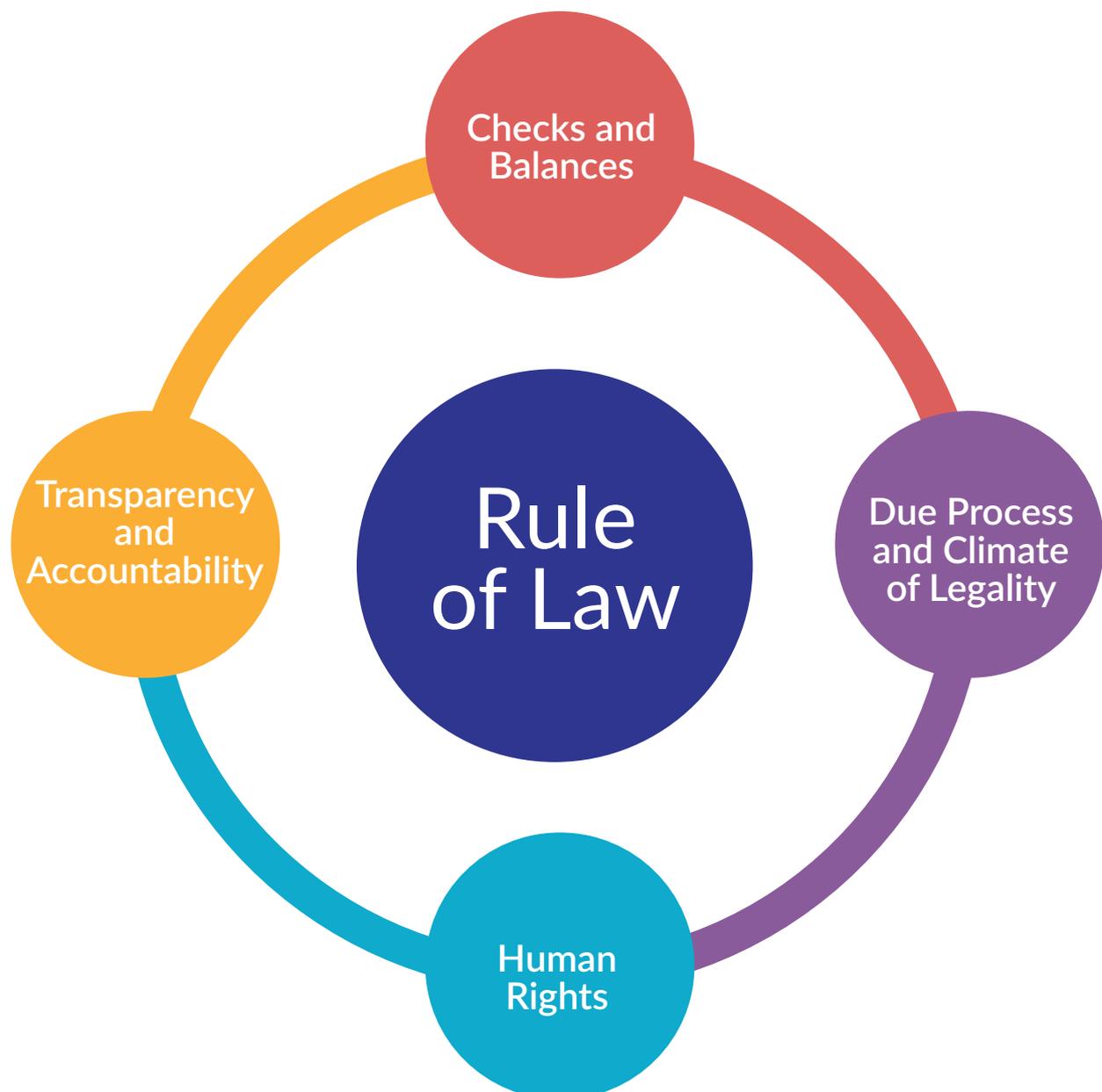


THE STATE OF THE RULE OF LAW IN UGANDA THIRD QUARTERLY REPORT



JULY - SEPTEMBER 2017

FOREWORD

I am delighted to present to you the third edition of the Uganda Law Society (ULS) Quarterly Report on the State of the Rule of Law for the period July-September 2017. As was with the two preceding reports, this edition of the Quarterly Report has been formulated in line with the Uganda Law Society (ULS) Strategic plan (2017-2021) which introduced the ULS Quarterly State of the Rule of Law Report. The report offers recommendations that once implemented, will build towards entrenching a culture that will change the negative trajectory of the State of Rule of Law in Uganda.

This Quarter has seen key developments made by the ULS with regards to the Rule of Law. In this respect, it should be noted that during the period, the ULS directly engaged the Government on the proposed amendments to the Constitution related to Land, and also appeared before the Commission of Inquiry into Land Matters to offer its legal opinion on Land Administration and Management matters in Uganda. The ULS has also actively launched Rule of Law Clubs in eight schools. We also participated with members of the Coalition in support of the Independence of the Judiciary (CISTIJ) to advocate for more support to the Judiciary during the time of the recent industrial action by the Judiciary.

I wish to relay my utmost gratitude to all the parties in their various capacities who have contributed to the development and compilation of this report. I particularly thank the Rule of Law Advisory panel as well as the ULS Secretariat for their involvement in the compilation of the report.

Through publication of this report, the ULS remains committed to the promotion of the Rule of Law. I therefore urge all the relevant stakeholders to take heed of the recommendations made in further pursuit of the Rule of Law.

For God and My Country



Francis Gimara

President - Uganda Law Society

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Additional thanks go to the ULS Secretariat team for their efforts in compiling this report including Ms. Irene S. Kwaga and Ms. Rita Aligo.

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INTRODUCTION

This is the third Quarterly Report of the Uganda Law Society (ULS). It provides an account and analysis of the key Rule of Law issues that prevailed in the country during the months of July, August and September, 2017. In a bid to analyze the various developments during the reporting period with respect to the Rule of Law, the report considers how these relate to the basic legal framework in Uganda, with a special emphasis on the 1995 Constitution, existing laws and the different regional and international instruments and standards that Uganda has ratified.

As shall be seen hereinafter, incidences of human rights violations continued to be the most predominant events of this quarter; the most profound were land-related matters, alleged serial murders, forced evictions, unlawful arrest and detention, assault and sexual offences.

The Report also points out both positive and negative developments over the quarter, concerns and gaps in the law, and its interpretation and implementation, while also providing recommendations on issues raised in order to ensure complete adherence to the Rule of Law.

As was the case with our previous quarterly reports, the ULS intends to provide a platform for a critical evaluation of Uganda's performance in the observance of the Rule of Law through this Report and to foster further discussions with relevant State and non-state actors on areas for improvement.

OVERVIEW OF ISSUES

A. THE STATE OF HUMAN RIGHTS

During the reporting period, we noted several cases of human rights violations relating to patients, prisoners, property, security and liberty of persons, economic rights and the right to life as highlighted below:

a) The Right to Life and Security of Persons

The right to life is enshrined in the 1995 Constitution under Article 22 which 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. Security of the individual is also a basic human right and the protection of individuals is, accordingly, a fundamental obligation of Government. States therefore have an obligation to ensure the human rights of their nationals and others by taking positive measures to protect them against the threat to life and bringing perpetrators of all threats life to justice.¹

Over the reporting period, numerous serial killings were registered across the country and widely published; some examples of which are as follows:

Rampant murder of women

At least 23 women and teenage girls were reported to have been raped and murdered in Entebbe, Kampala and Wakiso districts in a disturbingly recurring and similar pattern. Most of the cases arose within the Kampala Metropolitan Policing region that covers the latter two districts. The horrifying murders have mainly been recorded in the suburbs of Nansana and Abayita Ababiri in Wakiso district. The bodies of the victims of these ghastly murders were found either nude or partially clothed, bound and bearing the marks of torture, according to Police.² In response to this spate of deaths, the Inspector General of Police has commendably initiated community policing measures in the main affected areas, instructing police commanders to work with the public to identify and surveil potential criminals using the neighborhood watch system under an operation code-named “*Dumisha Usaalama*” as well as a sensitization drive to offer tips to girls and women on personal security.

A preliminary report by the Ministry of Internal Affairs to Parliament attributed these killings to business men involved in ritual killings; allegedly in the quest for more wealth.³ This report however contradicts the Police Doctor’s report which suggests that the cuts found on the victim’s bodies were not the kind associated with ritual killings where body parts or organs are usually taken from victims.⁴ More importantly, it should be noted that to date, although scores of suspects have been arrested in connection with the killings, there hasn’t been any apparent resolution regarding these murders given the continuous reports on more women killings, even as Members of Parliament continue mounting pressure on government over these murders.⁵

Other Killings

In yet another incident in July 2017, residents of Napumpum village in Panyangara Sub County in Kotido district were reported to be living in fear; following a spate of attacks that left four people dead within the space of 10 days.⁶ Reports indicate that the assailants suspected the victims of being police informers who had leaked information on people keeping illegal guns. The attacks started on 2nd July 2017 when the unknown assailants reportedly waylaid and stabbed to death 23 year old Jimmy Omara at around 8pm. According to the Police Spokesperson Asan Kasingye, the police were deployed in the area to prevent any further attacks.⁷

1 <http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf>

2 Vision Reporter, “Rape, murder spree puzzles Police,” New Vision, July 27, 2017, at p.5

3 Olive Eyotaru, “Govt report pins women murders on witchcraft,” The Observer, September 8-10, 2017 at p.2

4 Solomon Arinaitwe, “Govt report on women killings contradicts police doctor’s report,” Daily Monitor, September 8, 2017 at p.2.

