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**THE JUSTICIABILITY OF THE ARGUMENT FOR THE RECOGNITION OF FREEDOM TO TRANSACT AT  
THE EMERGENCE OF BLOCKCHAIN TECHNOLOGIES IN UGANDA AND WORLD WIDE**

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**THE JUSTICIABILITY OF THE ARGUMENT FOR THE RECOGNITION OF  
FREEDOM TO TRANSACT AT THE EMERGENCE OF BLOCKCHAIN  
TECHNOLOGIES IN UGANDA AND WORLD WIDE.**

George Okitoi\*

**ABSTRACT**

The paper discusses the need for recognition for freedom to transact due to the emergence of block chain technologies. It looks at the existing legal framework on block chain and the fact that it has the potential to revolutionize a wide range of industries by enabling secure, transparent and efficient record-keeping and communication. As a result, many countries have recognized the importance of blockchain and have begun to legislate and regulate various aspects of its use. He asserts that freedom to transact is justiciable to the extent that individuals can seek legal remedies if their freedom to transact is violated or infringed upon. The author argues for a need to develop specific legislation on block chain technologies as well as the adoption of guidelines to ensure that these technologies are used in a way that respects the freedom to transact and promotes human rights.

**1.0 INTRODUCTION**

**1.1 FREEDOM; THE HUMAN RIGHTS**

Human rights are fundamental rights and freedoms that are inherent to all human beings, regardless of their nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status.<sup>1</sup> These rights include the right to life, liberty, and security of person; the right to education; the right to work and to form a family; and the right to participate in the cultural

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<sup>1</sup> The United Nations, General Assembly Universal Declaration of Human Rights 1945, Article 2. (Adopted 10 December 1948) <[Universal Declaration of Human Rights |](#)> [Accessed 20 February 2023]

life of the community, among others.<sup>2</sup> These rights are recognized and protected by international law and are based on the principle that every individual is entitled to certain rights and freedoms simply because they are human.

### **1.1.1 THE LAW ON HUMAN RIGHTS**

The Universal Declaration of Human Rights,<sup>3</sup> sets out the fundamental human rights that are to be protected by law. It includes a wide range of civil, political, economic, social, and cultural rights, and is considered to be the cornerstone of international human rights law. The International Covenant on Civil and Political Rights,<sup>4</sup> sets out the civil and political rights that are to be protected by law. It includes rights such as the right to life, liberty, and security of person; the right to freedom of expression and religion; and the right to a fair trial, among others.

The International Covenant on Economic, Social, and Cultural Rights,<sup>5</sup> sets out the economic, social, and cultural rights that are to be protected by law. It includes rights such as the right to work and to form a family; the right to education; and the right to an adequate standard of living, among others. This treaty also embodies the basis for the right to transact. In Uganda, human rights are protected under Chapter Four of the Constitution<sup>6</sup> that provides for a variety of human rights protection, and mechanisms for the enforcement of those rights. Uganda is also a signatory to various international and regional human rights treaties such as the African Charter on Human and People's Rights,<sup>7</sup> among others.

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<sup>2</sup> The Constitution of Uganda 1995, Chapter 4 available at <[1995 Constitution of Uganda.pdf](#)> [Accessed 20 February 2023]

<sup>3</sup> Ibid.

<sup>4</sup> The International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) available at <<https://www.ohchr.org/en/>> [Accessed 25 February 2023]

<sup>5</sup> International Covenant on Economic, Social, and Cultural Rights (adopted 16 December 1966) available at <[International Covenant on Economic, Social and Cultural Rights](#)> [Accessed 20 February 2023]

<sup>6</sup> Ibid

<sup>7</sup> African Charter on Human and Peoples Rights (ratified on 27 May 1986) available at <[www.achpr.org](#)> [Accessed 20 February 2023]

