



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



JULY - SEPTEMBER 2018

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FOREWORD

“The evil that men do lives after them; the good is often interred with their bones.” Marcus Antonias 83 – 30 BC.

This season has been a season of test to our legal set up. We have seen a struggle between complying with the Rule of Law and the inconvenience that comes with the same. We have seen citizens arrested and kidnapped by unknown people, and at times by people known wielding and abusing state power. We have had people held beyond the requisite constitutional 48 hours, and others detained in ungazetted places. Allegations of torture, excessive use of force and assault of citizens have also been eminent.

We have had citizens taking the law in their hands with unfortunate acts of mob violence. We have seen increased acts of intolerance and unlawful deprivation of life by known and unknown people. These are not only unlawful, but completely unacceptable in a democratic dispensation like ours. The constitutional provisions in Chapter 4 of the 1995 Constitution of Uganda that guarantee the rights of citizens should be adhered to strictly with no preservation whatsoever.

Philip II of Macedonia 382 – 36 BC stated, “Macedonians hath not the will to call a spade by any other name than a spade.”

We often see the subject of Rule of Law in a different light. However, I hope that we shall all regardless of our political affiliation, see issues of the Rule of Law in the same light and stand united in condemning acts of impunity.

A reflection on our history is persuasive enough to motivate every Ugandan to aspire towards the preservation of the Rule of Law, because in the absence of the same, life becomes uncertain for us all and irredeemable. This is a recipe for disaster, social, political and economic unrest and inevitably leads to war.

The law should be respected by all persons regardless of class, stature or standing in society. No one is above the law. Likewise, the Rule of Law is not an accolade for convenience or selective application. The law should apply to all in like manner and therefore, there is no excuse whatsoever for violation of the law. Ugandans should aspire to operate within the convenience and confines of the law at all times. Our convenience outside the confines of the law should not suffice.

There is also an ardent need for tolerance amongst citizens for instance an election should not be seen as a contest of enemies, but one of adversaries with different ideas and aspirations for the nation. It is also a test of competence and choice. Similarly scores should not be settled outside the provisions of the law. There is therefore no justification whatsoever for violence under a democratic dispensation.

In light of all the above, we as citizens of Uganda should in unison condemn any act of impunity that undermines the Rule of Law, remembering that we are all potential victims to the breach thereof. We should have a collective voice advocating for the Rule of Law.

Remember, *"We must indeed all hang together, or, most assuredly, we shall hang separately"*
Benjamin Franklin.

For God and My Country

A handwritten signature in black ink that reads "SP Kinobe". The letters are cursive and fluid, with the "S" and "P" being particularly prominent.

Simon Peter M. Kinobe,
President – Uganda Law Society

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INTRODUCTION

This is the 7th edition of the ULS Quarterly State of Rule of Law Report. As was the case with the previous editions, the 7th Rule of Law Report aims to raise key legal issues that have occurred in Uganda over the past three months, in this instance during the months of July, August and September 2018. The issues are categorized under Checks and Balances, Human Rights, Transparency and Accountability as well as Due Process and Climate of Legality. The Report analyses these issues based on both National and International Legal Framework, and thereafter proceed to offer recommendations to the various Stakeholders on how to address the raised issues.

The ULS Rule of Law Reports were established under Objective Three of the ULS Strategic Plan (2017-2021) which emphasizes the promotion of the Rule of Law and Human Rights Protection, in line with the ULS Vision of being proficient in promoting the Rule of Law and Human Rights Protection.

During this review period, the report identified significant developments in the context of human rights. These included the threats to various fundamental human rights during the election violence including the right to life, freedom of torture and inhumane treatment, right to personal liberty, freedom of assembly and freedom of speech and press. Other issues which were raised in the categories of transparency and accountability as well as Due Process and Climate of Legality. These included an issue concerning the Jurisdiction of the General Court Martial, an issue on the misappropriation of funds at higher institutions of learning as well issues regarding the irregularities with Passport Distribution.

1) DUE PROCESS AND CLIMATE OF LEGALITY

a) The jurisdiction of the General Court Martial

The jurisdiction of the General Court Martial has been brought into question during this review period regarding the trial of civilians. This was highlighted in the aftermath of the Arua incidence which is referred to later on in this report. A number of civilian are currently being tried in the same court for example Abdallah Kitatta.¹ The General Court Martial has no jurisdiction to try civilians as was decided in *the case of Uganda Law Society vs. Attorney General*.² The ULS is of the view that it is only the DPP which is mandated to try civilians per Article 120 (3) of the 1995 Constitution of Uganda.

Legal Issue arising:

- i. Whether the General Court Martial has been acting illegally by trying civilian cases.