5 Vision Reporter, “Women murders: Relatives remember loved ones as homes are abandoned,” New Vision, September 21, 2017 at p.4-5.

6 See <http://www.ntv.co.ug/news/crime/12/jul/2017/unknown-assailants-stab-four-people-death-kotido-victims-said-be-police#sthash.bDMaOf1.dpbs>

7 Ibid.

In yet another related incident, two police officers, Special Constables (SPCs) Moses Kalungi and Hussein Mubiru, both attached to Mutundwe Police Post, were killed at Kalerwe, a business hub north of the city centre in a robbery in which an estimated Shs125m was stolen. It should be noted that the Kalerwe incident happened hours after thugs raided Mponye police post in Kabalagala Division, hacked a police officer who was on duty and stole his gun.⁸

There is however no apparent resolve on the part of the security forces to put an end to these killings. Additionally, investigations into previous killings of high profile personalities including the former Police Spokesperson and Asst. Inspector General Andrew Felix Kaweesi (together with his bodyguard and driver), Maj. Muhammad Kiggundu (with his bodyguard), the Asst. Director of Public Prosecutions Joan Kagezi and several Muslim clerics are yet to be finalized. This begs the question as to why these investigations are not yielding results and whether there is sufficient political will and commitment to have these matters concluded expeditiously.

Legal issue arising:

- Is the right to life guaranteed in Uganda?

Recommendations:

- The perpetrators of these crimes should be apprehended, so as to reinforce justice.
- Government should institute a specific inquiry into the above serial killings and publish a report on the same. Those found culpable should face the full force of the law.
- There is need to review and strengthen the Criminal Investigations and Intelligence Directorates to deliver on their mandates efficiently.

Protection of Rights of Women

The period July-September has seen an upsurge in the violation of women's rights as is provided for in Article 33 of the Constitution. This is due to the increase in the rampant murder of women in Entebbe, Kampala and Wakiso districts as has already been reported.⁹ This quarter has also registered sexual harassment cases against persons in authority, particularly within the Police department. This issue and necessary recommendation is covered in much detail later on in this report, under the sub-heading internal failures within the Uganda Police. The report also makes mention of Ms. Abdullah, a 63 year old woman who has been subjected to intimidation, torture and continual detention without trial leaving her weak and sick. This case is covered in much detail later in the report under the right to personal liberty.

Forced eviction of miners

On August 1, 2017 a combined force of heavily-armed police, the army and military police was deployed at Bukuya sub-county in Mubende district.¹⁰ In the midst of rising tensions, local security chiefs assured the residents that the armed forces were in the area to register both Ugandans and non-Ugandans working in the gold mines at Kitumbi and Bukuya sub-counties. This was supported by a statement issued the next day by the then Permanent Secretary in the Ministry of Energy and Mineral Development Mr. Stephen Isabaliija, stating that government wanted to register all the local artisanal miners in the area so that they could be organized in groups for proper regulation.¹¹ The exercise was anticipated to take three months with the support of the police, UPDF and Directorate of Citizenship and immigration Control. However, by daybreak the following day, the armed forces had given two hours to whoever was in the mining area to leave. According to the Observer the forced eviction was a result of a series of meetings at State House Entebbe and the Ministry of Energy and Mineral Development headquarters at Amber House in Kampala which resolved that the artisanal miners be evicted within a week in order to pave way for mineral exploration by a company named Gemstone International which had already secured an exploration license for the area.¹²

⁸ <http://www.monitor.co.ug/News/National/Police-Kalerwe-private-work-Kasingye/688334-4101590-3wgronz/index.html>

⁹ Ibid 2, 3 and 4.

¹⁰ Sadab Kitatta Kaaya, "Uganda: Mubende Gold Row - Inside Story of Forceful Evictions," The Observer, August 16, 2017. Retrieved from <http://allafrica.com/stories/201708160129.html>.

¹¹ Ibid.

¹² See supra note 11.

By the weekend, at least 2,000 artisanal gold miners were still stranded at mining sites in Kitumbi in Bukuya sub-county following their eviction by police and army.¹³ Security forces led by Col. Joseph Balikuddembe, the UPDF 1st Division commander, descended on and ordered the gold miners to leave within the space of two hours. Those from neighboring districts such as Mityana, Sembabule and Wakiso swiftly packed their belongings and departed. Others stared in confusion as armed police and soldiers charged on them and hollered orders.¹⁴

Prior to this eviction, MPs from Mubende had written to the President requesting an extension of the time within which his directive had to be implemented.¹⁵ In his response the President agreed to their request only with respect to miners in areas far away from where the investor had done the excavations.¹⁶

Subsequent to the evictions, on August 30, Christopher Tusiime of The Observer Newspaper went back to Mubende district to assess the impact of the eviction.¹⁷ Due to the evictions, several people's livelihoods have been drastically affected and changed. One Ms. Sylvia Nakiyira whose only source of income was selling water to the miners lost her business after the eviction.¹⁸ Furthermore, all her 200 jerry cans which facilitated her business were all confiscated.¹⁹ Ms. Nakiyira alongside other people has also been left destitute, being forced to sleep in a roofless church or alternatively, the verandah of some houses.²⁰ Mr. Abdul Hakim was also forcefully evicted from his land without any compensation.²¹ One Mr. Bernard Ssemuyaba is equally stranded as he was evicted without any compensation, yet he was born in the area.²² Some people who had invested in the mining pits were also evicted, for example one Abel (not real name) who had invested Shs 50m through a loan is in financial trouble as he cannot pay back the loan and faces jail time in this respect. One of the severally told stories in all areas around the mines is that bulldozers covering the pits have buried many miners inside.²³

Legal issues arising:

- Whether the manner of evictions was consistent with the law.
- Whether the evictions were done in a way that took cognizance of respect for human dignity and protection from inhuman treatment as per Article 24 of the Constitution, as well as the right to livelihood.

Recommendation:

- In planning its development programmes, Government should provide sufficient notice to communities it intends to evict and provide adequate compensation and options for resettling them. Government should also have due regard for the right to livelihood.

b) The Right to the Highest Attainable Standard of Health

The human right to health (physical and mental) is recognized in the International Covenant on Economic, Social and Cultural Rights (Article 12). Although the 1995 Constitution of the Republic of Uganda does not expressly provide for the right to health, Uganda is a state party to this covenant and therefore has an international obligation to ensure enjoyment of this right.

On July 1, 2017, the Daily Monitor newspaper reported that patients at Butabika National Mental Referral Hospital were being mistreated and subjected to the unnecessary use of chemical restraints. Reference was made to a report²⁴ generated by the Mental Disability Advocacy Centre (MDAC), an international NGO. According to the report, the hospital wards were found to be dirty, overcrowded, and lacked basic provisions for human dignity such as privacy and personal beddings. On a number of wards, they found

13 Josephine Nnabbaale, "2, 000 gold miners evicted, stranded," Daily Monitor, August 7, 2017. Retrieved from <http://www.monitor.co.ug/News/National/2-000-gold-miners-evicted-stranded-Mubende-UPDF/688334-4048130-rf0sq8/index.html>.

14 Ibid.

15 Sadab Kitatta Kaaya, "Uganda: Mubende Gold Row - Inside Story of Forceful Evictions," The Observer, August 16, 2017. Retrieved from <http://allafrica.com/stories/201708160129.html>

16 Ibid.

17 Christopher Tusiime, "Tears, misery define Mubende following gold diggers' eviction," The Observer, September 6-7, 2017, at p.22.

18 Ibid.

19 Ibid.

20 Ibid.

21 Ibid.

22 Ibid.

23 Ibid.

24 See Mental Disability Advocacy Centre, "Breaking Point: Findings from a Visit to Butabika National Mental Referral Hospital, Uganda", June 2017. Retrieved from http://mdac.org/sites/mdac.info/files/breaking_point_butabika_-_mdac_june_2017.pdf

evidence of malnutrition, and many residents had skin conditions, cuts and poor general hygiene. The report also established that mentally ill patients are overdosed with drugs even when they are not violent. The Police were requested to initiate investigations into allegations of torture and ill-treatment at the facility. When the MDAC team visited the hospital in May 2017, they found children detained with adults, cases of continued solitary confinement of patients, and that patients with serious health conditions were left untreated. The report also highlighted a shortage of general and specialist healthcare in addition to the mistreatment of patients.²⁵

Legal issues arising:

- Does the environment and manner of handling patients at the Butabika National Mental Referral Hospital guarantee the enjoyment of fundamental rights such as the right to health, the right to human dignity as prescribed by Article 24 of the 1995 Constitution and protection from cruel, inhuman or degrading treatment as defined by Section 7(1) of the Prevention and Prohibition of Torture Act (2012)?
- Are the best interests of the child guaranteed at Butabika Hospital in accordance with Article 34 of the Constitution and Section 9 of the Children Act?

