THE PRACTICABILITY OF THE RULE OF LAW IN UGANDA. A CRITIQUE

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A RESEARCH REPORT SUBMITTED TO THE SCHOOL OF LAW IN PARTIAL FOR THE REQUIREMENT OF THE FULFILLMENT FOR THE A WARD OF A BACHELORS DEGREE IN LAW AT KAMPALA INTERNATIONAL UNIVERSITY

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DECLARATION

I, Ankunda Doreck declare to the best of my knowledge that this research report is truly my original and has not been submitted in the fulfillment for any award of a degree or diploma in any other institution of higher learning or university, so it is entirely out of my own efforts.

Signature .....

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Date ..16/6/2017.....

APPROVAL

This is to satisfy that this research report is done under my supervision and it is now ready for submission to the school of law in Kampala international University with my approval.

Signature ..... Date 16/06/2017.....

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DEDICATION

I dedicate this piece of work to my dear parents whose love to educate me did not stop.

I refer and will always refer to my role models, my brothers and sister who supported me spiritually, morally, academically and financially.

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ABSTRACT

The 1995 Constitution provides a broad framework for observance of the Rule of Law. In its most basic form, the Rule of Law is about the principle that no one is above the law. The principle is intended to safeguard against arbitrary governance, whether by a totalitarian leader or by mob rule. It guards against excesses by the State, its agencies and the people that would foment dictatorship and anarchy. It fosters the welfare of the people and their nation by stipulating observance of rights and freedoms, security of persons and property and effective service delivery and guarding against injustices in all spheres of life.

The Uganda Law Society (ULS) Strategic Plan (2017 – 2021) has provided for the promotion and upholding of the Rule of Law as its third strategic thrust. In a bid to roll out this strategy, the ULS has:

a) Set up a High-Level Rule of Law Advisory Panel supported by an in-house Rule of Law
b) Officer;
c) Introduced the ULS Quarterly State of the Rule of Law Report;
d) Established the Annual High-Level Stakeholders' forum on rule of law issues in October;
e) Enhanced its strategic Public Interest Litigation and Advocacy campaign;
f) Created the Coalition in Support of the Independence of the Judiciary (CISTIJ);
g) Set up a Rule of Law Club program to be rolled out in universities and secondary schools; and is
h) Working towards establishment of an effective and supportive Rule of Law Fund.

This Report is the first of the new series intended to highlight positive developments and major challenges registered during each quarter of the year with regard to the Rule of Law, and to offer proposals for improvement.

The Report selects specific incidents affecting the Rule of Law indicating their legal implications and pointing to issues of concern that require additional attention and follow-up by all the key stakeholders.For sources, the Report draws from Government documentation, the media, the legal fraternity and members of the public. In each of the Reports, issues of concern will be clustered under five main headings namely: checks and balances, due process and a climate of legality, human rights, transparency and accountability and general issues.

It is our belief that a continuous follow-up on the recommendations in the report will lead to the creation of an environment that promotes and upholds the Rule of Law at all times.Working with strategic partnerships among the JLOS institutions and stakeholders, the ULS will follow up on the practical recommendations made for the attention of policy and decision makers.

CHAPTER ONE

1.0 The Genesis of the Rule of Law

In its most basic form, the Rule of Law is about the principle that no one is above the law. The principle is intended to be a safeguard against arbitrary governance, whether by a totalitarian leader or by mob rule. It is particularly designed to guard against excesses by the State, its agencies and the people, with the goal of avoiding dictatorship and ensuring that we do not revert to a state of anarchy. It fosters the welfare of the people and their nation by stipulating observance of rights and freedoms, security of person and property, effective service delivery and guarding against injustices in all spheres of life[1].

According to the 2016[2], Uganda ranks 105thout of 113 countries assessed during the period. This ranking brings Uganda to 10 positions lower than the 2015 ranking[3]. Hence, it is clear that the Rule of Law continues to decline on account of issues such as the level of corruption, the disregard of court orders, executive excess, weaknesses in the justice system, police brutality, unlawful arrests and detention, and malicious prosecutions among other negative developments. The economy is undergoing shocks and pressures with negative consequences because of the linkage between the Rule of Law and overall development.

While in the 1990s Uganda was largely regarded as a success story with respect to Rule of Law and good governance issues, recent statistics are less flattering. According to various reports, Uganda is a country with a superficial democracy, characterized by a semblance of the Rule of Law but in actual fact the respect of the rule of law is declining.

As part of its 2017 to 2021 Strategic Plan, the ULS has adopted a more proactive approach in dealing with issues relating to the rule of law in a bid to curb impunity, promote transparency and ensure the observance of due process of the law at all times. Under Strategic Objective 3 of the Plan which is "to promote the Rule of Law and human rights protection" the ULS shall continue to protect and assist the public in Uganda in all matters touching, ancillary or incidental

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[1] ULS State of Rule of Law Report, 2017
[2] World Justice Project Rule of Law Index
[3] *The change in rankings was calculated by comparing the positions of the 102 countries measured in 2015 with the rankings of the same 102 countries in 2016, exclusive of the 11 new countries indexed in 2016*

to the law and to assist the Government and the courts in all matters affecting legislation and the administration and practice of law in Uganda; respectively.

The achievement of the objective entails creating strategic partnerships with relevant stakeholders including the JLOS institutions, to carry out research, produce and share evidence-based position information on relevant issues. This Report is among the many steps taken towards the achievement of the objectives of ULS with respect to the Rule of Law.

1.1 Background of the study

The rule of law and access to justice are fundamental to ensuring sustainable change and development and should be seen, not as ends in themselves, but as tools in the promotion of other rights. It is not enough to have laws enacted or justice institutions rehabilitated, these laws must be implemented and systems operationalized to ensure that they work for the people. Indeed, in the last decade or so, UNDP has shown a conceptual shift in its approach to the rule of law and access to justice, viewing and applying these principles comprehensively in reforms that seek to eliminate poverty and strengthen social justice, human development, security, and democratic governance.

In this regard, UNDP has undertaken numerous interventions within the Eastern and Southern Africa (ESA) region. Progress has been made on many fronts, from successful referendum elections conducted in Uganda and Kenya and general elections held in Rwanda, Tanzania, Zambia and other countries in the region, to constitutions and laws enacted in Kenya, Zambia and Mozambique; justice institutions rebuilt in several countries; access to legal aid enhanced in Rwanda; and progress achieved in women's rights particularly in increased representation in political office across the region.

Tangible results have been attained in many crucial areas. For instance, the recently released United Nations MDG Progress Report, July 2011 reports gains in the reduction of global poverty which is estimated will sink below 15% in 2015; increased education enrolment with 18% gains in Sub-Saharan Africa alone between 1999 and 2009; reductions in deaths due to Malaria; a decline in the number of deaths of children under the age of five from 12.4 million in 1990 to 8.1 million in 2009; increased access to water with an estimated 1.1 billion people in urban areas and

723 million people in rural areas gaining access to an improved drinking water source between 1990 and 2008. In many cases, this progress has been reinforced by strong legal and justice systems and credible reforms in the rule of law and access to justice.

A key concern, nonetheless, is that despite this improvement, the most vulnerable including the "poorest of the poor and those disadvantaged because of their sex, age, ethnicity or disability" remain marginalized and excluded from the benefits so far attained. This state of affairs has been exacerbated by increasing inequality, multiple crises and persistent violent conflicts in many regions of the world, weak legal and justice systems and non-adherence to the rule of law.

While stories of reform are plentiful, stories of sustainable change as a result of these reforms are fewer and far between. Interventions have, in a number of cases, not translated into sustainable impact primarily as a result of the fragile context within which these reforms are implemented and the emerging global and regional context (including the global financial crisis, rising crime, global terrorism and HIV/AIDS) that pose new challenges for development programming.

The evolving global and regional context requires engagement with the distribution of power and resources, and renewed commitment to fundamental values and norms in order for the African continent to develop sustainably. Without bold and often contentious reforms the fragile situation in the region, shifting power relations and growing inequality are likely to remain unaddressed.

UNDP possesses the required technical capacity to engage with governments and partners. However, current development approaches that focus on technical capacity, while useful, are often inadequate or inappropriate to address injustices and major human rights violations especially in the case of fragile, conflict and postconflict situations.

The co-existence of UNDP with other UN agencies including the UN Missions supported by Department of Peacekeeping Operations (DPKO), or the Department of Political Affairs Bureau particularly in fragile and conflict settings aims at ensuring a division of roles. In practice, however, the division of roles and responsibilities is often insufficiently articulated and this has an impact on country programming regarding rule of law, especially when handling sensitive or politically charged issues.

The structural and root causes of inequality in society that concentrate resources, power and privilege into the hands of a few, should be increasingly central to development interventions. As each context is different, in-depth assessments and studies are required to support any intervention. A substantial challenge, nonetheless, is that addressing these structural problems requires long-term engagement and commitment and making difficult decisions.

Long-term planning and programming, funding and engagement are critical to addressing underlying complexities and vulnerabilities. Yet sustainable resources for funding rule of law and access to justice interventions over the long term do not exist. This may result, in some cases, in projects that are ad hoc and fragmented and whose sustainability is inherently ineffective and limited. Legal pluralisms are a reality in the region. While utilized by many individuals and communities in settling disputes, inherent to these alternative justice systems are weaknesses that can be used to exploit the vulnerable.

Lessons from Malawi, Botswana, Uganda and Kenya indicate that it is essential to systematically engage with these multiple justice systems so as to understand what works, what doesn't work, and how these systems can be strengthened to safeguard the rights of the vulnerable and ensure fair justice outcomes for individuals and communities.

1.2 Statement of the problem

1.3 Purpose of the study

The study aimed at examining the analysis the doctrine and the application of the rule of law in Uganda.

1.4Objectives of the study

1. To advance social, economic and cultural rights
2. To protect and promote the rights of vulnerable and marginalized groups
3. To assist societies to withstand crisis
4. To drive and further sustain growth that improves quality of life for all.

1.5Research objectives

1. What are advance social, economic and cultural rights
2. How to protect and promote the rights of vulnerable and marginalized groups
3. How to assist societies to withstand crisis
4. How to drive and further sustain growth that improves quality of life for all.

1.6 Scope of the study

1.6.1 Geographical scope

The research covered all the critically analysis the doctrine and the application of the rule of law in Uganda including the institutions, governance and government bodies in-line with rule of law in Uganda. The research was done in Kampala which lies within the Kingdom of Buganda, in Central Uganda.

1.6.2 Time scope

The study was covered within a period of 3 month February 2017-June 2017.

1.7 Methodology

Methodology utilized adopted qualitative in nature as, according to Leedy[4], this methodology is aimed at description. By utilizing qualitative methodologies the research is able to evaluate both formal and normative aspects of political activity. Qualitative research is used in several academic disciplines, including political science, sociology, education and psychology. According to Peshkin (200:134) in Patton, it usually serves one or more of a set of four purposes: description and interpretation.

[4] Established on 2001:148

CHAPTER TWO

LITERATURE REVIEW

3.0 Introduction

UNDP has over the last decades supported access to justice, rule of law, and security reforms through the provision of financial and technical support and advisory services in a broad range of related areas such as: criminal justice, prison and police reform; sexual and gender-based violence; public legal aid systems, legal awareness and legal counselling; informal justice systems; reform of family and inheritance law and women's land rights[5].

