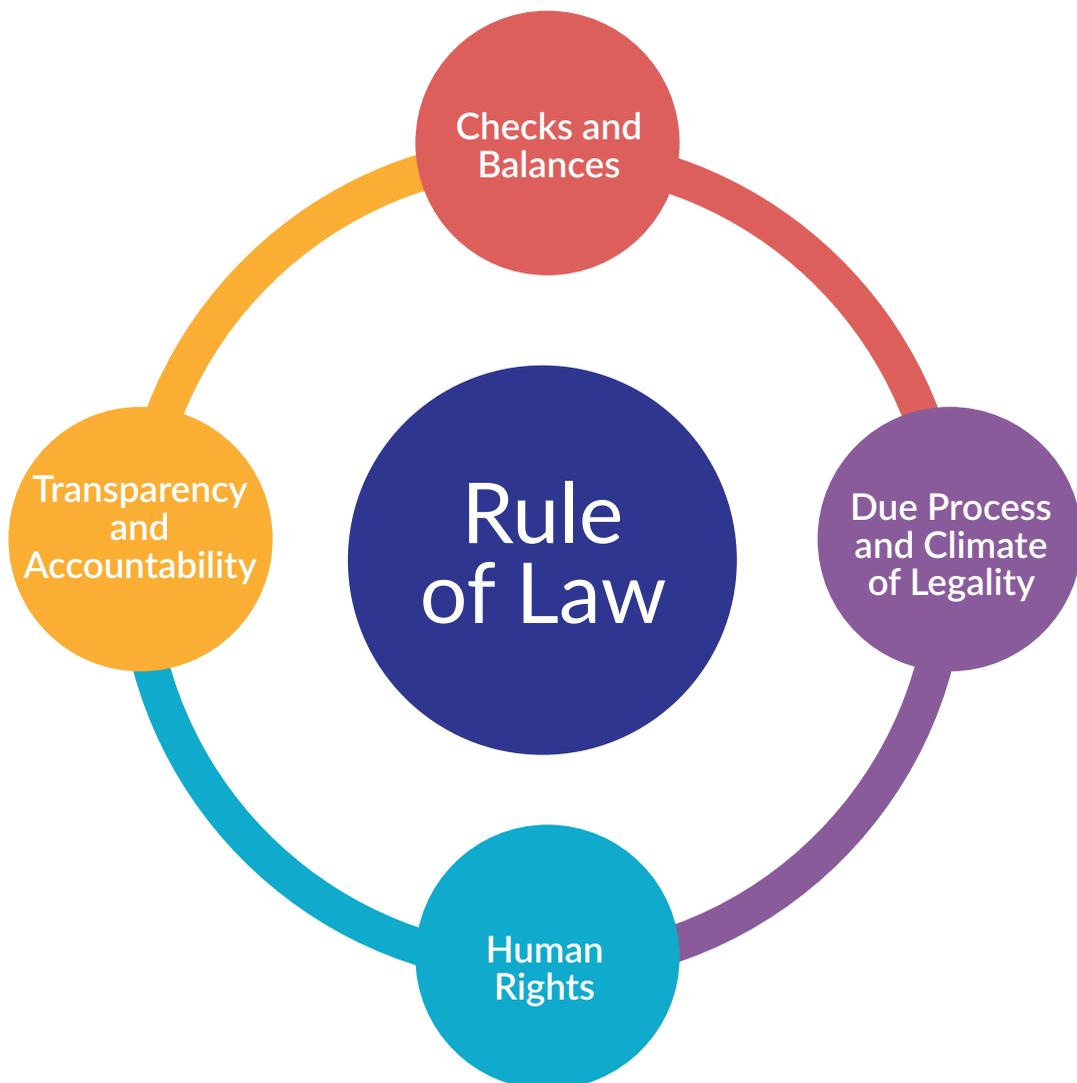




THE STATE OF THE RULE OF LAW IN UGANDA: FIRST QUARTERLY REPORT



JANUARY - MARCH 2018

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FOREWORD

This is the 5th Quarterly Rule of Law Report and the first one this year 2018. It is also the last report I will be presiding over as President of Uganda Law Society (ULS), and in line with our tradition and values of democracy we will be glad to hand to the next Executive Council this innovation as one of the mechanisms that we established to ensure that we adopt a more proactive and consistent approach on matters to do with the rule of law.

Interventions by the Bar on matters of upholding the Rule of Law at all costs will always be very important. In the past, the ULS has issued statements and these have been a good first response to the issues at hand. Beyond the statements, the quarterly Rule of Law reports are a good addition because they are platforms in which incidents affecting the Rule of Law during the quarter are analysed by a High Level Advisory Panel and not only appropriate recommendations made, but are a permanent record of particular acts of impunity noted by the ULS for future follow up.

