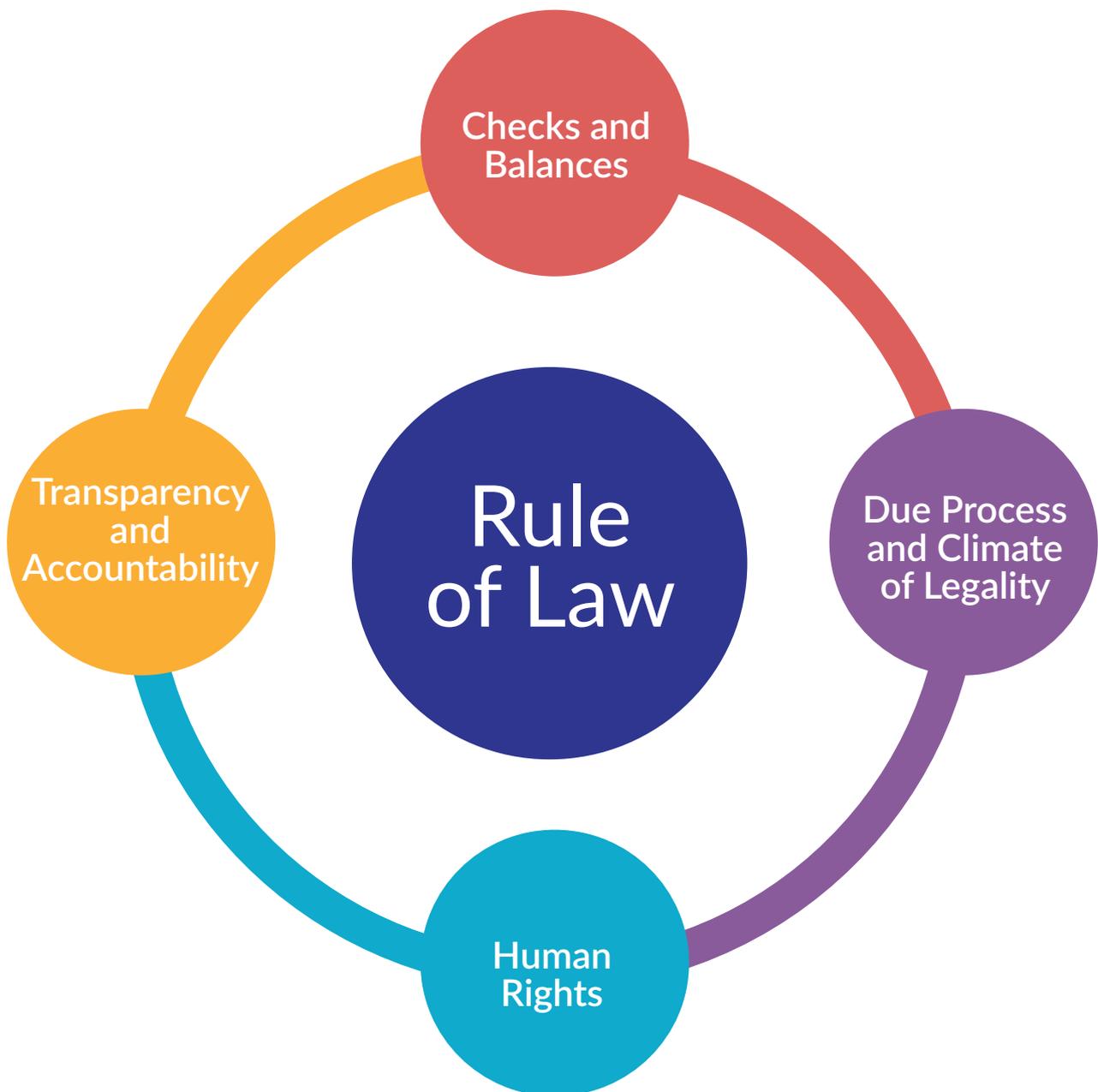




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# ULS STATE OF RULE OF LAW REPORT

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JANUARY - MARCH 2017



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# FOREWORD

The 1995 Constitution provides a broad framework for observance of the Rule of Law. In its most basic form, the Rule of Law is about the principle that no one is above the law. The principle is intended to be a safeguard against arbitrary governance, whether by a totalitarian leader or by mob rule. It guards against excesses by the State, its agencies and the people that would foment dictatorship and anarchy. It fosters the welfare of the people and their nation by stipulating observance of rights and freedoms, security of persons and property and effective service delivery and guarding against injustices in all spheres of life.

The Uganda Law Society (ULS) Strategic Plan (2017 – 2021) has provided for the promotion and upholding of the Rule of Law as its third strategic thrust. In a bid to roll out this strategy, the ULS has:

- a) Set up a High-Level Rule of Law Advisory Panel supported by an in-house Rule of Law Officer;
- b) Introduced the ULS Quarterly State of the Rule of Law Report;
- c) Established the Annual High-Level Stakeholders' forum on rule of law issues in October;
- d) Enhanced its strategic Public Interest Litigation and Advocacy campaign;
- e) Created the Coalition in Support of the Independence of the Judiciary (CISTIJ);
- f) Set up a Rule of Law Club programme to be rolled out in universities and secondary schools; and is
- g) Working towards establishment of an effective and supportive Rule of Law Fund.

This Report is the first of the new series intended to highlight positive developments and major challenges registered during each quarter of the year with regard to the Rule of Law, and to offer proposals for improvement.

The Report selects specific incidents affecting the Rule of Law indicating their legal implications and pointing to issues of concern that require additional attention and follow-up by all the key stakeholders.

For sources, the Report draws from Government documentation, the media, the legal fraternity and members of the public. In each of the Reports, issues of concern will be clustered under five main headings namely: checks and balances, due process and a climate of legality, human rights, transparency and accountability and general issues.

It is our belief that a continuous follow-up on the recommendations in the report will lead to the creation of an environment that promotes and upholds the Rule of Law at all times. Working with strategic partnerships among the JLOS institutions and stakeholders, the ULS will follow up on the practical recommendations made for the attention of policy and decision makers.

On behalf of the Executive Council, I would like to commend the ULS High Level Rule of Law Advisory Panel together with the secretariat team for their tremendous contribution to this report.



**Francis Gimara**  
**President - Uganda Law Society**

# INTRODUCTION

In its most basic form, the Rule of Law is about the principle that no one is above the law. The principle is intended to be a safeguard against arbitrary governance, whether by a totalitarian leader or by mob rule. It is particularly designed to guard against excesses by the State, its agencies and the people, with the goal of avoiding dictatorship and ensuring that we do not revert to a state of anarchy. It fosters the welfare of the people and their nation by stipulating observance of rights and freedoms, security of person and property, effective service delivery and guarding against injustices in all spheres of life.

According to the 2016 World Justice Project Rule of Law Index, Uganda ranks 105<sup>th</sup> out of 113 countries assessed during the period. This ranking brings Uganda to 10 positions lower than the 2015 ranking.<sup>1</sup> Hence, it is clear that the Rule of Law continues to decline on account of issues such as the level of corruption, the disregard of court orders, executive excess, weaknesses in the justice system, police brutality, unlawful arrests and detention, and malicious prosecutions among other negative developments. The economy is undergoing shocks and pressures with negative consequences because of the linkage between the Rule of Law and overall development.