¹Michael Odeng, FarooqKasule and Sarah Kisakye, "Kitatta runs to High Court to block trial at Army Court." New Vision, May 6, 2018. Available at https://www.newvision.co.ug/new_vision/news/1477060/kitatta-runs-court-block-trial-army-court last accessed on 13 September, 2018

²Uganda Law Society v Attorney General of the Republic of Uganda ((Constitutional Petition No. 18 of 2005)) [2006] UGCC 10 (30 January 2006)

Recommendations

- i. The Uganda Law Society recommends that the General Court Martial should cease trying civilians.
- ii. The Uganda People's Defense Force Act should be amended to comply with the decision of the Constitutional Court as mentioned above.

b) Irregularities in issuance of passports

It was reported that over one thousand people in the districts of Masaka, Mukono, Wakiso, Bukomansimbi and Lyantonde Districts risk having their passports cancelled following reports that the process they went through to obtain passports was improper. This followed the arrest of two officers attached to Masaka Immigration Office who were allegedly complicit in enabling people to process forged documents.³ It should generally be noted that since the beginning of this year, there has been increasing reports regarding arrests of people forging travel documents, work permits and academic certificates among other documents.⁴

We note that such irregularities affect the credibility of Ugandans conducting business abroad thus putting a dent on the climate of legality in Uganda. For example on July 29, 2018, reports indicated that Ugandans in China were deported and others evicted out of their hotel accommodation.⁵ This was as a result of the Chinese Government discovering that many foreign nationals like Nigerians that had been arrested due to drug trafficking and other offences, had Ugandan passports. Fraudulent dealings and corruption have also been reported in regards to the acquisition of passports.⁶

Legal Issue arising:

- i) Whether there are suitable controls and measures in place for identification of nationals before issuing passports.

Recommendations

- i. All the suspects alleged to have been involved in the fraudulent dealings concerning passports should be prosecuted with a view of weeding out all criminals hiding under the cover of these institutions.
- ii. We recommend that the Directorate of Citizenship and Immigration Control, the National Identification and Registration Authority (NIRA) and other concerned stakeholders, carry out

³ AliMambule, "1,000 passports likely to be cancelled over detected forgery," Daily Monitor, July 21, 2018. Available at www.monitor.co.ug/News/National/1000-passports-likely-cancelled-detected-forgery/688334-4674618-4y8ibu/index.html last accessed on 13 September 2018.

⁴ RisadelKasasira, "Immigration Official held over passport scam," Daily Monitor, August 4, 2018. Available at www.monitor.co.ug/News/National/Immigration-official-passport-scam-Jacob-Siminyu-/688334-4696538-ns5wu2z/index.html; MivuleGyagenda, "Senior Officer Detained As CMI Cracks Down on fraudulent officials At Internal Affairs", Soft Power, August 8, 2018. Available at <https://www.softpower.ug/senior-officer-detained-as-cmi-cracks-down-on-fraudulent-officials-at-internal-affairs/> last accessed on 13 September 2018.

⁵ Stephen Kafeero, "China cracks down on Ugandans, Nigerians", Daily Monitor, July 29, 2018. Available at <http://www.monitor.co.ug/News/National/China-cracks-down--Ugandans--Nigerians/688334-4686402-9ma6epz/index.html> last accessed on 13 September 2018.

⁶ Editor, "Restore Sanctity of Ugandan passport", Daily Monitor, August 5, 2018. Available at <https://www.google.com/amp/www.monitor.co.ug/OpEd/Editorial/Restore-sanctity-Ugandan-passport/689360-4698606-view-asAMP-1bym7ez/index.html> last accessed on 13 September 2018.

credible investigations and implement solid monitoring and evaluation systems.

- iii. The Ministry of Internal Affairs should provide a comprehensive report on irregularities with issuance of passports and outline effective steps to deal with them.

2) THE STATE OF HUMAN RIGHTS

Human rights are inherent and not granted by the State. The State is the main guardian of human rights and has the authority to take the necessary steps to protect human rights. However, there has been continued disregard of the protection of human rights in Uganda. The period under review has reported incidences of election violence, torture, cruelty and inhuman degrading treatment, abuse of rights of women and girls, loss of lives, infringement on freedom of press, speech, expression, and assembly.

As much as the citizens are entitled to enjoy their rights, the ULS also noted reported instances of citizens failing to observe their duties and responsibilities as provided for under the 1995 Constitution of Uganda. This subject is discussed below;

2.1 Election violence

During this review period, a series of elections were organized by the Electoral Commission to fill up vacancies for Members of Parliament as well as Local Council Committees. Specifically elections were conducted in new constituencies of Bugiri and Sheema Municipalities as well as by-elections to fill the vacant seat created after the murder of the Arua Municipality Member of Parliament.⁷

While most of the local council elections were conducted without any major incident, the ULS notes that there were reports of violence, intimidation and delay. For example, voters in Wandegeya, Nateete, Pioneer Mall and Naguru⁸ reportedly turned rowdy after finding out that their names were missing in the register. The Uganda Police had to use teargas to disperse some of them.⁹

It is intrusive to note that elections have continued to be carried out under a less satisfactory legal framework and the recommendations of the Supreme Court in the case of *Amama Mbabazi Vs. Kaguta Museveni & Others Presidential Election Petition No. 1 of 2016* remain unimplemented even after the lapse of the deadline given by the court.