## 1.2 BLOCKCHAIN TECHNOLOGIES

Blockchain technologies, are decentralized and distributed digital ledger systems that are used to record transactions across a network of computers. These technologies use cryptography to secure the data and ensure that it cannot be altered or tampered with. Blockchain technologies have the potential to revolutionize the way we store and exchange information, as well as the way we conduct business and interact with each other.<sup>8</sup>

Blockchain technologies were originally developed as the underlying technology for the crypto currency, such as Bit coin. However, they have since been applied to a wide range of other applications, including supply chain management, financial services, healthcare, and even voting systems.<sup>9</sup>

One of the key features of blockchain technologies is that they are decentralized, meaning that they do not rely on a central authority to verify or validate transactions. Instead, transactions are validated and recorded by the network of computers that make up the blockchain. This makes them resistant to tampering or fraud, and allows for greater transparency and accountability in the recording of transactions.<sup>10</sup>

Blockchain is the technology that underlies most cryptocurrencies and is used to record transactions on a digital public ledger. A blockchain is a decentralized, distributed database that maintains a continuously growing list of records called blocks. Each block contains a timestamp and a link to the previous block, creating a chain of blocks.<sup>11</sup>

Crypto currencies use block chain technology to record transactions on a digital public ledger. When a transaction is made, it is broadcast to the network and validated by nodes (computers) on the network. Once a transaction is validated,

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<sup>8</sup> Nicolas Kube, 'Daniel Drescher: Blockchain Basics: A Non-Technical Introduction in 25 Steps' (2018) 32 *Financial Markets and Portfolio Management* 329.

<sup>9</sup> Melanie Swan, *Blockchain: Blueprint for a New Economy* (O'Reilly Media, Inc 2015).

<sup>10</sup> Ibid

<sup>11</sup> 'Blockchain Facts: What Is It, How It Works, and How It Can Be Used' (Investopedia) <<https://investopedia.com>> [Accessed 20 February 2023]

it is added to the blockchain as a new block. This block is then linked to the previous block, creating a chain of blocks that cannot be altered.<sup>12</sup>

The use of blockchain technology in cryptocurrencies helps to ensure the security and integrity of the transaction record. It also allows for transparent and verifiable transactions, as the entire history of a crypto currency's transactions is recorded on the blockchain and can be accessed by anyone.<sup>13</sup>

Overall, blockchain technologies have the potential to revolutionize the way we store and exchange information, as well as the way we conduct business and interact with each other.<sup>14</sup>

### **1.2.1 BLOCKCHAIN AND FREEDOM TO TRANSACT**

An essential aspect of blockchain technologies that relates to freedom to transact is crypto currencies. Crypto currency is a digital or virtual currency that uses cryptography for security and is not backed by any government or central authority. Cryptocurrencies are decentralized systems that allow for secure online transactions to take place directly between users.<sup>15</sup> The most well-known crypto currency is Bit coin (BTC), but there are many other types of cryptocurrencies as well such as Ethereum (ETH), Tether (USDT), Binance Coin (BNB), Dogecoin (DOGE), Litecoin (LTC), Cardano (ADA), Polkadot (DOT), Chainlink (LINK), Bitcoin Cash (BCH) among many others.<sup>16</sup>

In relation to freedom the matter at hand, freedom to transact is a core tenet of crypto-libertarian ideology whereby the individual is sovereign and the state has no authority to limit what a person can do with their assets, digital or otherwise. An extension of the same school of thought that elevates economic freedom above

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<sup>12</sup> Ibid

<sup>13</sup> Ibid

<sup>14</sup> Don Tapscott and Alex Tapscott, *Blockchain Revolution: How the Technology Behind Bitcoin and Other Cryptocurrencies Is Changing the World* (Reprint edition, Portfolio 2018).