While in the 1990s Uganda was largely regarded as a success story with respect to Rule of Law and good governance issues, recent statistics are less flattering. According to various reports, Uganda is a country with a superficial democracy, characterised by a semblance of the Rule of Law but in actual fact the respect of the rule of law is declining.

As part of its 2017 to 2021 Strategic Plan, the ULS has adopted a more proactive approach in dealing with issues relating to the rule of law in a bid to curb impunity, promote transparency and ensure the observance of due process of the law at all times. Under **Strategic Objective 3** of the Plan which is “**to promote the Rule of Law and human rights protection**” the ULS shall continue to protect and assist the public in Uganda in all matters touching, ancillary or incidental to the law and to assist the Government and the courts in all matters affecting legislation and the administration and practice of law in Uganda; respectively.

The achievement of the objective entails creating strategic partnerships with relevant stakeholders including the JLOS institutions, to carry out research, produce and share evidence-based position information on relevant issues. This Report is among the many steps taken towards the achievement of the objectives of ULS with respect to the Rule of Law.

*1 The change in rankings was calculated by comparing the positions of the 102 countries measured in 2015 with the rankings of the same 102 countries in 2016, exclusive of the 11 new countries indexed in 2016*

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# OVERVIEW OF ISSUES

## A. CHECKS AND BALANCES

The Rule of Law ideally requires those who govern to limit their power to what is confined in the law. The constitutional principle of the Separation of Powers is designed to ensure that there is a balance of power and that no one organ of the State becomes overly powerful in relation to the others and especially with respect to the population at large.

The three arms of government are separate but mutually supportive in exercising their functions in order to prevent the abuse of power. A system of Checks and Balances has been adopted by modern societies by putting in place constitutional, institutional and non-governmental constraints to limit the reach of government officials. The essence of the system is that governmental power should not go unchecked as it may lead to abuse of authority, wasted resources, and ineffectiveness in achieving the most basic purposes of government.

During the reporting period, the following issues pertaining to the observance of checks and balances arose:

### **a) The award of UGX 6 Billion Bonus Payment by Government through the Uganda Revenue Authority**

42 public officials received a total of UGX 6 billion from H.E. the President Yoweri Museveni as a reward (dubbed the “presidential handshake”) for their participation and success in arbitral proceedings in two tax disputes against Heritage Oil and Gas Ltd (HOGUL) and Tullow Oil Uganda Ltd.

The issue triggered public outrage and raised fundamental questions regarding the legality and the procedural propriety of the award. In the absence of an official policy, concerns were raised that such awards would set a dangerous precedent and provide a foundation for future payments of large bonuses by those who claim to have contributed in one way or another in this and future similar ventures when the oil money begins to flow.

The Parliamentary Committee on Commissions, Statutory Authorities and Staff Enterprises (COSASE) was subsequently tasked to investigate the circumstances of the handshake. Among other stakeholders,<sup>2</sup> the ULS President was invited to meet with the members of the Committee on 20<sup>th</sup> February 2017 to offer guidance on the procedural propriety of this award.

The ULS offered a detailed position<sup>3</sup> noting *inter alia* that although it has severally been opined by among others the Attorney General (who is the Principal Legal Advisor to

<sup>2</sup> Including the Uganda Revenue Authority, the Attorney General, the Ministry of Energy and Mineral Resources among others.

<sup>3</sup> See the detailed ULS Legal Opinion on the Legality of the award of Uganda Shillings Six Billion awarded to public servants for winning arbitration case with M/s Heritage Oil & Gas Limited.

the Government of Uganda) that the awards were authorised by the President under Articles 98 and 99 of the Constitution, a careful reading of the said articles does not afford the President *carte blanche* to make such awards to public servants or indeed to any other individual without a supportive legal framework. A detailed reading of the said Articles reveals that the prerogative power asserted by the Attorney General and the recipients of the award is not absolute and must be exercised in accordance with the Constitution.

The ULS further contended that if the President is to exercise his prerogative to reward individuals who have made an outstanding contribution to public service through monetary rewards that will have an effect on the Consolidated Fund; the same must be done through an Appropriation or Supplementary Appropriation Act.

ULS also noted that the Attorney General's Chambers was affected by a conflict of interest which compromised the ability of the office to provide unbiased technical advice to the President, given that several officials in his Chambers were reported to have been beneficiaries of the award.

Furthermore under Section 58 of the Public Finance Management Act (PFMA), withdrawals from the Petroleum Fund must be done strictly via an Appropriation Act and upon sanction of the Auditor General. In the instant case, the award was alleged to be a withdrawal from the Petroleum Fund. If that was indeed the case, such award ought to have been done in accordance with the above-mentioned law.

Under Section 32 (1) of the Public Finance Management Act the withdrawal of any monies from the Consolidated Fund can only be executed by a warrant of expenditure issued by the Minister of Finance to the Accountant General upon issuance of a grant of credit by the Auditor General.

### **Legal issues arising:**

1. Whether the President as the fountain of honour can give awards under Articles 98, 99 of the Constitution without an enabling legal framework
2. Section 79 of the Public Finance Management Act, No. 3 of 2015 makes it an offence to incur unauthorized expenditure on behalf of Government or to divert public funds for unauthorized Activities. On conviction, such an offence attracts a sentence of a fine not exceeding five hundred Currency points or imprisonment for a period of four years.
3. Breach of the procedure stipulated under the Public Finance Management Act, No. 3 of 2015 –which requires Parliament's approval of all payments made out of the consolidated fund.

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## **Recommendations:**

1. There is a need for clear guidelines on the award/reward of public officials from the Consolidated Fund of the recently-established Petroleum Fund in order to award exceptional performance while maintaining the requisite accountability and transparency;
2. All payments made out of the Consolidated Fund and Petroleum Fund must be executed in full compliance with the laws governing these institutions; and
3. As the principal legal advisor to Government, the Office of the Attorney General should avoid situations which lead to a conflict of interest.

## **b) Issuance of the Justice Kavuma interlocutory order and its implications for relations with Parliament**

On 9<sup>th</sup> January 2017, the Deputy Chief Justice Steven Kavuma sitting as a single Judge issued an interim injunction in a constitutional matter restraining Parliament, any person, or authority from investigating, questioning or inquiring into the impugned UGX 6 Billion award and staying all proceedings of whatever nature which may be pending before any fora until the final Petition was disposed of. The order arose out of an application by a lawyer named Eric Sabiiti who sought the interim order in a bid to bar any person from investigating the presidential handshake.

The order raised concerns about the legality of issuing an injunction against Parliament stopping it from exercising its constitutional mandate to provide oversight on the spending of public resources. There were also concerns regarding the overall mutual respect of the arms of governance in the performance of their functions.