Recommendations:

The Government should:

- Take steps of providing facilities that cater to the special needs of children.
- Conduct investigations into the allegations of torture and other maltreatment as well as neglect of duty by the medical personnel in Butabika Hospital. Those found guilty of the alleged acts should face the full extent of the law.
- Increase the health sector budget, in line with recommendations²⁶ made at the universal periodic review and ensure that the budget is efficiently managed to avoid abuse and misappropriation.
- Recognize and provide for an explicit right to health as a justiciable constitutional right.
- Re-examine or check the existing health policies or programmes relating to treatment of mentally ill persons and align them with the international requirements for the highest attainable standard of physical and mental health as prescribed by the World Health Organization (WHO), and other international instruments.²⁷

c) Economic Rights

Article 40 of the Constitution provides for the rights of workers and specifically provides for equal payment for equal work without discrimination under clause (1) (b). However, this has not been the practice as evidenced by industrial actions taken by different government workers in the past and most recently as highlighted below.

During the period, State Prosecutors in the Directorate of Public Prosecutions held a strike and subsequently Judicial officers also commenced theirs.²⁸ The issue in both cases revolved around improvements in the terms of service. The government has, in both cases, undertaken to effect improvements. It may be noted however that industrial action has been taken or threatened by players in other sectors of the public service, examples being the local government staff, teaching staff and staff in the health sectors.

The guiding principle for just or equitable treatment should be that remuneration is commensurate with qualifications, experience, responsibility and output as against what the economy can sustain. Wide disparities in the terms of service amongst the sectors that are not based on principle are bound to cause grievances. Rather than ad hoc reactions to shocks of industrial action, the government should generally address the inadequacies and, the apparent discrimination by establishing a national Remuneration

²⁵ Emmanuel Ainebyoona, "Report questions handling of patients in Butabika Hospital," Saturday Monitor, July 1, 2017, at p.3.

²⁶ https://www.upr-info.org/database/index.php?limit=0&f_SUR=182&f_SMR=All&order=&orderDir=ASC&orderP=true&f_Issue=All&searchReco=&resultMax=300&response=&action_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly

²⁷ <https://www.hurinet.or.ug/wp-content/uploads/2015/01/The-state-of-implementation-of-ESCR-in-Uganda2.pdf>

²⁸ <http://allafrica.com/stories/201707140057.html> ; <http://www.monitor.co.ug/News/National/Judicial-officers-strike-over-little-pay/688334-4070364-bm7sww/index.html>

Commission to set, periodically review, and to harmonize the salaries and remuneration of all offices in the public service including those of the holders of constitutional office.

One concern here is the infringement of the rights to equal treatment, equal pay for equal work without discrimination implicit in Article 40 of the Constitution, and, the right to a reasonable standard of living as stated by international instruments such as *the Universal Declaration of Rights (25)* the *International Covenant on Economic, Social and Cultural Rights (11)* and *The African Charter on Human and Peoples' Rights (15)* which guarantees the right to work. The other concern is that industrial action inevitably negatively impacts on the protection of rights of innocent people. In this instance, suspects of criminal conduct could not, within the constitutional timeframe, be charged so as to get consequential relief, or, be accorded a speedy trial as result of Government not addressing the issues affecting judicial officers in time.

Legal issues arising:

- Whether the wide disparities in the remuneration of persons serving in public office could infringe rights of some public officers.
- Whether the Industrial action by officers in a sector of the public service could affect the enjoyment of the rights of other persons.

Recommendations:

- In accordance with its constitutional duty under Article 40 of the Constitution, Parliament should enact a law establishing a National Remuneration Commission to set, periodically review, and to harmonize the salaries and remuneration to public office. This will ensure fairness and equity in the process of remunerations.
- Government should as a matter of urgency address all the major concerns of the Justice Law and Order sector to minimise the shocks of industrial action which inevitably affect the enjoyment of the rights of other persons.

d) Freedom from Torture or Cruel, Inhuman or Degrading Treatment

The 1995 Constitution under Article 24 prescribes respect for human dignity and protection from inhuman treatment. It states that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”; yet in the review period and previous months, reports in the media brought to light several incidences involving torture of suspects. Below are some examples that made it to the headlines.

On July 16, 2017, the Daily Monitor reported that one Sande Patrick Byamukama, a supporter of the newly elected Kyadondo East MP Robert Kyagulanyi Ssentamu had been maimed following a beating by the Police during the by-election held in the constituency in late June 2017.²⁹ Byamukama was arrested during a scuffle, tortured and detained at Kasangati Polling Station and later transferred to Kira Police Station where he spent five days in custody without food. He claimed the police strangled, beat and kicked him all over his body and even damaged his private parts. He further contended that while in detention he was neither given any treatment and nor allowed visitation by his family until Monday July 3, 2017 when he was released on police bond.³⁰ Following his release, Byamukama was taken to a medical facility limping and with a lot of pain in the chest and abdomen. The doctor’s diagnosis was that due to the trauma to his private parts, he may not be able to sire any more children.³¹

Byamukama sought a declaration by the Court that the police violated his right to liberty under Article 23 of the Constitution by arresting him; and that by violently grabbing and confiscating his belongings, the police violated right to property under Article 26(1). The Attorney General is yet to file the Government’s defence against the suit.³² The Police have commenced an investigation into this matter³³ and we await its report.

29 See NTV report, “Bobi Wine supporter left maimed after police beating”, July 16, 2017. Retrieved from <http://www.ntv.co.ug/news/local/16/jul/2017/bobi-wine-supporter-left-maimed-after-police-beating-18149#sthash.ZbWu572y.dpbs>

30 Anthony Wesaka, “Bobi Wine supporter sues govt for injured manhood”, Daily Monitor, July 27 2017. Retrieved from <http://www.monitor.co.ug/News/National/Bobi-Wine-supporter-government-testicles-Parliament/688334-4033534-12in5akz/index.html>

31 Ibid.

32 Ibid.

33 See Article “Police Apologise for Torturing Bobi Wine Supporter, Investigate Culprits”, Uganda Today, July 17, 2017. Retrieved from www.theugandatoday.com/news/2017/07/police-apologise-for-torturing-bobi-wine-supporter-investigate-culprits/

In yet another incident on July 14, 2017, the Police fired live ammunition in order to disperse hundreds of students at Old Kampala Secondary School who were protesting over the transfer of their head teacher Ms. Azidah Ntegane Nsubuga.³⁴ Eight students were injured during this protest and hospitalized. Subsequently, the Kampala Metropolitan Police Spokesperson Emilian Kayima, announced that Police officer Michael Magambo (number 67093) who allegedly shot and injured a student had been arrested and the case referred to the Professional Standards Unit.³⁵ It should be noted that this protest is one of the several incidents that continue to highlight the trend of security organizations being at the helm of human rights violations in the Country.³⁶ The Human Rights Commission report noted that police officers are the top human rights violators in the country and this is one of the complaints that been repeatedly raised by human rights organizations and members of the general public; as well as the Uganda Law Society in its past Reports. It should also be noted that the Prohibition and Prevention of Torture Act, 2012 criminalizes torture and prescribes a sentence of imprisonment of fifteen years for anyone found guilty. Immediate steps need to be commenced to bring the perpetrators of the actions recounted above to book.

Reporting on another incident of torture, the Daily Monitor newspaper on August 8, 2017 published a story of 15 year old Stephen Matovu who appeared before the Commission of Inquiry into Land Matters and narrated how businessman Hajji Swaib Yiga, accused of land grabbing in Nakaseke District, had tortured him over alleged theft.³⁷

Matovu informed the Commission that Hajji Yiga employed him and others to work on his farm in Mizimbo village, Kapeeka Sub-county in Nakaseke District, but later accused him of stealing maize and farm implements from him.³⁸ He stated that Yiga and his driver arrested him, dragged him into Yiga's car and drove him deep into a maize plantation, tore his clothes and with the help of his driver pressed his genitals with pliers.³⁹ He added that Yiga threatened to kill and bury him in the plantation if he shouted.⁴⁰

Matovu told the Commission that he was only released after his mother had paid Shs1.1m as compensation that Yiga demanded from the family.⁴¹ The teenager—who told the Commission he was passing blood and having difficulty walking—asked the Commission to compel Yiga to meet his medical bills. Matovu testified that he had been employed on Yiga's farm on land he allegedly grabbed from peasants in Mizimbo village. The police spokesperson for Savannah Region in Nakaseke District, Paul Kangave says Yiga will be charged with assault and his file has been forwarded to the relevant authorities.

