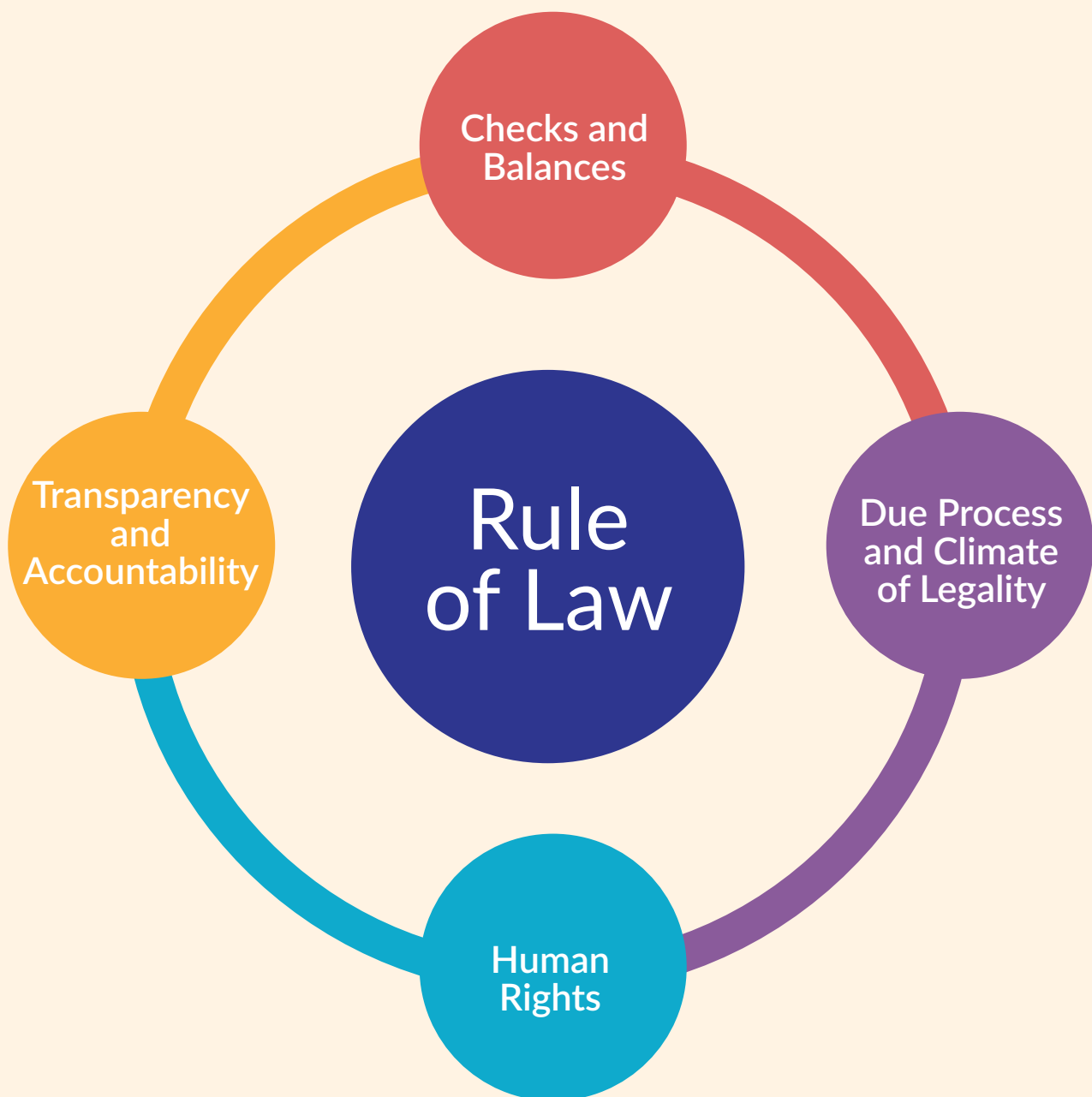




THE STATE OF THE RULE OF LAW IN UGANDA: SECOND QUARTERLY REPORT



APRIL - JUNE 2017

TABLE OF CONTENTS

Foreword	1
Acknowledgments	2
Introduction	3
Overview of Issues	4
A. Checks and Balances	4
a) Incidents Arising from the SIM Card Validation Exercise	4
B. The State of Human Rights	6
a) Torture	7
b) Violation of Children's Rights	9
c) Freedom of Expression	10
d) Media Freedoms	12
e) Protection of Environmental Rights	13
f) Violation of the Rights of Women	14
g) Security of Persons	16
h) The Right of Access to Information	17
i) Freedom of Worship and Association	18
C. Transparency and Accountability	20
a) Investigation and Prosecution of Corruption	20
b) Corruption in Ministries	22
c) Accountability in Public-to-Private Funding	23
D. Conclusion	25

FOREWORD

It is my earnest pleasure to present to you our second edition of the Uganda Law Society (ULS) Quarterly Report on the State of Rule of Law; covering the period April to June 2017. I particularly thank the Rule of Law Advisory Panel and the Rule of Law Department for compiling this report.

In this edition just like the first one, the Report identifies some positive aspects during the quarter that has contributed to the promotion of the Rule of Law. The Report as well picks up key commissions and omissions that threatened the Rule of Law during the period of April to June. Most importantly, the report makes recommendations that are essential in building the Rule of Law culture within the government.

We strongly believe that this Report offers the opportunity to take stock of the Rule of Law situation in the Country and further offers an invitation to every stakeholder to make a contribution to efforts aimed at making the rule of law a reality in Uganda.

I wish to express my appreciation to all the stakeholders that participated in the 1st edition of the ULS Quarterly State of Rule of Law Report. I wish in particular to recognise the positive feedback from the Commissioner General of Prisons, the Inspectorate of Government and the Uganda Law Reform Commission regarding the recommendations in the report that touch their institutions. Their response to the issues raised in the report is a clear testimony that with accountable leadership, most of the issues related to the rule of law can be addressed.

I therefore implore all the stakeholders to take study the recommendations in this report and make the necessary adjustments to enable us uphold the Rule of Law in Uganda at all times. We believe that this report will continue to shape the conversation of how we can work together to create the Uganda we want.



Francis Gimara
President - Uganda Law Society

ACKNOWLEDGMENTS

This Report was made possible with great support and guidance from the ULS Rule of Law Advisory Panel. Special thanks go to the Chairperson of the Advisory Panel - Professor Fredrick E. Ssempebwa and the members - Professor Joe Oloka-Onyango, Mrs. Gertrude Wamala Karugaba, Mr. Andrew Kasirye and Mrs. Lydia Ochieng Obbo and Ms. Loyola Karobwa.

Additional thanks go to the ULS Secretariat team including Ms. Rita Aligo, Mr. Peter Katonene Mwesigwa and Ms. Irene S. Kwaga for their effort in developing this Report.

INTRODUCTION

This is the Second 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 between the months of April and June, 2017. In a bid to analyze the various positive developments and the contraventions in respect to the Rule of Law, the report considers how these relate to the main legal framework in Uganda, with a special emphasis on the 1995 Constitution and the different regional and international instruments and standards that Uganda has ratified.

Incidences of human rights violations are the most predominant events of this quarter; the most profound being politically-motivated actions including unlawful detentions, disappearances, incidents of torture, as well as the clamp-down of dissenting voices. The Report points out both positive and negative trends over the quarter, it highlights concerns and gaps in the law, its interpretation and implementation, while providing recommendations on issues raised in order to ensure complete adherence to the Rule of Law. It is anticipated that the Report will provide a platform for a critical evaluation of Uganda's performance in the observance of the Rule of Law and to foster further discussions with relevant State and non-state actors on areas for improvement.