Under the Constitution, Parliament exercises legislative and deliberative functions. The Judiciary is mandated to determine whether legislative outcomes conform to the Constitution. It is most unusual for the Judiciary to intervene by stopping the deliberative process of Parliament. This is so because no issue of legality is likely to arise until the final outcome of the deliberations. Therefore, the misgivings over the interim order issued by a single judge of the Constitutional Court should be viewed in this context.

The other concern is that the order was issued without proper due process, in that the other parties concerned such as Parliament were not given an opportunity to be heard. Parliament rightly protested the court order as being improper but it obeyed and refrained from continuing with the investigations. The ULS commends Parliament for this development which was in accordance with the Rule of Law.

**Legal Issues arising:**

1. Under the Constitution, Parliament is empowered to legislate and deliberate matters of public interest and the Judiciary is empowered to test the legality of legislation made by Parliament
2. The Judiciary has no power to bar the deliberations of Parliament, which was an apparent infringement of the Separation of Powers principle, and undermines the power of the Judiciary to act as a necessary check on Parliament in future cases where the latter institution has erred.

**Recommendations:**

1. The ULS urges the respective arms of Government to maintain mutual respect of each other's mandates in the performance of their functions.
2. That Government should consider the implementation of the Commonwealth (Latimer House) Principles on three branches of Government to enable the development of a better relationship between them based on respect of rule of law, the promotion and protection of fundamental human rights and entrenchment of good governance based on the highest standards of honesty, probity and accountability.

**B. DUE PROCESS AND THE CLIMATE OF LEGALITY**

The concept of due process speaks to fair treatment as a citizen's entitlement through the normal judicial system. No person shall be deprived of the right to life, liberty or property without due process of law. It guards against practices and policies which violate basic precepts of fundamental fairness in court and related proceedings.

At its very basis, the principle of legality can be described as a mechanism to ensure that the state, its organs and its officials do not consider themselves to be above the law in the exercise of their functions but remain subject to it.

Over the review period, the following incidents pertaining to the due process of law and legality arose:

**a) Constitutional Court Decision on Interim Orders**

On the 23<sup>rd</sup> February 2017, three Justices of the Constitutional Court (namely Fredrick Egonda-Ntende, Kenneth Kakuru, and Elizabeth Musoke JCC) delivered a landmark decision in the case of *Murisho Shafi & 5 Others v. Attorney General & Inspectorate of Government*.<sup>4</sup> The main import of the ruling was that any decision rendered by a single Judge or a panel of three Justices in a constitutional matter did not conform to the

<sup>4</sup> Constitutional Application No.2 of 2017; < <http://www.ulii.org/ug/judgment/constitutional-court/2017/1/>>.

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jurisdictional requirement of Article 137(2) of the Constitution which stipulates as follows: “When sitting as a Constitutional Court, the Court of Appeal shall consist of a Bench of five members of that court”.

The ruling was of considerable significance on account of the fact that since the 1995 Constitution was enacted, several interlocutory matters before the Court have been decided by a coram of fewer than five members. Indeed, a practice had developed in which a single judge of the court—as in the Eric Sabiiti ruling reviewed in the previous section of this report—would preside over a matter and deliver a ruling. Many of those rulings had the effect of stifling further action on the substantive cause. For instance, interlocutory orders by a single judge of the Court have prevented the continuance of prosecutions at the Anti-Corruption Court and by the Director of Public Prosecutions. Therefore, in making their judgment in the Murisho case the judges must have been alive to the fact that interim orders issued especially by single Judges—even when well-intentioned—had been grossly abused by both courts and litigants. Indeed, in the recent past the ULS has expressed its dissatisfaction with some of the decisions issued by a number of justices of the Constitutional Court in outright disregard of the law and best practices.

In his ruling, Justice Egonda-Ntende stated that fidelity to the law (an essential strand underpinning the Rule of Law) would compel the Court of Appeal to respect the provisions of Article 137(2), however inconvenient; the inconvenience in this case being the necessity of assembling a full Bench of the Court to determine an application for interim relief. In making this recommendation, the court was also alive to the fact that decisions made without jurisdiction are a nullity whether declared so or not.

Controversy has however been created by the consequential orders and directives issued by Justice Kakuru. In addition to an order referring the matter before them to a coram of five Justices of the court, Justice Kakuru made the following consequential orders:

- (i) All interim orders issued by a single Justice of the Constitutional Court which are still in force are null and void and of no effect;
- (ii) Any interim or substantive orders of injunction issued by a coram of three Justices of the Constitutional Court which are still in force are null and void and of no effect; and
- (iii) The Registrar of the court was directed to place all pending constitutional applications before a full coram of the Constitutional Court for determination. Such applications should include all those made by either a single justice or a coram of three—but whose rulings had not been delivered by the time of the ruling.

A number of clarifications need to be made with respect to Justice Kakuru's ruling:

- (i) The majority decision in the case is that by Justices Egonda-Ntende and Musoke;
- (ii) The views of a minority judge although relevant, do not carry the day;

- (iii) These consequential orders are not valid unless the same issue is decided by a full Bench of the Constitutional Court under Article 137 (2) of the Constitution; and
- (iv) In any case the orders will not be binding on parties not privy to the Murisho case.

Despite the above, the ruling in the Murisho case presents an opportunity to reflect on the current status of the Constitutional Court given the experience of the last several decades.

### **Legal Issues:**

1. According to Article 137(2) of the 1995 Constitution, the Constitutional Court is properly constituted if it has a coram of five justices.
2. The Constitutional Court is separate from the Court of Appeal although the same personnel preside over the two courts. Therefore the rules of procedure for each court must be observed separately.

### **Recommendations:**

The ULS proposes the following specific recommendations for consideration by all the stakeholders:

1. The question of creating a separate Constitutional Court should be revisited. Time has come for a serious reconsideration of the institutional design of the Constitutional Court and, in particular, the need for the establishment of a separate, dedicated court for the determination of constitutional petitions, if the letter and spirit of Article 137(7) is to be truly operationalized.
2. The Chief Justice and the Rules Committee should review the rules of procedure for the various courts with the view to streamlining them.

We note that as a result of interim orders issued in the past an estimated 309 constitutional petitions have stalled, and the substantive applications that would have followed the interim orders (estimated at 201), are pending conclusion. As an interim measure it is recommended that a standing panel be set up to address this long-standing backlog.

### **b) Non-Compliance with Court Orders**

On 20<sup>th</sup> February 2017, the Jinja Chief Magistrate H/W Simon Kaggwa ordered that the Prime Minister of the Rwenzuru Kingdom, Mr. Johnson Thembo Kitsumbire and others who were arrested following the Kasese incident be transferred from Kirinya Government Prison in Jinja to Luzira Prison where they could receive proper medical attention. The Uganda Prisons Service however did not comply with this order.

It has been established that on two recent occasions, the sick prisoners have not been

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transferred from Kirinya to Luzira to receive treatment as court ordered.<sup>5</sup>

In response, the Jinja Chief Magistrate summoned the Commissioner General of Prisons, Dr. Johnson Byabashaija to appear before him on 6th March 2017 for “contempt of court”. It is not yet established whether the Commissioner answered the summons.

This is not an isolated development as there have been many other instances of state agencies failing to comply with court orders.