With regard to the Parliamentary elections, there were several incidences of violence, including loss of life particularly reported during the Bugiri, and Arua Municipality elections. Several other reported incidences of human rights abuses include torture, cruel, inhuman and degrading

⁷ <http://www.ec.or.ug/?q=news/ec-sets-date-election-mp-arua-municipality>

⁸ George Okello, "Chaos! LC1 polls rocked by violence countrywide over missing names in register", PML Daily, July 10, 2018. Available at <http://www.pmldaily.com/news/2018/07/lc1-elections-countrywide-rocked-by-violence-over-missing-names-in-register.html> last accessed on 13 September 2018.

⁹ Monitor Reporters, "Protests, scuffles ruin LC1 Elections." Daily Monitor, July 10, 2018. Available at <http://www.google.com/amp/www.monitor.co.ug/News/National/688334-4655600-view-asAMP-14j5v9mz/index.html> last accessed on 13th September 2018.

treatment, detention, prohibition of movement, infringement of freedom of expression (including media freedoms) and association. These violations compromised the rights of people to freely choose and elect their leaders. The rights that were infringed during the election violence include the following;

a) Protection of the right to life

As earlier noted, some people lost their lives while participating in the elections. Prominent among them was in Bugiri where Hon. Asuman Basalirwa's body guard succumbed to gunshot wounds.¹⁰ Similarly on August 13, 2018, Yassin Kawuma, who was Hon. Robert Kyagulanyi's driver, was allegedly shot dead by security officers on the eve of the Arua Parliamentary by-elections. In the aftermath of the Arua Municipality by-elections, riots were witnessed in different parts of the country as a result of the alleged torture of civilians and legislators in Arua District. Of particular note was the shooting to death of a one Ssekiziyivu Samuel and injury of five people in Mityana Municipality by security officers. This followed reports of the deteriorating health of their local Member of Parliament Hon. Zaake Francis.¹¹

The ULS is deeply concerned that elections which are supposed to be a peaceful activity have degenerated to a level where fatalities are happening. The right to life is sacrosanct in accordance with the International Covenant on Civil and Political Rights and Article 22 of the 1995 Ugandan Constitution.

In addition to the above, the ULS is gravely concerned about the general rise in the threat to the right to life, as has been witnessed by the most recent murder of the former Buyende District Police Commander Mohammed Kirumira.¹² This recent killing is yet another dent to government's seeming resolve to put an end to the wave of killings that have been plaguing the country. This is because investigations into previous high profile killings including the several murders of women in Entebbe, Kampala and Wakiso districts as well as the previous killings of former Arua Municipality MP Ibrahim Abiriga, AIGP Andrew Felix Kaweesi together with his bodyguard and driver, the Ass. Director of Public Prosecutions Joan Kagezi and several Muslim Clerics have not been concluded.

In a separate incident, it was reported in the month of August 13, 2018 that security operatives arrested a witch doctor (Owen Ssebuyungo) together with Juniro Kibuuka, Fred Kiiza Semanda and Muhammed after recovering five human bodies from his shrine.¹³ It was reported that Ssebuyungo had previously been arrested on the offence of human sacrifice but was later

¹⁰ Asuman Musobya, "Basalirwa's bodyguard dies in hospital after being shot", Daily Monitor, July 20, 2018. Available at <http://www.google.com/amp/www.monitor.co.ug/News/National/Basalirwa-bodyguard-dies-hospital-after-being-shot/688334-4673100-view-asAMP-exuvow/index.html> last accessed on 13 September 2018.

¹¹ Barbra Nalweyiso, "One shot dead, five injured in Mityana protests", Daily Monitor, August 19, 2018. Available at <http://www.monitor.co.ug/News/National/MP-Zaake--One-killed--five-injured-in-Mityana-protests/688334-4719454-jh1rlb/index.html> last accessed on 13 September 2018.

¹² Admin, "Muhammed Kirumira shot dead near his home", New Vision, 8th September, 2018. Available at https://www.newvision.co.ug/new_vision/news/1485389/muhammad-kirumira-shot-bulenga last accessed on 13th September, 2018.