<sup>15</sup> 'A Beginner's Guide to Investing in Cryptocurrencies | CoinMarketCap' (*CoinMarketCap Alexandria*) available at <[www.coinmarketcap.com](https://www.coinmarketcap.com)> [Accessed 21 February 2023]

<sup>16</sup> The CoinMarketCap website lists the top cryptocurrencies by market capitalization: available at <<https://coinmarketcap.com/>> [Accessed 21 February 2023]

all other social, cultural and political interests. The freedom to transact is increasingly invoked by crypto currency promoters and right-wing politicians, who share similar ideological leanings, in response to measures by governments and private sector actors to impose political consequences through economic means.<sup>17</sup>

A non-fungible token, or NFT, collector who goes by the pseudonymous Twitter handle @punk6529 posted a 56-part Twitter thread that ripped through the crypto world with viral intensity. Writing in response to the Canadian government's decision to obstruct bit coin transactions by members of the trucker convoy occupying Ottawa, punk6529 began with a stern pronouncement: "There are no other constitutional rights in substance without freedom to transact." What followed was a lengthy explication of how the ability to transact without government interference, with whomever one wants, in whatever amount or currency one wants was the wellspring from which all other rights flowed.<sup>18</sup>

### **1.2.2 THE LAW ON BLOCKCHAIN**

In terms of the law on blockchain technologies, there is currently no specific legislation in place that regulates the use of these technologies. However, there are various laws and regulations that apply to the use of blockchain technologies, depending on the jurisdiction in which they are used. For example, some countries have laws that regulate the use of digital currencies, such as Bit coin, which are based on blockchain technology.

Other countries have laws that regulate the use of blockchain technologies in specific sectors, such as finance or healthcare. It has the potential to revolutionize a wide range of industries by enabling secure, transparent and efficient record-keeping and communication. As a result, many countries have

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<sup>17</sup> Elizabeth M Renieris, 'Crypto's "Freedom to Transact" May Actually Threaten Human Rights' (*Centre for International Governance Innovation*) available at <<https://centrecigionline.org>> [Accessed 20 February 2023]

<sup>18</sup> Jacob Silverman and others, 'Bitcoin Goes to War' [2022] *The New Republic* available at <<https://newrepublic.com/article/>> [Accessed 20 February 2023]

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recognized the importance of blockchain and have begun to legislate and regulate various aspects of its use.

One of the first countries to legislate on blockchain technology was the United States. In 2017, the U.S. Commodity Futures Trading Commission (CFTC) approved the first bit coin futures contracts, recognizing the crypto currency as a commodity.<sup>19</sup> The CFTC also released guidance on the regulation of virtual currencies and blockchain-based derivatives.<sup>20</sup>

Additionally, the U.S. Securities and Exchange Commission (SEC) has issued guidance on the use of blockchain for securities settlement, and has taken enforcement actions against companies that have violated securities laws through their use of blockchain.

Australia: In 2017, the Australian Securities and Investments Commission (ASIC) released guidelines for initial coin offerings (ICOs) and issued a regulatory sandbox for fintech companies, including those working on blockchain projects.<sup>21</sup>

Canada: In 2014, the Canadian Securities Administrators (CSA) released a notice on the use of distributed ledger technology in the securities industry. The CSA has also issued guidance on the regulation of ICOs and has established a regulatory sandbox for fintech companies.<sup>22</sup>

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<sup>19</sup> CFTC (Commodity Futures Trading Commission) Approves First Bitcoin Futures Contracts, <https://www.cftc.gov/> [Accessed 20 February 2023]

<sup>20</sup> CFTC Issues Advisory on Virtual Currency Derivatives, <https://www.cftc.gov/> [Accessed 20 February 2023]

<sup>21</sup> '17-325MR ASIC Provides Guidance for Initial Coin Offerings' available at <<https://ASIC.com>> [Accessed 20 February 2023]

<sup>22</sup> The Canadian Securities Administrators Launches a Regulatory Sandbox Initiative | New Brunswick Financial and Consumer Services Commission (FCNB)' <<https://securities-administrators.ca>> [Accessed 20 February 2023]

China: In 2017, the People's Bank of China (PBOC) issued a statement on the regulation of ICOs, banning them in the country. The PBOC has also issued guidelines on the use of blockchain in the financial industry.<sup>23</sup>