OVERVIEW OF ISSUES

A. CHECKS AND BALANCES

The doctrine of Separation of Powers, as originally articulated by the French philosopher Montesquieu and the Federalists in the early years of the United States of America (USA), holds that the branches of government should be divided into the Executive, Legislative and Judicial offices; each with a corresponding function, separate and exclusive membership, and with minimal encroachment by one branch upon the other.¹ Essentially, these three arms of Government are the guarantors of the Rule of Law in their respective spheres². Checks and balances work by creating a monitoring mechanism between the Executive and the Legislature, and between these first two Arms and the Judiciary. In this way, all three of the governmental bodies check each other as a means to ensure that discretion is exercised judiciously, and that state power is not abused.

Over the reporting period, the following developments with respect to the operation of this principle arose:

a) Incidents Arising from the SIM Card Validation Exercise

The Government of Uganda commenced a process requiring all telecommunications service providers to verify all SIM-card subscriber details using the system of National Identification Numbers (NINs) of card holders as a basis of registration. An initial deadline of 20th April 2017 was set for the completion of the process by which date, all-cards whose details were not updated and verified would be deactivated. This directive was contested by the ULS on the grounds that the seven-day ultimatum was unreasonable and was legally problematic since it only permitted the use of National ID cards as the document for verification in contravention of the Regulation of Interception of Communications Instrument.³

The Government subsequently reviewed the original deadline and extended the verification exercise up to 19th May 2017. On 18th May 2017, the Parliament of Uganda adopted a motion urging the Government to extend the deadline for the exercise by not more than one year.⁴ However, the Executive arm of government through the Minister of Information, Communication Technology and National Guidance, Hon. Frank K. Tumwebaze, disregarded Parliament's resolution maintaining that unregistered cards would be disconnected by the given date. Indeed by midnight 20th May 2017, most unregistered cards had been switched off.

¹ M.J.C Vile, (1967) *Constitutionalism and the Separation of Powers*, Oxford: Clarendon Press.

² See the Commonwealth (Latimer House) *Principles on the Three Branches of Government* published in February 2009.

³ Instrument No. 42 of 2011.

⁴ Kitatta Kaaya "Sim Card: Why Tumwebaze defied Kadaga." *The Observer*, March 22, 2017. Retrieved from <http://www.observer.ug/news/headlines/52999-sim-cards-why-tumwebaze-defied-kadaga.html>

On Friday 20th May 2017 the Speaker of Parliament Rt. Hon. Rebecca A. Kadaga summoned the ICT Minister over what she considered contempt of Parliament. Citing Rule 211 of the Parliamentary Rules of Procedure, she requested the Rules and Privileges Committee to investigate the conduct of Minister Tumwebaze in disregarding the motion passed by Parliament.⁵ Given the confusion and uproar which followed the termination of the unregistered services, President Museveni intervened on the matter, leading to an extension of the period of termination.

A case was also filed at the High Court (Civil Division) challenging the validity of the SIM card registration exercise in so far as National Identification Cards were mandated as the only acceptable form of identification for registration.⁶

Legal issues arising:

1. Whether the national Identity Card is the only acceptable form of identification for the SIM card validation process. The specific law in operation that had been used for SIM card is the Regulation of Interception of Communications Act (RICA), 2010 and the RICA Regulations, 2011. This position is consistent with Section 3 of the Registration of Persons Act (RPA) of 2015, which defines “identity document” to include: birth certificate, passport, valid driving license, residence permit and voter’s identification card. Regulation 7 and Form 3 of the RICA Regulations respectively provide that in the registration of SIM-cards held by individuals, the identity document details to be provided include a passport, national identity card, entry permit, driver’s license and student identity card. Neither RICA nor the RICA Regulations limit the identifying document to the national identity card, which was not even in contemplation or in existence at the time RICA and the RICA Regulations were enacted.

We recognise that the directive to use the national ID as the only document for SIM card was done under Regulation 28 (1) I of the Registration of Persons Regulations No.67 of 2015. By the time the directive was carried out, this regulation was still work in progress and needed to be widely publicised before implementation.

2. It is also not clear under what law unregistered SIM cards be deactivated. The RICA and the RICA Regulations let alone the Registration of Persons Act and Regulations do not contain any provision that prescribes the deactivation of unregistered SIM cards. The basis of the directive to deactivate unregistered SIM cards for non registration using the national ID is thus not based on any provision of the law.

⁵ *Ibid.*

⁶ *Andrew Karamagi & Michael Aboneka v. UCC & AG, HCT Civil Suit No. 250 of 2017*

Recommendations:

1. In whatever actions that may be taken by all branches of Government—there must be strict adherence to the law.
2. The citizens must ensure that the law upon which their compliance is sought is legitimate. The high handed and hurried manner of implementation of this exercise robbed it of much needed legitimacy. This should serve as a lesson to Government. Citizens would rather be influenced positively to enable compliance with the laws than be coerced through irrational directives under threat of sanctions.
3. Although a new deadline has been set, Government should address the basic flaws in the process, i.e. The Attorney General and related agencies in charge of implementing the directive should resolve the resultant inconsistencies arising from this exercise. In the event of any additions that the Executive wishes to add to the law, it should consult extensively and in such situations the opinion of key stakeholders such as ULS should be sought.

B. THE STATE OF HUMAN RIGHTS

Human Rights are an integral component of the Rule of Law. The two concepts cannot therefore be treated in exclusion of each other. Rather, they must be understood to be intertwined and mutually-reinforcing values. Respect for Human Rights is directly essential to the Rule of Law. Unfortunately this largely continues not to be the case in Uganda.

During the review period, Ugandans witnessed an increase in politically-motivated detentions, alleged disappearances, torture and deaths in custody, as well as the stifling of dissenting voices in response to alternative opinions as expressed by activists, academics and opposition leaders. These incidences of human rights violations were identified:

The Aftermath of the Assassination of Asst. IGP Andrew Felix Kaweesi

In the report of the last quarter, the ULS decried the horrific killing of Assistant IGP Andrew Felix Kaweesi and highlighted its concern that—together with other acts of heightened criminality—the Rule of Law was placed under serious threat in this regard. While the ULS appreciates the need for a robust and extensive response to the assassination, it notes with considerable concern that in the aftermath of the Kaweesi death, the government in general and the security agencies in particular have engaged in a co-extensive violation of a whole variety of human rights.

a) Torture

During the review period, the media was awash with reports of torture meted out against suspects and detainees that occurred in varied detention centres, especially the now-infamous Nalufenya Prison.⁷ Police and security forces in Uganda are reported to be the main perpetrators of torture and ill-treatment. For the Police, torture is often used in criminal investigations and is seen as a means of “solving” crimes expediently by securing a confession. Individuals arrested and detained on suspicion of having committed a crime are most vulnerable and subjected to torture.

The prohibition against torture is a bedrock principle of International Law. Torture, as well as cruel, inhuman or degrading treatment is banned at all times, in all places, including in times of war.⁸ No national emergency, however dire, ever justifies its use. No one may ever be returned to a place where they would face torture.⁹

Uganda has ratified a number of international instruments prohibiting the use of torture and cruel, inhuman, or degrading treatment such as the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights,¹⁰ and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Article 24 of the Constitution of the Republic of Uganda prohibits any form of torture or cruel, inhuman and degrading treatment or punishment against anyone. In 2012, Uganda enacted the Prevention and Prohibition of Torture Act which was designed to mark a serious commitment on the part of the government to the eradication of the practice.