These recommendations are always shared with the stakeholders for implementation. In situations where the recommendations have not been attended to, then further action is taken. In the last quarter, the ULS litigation team filed two cases before the Constitutional Court to cause implementation of the recommendations from the previous ULS quarterly reports.

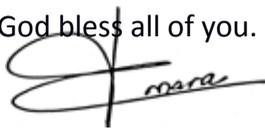
1. *ULS vs Attorney General, Constitutional Petition No. 52 /2017* – Challenging the actions and omissions by the Government in not providing adequate support to the Judiciary to enable them to perform their constitutional mandate.
2. *ULS vs Attorney General, Constitutional Petition No. 3/2018* – Challenging the manner and the substance in which the removal of age limit bill was passed.

The ULS will continue with the approach of initial engagement based on recommendations in the Quarterly Reports but where there is no response, then further measures under both national and international law should be pursued.

We are glad to report that the publication of these reports has strengthened the response of the ULS to issues of rule of law in Uganda. I remain indebted to the High Level Advisory Panel chaired by Prof. Fredrick Ssempebwa, comprising Mrs. Gertrude W. Karugaba, Mrs. Lydia Ochieng Obbo, Mr. Andrew Kasirye and Ms. Loyola Karobwa for a great job in steering this assignment. I wish to also express my gratitude to Prof. Joe Oloka Onyango for the good job he did in the first year of the Panel. A big thank you to the ULS team comprising Ms. Irene S. Kwaga, Ms. Mary Nalwoga, Ms. Rita Aligo, Ms. Gloria Kisaakye and the Rule of Law Committee chaired by Dr. Daniel Ruhweza for a great job in putting this report together.

Establishing a culture that respects the Rule of Law is a journey and starting the journey with you and coming thus far has made the journey truly worthwhile. I am deeply convinced that though we may not see instant results all the time, one day we will reap the good fruits we have collectively sowed.

God bless all of you.



Francis Gimara
PRESIDENT – UGANDA LAW SOCIETY
 22nd March 2018

ACKNOWLEDGEMENTS

This Report was generated with guidance from the ULS Rule of Law Advisory Panel. Special thanks go to the Chairperson of the Advisory Panel – Professor Fredrick E. Ssempebwa and Members - Ms. Gertrude Wamala Karugaba, Mr. Andrew Kasirye, Mrs. Lydia Ochieng Obbo and Ms. Loyola Karobwa.

Additional thanks go to the Chairperson of the ULS Rule of Law and Strategic Litigation Committee - Dr. Daniel Ruhweza, and Ms. Farida Bukirwa (member of this Committee) for their support and to the ULS Secretariat Team including Ms. Rita Aligo, Ms. Mary Nalwoga, Ms. Gloria Kisaakye and Ms. Irene S. Kwaga for their efforts in generating this Report.

INTRODUCTION

This is the first ULS Quarterly Report on the State of the Rule of Law for the year 2018 and the fifth issue in the series of this report. This publication is a ULS initiative in response to *Strategic Objective 3* of the ULS Strategic Plan (2017-2021), which is *to promote the Rule of Law and Human Rights protection* in Uganda. In this regard, this edition notes and analyses various Rule of Law issues and developments that transpired in the country during the period January - March 2018 and how the nation has fared in relation to the national and international policy and legal framework.

During the review period, issues of transparency and accountability resurfaced which included mismanagement of public funds by public institutions as highlighted in the 2017 Annual Report of the Auditor General, and the alleged misappropriation of humanitarian funds allocated to assistance of refugees by the Office of the Prime Minister. We also registered human rights violations in the country; which included infringement of environmental rights, freedom of speech and press, children's rights, torture; as well as the right to life and property. Issues pertaining to legality and/or failure to observe due process were also noted in the Report.

More importantly, the Report highlights legal issues arising from the above and offers recommendations on the same. This is intended to foster continuity in the promotion and observance of the Rule of Law. It is our hope therefore that this publication will facilitate constructive engagements with relevant stakeholders; in a bid to uphold Rule of Law in this Country.

OVERVIEW OF ISSUES

A. THE STATE OF HUMAN RIGHTS

During this quarter we observed continued incidents of human rights violations. These included blatant infringement of the freedom of speech and press; senseless killings; arbitrary arrests of different journalists; and environmental degradation, particularly within Mabira Forest. Also in the limelight were the army's operations on different islands in an apparent bid to curb illegal fishing and the ensuing brutality against the involved communities.

