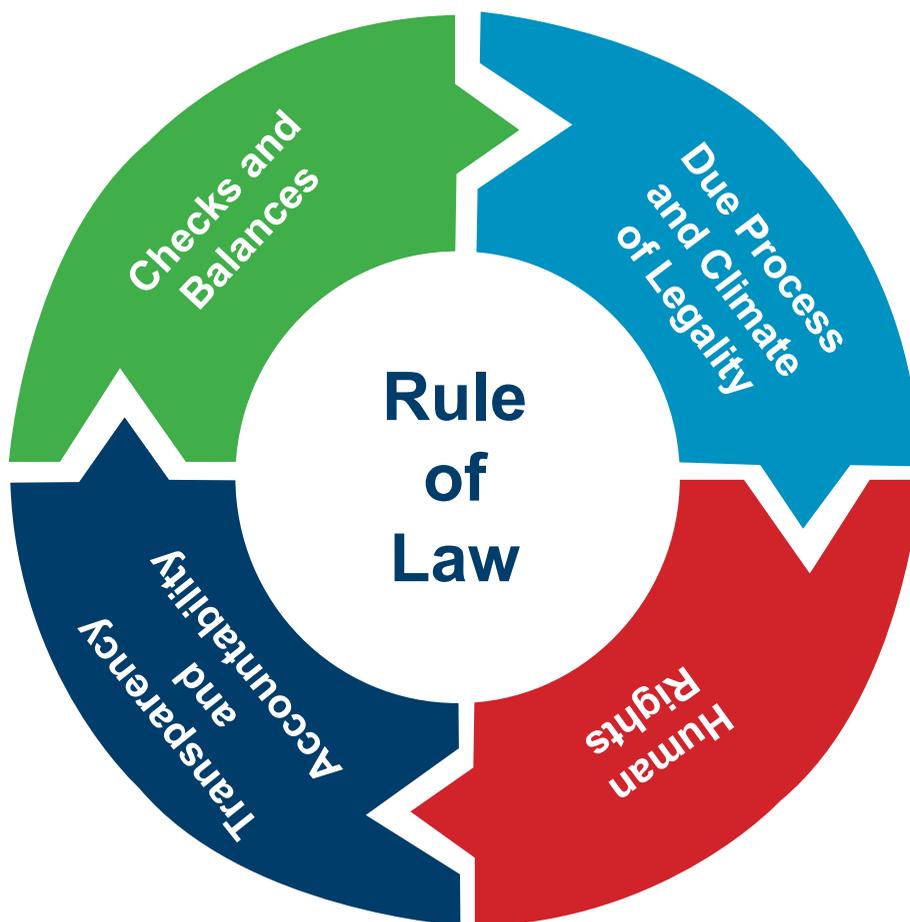


## THE STATE OF THE RULE OF LAW IN UGANDA: THIRD QUARTERLY REPORT



JULY - SEPTEMBER 2019



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## PRESIDENT'S FOREWORD

I am proud and honored to welcome you all to the third edition of the Uganda Law Society (ULS) Quarterly Report on the State of the Rule of Law for the period July-September. As was with the two preceding reports for the year 2019, this edition highlights incidents affecting the rule of law in the country as well as appropriate recommendations that are shared with various stakeholders for implementation so as to improve the observance of the Rule of Law and promotion of human rights in Uganda.

As ULS, we cannot agree more that the respect for human rights is not only an essential goal in itself but also a massively positive investment, with wide-ranging and durable impact. It is on this premise therefore that we continue to actively support the promotion and respect for human rights through our various Rule of Law activities, legal community awareness programs and provision of free legal services at our legal aid clinics.

In line with our vision, we strive to end discrimination and secure fair access to justice and fundamental resources for people who have been marginalized and excluded. Mattie Stepanek stated that, *"Unity is strength and when there is teamwork and collaboration, wonderful things can be achieved."* In this regard, we continue to work hand in hand with the various justice duty bearers and the relevant stakeholders as these engagements are essential for the promotion of human rights and the upholding the rule of law in the country.

In this quarter, there has been a number of human rights violations contrary to the 1995 constitution of Uganda these include but are not limited to; the right to Bail, the right to a health and clean environment

In closing, I thank the ULS Rule of Law Advisory Board as well as the Rule of Law & Strategic Litigation Committee together with the ULS Rule of Law Department for the good work and time they put in to support this important initiative.

**FOR GOD AND MY COUNTRY**



**Simon Peter M. Kinobe**

**President- Uganda Law Society**

## MESSAGE FROM THE CEO

I welcome you all to the launch of the 3<sup>rd</sup> ULS Quarterly Report of 2019. The ULS Strategic Plan (2017-2021) seeks to create a more proactive approach on issues related to the rule of law through strategic objective three which provides for the promotion of the Rule of Law and Human Rights Protection. It is on this basis that the ULS started launching quarterly Rule of Law Reports. This is done with the assistance of the Rule of Law Advisory Panel and the Rule of Law, Strategic and Litigation Committee.