In a letter to state security agencies, President Yoweri Museveni wrote about the horrifying effects of torture in Uganda and condemned its use.¹¹ There is now strong evidence that the above agencies engaged in torture and condoned its use as part of their interrogation mechanisms.¹² Recent media images of suspects tortured while in detention especially those of Kamwenge Town Council Chairman, Geoffrey Byamukama bearing deep torture wounds were most disturbing.¹³ Police officers—ACP Herbert Muhangi, D/SSP Henry Mugumya and ACP James Kusemererwa—were arrested and detained over the allegations of torturing Byamukama and later released on bail.¹³

7 Siraje Lubwama, “Kaweesi suspects reveal torture, death at Nalufenya”, *Daily Monitor*, May 26, 2017, at p.4.

8 Human Rights Watch, “Torture Topics”, 2012. Retrieved from <https://www.hrw.org/topic/torture>

9 *Ibid.*

10 “Uganda President Museveni warns against torture use.” *British Broadcasting Corporation (BBC) News Feature*, March 16, 2017. Retrieved from <http://www.bbc.com/news/world-africa-39936447> See also, “President Museveni speaks out against torture.” *The Independent* May 16, 2017. Retrieved from <https://www.independent.co.ug/president-museveni-speaks-torture/>

11 Elias Biryabarema, “Uganda’s Museveni orders halt to torture by security personnel.” *Reuters*, May 16, 2017. Retrieved from <http://www.reuters.com/article/us-uganda-rights-idUSKCN18C245>

12 Stanley Ndawula “CIP Records State Horror: Brutally Tortured Kamwenge Mayor Discovered Rotting.” *The Investigator*, May 10 2017. Retrieved from <http://theinvestigatornews.com/2017/05/cip-records-p-vii-state-horror-brutally-tortured-kamwenge-mayor-discovered-rotting-nakasero-hospital/>

13 Joseph Kato, “Kaweesi death: Police officers arrested over torturing suspects.” *Daily Monitor*, May 14, 2017, at p.3.

Pte. Godfrey Galabuzi Musisi, who was once convicted by a UPDF court-martial over accusations of attempting to assassinate President Museveni, and subsequently arrested on multiple occasions for other crimes, is one of the people in police custody over the killing of former police spokesperson Andrew Felix Kaweesi. Three weeks prior to his most recent arrest, Musisi underwent treatment in a clinic in Kampala for wounds sustained when he was tortured following an earlier arrest.¹⁴ Mr. Musisi subsequently sued the Attorney General for the torture demanding UGX 1 Billion in compensation. This case was forwarded to Principal Judge Yorakamu Bamwine for the two parties to go into mediation.¹⁵

The recent decision by the Parliamentary Human Rights Committee to visit the notorious Nalufenya Prison facility is most commendable.¹⁶ The Committee's findings and recommendations were tabled before Parliament and it is anticipated that more decisive measures will be taken to ensure the safety, dignity and wellbeing of persons detained at this and other prison facilities.

Legal issues arising:

1. Whether torture is necessary or acceptable under any circumstances. Article 24 of the 1995 Constitution provides that no person shall be subjected to any form of torture or cruel, inhuman and degrading treatment or punishment, while Article 44 stipulates that there shall be no derogation from the enjoyment of the freedom from torture and cruel, inhuman and degrading treatment or punishment. Section 3 of the Prevention and Prohibition of Torture Act of 2012 provides that there shall be no derogation from the enjoyment of the right to freedom from torture. Therefore it is not tolerable whatever the circumstances.

Recommendations:

1. The perpetrators of acts of torture should be brought to book. They should be held individually responsible for their actions. 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.
2. The Police should be equipped with better and modern investigation skills in order to ensure internationally acceptable standards of investigation.

¹⁴ Siraje Lubwama, "Man accused of trying to assassinate Museveni held over Kaweesi killing." *Daily Monitor*, April 2, 2017. Retrieved from <http://www.monitor.co.ug/News/National/Man-Museveni---Kaweesi--killing/688334-3873578-11s1y1dz/index.html>

¹⁵ *Ibid.*

¹⁶ Godfrey Ssali "TORTURE: Kadaga directs Human Rights Committee to inspect Nalufenya." *The Independent*, May 17, 2017. Retrieved from <https://www.independent.co.ug/torture-kadaga-directs-human-rights-committee-inspect-nalufenya/>

3. Those who have custodial authority should implement methods of interrogation and custody as sanctioned by the law. These include but are not limited to the following: charging of all suspects within 48 hrs; prompt access to a lawyer; access to a medical practitioner; and most importantly, access to the detainee by a member of the family. These coupled with strong judicial oversight mechanisms should guarantee that torture becomes less of a practice of first recourse by the Police and related security agencies.
4. More needs to be done in order to comprehensively address this predicament. For instance: (1) Independent periodic inspectors of detention facilities; and (2) Measures to reduce prison-crowding and the phenomenon of remand, etc.

b) Violation of Children's Rights

On 8th May 2017, twelve children of one Abdul Rashid Mbaziira from the town/village of Nambale in Mukono District were allegedly kidnapped and detained by the Uganda Police, and held incommunicado.¹⁷ The children—including a 2 year old—were arrested in an operation that saw their father jailed in connection with the killing of the late Kaweesi.

Although the reports of the arrest were initially denied by the police, Kampala Metropolitan Police Spokesperson Emilian Kayima later confirmed that the children were indeed in Police custody and that they would continue to keep them for an extra week as the police investigated allegations of human trafficking against their parents and guardians.¹⁸ Information availed by the press suggested that the children were taken from their parents'/guardians' custody without the consent of the latter who were at the time of the arrest not at home.¹⁹ Attempts to ascertain the whereabouts of these children from police officers at the Nagalama Police Station were futile. Moreover their mothers were denied access to them. In addition, the children were kept in police custody in an unknown location for over a month and were not produced to any child care entity by the Police as required by law. Eventually, the Police released the children to their mothers.²⁰

Legal issues arising:

1. Did the Police Act in accordance with the law in detaining the suspect's children? The argument by the police that they were holding these children in detention on suspicion that their guardian was planning to traffic them is questionable. If indeed this was the case, the police should have issued a statement to this effect and handed these children into the care of a registered child care and welfare

¹⁷ Paul Tajuba, "Uganda: Police Hold onto Children Held Over Kaweesi Killing." *Daily Monitor*, May 10, 2017. Retrieved from <http://www.monitor.co.ug/News/National/Police-hold-onto-children-held-over-Kaweesi-killing/688334-3920486-g0tx1p/index.html>.

¹⁸ *Ibid*.

¹⁹ Derrick Wandera, "What Kaweesi Murder Suspects Children Went Through." *Daily Monitor*, May 14, 2017, at p.3.

²⁰ Stephen Kafeero, "Kaweesi death: Emotional reunion as suspects children are released." *Daily Monitor*, May 12 2017, at p.3.

facility as investigations were proceeding. Article 34 of the Constitution of the Republic of Uganda on the rights of children, provides that subject to laws enacted in their best interests, children shall have the right to know and be cared for by their parents or those entitled by law to bring them up. These children were deliberately kept out of their parents care.