a) Fishermen Accuse Army of Brutality

The ULS has noted the findings of an investigative report¹ in which fishermen and other residents living on several islands have accused the army of brutality and use of disproportionate force, in an apparent bid to curb illegal fishing practices.² The report states that since February 25, 2017, when the army's marine section enforced a ban on irregular fishing methods and began patrolling the lake, acts of brutality have been meted out. These are alleged to have occurred at Masaka, Bubinge and Namit landing sites in Mayuge District, Ssenyondo and Nabyewanga landing sites, and Lufu Islands in Buvuma District, and in Buvuma islands. Deaths have been recorded as a result of this brutality. Residents claimed that when soldiers raided landing sites or islands, they inflicted torture indiscriminately thereby harming women and the elderly as well. Those who have survived death bear the scars of torture, as was narrated by one Muhammed Mwasolo who was interviewed. No action has been taken against the perpetrators of these violations of fundamental human rights.³

The Mandate of the army is to preserve and defend the sovereignty and territorial integrity of Uganda.⁴ If it assists the police in enforcing law and order, the army is obliged to foster harmony and understanding with civilians. Article 209 of the 1995 Constitution also commands the Forces to among other things be professional, disciplined and subordinate to the civilian authority.

In this regard, it is the Marine Unit of the Uganda Police Force that is tasked with implementing the lawful utilization of water bodies. The reasons for the army's intervention are not clear. Previous Reports have noted the problems arising from wanton resort to the army to manage basic law enforcement.⁵

Legal issues arising:

- Whether the army has the primary mandate to maintain law and order through direct interface with citizens in the manner narrated above.
- Whether the army's intervention and mode of operation as highlighted above is legal and justified.
- Whether Section 126 (e) of the UPDF Act can be invoked in light of the above stated actions of the army.

Recommendations:

- An independent commission of inquiry should be set up to investigate the numerous

1 <http://www.ntv.co.ug/news/local/21/jan/2018/terror-lake-fishing-community-accuses-updf-human-rights-abuse-22306#sthash.bQOZe0ve.dpbs>; <http://www.monitor.co.ug/SpecialReports/Terror-lake-Fishermen-accuse-army-brutality/688342-4273732-yeqrpw/index.html>

2 Ibid

3 Ibid

4 Section 7 of the Uganda People's Defense Forces Act

5 http://www.uls.or.ug/site/assets/files/1321/4th_quarter_rule_of_law_report-2017.pdf

allegations of human rights violations that have been raised against the army; arising from their activities on the said islands.

- The Uganda Human Rights Commission should enquire into the highlighted human rights violations as well as intervene to address the same.
- The ULS urges the Ministry of Defense to incorporate and ensure the rights-based approach in carrying out its mandate.
- The Parliamentary Committee on Human Rights and the Committee on Defense and Internal Affairs should engage the Minister of Defense on the role of the army in enforcing law and order.

b) Protection of Environmental Rights

On February 11, 2018, NTV Uganda published an investigative report⁶ which revealed that Mabira Forest was steadily being degraded by illegal loggers. These loggers who apparently are protected by plain clothed armed men are said to have been conniving with the National Forest Authority (NFA) rangers to cut down trees in the forest for charcoal burning and other purposes. The report also highlighted tree cutting in the forest reserve area on Ssesse Islands in Wanende Village; owing to an increase in demand for soft wood. This continued threat to the environment has among other things been attributed to the poor remuneration of the patrol personnel designated to protect forests; thereby impeding the fight against the environmental degradation.⁷

Article 39 of the 1995 Constitution of the Republic of Uganda states that every Ugandan has a right to a clean and healthy environment. The Constitution further stipulates under Article 245 that Parliament shall, by law provide for measures intended to protect and preserve the environment from abuse, pollution and degradation, to manage the environment for sustainable development and to promote environmental awareness. In addition, Uganda is a party to various international instruments on protection of the environment. Despite the legal framework in place, environmental degradation continues to occur with dire consequences to ecosystems.

Shortly after publication of NTV's investigative report, the Ministry of Water and Environment is said to have held a crisis meeting. The Chairperson of the Parliamentary Committee on Natural Resources also weighed in promising an investigation by Parliament into the matter.⁸ The ULS commends these prompt responses and anticipates more conclusive interventions to address the situation.

Legal issues arising:

- Whether the Government is conforming to its constitutional and international obligations to protect the environment and to ensure enjoyment of the right to a clean and healthy environment as prescribed by Article 39 of the 1995 Constitution of Uganda and Section 3 of the National Environment Act.

Recommendations:

- The National Environment Management Authority in liaison with the NFA should carry out a comprehensive investigation into illegal logging and the general utilization of the forest reserves, with a view to prosecuting the culprits.
- The Government should actively improve the welfare of the forest patrol personnel and provide necessary tools for its employees to enable effective management of the forest reserves.
- The Ministry of Water and Environment should effectively execute its oversight role in the management of the forest reserves.