France: In 2018, the French National Assembly passed a law recognizing the legal validity of smart contracts, which are often implemented on blockchain platforms.<sup>24</sup>

Germany: In 2019, the German Federal Financial Supervisory Authority (BaFin) issued guidelines on the regulation of ICOs and the use of blockchain in the financial sector.<sup>25</sup>

Japan: In 2017, the Japanese Financial Services Agency (FSA) recognized bit coin as a currency and regulated bit coin exchanges as financial instruments. The FSA has also issued guidelines on the use of blockchain in the financial industry.<sup>26</sup>

Singapore: In 2017, the Monetary Authority of Singapore (MAS) issued guidelines on the regulation of ICOs and has established a regulatory sandbox for fintech companies, including those working on blockchain projects.<sup>27</sup>

Switzerland: In 2018, the Swiss Federal Council released a report on the legal and regulatory framework for blockchain and distributed ledger technology.<sup>28</sup>

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<sup>23</sup> 'China: Central Bank Issues New Regulatory Document on Cryptocurrency Trading' (*Library of Congress, Washington, D.C. 20540 USA*) available at <[www.loc.gov](http://www.loc.gov)> [Accessed 20 February 2023]

<sup>24</sup> Julie Zorrilla, Stephan de Navacelle, Thomas Lapiere, 'A French Law Perspective on Blockchain Technology' available at <<https://www.ibanet.org/>> [Accessed 20 February 2023]

<sup>25</sup> 'BaFin - Activities Relating to DLT, Blockchain and Crypto Assets' available at <[www.BaFin.com](http://www.BaFin.com)> [Accessed 20 February 2023]

<sup>26</sup> Luke Graham, 'As China Cracks down, Japan Is Fast Becoming the Powerhouse of the Bitcoin Market' (*CNBC*, 29 September 2017)

<sup>27</sup> 'Overview of Regulatory Sandbox' available at <<https://www.mas.gov.sg/>> [Accessed 20 February 2023]

<sup>28</sup> The Federal Council, 'Legal Framework for Distributed Ledger Technology and Blockchain in Switzerland - An Overview with a Focus on the Financial Sector'. Available at <<https://www.news.admin.ch/newsd/>> [Accessed 20 February 2023]



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These are just a few examples of the countries that have legislated on blockchain technology. It is important to note that the regulation of blockchain varies widely across different jurisdictions, and it is likely that more countries will continue to legislate and regulate this technology as it continues to evolve.

### **1.2.3 BLOCKCHAIN TECHNOLOGIES AND UGANDA**

The Ugandan President Yoweri Museveni has spoken positively about blockchain technology, and its application in Uganda. At the Africa Blockchain conference held in May 2019, the president said that there is a need “to look for a new technology of enabling things to move faster and new systems that go with it.”<sup>29</sup>

Several crypto to fiat currency exchanges have been launched in Uganda, like BitPesa, Coin Pesa and Binance Uganda, Yellow card and Chipper Cash. However, crypto currency is not considered a legal tender in Uganda. It is not regulated by the government or central bank, which makes it risky for one to use in the country.<sup>30</sup>

In October 2019, the Minister of Finance issued a public statement stating:

*“The government of Uganda does not recognize any crypto-currency as legal tender in Uganda. It has not licensed any organization in Uganda to sell crypto-currencies or to facilitate the trade in crypto-currencies and so these organizations are not regulated by the Government or any of its agencies. As such, unlike other owners of financial assets who are protected by Government regulation, holders of crypto-currencies in Uganda do not enjoy any consumer protection should they lose the value assigned to their holdings of crypto-currencies, or should organization facilitating the use,*

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<sup>29</sup> Alice Namuli Blazevic, ‘Blockchain, Cryptocurrencies and the Law in Uganda – KATS’ available at <<https://Blockchain,CryptocurrenciesandthelawinUganda.com>> [Accessed 25 February 2023]