¹³ Fred Muzaale, "Witch doctor arrested with 5 human bodies", Daily Monitor, August 13, 2018. Available at <http://www.monitor.co.ug/News/National/Witch-doctor-arrested-5-human-bodies/688334-4709674-format-xhtml-g0rrgvz/index.html> last accessed on 13th September 2018.

released by the police.¹⁴ The ULS is greatly concerned about the increasing reports on human sacrifice by fake healers which concern has not been fully addressed by Government and other stakeholders.

b) Freedom from torture, respect for human dignity and protection from inhuman treatment

During the reporting period, the ULS received reports of torture, cruel, inhuman and degrading treatment. Of particular note is the alleged torture of thirty-three Ugandans in Arua Municipality and particularly Night Asara a District Councilor for Arua Hill Division who for days passed blood in her urine after the torture, Caroline Nalubowa who was kicked repeatedly in the back, Akira Maida who was injured in the abdomen and now passes blood whenever she is urinating. One Jane Abola who while narrating her ordeal mentioned the Regional Police Commander Jonathan Musinguzi and Gulu District Commander Emmanuel Mafundo as having been central to the torture of the arrested persons.¹⁵ The Parliamentary Report on torture also mentioned another victim a one Atiku Shaban who sustained severe injuries arising out of the severe beating while he was in detention.¹⁶

In the same incident, the Hon. Francis Zaake was reported to have been tortured from an unknown location and later dumped at the gate of Rubaga Hospital.¹⁷ The Adhoc Committee of Parliament which was tasked to probe into the circumstances surrounding the arrest of Hon. Robert Kyagulanyi and three other Members of Parliament indicated in their report that security officers reportedly belonging to the Special Forces Command broke into Hon. Kyagulanyi's hotel room at Pacific hotel in Arua, found him kneeling on the floor with his hands up in surrender but went ahead to hit him with a blunt object that he suspected to be an iron bar.¹⁸ He was thereafter allegedly severely beaten with gun butts and other objects until he became unconscious. It is alleged that these actions were in retaliation for the stoning of the Presidential motorcade by a procession of supporters belonging to Hon. Kassiano Wadri.¹⁹

The ULS in its press Statement issued on August 15, 2018 noted and condemned the violence that led to the death Yassin Kawuma, the driver to Hon. Robert Kyagulanyi and Ssekiziyivu Samuel in Mityana Municipality. The ULS expressed concern over numerous reports about the torture of the said two legislators of Parliament whilst in detention as well as other people who

¹⁴ Ibid

¹⁵ Rosebell Kagumire, "Bobi saga: Tortured women narrate ordeal, The Observer, August 29, 2018. Available at <https://observer.ug/news/headlines/58533-bobi-saga-tortured-women-narrate-ordeal.html> last seen September 9, 2018 last accessed on 13th September 2018.

¹⁶ Ibid

¹⁷ Reporter, "MP Zaake tortured by security in Arua, The Eagle, August 15, 2018. Available at <http://eagle.co.ug/2018/08/15/photo-mp-zaake-tortured-by-security-in-arua.html> last accessed on 13th September, 2018.

¹⁸ Paul Ampuire, "Report on Jailed MPs Highlights Torture, Bobi Wine's Plight", SoftPower, August 24th, 2018. Available at <https://www.softpower.ug/report-on-jailed-mps-highlights-torture-bobi-wines-plight> last accessed on 13th September, 2018.

¹⁹ Wilfred Kamusiime, "Security Situation in Arua Municipality," Uganda Police Force, August 14, 2018. Available at <https://www.upf.go.ug/security-situation-in-arua-municipality/> last accessed on 13th September 2018.

were arrested during these elections.²⁰ The ULS also notes reports of stoning of the Presidential motorcade by civilians and does not condone such acts.

c) Protection of personal liberty

During this reporting period, the persons arrested were denied their Constitutional rights to freedom, due process and fair trial. Although the Constitution provides that persons arrested should be produced in Court within 48 hours, this provision continued to be disregarded during this review period. For example the Parliamentary report on torture indicated that 33 people who were arrested in Arua during the Parliamentary by-elections were not produced within 48 hours as required by the Constitution. In addition other rights including the right to seek urgent medical attention, inform their next of kin and access to their lawyers were violated.²¹ This unconstitutional delay exposed the suspects especially those that were brutally tortured to grave danger to their health and well-being.

These violations triggered protests across the country and around the world calling for the respect of the rule of law, human rights and democracy, as well as release of the detainees. These incidents raise doubt on the commitment to protect and safe guard the Constitutional principles provided for under Articles 24, 44(a) and Article 23(3) of the 1995 Constitution of Uganda as well as the Prevention and Prohibition of Torture Act 2012.

d) Freedom of Assembly

Freedom of Assembly is defined as the right to hold public meetings and form associations without undue interference by the Government.²² This right is also embraced in the 1995 Constitution of Uganda under Article 29(1) which guarantees the right to freedom of assembly and to demonstrate together with others in a peaceful manner. This implies that the police should not prohibit a public assembly in their own discretion but they should regulate the time, place and manner of a peaceful assembly provided Constitutional safeguards are met.