Another witness in the same matter, one Godfrey Sekalongo told the Commission that Yiga's aide Joseph Kasozi hired him to transport his items on his motorcycle on July 29, 2017. On their way to the farm to collect these items, they were intercepted by police officers and Kasozi managed to escape; leaving Sekalongo (who had lost control and fallen from his motorcycle) in the hands of a crime preventer. Sekalongo was assaulted and injured by this crime preventer and detained at Kapeeka Police Station for a night and later transferred to Kiwoko Police Station in Nakaseke District where he spent four days before being arraigned in court. At the time of the story, Selakongo was on remand until August 17, 2017 at Wakyato Government prison where he was picked to testify before the Commission. Asked on which charges he had been remanded, he mentioned that he had been told that the charges were in connection to stealing six bags of maize belonging to Yiga, worth Shs 300,000.

Legal issues arising:

In relation to Byamukama's case

- Whether Byamukama's arrest and detention was in accordance with the law.

Regarding the school protest

- Did the Police act in accordance with the law in quelling the Old Kampala SS protest?

34 John Patrick Kabuye, "Old Kampala SS closed over students' strike, two arrested", Daily Monitor, July 14, 2017. Retrieved from <http://www.monitor.co.ug/News/Education/Police-fire-bullets-disperse-striking-Old-Kampala-students/688336-4014566-ppg97az/index.html>

35 Joan Murungi and Simon Masaba, " Cop held over defilement of his colleague's daughter", New Vision July 18, 2017 at p8.

36 See the Uganda Human Rights Commission 19th Annual Report to the Parliament of the Republic of Uganda 2016.

37 Ephraim Kasozi and Jalira Namyalo, "Land grabber accused of squeezing teenager's genitals," Daily Monitor, August 8, 2017, at p 3.

38 Ibid.

39 Ibid.

40 Ibid.

41 Ibid.

In relation to Stephen Matovu

- Whether in the given circumstances, the arrest, detention and treatment of Matovu was lawful.

Recommendations:

- The Government should decisively address the endemic cases of torture, arbitrary arrests and detentions in this country. Additionally, perpetrators of torture should be held personally liable for their actions.
- The Police should conduct a thorough investigation into Yiga's alleged assault of Matovu with a view of prosecuting the perpetrator prescribed under Section 236 of the Penal Code Act and Section 5(h) of the Prohibition and Prevention of Torture Act 2012.
- Additionally, if found guilty, Yiga should compensate Matovu for among other things, the harm or loss suffered, pain and suffering as well as costs required for legal and medical services as prescribed under Section 6 of the Prohibition and Prevention of Torture Act.
- The Uganda Law Society Legal Aid Clinic should offer legal aid to Matovu.

Kaweesi murder case suspects demand medical examination

During the review period, the High Court granted the 19 suspects in the Kaweesi murder case leave to be medically examined by the African Center for Treatment and Rehabilitation of Torture Victims (ACTV), in order to verify the cause of injuries they exhibited in court.⁴² ACTV is a registered non-governmental organization accredited by the Ministry of Health to operate a medical referral centre that provides physical and psychological care that supports the process of rehabilitation of victims of torture.

The suspects claimed that they were arrested from their homes and taken into military custody where they were tortured and later charged in court before being remanded to Nalufenya Police Station where they say the acts of torture were resumed. The suspects' lawyer Ladislaus Rwakafuuzi, informed court that the suspects had not received sufficient medical treatment for the injuries suffered (open wounds, broken legs and impaired sight and hearing).⁴³ Additionally, the suspects sought a court order for their unconditional release from detention at Luzira prison, arguing that their continued detention without medical care amounted to a violation of their constitutional rights for which they also claimed compensation from government.⁴⁴

Subsequently, on July 24, 2017 the Court ruled that all the 19 suspects should be taken for medical examination. The Judge ordered that a medical report of the findings be brought to court within 14 days and noted that court cannot rely on the medical report by doctors at Luzira since they worked for the government whose workers are accused of torturing the suspects.⁴⁵

On August 24, 2017, the ACTV released its report on the medical condition of the 19 suspects.⁴⁶ According to the medical examination report, all the suspects had symptoms of anxiety such as depression, post-traumatic stress and behavior functioning, which the doctors say are consistent with exposure to traumatic events, including among other things torture. The examination was conducted by Drs. David Kyazze and Daniel Kenneth Bagonza of ACTV.⁴⁷

Legal issues arising:

- Whether the arresting authority acted lawfully by detaining the suspects in a place that is not gazette.
- Whether the rights of the suspects to medical treatment as required by Article 23(5) (c) of the Constitution were observed.
- Whether the State has fulfilled its international obligation to ensure that persons in detention

42 Juliet Kigongo, "Kaweesi murder case: Suspects demand medical examination," Daily Monitor, July 11, 2017, at p.6.

43 Ibid.

44 Ibid.

45 www.monitor.co.ug/News/National/Court-orders-torture-tests-kaweesi-suspects/688334-4029778-lo90agz/index.html

46 Farooq Kasule and Michael Odeng, "Kaweesi murder suspects' medical report out," New Vision, August 25 2017 at p.8.

47 Ibid.

are treated with humanity and with respect for the inherent dignity of the human person as prescribed by Article 10(1) of the International Covenant on Civil and Political Rights.

Recommendations:

- We recommend regular prison and police inspections conducted by independent inspectors in order to establish the conditions under which prisoners are held, to consider the manner of their treatment of and to publicly report on their findings. It is in society's best interest to ensure that jails are used and operated properly. This can only be achieved by establishing a clear set of standards coupled with a process of inspections and follow-up in order to see that any identified deficiencies are corrected.

It is vital to note that the Parliamentary Committee on Human Rights that was tasked to visit the infamous Nalufenya Prison and report on the allegations of torture generated two conflicting reports. One was submitted by the Chairperson of the Committee Hon. Jovah Kamateeka and the other 'the minority report' by Kilak North Member of Parliament – Hon. Anthony Akol. The first report which was meant to examine the status of Nalufenya and the alleged cases of torture indicated that "there was hardly any overt evidence of torture and that the suspects are well fed, and the facility appeared reasonably very clean". The report further stated that the facility, on average holds less than 50 inmates and most often suspects are transferred to Luzira Prison after trial in court within a period of one week and that, "the committee could not establish whether there had been overcrowding or not or whether those transferred had been tortured at the facility". The minority report on the other hand urged Parliament to close Nalufenya detention facility for gross human rights violations. In his dissenting one-man report, Hon. Akol stated that the facility had simply been set up to look like an organized police facility in anticipation of the MPs' arrival, yet the medical records at the facility as well as the numerous testimonies of suspects suggested that suspects had been treated with different conditions that suggested torture. The contradictory reports on Nalufenya facility therefore still beg the question as to whether Nalufenya facility is a harbor for rampant human rights violations that are yet to be dealt with.⁴⁸ It is important that the issue of Nalufenya detention facility is reviewed by all the key stakeholders once again.

e) Property Rights

Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his/her property.⁴⁹ The right to property is enshrined under Article 26 of the 1995 Constitution which prohibits compulsory deprivation of property or any interest in or right over property of any description except where acquisition or taking of possession is in the public interest or for public use. In this instance, the law provides for prompt, fair and adequate compensation.⁵⁰ That notwithstanding, there have been several incidents over the years pertaining to land grabbing involving individuals, local and foreign investors as well as Government for its infrastructure and investment projects. In the period under review, there were a number of incidents involving Government acquisition of land for investment without due regard to the rights of land owners as shown below.

Amuru Land Acquisition

In late July, Government announced plans to start opening the boundaries of land in Amuru District that had been allotted to the Madhvani Group for the establishment of a sugarcane plantation and factory in the area.⁵¹ The planned survey came a month after a reported agreement was reached in Kampala between the government, some landowners and cultural leaders from Amuru.⁵² The Madhvani Group had shown an interest in the land to establish a sugar factory but resistance from the local communities forced the company to pull out.⁵³ To stop the Minister of Lands, Housing and Urban Development and her team, from launching the survey, some legislators from the region alongside several local citizens

48 <http://parliamentwatch.ug/human-rights-committee-produces-conflicting-reports-on-nalufenya-house-adpots-both/#.WcKQxTWEbIU> : <http://www.parliament.go.ug/index.php/about-parliament/parliamentary-news/1256-parliament-condemns-torture-demands-nalufenya-closure>

49 Article 17 of the 1948 Universal Declaration of Human Rights.

50 Article 26(2)(b)(i) of the 1995 Constitution.

51 Cissy Makumbi and Stephen Okello, "Amongi calls off Amuru land survey amid protests," *Sunday Monitor*, August 13, 2017 at p.8.

52 *Ibid.*

53 See online Article titled "Breaking down the Amuru land conflict", *Daily Monitor*, published on August 14, 2017. Retrieved from <http://www.monitor.co.ug/News/National/Breaking-down-the-Amuru-land-conflict-/688334-4056238-qwsjy7/index.html>

put up a spirited fight against the allocation. Residents, some of whom stripped down to their waists blocked the road to the area amidst gunfire and teargas. Two people were injured in the fracas.⁵⁴ The point of contention however, mainly relates to the ownership of the land and the use to which it should be put. Some residents noted that their names were written down as consenting land owners without any knowledge of what was going to happen.