6 <https://www.youtube.com/watch?v=uoyywYbmdgo> Retrieved from NTV UGANDA

7 Ibid

8 <http://www.monitor.co.ug/OpEd/Commentary/Govt-should-address-energy-poverty--save-Mabira-forest/689364-4306732-yl12mk/index.html>

- NEMA should consider scaling up its environmental activities including sensitization programmes, prosecutorial powers and be allowed a more deterrent punitive regime; so as to rescue the environment from abuse and ruin.⁹

c) Freedom of Speech and the Press

There has been a clampdown on the freedom of speech and expression as exemplified by the arbitrary arrests of journalists. On February 13, 2018, Charles Etukuri, a Vision Group Journalist was abducted by security operatives for close to a week; allegedly over a story he published in the Saturday Vision about the death of a Finnish national in one of the city hotels.¹⁰ Although Mr. Etukuri was released without charges, he was reportedly ordered to reveal his sources and explain his involvement in the case.¹¹

In a separate incident, a radio presenter Richard Kasule was arrested by Police outside the Top Radio Station in Bwaise, a Kampala suburb as he left the studio. Richard Kasule alias Kamagu Omugagga who hosts the Simbula First Class, a Luganda five hour live show was picked by policemen as he chatted with colleagues. He was then whisked away to Wandegaya Police Station. The Police spokesperson, Emilian Kayima, is reported to have told a weekly press meeting held at the Central Police Station that Kasule was arrested for *“using his mouth recklessly and defaming everyone”*.¹²

In yet another instance, famed veteran journalist Reverend Captain Isaac Bakka was arbitrarily detained incommunicado for about four months before his whereabouts were discovered. Reverend Bakka 68, who is currently being held in Luzira Upper Prison was arrested and charged with treason through procuring of arms and other materials, which were intended for use to overthrow the government. Rev. Bakka alleged that he was blindfolded throughout his detention. It should be noted that Bakka’s presence at Luzira was only disclosed a day after some Members of Parliament tasked government to explain the whereabouts of the journalist who had been missing since October 2017.¹³

The 1995 Constitution of Uganda, the 1995 Press and Journalism Act, the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Civil and Political Rights enjoin Uganda to protect, uphold and ensure the observance of the freedom to seek, receive and impart information and ideas of all kinds. The acts of arbitrary arrests, detention and harassment narrated above are in direct contravention of the foregoing instruments and laws.

Legal issues arising:

- Whether the above arrests of journalists was in accordance with Uganda’s municipal and international law obligations.
- Whether the arrests and extended detention without regard to due process of the named journalists amount to a violation of their rights to freedom of speech and expression.

Recommendations:

- The Police ought to hasten their investigations into the aforementioned journalist arrests and unconditionally release all those held outside the ambit of the law.
- The Uganda Journalists Association and non-state groupings like the Human Rights Network for Journalists should take a more proactive stance in protecting journalists, as they practice their profession and exercise their rights under the Constitution.

9 http://uls.or.ug/site/assets/files/1279/uls_rule_of_law_quaterly_report_june_2017_final.pdf at p.14

10 <http://observer.ug/news/headlines/56902-new-vision-journalist-etukuri-abducted.html> ; Chris Kiwawulo and Simon Masaba, “Abducted Vision journalist still missing”, New Vision, February 15, 2018, at p.3

11 Betty Amamukirori, “New Vision journalist released, court issues order against ISO”, New Vision, February 20, 2018, at p.4.

12 Eddie Ssejjoba, “Top Radio show host arrested”, New Vision, February 20, 2018, at p.6.

13 <http://www.monitor.co.ug/News/National/I-was-blindfolded-four-months-says-journalist-Bakka/688334-4312126-8vbfm3z/index.html> ; <http://observer.ug/news/headlines/56970-i-was-blindfolded-for-4-months-says-journalist-bakka.html>

- The Police should refrain from taking sides in disputes involving state functionaries and the civilian population.¹⁴

d) Violation of Children's Rights

The ULS has noted with great concern the increased use of street children by criminal gangs to commit murders and aggravated robbery in Kampala, Wakiso and Mukono.¹⁵ Media reports in the past quarter highlighted cases of armed robbery and murder apparently carried out by street teenagers who do surveillance for criminals and are each paid a fee of UGX 50,000 per mission. Their victims included special hire taxi drivers, mobile money operators, hardware salespersons, financial institutions and wholesale shops. It was also reported that about seventy per cent of murders or robberies carried out in Kampala have involved street teenagers aged between 16 and 19 on promise of accommodation or payment worth UGX 50,000. Flying Squad Unit records have further revealed that there are more than thirty street children in police cells who were involved in kidnaps, murders of special hire drivers, mobile money dealers and individuals suspected to be having huge sums of money around them.¹⁶ There appears to be no policies to address the issue of scarce resources over a rapidly expanding population which is one cause of street dwelling.

Using vulnerable minors as tools in criminal activity is unacceptable and is a grave violation of their rights as children. Besides adding to their vulnerability, this poses a great threat to the security of persons and the future of this nation.