We have noted excessive use of force by the police and the military to disperse assemblies. Cases of brutality, arbitrary arrests, use of teargas and live ammunition which have resulted into the death of some individuals, bodily harm and destruction of property have been reported in Arua, Gulu and Kampala during assemblies.²³

Of great concern is the Public Order Management Act 2013, which gives powers to an officer to stop or prevent an assembly under Section 8(1). The ULS is of the view that this section is unconstitutional because it gives powers to the police to prohibit the convening of an assembly or procession unjustifiably hence limiting the enjoyment of this fundamental right to assemble. It should be noted that the militarization of the police has also increased brutality among security officers.

Legal Issues arising:

- i. Whether the State is responsible for the infringement of the abovementioned constitutionally

mandated human rights and freedoms?

- ii. Whether the excessive use of force by law enforcers to control the crowds was justifiable in a free and a democratic society.
- iii. Whether the citizens are aware of their duties and responsibilities per Articles 17 and 43 respectively as well as the National Objectives and Directive Principles of State Policy of the 1995 Constitution of Uganda?

Recommendations

- i. Perpetrators of torture should be investigated, prosecuted and punished. The security agencies should ensure that their officers and men are not shielded from the Criminal and Civil Justice Systems. These agencies should be seen to enforce justice or cooperate fully in the fight against injustice. On the other hand the Directorate of Public Prosecutions should take on the prosecution of these perpetrators without fear and favor.
- ii. The cases against those arrested and charged for crimes allegedly committed during the elections should be expedited to ensure fairness and justice.
- iii. Personal liberties should be protected as clearly stipulated under Article 23(4) of the Constitution. This Article specifically prohibits detention of a person arrested or detained if not earlier released to be produced in court not later than 48 hours. Therefore various security agencies including the Uganda Police Force and the military, courts and concerned stakeholders should diligently observe these Constitutional provisions.
- iv. The responsible State agencies in particular the police and the Director of Public Prosecution should conclusively investigate and disclose the perpetrators of torture and ensure that they face prosecution in open court. In the event that this is not done in the next two months, the Uganda Law Society should consider instituting both private Criminal and Civil prosecution as recommended at the Extra General meeting of the ULS.

Personal liberties should be protected at all times. Various stakeholders and security agencies including the Uganda Police Force and Military and courts should diligently observe the Constitutional provisions.

- v. Any person under custody has a right of access to medical treatment at the cost of the State unless the victim or his/her family choose otherwise.
- vi. The Government should expedite the investigations of the various murders that have heightened security tensions in the Country.
- vii. It is recommended that the Electoral Commission should strengthen processes of voter identification, registration and civic education so as to ensure free and fair election.
- viii. For purposes of conducting free and fair elections in future, it is recommended that we

²⁰ Retrieved from http://www.uls.or.ug/site/assets/files/1359/uls_statement_on_police_brutality_in_arua.pdf

²¹ Ibid

²² <https://www.dictionary.com/browse/freedom-of-assembly>

²³ See Javira Ssebawami at <http://www.pmldaily.com/news/2018/08/gunshots-roads-close-in-kampala-as-security-quells-riots.html> last seen September 9, 2018

completely revert to the use of ballot and that the recommendations of the Supreme Court in Amama Mbabazi's case aimed at improving the conduct of elections be implemented to ensure smooth running of election periods.

- ix. The Electoral Commission should ensure that stakeholders in the election process develop dialogue and cooperation to ensure smooth conduct of elections.

e) Freedom of speech and press

Article 29(1) (a) of the 1995 Constitution of Uganda guarantees that every person shall have the right to freedom of speech and expression. The International Covenant on Civil and Political Rights to which Uganda is party to also states in Article 19(2) that everyone has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds.

However, the ULS has consistently noted an increase in the infringement of press freedoms in Uganda over the past three months. During this quarter, three journalists covering a demonstration by local Mobile Money operators who were protesting against the newly introduced tax on mobile money transactions were assaulted and arrested in the course of doing their jobs.²⁴ Similarly journalists were constantly attacked while covering the various elections and related processes. During and in the aftermath of the Arua elections, it was reported that NTV Journalists Herbert Zziwa and Ronald Muwanga as well as NBS TV Journalist Julius Bakebenge were forcefully arrested in the middle of live programming.²⁵ The aftermath of the elections also witnessed the brutality meted out by the army against journalists especially Akena James of Reuters and Juma Kiirya of NTV who were covering the quelling of protests in Kampala.²⁶

The increasing cases of infringement of press freedoms demonstrate that the media operating environment in the country is declining and this has drawn widespread criticism from both local and internationally. For example international bodies including the Foreign Correspondents Association of Uganda (FCAU), Reuters as well as the Pakistan Press Foundation, the Kenya Editor's Guild, among others were concerned.²⁷ The violation of press freedoms infringes Articles 24 and 29 respectively of the 1995 Constitution of Uganda, in addition to several International Instruments on press freedoms many of which Uganda subscribes to.