Traditional rule of law and justice reforms were largely supply oriented and focused on addressing challenges in the justice sector that included enacting new policies and legislation and repealing outdated laws that have perpetuated discrimination; removing procedural technicalities that have obstructed justice; enhancing the geographical presence of justice sector institutions so as to address the inaccessibility of the formal justice system; and capacitating overstretched and ill-resourced justice systems. Nevertheless, in the last decade, the provision of legal aid has expanded and the awareness of rights holders has been enhanced while working with and capacitating informal justice systems to deliver justice that resonates with legal principles. Examples of specific programmes that have been implemented or facilitated by UNDP in the region include:

Supporting governments to formulate national justice reform strategies, for example, the Access to Justice Programme in Malawi, the Justice Law and Order Sector-Wide Approach in Uganda, the Legal Sector Reform Programme in Tanzania; the reform and modernization of the justice system in Swaziland, Angola and the Comoros; and the review and reform of laws in Rwanda.

Enhancing legal awareness and legal aid through supporting awareness-raising activities such as theAmkeni Wakenya's Access to Justice Project in Kenya; supporting interventions to develop a

[5] UNDP 2011: Global Thematic Programme for Accelerating Access to Justice for Human Development, 2009-2013 p11. The document highlight some of the interventions UNDP has undertaken based on a 2006/2007 UNDP survey carried out to assess its justice programming since 2004.

legal aid policy and institutional framework in Swaziland; capacity-building paralegal associations in several countries and strengthening legal aid service providers.

Facilitating adjudication through training judicial officers, including the establishment of a SADC Judicial Secretariat based in Johannesburg so as to enhance the integrity and independence of the SADC judiciary which has been under threat from executive interference in several countries in the region.

Enhancing the functionality and accessibility of adjudication systems by establishing centres for administration of justice and strengthening informal justice mechanisms including; capacitating court presidents, clerks and assessors in the traditional courts in Swaziland; capacitating the Local Council Courts through legislative enactments and developing regulations and manuals and providing training for local councilors in Uganda and the decentralization of the courts and reconstructing the basic echelons of the traditional justice systems in Sierra Leone.

Supporting transitional justice initiatives in post-conflict areas, for example, through partnerships with traditional leaders in northern Uganda, and establishing a Justice and Confidence Centre in Uganda, and training Justices of the Peace and their clerks and bailiffs for duty in rural locations during the critical post-conflict period in Sierra Leone.

Supporting reforms aimed at anchoring democratic governance, community policing and human right straining in prisons and for police in Tanzania, Kenya, Mozambique and Ghana; electoral reforms and civic education in various countries in the region; constitutionalism in Uganda and Kenya. Implementing programmes on gender justice across the region.

Consider the case of Brian Kelly. On May 24, 2007, Kelly was riding with a friend in the town of Carlisle, Pennsylvania. Officer David Rogers of the Carlisle Police Department pulled Kelly's friend over for speeding. Rogers told the two that the traffic stop was being recorded with a microphone attached to his uniform. Kelly, who had a video camera with him, began recording the stop as well. When Rogers returned from writing a ticket, he noticed Kelly's camera. Rogers demanded Kelly turn the camera off and hand it over to him. Kelly,' complied.

Rogers then returned to his car and called John Birbeck, an assistant district attorney in Cumberland County. Rogers asked Birbeck if Kelly's recording violated Pennsylvania's wiretapping law. Birbeck incorrectly told him it did. Rogers then called in back-up officers and placed Kelly under arrest. During the arrest, Rogers "bumped" (the term Kelly used in his lawsuit) Kelly, causing a staple from a rugby injury to rupture, causing Kelly's leg to bleed. Kelly spent the night in jail. He was eventually charged with a felony punishable by up to seven years in prison. Cumberland County District Attorney David Freed would later tell the Patriot-News that while he sympathized with Kelly not being aware that what he did was illegal, and that he might (graciously!) allow Kelly to plead to a misdemeanor, "Obviously, ignorance of the law is no defense."

Here's the problem: Freed was the one who was ignorant of the law. So was Birbeck. And so was Rogers. The Pennsylvania Supreme Court ruled in 1989 that recording on-duty public officials is not a violation of the state's wiretapping law because public officials have no legitimate expectation of privacy while they're on the job. The order for Kelly to stop videotaping was illegal. So was Kelly's arrest and his incarceration. Freed eventually dropped all charges.

Kelly filed a civil rights lawsuit against Rogers and the town of Carlisle. In May of last year, Federal District Court Judge Yvette Kane dismissed Kelly's suit. The reason? As a police officer, Rogers is protected by the doctrine of qualified immunity. In order to even get his case in front of a jury, Kelly has to show that Rogers (a) violated Kelly's civil rights, and (b) the rights Rogers violated have been clearly established. Even if Kelly can meet those two burdens, he must also show that Roger's actions in violating Kelly's rights were unreasonable.

So it isn't enough that the police are wrong about the law. They have to be very obviously wrong for you to collect any damages from a wrongful arrest.

Kane found that because Rogers sought advice from the local prosecutor's office it was reasonable for him to act on that advice, even if the advice happened to be wrong on the law. Moreover, Kane found that because the federal appeals courts have yet to find a specific right to make audio recordings of police, that right is not yet clearly established. Kelly is appealing.

Suing Birbeck isn't likely an option for Kelly, either. Prosecutors enjoy an even stronger protection called absolute immunity. Under absolute immunity, there is virtually nothing a prosecutor can do in the course of his job that would subject him to a lawsuit.

The contradiction couldn't be starker. Kelly, a citizen who neither works in law enforcement nor has been to law school, was arrested, jailed, and charged with a felony for not knowing that an antiquated law pertaining to wiretapping prevented him from using a wireless video camera to record a traffic stop that the police officer himself was recording. Even if Kelly had broken the law, at worst he made a recording of Rogers without Rogers' consent in addition to the recording Rogers was already making. Rogers wasn't harmed at all. And for that, Kelly could have gone to prison for seven years.

On the other hand, Freed, Birbeck and Rogers are all paid by taxpayers to know and enforce the law. Freed and Birbeck presumably went to law school, and presumably passed the Pennsylvania bar exam. Knowing the state's criminal code and the court decisions that affect it is a fairly integral part of their jobs. The harm caused by their ignorance of the law is far from insignificant: A man was wrongly arrested, detained, and jailed. His First Amendment rights were violated. And he was injured in the course of his arrest. Yet they won't be going to jail. In fact, they're unlikely to be sanctioned or punished at all.

And Kelly isn't the only person this has happened to. Last month, Allegheny County, Pennsylvania settled a lawsuit with Elijah Matheny, who was arrested and charged in 2009 for recording the police with a cell phone camera. Part of the settlement requires the Allegheny County DA's office to instruct local police that citizens in Pennsylvania have the right to record on-duty police officers.

That's a start. But it's one county, in one state. There have also been recent wiretapping arrests of citizens recording police in Maryland, New Hampshire, and Oregon, despite the fact that all three states have privacy provisions in their wiretapping laws, and that no court in the country has ruled that on-duty cops have an expectation of privacy in public spaces or while performing their official duties. The justification for those arrests is that the citizens of those states should know that antiquated laws covering the tapping of phone lines also make it illegal to record a

police officer with a cell phone. But just as in Pennsylvania, it is law enforcement officials themselves who are wrong on the law. And even in the rare case where a wrongful arrest leads to a cash settlement, it's generally paid for by taxpayers, not the law enforcement official who broke the law in the first place.

And the problem goes beyond wiretapping laws. Last month, police in Washington, D.C. detained and threatened to arrest Jerome Vorus, who photographed a traffic stop in Georgetown. D.C. Police Chief Kathy Lanier subsequently acknowledged on a radio call-in show that there's no law against photographing police in D.C., but then went on to excuse her officers' violation of the photographer's rights, explaining that cops don't like having their photos taken because "we can have our pictures end up on all sorts of websites, and that can be dangerous for us." The message to D.C. cops? Citizens are permitted to photograph you, but nothing's going to happen to you if you stop those citizens from exercising their rights.

Carlos Miller, who has documented dozens of these incidents on his Photography Is Not a Crime blog, has twice been prevented by private security and public police from taking video at a Miami Metrorail station, despite getting assurance from Metrorail Safety and Security Chief Eric Muntan that shooting non-commercial video on the train and in its stations is perfectly legal. Last month, The Washington Post catalogued numerous instances where people were arrested, detained, or warned for taking pictures or video in public despite having the law on their side. The New York Times reported similar incidents, including one where a man was prevented from taking photos at an Amtrak station for a photography competition sponsored by Amtrak.

Every person is presumed to be aware of the law

The maxim "ignorance of law is not an excuse" is sometimes thought to be equivalent to the statement "Every person is presumed to be aware of the law". But on a closer analysis it can be seen that both statements are not one and the same. There is absolutely no justification for the presumption that everybody is aware of all the laws in operation. It is a ridiculous presumption if not an arbitrary one. If everybody knows the law, then what is the necessity for the courts? If everybody knows the law then there is no need for consulting an advocate or a solicitor. We quite often find that District Court is reversed by the High Court which is in turn reversed by the

Supreme Court. Is it not because the High Court was ignorant of the law? If High court was aware of the law then why Supreme Court reversed the judgment of the High court? Thus it is crystal clear that High court was ignorant of the law. It is also equally possible that the Supreme Court itself may over rule or reverse its own decision and then it is quite clear that the Supreme Court was ignorant of the law while deciding the case at the first instance.

Over a hundred and thirty years ago, Maula J. pointed out in Martindalev. Falkne.[6] There is no presumption in this country that every person knows the law: it would be contrary to common sense and reason if it were so."

Justice Lush in R v Tewkesbury corporation[7] observed that "there is no maxim which says that for all intents and purposes a person must be taken to know the legal consequences of his r acts;" The great common law judge of the 20th century Lord Atkin observed in Evans Vs Bartam as follows "The fact is that there is no and never has been a presumption that everyone knows the law. There is the rule that ignorance of the law does not excuse, a maxim of very different scope and application"

The position in England

The English judges long back kicked aside the maxim whenever situations warranted. Scrutton L.J once said "it is impossible to know all the statutory law and not very possible to know all the common law". It was also the accepted position that the rule ignorance of law does not excuse cannot be pleaded to escape the consequences of criminal law, yet the law can take notice of the existence of doubtful point of law about which a person may be ignorant.

According to Lord Westbury in Cooper v. Phibbs, L. R. 2 H. L. 170, the word "Jus" in the maxim ignorant juris baud excusat is used in the sense of "general law, the law of the country," not in the sense of "a private right." The true meaning of that maxim is that parties cannot excuse themselves from liability from all civil or criminal con sequences of their acts by alleging ignorance of the law, but there is no presumption that parties must be taken to know all the legal

[6] '[184612 CB 706
[7] (LR 3 QB 629)

consequences of their acts, and especially where difficult questions of law, or of the practice of the court are involved.