Legal issues arising:

- Whether Government has fulfilled its obligation under Article 34 (7) of the 1995 Constitution of Uganda in respect to special protection of vulnerable children.

Recommendations:

- The Ministry of Gender, Labor and Social Development should remodel its approach and proactively streamline its activities towards the protection and sustenance of children; particularly street children.
- This Ministry also ought to ensure that the street children are rehabilitated and empowered with life skills that will enable them to vacate the streets and keep away from a life of crime.

B. DUE PROCESS AND CLIMATE OF LEGALITY

In the review period, several issues arose pertaining to due process and legality as illustrated below:

a) Boda Boda 2010 Boss Abdallah Kitatta arrested over criminal involvement

On January 22, 2018, the New Vision reported¹⁷ that Abdallah Kitatta, the patron of Boda Boda 2010, a notorious vigilante Boda Boda group operating in Kampala and Wakiso districts was arrested by the Chieftaincy of Military Intelligence (CMI) in a joint operation with the Internal Security Organization (ISO). The two security agencies revealed that Mr. Kitatta was being held together with his brother Huzairu Kiwalabye and 28 others in connection with the murder of the Case Hospital Accountant - Francis Ekalungar. Ekalungar's body was found at Kajjansi on Entebbe Road days after he was kidnapped while on his way to the bank to deposit money.¹⁸ Security operatives raided the offices of Boda Boda 2010 in various parts of the city, and recovered items including motorcycles, number plates, hammers,

¹⁴ http://www.uls.or.ug/site/assets/files/1321/4th_quarter_rule_of_law_report-2017.pdf

¹⁵ Joseph Kato, "Street teenagers paid Shs 50,000 to kill, rob", Daily Monitor, February 25, 2018, at p.4

¹⁶ Ibid

¹⁷ Vision Reporter, "Boda boda 2010 boss Kitatta, 29 arrested over kidnap, murder", New Vision, January 22 2018, at p.4.

¹⁸ Ibid.

machetes and documents. The search was conducted while a group of motorcyclists camped near the offices singing their praises to the military for arresting members of the Boda Boda 2010 and their patron Abdallah Kitatta. They claimed that Boda Boda members had been torturing, and extorting money from them supposedly as taxes and confiscating their motorbikes for failure to oblige.¹⁹ Following the above arrests, several people have come forward to give detailed accounts of torture allegedly meted out on them during the seven years of operation by this group. Some victims of this group stated that they had on several occasions reported to the police but no action was taken to address their concerns.²⁰ In this regard government moved to set up a committee to regulate the Boda Boda industry while investigations are underway.²¹ The ULS commends the State on this prompt move. However, the regulatory initiative should be stakeholder inclusive for it to be sustainable. Transport operations should take account of the public interest.

It may be noted that a week prior to Kitatta’s arrest, the immediate past Inspector General of Police Gen. Kale Kayihura appeared before the Parliamentary Committee on Defense and Internal Affairs and was reported as having defended Kitatta arguing that he had supported the police to fight crime in communities. He further informed the House that Kitatta and his group helped to disperse opposition supporters during the 2011 *Walk to Work* protests as well as during the 2016 general elections.²²

If the foregoing is an accurate report, questions arise as to the legal status of the Boda Boda group and as to why it took so long for its activities to be investigated despite reported complaints filed against its members.

While the maintenance of law and order²³ and the territorial integrity and sovereignty of Uganda²⁴ falls within the jurisdiction of the security institutions including the police, acquiescence by these institutions in ceding their respective mandates to outfits with doubtful legal status and unclear mandate is a matter of great concern.

Legal issues arising:

- The legal status and mandate of Boda Boda groups.
- Whether there is any comprehensive legal and policy framework guiding community policing in Uganda.²⁵

Recommendations:

- The authorities should expeditiously investigate the allegations of human rights violations and those found culpable should face the full extent of the law.
- A proper policy and legal framework that defines stakeholders, demarcates roles and sets the parameters for community policing must be established.²⁶
- The leadership of the Police should not permit associations with groups without a legal status and mandate.
- The ULS concludes by reiterating its previously stated position²⁷ that government and other stakeholders ought to evaluate the legality of the Boda Boda 2010 Association, its affiliates and whether their activities have since inception, been in line with observance of fundamental human rights.²⁸