2. Was the best substitute care availed to these children in line with the provisions of the law, and were child welfare officers involved in the process of separating these children from their parents? The law provides for how a child shall be handled in the event of the need to be separated from his/her parent. Section 4 of the Children Act provides for the child's right to stay with his or her parents or guardians. Subject to this provision, where a competent authority determines in accordance with the laws and procedures applicable that it is in the best interests of the child to separate him or her from his or her parents or parent, the best substitute care available shall be provided for the child.
3. Whether the best interests of these children were considered during this process

Recommendations:

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.²¹
2. The perpetrators of these arrests and detentions should be prosecuted. The illegal detention of children in this manner sets an extremely dangerous precedent and must not be tolerated.
3. The family of the children is advised to seek legal representation and possibly legal aid in order to address the violations done to the children. Damages should be paid to the affected family for the distress occasioned by the unlawful arrest and detention of the children.

c) Freedom of Expression

On Friday 7th April 2017, Dr. Stella Nyanzi a research fellow at Makerere University and a Social Media activist was arrested following her presentation as guest speaker at a Rotary Club of Kampala Metropolitan meeting held to raise funds for sanitary pads for school girls. Dr. Nyanzi, was arrested and charged with two counts including cyber harassment and offensive communication contrary to sections 24 (1)(2)(a) and 25 of the Computer Misuse Act of 2011.²² Prior to her arrest, Dr. Nyanzi posted

²¹ Article 3 of the UN Convention on the Rights of the Child.

²² "Academic Stella Nyanzi Charged with Cyber-Harassment." Aljazeera News Agency, April 8, 2017. Retrieved from <http://www.aljazeera.com/news/2017/04/academic-stella-nyanzi-charged-cyber-harassment-170410183134831.html>

criticisms on social media against the government, especially President Yoweri Museveni and Education Minister and First Lady Janet Museveni for failing to deliver on a campaign pledge to provide free sanitary pads girls in schools.²³ Nyanzi accused the government of presiding over widespread corruption, human rights abuse, alleged extra-judicial killings, defaulting on crucial public health care delivery, electoral fraud, misplaced government priorities and deliberately impoverishing Ugandans. The language used by Dr. Nyanzi was found objectionable by Government and sections of the public.

According to the Universal Declaration of Human Rights, freedom of expression is the right of every individual to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. It is the essence of free society and is crucial in a democracy as information and ideas help to inform political debate and are essential to public accountability and transparency in government. Liberty to express one's opinions and ideas without hindrance, and especially without fear of punishment plays a significant role in the development of that particular society and ultimately for the State. It is one of the most important fundamental liberties guaranteed against state suppression or regulation. While Freedom of opinion is guaranteed, the right to freely express one's view must be exercised responsibly and with due regard to the rights and freedoms of others. A limitation of freedom of expression may only be made to satisfy a purpose acceptable in a democratic society and may not go beyond what is necessary with regard to the purpose for which it was intended. Nor may it extend so far as to constitute a threat to the free shaping of opinion, which is one of the fundamental aspects of democracy. The 1995 Constitution of the Republic of Uganda provides that every person shall have the right to freedom of speech and expression, which shall include freedom of press and other media.

Of great concern however are reports that Dr. Nyanzi's bail application was denied by the High Court Judge who referred her back to the Chief Magistrate Court which had earlier denied her bail application insisting that the application filed by the state prosecutor seeking to check the mental status of Dr. Stella Nyanzi must be first disposed off before she can apply for bail.²⁴ Furthermore, during her remand, Dr. Nyanzi's family and friends could not readily access her²⁵.

Legal issues arising:

1. Should criminal sanctions be issued in a matter of a civil nature?
2. Was the Magistrate acting in accordance with the law in refusing to hear Dr. Nyanzi's bail application on account of uncertainty of her mental health status?

²³ *Patience Akumu, "How insults and a campaign over sanitary pads landed activist in jail." The Guardian, April 23, 2017. Retrieved from <https://www.theguardian.com/world/2017/apr/22/activist-uganda-president-buttocks-jail-stella-nyanzi>*

²⁴ *Farooq Kasule, "Stella Nyanzi back in court." New Vision, May 10, 2017. Retrieved from http://www.newvision.co.ug/new_vision/news/1452947/dr-nyanzi-court*

²⁵ *"Dr. Nyanzi children wait 4 hours to see mother." Daily Monitor, April 20 2017. Retrieved from <http://www.monitor.co.ug/News/National/Dr-Nyanzi-children-wait-hours-mother/688334-3896282-anwq00/index.html>*

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3. Whether the State has promoted and protected the right to freedom of expression in accordance with constitutional and international obligations as prescribed by the International Covenant on Civil and Political Rights.

Recommendation:

Since this matter is currently in Court, the ULS refrains from discussing its merits and making recommendations. We await the decision of the Court on the matter before we can make recommendations.

d) Media Freedoms

Journalists in Uganda have over the years continued to face threats, restraint, assault, arrest and detention for covering and reporting on unfolding events.²⁶ On 8th April 2017, NTV Journalist Gertrude Uwitware was allegedly kidnapped, blindfolded and interrogated by unknown assailants for a number of hours. Prior to her abduction, Ms. Uwitware had received death threats on her social media platform where she had commented on the arrest of Dr. Stella Nyanzi.²⁷ To date no one has been apprehended in relation to this arrest/kidnap.

On 31st April 2017, the offices of The Observer newspaper were broken into by unknown assailants. Desktops, laptops, cameras and hard drives were stolen. Eight months prior to this event, there was a similar break-in at the same news house. Intimidation against the media not only hampers the freedom of opinion and expression. Following the recently-celebrated World Press Freedom day on 3rd May 2017, efforts by Government to guarantee and buttress enjoyment of the freedom of press and the safety of journalists are critical.

That said, not all is doom and gloom as there have been a positive development toward safeguarding media freedoms and the safety of journalists. In a March 2017 court decision, a senior police officer was found guilty of assault occasioning bodily harm, to WBS TV journalist Andrew Lwanga who was covering a peaceful protest by unemployed youth in Kampala in January, 2015.²⁸ Officer Joram Mwesigye, a former District Police Commander in Kampala was sentenced to a fine of One Million Uganda Shillings (about 285 dollars) or a one year prison sentence, and ordered to compensate the victim journalist a sum of five million Uganda Shillings within thirty days of the date of judgment.²⁹ It is unclear whether the compensation has been paid.

²⁶ Maria Burnett, "A media minefield: Increased threats to Freedom of Expression in Uganda." *Human Rights Watch Report*, May 2010. Retrieved from <https://www.hrw.org/node/90067>

²⁷ Joseph Kato, "NTV's Gertrude Uwitware kidnapped, blindfolded." *Daily Monitor*, April 10, 2017. Retrieved from <http://www.monitor.co.ug/News/National/NTV-s-Gertrude-Uwitware-kidnapped-blindfolded-police/688334-3884146-byha70/index.html>

²⁸ Flavia Nassaka, "Uganda: Police Killing the Messenger." *The Independent*, January 25, 2015. Retrieved from <http://allafrica.com/stories/201501260036.html>

²⁹ Article 19 News Report, "Court finds Police-Officer Guilty of Assaulting Journalists." *Article 19*, March 13, 2017. Retrieved from <https://www.article19.org/resources.php/resource/38668/en/uganda-court-finds-police-officer-guilty-of-assaulting-journalists>

Legal issues arising:

1. Whether the State has adequately undertaken its obligation to ensure and protect media freedoms and the rights of journalists as persons in accordance with the Constitution. The State has an obligation to protect and ensure the liberty of persons. The Universal Declaration of Human Rights (UDHR) states that everyone has the right to life, liberty and security of person. The UDHR further provides that no one shall be subjected to arbitrary arrest.