In a later incident, a number of Amuru residents were arrested while some were flogged or fled on their own during an impromptu security crackdown that paralyzed commercial and farming activities in Kololo Parish in Amuru District.⁵⁵ The assault on civilians allegedly by police and soldiers happened on Sunday 13th August 2017 in areas where the government wants to survey 10,000 hectares of arable land for the Madhvani Group project. Furthermore, hundreds of children remained out of school after the police set up a base at Payot Community School and crime preventers occupied Kololo Primary School until 14th August 2017.

On August 22, 2017 the New Vision reported that Government had commenced the survey and that the process had been marred by intimidation and harassment of those who were unwilling to offer their land.⁵⁶ The Amuru District Chairperson—Michael Lakony—confirmed receiving complaints of people being coerced to accept the land survey, but said that he had not yet verified them. The Madhvani Group insists its plans to invest in Amuru have been now shelved until there is consensus by residents for the project.⁵⁷

The Constitutional Amendment Bill

Prior to the Amuru incident (July 2017), Government proposed a Constitutional Amendment Bill in a bid to amend Article 26 of the Constitution in accordance with Articles 259 and 262 of the Constitution; arguing that the Bill would resolve the problem of the delayed implementation of infrastructure and investment projects due to disputes arising out of the compulsory land acquisition process. The Bill seeks to amend Article 26 to allow Government to take possession of private land for public works by depositing the contested sum for compensation in the courts, as the works go on awaiting resolution of the dispute. This move was widely contested and on August 4, 2017, the Uganda Law Society (ULS) issued a press statement⁵⁸ asking Government to withdraw the proposed Bill; arguing that there are adequate laws in place to assist government tackle the issues it wishes to cure with this proposed legislation.⁵⁹

In its press release, the ULS urged Government to instead amend the Land Acquisition Act in order to address the challenges in executing public projects on land including setting a timeframe to resolve the current land disputes. Since issuance of the release, the President has embarked on a country-wide radio campaign to publicize the government position on the issue, after the NRM Caucus in Parliament had rejected the bill.⁶⁰

The Commission of Inquiry into Land Matters

In December 2016, President Museveni appointed Court of Appeal Judge, Catherine Bamugemereire to head a seven-person Commission of Inquiry into land matters that have increasingly become highly controversial in Uganda. The Commission was expected to probe into the effectiveness of the law on land matters, the policies and process of land acquisition, land administration, land management and land registration in Uganda.⁶¹

We hope that in keeping with their mandate, the Commission of Inquiry's recommendations will be focused to policy and legal improvements in the land management sector.

54 Ibid 38.

55 Cissy Makumbi, "Police, soldiers whip Amuru residents", Daily Monitor, August 15, 2017 at p.2

56 Arnest Tumwesigye, "Intimidation, tears as Amuru land is surveyed," New Vision, August 22, 2017 at p.22.

57 Ibid.

58 See "Uganda Law Society asks government to withdraw the Constitutional Amendment Bill 2017". Retrieved from <http://www.ntv.co.ug/news/local/04/aug/2017/uganda-law-society-asks-government-withdraw-constitutional-amendment-bill#sthash.CJVBjopw.dpbs>

59 Ibid.

60 Monitor Reporter, "Museveni resorts to radio to explain Land Amendment Bill", Daily Monitor, September 4, 2017. Retrieved from <http://www.monitor.co.ug/News/National/Museveni-radio-Land-Amendment-Bill-Masaka-Amongi/688334-4081948-e3anv5/index.html>

61 Anthony Wesaka, "Commission of Inquiry into land matters finally begins work," Daily Monitor, May 2 2017. Retrieved from <http://www.monitor.co.ug/News/National/Commission-of-inquiry-into-land-matters-finally-begins-work/688334-3910986-14pnhc3/index.html>

Legal issues arising:

- Was due process followed by Government in the process of acquiring the land in Amuru as prescribed by Article 26 of the Constitution and Sections 5 and 6 of the Land Acquisition Act of 2007?
- Whether acquisition of land for private investment purposes falls within the meaning of public purpose under the Constitution.
- Do Government's proposals of compensation meet the prompt, fair and adequate test set by the Constitution?
- Whether the proposed law meets the test of the right to property.
- Did Government consider the fundamental rights of the residents i.e. the right to property (Article 26 (2), education (Article 30), life (Article 22) and economic rights (Article 40) among others, even as they attempted to survey the land?
- Whether the proposed Constitutional Amendment bill is necessary.
- Whether the bill if passed in its current form is constitutional.

Recommendations:

- Government should widely consult land owners and sensitize them on impending public projects before launching them. Additionally, Government is advised that matters of a constitutional nature must be well thought out and must involve a consultative process that allows for adequate public participation.
- Government's power to acquire land is limited to public purpose, not to protect investors.
- In the event that Government wishes to acquire land for public purpose, it should follow the procedure set out in the Land Acquisition Act.
- Any genuine land buyer must approach the land owners and negotiate with them directly.
- Those involved in the harassment, assault and killing of the residents of Amuru regardless of their rank, role or position should be prosecuted.
- The Government should put in place legal mechanisms for people who own land under Customary Land Tenure. In particular, the traditional institutions must be strengthened to enable them mediate Land disputes.
- Concerning the proposed constitutional amendment bill, the Uganda Law Society advised government that matters of a constitutional nature must be well thought out and must involve a consultative process that allows for adequate public participation.
- The Government does not need a constitutional amendment to expedite Government projects. It needs to operationalize and strengthen the 1965 Land Acquisition Act.

f) The Right to personal liberty

Article 23 (1) (a) of the Constitution provides that no person shall be deprived of personal liberty except in execution of a sentence or order of a court order, whether established for Uganda, another country or an international Court or tribunal in respect of a criminal offence committed by that person and further provides other instances in sub clauses *b* to *h*. There have however been incidences where persons were arrested and detained during the reporting period by security operatives outside the specified exceptions in the Constitution.

On July 5, 2017 for instance, NTV Uganda aired a story of three men who were being held incommunicado by the police.⁶² In the story, relatives of Ivan Kabaale, George Wanzige and Ibrahim Musisi shared their

⁶² See report "Three men give account of detention experience in Nalufenya", NTV, July 5, 2017. Retrieved from <http://www.ntv.co.ug/news/local/08/aug/2017/three-men-give-account-detention-experience-nalufenya-18474#sthash.hPQUUCWGZ.dpbs>

fears and frustrations seeking to know the whereabouts of their loved ones. When contacted by NTV Uganda, the Police Flying Squad Unit boss—one Herbert Muhangi—reported that he was unaware of the situation of the three men. The three men were later released on police bond and shared the details of their ordeal while in detention. All three confirmed that they were picked up, tortured and detained at the Central Police Station and Nalufenya Police Station by Flying Squad Unit operatives who even continued to trail them following their release. One of the men mentioned that they were bundled into a private unidentified car and taken to the Central Police Station where they were detained and their belongings taken away. Another mentioned that he was arrested while trying to visit a colleague in jail and the other, Ibrahim Musisi—the head of Uganda Yaffe—a pressure group linked to the Forum for Democratic Change (FDC) political party—said that their arrest occurred during the time when rampant killings linked to the Kijambiya gang were taking place.⁶³ He claimed that the operatives told them to insist that Dr. Kizza Besigye and Ms. Ingrid Turinawe were behind the killings.⁶⁴ The three men claim that they were later transferred to Nalufenya Police Station in Jinja and charged with terrorism. After three weeks, Musisi was transferred to Kira Police Station while his colleagues were brought back to CPS Police Station. All the while, they were not permitted to see their visitors and were eventually released after one of the Police bosses and NTV Uganda intervened.⁶⁵

Legal issue arising:

- Whether the three men were arrested and detained in accordance with the law.

Recommendations:

- A thorough investigation should be conducted into the alleged arrests. Should there be any inconsistencies with the law in the manner and procedure in which they were effected, the officers responsible must be held accountable for their actions and face the full might of the law.
- The trio must be compensated, should it be determined that they were unlawfully arrested and detained as provided by Article 23(7) of the Constitution.

Mother of July 2010 terror suspect claims torture by security officers

Over the last year, Fatuma Said Abdallah—the mother of Omar Awadh Omar (one of the 13 suspects who were arrested and tried for their role in the July 2010 bombing) has been subjected to all manner of torture (physical and psychological) that has left her weak and sick.⁶⁶ Omar and four others were initially acquitted of all charges and court ordered their release, only for them to be rearrested at the High Court premises under new terrorism charges.⁶⁷ One year later and their case is yet to be heard. In seeking justice for her son, Ms. Abdallah has allegedly been hounded, incarcerated and tortured by security personnel.

Abdallah who is 63 years old and hypertensive has claimed that personnel from the counter terrorism unit of the police have raided her home several times; the most recent being December last year where they used sniffer dogs (animals considered an abomination in the Islamic faith) to search her home.⁶⁸ She has been detained at facilities such as Naguru, Kira Road police station, the notorious Special Investigations Unit (SIU) in Kireka and the infamous Nalufenya prison.⁶⁹ At the latter facility (where she had gone to inquire about the whereabouts of her son) she was detained for weeks during the Ramadan period under difficult conditions; without appropriate medication. Her two crimes, she avers, were the fact that she is Omar’s mother and the perception that she is of Somali descent. Ms. Abdallah has asserted that the security operatives have profiled Muslims and the Somali community as terrorists or their conspirators.⁷⁰ Despite the fact that she has been incarcerated and tortured several times, she has never been formally charged.⁷¹

Additionally, Omar and 4 others continue to be detained on what their lawyers term as “frivolous

63 Ibid.

64 Ibid.

65 Ibid.

66 Derrick Kiyonga, “Mother of July 2010 terror suspect claims torture by security officers”, The Observer, July 12-13, 2017, at p.5.