19 Vision Reporters, “CMI raid Boda boda 2010 offices, arrest 14 more suspects”, New Vision, January 23, 2018, at p.4.
 20 James Kabengwa, “Harrowing tales from victims of Boda boda 2010”, Daily Monitor, January 24, 2018, at p.4.
 21 https://www.newvision.co.ug/new_vision/news/1469882/govt-sets-committee-regulate-bodaboda-industry
 22 <http://www.monitor.co.ug/News/National/-police-failed-crime-Francis-Ekalungar-Felix-Kaweesi-/688334-4275082-13brjyo/index.html>
 23 Section 4 of the Police Act Cap 303
 24 Art. 209 (a) of the 1995 Constitution
 25 <http://library.fes.de/pdf-files/bueros/uganda/14148.pdf>
 26 See supra note 6
 27 http://uls.or.ug/site/assets/files/1321/4th_quarter_rule_of_law_report-2017.pdf at p. 5
 28 Ibid

b) The wave of criminal activity in the country

During the period under review, the ULS observed a wave of crime across the country that has raised questions about the security of persons and property. There has been an upshot of aggravated robbery, kidnaps and murder among other criminal activities in the country. In February 2018, six foreign nationals are said to have mysteriously died.²⁹ Information released so far by the Police remains scanty at worst and raises more questions at best.³⁰

The kidnap and eventual murder of Susan Magara whose body was recovered three weeks later also made headlines; thereby heightening tensions around the country.³¹ The greater Teso region also registered an increased number of robberies and murders.³² There is a notable brazenness with which these heinous crimes are being committed as happened recently in Bweyogerere when armed men riding on a motorcycle attempted to slit the throat of a female driver in moving traffic.³³

As the nation awaits an investigation report on the above incidences, it should be noted that to date, no comprehensive report has been released, regarding the systematic killings of women in Entebbe and Wakiso districts. Neither has any been released pertaining to the killing of public personalities including the late Spokesperson and Assistant Inspector General of Police - Andrew Felix Kaweesi (together with his body guard and driver), Assistant Director of Public Prosecutions - Joan Kagezi as well as the killings of several Muslim clerics. As highlighted in the third edition of ULS Quarterly Report on the State of the Rule of Law, the question whether there is sufficient political will and commitment to have these matters concluded remains unanswered.³⁴

Legal issues arising:

- Is the right to life, as enshrined in the Constitution, guaranteed in Uganda?
- Whether government has taken adequate and appropriate measures to curb the increasing criminal activity in the country.

Recommendations:

- The Government should institute a specific inquiry into the serial killings and the unresolved murder cases in recent years and publish a report on the same. Those found culpable should face the full force of the law.³⁵
- There is need to review, strengthen and streamline the Criminal Investigations and Intelligence Directorates to deliver on their mandates efficiently.³⁶

c) Regulatory institutions falling short on their mandates

The country is currently overhung by a cloud of lawlessness that is coupled with impunity. Regulatory institutions such as the Uganda Communications Commission (UCC), Electricity Regulatory Authority (ERA), Kampala Capital City Authority (KCCA), the Uganda Bureau of Standards (UBOS), National Medical Stores (NMS), Police Professional Standards Unit (PPSU) and others have significantly lost traction in their particular mandates. This has increased the incidence of human rights violations without recourse to the law for the ordinary Ugandan.

The affected mandates of the above institutions include communications, energy, consumer goods sold

29 URN, "Foreign nationals deaths hit 6 in February", The Observer, February 27, 2018. Retrieved from <http://observer.ug/news/headlines/57040-foreign-nationals-deaths-hit-6-in-february.html>

30 Vision Reporter, "Investor death: Finland ex-minister, ISO Staff arrested", February 11, 2018, at p.3.

31 <http://observer.ug/news/headlines/57041-kidnapped-woman-susan-magara-found-dead.html>

32 https://www.newvision.co.ug/new_vision/news/1470749/increasing-crime-rate-worries-pallisa-leaders;

<http://www.ntv.co.ug/news/local/03/mar/2018/police-blamed-increased-crime-teso-region-23751>

33 <https://www.independent.co.ug/two-suspected-armed-robbers-shot-dead/>

34 http://www.uls.or.ug/site/assets/files/1303/uls_2017_rule_of_law_3rd_quarterly_report_september_2017.pdf

35 Ibid

36 Ibid

on the market, medical supplies and the responsibility of checking errant police officers. As a result, the sale of unregistered SIM Cards (on the UCC's watch) has facilitated crime as revealed in the Magara case³⁷; and the poor regulation of electricity providers by ERA has led to fleecing (high power tariffs)³⁸ and deaths (by electrocution)³⁹ of end users. There has been an influx and delivery of substandard foods (re: butchers preserving meat with formalin)⁴⁰ and expired drugs on the open market; not to mention the unchecked indiscipline of errant police officers. Additionally, contractors hired on public infrastructure projects have routinely failed to perform to required standards with impunity. This has not only shortchanged the taxpayer—it has also endangered life as accidents result from poor workmanship in construction of infrastructure such as roads and buildings.

Legal issues arising:

- Whether the regulatory bodies have been effective in ensuring the proper delivery of services.