Recommendation:

1. Government should institute and support meaningful and transparent investigations into assaults on journalists and the break-ins at media houses and prosecute the persons involved in such acts. The protection of a journalist's sources is one of the basic conditions for freedom of the press.

e) Protection of Environmental Rights

Over the period under review, a number of incidents relating to protection of the environment have taken place. In Busia district, unregulated gold miners have resorted to digging for the mineral under people's homes, leaving a number of families endangered and homeless.³⁰ Of course, such activity also affects the integrity and quality of the environment (including water sources and wetlands). Also related to environmental rights are reports that Lake Victoria's water has turned green and thick as a result of effluent discharged into the lake on a daily basis.³¹ These human activities have put the lives of millions of people at risk in the three East African Countries that use the lake for domestic and fishing activities, among others. Uganda has lost more than one million jobs due to dwindling fish stocks as more than 10 fish processing factories have closed over the past five years.³² Corruption has rendered the control of the lakes almost impossible. It is common knowledge that about 70% of fishermen on the said lakes use illegal gear.³³

The above activities constitute environmental crimes entailing deliberate acts or omissions leading to degradation of the environment resulting in harmful effects on human beings, the environment and natural resources. The influence of environmental factors on our ability to enjoy fundamental human rights cannot be overstated. Many of the rights guaranteed under international human rights law are defined to include an environmental dimension. For instance, the rights to the highest attainable standard of health and to an adequate standard of living depend on a certain degree of environmental quality and stability. In fact, environmental degradation or destruction has been interpreted as a violation of these human rights. That said, the importance of the environment to the fulfilment of human rights is still not widely appreciated at the national level.

³⁰ Pascal Kwesiga, "Poverty Killing Gold Diggers." *New Vision* June 2, 2017. Retrieved from http://www.newvision.co.ug/new_vision/news/1454622/poverty-killing-gold-miners

³¹ Paul Tajuba, "Experts Warn of Dire Effects as Pollution Takes Toll on Lakes." *Daily Monitor*, May 6, 2017. Retrieved from <http://mobile.monitor.co.ug/News/Experts-warn-dire-effects-pollution-takes-toll-lakes-Nema/2466686-3915500-format-xhtml-l8dk4k/index.html>

³² *Ibid.*

³³ Gerald Tenywa, "Tax Bodies Curb Illegal Fishing." *New Vision*, May 17, 2014. Retrieved from http://www.newvision.co.ug/new_vision/news/1340825/tax-bodies-curb-illegal-fishing

Legal issues arising:

1. Whether Government has taken adequate measures from the foregoing to ensure enjoyment of the right to a clean and healthy environment as prescribed by Article 39 of the Constitution and Section 3 of the National Environment Act Cap 153.

Recommendations:

1. The National Environmental Management Authority (NEMA) should prosecute those liable for environmental offences.
2. NEMA should consider scaling up its environmental activities including sensitization programmes and prescribe better alternatives to the activities that are ruining the environment.
3. Government should enable NEMA through adequate funding to effectively carry out its duties.

f) Violation of the Rights of Women

On 3rd April 2017, a woman (name withheld for her protection) went to a police post in Kamuli where she reported a case of domestic violence against her husband.³⁴ Following registration of her complaint, she was allegedly raped by an Inspector of Police in charge of Butansi Police Post, one David Edward Osiiya. After registering her complaint, Osiiya said he needed to travel to Kamuli Town to photocopy Police Form 3 and allegedly requested UGX 20,000 for her medical examination and UGX 50,000 for processing the file and arresting her husband. The woman further said the officer had her held as he went to photocopy the form promising to work on her case if she cooperated and “talked nicely”. Osiiya is thereafter said to have made sexual advances to her, which she rejected leading to the rape. Asked why she did not make an alarm, the woman said that there was a gun in the room so she feared to be shot. Police in Kamuli District are holding Osiiya over abuse of office.

This incident has raised a number of questions relating to the protection of the rights of women. Such issues are very sensitive and victims of rape and domestic violence by family relations find it difficult to confide in male officers and they often do not receive adequate attention.

Over the reporting period, matters involving sexual harassment by employers in the private sector were also brought to public scrutiny after the Directorate of Public Prosecutions (DPP) received a complaint of sexual harassment against the Chairman of the Aya Group of companies.³⁵ A former employee of the Group accused the chairman of sexually harassing her.

³⁴ Sam Caleb Opio “Kamuli Police Boss Arrested.” *Daily Monitor* April 3, 2017. Retrieved from <http://www.monitor.co.ug/News/National/Kamuli-police-boss-arrested-rape-domestic-violence-complainant/688334-3875804-ave4rcz/index.html>

³⁵ Anthony Wesaka, “Aya case file on sexual abuse sent back to CID.” *Daily Monitor*, May 16, 2017. Retrieved from <http://mobile.monitor.co.ug/News/Aya-case-file-on-sexual-abuse-sent-back-to-CID/2466686-3929638-format-xhtml-2m1myz/index.html>

Sexual harassment is one form of discrimination which arises out of an unfair use of influence, power or authority by one person over another or lack of respect for another person. Allegations of sexual harassment are often overlooked but remain a serious national problem that demands urgent attention.³⁶ Whereas the vice is rampant, most cases go unreported and unpunished due to a lack of evidence while a majority of victims fear to report the events due to apprehension of losing their jobs or other placements in society. Sexual harassment of workers especially female workers was identified as one gender issue that needs urgent attention.

Equally troubling were recent reports and accusations against a deceased prominent school head of sexual misconduct after several young children emerged at his burial recently accompanied by some youthful mothers alleged to be his former students.³⁷ While there is currently no conclusive evidence regarding these accusations, the fact is that several unanswered questions remain as to whether he took advantage of his position to prey on vulnerable members of his education institutions and society. This is a matter that the Ministry of Education should look into for purposes of setting the record straight as well as instituting protective mechanisms in institutions of learning to guard against similar incidents in the future.

Legal issues arising:

1. Is there adequate protection from sexual and gender based crimes in Uganda? There are concerns relating to children (especially the girl-child) in schools and women in many workplaces. Most institutions do not have a sexual harassment policy and enforcement measures in place. The State has a constitutional obligation (per Articles 32 and 33(3)) to protect women and their rights, taking into account their unique status and natural maternal functions in society.

Recommendations:

1. A thorough investigation should be made into the incident at Butansi Police Post and if found liable, the said officer should be prosecuted.
2. Access to justice is critical to the full enjoyment of women's human rights and to effectively address sexual and gender-based crimes in Uganda. The Uganda Police should be equipped to effectively investigate cases of gender based violence as well as put in place gender-sensitive mechanisms to handle such crimes.
3. There is a need to strengthen the enforcement of sexual harassment laws and to institute sexual harassment policies in all institutions (public or private) to safeguard employees against harassment. Sensitisation programmes for employers, employees and the general public must be initiated in a bid to curb this vice.