²⁴Retrieved from https://www.ifex.org/uganda/2018/07/16/jours_arrested_tax_protest/

²⁵Retrieved from <https://www.google.com/amp/s/cpj.org/amp/029672.html>

²⁶ZahraNamuli, "Journalists Body threatens blackout unless Army, Police punish officers who attacked media", Nile Post, August 22, 2018. Available at <https://nilepost.co.ug/2018/08/22/journalists-body> last accessed on 13 September 2018.

²⁷JaviraSsebawami, "International media slam Ugandan authorities on harassing journalists", PML Daily, August 14, 2018. Available at www.pmldaily.com/news/2018/08/international-media-slam-ugandan-authorities-on-harassing-journalists.html last accessed on 13th September, 2018. ; Paul Ampurire, "Reuters Wants Swift, Transparent Probe Into Brutality of its Reporter By Soldiers", SoftPower, August 25, 2018. Available at <https://www.softpower.ug/reuters-wants-swift-transparent-probe-into-brutality-of-its-reporter-by-soldiers/> last accessed on 13th September 2018 ;Chimp Corps, Pakistan Press Foundation shows Concern over Attacks on Journalists In Uganda, Chimp Reports, August 15, 2018. Available at <https://chimpreports.com/pakistan-press-foundation-shows-concern-over-attacks-on-journalists-in-uganda/> last accessed on 13th September, 2018. ; The East African, "Kenyan editors condemn attacks on Uganda journalists, August 21, 2018. Available at www.theeastafrican.co.ke/news/ea/Kenyan-editors-condemn-attacks-on-Uganda-journalists-attack/4552908-4722956-rb8q32/index.html last accessed on 13th September, 2018.

Legal Issues arising:

- i. Whether the freedom of speech and expression is being infringed upon contrary to Article 29(1) (a) of the 1995 Constitution of Uganda.
- ii. Whether the crackdown on press freedoms in Uganda is infringing upon citizens' rights of access to information, in contravention of Article 41 of the 1995 Constitution of Uganda.

Recommendations

- i. The Uganda Police Force should carry out expeditious investigations against the journalists who have been arrested.
- ii. Government should expedite the implementation of the recommendations of the Supreme Court in the case of *Amama Mbabazi Vs Kaguta Museveni & others*²⁸ with regard to electoral reforms aimed at improving the conduct of elections.
- iii. The Uganda Law Society media law cluster should work with other key stakeholders such as the African Center for Media Excellence, the Human Rights Network for Journalists, the Centre for Public Interest Law and the Uganda Journalist Association to convene a forum with Government officials to take a more proactive stance in protecting journalists per their Constitutional rights.²⁹
- iv. A stakeholder comprehensive legal aid scheme involving all the key stakeholders to support the safety of journalists should be explored and put in place.
- v. The ULS should sensitize the public on the responsible use of the Social Media through the media law cluster.

f) Rights of women

Objective XV of the 1995 Constitution of Uganda provides that the State shall recognize the significant role that women play in society. Article 33 (2)(3) also provides that the State shall provide facilities and opportunities necessary to enhance the welfare of women as well as protect women and girls and their rights, taking into account their unique status and natural maternal functions in society. The State therefore has a fundamental obligation to ensure that women's rights are protected and upheld.

On July 6, 2018, it was reported that over 500 girls had been defiled in Kampala since January 2018, particularly during school holidays.³⁰ In a separate incident, media reports quoted a study that was commissioned by Action for Rural Women's Empowerment which revealed that at least 47% of young girls (8-12 years) were defiled between 2016 and 2018 in Kyankwanzi and the defilement cases resulted into pregnancy.³¹

²⁸Presidential Election Petition No. 1 of 2016

²⁹ Retrieved from http://www.uls.or.ug/site/assets/files/1340/5th_quarterly_rule_of_law_report.pdf

³⁰ Joseph Kato, "500 girls defiled in Kampala since January- police report", Daily Monitor, July 6, 2018. Available at <http://www.monitor.co.ug/News/National/500-girls-Kampala-January-police-report-Nateete-Nsangi/688334-4648840-3k5jy6/index.html> last accessed on 13th September, 2018

³¹Fred Muzaale, "47% young girls in Kyankwanzi abused", Daily Monitor, Wednesday July 18, 2018, at p.13

The ULS also received reports during this reporting period that Nansana, a Kampala suburb has many teenagers who are not in school and are instead engaged in collecting metal scrap to feed the recycling industry. These girls are often defiled by their fellow teenagers or men who disguise as customers for their food stuffs and metal scrap.³²

That is as a result of girls facing difficulties in accessing justice. The ULS notes that the State is mandated to provide and promote free and compulsory education as well as provide appropriate measures to ensure that every citizen has equal opportunity to attain the highest educational standard if possible.