<sup>30</sup> Ganyanna Sheba Percy, ‘CRYPTOCURRENCY IN UGANDA – Nabasa & Company Advocates’ available at <<https://nabasalaw.com/>> [Accessed 21 February 2023]

*holding or trading of crypto-currencies fail for whatever reason to deliver the services or value they have promised”<sup>31</sup>*

Despite this, there have been attempts by the government to control crypto currency exchanges from carrying out money laundering activities, for example, on 12 September, 2020, the Financial Intelligence Authority (FIA) published a press release, notifying the public of an Amendment of the Second Schedule to The Anti-Money Laundering Act 2013.<sup>32</sup>

The amendment included virtual asset service providers among the list of accountable persons under the Act, that required them to register and made them subject to supervision and monitoring by the FIA. This was done in a bid to hold crypto service providers accountable due to the numerous reported scams in relation to crypto-currency that were being recorded in the country.<sup>33</sup>

Despite the lack of regulation specifically targeted at cryptocurrencies, there are various laws existing in Uganda that tackle the subject, for example, Section 3 of the Foreign Exchange Act, 2004, defines “foreign currency” to mean a currency other than the legal tender of Uganda. It further defines “foreign exchange” to include banknotes, coins or electronic units of payment in any currency other than the currency of Uganda which are or have been legal tender outside Uganda. It can be argued that crypto currency falls under the bracket of electronic units of payment.

Under the current legal regime in Uganda, the Electronic Transactions Act,<sup>34</sup> the Electronic Signatures Act,<sup>35</sup> and the Computer Misuse Act as Amended,<sup>36</sup>

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<sup>31</sup> Ibid

<sup>32</sup> Sydney Asubo, ‘Amendment of The Second Schedule To The Anti-Money Laundering Act 2013 | Financial Intelligence Authority’ available at <<https://www.fia.go.ug/>> [Accessed 21 February 2023]

<sup>33</sup> Ibid.

<sup>34</sup> Electronic Transactions Act 2011 available at <<https://ulii.org/akn/ug/>> [Accessed 20 February 2023]

<sup>35</sup> Electronic Signatures Act 2011 available at <<https://ulii.org/akn/ug/>> [Accessed 20 February 2023]

<sup>36</sup> Computer Misuse Act 2011 available at <<https://ulii.org/akn/ug/>> [Accessed 20 February 2023]

provide a seemingly comprehensive legal framework for e-commerce in Uganda, meaning that de facto, these acts could regulate the use and transfer of crypto currency.

In addition, the National Payment Systems Act,<sup>37</sup> has been enacted, from the long title, as an Act to regulate payment systems; to provide for the safety and efficiency of payment systems; to regulate issuance of electronic money; to provide for the oversight of payment instruments among other related matters. Therefore, regulators in theory would be able to use this legislation to control crypto currencies in Uganda.

## **2.0 FREEDOM TO TRANSACT**

The freedom to transact is a fundamental human right that is protected by reading all together, the various international human rights instruments, including the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights. In theory, it could exist by reading it into these various instruments. It should be noted however that there is no law providing for the right to transact.

This right nonetheless is essential for the exercise of other economic, social, and cultural rights, such as the right to work, the right to form a family, and the right to participate in the cultural life of the community, the right to health, the right to property and many others. This is because all these rights rely on one's ability to be able to contract and receive these services, publicly or privately.

Freedom to transact, according to me, refers to the right to enter into contracts and conduct business freely, without interference or discrimination. This would essentially include the right of two contracting parties to determine what mode of consideration they are willing to give to each other. There are various international human rights instruments that would protect the right to freedom to transact, including the International Covenant on Civil and Political Rights

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<sup>37</sup> National Payment Systems 2020 <<https://ulii.org/akn/ug/>> [Accessed 20 February 2023]

and the Universal Declaration of Human Rights. These instruments recognize the right to freedom of contract and the right to engage in any lawful occupation, as well as the right to protection against discrimination in the exercise of these rights.