The ULS Secretariat remains committed to the implementation of the ULS Vision and its Strategic Objectives. I thank and appreciate the Rule of Law Advisory Panel chaired by Prof. Fredrick Ssempebwa as well as the Rule of Law, Strategic and Litigation Committee chaired by Dr. Daniel Ruhweza for their invaluable support towards the compilation of this support.

The ULS Secretariat remains committed to implementing the vision of the ULS in line with its Strategic Plan, to uphold and enhance the rule of the law. I therefore urge all the relevant stakeholders to take note of the recommendations made in this report.



**Joyce Nalunga Birimumaaso**

**Chief Executive Officer- Uganda Law Society**

## ACKNOWLEDGEMENT

The production of this Report was made possible by the unwavering support and guidance from the ULS Rule of Law Advisory Panel. This Panel is chaired by Professor Fredrick E. Ssempebwa with Ms. Gertrude Wamala Karugaba, Mr. Francis Gimara, Mr. Andrew Kasirye, Mrs. Lydia Ochieng Obbo and Ms. Loyola Karobwa as members.

The ULS is also indebted to the ULS Rule of Law and Strategic Litigation Committee chaired by Dr. Daniel Ruhweza for their support in the compilation of this Report.

Appreciation also goes to the ULS Rule of Law Department under the headship of Ms. Leah Nasasira Bitu, Ms. Mary Nalwoga, the Rule of Law Officer and the brain behind compilation and analysis of diverse data to come up with comprehensible text and Ms. Rita Aligo for coordinating the launch of this report. Thanks to the entire ULS Secretariat and the Management Team for an enabling setting to the undertakers of this assignment.

## INTRODUCTION

This is the third quarterly Rule of Law Report of the Uganda Law Society for the year 2019 and the 11<sup>th</sup> issue in the series of this report. The report highlights key rule of law related occurrences that occurred in the months of July, August and September 2019. Upholding the rule of law is a key engine of progressive development and sustainable development. It also highlights key issues that have posed a threat to the upholding of the rule of law in the review period.

This report identifies the positive progress that has been made during this reporting period in regards to the protection and promotion of the rule of law. This quarter has seen key developments made by the Uganda Police force (UPF) to curb corruption among police officers, protection of human rights and emphasizing individual responsibility for actions arising out of human rights violations. The UPF further awarded best policing Districts and friends of police. In addition, the reporting period has seen a positive stride in investigative journalism made by the *Sunday Vision* in exposing bribery and corruption in the judiciary.

However, incidents of human rights violations remained rife including the violation of the rights to life, health, bail, and the right to enjoy a free and healthy environment, freedom from torture and inhuman treatment. There has also been an escalation in the wave of criminal activity that ultimately led to a number of deaths in the country as well as arbitrary arrests, including that of several boda boda riders and private individuals. The report also makes mention of the threat to the independence of the Judiciary and Parliament. Corruption scandals in the Judiciary were also highlighted in the report.

In view of the issues raised, the report provides several recommendations on the highlighted rule of law violations in a bid to enhance stringent measures for the protection of the rule of law. It is hoped that the report will provide a platform to evaluate critical stakeholders in the performance and observance of the rule of law in Uganda. It is additionally hoped that these stakeholders shall implement the recommendations given in the report.

# HUMAN RIGHTS

## The Right to Life

Article 22 of the 1995 Constitution of the Republic of Uganda states that no person shall be deprived of life intentionally except in execution of a sentence passed in a fair trial by a court of competent jurisdiction in respect of a criminal offence under the laws of Uganda and the conviction and sentence have been confirmed by the highest appellate court. Security of an individual is a basic human right. States therefore have an obligation to ensure that the human rights of their nationals are protected by taking positive measures to protect them against the threat to life and bringing the perpetrators to justice.<sup>1</sup>

However, contrary to the above stated provision, the right to life in Uganda remains constantly under threat. Despite the numerous recommendations that have been made in the previous ULS Rule of Law Reports on several issues threatening the right to life<sup>2</sup>, there remains an increase in kidnaps, murders and robbery cases as has been reported during this review period; and that despite the fact that arrests that have been made by Police, it is questionable as to whether the investigations were followed to their maximum conclusion.

Below are some of the cases that were reported on during this quarter;

On July 21, 2019, the residents of Kamuli District woke up to the gruesome attack on a family by unknown machete-wielding men; that left the couple dead and causing severe injuries to their daughter, Gloria Namugolo aged 19 years.<sup>3</sup>

- A Kenyan truck driver identified as Natalia Peter was killed and dumped at Buwambo by an unknown assailant. The body was discovered by the residents of Buwambo on July 29, 2019.<sup>4</sup>
- In another instance, a 50 year old Moses Kibuka a resident of Namugoona in Wakiso District was found killed and dumped in Buliisa District.<sup>5</sup> The body was found strangled to death by unknown assailants.