Legal issues arising:

- i. Whether the Government and its citizens (parents) are conforming to the Constitutional provision of providing children with basic education, protection from social and economic protection exploitation.

Recommendations:

- i. We recommend that Government agencies like the Ministry of Education and Sports in liaison with Ministry of Gender, Labor and Social Development and the Uganda Police Force should carry out thorough investigation into the cause of defilement among the girl child with a view of eliminating the perpetrators and empowering women and girls.
- ii. The ULS calls upon all actors like traditional leaders, educators, parents, NGO’s and spiritual leaders to work towards a holistic education that addresses the health needs of children including physical, mental, spiritual, moral and social needs.

3. TRANSPARENCY AND ACCOUNTABILITY

a) Misappropriation of funds at higher institutions of learning

Overtime, the ULS has noted continued reports of corruption and lack of accountability within higher institutions of learning. It has been alleged that more than UGX 1 billion was squandered at Soroti University prior to its commencement. This follows an audit report dated August 2, 2018, compiled from April to June, which raised issues on the mismanagement of more than UGX 1 billion, which included double payment on hiring of lawyers.³³ The ULS also learnt of reports of an alleged probe by the Inspectorate General of Government into corruption and fraud allegations among other things at Makerere University. This followed several allegations against top officials at the University alluding to fraud, corruption, bribery and conflict of Interest.³⁴

³²Ibid

³³Simon Peter Emwamu, “Soroti varsity on the spot over missing shs 1 billion”, Daily Monitor, August 27, 2018. Available at www.monitor.co.ug/News/National/Soroti-varsity-on-the-spot-over-missing-Shs1-billion-/688334-4730204-13pcccv/index.html last accessed at 13th September, 2018.

³⁴Damali Mukyahe, “IGG probes graft, nepotism at Makerere”, Daily Monitor, August 25, 2018. Available at www.monitor.co.ug/News/National/IGG-graft-nepotism-Makerere-Bruce-Kabasa-Muasa/688334-4727340-f20tlq/index.html last accessed on 13th September 2018. www.britannica.com/topic/checks-and-balances

Legal Issue arising

- i. Whether there are enough deterrent measures to curb corruption and misappropriation of funds in higher institutions of learning and in government institutions in general.

Recommendations

- i. The Ministry of Education and Sports should undertake a thorough investigation into the alleged mismanagement of funds and the culprits prosecuted.
- ii. There should be commitment by the government to hold public officers accountable for the management of public funds.

4. CHECKS AND BALANCES

Checks and balances is a principle of Government under which separate branches are empowered to prevent actions by other branches and are induced to share power.³⁵

a) Threat to Separation of Power Principle

On July 26, 2018, the Constitutional Court in Mbale released its judgment on the Constitutional Petition No. 3 of 2018 that sought to scrap the presidential age limit and the extension of all political offices from five to seven years. In its judgment, the Court retained the clause that scrapped off the presidential age limit and declared the extension of five to seven years for political officers unconstitutional.

Subsequent to the judgment, it was reported that the President condemned the judges for spending more time on form rather than substance.³⁶ This was in the context of their decision against the seven year term for members of Parliament; that “judges are not the ones in charge of this country. It is the NRM Members of Parliament who, if they followed his guide lines and bonded closely with the people, through wealth and job creation, that can make necessary Constitutional reforms.”³⁷ It should be noted that this is a direct attack on the judiciary and the Uganda Law Society strongly condemns it.

The President of the Republic of Uganda has also reported to have made statements doubting the integrity of the Electoral Commission threatening to disband it.

The above mentioned incidences highlight a lack of respect for the functional integrity of other arms of government and institutions of democracy thereby but most importantly, infringing upon the Separation of powers principle.

³⁵Retrieved from <https://www.britannica.com/topic/checks-and-balances>

³⁶Kim Aine, “Museveni on Age Limit Ruling: Judges are not in Charge of Uganda,” Chimp Reports, July 30, 2018. Available at <https://chimpreports.com/museveni-on-age-limit-ruling-judges-are-not-in-charge-of-uganda> last accessed on 13th September 2018.

³⁷Ibid

Legal issue arising:

- i. Whether the independence of the Judiciary as an arm of Government is at a threat?

Recommendations:

- i. Separation of powers is paramount in the promotion of the rule of law and democracy in the country and therefore the respective arms of Government should maintain mutual respect of each other's mandates in the performance of their functions.
- ii. The judiciary and the independent institutions of democracy should be empowered to handle matters before it without fear of any interference from any arms of Government.