³⁶ Perry Aritua, "Status of Gender Balance and Hindrances Faced by Women in Public Administration in Uganda." ACFODE Report (2014). Retrieved from <http://acfode.org/wp-content/uploads/2016/03/Status-of-Gender-Balance-Hindrances-Faced-by-Women-in-Public-Administration-in-Uganda.pdf>

³⁷ Vivian Agaba and Agnes Nantambi, "UNATU boss criticizes 'Mukiibi's love life with students.'" *New Vision*, June 8, 2017. Retrieved from http://www.newvision.co.ug/new_vision/news/1455018/unatu-boss-criticizes-mukiibi-actions#sthash.p4KFmL9J.dpuf

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4. A comprehensive public inquiry should be undertaken to investigate all the allegations of sexual harassment in all institutions of learning.

g) Security of Persons

During the month of April 2017, Uganda witnessed an unprecedented upsurge in criminal activity around the country led by a new gang named “Bakijambiya” (The Machete Gang) that terrorized parts of Masaka, Wakiso and Kampala.³⁸ These gang members carry machetes, hammers, and pangas among other things and began operations in Masaka where they robbed several individuals and killed five people.³⁹ They have since expanded their operations to parts of Kampala and Wakiso.⁴⁰

The Inspector General of Police, Gen. Kale Kayihura has been criticized for failing to stop these gangs since commencement of their activities early this year.⁴¹ The IGP revealed that the Police were deeply investigating the involvement of politicians in this recent wave of criminal gang attacks on members of the public.⁴² Meanwhile, the numbers of victims keeps increasing and desperate citizens have abandoned their homes as the gangs get bolder, issuing warnings ahead of an attack, and the Police is still unable to stop them.

Recent remarks by President Museveni urging Ugandans, who receive a good income to install CCTV cameras, set a dangerous precedent. The ULS maintains that it is the duty of the State to ensure the security of persons and this obligation should not be delegated.

Legal issues arising:

1. Whether Government is fulfilling its constitutional obligation to ensure the security of persons and whether adequate resources have been allocated to this cause. The activities of this gang have dire implications on the enjoyment of the rights to life and security of persons. Under Article 22 (1) of the 1995 Constitution and the International Covenant on Civil and Political Rights, the Government of Uganda has a duty to ensure no one is deprived of life intentionally except in circumstances specified under Article 22 of the Constitution.

Abrogating its security functions toward citizens is an indictment of the Government’s capacity to provide for national security.

38 Haggai Masiko, “Who is behind Uganda’s new terror gangs?” *The Independent*, May 8, 2017. Retrieved from <https://www.independent.co.ug/cover-new-terror-gangs/>

39 *Ibid*

40 Kitaata, Kaaya, “Gangs Terrorise Kampala Wakiso.” *The Observer*, April 24, 2017. Retrieved from <http://allafrica.com/stories/201704240578.html>

41 Haggai Masiko, “Who is behind Uganda’s new terror gangs?” *The Independent*, May 8, 2017. Retrieved from <https://www.independent.co.ug/cover-new-terror-gangs/>

42 “Police Investigating Politics in Recent Attacks by Criminal Gangs - Kayijura.” *Uganda Today Magazine*, April 24, 2017. Retrieved from <http://www.theugandatoday.com/news/2017/04/police-investigating-politics-in-recent-attacks-by-criminal-gangs-kayihura/>

Recommendations:

1. The Police should urgently undertake thorough investigations into these gangs and their activities in the country in order to bring the culprits to book and ensure national security. All resources necessary should be availed by Government to enable the police deliver on their mandate.

h) The Right of Access to Information.

The Judicial Service Commission (JSC) has received names of the candidates to fill 23 vacancies in the Judiciary, including the position of Deputy Chief Justice. However, no information over how the names of these candidates were generated has been availed to the public. While the JSC had made some progress in terms of improving the process of the selection of members of the Judiciary, withholding such information suggests a lack of commitment to ensuring maximum transparency and accountability in the process of the appointment of judges and magistrates.⁴³

An important underpinning of democracy is that access to information in the possession of public authorities should be promoted and respected, and indeed, both Article 41 of the Constitution and the Access to Information Act of 2005 set out to achieve this goal. Information held by public authorities is not acquired for the benefit of officials or politicians but for the public as a whole. Unless there are good reasons for withholding such information, everybody should be able to access it. More importantly, access to information is a key component of transparent and accountable government. It plays a key role in keeping citizens in the know of what is going on concerning their government, and in exposing corruption and mismanagement of public office.

Legal issues arising:

1. Whether Government has fulfilled its constitutional obligation to avail the necessary information to the public in this respect. The law requires government bodies to proactively publish information if it is in the interest of the public. Under Article 41 of the Constitution, every citizen has a right of access to information in the possession of the state or any other organ of the state except where the release of the information is likely to interfere with the security of the state or the right to the privacy of any other person. Section 5 of the Access to Information Act 2005 and the Regulations thereof stipulate the right to access information and the requirement for government to avail information proactively.

⁴³ Ian Katusime, "Replacing Kavuma, 20 others, Gets Complicated." *The Independent*, May 15, 2017. Retrieved from <https://www.independent.co.ug/replacing-justice-kavuma-20-others-gets-complicated/>

Recommendations:

1. Government should urgently consider training judicial information officers in ministries, departments and agencies to establish and manage an effective access to information regime;
2. Transparency in the system of appointments to judicial office should be maintained.

i) Freedom of Worship and Association

On 5th April 2017, the New Vision newspaper reported that the Government had undertaken to draft a new policy to streamline the operation of Faith Based Organisations (FBOs).⁴⁴ The draft policy stipulates that although the Constitution provides for freedom to practice and belong to any religion, there is need to regulate and guide the public on how this freedom should be exercised or to what extent it should be allowed without violating other people's rights and safety.⁴⁵

The draft policy further seeks to harmonize Government and Religious organizations' programmes and activities.⁴⁶ Some of the key issues in the proposed policy include, creating and empowering the Department for Religious Affairs to vet and recommend the registration and regulation of religious organisations⁴⁷, establishment of a data management system as well as collaboration between government and faith based organisations to implement government programmes⁴⁸. This seems to suggest that aside from their mandate to provide a service to facilitate the enjoyment of free choice of belief and freedom of worship, the activities of FBOs would be linked to and aligned with government programmes.

This policy has the implication and potential to restrict the freedoms of speech and freedoms of worship which are allegedly being abused by some elements in society who critique and challenge government's actions.⁴⁹ According to the Minister and the Director of the Department for Religious Affairs, they hope to promote what they believe to be ethical ways of worship and to restrict unethical ways of worshipping or teaching.⁵⁰ This begs the question as to what constitutes ethical or unethical ways of worship and by what criteria this would be determined. The policy seeks to harmonize and institutionalize conflicting religious ethics and values observed by selected religious groups and to rationalize them into a "National Faith" organization with structures at central and local government level tasked to monitor and evaluate all religions and faith based organizations in order to align their teachings and

44 John Agaba, "Lokodo Dares Prophets, Asks Churches to Pay Tax." *New Vision*, April 5, 2017 at P.10.

45 See Chapter 4 of the Draft Faith Based Organizations Policy, 2016 by the Directorate for Ethics and Integrity at p.11.