67 Ibid.

68 Ibid.

69 Ibid.

70 Ibid.

71 Ibid.

charges,” moreover without trial for a year since they were committed to the High Court. Intriguingly, the charge sheet indicates that the suspects committed offences between February 16 and March 16, 2016 in Jinja and yet this is the time they were on trial and incarcerated at Luzira prison. The indictment was later amended to affirm that the suspects committed the said offences while at Luzira and not Jinja as stated previously.

It should be noted that the continual detention without trial of Omar and other suspects, as well as the incarceration and torture of Ms Fatumah without being formally charged constitutes the violation of their rights to be brought to court within the required forty-eight hours as per Article 23(4) (b) of the Constitution, as well as their rights to be presumed innocent until proven guilty as is provided for in Article 28(3) (a) of the Constitution.

Legal issues arising:

- Whether the arrest and detention of Miss Abdullah was in line with her right to a fair hearing as is provided for in Article 28 of the Constitution, Article 10 of the Universal Declaration of Human Rights, Article 9 of the International Covenant on Civil and Political Rights and Article 7 of the African Charter on Human and People’s Rights.
- Whether Ms. Abdullah was accorded the necessary and appropriate medical attention during her detention at Nalufenya in accordance with Article 12 (1) of the International Covenant on Economic, Social and Cultural Rights and Article 23(5) of the Constitution.
- Whether the infringement of Ms. Abdullah’s right to privacy, as is provided for by Article 27(1) of the Constitution was justified.
- Whether police operatives treat all detainees equally and fairly as per Article 21(1) and (2) of the Constitution.

Recommendations:

- The State should carry out investigations into the above mentioned instances of arbitrary arrest, unlawful imprisonment and torture of Ms. Abdallah. Should it be established that these acts took place, those found liable should face the full extent of the law.
- Furthermore, in keeping with Article 23(7) of the Constitution Ms. Abdallah should be compensated for unlawful arrest and detention.
- The State should put in place mechanisms to ensure that prisoners are afforded and enjoy the highest attainable standard of physical and mental health.
- The Uganda Law Society Legal Aid Project should take up Ms. Abdullah’s case, as per its mandate of striving for justice of the marginalized persons of society.

B. TRANSPARENCY AND ACCOUNTABILITY

During the review period, the following incidences concerning effective planning, spending and accountability in government transactions arose:

a) Procurement of ROKO Construction Ltd services by Parliament

Queries emerged after Parliament controversially awarded a UGX. 180bn deal to the civil engineering construction company ROKO Construction Ltd. ROKO has been contracted to build a new chamber for the national assembly, modify the existing one and establish a hall of honor.⁷² The deal was to be executed in a joint venture between ROKO Construction Uganda and ROKO Construction Rwanda. It is reported that during the bidding process the Contracts and Evaluation Committees of Parliament ignored the safety nets provided in the Public Procurement and Disposal of Public Assets (PPDA) regulations to deter fraud or corruption.⁷³ Moreover, the contract was concluded within 72 hours, including the bidding

⁷² Solomon Arinaitwe, “Queries as Roko firm gets Shs 180b Parliament deal”, Daily Monitor, July 6, 2017, at p4-5.
⁷³ Ibid.

stage to the evaluation committee, the contracts committee and to the signature of the contract, while the tendering process lasted over a year amid allegations of collusion between rival construction firms and technocrats at Parliament handling the deal.⁷⁴

The evaluation committee argued that the PPDA regulation on post-evaluation assessment was waived because of the “urgency” to construct a new chamber for the national assembly and that ROKO has the “required financial muscle to undertake the procurement for the Parliamentary Commission”.⁷⁵ The correspondences indicate that the ROKO bid was submitted on June 26, 2017 at 4:00pm, the exact date and time of the bid submission deadline.⁷⁶ Thereafter the six-member Evaluation Committee is said to have convened and approved ROKO’s bid the very next day (June 26, 2017), less than 48hrs after the bid submission deadline. On June 28, 2017, the Clerk to Parliament is said to have sought clearance from the Solicitor General and was given a green light almost instantly.

Legal issues arising:

- Whether the procedures undertaken in the above procurement process were in accordance with the law under Section 29(c) of the Public Procurement and Disposal of Public Assets Act and in a manner that promotes transparency, accountability and fairness in line with Section 45 of the Act.
- Whether the said Parliamentary Committees took the necessary lawful measures to expose, combat and eradicate corruption as well as abuse or misuse of power as stipulated in Objective XXVI (iii) of the Constitution.

Recommendations:

- A thorough investigation should be undertaken to determine the legality in the process leading to the award of the contract to ROKO Construction Ltd. Should it be determined that the contract awarded is illegal, it should be rendered null and void as per the law. It should also be noted that according to Section 8 of the Anti-Corruption Act, a person who contravenes established principles commits an offence. From the foregoing, it is apparent that the principle of transparency and accountability may have been infringed since the proper procurement steps were not taken.
- Parliament as the overall oversight body must ensure that its processes of procurement and management of public funds is above board at all times to maintain the moral and legal integrity to demand the same from all the other Government agencies.

b) Inefficient infrastructure spending

On August 2, 2017 the Daily Monitor reported⁷⁷ that a new report⁷⁸ released by the World Bank revealed that the Uganda Government loses \$300 million (about Shs 1.06 trillion) per annum as a result of inefficiencies in infrastructure projects. This World Bank economic update urges the government to make its Public Private Partnership (PPP) policy more effective by ensuring transparency in the bidding process and project implementation. The report further recommends that the selection of projects be done well by involving careful analysis before execution to ensure value for money. Senior Economist at the World Bank Country Office Rachel K. Sebudde, noted that overall the economy has been growing at one of the slowest rates in the past decade with the GDP growth rate between July 2016 - March 2017 estimated at 2.5 per cent per annum, and remained below 4 percent in the year ending June 2017.⁷⁹ She added that inefficiencies are due to delays in the implementation of projects, the wrong costing of the projects by implementers, a lack of competition in the bidding for the construction of some projects, failures to follow rules in the stipulated legal and regulatory frameworks as well as slower procurement processes, among others.

74 Ibid.

75 Ibid.

76 Solomon Arinaitwe, “Queries as Roko firm gets Shs 180b Parliament deal”, Daily Monitor, July 6, 2017, at p4-5.

77 Martin Luther Oketch, “Inefficiencies cost Uganda \$300m per year-World Bank” Daily Monitor, August 2, 2017, at p.6.

78 See Report No: AU50000021, Ninth Edition: Uganda Economic Update, titled “Infrastructure finance deficit: Can Public private partnerships fill the gap? The World Bank Group, June 2017. Retrieved from <http://documents.worldbank.org/curated/en/261811498801726339/pdf/P161699-06-30-2017-1498801724865.pdf>

79 Ibid 95.

Legal issues arising:

- Whether the procurement law and all the other relevant laws that support infrastructural development are being appropriately implemented as per Section 45, 46 and Section 48 respectively of the Public Procurement and Disposal of Public Assets Act as well as Article 164(2) of the Constitution.

Recommendations:

- Government of Uganda should pay close attention to issues raised in the World Bank Report and heed the recommendations made. Emphasis should particularly be placed in implementing measures prescribed by law to ensure transparency, efficiency and value for money.

c) BOU in the spotlight over controversial procurement of commemorative pens

Some Bank of Uganda officials are in the spotlight over a controversial procurement of commemorative pens reportedly procured during the bank's celebration marking 50 years of existence.⁸⁰ The bank used 125 million shillings to procure 350 branded rolling ball point pens for guests at the Golden Jubilee celebrations and the Joseph Mubiru Memorial Lecture.⁸¹ The Bank of Uganda Communications Director Christine Alupo told NTV that the money was used not just to procure pens but also other memorabilia for the high profile local and international guests.⁸² Lawmakers sitting on the committee on Commissions, Statutory Authorities and State enterprises have since tasked BOU officials led by deputy governor Dr Louis Kasekende with providing more details on the transaction, which the committee chairperson, Abdu Katuntu described as "a matter of public concern".⁸³ It is alleged that documents relating to the transaction indicate that the branded ball pens supplied by Aristoc Booklex Ltd received retrospective approval of Public Procurement and Disposal of Public Assets, contrary to the law.⁸⁴

Legal issues arising:

- Whether Bank of Uganda Officials exercised the principle of accountability as per objective XXVI of the Constitution in the purchase of the pens.
- Whether the purchase of the pens was done in accordance with the regulations set out in the Public Procurement and Disposal of Public Assets Act.