At this juncture, it may be worthwhile to take note of the observations of Lord Westbury in Spread V Morgan[8] which is reproduced below: "it is true that the law will not permit the excuse of ignorance of law to be pleaded for the pose of exempting persons from damages for breach of contract or for crimes committed by them but on other occasions and for other purposes it is evident that the fact that such ignorance existed will sometimes be recognised so as to affect a judicial decision"

Thus it is clear that the maxim has been applied in England only when facts and circumstances justify its application.

Position in America

The status given to the maxim in the US is not different from that of England or India. Attention is invited to the celebrated case of Lambert v California, a case decided by the Supreme Court in America where it was held as follows

"When applied to a person who has no actual knowledge of his duty to register, and where no showing is made of the probability of such knowledge, this ordinance violates the Due Process Clause of the Fourteenth Amendment."

In **Cheek v CHEEK v. UNITED STATES**[9], the Supreme Court of America made the observations which are reproduced below.

"The general rule that ignorance of the law or a mistake of law is no defense to criminal prosecution is deeply rooted in the American legal system. See e.g., United States v. Smith,[10] Barlow v. United States[11],: Based on the notion that the law is definite and knowable, the common law presumed that every person knew the law. This common law rule has been applied

[8] 11 HLcase588(602)
[9] 11 HLcase588(602)
[10] 5Wheat. 153, 182 (1820)
[11] Pet. 404,411(1833)

by the Court in numerous cases construing criminal statutes. See, e.g., United States v. International Minerals & Chemical Corp[12].,; Hamling v. United States,[13]: Boyce Motor Lines, Inc. v. United States[14],.

The proliferation of statutes and regulations has sometimes made it difficult for the average citizen to know and comprehend (498 U.S 192 at 200) the extent of the duties and obligations imposed by the tax laws. Congress has accordingly softened the impact of the common law presumption by making specific intent to violate the law an element of certain federal criminal tax offenses. Thus, the Court almost 60 years ago interpreted the statutory term "wilfully" as used in the federal criminal tax statutes as carving out an exception to the traditional rule. This special treatment of criminal tax offenses is largely due to the complexity of the tax laws.

In United States v. Murdock[15], the Court recognized that: "Congress did not intend that a by person by reason of a bona fide misunderstanding as to his liability for the tax, as to his duty to make a return, or as to the adequacy of the records he maintained, should become a criminal by his mere failure to measure up to the prescribed standard of conduct."

3.1 Major trends in the rule of law and access to justice

In the last decade, there has been a shift in UNDP's work from the traditional legalistic interpretation of the rule of law and access to justice to a broader understanding of the concepts, in which the focus is placed on enhancing equal access to opportunities and on the role of the legal systems in enhancing access to sustainable development. Key factors for this shift have included: the changing African governance architecture with a specific quest for shared African values as shown in the African Peer Review mechanism; the vision of building capable, democratic, developmental states in Africa focussed on public service delivery, accountability, human rights protection and promotion, and increased focus on the relationship between justice and development with more emphasis on the MDGs, economic justice and inclusive growth. The major trends have included:

[12] 402 US 558 (1971)
[13] 418 U.S 87(1974)
[14] 342 U.S 337 (1952)
[15] 290 U.S 389 (1933)

3.1.1 Policy and legislative reforms

From repealing outdated and discriminatory laws and enacting new laws that are in accordance with international and regional human rights standards, to wider democratic governance reforms including facilitating constitution making, electoral reforms, strengthening key oversight bodies including national parliaments and national human rights institutions.

3.1.2 Specific institutional reforms

Training judges on the adoption of sector-wide approaches and legal sector reform programmes for improved justice service delivery.

3.1.2 Legal empowerment

Legal empowerment of the poor and marginalized groups through legal assistance and awareness of innovative approaches on legal pluralisms and alternative justice mechanismsand legal protections for economic and social rights claims.

3.1.2 Crime prevention strategies

Community policing, penal reforms for broader engagement on security sector reforms, transitional justice mechanisms and an increased focus on creating an environment conducive for economic development.

3.1.2 Gender equality programming

Gender mainstreaming and focusing on women's security in the public sphere to increasing women's legal and economic empowerment and emphasising the private sphere including the home (in issues of domestic violence) and work place (equal work for equal pay and sexual harassment).

3.1.3 Added emphasis on commercial and economic governance reforms

Trade in both the formal and informal sectors, public financial management, anti-corruption, and land, energy and climate change adaption.

Additional focus on human rights-based approachesin development programming including participation, non-discrimination and inclusion of vulnerable groups, empowerment of both rights holders and duty bearers and accountability for human rights-based outcomes.

CHAPTER THREE

A CRITICAL ANALYSIS OF THE APPLICATION OF RULE OF LAW

2.0 Introduction

The Rule of Law has been defined by the UN Secretary General[16] as "a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency."

2.1 Checks and Balances

The Rule of Law ideally requires those who govern to limit their power to whatis confined in the law. The constitutional principle of the Separation of Powers isdesigned to ensure that there is a balance of power and that no one organ of theState becomes overly powerful in relation to the others and especially with respectto the population at large.

The three arms of government are separate but mutually supportive in exercising theirfunctions in order to prevent the abuse of power. A system of Checks and Balanceshas been adopted by modern societies by putting in place constitutional, institutionaland non-governmental constraints to limit the reach of government officials. Theessence of the system is that governmental power should not go unchecked as itmay lead to abuse of authority, wasted resources, and ineffectiveness in achievingthe most basic purposes of government.

During the reporting period, the following issues pertaining to the observance ofchecks and balances arose:

[16] UN, 2004: Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies."

2.2 The award of UGX 6 Billion Bonus Payment by Governmentthrough the Uganda Revenue Authority

42 public officials received a total of UGX 6 billion from H.E. the President YoweriMuseveni as a reward (dubbed the "presidential handshake") for their participationand success in arbitral proceedings in two tax disputes against Heritage Oil and GasLtd (HOGUL) and Tullow Oil Uganda Ltd.

The issue triggered public outrage and raised fundamental questions regarding thelegality and the procedural propriety of the award. In the absence of an officialpolicy, concerns were raised that such awards would set a dangerous precedent andprovide a foundation for future payments of large bonuses by those who claim tohave contributed in one way or another in this and future similar ventures when theoil money begins to flow.

The Parliamentary Committee on Commissions, Statutory Authorities and StaffEnterprises (COSASE) was subsequently tasked to investigate the circumstances ofthe handshake. Among other stakeholders[17], the ULS President was invited to meetwith the members of the Committee on 20th February 2017 to offer guidance on theprocedural propriety of this award.

The ULS offered a detailed position[18] noting *inter alia* that although it has severally beenopined by among others the Attorney General (who is the Principal Legal Advisor to the Government of Uganda) that the awards were authorized by the President under Articles 98 and 99 of the Constitution, a careful reading of the said articles does not afford the President carte blanche to make such awards to public servants or indeed to any other individual without a supportive legal framework. A detailed reading of the said Articles reveals that the prerogative power asserted by the Attorney General and the recipients of the award is not absolute and must be exercised in accordance with the Constitution.

If the President is to exercise his prerogative to reward individuals who have made an outstanding contribution to public service through monetary rewards that will have an effect on

[17]Including the Uganda Revenue Authority, the Attorney General, the Ministry of Energy and Mineral Resources among others.
[18]The detailed ULS Legal Opinion on the Legality of the award of Uganda Shillings Six Billion awarded to public servants for winning arbitration case with M/s Heritage Oil & Gas Limited.

the Consolidated Fund; the same must be done through an Appropriation or Supplementary Appropriation Act.

The Attorney General's Chambers was affected by a conflict of interest which compromised the ability of the office to provide unbiased technical advice to the President, given that several officials in his Chambers were reported to have been beneficiaries of the award.

Furthermore under Section 58[19], withdrawals from the Petroleum Fund must be done strictly via an Appropriation Act and upon sanction of the Auditor General. In the instant case, the award was alleged to be a withdrawal from the Petroleum Fund. If that was indeed the case, such award ought to have been done in accordance with the above-mentioned law.

Under Section 32 (1)[20]the withdrawal of any monies from the Consolidated Fund can only be executed by a warrant of expenditure issued by the Minister of Finance to the Accountant General upon issuance of a grant of credit by the Auditor General.

2.3 Due process and the climate of legality

The concept of due process speaks to fair treatment as a citizen's entitlement through the normal judicial system. No person shall be deprived of the right to life, liberty or property without due process of law. It guards against practices and policies which violate basic precepts of fundamental fairness in court and related proceedings.

At its very basis, the principle of legality can be described as a mechanism to ensure that the state, its organs and its officials do not consider themselves to be above the law in the exercise of their functions but remain subject to it.

Over the review period, the following incidents pertaining to the due process of law and legality arose:

[19] The Public Finance Management Act (PFMA)
[20] The Public Finance Management Act

2.4 Constitutional Court Decision on Interim Orders

On the 23rdFebruary 2017, three Justices of the Constitutional Court (namely Fredrick Egonda-Ntende, Kenneth Kakuru, and Elizabeth Musoke JCC) delivered a landmark decision in the case of ***Murisho Shafi & 5 Others v. Attorney General& Inspectorate of Government***[21]. The main import of the ruling was that any decision rendered by a single Judge or a panel of three Justices in a constitutional matter did not conform to the jurisdictional requirement of Article 137(2)[22] stipulates as follows: "When sitting as a Constitutional Court, the Court of Appeal shall consist of a Bench of five members of that court"

The ruling was of considerable significance on account of the fact that since the 1995 Constitution was enacted, several interlocutory matters before the Court have been decided by a Coram of fewer than five members. Indeed, a practice had developed in which a single judge of the court as in the Eric Sabiiti ruling reviewed in the previous section of this report would preside over a matter and deliver a ruling. Many of those rulings had the effect of stifling further action on the substantive cause. For instance, interlocutory orders by a single judge of the Court have prevented the continuance of prosecutions at the Anti-Corruption Court and by the Director of Public Prosecutions.

Therefore, in making their judgment in the Murisho case the judges must have been alive to the fact that interim orders issued especially by single Judges even when well-intentioned had been grossly abused by both courts and litigants. Indeed, in the recent past the ULS has expressed its dissatisfaction with some of the decisions issued by a number of justices of the Constitutional Court in outright disregard of the law and best practices.

In his ruling, Justice Egonda-Ntende stated that fidelity to the law (an essential strand underpinning the Rule of Law) would compel the Court of Appeal to respect the provisions of Article 137(2), however inconvenient; the inconvenience in this case being the necessity of assembling a full Bench of the Court to determine an application for interim relief. In making this recommendation, the court was also alive to the fact that decisions made without jurisdiction are a nullity whether declared so or not.

[21]Constitutional Application No.2 of 2017; < http://www.ulii.org/ug/judgment/constitutional-court/2017/1/>.
[22] The Constitution of Uganda 1995

Controversy has however been created by the consequential orders and directives issued by Justice Kakuru. In addition to an order referring the matter before them to a coram of five Justices of the court, Justice Kakuru made the following consequential orders:

(i) All interim orders issued by a single Justice of the Constitutional Court which are still in force are null and void and of no effect;

(ii) Any interim or substantive orders of injunction issued by a coram of three Justices of the Constitutional Court which are still in force are null and void and of no effect; and

(iii) The Registrar of the court was directed to place all pending constitutional applications before a full coram of the Constitutional Court for determination.