Recommendation:

- Government (Office of the Prime Minister) should embark on a wide-ranging inquiry that examines the effectiveness of regulatory authorities and commissions with a view to plugging loopholes and eradicating inefficiencies.

d) Executive overreach into the work of statutory institutions

Successive ULS Reports have previously highlighted executive interference in the work of institutions as a rule of law impediment. This quarter, yet again, media reports recounted President Yoweri Museveni's directive instructing Uganda National Roads Authority (UNRA) to reinstate Dott Services (a private contractor) to complete the Nakalama-Tirinyi-Mbale road, contrary to UNRA's decision to terminate Dott's contract.

This directive raises questions of institutional independence since UNRA's decision to terminate Dott Services contract was taken after due process and as such, can only be subjected to judicial review by the aggrieved party taking into consideration public policy. It is upon the court to decide whether there are accentuating circumstances to reinstate the contract.

Legal issues arising:

- Whether the President has the latitude to interfere with the decisions of a statutory organization. What is the supervisory role of the Executive over autonomous statutory institutions?

Recommendations:

- We propose that the Public Procurement and Disposal of Public Assets Authority should advise whether a presidential directive can override the bidding process as required by law.
- The ULS should generate originating summons seeking the court's pronouncement on whether the Executive can order the reinstatement of a contract that has been terminated.

37 See Article "UCC, telecoms under fire over illegal SIM cards", Daily Monitor, March 1, 2018. Retrieved from <http://www.monitor.co.ug/News/National/UCC-telecoms-under-fire-illegal-SIM-cards/688334-4323916-cxij88z/index.html>

38 See <http://radioonefm90.com/manufacturers-decry-high-power-tariffs/and> <http://www.monitor.co.ug/Business/Businesses--government-power-tariffs-Museveni/688322-4254754-sf1mg3/index.html>

39 Andrew Bagala, "Pupils, maid electrocuted", Daily Monitor, March 5, 2018 at p.3

40 Charles Etukuri, "Butchers treating meat with drugs meant for dead bodies", New Vision, January 4, 2018. Retrieved from https://www.newvision.co.ug/new_vision/news/1468482/butchers-treating-meat-drugs-meant-dead-bodies

e) The Case of Buyende District Police Commander, Mr. Muhammed Kirumira

Media reports have been awash with stories about the case of former Buyende District Police Commander, Assistant Superintendent of Police, Muhammad Kirumira who was accused of a litany of offences including abuse of office, corruption and insubordination. Matters came to a head when police officers forcefully gained entry into his residence, arrested, detained and arraigned him before the Police's administrative court. It is reported that most of the charges have since been dropped⁴¹ for want of evidence after a police witness disowned his recorded statement and the case file "went missing".⁴²

This matter was raised on the floor of Parliament; leading to a directive issued by the Speaker of Parliament to the line Minister of Internal Affairs to explain the circumstances surrounding Muhammad Kirumira's indictment, arrest, detention and prosecution. No response has since been rendered by the Minister. It appears that most of the charges brought against Kirumira were frivolous and unsubstantiated.

Legal issues arising:

- Whether the conduct of the Police in preferring charges and subsequently arresting by forceful entry into his residence in full view of minors (his children) and expectant wife was legally justifiable.
- Whether the arrest of Kirumira was consistent with the Force's professional standards, due process requirements and public reputation.

Recommendations:

- The leadership of the Police Force should undertake an internal review of the circumstances leading to Kirumira's public outburst and subsequent prosecution to ensure that the internal complaints management system is fair and effective.

C. TRANSPARENCY AND ACCOUNTABILITY

Objective XXVI of the 1995 Constitution states that all persons placed in positions of leadership and responsibility shall, in their work, be answerable to the people. It further states 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.

These provisions notwithstanding, there remains a perennial lack of accountability and transparency within government ministries, departments and agencies. Latest in the series of scandal is the misappropriation of funds allocated to humanitarian assistance to refugees at the Office of the Prime Minister. Other scams that have been unearthed are highlighted below:

a) Mismanagement and lack of accountability within ministries revealed in Auditor's Report

The Office of the Auditor General revealed in its annual audit report for the financial year 2017, that government ministries and departments failed to account for billions of shillings arising from lack of supporting documentation, fraudulent payments and funds diverted to ineligible activities among others, under various ministries and agencies. An example cited in the report was the failure by various District Local Governments and Municipalities to account for the sh1.38 billion shillings which lacked

41 See Article "Police court drops six more charges against Kirumira" The Observer, March 6, 2018. Retrieved from <http://observer.ug/news/headlines/57111-police-court-drops-six-more-charges-against-kirumira.html>