Recommendations:

- Where public funds are involved, due compliance must be had to the public procurement and in the process, public interest law.

d) Centenary Park Evictions

A protracted battle has emerged between the Kampala City Council Authority and Nalongo Estates over the renewal of the management contract and extension of the sublease of Centenary Park.⁸⁵ On November 30, 2016, KCCA informed Nalongo Estate of the expiry of their contract and gave them thirty days to vacate and deliver the said property to KCCA.⁸⁶ This stemmed from a 10 year old contract that the then Kampala City Council (KCC) had awarded Nalongo Estates in 2006 to manage and transform Centenary park into a modern recreational centre.⁸⁷ In May 2011, the Kampala District Contracts Committee had also granted Nalongo Estates a separate year sublease for plots 96A-100A at Kitante (Yusuf Lule) Road and Plot Park Link.⁸⁸ The sublease was to be extended for 49 years upon the lapse of the five years but KCC now Kampala City Council Authority has rejected this proposal citing an impending installation of sewer lines, a power substation and the construction of a flyover which would take part of the lease land at

80 <http://www.ntv.co.ug/news/local/15/aug/2017/bou-spotlight-over-controversial-procurement-commemorative-pens-18574#sthash.TveMSUgC.dpbs>

81 Ibid.

82 Ibid.

83 Moses Walubiri, "MPs query Bank of Uganda pen deal", New Vision, August 18, 2017, at p6.

84 Ibid.

85 Amos Ngwomoya, "Behind fight for Centenary Park", Daily Monitor, July 11, 2017, at p.4.

86 Ibid.

87 Ibid.

88 Ibid.

Centenary Park, further stating that government programmes would be delayed.⁸⁹

The President eventually intervened and ordered for Nalongo Estates to be granted a temporary management contract on the land that will not be affected by the pending government projects.⁹⁰ Nalongo Estates had appealed to President Museveni, citing unfair treatment by the Parliament's Committee on Commissions, Statutory Authorities and State Enterprises chaired by Bugweri MP Abdul Katuntu.⁹¹

He however added that Nalongo Estates should not erect permanent structures on the land.⁹² Following this resolution, the evictions of tenants and demolition of structures on the part of Centenary Park proceeded.⁹³ About 300 workers displaced by the demolitions at Centenary Park have since appealed to government to compensate them for loss of business.⁹⁴

Legal issues arising:

- Whether the handling of the Centenary Park Situation was consistent with the law.
- Whether the influence of Parliament as well as the Executive, hence conflict of the different arms of government was done in accordance with the separation of powers principle as per the Constitution.

Recommendations:

- Institutions established by law should be allowed to discharge their mandate without undue interference or influence by the State.

C. DUE PROCESS AND CLIMATE OF LEGALITY

Every citizen is obligated to act in a manner that is in accordance with the law, taking particular regard to fairness and justice. Bearing this in mind, it should be noted that there were some legality issues that prevailed during the period July-September, which include the following;

a) Brig. Kasirye Ggwanga burns Grader over Land Grabbing

Rtd. Brig. Kasirye Ggwanga has bragged of burning a grader he found at his daughter's land in Lubowa on Entebbe Road and vowed to deal ruthlessly with land grabbers. An eyewitness told this newspaper that a furious Brig. Ggwanga arrived at the contested land after businessman identified as Hajji Musa Ssempebwa, Aloysius Sseruwagi and Hasan Ssemujju, had hired a tractor to level part of the land.⁹⁵ Eye witnesses also said upon arriving on the scene, he fired several bullets in the air prompting the driver of the grader to flee for safety.⁹⁶ He (Brig. Kasirye Ggwanga) went on to sprinkle the fuel around the grader before setting it ablaze.⁹⁷ Mr. Vincent Ssekate, the spokesman of Criminal Investigations Directorate (CID), said the owner of the grader had reported to police a case of arson and destruction of property.⁹⁸ Despite reports that Brig Kasirye Ggwanga was summoned, there is no evidence to show that any action has been taken to hold him accountable.⁹⁹

Legal Issues arising:

- Whether Brig. Kasirye followed due process, whilst pursuing justice for the attempted land grabbing on his land.
- Whether Brig. Kasirye's actions of burning the grader violated the right to property as is provided for by Article 26(1) of the Constitution which emphasises the right to own property.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ <http://www.monitor.co.ug/News/National/Centenary-Park-Museveni-meeting-orders-demolition/688334-4006506-format-xhtml-qp0f22/index.html>

⁹² Ibid 83.

⁹³ Ibid.

⁹⁴ Stephen Wandera, "Centenary Park evictions: Traders seek compensation", Daily Monitor, July 11, 2017, at p.4.

⁹⁵ <http://www.monitor.co.ug/News/National/Brig-Gwanga-burns-grader-over-land-grabbing/688334-4056252-vfnypu/index.html>

⁹⁶ Andrew Bagala, "CID prepare to summon Brig Ggwanga", Daily Monitor, August 21, 2017, at p.7.

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Ibid.

Recommendations

- Thorough investigations into the incidents should be undertaken and necessary action should be taken against Brig Kasiry Ggwanga and any other person found culpable.
- Stakeholders must work together to ensure that the land justice mechanism is made to work to the satisfaction of all citizens to avoid the current frustration with the system that makes citizens to take the law into their own hands.

b) Internal control failures within the Uganda Police

As investigations into misconduct by Police officers intensify, it has emerged that several case files of high-profile personalities implicated in criminal cases have mysteriously gone missing from the force's custody.¹⁰⁰ According to sources at the Professional Standards Unit (PSU), Police station officers, including district Police commanders (DPCs), hide or conceal criminal case files to fail investigations.¹⁰¹ At times, they doctor the files to remove vital details from the criminal registration books that are kept at the stations.¹⁰² Sources disclosed that at times, the investigating officers, sell the case files to the prime suspects at a fee, to "kill" the cases.¹⁰³ The vice, according to sources, threatens the ability of the Police to trace criminal records of suspects in high-profile cases in future.¹⁰⁴ It is suspected some of the Police officers receive regular pay from the criminals to watch out for criminal cases filed against them, so that evidence can be quickly destroyed.¹⁰⁵

In a separate incident connected to the police department, a senior detective has been arrested as police began internal inquiries into the circumstances under which 87 suspected drug traffickers due for appearance in court vanished from custody.¹⁰⁶ The suspects were arrested at Entebbe International Airport over the past 13 years and the Directorate of Public Prosecutions sanctioned charges of drug trafficking against each of them. Instead of detectives taking the accused to be formally charged in court, investigators were perplexed to find that each had under unclear circumstances been freed and escaped.¹⁰⁷ This revelation, which has sparked panic among police officers, is contained in a report of an impromptu audit of Aviation Police by the Police Professional Standards Unit (PSU) last week. Mr. Vincent Ssekate, the PSU spokesperson, said the suspects, who were arrested by Aviation Police between 2004 and August 2017, cannot be traced.¹⁰⁸

The Police Force has also grappled with Sexual Harassment and Assault cases. The Professional Standards Unit (PSU) of the Police is investigating one of their own, Mr. Jamar Basalirwa on allegations of sexual harassment. Two female officers under his leadership registered sexual harassment complaints with the PSU against Basalirwa, who is at the rank of Assistant Commissioner of Police (ACP) and head of protocol in the Police Force. The duo claimed that Basalirwa made sexual advances and when they rejected his proposal, he allegedly started harassing them, threatening to dismiss them from his unit.¹⁰⁹

In a separate but similar incident, the long arm of the law caught up with police officer Samuel Kalikawe, who was found red-handed defiling a girl in a police barracks on Sunday afternoon.¹¹⁰ The New Vision learnt that officer number 62709, Samuel Kalikawe, attached to Hoima Police Station, was in detention for defiling a Senior One student who is a daughter of a colleague. The case was reported and referenced as Hoima SD REF 18/16/2017.¹¹¹

Legal issues arising:

- Whether the Police was effectively exercising its mandate in accordance with the law.
- Whether the State has fulfilled its constitutional mandate of ensuring the protection of women and their rights as per Articles 33 of the Constitution.

¹⁰⁰ Simon Masaba, "High-profile case files disappear from Police", *New Vision*, September 1, 2017, at p.5.

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

¹⁰⁶ Andrew Bagala, "Police aid 87 drug traffickers to flee", *Daily Monitor*, September 4, 2017, at p.4.

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

¹⁰⁹ Joseph Kato, "Police chief suspended over sexual harassment," *Daily Monitor*, July 18, 2017, at p7.

¹¹⁰ Joan Murungi and Simon Masaba, "Cop held over defilement of his colleague's daughter," *New Vision*, July 18, 2017, at p.8.

¹¹¹ *Ibid.*

Recommendations:

- There is need for a complete overhaul of the entire police system. There is need for an independent process authority to actively embark on weeding out corruption in the police force and bringing back the sense of accountability that is required for such a public institution.
- The State should ensure that institutions have a sexual harassment policy as well as enforcement measures in place.
- There is need to think about creating an oversight body over the police to address the many issues affecting this critical institution.

c) The Age Limit Debate

Article 102 of the constitution prescribes a minimum of 35 and a maximum of seventy-five as the ages of eligibility to stand for election to the office of President. A move to amend the Article started as a project of one member of Parliament, and has been adopted by a group of MPs of the ruling party, NRM, and reportedly endorsed by the Cabinet.¹¹² The ensuing debate within and outside of Parliament raises several issues pertinent to the Rule of Law, constitutionalism, and the popular participation of citizens in their governance.