### **Legal issues arising:**

1. Under Section 117 of the Penal Code Act of Uganda, it is an offence to disobey any order, warrant or command duly made, issued or given by any court and the same is punishable by imprisonment for two years.

### **Recommendations:**

1. There is a need to institute measures and mechanisms to deter the recurrence of similar acts, commissions and omissions of breach and non-compliance with court orders.
2. There is need for continuing education/sensitization of law enforcement agencies and other stakeholders on their constitutional and legal obligations with regard to implementing court orders.

## **c) Crisis at the Uganda National Chamber of Commerce and Industry**

On 2<sup>nd</sup> March 2017, the Chairpersons of some of the branches of the Uganda National Chamber of Commerce and Industry (UNCCI) petitioned<sup>6</sup> the ULS to intervene as per its statutory mandate in what has become a crisis at the UNCCI following a botched Annual General Meeting (AGM) and Elections. These events which according to the UNCCI Constitution should have been held in December 2016 were suspended by Government citing administrative gaps and security concerns and Government is yet to constitute a framework within which the AGM will take place. The Board of Directors’ term expired in September 2016 rendering them illegitimate and without mandate. A section of the members of the UNCCI have accused its leadership of grossly mismanaging the institution and have filed a court case against the AG.<sup>7</sup>

The importance of the UNCCI cannot be understated as it is a key driver of economic

<sup>5</sup> Prisons Boss Byabashaija Summoned over Sick Prisoners <http://www.theugandatoday.com/news/2017/02/prisons-boss-byabashaija-summoned-over-sick-prisoners/>.

<sup>6</sup> See Letter from the UNCCI dated 2nd March 2017 and entitled “Petition to the Uganda Law Society about the Crisis at the Uganda National Chamber of Commerce and Industry”.

<sup>7</sup> Miscellaneous Application No. 932 of 2016 and HCT-00- CV-MC-0326-2016.

growth by promoting investments and job creation, business skills development and linkages, global trade and export opportunities, business mentoring and entrepreneurship.

The State's action in blocking the elections of the UNCCI without working with the members of the Chamber to resolve the matter raises concerns about the arbitrary interference by Government in the affairs of private institutions.

### **Legal issues arising:**

1. Government blocked the elections of the UNCCI without any enabling legal framework. The UNCCI is registered as a company limited by guarantee and under the law, its affairs are supposed to be managed by a duly-constituted Board appointed by members of the UNCCI at a legally convened AGM.

### **Recommendations:**

1. The Courts of law should quickly dispose of these matters to allow the UNCCI to conduct its elections as per its Articles of Association; and
2. Government Ministers should avoid making unilateral decisions without the requisite supporting legal framework.

## **d) Due Process and the Rights of the Accused**

On 12<sup>th</sup> January 2017 three suspects, Dan Oola Odiya and his co-accused Kenneth Otto and Sam Oboma who were facing charges of treason, concealment of treason, murder, attempted murder and aggravated robbery were released by Gulu Grade One Magistrates Court presided over by H/W Paul Owino. This release was carried out on the recommendation of the Director of Public Prosecutions (DPP) who decided to discontinue proceedings against the trio. Shortly after their release, they were re-arrested by security agents from the holding cells as they awaited the processing of their release. They were subsequently driven away to an unknown destination. The police later admitted that they had executed the subsequent arrest and detention, and explained that they simply intended to further question Mr. Odiya and possibly re-charge him.<sup>8</sup> It may be recalled that even the Omusinga of the Rwenzururu Kingdom--HH Charles Wesley Mumbere was released on bail by court and was rearrested in a similar manner.

The law gives the police powers to re-arrest discharged suspects, if there are other charges against them. However, forcefully doing so within the court premises is unacceptable, unlawful and an affront to judicial independence and process. If not addressed, such actions will lead to a consistent abuse of the judicial process and of

<sup>8</sup> *Police re-arrests UPC's Odiya after DPP Clears him of Treason*  
<<http://www.monitor.co.ug/News/National/DPP-drops-charges-against-UPC-s-Odiya--re-arrested-/688334-3514952-sdkhooz/index.html>>.

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the rights of accused persons. This trend has gained notoriety over the years since the 2005 raid on the High Court by the Black Mamba brigade. If the law enforcing agencies such as the Police fail to respect the rights of the people, and to protect the courts while they carry on with their judicial functions, then members of the public get the wrong message about the sanctity of the courts. Thus, in 2016 there was an attack on the Makindye Magistrate's Court by alleged hooligans protesting the private criminal prosecution of the Inspector General of Police. The sanctity of the courts must be respected. Due process of law is a constitutional guarantee that prevents governments from impacting on citizens in an abusive way. In its modern form, due process includes both procedural standards that courts must uphold in order to protect people's personal liberty.

### **Legal issues arising:**

1. Under Article 28(3)(a) of the Constitution persons are presumed to be innocent until proven guilty. Therefore, all accused persons maintain their rights to apply for bail including the right to liberty unless there are compelling reasons for them to be detained.

### **Recommendations:**

1. It is recommended that the actions of the officers involved be investigated and those found culpable be held to account;
2. We call upon the legal fraternity and other stakeholders to forward recommendations on how guidelines for the handling of bail can be streamlined;
3. The Police should ensure the exhaustion of investigations against suspects in order to avoid bringing criminal charges in an incremental manner.

### **e) The case of Omusinga Charles Mumbere**

On 6<sup>th</sup> February 2017, the Rwenzururu King Omusinga Charles Mumbere was granted non cash bail of UGX 100 Million and released from prison. He and more than 150 of his royal guards on remand are facing grave charges ranging from terrorism, treason, murder, aggravated robbery, attempted murder and malicious damage to property. Some of the charges arose from the bloody clashes that took place in his palace in Kasese on 27<sup>th</sup> November 2016 when the police in a joint operation with the army, attacked the palace. We note however that only the King was released and at the time of compiling this report, there is no indication as to the fate of the other suspects.

### **Legal issues arising:**

1. There is an apparent discrimination in the dispensation of justice contrary to Article 21 of the Constitution. The Omusinga and the other suspects were arrested on suspicion of crimes arising out of the same incident in Kasese.

### **Recommendations:**

1. It is recommended that all suspects arrested in consequence of the Kasese incident be treated equitably with respect to court processes.

## C. HUMAN RIGHTS

The Universal Declaration of Human Rights (UDHR) states that everyone has the right to life, liberty and security of person. Its preamble explicitly recognizes the centrality of fundamental rights to the Rule of Law, stating that “it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law”.

The Declaration further provides that no one shall be subjected to arbitrary arrest, detention or exile and that everyone has a right to be presumed innocent until proven guilty. This declaration was adopted by Chapter Four of the 1995 Constitution of the Republic of Uganda which stipulates the protection of fundamental rights and freedoms including the rights of the accused under the law as well as freedom of opinion and expression.

Article 23 of the 1995 Constitution provides for the protection of personal liberty while Article 24 of the same provides for the respect for human dignity and protection from inhuman treatment. Other national legislations that impact on the protection of human rights include the Police Act; the Magistrates Court Act; the UPDF Act and the Anti-torture Act. Despite the law, Uganda still faces challenges in their enforcement, which inevitably affects the enjoyment of the rights created therein. The following issues relating to the observance of human rights arose during the review period.