42 Nelson Bwire Kapo, "Kirumira charged for storming out of police court; chairman denies ever being attacked", Nile Post, February 23, 2018. Retrieved from <http://nilepost.co.ug/2018/02/23/kirumira-charged-for-storming-out-of-police-court-chairman-denies-ever-being-attacked/>

supporting documentation, thus raising questions of whether the funds were used for the intended purposes. This contravened regulation 43(2) of the Local Government Financial and Accounting Regulations 2007, which requires Administrative advances to council employees to be authorized by the Chief Executive and to be accounted for within a month.⁴³ It was also noted that although pension and gratuity were decentralized with arrears amounting to UGX.199 Billion, only UGX 7.4bn of UGX 199bn was utilized; thus raising questions about the effectiveness of the decentralization of pension management. In addition, the procurement processes in a number of cases did not allow for competition or significantly reduced competition as a large number of bidders were disqualified based on technicalities.⁴⁴

Legal issues arising:

- Whether the appropriation, disbursement and management of funds as highlighted in the report were conducted in a manner which promotes transparency, accountability and fairness.

Recommendations:

- A thorough and widespread investigation should be conducted to address the irregularities that were raised by the Auditor General's report. Similarly, the Inspector General of Government (IGG) and the Criminal Investigations Department (CID) should manage the administrative and criminal elements respectively.
- Ministries, departments and agencies should review their internal mechanisms to seal loopholes that facilitate the mismanagement of funds.
- The Media is called upon to get involved in investigative journalism so as to disclose such anomalies.
- The Finance Intelligence Authority should collaborate with the Office of the IGG in checking accounts and dealings of the officials involved in handling finances received by an institution.

b) Mismanagement of funds meant for Refugees

A misuse of funds meant for refugees and humanitarian assistance has been reported at the Office of the Prime Minister (OPM). The alleged scam was first raised by Ms. Rosa Malango, the UN Country Representative querying the management of the refugee situation in Uganda. She raised three major issues which included the questionable number of refugees in Uganda, abuse of funds and other resources by some officials as well as suspected trafficking in girls and women refugees.⁴⁵ OPM officials have denied the allegations and argued that UN agencies, which manage most of the major financial aspects of the relief programmes and distribution of food with its partners should account for the alleged misuse. The United Nations and other major donors have initiated their own investigations into the matter. In addition, the Government is also carrying out its own investigations into the alleged possible inflation of refugee numbers in the country and abuse of funds meant for the displaced persons.⁴⁶

Legal issues arising:

- Whether the OPM exercised proper controls to facilitate effective disbursement and utilization of these humanitarian funds.
- Whether the refugee management measures in place guarantee security of persons.

43 <http://www.oag.go.ug/wp-content/uploads/2018/01/Annual-Report-of-the-Auditor-General-FY-2017.pdf>

44 Ibid

45 Eriasa Mukibi Sserunjogi, "OPM hit by refugee corruption scandal", Daily Monitor, February 5, 2018 at p.3

46 Pascal Kwesiga, "Govt orders Police to probe refugee corruption scandal", New Vision, February 6, 2018, at p.3

Recommendations:

- Government should thoroughly investigate the alleged misuse of refugee funds, human trafficking and bring the perpetrators to book.
- The Office of the Prime Minister as well as United Nations High Commission for Refugees (UNHCR) should review their internal mechanisms to plug loopholes that could lead to mismanagement of funds.

D. POSITIVE DEVELOPMENTS IN THE FIRST QUARTER 2018

a) Appointment of New Inspector General of Police

The news of the appointment of a career policeman Martin Okoth Ochola as the new Inspector General of Police is a welcome development. The ULS in its Statement issued on 5th March 2018 regarding the appointment noted that it was long overdue as the previous leader of the Uganda Police Force had taken to blaming everything else for the poor performance of the Police apart from himself. It is absurd that the change in leadership had to come out at the cost of rising insecurity, disrespect of human rights and unnecessary deaths of both nationals and foreigners.

The new leadership has started on a positive note by undertaking an audit of all guns in the country and streamlining systems in the Uganda Police Force. We expect the new leadership, to address the following issues as a matter of urgency:

1. Compile a comprehensive crime report indicating both resolved and unresolved cases of crime and as well steps being taken to attend to unresolved criminal cases;
2. Undertake a comprehensive investigation of criminal gangs in the country with the aim of bringing the lords of impunity and crime to book. This investigation must be aimed at exposing, arresting and prosecuting both current and former leaders of the police who through acts of commission or omission have perpetrated several criminal acts;
3. Develop a new Police Charter reaffirming the Uganda Police's commitment to respect and uphold human rights and to be accountable to the public at all times on matters of enforcing law and order; and
4. Restore public confidence in the institution of the Police and work towards rebuilding a non partisan police force which is acceptable and respected by all stakeholders.

The ULS looks forward to a cordial working relationship with the Police in promoting the Rule of Law in Uganda.

Uganda Law Society
Plot 5A John Babiiha Road
P. O. Box 426, Kampala
Phone: +256 312 262420;
0800100150/1 (Toll Free)
www.uls.or.ug