The first issue concerns the basic principles and structures by which the enactment of the 1995 Constitution was motivated, including the need to avoid “political and constitutional instability” and the establishment of a “durable national Constitution based on the principles of unity, peace, equality, democracy, freedom, social justice and progress”.¹¹³ In this light, the age limit in the Constitution needs to be married to the presidential term limits (originally Article 105(2) of the Constitution), and which were excised from the Constitution in 1995. If the age limit is removed from the Constitution and in the absence of term limits, in effect the last check to unlimited executive excess and a defined process of presidential succession has been eliminated. Also, quite clearly the amendment is motivated by the interests of the incumbent (President Museveni) which runs counter to all the principles of democratic constitutionalism.

Secondly, the proposed amendment runs the danger of infecting numerous other provisions in the Constitution concerning not only the eligibility of a person to run for the presidency, but with respect to all the other public offices on which similar limitations have been imposed. In effect, the amendment suggests that every limitation which the people of Uganda decided upon during the constitution-making process (including the age of voting, the qualifications of persons for public office and the limitations on the abuse of power) can be altered in whimsical fashion.

The third issue touches on the process by which the amendment may be effected. Although Parliament can singularly run through the entire process of amending Article 102 of the constitution, in the spirit of constitutionalism the exercise must be consultative. That spirit is partly reflected in the *National Objectives on democracy*, and also in Article 38 of the Constitution which guarantees the civic rights of Ugandans. Constitutionalism also derives from the ethos of participatory democracy that developed alongside the making and implementation of the constitution. The constitution is an embodiment of a national consensus derived from wide consultative discussions and debates. It is therefore important that any adjustments take account of the people’s views over their nature and desirability. Government has itself proposed a consultative process through a Review Commission towards a consensus on whether, and how, the Constitution should be amended. Discussions over constitutional amendments should be widely participatory and not restricted to the chambers of Parliament.

This leads to the final issue that concerns the people’s civic rights to speak, participate, and influence matters of governance whether individually, or, in association with others. The rights are guaranteed by the Constitution in provisions that guarantee *inter alia*: personal liberty, human dignity, the freedoms of, assembly, association, and expression, plus the right to participate in the affairs of government. It is evident that these rights as sought to be exercised over the current debate, are not being respected and protected. Ugandans should be free to assemble and demonstrate in expression of their views, and not be unilaterally prevented from doing so by the security forces.

112 Solomon Arinaitwe, “Age limit removal: Inside Opposition, NRM playbooks,” Sunday Monitor July 16, 2017, at p16 ; https://www.newvision.co.ug/new_vision/news/1461448/-nrm-mps-agree-remove-presidential-age-limit ; https://www.newvision.co.ug/new_vision/news/1461870/age-limit-religious-leaders-security-remain-neutral ; <http://nbs.ug/abiriga-beaten-over-age-limit/>

113 Preamble of the Constitution.

Even under the current law (*The Public Order Management Act*) that is conceived to regulate the freedoms but is generally restrictive, what is required is notice of a gathering or demonstration to the police. The police have broken up gatherings of people expressing opposition to the proposed amendment. The Offices of two Civil Society Organisations that are known to have spoken out against the proposals have been vandalized under the guise of searching for criminal evidence.¹¹⁴ Excessive force and, even degrading treatment has often been part of police intervention.¹¹⁵ A military/police presence established in the precincts of the Parliamentary buildings that does not augur well with free speech in the House.¹¹⁶ This is besides the fact that some members of Parliament opposed to the proposed amendment are under threat of criminal action.

Legal Issues arising:

- Whether the proposed amendment does not violate the fundamental principles upon which the 1995 Constitution was constructed, and infects other provisions of the Constitution.
- Whether the process of amending the constitution should not be consultative and participatory.
- The status of the regulatory process under *the Public Order Management Act* in relation to the people's rights and freedoms.

Recommendations:

- The basic principles and structure of the 1995 Constitution needs to be given careful consideration in order not to introduce a situation of political instability and constitutional disorder.
- Steps taken to amend the constitution should allow for wide consultation and participation of the people.
- The rights of Ugandans to peacefully assemble, to demonstrate and to express their views should be respected and protected by the police.

D. GENERAL ISSUES

Development of an Amnesty Model Law

During the reporting period, the ULS completed the Amnesty Law Project; a four year multi stakeholder initiative which was conceived to contribute to reform of the law¹¹⁷ governing amnesty in the country by developing a model law on Amnesty which is victim inclusive, provides conditional amnesty and prosecutes those liable for atrocious war crimes. This project was implemented by a coalition of partners led by the ULS including the Uganda Law Reform Commission, the Law Development Centre and the Justice and Reconciliation Project in consultation with the Justice, Law and Order Sector.

Establishment of the Anti-Pornography Committee

The directorate of ethics and integrity has confirmed the inauguration of a nine-member Pornography Control Committee, to implement the Anti-Pornography Act 2014.¹¹⁸ The Ethics Minister Simon Lokodo said the government will spend Shs2b each year to fund activities of the ad hoc team he inaugurated at the Uganda Media Centre in Kampala.¹¹⁹ The total secretariat constitutes of between 30 to 40 staff.¹²⁰ They will acquire top-end gadgets to monitor and or intercept, downloading, watching, sharing and or transmission of electronic pornographic material and Uganda Communications Commission has been co-opted under the arrangement to handle media and cinema proprietors that broadcast such material.¹²¹ The Committee has been mandated to ensure early detection and prohibition of pornography, ensure

114 Betty Amamukirori, "CSOs condemn office raids," *New Vision* September 22, 2017, at p5.

115 Ibid 7.

116 Ibid 6.

117 The Amnesty Act of Uganda of 2000

118 Martin Kitubi, "Anti-pornography committee gets sh2b", *New Vision*, August 29, 2017, at p.6.

119 Ibid.

120 Tom Brian Angurini & Paul Tajuba, " Govt pools 40 people, Shs2b to fight pornography", *Daily Monitor*, August 29, 2017, at p.3.

121 Ibid.

arrest and prosecution of culprits and collect and destroy pornographic objects with the assistance of the Police; to also educate and sensitize the public on the dangers of pornography, promote rehabilitation of people affected by pornography and promote appropriate educational materials against pornography in the school curriculum.¹²² It has also been mandated to expedite the development or acquisition and installation of effective protective software in the electronic devices, such as computers, phones and television sets for detection and suppression of pornography.¹²³ All persons convicted for one offence or the other under the Anti-Pornography Act will be registered with all of their particulars, including residence and telephone contacts.

In the performance of its function, the committee will ensure adherence to the rule of law and protection of human rights.

E. CONCLUSION

There have not been any marked improvements in the state of human rights and the observation of the rule of law. The issue of the age term limit is ongoing and we hope that peoples' right to free speech and personal liberty is respected as this issue is being discussed, and that the spirit of constitutionalism is upheld.

122 *Ibid* At p.117.
123 *Ibid*.

Updates on Recommendations from the previous Quarterly Reports

FIRST QUARTERLY REPORT	
Recommendations	Updates
<p><u>Non-Compliance with Court Orders</u></p> <p><u>Addressed to the Commissioner General of Prisons</u></p> <ul style="list-style-type: none"> • 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. • There is a need for continuing education/sensitization of law enforcement agencies and other stakeholders on their constitutional and legal obligations with regard to implementing court orders 	<ul style="list-style-type: none"> • On the 29th of April, 2017, the Commissioner General of Prisons responded to the legal issue raised concerning the non-compliance with court orders, stating that the Uganda Prisons got the information about the court order and summons from Newspapers and then sought the legal advice of the Solicitor General.
<p><u>The award of UGX 6 Billion Bonus Payment by Government through the Uganda Revenue Authority</u></p> <ul style="list-style-type: none"> • 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; • All payments made out of the Consolidated Fund and Petroleum Fund must be executed in full compliance with the laws governing these institutions; and • As the principal legal advisor to Government, the Office of the Attorney General should avoid situations which lead to a conflict of interest. 	<ul style="list-style-type: none"> • A resolution was made by the Parliament of Uganda requiring all beneficiaries in the oil cash bonanza to refund the monies received with further recommendations for a legal framework within which such donations can be regulated and streamlined.
<p><u>Buliisa Land Title Cancellations</u></p> <p><u>Addressed to the Inspectorate General of Government</u></p> <ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • On the 5th of May 2017, the Inspectorate of Government responded, stating that in many instances the orders of the IG in respect of land matters are not respected and implemented. • She further intimated that this could be because the jurisdiction to adjudicate between contestants over registered land is vested in the High Court and the Commissioner Land Registration or registrars of titles. In addition, these officials are protected from prosecution and civil litigation against them personally by section 175 of the Registration of Titles Act.

UGANDA LAW SOCIETY
Plot 5A, John Babiha Road
P. O. Box 426, Kampala
Phone: +256 312 262420;
0800100150/1 (Toll Free)
www.uls.or.ug