The murder of a 28 year old Maria Nagirinya who was abducted from her home in Lungujja Busega Community Zone in Kampala. Her body and that of her driver Ronald Kitayimbwa were found dumped in Mukono town, on Kayunga road, Mukono District.<sup>6</sup>

- In yet another incident was the kidnap and murder of a 57 year old James Kalumba a resident of Bweya Kajjansi whose body was found a month later lying dead in a swamp along Entebbe road.<sup>7</sup>

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

2 <https://www.docdroid.net/ttDrCrV/uls-2017-rule-of-law-3rd-quarterly-report-september-2017.pdf> , <https://www.docdroid.net/oMaD795/uls-2017-rule-of-law-4th-quarterly-report-december-2017.pdf> , <https://www.docdroid.net/YVeBUVF/uls-2018-rule-of-law-3rd-quarterly-report-sept-2018.pdf> , <https://www.docdroid.net/zvKyse2/uls-2019-rule-of-law-1st-quarterly-report-march-2019.pdf>

3 BY Sam Caleb Opio, "Thugs hack husband, wife to death," Daily Monitor, July 23, 2019. Available at <https://www.monitor.co.ug/News/National/Thugs-hack-husband-wife-death/688334-5206576-9kpsouz/index.html> last accessed on September 13, 2019.

4 By Tom Malaba, "Kenyan truck driver killed in Uganda, body dumped in Wakiso," Daily Monitor, August 2, 2019. Available at <https://www.monitor.co.ug/News/National/Kenyan-truck-driver-killed-in-Uganda-body-dumped-in-Wakiso/688334-5220290-a3sixw/index.html> last accessed on September 3, 2019.

5 By Okello Emmanuel, "Body of murdered Wakiso man found dumped in Buliisa District," URN, August 29, 2019. Available at <https://ugandaradionetwork.com/story/body-of-murdered-wakiso-man-found-dumped-in-buliisa> last accessed on September 3, 2019.

6 By James Kabengwa, "Nagirinya murder: Museveni vows to apprehend killers," Daily Monitor, September 1, 2019. Available at <https://www.monitor.co.ug/News/National/Nagirinya-murder-Museveni-vows-apprehend-killers/688334-5256776-146q58h/index.html> last accessed on September 3, 2019.

7 By URN, "Kidnapped Kajjansi man found dead a month later," *The Observer*, September 3, 2019. Available at <https://observer.ug/news-headlines/61855-kidnapped-kajjansi-man-found-dead-a-month-later> last accessed on September 5, 2019.

## Human Rights Violations in Detention Centres

The ULS has also noted with concern that the rights of prisoners have been infringed upon during this quarter, and that in doing this, their dignity and quality of life has been assaulted. There have been reports of inmates dying in prison under suspicious circumstances. In one instance, residents of Tiira Village in Busia County accused prison warders at Masafu Government Prison of allegedly torturing an inmate to death.<sup>8</sup>

## Road Carnages

In addition to the above, the increasing spate of road accidents is proving to be a worrying phenomenon and a subsequent threat to the right to life as was seen this quarter. Several road accidents have been reported on during this review period, most of which were caused by failure to heed to the road regulations including over speeding amongst others. The road accidents which were reported to have occurred during this quarter as a result include;

- On August 18 2019, a bus belonging to YY Coaches registration number, UAX 852F rammed into a taxi registration number, UAV 689E killing eleven people along the Iganga-Tirinyi-Mbale highway.<sup>9</sup>
- On September 13 2019, an accident involving a bus belonging to Robyln Coaches in Nakasongola district along Kampala-Gulu highway claimed the lives of seven people.<sup>10</sup>
- On September 15, 2019, eight people perished in an accident along the Jinja-Kamuli highway.<sup>11</sup>

These recurring accidents raise the question of the efficiency of the regulatory system in respect of public transport, and, of the traffic police in quelling road accidents.

## Legal Issues

- Is the right to life, as enshrined in the Constitution, guaranteed in Uganda?
- The ULS renews the issue of whether there is a comprehensive legal framework guiding community policing in Uganda.

## Recommendations

- The Government together should institute a specific inquiry into the serial killings and publish the findings. Those found culpable should face the full arm of the law.
- A standard community policing with a proper policy and legal framework should be established and implemented from village level up to the District.

## Freedom from torture and inhumane treatment

There have been several allegations reported, stating that suspects who are detained in safe houses are subjected to inhumane treatment and torture, which is not only an affront to their right to life but also an infringement to their right to freedom of torture as per Article 24 of the Ugandan Constitution. In one instance it was reported that the suspects in the Maria Nagirinya murder case were allegedly tortured whilst in detention. This has placed the legality of safe houses in question, and raises the question as to whether safe houses are just torture chambers being disguised as houses where investigations are carried out.