### a) Arbitrary Arrests and Detentions

Over the period under review in this report, the ULS conducted several consultations with the police concerning the issue of arbitrary arrest and detention. The highest number of registered complaints pertains to the arbitrary arrest of suspects conducted by plain-clothed officials, without proper identification or arrest warrants. Those arrested were often held for long periods during which they were denied contact with their lawyers or families, tortured or otherwise ill-treated and denied access to medical care. What is of great concern is that arbitrary arrests in Uganda are increasingly becoming the norm. On Sunday 12<sup>th</sup> March 2017, a Kampala Capital City Authority Mr. Mubarak Kalenge was kidnapped and days later found with serious injuries.<sup>9</sup> Several unnamed individuals are reported to have been taken into police custody on suspicion of having played a part in this incident.

The ULS also made consultations with various human rights agencies including the Uganda Human Rights Commission (UHRC) and these revealed that some suspects

<sup>9</sup> Andrew Bagala, “How KCCA lawyer survived kidnap,” *Daily Monitor*, March 15, 2017: pp. 4 and 5.

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are subjected to flogging during these extra-judicial incarcerations. Reported methods of torture include: severe beatings; confinement in very small, cramped spaces; deprivation of light, food and water; and denial of medical treatment. In one case, a male detainee was reported to have been threatened with rape. Though some of these complaints are brought before the UHRC, the duration taken to hear and conclude a matter (on average 46 months) is untenable and unsustainable. Under the Rule of Law, effective remedies, notably in providing recourse to any person who alleges that her or his rights have been violated, is essential. Without such recourse, justice is of little use.

Article 23 of the Constitution provides that “no person shall be deprived of personal liberty” except for certain cases such as the execution of a sentence or under a court order; preventing the spread of an infectious or contagious disease; the case of a person of unsound mind; for purposes of preventing unlawful entry into the country, among others. A person arrested under Ugandan law has the following rights: the right to be kept in a place authorised by law; the right to be informed in a language they understand the reasons for the arrest, restriction or detention and of their right to a lawyer of their choice; the right to be brought to court as soon as possible but not later than 48 hours; and the right to protection from torture and other cruel, inhuman or degrading treatment or punishment.

### **Legal issues arising:**

1. Article 9 of the UDHR stipulates that no one shall be subjected to arbitrary arrest, detention or exile. The above unlawful arrests contravene this law;
2. Article 28 of the 1995 Constitution stipulates that in the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law. The lengthy hearing processes at the UHRC Tribunal occasion a delay in accessing justice which contravenes this provision; and
3. Article 8 of the UDHR stipulates that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

### **Recommendations:**

1. Those institutions that play an oversight role in relation to pre-trial detention such as the Police should be strengthened through capacity-building in order to ensure the efficient performance of their mandates.
2. Sufficient resources should be allocated to facilitate an increased capacity to investigate complaints, as well as to facilitate the prevention of these violations and public education on the same.
3. The Uganda Human Rights Commission Tribunal should work towards reducing the time it takes to conclude a human rights matter.

## b) Freedom of Association

On 2<sup>nd</sup> February 2017, it was reported in the media<sup>10</sup> that the Parliamentary Local Government Public Accounts Committee (LGPAC) had generated a report following investigations over a period of six months into allegations of rampant corruption in 116 districts in the country. At a press conference held the day before, the Committee delivered its report in which among other recommendations it directed chief administrative officers (CAOs) disband the association they had formed, citing a violation of the Uganda Public Service Standing Orders.

The ULS commends the Committee's efforts in curbing corruption. However, its recommendation to disband the CAO association is unconstitutional. Article 29(1) (e) of the 1995 Constitution provides for the people's right and freedom to organize themselves into associations. This freedom is also enshrined in several international human rights instruments, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples Rights (ACHPR).

It is noted that Section 5 of the Public Service Standing Orders prohibits certain categories of public officers involved in the administration of the State from forming or joining a labor union or engaging in trade union activities or using trade union practices or tactics in any matter concerning their employment. However, this prohibition does not extend to joining associations as the law makes a clear distinction between Trade Unions and Associations. Associations such as those of CAOs if not formed for Trade Union purposes, are not governed by the Labor Unions Act and therefore fall outside the provisions of the Standing Orders prohibiting public officers involved in the administration of the state from joining Trade Unions.<sup>11</sup>

### Legal issues arising:

1. The Committee's recommendation contravenes Article 29(1)(e) of the Constitution of Uganda which provides for the freedom of association or to join associations. Under the law, public officers such as CAOs are free to form or join associations that are not organized for trade unions purposes.

### Recommendations:

1. The Committee on Local Government Accounts should come up with guidelines for the operation of Associations by public officers and refrain from orders that could infringe rights of the people concerned.

<sup>10</sup> See Moses Mulondo, "MPs ask district officials to return swindled shs 7.2b" *New Vision*, February 2, 2017: p.4.

<sup>11</sup> Section G of the Uganda Public Service Standing Orders of 2010.

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## c) Freedom of Assembly

On 22<sup>nd</sup> February 2017, the Kampala Lord Mayor Mr. Erias Lukwago was arrested along with Rubaga North MP, Moses Kasibante, Kawempe South MP Mubarak Munyagwa and Makindye West MP Allan Ssewanyana, together with several Kampala Capital City Authority (KCCA) councilors and whisked away to an unknown location.<sup>12</sup> They were arrested at the Nakivubo Park Yard market in Kampala where they had gone to address city vendors, who were protesting against an order to have them evicted. The police state that the arrests were effected under Section 24(1) of the Police Act which provides for preventive arrest.

Be that as it may, the Constitution of the Republic of Uganda guarantees the freedom to assemble and to demonstrate together with others peacefully and unarmed and to petition. Furthermore, Uganda has ratified the UDHR which provides for this freedom under articles 2 and 20.

The Public Order Management Act 2013 also provides for the regulation of public meetings which the Act defines as a “gathering, assembly, procession or demonstration in a public place or premises held for the purposes of discussing, acting upon, petitioning or expressing views on a matter of public interest”. This law requires organisers of public assemblies to notify the police for security purposes. However, permission from the State is not a prerequisite. But then this Act grants the police wide-ranging powers to stop or prevent a public meeting from taking place. This is unconstitutional and was so decided by the Constitutional Court in the case of *Muwanga Kivumbi v. The AG*.<sup>13</sup>

### Legal issues arising:

1. Article 29(1)(d) of the 1995 Constitution provides for the protection and observance of the freedom of assembly stating that “every person shall have the right to freedom to assemble and to demonstrate together with others peacefully and unarmed and to petition.” The above arrest of the Kampala Lord Mayor and others was unconstitutional.
2. Section 8 of the Public Order Management Act contravenes Article 29(1)(d) of the Constitution.

### Recommendations:

1. Section 8 of the Public Order Management Act should be adjusted to bring it into consonance with the 1995 Constitution on the freedom of peaceful assembly.