46 See first Objective of the Draft Policy at p.11.

47 See Para 2 at p.16 and Para 1 at p.17 of the Draft Policy.

48 Felix Basiime, "Clerics support policy to regulate religious activities," *Daily Monitor*, March 23 2017. Retrieved from <http://www.monitor.co.ug/News/National/Clerics-support-policy-regulate-religious-activities/688334-3861542-vvfay7/index.html>

49 See Para 2 at p.11 of the Draft Policy.

50 Ibid

practices to government's national faith standards.⁵¹ The Minister further proposed that churches need to pay tax.⁵²

The main rationale for the proposed Policy is that government will: (a) reduce confusion among young citizens of what to believe and what not to believe; (b) strengthen ties between government and faith-based organizations.⁵³

It is quite clear that despite its stated objectives, the policy is highly problematic not only in the wide range of human rights and freedoms that it will negatively impact, but also insofar as the role of the government with respect to religious freedom and organization is concerned. At a minimum, if effected the policy will restrict what people are taught to believe and how they practice their worship by monitoring and evaluating what they teach. At worst, it will dictate what they practice during worship and whom they appoint to lead prayers or worship services. Suffice to note that Faith-based Organizations are already regulated under the Ministry of Internal Affairs as Non-governmental Organizations. The draft policy overlooks the reality that whenever one's belief/faith is different from another, there will always be conflicting opinions on how it should be organized and expressed. This explains the different places and styles of worship.

Rather than adopt measures that would in effect infringe on religious freedoms and choice, the policy should instead focus on promoting tolerance between religious/faith-based organisations, and ensuring that the more exploitative elements in the new religious movements are controlled under the already existing and able legal framework.

This policy has been challenged through a petition to Directorate of Ethics and Integrity in the Office of the President by a section of Christians who believe this policy would not only infringe the Constitutional right to religious freedom but also depicts control of the state over exercise of the right to practice religion⁵⁴. Moreover, consultations on the policy have already commenced in different parts of the country and the same are yet to be held with key stakeholders such as the ULS tasked with the major role of advising on matters of public importance⁵⁵.

Legal issues arising:

1. Whether the proposed policy is in line with the law with regard to freedom of religion or worship. Article 29(1)(c) of the 1995 Constitution, provides that every person shall have the freedom to practice any religion and manifest such practice

⁵¹ See Para 9.1 (ii) under Chapter 9 of the Draft Policy at p.22.

⁵² John Agaba, "Lokodo Dares Prophets, Asks Churches to Pay Tax." *New Vision*, April 5, 2017 at p.10.

⁵³ Draft Faith Based Organizational Policy Directorate for Ethics and Integrity p. 11 and 12.

⁵⁴ Lillian Namagembe, "Policy to regulate religious activities divides clerics." *Daily Monitor*, May 8, 2017. Retrieved from <http://www.monitor.co.ug/News/National/Policy--regulate-religious--activities--divides--clerics/688334-3921758-go0teqz/index.html>

⁵⁵ Section 3(d) and (e) of the Uganda Law Society Act Cap 276.

which shall include the right to belong to and participate in the practices of any religious body or organisation in a manner consistent with the Constitution.

2. Most religious bodies are registered as non-profit making charitable and religious institutions and therefore not subject to tax on their income. To ask such bodies to pay an extra tax on top of income raised by their own members who have already paid tax is unfair and inequitable. As a matter of fact, religious institutions already pay taxes such as VAT, import duty and excise duty through the purchase of goods and services for their use and for the use of their congregations.

Recommendations:

1. Government should uphold its constitutional duty to protect and respect the right to freedom of worship as enshrined in the Constitution of the Republic of Uganda.
2. Government should withdraw the draft policy as it is unconstitutional and will have serious implications on the enjoyment of the freedom of religion or worship.

C. TRANSPARENCY AND ACCOUNTABILITY

Transparency and accountability are critical to good governance and essential aspects of the Rule of Law. Transparency is generally defined as the principle of enabling the public to gain information about the operations and structures of a given entity.⁵⁶ Those responsible for actions taken should be able to explain, clarify and justify these actions. Transparency and accountability form an integral feature of the Rule of Law.

a) Investigation and Prosecution of Corruption

On 19th May 2017, Honorable Chief Justice Bart Katureebe criticised the Inspector General of Government (IGG) Justice Irene Mulyagonja on account of the failure of her office to prosecute magistrates who are caught red-handed in acts of corruption. In his remarks at the ULS Annual Law Conference, the Chief Justice narrated two separate incidents in which the IGG arrested two magistrates involved in corruption but pardoned them instead of prosecuting them.⁵⁷ The Chief Justice's comments were made in response to a statement by the IGG who reported that it would be illogical to spend millions of shillings prosecuting the magistrate yet the evidence against him could only result in a conviction for a case involving a petty fine. Justice Mulyagonja

⁵⁶ David Heald, "Varieties of transparency," *Transparency: The Key to Better Governance?* ed. Christopher Hood and David Heald, Oxford University Press (2006) pg26.

⁵⁷ Antony Wesaka, "Magistrate Named in Bribe Scandal Offers to Resign, Judiciary Refuses." *Daily Monitor* May 20, 2017. Retrieved from <http://www.monitor.co.ug/News/National/Magistrate-named-bribe-scandal-resign-Judiciary-refuses/688334-3933606-ww9c5gz/index.html>

explained that her aim was to clean up the Judiciary but there were different methods to be deployed, including demanding that a given magistrate resigns from the service as opposed to spending huge sums of money to prosecute a corruption case involving relatively small amounts. She cited the Judiciary's new Plea Bargaining programme in which criminals were given lenient sentences in exchange for pleading guilty to the offences as one of the mechanisms applied to address some corruption cases.⁵⁸

It is the view of the Uganda Law Society that corruption is dishonest or fraudulent conduct by those in power. Corruption is the abuse of entrusted power for private gain and can be classified as grand, petty and political depending on the amounts of money lost and the sector where it occurs.⁵⁹ It threatens sustainable economic development, ethical values and justice, destabilises society and endangers the Rule of Law. In Uganda, the duty to investigate and prosecute corruption is vested in the Inspectorate of Government—a body established by the Constitution. The IGG consequently has a duty to foster strict adherence to the Rule of Law and to ensure that corruption related offences are prosecuted to the full extent regardless of the magnitude involved.

Legal issues arising:

1. Whether the decision by the IGG to pardon rather than prosecute the two errant magistrates was in accordance with the law? Article 223 of the Constitution and section 14(7) of the Inspector General of Government Act task the IGG to prosecute or cause prosecution in respect of cases involving corruption, abuse of authority or of public office and foster the elimination of corruption. National Objective XXVI of the Constitution also stipulates that all lawful measures shall be taken to expose, combat and eradicate corruption and abuse or misuse of power by those holding political and other public offices.
2. The position of the IGG raises a serious issue of Criminal Justice policy, namely, should criminal sanctions against acts of corruption be waived on the grounds of degree or cost?

Recommendations:

1. The IGG should investigate and prosecute ALL corruption cases rather than merely pardoning errant officers. Corruption is a grave crime with dire consequences and must not be treated lightly.

⁵⁸ *Ibid*

⁵⁹ See definition of corruption by Transparency International. Retrieved at <https://www.transparency.org/what-is-corruption/>

2. The punishment for corruption should be a deterrent one. Although plea bargaining is a welcome innovation to fast track the court processes which are usually lengthy, complex and expensive, the sentencing given in relation to corruption cases should not fall far below the measures set out in the sentencing guidelines.
3. There should be more publicity on plea bargaining in cases involving corruption to ensure a better understanding of this concept among members of the general public.

b) Corruption in Ministries

Corruption is widespread in the Public Service and Government technocrats are perceived as among the most corrupt in the country.⁶⁰ In response to this state of affairs, President Yoweri Museveni recently launched an open war against corrupt officials.⁶¹ Within the month of April a number of arrests involving public officials were made.