8 Retrieved from <https://www.monitor.co.ug/News/National/Masafu-prisons-officials-on-the-spot-over-inmate-s-death-688334-5174200-format-xhtml-13lj1hgz/index.html>

9 <https://observer.ug/news/headlines/61690-police-identifies-11-victims-of-namutumba-bus-accident>

10 <https://observer.ug/news/headlines/61961-7-people-killed-in-nakasongola-bus-accident>

11 <https://observer.ug/news/headlines/61994-8-perish-in-kamuli-road-accident>

It is noted that Members of Parliament sitting on the Human Rights Committee were blocked from accessing suspected safe houses in Nkokonjeru, Kyengera and Nalukolongo.<sup>12</sup> It is alleged that several people have been kidnapped, arrested and detained in these safe houses where they undergo horrendous torture and given one meal in four days.<sup>13</sup> While interfacing the Human Rights Committee of Parliament, Gen. Elly Tumwine informed members of the committee that safe houses indeed exist but he was emphatic that legislators have no business visiting the said facilities.<sup>14</sup>

It should be noted that excessive pretrial detention undermines the rule of law by debasing the presumption of innocence, furthering corruption and even promotes criminality in the country.

### Legal issue arising:

- Whether the right of presumption of innocence until proved guilty is protected.

### Recommendations:

- The government should publish official statistics of the details of the people on pretrial detention.
- Independent monitoring bodies should be supported in regularly monitoring places of detention including police lock-ups and other places of pretrial detention.

## The Right to Health

The International Convention on Economic, Social and Cultural Rights (Article 12) recognizes the human right to health (physical and mental). Although this right is not expressly provided for in the 1995 Constitution of Uganda, Uganda is a signatory to this convention and therefore has an international obligation to ensure that Ugandans enjoy this right. However, despite government's strategic intervention to improve the state of health in Uganda; there is evidence that points towards a continual breakdown in the health care system, as seen by reports of quack doctors treating patients.<sup>15</sup> It has also been reported that fake vaccines are also being sold in the market.<sup>16</sup> This therefore raises the question whether the National Drug Authority which is mandated to monitor the quality and efficacy of drugs on the market, is well equipped to fight the battle of fake drugs on the market.

### Legal issue arising:

- Whether the right to access quality health services is adequately protected?

### Recommendations:

- The right to health as a justiciable constitutional right should be recognized and provided for.
- The capacity of the Medical Council and the National Drug Authority should be enhanced to effectively wipe out quack medical practitioners and to fight the distribution of expired/fake drugs.
- The Ministry of Health together and the National Drug Authority should increase the levels of awareness on fake drugs.
- The Culprits should be brought to book through prosecutions and consequent banning of culpable medical professionals from practice.

12 By Olive Nakatude, "MPs Denied Access to Suspected Safe Houses, URN, September 10, 2019. Available at <https://ugandaradionetwork.com/story/mps-denied-access-to-suspected-safe-houses> last accessed on September 11, 2019.

13 [ibid](#)

14 By Kungu Al-Mahadi Adam, "MPS on human rights committee blocked from accessing "safe houses", ISO boss summoned," *Soft power news*, September 10, 2019. Available at <https://www.softpower.ug/mps-on-human-rights-committee-blocked-from-accessing-safe-houses-iso-boss-summoned> last accessed on September 11, 2019.

15 By Website, "Nurse injects pupils with fake vaccines," *New Vision*, July 18, 2019. Available at [https://www.newvision.co.ug/new\\_vision/video/1503822/nurse-injects-pupils-fake-vaccine](https://www.newvision.co.ug/new_vision/video/1503822/nurse-injects-pupils-fake-vaccine) last seen on September 2, 2019.

16 [Ibid.](#)

## The right to Bail

The right to bail is a fundamental right guaranteed by Article 23(6) of the 1995 Constitution of the Republic of Uganda. Its basis is found in Article 28 of the same Constitution which states that an accused person is to be presumed innocent until he/she is proved or he/she pleads guilty. This makes bail a right after fulfilling conditions given by the court acting judiciously.

During this review period, there have been several incidents where the right to bail of suspects has been directly infringed upon. On September 11, 2019, it was reported that four of the eight suspects charged in the murder of former Police Spokesperson, Andrew Felix Kaweesi were re-arrested at the Kololo based International Crimes Division of High Court along with their lawyer James Mubiru. The re-arrests took place shortly after the suspects were discharged by the Registrar of the International Crimes Division of High Court; Esther Nasambu following their bail release by Justice Lydia Mugambe.<sup>17</sup> Security operatives argued that the re-arrests were necessary based on allegations that they were peace violators.<sup>18</sup> However, even though security agencies say that re-arrests are on the basis of other offences, the suspects are never presented before court. Under what mandate do security operatives and prison authorities conduct re-arrests even after the presiding judge has granted the suspects bail? Furthermore, the response of the prison authorities suggests that there is an underlying undertone that certain people do not deserve bail, which is not substantiated in law.