Such applications should include all those made by either a single justice or a coram of three but whose rulings had not been delivered by the time of the ruling.

A number of clarifications need to be made with respect to Justice Kakuru's ruling:

(i) The majority decision in the case is that by Justices Egonda-Ntende and Musoke;

(ii) The views of a minority judge although relevant, do not carry the day;

(iii) These consequential orders are not valid unless the same issue is decided by a full Bench of the Constitutional Court under Article 137 (2) of the Constitution; and

(iv) In any case the orders will not be binding on parties not privy to the Murisho case.

Despite the above, the ruling in the Murisho case presents an opportunity to reflect on the current status of the Constitutional Court given the experience of the last several decades.

2.5 Non–Compliance with Court Orders

On 20thFebruary 2017, the Jinja Chief Magistrate H/W Simon Kaggwa ordered that the Prime Minister of the Rwenzururu Kingdom, Mr. Johnson Thembo Kitsumbire and others who were arrested following the Kasese incident be transferred from Kirinya Government Prison in Jinja to

Luzira Prison where they could receive proper medical attention. The Uganda Prisons Service however did not comply with this order.It has been established that on two recent occasions, the sick prisoners have not been transferred from Kirinya to Luzira to receive treatment as court ordered[23].

In response, the Jinja Chief Magistrate summoned the Commissioner General of Prisons, Dr. Johnson Byabashaija to appear before him on 6th March 2017 for "contempt of court". It is not yet established whether the Commissioner answered the summons.

This is not an isolated development as there have been many other instances of state agencies failing to comply with court orders.

Legal issues arising:

Under Section 117[24], it is an offence to disobey any order, warrant or command duly made, issued or given by any court and the same is punishable by imprisonment for two years.

Recommendations:

There is a need to institute measures and mechanisms to deter the recurrence of similar acts, commissions and omissions of breach and non-compliance with court orders.

There is need for continuing education/sensitization of law enforcement agencies and other stakeholders on their constitutional and legal obligations with regard to implementing court orders.

2.7 Crisis at the Uganda National Chamber of Commerce and Industry

On 2nd March 2017, the Chairpersons of some of the branches of the Uganda National Chamber of Commerce and Industry (UNCCI) petitioned[25] the ULS to intervene as per its statutory

[23]Prisons Boss Byabashaija Summoned over Sick Prisoners http://www.theugandatoday.com/news/2017/02/prisonsboss-byabashaija-summoned-over-sick-prisoners/.
[24] The Penal Code Act of Uganda
[25]See Letter from the UNCCI dated 2nd March 2017 and entitled "Petition to the Uganda Law Society about the Crisis at the Uganda National Chamber of Commerce and Industry".

mandate in what has become a crisis at the UNCCI following a botched Annual General Meeting (AGM) and Elections. These events which according to the UNCCI Constitution should have been held in December 2016 were suspended by Government citing administrative gaps and security concerns and Government is yet to constitute a framework within which the AGM will take place. The Board of Directors' term expired in September 2016 rendering them illegitimate and without mandate. A section of the members of the UNCCI have accused its leadership of grossly mismanaging the institution and have filed a court case against the AG[26].

The importance of the UNCCI cannot be understated as it is a key driver of economic growth by promoting investments and job creation, business skills development and linkages, global trade and export opportunities, business mentoring and entrepreneurship.

The State's action in blocking the elections of the UNCCI without working with the members of the Chamber to resolve the matter raises concerns about the arbitrary interference by Government in the affairs of private institutions.

2.7.1 Human Rights

The Universal Declaration of Human Rights (UDHR) states that everyone has the right to life, liberty and security of person. Its preamble explicitly recognizes the centrality of fundamental rights to the Rule of Law, stating that "it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law".

The Declaration further provides that no one shall be subjected to arbitrary arrest, detention or exile and that everyone has a right to be presumed innocent until proven guilty. This declaration was adopted by Chapter Four of the 1995 Constitution of the Republic of Uganda which stipulates the protection of fundamental rights and freedoms including the rights of the accused under the law as well as freedom of opinion and expression.

[26]Miscellaneous Application No. 932 of 2016 and HCT-00- CV-MC-0326-2016.

Article 23[27]provides for the protection of personal liberty while Article 24 of the same provides for the respect for human dignity and protection from inhuman treatment. Other national legislations that impact on the protection of human rights include the Police Act: the Magistrates Court Act; the UPDF Act and the Anti-torture Act. Despite the law, Uganda still faces challenges in their enforcement, which inevitably affects the enjoyment of the rights created therein.

The following issues relating to the observance of human rights arose during the review period.

2.7.2 Arbitrary Arrests and Detentions

Over the period under review in this report, the ULS conducted several consultations with the police concerning the issue of arbitrary arrest and detention. The highest number of registered complaints pertains to the arbitrary arrest of suspects conducted by plain-clothed officials, without proper identification or arrest warrants. Those arrested were often held for long periods during which they were denied contact with their lawyers or families, tortured or otherwise ill-treated and denied access to medical care. What is of great concern is that arbitrary arrests in Uganda are increasingly becoming the norm. On Sunday 12thMarch 2017, a Kampala Capital City Authority Mr. Mubarak Kalenge was kidnapped and days later found with serious injuries.[28] Several unnamed individuals are reported to have been taken into police custody on suspicion of having played a part in this incident.

The ULS also made consultations with various human rights agencies including the Uganda Human Rights Commission (UHRC) and these revealed that some suspects are subjected to flogging during these extra-judicial incarcerations. Reported methods of torture include: severe beatings; confinement in very small, cramped spaces; deprivation of light, food and water; and denial of medical treatment. In one case, a male detainee was reported to have been threatened with rape. Though some of these complaints are brought before the UHRC, the duration taken to hear and conclude a matter (on average 46 months) is untenable and unsustainable. Under the Rule of Law, effective remedies, notably in providing recourse to any person who alleges that her or his rights have been violated, is essential. Without such recourse, justice is of little use.

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[27] The 1995 Constitution of the Republic of Uganda

[28] Andrew Bagala, "How KCCA lawyer survived kidnap," Daily Monitor, March 15, 2017: pp. 4 and 5.

Article 23[29]provides that "no person shall be deprived of personal liberty" except for certain cases such as the execution of a sentence or under a court order; preventing the spread of an infectious or contagious disease; the case of a person of unsound mind; for purposes of preventing unlawful entry into the country, among others. A person arrested under Ugandan law has the following rights: the right to be kept in a place authorised by law; the right to be informed in a language they understand the reasons for the arrest, restriction or detention and of their right to a lawyer of their choice; the right to be brought to court as soon as possible but not later than 48 hours; and the right to protection from torture and other cruel, inhuman or degrading treatment or punishment.

Legal issues arising

Article 9 of the UDHR stipulates that no one shall be subjected to arbitrary arrest, detention or exile. The above unlawful arrests contravene this law.

Article 28 of the 1995 Constitution stipulates that in the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law. The lengthy hearing processes at the UHRC Tribunal occasion a delay in accessing justice which contravenes this provision.

Article 8 of the UDHR stipulates that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Recommendations

Those institutions that play an oversight role in relation to pre-trial detention such as the Police should be strengthened through capacity-building in order to ensure the efficient performance of their mandates.

[29]The 1995 Constitution of the Uganda

Sufficient resources should be allocated to facilitate an increased capacity to investigate complaints, as well as to facilitate the prevention of these violations and public education on the same.

The Uganda Human Rights Commission Tribunal should work towards reducing the time it takes to conclude a human rights matter.

2.7.3 Freedom of Association

On 2nd February 2017, it was reported in the media[30] that the Parliamentary Local Government Public Accounts Committee (LGPAC) had generated a report following investigations over a period of six months into allegations of rampant corruption in 116 districts in the country. At a press conference held the day before, the Committee delivered its report in which among other recommendations it directed chief administrative officers (CAOs) disband the association they had formed, citing a violation of the Uganda Public Service Standing Orders.

The ULS commends the Committee's efforts in curbing corruption. However, its recommendation to disband the CAO association is unconstitutional. Article 29(1)(e)[31] provides for the people's right and freedom to organize themselves into associations. This freedom is also enshrined in several international human rights instruments, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples Rights (ACHPR).

It is noted that Section 5 of the Public Service Standing Orders prohibits certain categories of public officers involved in the administration of the State from forming or joining a labor union or engaging in trade union activities or using trade union practices or tactics in any matter concerning their employment. However, this prohibition does not extend to joining associations as the law makes a clear distinction between Trade Unions and Associations. Associations such as those of CAOs if not formed for Trade Union purposes, are not governed by the Labor Unions

[30]See Moses Mulondo, "MPs ask district officials to return swindled shs 7.2b" New Vision, February 2, 2017: p.4.
[31]The 1995 Constitution of Uganda

Act and therefore fall outside the provisions of the Standing Orders prohibiting public officers involved in the administration of the state from joining Trade Unions.[32]

Legal issues arising:

The Committee's recommendation contravenes Article 29(1)(e)[33]which provides for the freedom of association or to join associations. Under the law, public officers such as CAOs are free to form or join associations that are not organized for trade unions purposes.

Recommendations:

The Committee on Local Government Accounts should come up with guidelines for the operation of Associations by public officers and refrain from orders that could infringe rights of the people concerned.

2.7.4 Freedom of Assembly

On 22nd February 2017, the Kampala Lord Mayor Mr. Erias Lukwago was arrested along with Rubaga North MP, Moses Kasibante, Kawempe South MP Mubarak Munyagwa and Makindye West MP Allan Ssewanyana, together with several Kampala Capital

City Authority (KCCA) councilors and whisked away to an unknown location[34]. They were arrested at the Nakivubo Park Yard market in Kampala where they had gone to address city vendors, who were protesting against an order to have them evicted. The police state that the arrests were effected under Section 24(1)[35]provides for preventive arrest.

Be that as it may, the Constitution of the Republic of Uganda guarantees the freedom to assemble and to demonstrate together with others peacefully and unarmed and to petition. Furthermore, Uganda has ratified the UDHR which provides for this freedom under Articles 2 and 20.

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[32]Section G of the Uganda Public Service Standing Orders of 2010.
[33] The Constitution of Uganda 1995
[34]ord M ayor – E rias L ukwago O pposition P oliticians A rrested h ttp://www.ntv.co.ug/news/local/22/feb/2017/lordmayor-erias-lukwago-opposition-politicians-arrested-16282.
[35]The Police Act

The Public Order Management Act 2013 also provides for the regulation of public meetings which the Act defines as a "gathering, assembly, procession or demonstration in a public place or premises held for the purposes of discussing, acting upon, petitioning or expressing views on a matter of public interest". This law requires organisers of public assemblies to notify the police for security purposes. However, permission from the State is not a prerequisite. But then this Act grants the police wide-ranging powers to stop or prevent a public meeting from taking place. This is unconstitutional and was so decided by the Constitutional Court in the case of ***Muwanga Kivumbi v. The AG.***[36]

Legal issues arising:

Article 29(1)(d) of the 1995 Constitution provides for the protection and observance of the freedom of assembly stating that "every person shall have the right to freedom to assemble and to demonstrate together with others peacefully and unarmed and to petition." The above arrest of the Kampala Lord Mayor and others was unconstitutional.