<sup>12</sup> Lord Mayor – Erias Lukwago Opposition Politicians Arrested <http://www.ntv.co.ug/news/local/22/feb/2017/lord-mayor-erias-lukwago-opposition-politicians-arrested-16282>.

<sup>13</sup> Constitutional Petition No. 9 of 2005.

2. The police should not use excessive force in dispersing peaceful gatherings, even where they believe that the organizers have not complied with the Public Order Management Act's advance notification requirement.
3. To facilitate the above recommendation, the government should publish guidelines on the interpretation of the Public Order Management Act.

#### **d) The Right to Life**

The right to life is a moral principle based on the belief that a human being has the right to live and, in particular, should not be killed by another human being. The Constitution of the Republic of Uganda under Article 22 provides that;

*"No person shall be deprived of life intentionally except in execution of a sentence passed in a fair trial by a court of competent jurisdiction in respect of a criminal offence under the laws of Uganda and the conviction and sentence have been confirmed by the highest appellate court".*

The attack on the Rwenzururu kingdom palace in Kasese by the UPDF in November 2016 on suspicion of terrorism and treason left an estimated 116 people dead. Whether the Rwenzuru's King's Palace should have been attacked in the manner that was reported is a matter for debate. Although attempts to resolve this crisis have mostly been political in nature i.e. negotiations between the State and some kingdom officials in a bid to end the crisis, there are still critical issues which must be addressed pertaining to the long standing tensions among the local communities in the Rwenzori region. Moreover, this crisis led to human rights violations including loss of lives and property.

We have also noticed an increase in the number of high profile murders conducted by unknown persons riding motorcycles. The latest being that of police spokesman AIGP Andrew Felix Kaweesi who was brutally shot dead together with his bodyguard Cpl Kenneth Erau and driver Geoffrey Mambewa on the 17<sup>th</sup> March 2017. The pattern of this murder is similar to that of several muslim leaders.

#### **Legal issues arising:**

1. Article 22 of the 1995 Constitution provides for the right to life except in execution of a sentence passed in a fair trial by a court of competent jurisdiction in respect of a criminal offence under the laws of Uganda and the conviction and sentence have been confirmed by the highest appellate court. The Kasese attacks were characterized by extrajudicial killings and others killings carried out by the traditional institution and locals in the region prior to and during the attack on the Buhikira Palace.

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## **Recommendations:**

In addressing issues, the ULS hereby proposes the following approach:

### **On the Kasese Incident;**

1. We emphasize the need to engage the many issues of justice and reconciliation that have long been of concern in the Rwenzururu region. The ULS therefore proposes that Government establishes a Truth and Reconciliation Body of eminent independent persons to conduct a thorough and impartial investigation into: (1) the grievances of the communities in the Rwenzururu region, (2) the raid on the palace and (3) human rights violations which attended the raid on the palace. (4) investigate and determine the role of the Rwenzuru militia in causing lawlessness in the Rwenzururu region. The objective is to identify permanent and sustainable solutions to the crisis.
2. We also recommend the need for engagement with the Director of Public Prosecutions to discuss concerns relating to detentions and the manner of handling prosecutions pertaining to this conflict.
3. We recommend the need for some recognition in terms of reparations from the state toward those who innocently lost lives and property in this conflict.

### **Regarding murders of individuals and increase in crime;**

4. Government needs to streamline, monitor, regulate and supervise the use of motorcycles.
5. Security and policing matters must remain a preserve of regulated armed forces and the involvement of civilians in security matters must be discouraged.
6. The LC 1 elections need to be carried out (By secret ballot system). Local Councils are key pillars in giving information and coordinating community responses to crime.

## **c) Right to Property and Land**

Land grabbing and forcible evictions are one of the major threats to land tenure security in the country. It is a violation not only of one's right to property but also of the right to housing, life and a host of other related rights. While the right to land is constitutionally protected under Article 26 of the Constitution, land grabbing (or the process of selling or leasing large tracts of land to foreign States or companies), has become a serious issue in Uganda; drawing increased international attention in recent years.<sup>14</sup> Most Ugandans live in rural areas and are dependent on agriculture for their daily survival.<sup>15</sup> In general, communities affected by land acquisitions have not

<sup>14</sup> Think Africa Press, 'Law of the Land: Land Grabs Threaten Local Livelihoods in Uganda,' 28 November 2012.

<sup>15</sup> *Id.*

been adequately consulted or compensated for the loss of land, and have suffered as a result.<sup>16</sup>

500 residents occupying the Namanve Forest Reserve in Bukasa, Bweyogerere parish in Kira Municipality were evicted in December 2016 to pave way for the construction of the Standard Gauge Railway, the Greenbelt and the Dry Port.

According to preliminary estimates, there are more than 16,000 encroachers/settlers in the area. H.E. the President of the Republic of Uganda Yoweri Museveni cited some dubious collusion between government officials and some encroachers to continue occupying the land, and according to media reports directed the Inspector General of Police Kale Kayihura to prepare the eviction exercise.

In January 2017, the Minister of Lands, Housing & Urban Development the Hon. Betty Amongi Akena announced the cancellation of at least 25 freehold land titles said to have been fraudulently and erroneously issued in the forest reserve in the villages of Bukasa, Wankolokolo and Senyu in Wakiso District and Mukono District. She also hinted on government's plans to relocate the encroachers to some 200 acres secured elsewhere. To date, this relocation has not been done.

### Legal issues arising:

1. The rights of land ownership in Uganda are both recognized and protected by Uganda's Constitution under Articles 26 and 237.<sup>17</sup> Additionally, in situations where land has been acquired by force, adequate compensation for such land has to be made to individuals and communities affected by such acquisition.<sup>18</sup> The lack of access or rights to land usually results in economic insecurity. The international community for many years has viewed forced eviction as a very serious issue and a gross violation of human rights.<sup>19</sup> Article 11(1) of the ICESCR provides for the right to adequate housing and State parties are required to recognize, grant and protect this right.<sup>20</sup> The right to housing should not be interpreted in a narrow or restrictive sense, rather it should be seen as the right to live somewhere in security, peace and dignity.

<sup>16</sup> *Id.* See also: Milieudéfense, 'Land grabbing for palm oil in Uganda,' 2013. Friends of the Earth, 'Palm oil landgrab in Uganda: Wilmar International's violations in Kalangala Island,' Landgrabs, forests & finance: Issue brief #5, [date unspecified]. See also: National Association of Professional Environmentalists (NAPE), Uganda and The Gaia Foundation (UK), 'Mining and its impacts on Water, Food Sovereignty and Sacred Natural Sites and Territories,' July 2014. See also: Gabriella Wass & Chris Musiime, 'Business, Human Rights, and Uganda's Oil: Part I: Uganda's oil sector and potential threats to human rights,' Updated October 2013.

<sup>17</sup> Committee on Economic, Social, and Cultural Rights, General Comment No. 21, Right of everyone to take part in cultural life (Art. 15, para. 1(a) of the International Covenant on Economic, Social, and Cultural Rights) (2009)

<sup>18</sup> *Id.*

<sup>19</sup> Committee on Economic, Social, and Cultural Rights, Cultural Rights, General Comment 7: Forced Eviction and the Rights to Adequate Housing (1997)

<sup>20</sup> Article 11(1) of the International Covenant on Economic, Social, and Cultural Rights: 1- The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.