The right to bail has also been hampered by reports of bribery and corruption allegations which occur around the precincts of court structures, to facilitate bail applications.<sup>19</sup> The alleged proponents of the cases of bribery and corruption around the courts, inform clients at court that they won't be able to receive bail or the matter will take longer than expected if they didn't pay certain amount of money to the magistrate and State Attorney.<sup>20</sup>

The ULS notes that despite the numerous efforts by the judiciary to convey professionalism and fight corruption, it is still a vice in the courts of law.

Legal issue arising:

- Whether the right to bail is observed by those involved in law enforcement.

### Recommendations:

- All charges against suspects should be brought together in a timely manner in order to address the perennial justification of re-arrests of persons on bail on the ground of further charges.
- All efforts should be made to increase sensitization on the right to bail and also streamline procedures for bail application.
- Persons who engage in bribery around courts should be prosecuted

## The Right to a clean and healthy Environment

The 1995 Constitution of the Republic of Uganda provides for the right to a clean and healthy environment. The Constitution further puts in place a body with a responsibility of ensuring that Ugandans enjoy that right which is the National Environment Management Authority (NEMA). The Authority has made efforts to improve access to information together with the Ministry of Water and Environment as an attempt to spearhead awareness and public participation in environment matters especially protection. However efforts to effectively and efficiently protect the environment have not yet manifested.

<sup>17</sup> <https://www.independent.co.ug/kaweesi-murder-suspects-re-arrested-after-being-released-on-bail/>

<sup>18</sup> <https://observer.ug/news/headlines/61969-army-justifies-rearrest-of-kaweesi-murder-suspects>

<sup>19</sup> By Admin, "Task force to probe corruption in the judiciary unveiled," *New Vision*, August 8, 2019. Available at <http://www.newvision.co.ug/newvision/news/1505104/taskforce-probe-corruption-judiciary-unveiled> last accessed on September 2019

<sup>20</sup> Ibid

The different ways in which the right to enjoy a clean and healthy environment has over the review period been threatened include the following;

- Increasing rate of developers who are continuously destroying wetlands. i.e the giveaway of Lubigi wetland, one of the top flood guards in the Districts of Kampala, Wakiso and Mpigi.<sup>21</sup>
- Individual land titles have been issued by the Ministry of Lands in Lwera and other wetlands in Masaka Sub-region. The Chinese investors were also authorised by NEMA to operate in Lwera and also expand their rice fields in the areas of Magezi – Kizungu Ward Lukaya Town Council in Kalungu District.<sup>22</sup>
- In the same instance, it was reported that on the other part of Lwera near Mpigi District, there are individual businessmen and companies that acquired titles and are engaging in sand mining and fish farming.<sup>23</sup>

The main issue arising out of the incidents listed above is the question of who has the authority to issue out land titles, and whether due process in ensuring that the environment is protected at all times was undertaken.

It should be noted that wetlands in Uganda are held in trust by the central government or local government for the common good of the people; which has increased human activities in the name of fighting poverty and a challenge for NEMA to fully monitor environmental degradation. That notwithstanding, the effort to ensure clean and healthy environment is not effective and efficient.

### Legal issue arising:

- Whether the Government is efficiently and effectively in full control of managing and protecting resources to enable full enjoyment of the right to a clean and healthy environment.

### Recommendations:

- The role of the National Environment Management Authority, Ministry of Water and Environment, the Central Government and Local Government in protecting natural resources should be streamlined to enable proper management of the resources by these bodies.
- The National Environment Management Authority needs to enhance its oversight role in the management of natural resources.
- The mandate of NEMA on environmental issues should be respected.

### Entitlement to Legal Practice

The 1995 Constitution of Uganda states under Article 40(2) that every person in Uganda has the right to practice his or her profession and to carry on any lawful occupation, trade or business. In addition, the International Covenant on Economic, Social and Cultural Rights to which Uganda is a party under Article 6(1) provides for the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and the state will take appropriate steps to safe guard that right.

The ULS has noted continuous attacks on advocates in the course of their duty. Several lawyers have been kidnapped, tortured or illegally arrested. In this regard, the incidents listed below occurred during this review period in which entitlement to representation was threatened;

21 By Lillian Namagembe, "Kampala at risk of flooding as investor takes over Lubigi," *Daily Monitor*, July 15, 2019. Available at <https://www.monitor.co.ug/News/National/Kampala-flooding-investor-Lubigi-KCCA-Dr-Tom-Okurut/688334-5195974-pnsdz/index.html> last accessed on September 3, 2019.