Section 8 of the Public Order Management Act contravenes Article 29(1)(d)[37].

Recommendations:

Section 8 of the Public Order Management Act should be adjusted to bring it into consonance with the 1995 Constitution on the freedom of peaceful assembly.

The police should not use excessive force in dispersing peaceful gatherings, even where they believe that the organizers have not complied with the Public Order Management Act's advance notification requirement.

To facilitate the above recommendation, the government should publish guidelines on the interpretation of the Public Order Management Act.

[36]Constitutional Petition No. 9 of 2005.
[37]The 1995 Constitution of Uganda

2.7.5 The Right to Life

The right to life is a moral principle based on the belief that a human being has the right to live and, in particular, should not be killed by another human being. The Constitution of the Republic of Uganda under Article 22 provides that; "No person shall be deprived of life intentionally except in execution of a sentence passed in a fair trial by a court of competent jurisdiction in respect of a criminal offence under the laws of Uganda and the conviction and sentence have been confirmed by the highest appellate court".

The attack on the Rwenzururu kingdom palace in Kasese by the UPDF in November 2016 on suspicion of terrorism and treason left an estimated 116 people dead. Whether the Rwenzuru's King's Palace should have been attacked in the manner that was reported is a matter for debate. Although attempts to resolve this crisis have mostly been political in nature i.e. negotiations between the State and some kingdom officials in a bid to end the crisis, there are still critical issues which must be addressed pertaining to the long standing tensions among the local communities in the Rwenzori region. Moreover, this crisis led to human rights violations including loss of lives and property.

We have also noticed an increase in the number of high profile murders conducted by unknown persons riding motorcycles. The latest being that of police spokesman AIGP Andrew Felix Kaweesi who was brutally shot dead together with his bodyguard Cpl Kenneth Erau and driver Geoffrey Mambewa on the 17th March 2017. The pattern of this murder is similar to that of several muslim leaders.

Legal issues arising:

Article 22[38] provides for the right to life 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. The Kasese attacks were characterized by extrajudicial killings and others killings carried out by the

[38] The 1995 Constitution of Uganda

traditional institution and locals in the region prior to and during the attack on the Buhikira Palace.

Recommendations:

In addressing issues, the ULS hereby proposes the following approach:

On the Kasese Incident;

We emphasize the need to engage the many issues of justice and reconciliation that have long been of concern in the Rwenzururu region. The ULS therefore proposes that Government establishes a Truth and Reconciliation Body of eminent independent persons to conduct a thorough and impartial investigation into: (1) the grievances of the communities in the Rwenzururu region, (2) the raid on the palace and (3) human rights violations which attended the raid on the palace. (4) investigate and determine the role of the Rwenzuru militia in causing lawlessness in the Rwenzururu region. The objective is to identify permanent and sustainable solutions to the crisis.

We also recommend the need for engagement with the Director of Public Prosecutions to discuss concerns relating to detentions and the manner of handling prosecutions pertaining to this conflict.

We recommend the need for some recognition in terms of reparations from the state toward those who innocently lost lives and property in this conflict.

Regarding murders of individuals and increase in crime;

4. Government needs to streamline, monitor, regulate and supervise the use of motorcycles.

5. Security and policing matters must remain a preserve of regulated armed forces and the involvement of civilians in security matters must be discouraged.

6. The LC 1 elections need to be carried out (By secret ballot system). Local Councils are key pillars in giving information and coordinating community responses to crime.

2.7.6 Right to Property and Land

Land grabbing and forcible evictions are one of the major threats to land tenure security in the country. It is a violation not only of one's right to property but also of the right to housing, life and a host of other related rights. While the right to land is constitutionally protected under Article 26 of the Constitution, land grabbing (or the process of selling or leasing large tracts of land to foreign States or companies), has become a serious issue in Uganda; drawing increased international attention in recent years[39]. Most Ugandans live in rural areas and are dependent on agriculture for their daily survival[40]. In general, communities affected by land acquisitions have not been adequately consulted or compensated for the loss of land, and have suffered as a result[41]. 500 residents occupying the Namanve Forest Reserve in Bukasa, Bweyogerere parish in Kira Municipality were evicted in December 2016 to pave way for the construction of the Standard Gauge Railway, the Greenbelt and the Dry Port.

According to preliminary estimates, there are more than 16,000 encroachers/settlers in the area. H.E. the President of the Republic of Uganda Yoweri Museveni cited some dubious collusion between government officials and some encroachers to continue occupying the land, and according to media reports directed the Inspector General of Police Kale Kayihura to prepare the eviction exercise.

In January 2017, the Minister of Lands, Housing & Urban Development the Hon. Betty Amongi Akena announced the cancellation of at least 25 freehold land titles said to have been fraudulently and erroneously issued in the forest reserve in the villages of Bukasa, Wankolokolo and Senyu in Wakiso District and Mukono District. She also hinted on government's plans to relocate the encroachers to some 200 acres secured elsewhere. To date, this relocation has not been done.

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[39]Think Africa Press, 'Law of the Land: Land Grabs Threaten Local Livelihoods in Uganda,' 28 November 2012.
[40] Ibid
[41]Milieudefensie, ' Land grabbing for p alm oil i n Uganda,' 2013. Friends of the Earth, ' Palm oil landgrab in Uganda: Wilmar International's violations in Kalangala Island,' Landgrabs, forests & finance: Issue brief #5, [date unspecified]. See also: National Association of Professional Environmentalists (NAPE), Uganda and The Gaia Foundation (UK), 'Mining and its impacts on Water, Food Sovereignty and Sacred Natural Sites and Territories,' July 2014. See also: Gabriella Wass & Chris Musiime, 'Business, Human Rights, and Uganda's Oil: Part I: Uganda's oil sector and potential threats to human rights,' Updated October 2013.

Legal issues arising:

The rights of land ownership in Uganda are both recognized and protected by Uganda's Constitution under Articles 26 and 237.[42] Additionally, in situations where land has been acquired by force, adequate compensation for such land has to be made to individuals and communities affected by such acquisition.[43] The lack of access or rights to land usually results in economic insecurity. The international community for many years has viewed forced eviction as a very serious issue and a gross violation of human rights.[44] Article 11(1) of the ICESCR provides for the right to adequate housing and State parties are required to recognize, grant and protect this right.[45] The right to housing should not be interpreted in a narrow or restrictive sense, rather it should be seen as the right to live somewhere in security, peace and dignity.

In his judgment, Justice Joseph Mulenga stated that "... the right to freedom of expression is of great significance to democracy. It is the bedrock of democratic governance." He further stated that "Subject to the limitation under Article 43, a person's expression or statement is not precluded from the constitutional protection simply because it is thought by another or others to be false, erroneous, controversial or unpleasant."

Therefore, everyone has the freedom to express his or her views using whatever medium is available to them; social media inclusive.

Legal issues arising:

Article 29(1) of the 1995 Constitution of Uganda provides that everyone shall have the right to "freedom of speech and expression which shall include freedom of the press and other media." The Constitution is relatively elaborate in its provisions guaranteeing the freedoms of opinion,

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[42]Committee on Economic, Social, and Cultural Rights, General Comment No. 21, Right of everyone to take part in cultural life (Art. 15, para. 1(a) of the International Covenant on Economic, Social, and Cultural Rights) (2009)
[43] Ibid
[44]Committee on Economic, Social, and Cultural Rights, Cultural Rights, General Comment 7: Forced Eviction and the Rights to Adequate Housing (1997)
[45]Article 11(1) o f t he International Covenant o n Economic, Social, and Cultural Rights: 1- T he States P arties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.

expression and information. Under Article 20(1), the right to expression and access to information is "inherent and not granted by the State."

Recommendation:

The Government should ensure that it streamlines legislation that could appear to impinge on Freedom of Expression. The right to freedom of expression is particularly important for Ugandans who should be free to express their opinions without fear of prosecution and provides for the right to seek receive and impart information and ideas and is therefore considered as one of the major pillars of good governance.

2.7.7Pretrial Detention

A fair and functioning justice system is a critical component of a free and democratic society, and Uganda has made important strides in this direction. Priority also needs to be given to consistently protecting the rights of the most vulnerable especially those hidden from public view in places of detention in order to ensure that the right to be presumed innocent and to have a fair and speedy trial is universally respected, both in law and in practice.

The issue of pre-trial detention is of continuing concern to the ULS. In 2014, the ULS in partnership with Avocats Sans Frontières (ASF) conducted a research on pretrial detention entitled "Combating Prolonged Pre Trial Detention in Uganda" and proffered several recommendations about how to address this disturbing phenomenon.

The ULS/ASF Report among other things raised issues regarding the tendency of the police to parade some suspects in public and the media totally negating the presumption of innocence. The suspects' legal status is undermined and they are also under enormous personal pressure such as a loss of income for those who are employed, separation from family and community ties and most even face torturous conditions. The pre-trial stage (from arrest to trial) of the criminal justice process is also particularly prone to corruption. It has a hugely damaging impact on the accused, their families and communities. Even if a person is acquitted and released, they may still have lost their home and job. They face the stigma of having been in prison when they return to the community.

On 14thMarch 2017, the Foundation for Human Rights Initiative (FHRI) launched a Report entitled Justice Delayed is Justice Denied: The Plight of Pretrial Detainees in Uganda, the result of a 9 months research Project. In this report, FHRI notes that Uganda has a relatively comprehensive legal framework safeguarding the rights to liberty and a fair hearing, and protecting against lengthy pre trial detention. Nevertheless, the report highlights challenges with observance of the 48 hour rule, the 60 day limit for suspects in non capital offences and the 180 day limit for suspects in capital offences; among other systemic and infrastructural challenges leading to congestion and overcrowding in detention facilities as well as lengthy and excessive pretrial detention. Causes cited in the report for excessive pretrial detention were attributed to the arrest culture and investigative capacity, weak enforcement of mandatory bail, mob justice, legislative discrepancies, the fear that suspects will disappear, petty offences, corruption, poor legal representation, ignorance of the law and judicial processes, as well as backlog, understaffing and underfunding. Moreover, those excessively or unlawfully detained are not compensated by the State as prescribed by law.

Legal issues arising:

Prolonged pretrial detention contravenes Article 28(2)[46] provides that in the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.

Furthermore, Article 10 of the UDHR, Article 9 of the ICCPR and Article 7 of the ACHPR all provide for a prompt arraignment before court and a speedy and fair trial and a fair hearing.

Parading suspects before the public contravenes Article 28(3)(a) of the 1995 Constitution which provides that every person who is charged with a criminal offence shall be presumed to be innocent until proved guilty or until that person has pleaded guilty.

Prolonged pretrial detention contravenes Article 23 of the 1995 Constitution provides that no person shall be deprived of personal liberty. Suspects are kept in detention with no charges preferred against them.

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[46]The 1995 Constitution of Uganda

Article 3 of the UDHR Universal Declaration of Human Rights, Article 9 of the International Covenant on Civil and Political Rights, and Article 6 of The African Charter on Human and People's Rights provide an elaborate framework for the protection of the right to liberty.

Recommendations:

The Government needs to effect the appointment of more judicial officers to preside over criminal matters. The judicial officer-detainee case ratio is a prominent factor cited as one of the main causes of prolonged pre-trial detention.