In terms of the law that provides for this freedom, there are various laws and regulations that protect the freedom to transact in different jurisdictions. For example, anti-discrimination laws and consumer protection laws may provide protections against discriminatory or unfair practices in the conduct of business.

In addition, contract law and commercial law may provide the legal framework for the formation and enforcement of contracts and the conduct of business. Therefore, it is clear from the above submission that there is no specific mention of the right to transact under international or regional human rights instruments. However, in the words of Elizabeth M. Renieris,

*“This is not to say that a freedom to transact could never become enshrined as a right or that rights do not expand or evolve, they do. But even then, it most likely would not be absolute, as rights rarely are.”<sup>38</sup>*

The argument for the existence of the right is strong, however, it is likely that even when recognised as a right under international law, freedom to transact shall have a claw back clause. Claw back clauses constitute restrictions that are built into human rights provisions. These internal modifiers qualify rights and permit the state to restrict those rights to the maximum extent permitted by their domestic law.<sup>39</sup>

Therefore, the individual is given the right, and simultaneously deprived of it, because it is subject to domestic constraints that often deprive people of all legal protection.

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<sup>38</sup> Ibid 17

<sup>39</sup> General Comment No. 34

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One of the most abused clawback clauses under these international human rights systems is the one that appears under all these treaties in relational to freedom of expression, most notably under *Article 19(3)* of the ICCPR which states that, the exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: For respect of the rights or reputations of others; For the protection of national security or of public order, or of public health or morals.

General Comment No.34,<sup>40</sup> states that restrictions are permitted in respect of, inter alia the rights and reputations of others and protection of national security. In Uganda, Article 43 of the Constitution provides for general limitation on fundamental and other human rights and freedoms.<sup>41</sup>

There have been several court cases that have tried to define and protect freedom to transact. For example, in the case of *Brennan v Titusville Steel Co.*<sup>42</sup> the Supreme Court of Pennsylvania recognized the right to freedom of contract as a fundamental right protected by the state constitution. It found that an ordinance that imposed a tax upon interstate commerce was in violation of the provisions of the Constitution of the United States. In the case of *Griswold v Connecticut*,<sup>43</sup> the Supreme Court of the United States struck down a state law that prohibited the use of contraceptives on the grounds that it violated the right to privacy and the freedom to transact in private medical matters.

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<sup>40</sup> 'United Nations: International Covenant on Civil and Political Rights' (1967) 61 American Journal of International Law 870 available at <<https://www2.ohchr.org/>> [Accessed 20 February 2023]

<sup>41</sup> Ibid 2

<sup>42</sup> *Brennan v Titusville*, 153 U.S. 289 (1894) available at <<https://supreme.justia.com/>> [Accessed 20 February 2023]

<sup>43</sup> *Griswold v. Connecticut*, 381 U.S. 479 (1965) <<https://supreme.justia.com/>> [Accessed on 20 February 2023]

### **3.0 THE JUSTICIABILITY OF FREEDOM TO TRANSACT**

Justiciability deals with the boundaries of law and adjudication. Its concern is with the question of which issues are susceptible to being the subject of legal norms or of adjudication by a court of law.<sup>44</sup> The justiciability of a human right refers to the extent to which it can be enforced or protected through the legal system. In the case of freedom to transact, this right is justiciable to the extent that individuals can seek legal remedies if their right to transact is violated or infringed upon.

For example, if an individual is denied the right to enter into a contract or to conduct business because of their race, religion, or nationality, they may be able to seek legal remedies through the courts on grounds of discrimination.<sup>45</sup> Similarly, if an individual is denied access to financial services or is subjected to discrimination in the financial sector, they may be able to seek legal remedies to protect their freedom to transact.

### **3.1 THE UGANDAN PERSPECTIVE**

In Uganda, the freedom to transact is recognized and protected by the Constitution, which guarantees the right to freedom of contract and the right to engage in any lawful occupation, trade, or business. It is provided for under Article 40(2) of the 1995 Constitution that provides that, every person in Uganda has the right to practise his or her profession and to carry on any lawful occupation, trade or business.<sup>46</sup> Article 21(2) of the Constitution prohibits discrimination on grounds such as race, ethnicity, religion, and gender, which may interfere with the freedom to transact.