22 By Malik Fahad Jingo and Al Mahdi Ssenkibirwa, "Museveni orders cancellation of titles in Lwera wetland," *Daily Monitor*, July 29, 2019. Available at <https://www.monitor.co.ug/News/National/Museveni-orders-cancellation--titles-Lwera-wetland/688334-5209352-p98c1xz/index.html> last accessed on September 3, 2019.

23 Ibid

- The murder of advocate Isaac Sendegeya who was based in Kisoro District. Advocate Sendegeya was shot dead at the entrance of his home situated in Nturo Village in Kisoro.<sup>24</sup>
- Advocate Patrick Mugisha was illegally detained in a “safe” house in Kyengera under the auspices of the Internal Security (ISO) and was later released without charge after outcry amongst others from the ULS. He was detained beyond the constitutionally mandated 48 hours without any opportunity of contacting an advocate or next of kin. Upon his release, Advocate Mugisha reported that ISO tried to coerce him to sign a memorandum of understanding with some of his clients which he declined.<sup>25</sup>
- Advocate Bonny Akol was kidnapped in Najjera by unknown people.<sup>26</sup> The Uganda Police later revealed that he had been arrested by a “sister security agency”, was in “good hands” and in a gazette area.
- The illegal arrest, abuse and assault of advocate James Mubiru together with his clients at the International Crimes Division of the High Court. His clients had just been released on bail by the Registrar of the Court; when yet to be identified persons plain clothes closed the main gate of the court premises whisked away the four suspects in the murder of the former police spokesperson Andrew Felix Kaweesi and their advocate in broad day light. The manner in which the suspects and their advocate were arrested is highly reprehensible.

The ULS issued several statements condemning these acts of kidnap, illegal arrest and detention as well as the killing of lawyers by security organs and the public.

### Legal issue arising:

- Whether the right to practice one’s profession and to carry any lawful occupation is respected.

### Recommendations:

- All security organs ought to respect the legal profession and protect/support its role in safeguarding the rights of the people.

## Freedom of expression

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 and impart information and ideas through any media regardless of frontiers. This same right is provided for under Article 29(1)(a) of the 1995 Constitution of Uganda. This freedom can be expressed through published articles, leaflets and books, television and radio broadcasting, works of art as well as the internet and social media.

The infringement of the freedom of expression was highlighted with the arrest of Pastor Joseph Kabuleta. He was arrested from a restaurant at Forest Mall Lugogo, for committing the offence of offensive communication against the President contrary to S.25 of the Computer Misuse Act 2011.<sup>27</sup> Kabuleta was arrested by security officers in civilian clothes and driven away to the Police Investigations Unit on the outskirts of Kampala where he was held incommunicado for four days without being produced in the courts of law or given access to a lawyer or next of kin, before being released, thus also infringing the constitutional

24 By Robert Muhereza & Leonard Mbishinzimana, “Gunmen kill lawyer at his home,” *Daily Monitor*, July 21, 2019. Available at <https://www.monitor.co.ug/News/National/Gunmen-lawyer-home-Isaac-Sendegeya-Mr-Maate-Bizimana/688334-5204430-dlcnppz/index.html> last accessed on September 12, 2019.

25 NTV News, “Kidnapped lawyer Patrick Mugisha says that he was being held by ISO,” August 6, 2019. Available at <https://www.ntv.co.ug/news/national/Kidnapped-Lawyer-Patrick-Mugisha-says-he-was-being-held-by-ISO/4522324-5224926-ss38bm/index.html> last accessed on September 12, 2019.

26 By Sam Waswa, “City lawyer Akol Bonny kidnapped at Najjera,” *Chimp reports*, September 5, 2019. Available at <https://chimpreports.com/city-lawyer-bony-akol-kidnapped-in-najjera> last accessed on September 12, 2019.

27 By Anthony Wesake, “Police release Kabuleta four days after his arrest,” *Daily Monitor*, July 16, 2019. Available at <https://www.monitor.co.ug/News/National/Police-release-Kabuleta-four-days-after-his-arrest/688334-5198866-xs240y/index.html> last accessed on September 9, 2019.

requirement under Article 23 of the 1995 Constitution of Uganda.<sup>28</sup> The ULS highly condemns this kind of political intimidation which is a threat to freedom of expression.

### Legal issues arising:

- Whether the right to freedom of expression is respected.

### Recommendations:

- The right to freedom of expression is unlimited if exercised without interference with the rights of others and therefore considering the fact that it's democratic, anyone should be given space to exercise it freely.
- The public should be sensitized on the right to freedom of expression with emphasis on the proper limits to the freedom.
- The culprits who illegally interfere with the right should be brought to book and face the full arm of the law for having violated this democratic right.