There is a need for improving the remuneration of JLOS actors such as the police, judicial officials, and prison staff to motivate them to dispose of cases in a timely manner to avoid prolonged pre-trial detention and corruption in the justice system.

The courts and the prison authorities need to improve the mechanisms of coordination and case management between the two entities in order to avoid failure to produce detainees in court on a set date and time.

2.7.8 The State should allocate more funding to conduct criminal sessions

The State should provide adequate resources to specifically support police investigations.

The State should adopt a national Legal Aid Policy and thereafter enact a Legal Aid law to assist all suspects.

The State should allocate additional funding to the State Brief Scheme to enhance remuneration to state brief lawyers.

The State should expedite the processing and enactment of the Administration Judiciary Bill into law to strengthen the functional and financial independence of the Judiciary.

The State should increase the budgetary allocation to facilitate set up and maintenance of more places of detention such as the prisons and remand homes.

2.8 Transparency and accountability

Corruption is defined as the use of public power for private gain. As it is a manifestation of the abuse of power for personal interest, the fight against the scourge of corruption is one of the hallmarks determining a society governed by the Rule of Law. Corruption can take many forms, including bribery, nepotism, extortion, fraud, abuse of office and embezzlement. It is costly for citizens as it siphons resources and creates inequities in public service delivery, lowers regulatory compliance, weakens accountability, curtails the public's opportunities for participation, undermines the government's credibility, and leads to injustice.

Addressing corruption is a complicated political endeavour requiring creative thinking and a coordinated effort by numerous stakeholders, including government, businesses, academia, and the civil society among others. The ULS has identified judicial corruption, public-private corruption and the use of public office for private gain as major issues of concern during the review period. Among those of most concern were the following.

2.8.1 Judicial corruption

During the reporting period, the Judiciary lodged a complaint with the Judicial Service Commission (JSC) upon instructions from the Chief Justice who called for an investigation into alleged corruption and judicial misconduct against Justice Joseph Murangira the Deputy Head of the High Court's Criminal Division. Justice Murangira is alleged to have solicited of a bribe from one of the people he sentenced to death 8 years ago. It is further alleged that upon failure to meet the judge's demands, the accused was sentenced to death and his file went missing. The Chief Justice through the Principle Judge requested the JSC to look into allegations concerning the case in which Justice Murangira sentenced one Joseph Ekusai to death for murder.

The ULS welcomes this as a positive development because the move serves to show:

(a) that the Judiciary takes public concerns about the conduct of judicial officers seriously; and
(b) it shows commitment to determining the veracity of complaints taking into account the public interest, and the interests of individual judicial officers in being protected from unfounded

allegations. The ULS call upon the general public to be vigilant about their rights to forward complaints against errant judicial officers.

Legal issues arising:

Principle 3.2 of the Judicial Code of Conduct provides that "A Judicial Officer shall at all times and in every respect be of an upright character and ensure that his or her conduct is above reproach in the view of a reasonable fair-minded and informed person" while Principle 3.3 provides that "A Judicial Officer shall exhibit and promote high standards of judicial and personal integrity. If found culpable following investigations, the said judicial officer shall have breached Principle 3 of Judicial Code of Conduct and shall be liable to disciplinary action.

Section 5 of the Anti Corruption Act 2009 outlaws bribery.

Recommendations:

In light of the above case and continuing concerns expressed about transparency and accountability within the Judiciary, there is a need to strengthen whistle blower protection in order to shield anyone who reports judicial misconduct.

Those who work within the justice sometimes become aware of incidents of corruption. However, there is a perception that reporting will be visited with retaliation.

The judicial misconduct evaluation process should be made more visible.

The general public should be vigilant about their rights to forward complaints against errant judicial officers to the JSC.

2.8.2 General Issues

During the review period, there were some positive developments which if sustained will go a long way in fostering and strengthening the Rule of Law in Uganda. These include:

2.8.3 The Judiciary Administration Bill

Following calls for the immediate passing of the Judiciary Administration Bill by the Executive and Parliament, in January 2017 Minister for Justice and Constitutional Affairs Hon. Kahinda Otafiire disclosed that he was preparing to table the Bill before Parliament in February. Although by the time of this report, the bill had yet to be tabled, the promised action on the part of the Minister needs to be welcomed. This legislation seeks to strengthen the independence of the Judiciary by moving it from its current placement under the Ministry of Public Service which essentially puts it under the Executive arm of government[47].

Recommendation:

Government should as a matter of urgency fast-track the process of the passing of the Bill when presented before it.

2.9 Government holding officers accountable

On 24th January 2017 the media reported that the Inspector General of Police ordered the arrest of Sheema District Police Commander, Mr. Innocent Mubangizi over the release of rally driver Mr. Ponsiano Lwakataka who was arrested alleged in the possession of immature fish en route to the Democratic Republic of Congo[48]. Mr. Lwakataka was released from custody and according to the media, the District Commander is suspected to have a received a bribe to facilitate his release.

Within the same period the police convicted and sentenced nine police officers and a crime preventer who were accused of beating supporters of former FDC President Kizza Besigye along Entebbe road. The Police Disciplinary Court ordered the demotion of some police officers while others were dismissed depending on the gravity of their crimes[49]. These actions by the Uganda Police are most commendable and the Uganda.

Law Society urges the Police to continue this fight against impunity.

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[47] *Activists Want Adminstatrion of Justice Bill Passed. http://www.newvision.co.ug/new_vision/news/1446908*
[48] *http://www.monitor.co.ug/News/National/Kayihura-wants-officers-who-released-Lwakataka-arrested/688334-3785202-e1kvq/index.html.*
[49] *Police Officers Demoted Over Beating Besigye Supporters http://www.ntv.co.ug/news/local/02/feb/2017*

There are however also some areas for the State's attention which we wish to propose and these include:

Mining regulations

Small scale mining enforcement and protection laws are not being heeded to and are under regulated. The fact is that the regulatory system for small scale miners is non-existent.

In Nabwaala mining site located in Budhaya Sub-county in Bugiri district which has over 500 small scale gold miners, mining is by open pit. In their search for gold, the miners report using rudimentary tools like a hand-held pick axe, shovels, and hoes.

They do not have access to the necessary protective gear like helmets, gloves, nosemasks and gumboots to protect them from accidents as well as getting into contact with mercury during the washing and amalgamation process which poses serious dangers to their health. Moreover, there are open, deep and abandoned pits scattered all over the place; often with no kind of forewarning of probable accidents[50]. Owing to the rudimentary methods employed at these mines, mounds of tailings stand at several meters high, overlying the edges of the pits that are sometimes more than 50 feet deep. On rainy days, accidents are imminent as the loose earth simply collapses into the pit. Last year alone, four deaths occurred at the Nabwaala's mining sites.

Legal issues arising:

The mining law is inadequate as a mechanism to ensure the protection of small scale miners and the safeguard of the environment.

Recommendations:

The central government should take up the issue of regulating small scale miners to ensure safety, quality mining and development in the relevant areas.

[50] *Health Safety Takes Back Seat In Busoga Gold Rush http://www.eabizinfo.com/2017/02/02*

2.10 Buliisa Land Title Cancellations

Within the reporting period, Government of Uganda cancelled 1 and titles for 5090 hectares issued between December 2010 to February 2017 in Buliisa district.[51] Themajor cause of land problems in Buliisa is oil. Land grabbers with money influence grants of leases without due regard to the rights of bon fide occupants of the land.

Section 4 of the Land (Amendment) Act makes such a transaction void.

There has been simmering conflict in the Albertine Graben in places like Rwamutongo in Hoima and in Buliisa itself where people have raised their voices complaining about 'foreigners' buying off their land and throwing them off it to pave way for oil and gas development projects. The people have unfortunately become the victims of corrupt allocations of land.

Legal issues arising:

District Land Boards are independent. Under section 60 of the Land Act no one has power to direct their operations.

Land certificates are conclusive evidence of ownership and, can be impeached only for proven fraud.

Recommendations:

Prosecute corrupt lands officials: All titles issued between 2010 and 2017 were issued by the district land board and other institutions of government but to date, no official from those institutions has ever been prosecuted and convicted for facilitating and engaging in fraud.

2.11 The Rule of Law and Access to Justice

Since the adoption of the Universal Declaration of Human Rights by the General Assembly in 1948, significant progress has been attained through the ratification of key human rights treaties

[51] *F rancis Mugerwa ' Government Cancels land Tiles' Daily Monitor, March 7, 2017. http://www.monitor.co.ug/News/ National/Govt-cancels-land-titles-issued-in-past-7-years/688334-3838968-format-xhtml-12vcwi2z/index.html.*

and instruments and the establishment of institutional frameworks and treaty mechanisms for the protection and promotion of human rights. The last few decades have seen a wave of reforms that seek to incorporate the fundamental Bill of Rights[52], including constitutional reforms[53], enactment of legislation, creation of national human rights and democratic institutions, and the establishment of integrated justice systems to coordinate reform. Central to these reforms are two fundamental principles: the Rule of Law and Access to Justice. The Rule of Law is a cornerstone of democratic governance and ensures that governmental authority is legitimately exercised in accordance with written, publicly disclosed laws which are consistent with international human rights norms and standards and enforced in accordance with established procedural steps referred to as due process.

The existence of laws and justice systems provides a starting point for individuals and communities to claim and demand their human rights as laid down in international, regional and national instruments. However, it's not enough to have laws, these laws must be implemented and there must be mechanisms for rights holders and claimants to seek justice and redress where these rights are not protected and promoted or have been violated. Required are functioning systems and mechanisms through which aggrieved parties can settle disputes and grievances and seek redress.

It is globally recognized that therule of law and access to justiceare not ends in themselves but thatboth are pivotal to eliminate povertyand strengthen social justice,human development, security anddemocratic governance. In its widerapplication, the rule of law hasbeen extended to embrace socioeconomicdevelopment and socialjustice. In this sense, the rule of lawnot only prohibits those in powerfrom abusing it, but also obligatesthem to act positively and meaningfullyfor the welfare of the people asa whole[54]. Increasingly, the definitionof access to justice has expanded beyond the traditional narrow sense of addressing barriers to justice

[52] The International Bill of Rights consists of the UDHR, the International Covenant on Civil and Political Rights (and Optional Protocols), the International Covenant on Economic, Social and Cultural Rights (and Optional Protocol) and subsequent treaties.

[53] The latest countries in Africa to enact new constitutions are Kenya and newly created South Uganda

[54] "Strengthening Administration of Justice and Upholding The Rule of Law in East Africa: Challenges And Opportunities" A paper presented by Mr. Keriako Tobiko, Director of Public Prosecutions, Kenya during the 2nd EAC conference on good governance- 19th- 20th August 2010, Nairobi.

toencompass a greater focus on justice outcomes. According to UNDP[55], access to justice encompasses morethan improving an individual's access to courts, or guaranteeing legal representation. It must be defined in terms of ensuring that legal and judicial outcomes are just and equitable. Furthermore, it must encompass the ability of people especially those from disadvantaged groups to prevent and overcome human poverty by seeking and obtaining a remedy, through the justice system, for grievances in accordance with human rights principles and standards[56]."