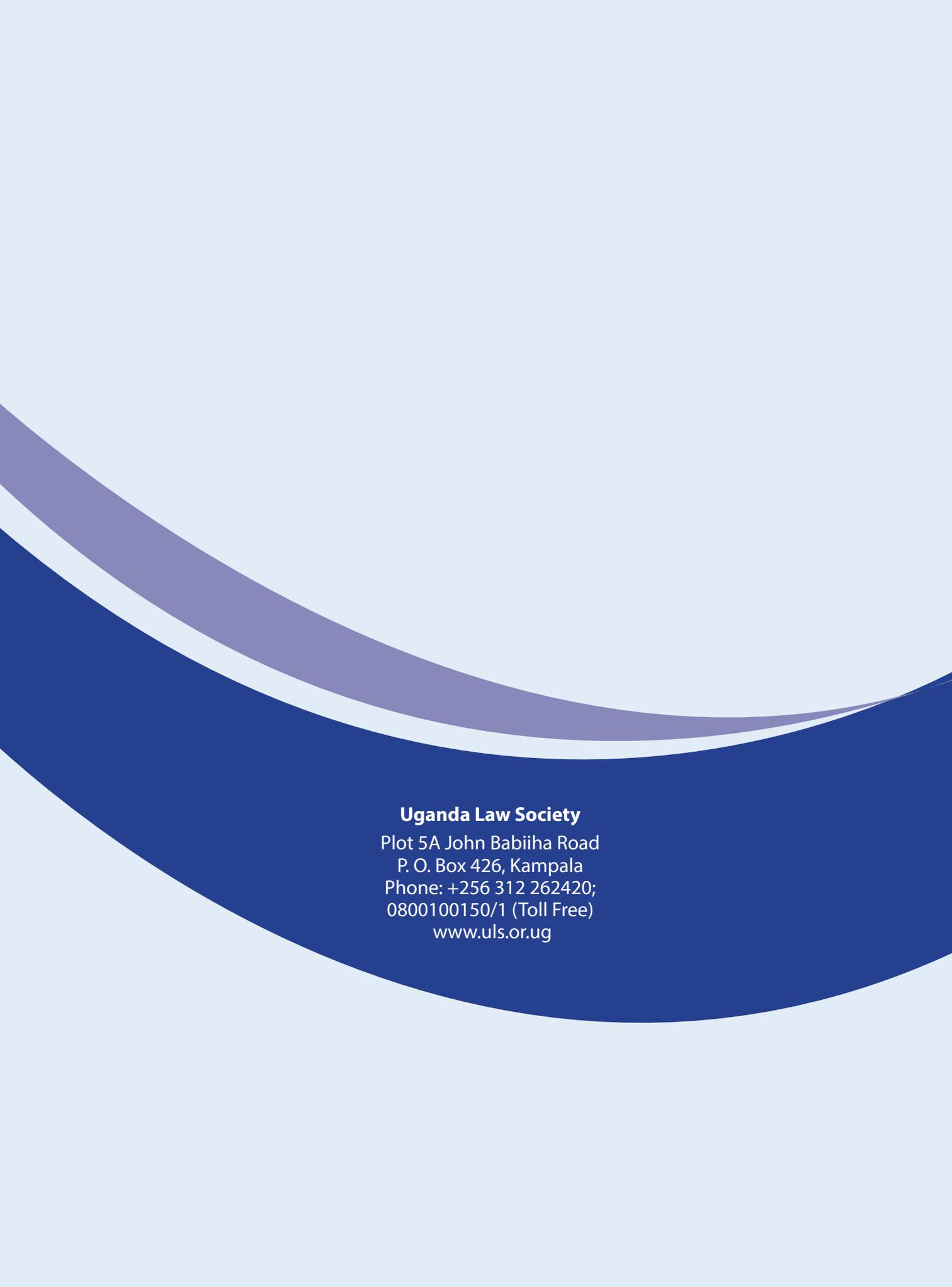
GENERAL COMMENTS

- 1) The Constitutional Court upheld a decision by Parliament to lift the Presidential Age Limit provision and amend Article 102(b) of the Constitution although the same court did not grant Parliament its proposal to extend its term from the current five years to seven years. Given the historical and political importance of this Ruling, there have been several Notices to Appeal filed in response including one by the Uganda Law Society. The Uganda Law Society will closely continue to monitor this new constitutional development.
- 2) The ULS noted a positive development when the Minister of Justice and Constitutional affairs suggested to set up a commission of inquiry on alleged illegal arrests by elements in the security organs and he further advised Parliament that the preventive arrest done by the police is illegal and unconstitutional.

Conclusion

During this reporting period, the ULS noted any positive development towards observation of human rights and Rule of Law in the country. We hope that fundamental rights and freedoms for example freedom of speech, press and assembly, freedom from torture, protection of the right to life among others are respected as recommended in this report. The principle of separation of powers is also paramount in promoting democracy and therefore we urge that there should be observance of the independence in the three arms of Government in the performance of their duties.





Uganda Law Society

Plot 5A John Babiha Road

P. O. Box 426, Kampala

Phone: +256 312 262420;
0800100150/1 (Toll Free)

www.uls.or.ug