### Positive developments on Human rights during this quarter

We commend the Parliament of Uganda for passing the Human Rights Enforcement Act, an enabling framework for individuals. It is also gratifying to note that the police is aware of this development.

## DUE PROCESS AND CLIMATE OF LEGALITY

The concept of due process speaks to fair treatment as citizen's entitlement through the normal justice system. No person shall be deprived of the right to life, liberty or property without due process of the law.

In the review period, several incidents arose pertaining to due process and legality, alluding to the general state of lawlessness and climate of illegality in the country. They include the following;

- The ULS has continued to witness injustice displayed on Muslim clerics who have been released on bond or acquitted; but rearrested by unknown people and taken back to prisons without due process.
- Of particular note was the arrest of former Tabliq sect leader Amir Kinene who was acquitted of accusations of murder and terrorism two years ago.<sup>29</sup> Kinene was one of the eight men who were acquitted of terrorism and murder in connection with the killing of Muslim clerics by the International Crimes Division of the High Court in 2017. He was recently released, two years after he was acquitted.<sup>30</sup>
- In a separate but similar incident, was the illegal re-arrest, abuse and assault of Kaweesi suspects together with their advocate, James Mubiru. The suspects had just been released on bail by the Registrar; Her Worship Esther Nasambu at the International Crimes Division of the High Court; when uniformed and plain-clothed security officers closed the main gate of the court premises whisked away the four suspects in the murder of the former police spokesperson Andrew Felix Kaweesi and their advocate in broad day light. It should also be noted that they had already been granted bail by Justice Mugambe which had been ignored. The suspects are Yusuf Nyanzi, Jibril Kalyango, Joshua Kyambadde and Yusuf Mugerwa. It should be noted that some of the suspects in the same case were given bail on March 19, 2019 but have never been released and their bail application forms have

<sup>28</sup> Ibid

<sup>29</sup> By Ephraim Kasozi & Juliet Kigongo, "Muslim leader still in jail 2 years after acquittal, *Daily Monitor*, August 27, 2019. Available at <https://www.monitor.co.ug/News/National/Muslim-leader-jail-2-years-acquittal-OwinyDollo-Kinene/688334-5250084-ueapeh/index.html> last accessed on September 13, 2019.

<sup>30</sup> Retrieved from <https://www.ntv.co.ug/news/national/Court-of-Appeal-orders-release-of-Kinene-acquitted-for-murder/4522324-5250694-c5kvql/index.html>

never been signed by court.<sup>31</sup> They are free but still incarcerated without any reason and at the date of this report, habeas corpus applications are pending hearing.

- During this quarter, Major General Kasiirye Gwanga was accused of shooting at the trucks of timber dealers, deflating their tires on two occasions. Major General Ggwanga argued that he was saving the environment from being destroyed by loggers.<sup>32</sup> It appears that by virtue of political connections and military affiliations, he is not being held culpable for any of his actions.
- During this period, the ULS noted an affront to the dignity the Judiciary leading to undermining the powers and privileges of these institutions. The ULS noted with great concern the dramatic and chaotic abuses which included the hurling of a water bottle at the Grade One Magistrate Gladys Kamasanyu while she was sentencing Dr. Stella Nyanzi, a former Makerere University researcher on charges of cyber harassment. The Judiciary should exercise its powers without intimidation or interference. The ULS applauds the court orderlies for their immediate response of arresting the perpetrators.
- In the Nagirinya murder case, it was reported that the suspects in the murder trial were hardcore criminals who should have remained in custody. This therefore begs the question as to whether due process and objective considerations are made when releasing a suspect.

### The Recommendations:

- The Uganda Human Rights Commission should be more visible in exercising its mandate of summoning errant security agencies and, in offering remedies to the victims whose rights have been violated.
- All security agencies ought to respect the orders of the judiciary.

## TRANSPARENCY AND ACCOUNTABILITY

### The Judiciary

Article 28 of the 1995 Constitution of Uganda states that every person shall have a right to a fair, speedy and public trial before an independent and impartial court or tribunal established by law. Over a period of time, the Judiciary has been making efforts to ensure that the public enjoys this right. However, the issue of bribery and corruption remains a serious vice in the judiciary's side. To address this issue, a committee was set up by the head of the judiciary to address the allegations of bribery and corruption within the judiciary. We hope that the work of the committee will be concluded and implemented, although some have questioned the efficacy of the committee.

In a separate but similar incident it was also alleged that the judiciary wrongfully spent Shs. 34 Billion, a query which was raised by the Auditor General in the 2018 Audit report. The report indicated that the judiciary spent Shs. 7 Billion on desktops, vehicles for judges, software, furniture and water borne toilets. The permanent secretary to the judiciary Mr. Kagole Kivumbi confirmed before the Public Accounts Committee of Parliament that there was a mischarge of the funds.<sup>33</sup> The ULS notes that the Chief Justice has instituted a Committee to probe these and related allegations.