Overall, progress in the realization of the rule of law and access to justice in eastern and southern Africa has been attained at certain levels, for example, in promoting the rights of children; gender equality through women's representation in public office; protection of inheritance and property rights; and combating domestic violence. However, significant concerns exist especially around translating laws into implementation, ensuring positive change and impact on communities and sustaining development.

In the African context, the last decade has seen numerous reforms, innovations and practices aimed at enhancing the rule of law, democracy and access to justice that have made some difference within the localities and communities of intervention. In some specific cases, tangible progress has been recorded and justice outcomes have been attained. In many cases, however, some reforms have not always been responsive to structural challenges and often do not address the roots of the problem caused by patriarchy, power and privilege that are manifested in exclusion, unequal distribution of resources and discrimination.

[55] UNDP, 2004: Access to Justice Practice Note, 9/3/2004, p6.
[56] Ramaswamy Sudarshan, 2003; Rule of Law and Access to Justice: Perspectives from UNDP Experience - Paper presented to the European Commission Expert Seminal on Rule of Law and the Administration of Justice as part of Good Governance, 3-4 July 2003, Brussels.

CHAPTER FOUR

CHALLENGES FACING THE APPLICATION AND RULE OF LAW

4.1 Essence of Constitutional Government

Constitutional government is limited government based on a prescribed division of powers among public officials. The leading principle of constitutional government is known as the rule of law. This signifies that no political authority is superior to the law itself. When and where the rule of law is in force, the rights of citizens are not dependent upon the will of rulers; rather, their rights are established by law and protected by independent courts. Individuals, thus, have a secure area of autonomy and have set expectations of having their rights and duties pre-established and enforced by law. Related to the principle of the rule of law is the doctrine of the supremacy of law. This is a fundamental concept which requires generality in law. It is a further development of the principle of equality before the law. Laws should not be made in respect of particular persons. The idea of supremacy of law requires a definition that must include the distinction between law, executive administration and prerogative decree.

Failure to maintain the formal differences between these issues would lead to a conception of law as being nothing more than authorisation for power, rather than the guarantor of liberty equally to all.

Principles of government are normally associated with the rule of law and include independence of the judiciary and the right of redress for injustices perpetuated by the state. Security of tenure for judges, the judges' own distinguished traditions of learning, integrity and technique as well as the law of contempt, ensure that proper judicial review processes can take place. Judicial review empowers a court to invalidate the acts of a legislative body or executive officer. Without these powers of the judiciary, the most elaborate system of rights, remedies and procedures would be of little use/ inconsequential.

Further, structural principles exist that determine the forms of constitutional government. The principle of separation of powers is premised on the basis that when a single person or group has a large amount of power, it can threaten citizens.

Separation of powers is a method of checking the amount of power in any individual or group's hands, making it more difficult to abuse such power. Protection of the people against misuse of power by the state itself is, in the first instance, secured when the functions of the government are kept separate and when ultimate power of the state vests, in the final analysis, with the people, who exercise it through election of representatives in regular, free and fair elections. The principle of separation of powers relates to the very heart of constitutional government, which is to structure political institutions with the requisite powers and independence to make judgments that respect equal rights of free people, while at the same time promoting the public good.

As a feature of constitutionalism, rules imposing limits upon government power must be entrenched, either by law or by way of constitutional conventions. In other words, individuals whose powers are constitutionally limited must not be legally entitled to change or expunge those limits at their pleasure. Where a government is entitled to change the very terms of its constitutional limitations at its discretion, it is questionable whether there would, in reality, be any constitutional safeguards for the public.

The letter of the constitution by itself is neither enabling nor constraining. For constitutional provisions to operate meaningfully and effectively institutional and cultural apparatus to implement, enforce and safeguard the constitution must be in place. The rule of law is one key components of the constitution's implementing and safeguarding apparatus. An independent judiciary and the notion of the supremacy of law all work together to ensure that the letter and spirit of the constitution are honoured in the workings of a constitutional government.

It is against this background that this chapter discusses the observance of fundamental constitutional principles with regard to the three state organs mandated to uphold minimum constitutional guarantees in protection of its citizenry.

4.2 Security Agencies and Respect for Rights

The role of the army as part of the executive still raises concerns. Although the NRM government has in relative terms endeavoured to discipline and professionalise the army, its role in elections and its presence in parliament still raise questions. In view of the history of the army in usurping power in the country, this position still causes concern. The presence of the Uganda

Peoples Defence Forces (UPDF) members in Parliament also contradicts their non partisan character especially since they sit and vote with the ruling government. Actions of other security agencies, which form part of the executive, illustrate excess use of power by the state. The Uganda Human Rights Commission (UHRC), in its reports, still maintains that torture continues to be a widespread practice amongst security organizations in Uganda, being commonly used to humiliate and break down suspects during investigations (especially on members of the opposition). The issue of "safe houses" also remains unresolved.

4.3 Functions of Public Officers

Public officials in Uganda owe their allegiance to the president rather than to the state. Indeed, many such officers cannot be appointed to their offices without the president's approval. This is a matter that raises concern about whether such officers owe allegiance to the state or to the president, and hence whether they can question actions of the president that are not in the national interest.

4.4 Excesses of Power: Overstepping permissible limits with the Judiciary?

The executive publicly attacks the work of the judiciary on land matters, and bail and the classic example is when the Peoples Redemption Army (PRA) suspects were granted bail and the famous black mamba attack on the temple of justice (High Court). Also on 27 June, the president rejected a constitutional court ruling that nullified the 2000 referendum, saying that the government would not accept the contents of the ruling.

President Museveni said that a closer look at the ruling revealed an absurdity and shocked the general moral of common sense: "We restored constitutionalism and the rule of law. That is why judges can rule like

this against the government. There were times when if a judge made such a ruling, he would not live to see tomorrow. The ruling will not work. It is simply unacceptable. Judges say Article 74 has evaporated. Article 74 is not dead. The movement system is not dead. We are all here."

The courts were forced to close, resulting in cessation of their work, when the public, after hearing these statements, took to the streets and demonstrated to oppose the ruling. The president made matters worse when he inferred that the judiciary was not impartial. In a public address, he stated that the Democratic Party (DP), which had filed the petition on the legality of the referendum, always filed weak cases only to be helped by "their friends the judges". He thereon pledged to "sort out" the judges and stated that the days for "biased" courts in the Ugandan judiciary were numbered. He stated that judges were hiding behind the principle of separation of powers to mete out injustice to the people.

4.5 Violation of Other Human Rights

In 2004, the government, through the Broadcasting Council, closed down a television station and four radio stations, apparently due to unpaid licence fees. An official of the Council stated that about thirty radio stations and three television stations faced closure over unpaid license fees. This, by then, raised the question of deliberate hiking of licence fees by the government, thereby forcing broadcasters off the air and limiting peoples' rights to expression and information. Later, this became a case by case clamp down on media freedoms and right of freedom of expression with the closure of a Soroti-based private FM radio station, Kyoga Veritas, for allegedly because it defied a ministerial directive to refrain from broadcasting news about LRA attacks in the region. It's also important to note that during the 2001,2006 and 2011, radio stations or presenters that hosted opposition leaders were closed/fired or suspended and this trend worsened after the 2009 Buganda riots where a large number of radio stations were closed and radio presenters arrested/prosecuted/fired for discussion on the riots. Today, a number of radio talk show programmes have been suspended in the directive of the media council for discussing corruption scandals which involve highly connected politicians. This is a clear infringement of rights enshrined in the constitution, harming constitutional development in the country.

At the same time, the government still interferes with the people's right to free association by limiting the ability of political parties/ civil society groups to undertake their work. The Uganda Police Force (UPF) whose constitutional mandate is to keep law and order has continued to abuse Chapter IV of the Constitution on the protection and promotion of fundamental and other

human rights and freedoms especially civil and political rights. The Kiboko squad continues to cause mayhem on civil political leaders supervised by the Police.

Journalists are still beaten up and their gadgets destroyed by police while on duty and also they are still arrested/persecuted for reporting what the government does not want to hear. This was intended to intimidate the journalists into ceasing to report freely on the key governance issues in Uganda.

4.6 Legislation and Public Participation

Laws and bills that infringe on rights have gained positive state audience and attention. One such bill is the Public Order Management Bill where government seeks to ban any meeting or two or more people without police permission. Government is also proposing that whoever wants to use public address system must first obtain police permission. The law further seeks to impose a liability duty on the owners of the premises where such meetings will be taking place. Other recent laws like the Non- Governmental Organization (NGO) Amendment Act, which has put in place stringent provisions for regulating the work of NGOs. Requirements, such as annual registration and license fees, put NGOs in an awkward situation. This Act fails to recognize NGOs as partners in development with government. It sought to deny permits to NGOs whose development plans or activities might be against or contradict government policies.

4.7 The Legislature and Observance of Constitutional Guarantees

Following the promulgation of the Constitution in 1995, Uganda opted for a presidential and parliamentary democracy. The main emphasis of the constitution was to ensure that the sovereignty of the people was exercised through a democratically elected representative body called the legislature.

Most functions by the executive branch of the government are accountable to parliament. Parliament is supposed to exercise control over the executive arm of government through legislative business. Besides ministers, including the president, are answerable to parliament for their actions. Therefore, parliament has a significant role to play in improving the quality of governance.

For the 9th Parliament, during its first year, it was generally seen as assertive and its actions upheld the rationale for constitutional governance. But with the Kyankwazi interference and arrests of Mps after the death of the colleague the Late Cerinah Nebanda coupled with the failed recall of Parliament at the beginning of 2013, the vibrant Mps have gone silent. It's important to note, therefore, that the executive arm of government is still reluctant to accept in good faith resolutions of parliament as an autonomous body. In these instances, the executive has made deliberate moves to influence parliament's decisions directly, for example, by invoking party sentiments or political patronage when it came to voting on contentious issues.

4.8 The threats to the Rule of Law in Uganda

Limited access to justice for the vulnerable remains the single most challenge undermining the rule of law in Uganda despite tremendous strides in the administration of justice. According to a JLOS baseline survey access to courts was found to be a paltry 6.45% as compared to local council courts that stood at an average of 69.1%. As of last year, we completed 150,052 cases but we left 114,512 cases pending in the system. With these figures, less than 25% of the population trust the courts with the most vulnerable holding the view that justice serves only the rich.

Our timelines for case disposal, though improving, sadly remain below the international best practice of resolving disputes under one year. On average, it takes the Supreme Court 1200 days to resolve an appeal; the Court of Appeal 700 days to resolve an appeal. In the High Court it takes 740 days to resolve a case. For Magistrates, it takes 275 days to resolve a case. Appeals in the High Court take more than 1600 days to resolve.

There is need affirmative action to reduce these worrying destructive timelines if we are to improve access of the courts to the poor.

On the side of certainty of judicial proceedings and processes we score poorly. In Uganda, case schedules are not certain and most Judgments are still delivered on notice and even where notice is given, timelines are hardly complied with. Cases are adjourned liberally despite clear rules under the Case Management Regime which discourages unmeritorious adjournment. It is no wonder that many people perceive our system as weak, unpredictable, discriminatory and

unreliable and a major drawback to positioning Uganda as a safe destination for investment, tourism and a safe place to grow in.