The justiciability of the freedom to transact in Uganda refers to the extent to which this right can be enforced or protected through the legal system in

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<sup>44</sup> Ariel L Bendor, 'Are There Any Limits to Justiciability? The Jurisprudential and Constitutional Controversy in Light of the Israeli and American Experience' (1997) 7 *Indiana International & Comparative Law Review* 311 available at <<https://mckinneylaw.iu.edu/>> [Accessed on 20 February 2023]

<sup>45</sup> *Ibid* n (4), article 2

<sup>46</sup> *Ibid* n (2), Art 21(2)

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Uganda. In general, the freedom to transact would be considered, justiciable in Uganda, as individuals have the right to seek legal remedies if their freedom to transact is violated or infringed upon.

Article 45 of the Constitution of Uganda provides for human rights and freedoms additional to other rights. It states that, the rights, duties, declarations and guarantees relating to the fundamental and other human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned.

Therefore, the fact that there is no explicit mention of the right to freedom to transact under Chapter Four of the constitution, does not in itself extinguish the justiciability of freedom to transact. In *Attorney General v Susan Kigula & 417 others*, the Supreme Court of Uganda stated that the rights in the Constitution are not exhaustive.<sup>47</sup>

There have been very few court cases in Uganda that have addressed issues related to the freedom to transact but several on freedom of contract. For example, in the case of *Madrama v Attorney General* the Supreme Court of Uganda held that, it is trite that there is freedom of contract. However, it noted that, one cannot contract out of the law, let alone out of the Constitution.<sup>48</sup>

The freedom to transact is a fundamental human right that is recognized and protected by the Constitution of Uganda. This is because, without the ability to transact, most of the rights protected under Chapter Four would not be realized such as the right to education under Article 30, economic rights under Article 40, and the rights derived from Article 8A under the National objectives and guidelines for state policy such as the right to health. This freedom to transact

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<sup>47</sup> *Attorney General v Susan Kigula & 417 Ors* [2009] UGSC 6 <<https://ulii.org/ug/judgment/>> [Accessed 25 February 2023]

<sup>48</sup> *Madrama v Attorney General* [2019] UGSC 1 <<https://ulii.org/ug/judgment/>> [Accessed 25 February 2023]

is justiciable to the extent that individuals can seek legal remedies if their freedom to transact is violated or infringed upon.

#### **4.0 CONCLUSION**

The argument for freedom to transact fundamental to the realization of other human rights. Through a holistic reading of the various international human rights instruments as shown above, freedom to transact can be implied into the provisions. This freedom is essential for the exercise of other economic, social, and cultural rights, and it is justiciable to the extent that individuals can seek legal remedies in the courts of law if their right to transact is violated or infringed upon, such as the right to enter into a contract, on grounds such as discrimination.

Given the potential of blockchain technologies to revolutionize the way we conduct business and interact with each other, it is important that these technologies be recognized and regulated in a way that promotes the freedom to transact and protects the rights of individuals. This could involve the development of specific legislation on blockchain technologies as well as the adoption of standards and guidelines to ensure that these technologies are used in a way that respects and promotes human rights.

The fact the two contracting parties wish to conduct business using cryptocurrencies should not be infringed upon by the state. This is because this would be a violation of the right to self-determination of an individual and also the common law principle of freedom of contract. Consideration under contract should always be left open to the contracting parties to decide; what is valuable in to eyes of one person may not be valuable to another. As the saying goes, one man's meat is another man's poison.

The mere fact that in an increasingly capitalistic world, it is nearly impossible to get any service or good without a form of payment or consideration being rendered. Therefore, this strengthens the case of the right to freedom to transact, and with the emergence of cryptocurrencies, now being threatened by



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governments that feel their grasp on economic control is slipping, this has only helped supporters of this right as discussed in this paper.

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