During this review period, it was also reported that a petition to the Chief Justice, Bart Katureebe was filed by over 3000 Mubende Evictees to remove Justice Mulangira off their matter. The judge has been accused of compelling them to file submissions before the completion of the pleading and conferencing process,

31 By Farouk Kasule, "Kaweesi muder suspected: free but still incarcerated," New Vision, July 17, 2019. Available at [https://www.newvision.co.ug/new\\_vision/news/1503732/kaweesi-suspects-free-jail](https://www.newvision.co.ug/new_vision/news/1503732/kaweesi-suspects-free-jail) last accessed on September 13, 2019.

32 Retrieved from <https://www.ntv.co.ug/news/national/Kasiirye-Ggwanga-vows-to-take-on-timber-dealers-loggers/4522324-5262326-28mac1/index.html>

33 ibid

which they found bizarre. The question of impartiality therefore arises.<sup>34</sup> The Chief Justice has since asked Justice Mulangira to explain himself.

### Legal issue arising:

- Whether the principle of transparency and accountability has been duly exercised by the judiciary per Article 164(2) and Objective XXVI (iii) of the Constitution.

### Recommendations:

- If probes find credible evidence, the court officials liable for mismanagement of funds should be duly prosecuted.
- More stringent measures should be developed to stamp out the vice of corruption within the judiciary as is necessitated by Objective XXVI (iii) of the Constitution.

## Issues of Democracy

On July 26, 2019, a set of electoral reforms were presented to Parliament to consolidate a resolution by the ruling NRM decision to bar candidates from running independent of their party after losing a primary. The Bills include the Presidential Elections Amendment Bill 2019, and the Parliamentary Elections Amendment Bill 2019, the Electoral Commission Amendment Bill 2019, the Political Parties and Organizations Bill 2019, and the Local Governments Amendment Bill 2019.

However, questions were raised in regards to why the Bills did not address some of issues in the constitutional judgement on elections.<sup>35</sup> There was also uncertainty as to the exact proposals approved for presentation in view of denials by the Attorney General of being party to some of the proposals. However, the Bills are under consideration by Parliament and the outcomes are awaited.

### Positive developments on accountability and transparency during this quarter

Not all was gloom and doom in the judiciary, during this quarter, the ULS noted the development of an Economic, Social and Cultural Rights violations manual on human rights adjudication which will help the judiciary and the public in pursuing effective accountability, regulation, remedies and implementation through participatory approaches like promoting public debates and intensifying-cross network strategies for investigation.

In a bid to promote transparency and accountability, the Inspector General of Police Martin Okoth Ochola directed the Director of logistics and engineering AIGP Godfrey Bangirana to leave office in a letter dated July 19, 2019.<sup>36</sup> The letter indicated that his contract was not to be renewed due to allegations of mismanaging procurement deals.<sup>37</sup> This shows transparency within the police which ULS encourages and upholds the act of the police.

In addition ULS will also like to recognize the works of police who summoned 306 Criminal Investigations Department (CID) bosses for anti-corruption training. This was done for purposes of reducing theft of files and complaints against failure to conclude criminal cases.<sup>38</sup>

The ULS also welcomes the landmark judgment made by the Supreme Court on July 26, 2019, in which it ruled

<sup>34</sup> <https://ugandaradionetwork.com/story/mubende-evictees-want-justice-mulangira-off-their-matter>

<sup>35</sup> <https://www.monitor.co.ug/News/National/Govt-presents-electoral-reforms-ignores-Constitutional-review/688334-5211182-1507te9z/index.html>

<sup>36</sup> By Fred Kiva, "IGP to AIGP Bangirana: Leave, hand over office to your junior," The Kampala Post July 22, 2019. Available at <https://kampalapost.com/content/igp-ochola-aigp-bangirana-leave-handover-office-your-junior> last accessed on September 9, 2019.

<sup>37</sup> Ibid

<sup>38</sup> Available at [https://www.facebook.com/thenewvision/posts/1015759729114078?comment\\_tracking=%7B%22tn%22%3A%22O%22%7D](https://www.facebook.com/thenewvision/posts/1015759729114078?comment_tracking=%7B%22tn%22%3A%22O%22%7D) Last accessed on September 9, 2019.

that Members of Parliament cannot unilaterally increase their remuneration without involvement of the Executive. We believe that this judgement ensures that transparency remains paramount in all proceedings within government, and also ensures for checks and balances within the three arms of government.<sup>39</sup>

The ULS acknowledges these positive developments and if they continue and are put into practice, protection of human rights and promotion of the rule of law would be promoted among UPF officers and partners.

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<sup>39</sup> <https://www.monitor.co.ug/News/National/MPs-can-t-increase-own-pay-court-rules/688334-5211296-1aegu6z/index.html>





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