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In his judgment, Justice Joseph Mulenga stated that “... the right to freedom of expression is of great significance to democracy. It is the bedrock of democratic governance.” He further stated that “Subject to the limitation under Article 43, a person’s expression or statement is not precluded from the constitutional protection simply because it is thought by another or others to be false, erroneous, controversial or unpleasant.”

Therefore, everyone has the freedom to express his or her views using whatever medium is available to them; social media inclusive.

### **Legal issues arising:**

1. Article 29(1) of the 1995 Constitution of Uganda provides that everyone shall have the right to “freedom of speech and expression which shall include freedom of the press and other media.” The Constitution is relatively elaborate in its provisions guaranteeing the freedoms of opinion, expression and information. Under Article 20(1), the right to expression and access to information is “inherent and not granted by the State.”

### **Recommendation:**

1. The Government should ensure that it streamlines legislation that could appear to impinge on Freedom of Expression. The right to freedom of expression is particularly important for Ugandans who should be free to express their opinions without fear of prosecution and provides for the right to seek receive and impart information and ideas and is therefore considered as one of the major pillars of good governance.

### **e) Pretrial Detention**

A fair and functioning justice system is a critical component of a free and democratic society, and Uganda has made important strides in this direction. Priority also needs to be given to consistently protecting the rights of the most vulnerable—especially those hidden from public view in places of detention—in order to ensure that the right to be presumed innocent and to have a fair and speedy trial is universally respected, both in law and in practice.

The issue of pre-trial detention is of continuing concern to the ULS. In 2014, the ULS in partnership with Avocats Sans Frontières (ASF) conducted a research on pretrial detention entitled “Combating Prolonged Pre Trial Detention in Uganda” and proffered several recommendations about how to address this disturbing phenomenon. The ULS/ASF Report among other things raised issues regarding the tendency of the police to parade some suspects in public and the media—totally negating the presumption of innocence. The suspects’ legal status is undermined and they are also under enormous personal pressure such as a loss of income for those who are

employed, separation from family and community ties and most even face torturous conditions. The pre-trial stage (from arrest to trial) of the criminal justice process is also particularly prone to corruption. It has a hugely damaging impact on the accused, their families and communities. Even if a person is acquitted and released, they may still have lost their home and job. They face the stigma of having been in prison when they return to the community.

On 14<sup>th</sup> March 2017, the Foundation for Human Rights Initiative (FHRI) launched a Report entitled *Justice Delayed is Justice Denied: The Plight of Pretrial Detainees in Uganda*, the result of a 9 months research Project. In this report, FHRI notes that Uganda has a relatively comprehensive legal framework safeguarding the rights to liberty and a fair hearing, and protecting against lengthy pre trial detention. Nevertheless, the report highlights challenges with observance of the 48 hour rule, the 60 day limit for suspects in non capital offences and the 180 day limit for suspects in capital offences; among other systemic and infrastructural challenges leading to congestion and overcrowding in detention facilities as well as lengthy and excessive pretrial detention. Causes cited in the report for excessive pretrial detention were attributed to the arrest culture and investigative capacity, weak enforcement of mandatory bail, mob justice, legislative discrepancies, the fear that suspects will disappear, petty offences, corruption, poor legal representation, ignorance of the law and judicial processes, as well as backlog, understaffing and underfunding. Moreover, those excessively or unlawfully detained are not compensated by the State as prescribed by law.

### **Legal issues arising:**

1. Prolonged pretrial detention contravenes Article 28(2) of the 1995 Constitution which provides that in the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law. Furthermore, Article 10 of the UDHR, Article 9 of the ICCPR and Article 7 of the ACHPR all provide for a prompt arraignment before court and a speedy and fair trial and a fair hearing.
2. Parading suspects before the public contravenes Article 28(3)(a) of the 1995 Constitution which provides that every person who is charged with a criminal offence shall be presumed to be innocent until proved guilty or until that person has pleaded guilty.
3. Prolonged pretrial detention contravenes Article 23 of the 1995 Constitution provides that no person shall be deprived of personal liberty. Suspects are kept in detention with no charges preferred against them.
4. Article 3 of the UDHR Universal Declaration of Human Rights, Article 9 of the International Covenant on Civil and Political Rights, and Article 6 of The African Charter on Human and People's Rights provide an elaborate framework for the protection of the right to liberty.

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## Recommendations:

1. The Government needs to effect the appointment of more judicial officers to preside over criminal matters. The judicial officer-detainee case ratio is a prominent factor cited as one of the main causes of prolonged pre-trial detention.
2. There is a need for improving the remuneration of JLOS actors such as the police, judicial officials, and prison staff to motivate them to dispose of cases in a timely manner to avoid prolonged pre-trial detention and corruption in the justice system.
3. The courts and the prison authorities need to improve the mechanisms of coordination and case management between the two entities in order to avoid failure to produce detainees in court on a set date and time.
4. The State should allocate more funding to conduct criminal sessions.
5. The State should provide adequate resources to specifically support police investigations.
6. The State should adopt a national Legal Aid Policy and thereafter enact a Legal Aid law to assist all suspects.
7. The State should allocate additional funding to the State Brief Scheme to enhance remuneration to state brief lawyers.
8. The State should expedite the processing and enactment of the Administration Judiciary Bill into law to strengthen the functional and financial independence of the Judiciary.
9. The State should increase the budgetary allocation to facilitate set up and maintenance of more places of detention such as the prisons and remand homes.

## D. TRANSPARENCY AND ACCOUNTABILITY

Corruption is defined as the use of public power for private gain. As it is a manifestation of the abuse of power for personal interest, the fight against the scourge of corruption is one of the hallmarks determining a society governed by the Rule of Law. Corruption can take many forms, including bribery, nepotism, extortion, fraud, abuse of office and embezzlement. It is costly for citizens as it siphons resources and creates inequities in public service delivery, lowers regulatory compliance, weakens accountability, curtails the public's opportunities for participation, undermines the government's credibility, and leads to injustice.

Addressing corruption is a complicated political endeavour requiring creative thinking and a coordinated effort by numerous stakeholders, including government, businesses, academia, and the civil society among others. The ULS has identified judicial corruption, public-private corruption and the use of public office for private gain as major issues of concern during the review period. Among those of most concern were the following.

### **a) Judicial corruption**

During the reporting period, the Judiciary lodged a complaint with the Judicial Service Commission (JSC) upon instructions from the Chief Justice who called for an investigation into alleged corruption and judicial misconduct against Justice Joseph Murangira—the Deputy Head of the High Court’s Criminal Division. Justice Murangira is alleged to have solicited of a bribe from one of the people he sentenced to death 8 years ago. It is further alleged that upon failure to meet the judge’s demands, the accused was sentenced to death and his file went missing. The Chief Justice through the Principle Judge requested the JSC to look into allegations concerning the case in which Justice Murangira sentenced one Joseph Ekusai to death for murder.