On 5th April 2017, two Ministry of Finance officials Mr. Charles Ogol (a Principal Finance Officer) and Mr. Geoffrey Turyamuhika (a Senior Economist) were caught allegedly soliciting a kickback of US\$60,000 from Guangzhou Dongsong Energy Group (U) Company a Chinese investor.⁶² On 7th April 2017, a combined team of the Special Forces Command and the Police arrested Hon. Herbert Kabafunzaki, the State Minister for Labour, Employment and Industrial Relations for allegedly soliciting a bribe.⁶³ Kabafunzaki who is also the MP for Rukiga County was arrested together with clearing agent Brian Mugabo at a Hotel in Kampala as he allegedly collected a UGX 5m bribe as partial payment of UGX 10m he had reportedly solicited from businessman Mohammed Hamid of the Aya Group. According to Hamid, the Minister asked for UGX 10m in order to clear his name in the ongoing investigation of the allegations of sexual harassment of one of the group's employees earlier referred to in this report.

Legal issues arising:

1. Whether the above public service officials were involved in acts of corruption. The facts above demonstrate elements of abuse of public office through soliciting of bribes contrary to Section 5 of the Anti Corruption Act 2009.

⁶⁰ John Martin Keweza, "Fighting Corruption in Uganda: Despite small gains, citizens pessimistic about their role." *Afro Barometer Dispatch Number 77*, March 28, 2016. Retrieved at <http://afrobarometer.org/publications/ad77-fighting-corruption-in-uganda-citizens-pessimistic>

⁶¹ "Museveni Vows on Corruption." *State House Website*, April 13, 2017. Retrieved from <http://www.statehouse.go.ug/media/news/2017/04/13/president-museveni-vows-corruption-%E2%80%9Cits-open-war%E2%80%9D>

⁶² Yasin Mugerewa, "You are Thieves: Museveni Tells Finance Officials." *Daily Monitor*, April 6, 2017. Retrieved from <http://mobile.monitor.co.ug/News/You-are-thieves--Museveni-tells-Finance-officials/2466686-3879198-format-xhtml-989lmoz/index.html>

⁶³ David Lumu, "Minister Kabafunzaki Arrested Soliciting Bribes." *New Vision*, April 8, 2017. Retrieved from http://www.newvision.co.ug/new_vision/news/1450604/minister-kabafunzaki-arrested-soliciting-bribe

2. While the ULS notes what appears to be a fresh resolve on the part of government to address a long-standing issue regarding the abuse of public office, the Kabafunzaki case raises a number of Rule of Law concerns. First, was the manner of arrest, which appeared to smirk of entrapment which is a defence to criminal charges. Secondly, does the Special Forces Command (SFC) which appeared to be the lead security agency involved in the operation have a legal mandate to arrest suspects? The law provides for the Police as the main law enforcement agency with the mandate to conduct arrests. Only Police officers have the authority to charge an individual. Therefore, others persons can only apprehend suspects and must turn them over to the Police. Over-zealousness should not undermine what is otherwise a noble endeavour.

Recommendations:

1. If found liable, Hon. Kabafunzaki and the above-mentioned officers at the Ministry of Finance should be prosecuted under Sections 5 and 11 of the Anti Corruption Act 2009.
2. It is necessary to ensure that all arrests are conducted by those law enforcement agencies mandated by law. The military is not mandated under the law to effect an arrest as witnessed in the Kabafunzaki incident.

c) Accountability in Public-to-Private Funding

On 13th March 2017 it was reported that Security operatives and Arua district leaders are investigating two companies contracted to build classrooms Uleppi Secondary School at a cost of UGX 259M. The companies received cash advances and left the sites prematurely. The cash advance was part of a UGX 545M World Bank loan. One company was contracted to construct two classroom blocks, two multi-purpose science classrooms, while the other was to build a ventilated pit latrine and complete a four-classroom block the school.⁶⁴ These classrooms and pit latrines are yet to be built.

Uganda faces a recurrent problem of under utilising financial and technical resources received for development. There is a general tendency to haphazardly implement projects--resulting in substandard products especially roads and other forms of infrastructure. Coupled with the poor flow of communication whereby reports from sub committees hardly reach the decision making teams, such actions greatly stifle the process of development in the country.

⁶⁴ Josephine Namuloki, "Schools Hunt Contractors over World Bank Projects," *The Observer* April 13, 2017, Retrieved from <http://www.observer.ug/news/headlines/51737-schooljhs-hunt-contractors-over-world-bank-projects.html>

Whereas calls by citizens for transparency, accountability, and equality were mostly directed to government in the past, there is increasing awareness and demand for accountability from private companies for funds received from foreign entities. Over the years, the scope of financial accountability has expanded rapidly and significantly, with an emphasis on Government contractors to account for funding.⁶⁵ This enhanced financial accountability requires governments to be responsible for ensuring that there are adequate systems to secure and improve results.

Legal issues arising:

1. Under Article 164 (3) of the Constitution, Parliament is tasked to monitor all expenditure of Public Funds, but the key question is whether Parliament effectively monitors all public expenditure with a view to ensuring value-for-money? Is Parliament fully equipped to handle this task?
2. Were proper procedures followed in the procurement of the above construction services?

Recommendations:

1. There is need to devise a policy on public-private transparency and accountability—considering four issues: (a) who is accountable? (b) for what is s/he accountable? (c) to whom is s/he accountable? and (d) how is that accountability discharged?
2. Members of a community should be involved in the planning and implementation of development projects in its area -- to ensure transparency and accountability. Government should develop monitoring tools for communities with respect to development projects and these tools should highlight issues of concern. The result will be greater efficiency, transparency and accountability.
3. Companies contracted to undertake works on rural institutions should be checked by Government.
4. Although the law simply requires Parliament to monitor all expenditure of public funds, it is prudent for Parliament not to limit itself to merely monitoring expenditure but ensuring value for money.

⁶⁵ See Local Government 'Financial Accounting' Regulations 2007.

D. CONCLUSION

It is the duty of the State to ensure that the Rule of Law prevails. That said, the duty to observe the Rule of Law does not lie solely on the State but upon all relevant actors ranging from civil society, the academia, the business sector to members of the general public; among others. As this Report illustrates, due process, human rights, transparency and accountability are indivisible, interdependent and interrelated. Realising these concepts requires concerted effort from each of these actors.

During the reporting period and on a positive note, we note that the State opted to take steps to foster enjoyment of the right to health by improving service delivery in the health sector. As per the recent national budget, Government of Uganda has allocated UGX 1.8 trillion to the Health Sector for the next financial year. Priority will be directed on improving health outcomes and removing inefficiency in health service delivery. This is most commendable and we urge Government to continue to ensure the necessary requirements for the effective service delivery.

Additionally, following publication of the 1st edition of our quarterly Rule of Law Report, the ULS has noted positive developments in response to recommendations made. Most noteworthy, is the recent order by 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 streamlined⁶⁶. The ULS greatly commends Parliament on this development as it is in line with our recommendations on this issue.

We also noted that the President upon advice by the Attorney General withdrew his executive order banning Dott Services from securing Government contracts. If this order had not been recalled, it would have set a bad precedent for the Rule of Law.

⁶⁶ Solomon Arinaitwe and Ibrahim Manzil, "MPs order govt officials to return Shs 6b oil cash." *Daily Monitor*, June 22, 2017, at p.3 and p.4.