The ULS welcomes this as a positive development because the move serves to show: (a) that the Judiciary takes public concerns about the conduct of judicial officers seriously; and (b) it shows commitment to determining the veracity of complaints taking into account the public interest, and the interests of individual judicial officers in being protected from unfounded allegations. The ULS call upon the general public to be vigilant about their rights to forward complaints against errant judicial officers.

### **Legal issues arising:**

1. Principle 3.2 of the Judicial Code of Conduct provides that “A Judicial Officer shall at all times and in every respect be of an upright character and ensure that his or her conduct is above reproach in the view of a reasonable fair-minded and informed person” while Principle 3.3 provides that “A Judicial Officer shall exhibit and promote high standards of judicial and personal integrity. If found culpable following investigations, the said judicial officer shall have breached Principle 3 of Judicial Code of Conduct and shall be liable to disciplinary action.
2. Section 5 of the Anti Corruption Act 2009 outlaws bribery.

### **Recommendations:**

1. In light of the above case and continuing concerns expressed about transparency and accountability within the Judiciary, there is a need to strengthen whistle blower protection in order to shield anyone who reports judicial misconduct. Those who work within the justice sometimes become aware of incidents of corruption. However, there is a perception that reporting will be visited with retaliation;
2. The judicial misconduct evaluation process should be made more visible; and
3. The general public should be vigilant about their rights to forward complaints against errant judicial officers to the JSC.

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## E. GENERAL ISSUES

During the review period, there were some positive developments which if sustained will go a long way in fostering and strengthening the Rule of Law in Uganda. These include:

### ● The Judiciary Administration Bill

Following calls for the immediate passing of the Judiciary Administration Bill by the Executive and Parliament, in January 2017 Minister for Justice and Constitutional Affairs Hon. Kahinda Otafire disclosed that he was preparing to table the Bill before Parliament in February. Although by the time of this report, the bill had yet to be tabled, the promised action on the part of the Minister needs to be welcomed. This legislation seeks to strengthen the independence of the Judiciary by moving it from its current placement under the Ministry of Public Service which essentially puts it under the Executive arm of government.<sup>21</sup>

**Recommendation:** Government should as a matter of urgency fast-track the process of the passing of the Bill when presented before it.

### ● Government holding officers accountable

On 24<sup>th</sup> January 2017 the media reported that the Inspector General of Police ordered the arrest of Sheema District Police Commander, Mr. Innocent Mubangizi over the release of rally driver Mr. Ponsiano Lwakataka who was arrested alleged in the possession of immature fish en route to the Democratic Republic of Congo.<sup>22</sup> Mr. Lwakataka was released from custody and according to the media, the District Commander is suspected to have received a bribe to facilitate his release.

Within the same period the police convicted and sentenced nine police officers and a crime preventer who were accused of beating supporters of former FDC President Kizza Besigye along Entebbe road. The Police Disciplinary Court ordered the demotion of some police officers while others were dismissed depending on the gravity of their crimes.<sup>23</sup> These actions by the Uganda Police are most commendable and the Uganda Law Society urges the Police to continue this fight against impunity.

There are however also some areas for the State's attention which we wish to propose and these include:

### ● Mining regulations

Small scale mining enforcement and protection laws are not being heeded to and are under regulated. The fact is that the regulatory system for small scale miners is non-existent.

<sup>21</sup> Activists Want Administration of Justice Bill Passed. [http://www.newvision.co.ug/new\\_vision/news/1446908](http://www.newvision.co.ug/new_vision/news/1446908)

<sup>22</sup> <http://www.monitor.co.ug/News/National/Kayihura-wants-officers-who-released-Lwakataka-arrested/688334-3785202-e1kvq/index.html>.

<sup>23</sup> Police Officers Demoted Over Beating Besigye Supporters <http://www.ntv.co.ug/news/local/02/feb/2017>.

In Nabwaala mining site located in Budhaya Sub-county in Bugiri district which has over 500 small scale gold miners, mining is by open pit. In their search for gold, the miners report using rudimentary tools like a hand-held pick axe, shovels, and hoes. They do not have access to the necessary protective gear like helmets, gloves, nose-masks and gumboots to protect them from accidents as well as getting into contact with mercury during the washing and amalgamation process which poses serious dangers to their health. Moreover, there are open, deep and abandoned pits scattered all over the place; often with no kind of forewarning of probable accidents.<sup>24</sup> Owing to the rudimentary methods employed at these mines, mounds of tailings stand at several meters high, overlying the edges of the pits that are sometimes more than 50 feet deep. On rainy days, accidents are imminent as the loose earth simply collapses into the pit. Last year alone, four deaths occurred at the Nabwaala's mining sites.

### **Legal issues arising:**

1. The mining law is inadequate as a mechanism to ensure the protection of small scale miners and the safeguard of the environment.

### **Recommendations:**

1. The central government should take up the issue of regulating small scale miners to ensure safety, quality mining and development in the relevant areas.

### **● Buliisa Land Title Cancellations**

Within the reporting period, Government of Uganda cancelled land titles for 5090 hectares issued between December 2010 to February 2017 in Buliisa district.<sup>25</sup> The major cause of land problems in Buliisa is oil. Land grabbers with money influence grants of leases without due regard to the rights of bon fide occupants of the land. Section 4 of the Land (Amendment) Act makes such a transaction void.

There has been simmering conflict in the Albertine Graben in places like Rwamutongo in Hoima and in Buliisa itself where people have raised their voices complaining about 'foreigners' buying off their land and throwing them off it to pave way for oil and gas development projects. The people have unfortunately become the victims of corrupt allocations of land.

### **Legal issues arising:**

1. District Land Boards are independent. Under section 60 of the Land Act no one has power to direct their operations.
2. Land certificates are conclusive evidence of ownership and, can be impeached only for proven fraud.

<sup>24</sup> Health Safety Takes Back Seat In Busoga Gold Rush <http://www.eabizinfo.com/2017/02/02>

<sup>25</sup> Francis Mugerwa ' Government Cancels land Tiles' Daily Monitor, March 7, 2017. <http://www.monitor.co.ug/News/National/Govt-cancels-land-titles-issued-in-past-7-years/688334-3838968-format-xhtml-12vcwi2z/index.html>.

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## **Recommendations:**

1. Prosecute corrupt lands officials: All titles issued between 2010 and 2017 were issued by the district land board and other institutions of government but to date, no official from those institutions has ever been prosecuted and convicted for facilitating and engaging in fraud.

## CONCLUSION

The issues in this report indicate the need to proactively work with the Government to advance the rule of law particularly in the areas that have been highlighted. Recommendations have been given for necessary action by relevant stakeholders. In particular, the ULS wants to emphasize that while the constitutional and legal framework for the protection and enhancement of the Rule of Law is largely in place, serious problems remain by way of the implementation of this framework and the commitment of the main stakeholders to due process, respect for fundamental human rights, transparency and accountability. There is consequently much that needs to be done. Attention to the recommendations in this report will go some distance in ensuring that respect for the Rule of Law in Uganda is positively enhanced in future.