They cannot in this era of great advancement in technology and improvements in case management across the globe, allow our Justice system to be inefficient. I therefore propose to make the following changes in the way we administer justice in Uganda.

4.9 Electoral Fraud

Change of governments and those in poweris one of the characteristics of democracy and this has to be done through free and fair elections. With different authoritarian regimes, the Global South witnessed several so-called presidential elections with either a single candidate or many candidates without any chance of winning. An example is Chad where in the 2006 presidential elections; the president was re-elected with ninety nine percent. In Zaire(currently DRC) during Mobutu's time or in Togo where as the world watched, a military government adopted the façade of democracy. There is the other kind of electoral fraud such as presidential elections in Uganda.

4.10 The violation or review of the constitution

As it is well known, in the authoritarian regime, the leader designs the Constitution to meet his political needs.

Unfortunately this practice is becoming more and more prelevant amongst leaders who were democratically. Indeed, in the Global South, the Constitution, one of the pillars of the Rule of Law is coveted by those who have the duty to protect it.

In this regard, last February 2008 the Global South witnessed the violation of the Constitution by the Congolese president democratically elected Joseph Kabila and the prime minister Antoine Gizega who appointed magistrates in violation of the Congolese Constitution .

But the threat is also found in the review of the Constitution which aims to increase the power of the Head of the State or to allow him to remain in power through unlimited terms.

Furthermore, there is currently an attempt to review the Constitution by the dictator of Cameroon Paul Biya the one who has been in power since 1984. The review aims to allow him to be candidate in the next lections. Let us hope he will not succeed. Indeed, despite the fact Biya's authoritarianism, the people of Cameroon are offering a real opposition to the review of the Constitution.

But the attempt to change the Constitution is not only made by the authoritarian leaders such as Paul Biya in Cameroon, but also by those democratically elected in their respective countries. The review of Constitution was attempted in Nigeria by the now former president Olusegun Obasanjo who tried through Parliament to review the provision limiting the number of terms a president may serve. He failed because the majority in Parliament voted against the amendment.

CHAPTER FIVE

RECOMMENDATION AND CONCLUSION

5.1 Priorities for 2016

5.1.1 National Court Case Census

Recently we carried out a National Court Case Census to determine how many cases were pending in the Judiciary with emphasis on, among others, how long the cases have been in the system and establish the reasons for the delay, with the view of making proposals to better the adjudication process in our country. As of now, a team led by the Hon Justice Henry Peter Adonyo is finalizing the report. However, preliminary findings indicate that we have 114,512 active cases at different stages of hearing and many of these cases can be weeded out because they do not deserve to be in the courts. In addition, preliminary findings reveal that most of the civil cases are made up of interlocutory applications that can easily be handled through expedited hearing and allocating them to registrars to deal with them.

Equally, we identified courts with a lot of cases and identified courts with very little work and some, non-operational. Armed with this information, we are going to design a comprehensive case backlog reduction strategy to tackle the existing case backlog through targeted clearance of old cases, weeding out of unmeritorious cases, deployment of staff based on case load and targets and heightened use of plea bargaining to address the huge case load of capital cases in the High Court. Case backlog clearance will be combined with other interventions to improve the performance of the Judiciary.

5.1.2 Streamlining management of appeals

In the Supreme Court, the Court will sit throughout the year to deal with all the business in the court. The Rules of the Supreme Court are to be amended to limit timelines for arguing appeals (this work is in progress by the Justice Tsekooko Committee on Reform of Civil and Criminal Laws).

It is proposed that all appeals will be filed with written submissions and oral arguments will be limited to not more than one hour per appeal. Oral arguments will only be limited to clarifications by counsel on points which are not clear. Dates for delivery of judgments will be communicated at the end of the trial, except in exceptional circumstances, where the parties will be notified within two weeks.

Internally within the court, Justices who are tasked with writing draft judgments of the court will be given a specified number of days to generate drafts. Responses to the drafts by the other members of the Coram shall be done also within a specified period. My goal is to have judgments of the Supreme Court out in less than 90 days but in any case not later than 180 days. Selection of the Coram of Justices to hear cases will be made in such a way as to promote transparency in the administration of justice. Adjournments and ill preparation of counsel and records will be severely discouraged to promote procedural efficiency. These innovations will equally apply to the Court of Appeal to improve the efficiency and performance of the court.

5.1.3 Reducing Red tape and Bureaucracy in the administration of Justice

Article 133 (1) of the Constitution to enhance efficiency in the administration of justice in Uganda through issuance of Orders and Directions, especially, in reducing red tape, bureaucracy, maladministration of justice and inefficiency. The makers of the Constitution in enacting this provision, were motivated by the need to streamline the administration of justice and give the Chief Justice Powers to deal with people's concerns about the Judiciary which included delay of justice, discrimination, indiscipline and impunity by judicial officers and other vices in the administration of justice.

5.1.4 Revolutionalizing hearing of interlocutory applications

Simplifying, limiting and easing hearing of interlocutory applications which constitute 60% of civil cases throughout all the courts is to be prioritized through the reform of the Civil Procedure Rules. The goal should be to clear applications within a short time and at the least cost to the parties. Consequently, the Civil Procedure Rules are to be amended to provide for filing of applications and responses with written submission to limit oral hearings. Judges and Registrars are to be empowered under the same amendment to dispose the applications with or without

hearing the parties except where the justice of the case demands oral arguments. Through this procedure, we hope to dispose of cases promptly and reserve the limited court time for hearing of substantive applications. That said, the Rules will have inbuilt safeguards to prevent abuse of court process by all the officers of the court.

5.1.5 Efficient utilization of judicial time

There is a lot of judicial time on travels abroad and attendingworkshops/seminars that are not essential or do not add value to thecourts. Consequently, judicial officers, will be allowed to travel abroad ifthe judicial calendar permits. Priority must be given to adjudication ofcases.

The Deputy Chief Justice, the Principal Judge and the Chief Registrar willhave to clear individual officers before making submissions to the ChiefJustice for the final clearance. In the same vein, funding for foreigntravel, which has in the past eaten into the operational budget of theJudiciary will be minimized and savings applied to funding court sessionsand operations. The Judicial Studies Institute through the JudicialTraining Committee should issue a training timetable for the year, which shall guide all the courts. Training activities outside the Judicial training calendar will be minimised, to discourage incessant movement of judicial officers from courts to training venues.

5.1.6 Institutionalizing Targets for Judicial Officers

Each judicial officer will have to meet their targets which have been set. For ease of reference, the target for the Supreme Court is 80 appeals and Court of Appeal 600 appeals. The target for a High Court Judge is 300 cases; a Registrar 400 cases, a Chief Magistrate 600 - this target has been adjusted from the previous target of 800 cases; Magistrate Grade I, 400 cases and new magistrate 300 cases. The Registry of Performance Management, together with the Registry for Magistrates Affairs, will be tasked with generating data for following up the targets. Resources are to be provided for the courts to meet the targets, although I must emphasize that courts should employ cost neutral innovations and timely decision making to deal with most of the business before the courts.

Performance management

Performance management is to be rolled out soon in the Supreme Court, Court of Appeal, the High Court and some selected Magistrates Courts in the country. Funding for the roll out will be sourced from the Government of Uganda as Danida funds will not be available until 2017.

5.1.7 Filling Existing Vacancies and Engagement of Acting Judges

All existing vacancies are to be filled in the service especially in the High Court where there are 16 vacancies, the Court of Appeal 2 vacancies and the Supreme Court 2 vacancies. To this effect, I am grateful to Ministry of Finance for providing ten billion shillings in the next financial year for recruitment of Judges. The Judicial Service Commission has appointed 56 Magistrates Grade I and one Senior Magistrate Grade I. A Cabinet Memorandum seeking the recruitment of acting judges and retention of retired judges will be presented to Cabinet by the Ministry of Justice and Constitutional Affairs. My goal is to engage acting Judges to deal with the high number of pending cases in the Court of Appeal and to some extent, the High Court.

5.1.8 Strengthening the Inspectorate of Courts:

The Inspectorate of Courts has been strengthened with the appointment of Justice of Supreme Court as the Chief Inspector and other Sub Inspectors of Courts to, among others, identify and correct inefficiencies in courts; investigate noncompliance with statutory provisions; investigate cases of incompetence by judicial officers to improve the quality of justice and eliminate judicial impunity which is slowly creeping in courts that were hitherto considered safe. The scope of the reformed inspectorate is to be discussed in the Conference.

5.1.9 Public Outreach

Judges in the Circuits will be expected to have at least two court open days in the year to engage and reach out to the public to bridge the gap between the people and the courts. In my upcountry trips I have noticed that the courts can repair the damaged relationships with the public and improve public confidence in the Judiciary by listening to the people and solving some of their problems as can be seen from the experiences of courts that have close ties with the community.

Public outreaches will be promoted because it has been established that the publichave an important role to play in helping the justicesystem to identify, priorities, and solve local problems. Activelyengaging citizens helps improve public trust in the justice system. Greater trust, in turn, helps people safer, foster laws abiding behavior, and makes members of the public more willing to cooperate in pursuit of justice. We shall use ourelaborate network under the Justice Law and Order Sector to engagethe public; in particular to root out petty corruption that is underminingpublic confidence in the Judiciary and weakening the rule of law.

5.1.10 Establishment of Technical support to the Judiciary on Law

5.1.10.1 Reform

I have also established an office with support from the Uganda Law Reform Commission, which has seconded one of its officers, Mr. Khaukha Andrew as Technical Advisor to the Judiciary on law reform, to be able to follow up on the issues of law reform. Quite often, on occasions like this, we make recommendations on law reform and there is no one to make a follow up on them. In addition we have law reform programmes that we have embraced like plea bargaining and sentencing guidelines that need constant monitoring and feedback. The presence of a Technical Advisor will help us a great deal.

5.2 Recommendation

Need for Public Notice; State and federal governments cannot pass secret criminal laws and then prosecute an unwary offender. (This only happens in totalitarian regimes and in the novels of Franz Kafka.) Criminal laws must be enacted through a public process in the state or federal legislatures, and those laws must be published in accessible places such as official volumes containing the penal code, or on a government website.

Sometimes the law crimirializes behavior that might be lafu1 in some places. For example, it might be okay to park along the shoulder of a particular highway, but in some stretches, the highway department posts "No Parking" signs to alert drivers that here, no parking is allowed. These signs give fair warning; without them, drivers cannot be expected to know the rule, and would have a good defense if they are ticketed.

Because our government has long-established procedures for making laws known, insufficient public notice is rarely an available defense. However, where defendants are charged with violating a brand new law that criminalizes behavior that is perfectly lawful in other places, those individuals may be able to assert their ignorance as a defense. The availability of the defense, however, will turn not only on a defendant's lack of knowledge and the government's lack of notice, but also on the particular wording of the criminal law in issue.

5.3 Conclusion

Ignorance of the law is no excuse. That's the standard line motorists hear when they say they weren't aware of the speed limit, or gun owners hear when they say didn't know about the gun laws in the jurisdiction they happened to get arrested in. Yet that ignorance is pretty understandable in an America where just about everything is being criminalized. At the federal level alone there are now more than 4,500 separate crimes and that's not counting the massive regulatory code, violations of which also can sometimes be punished with criminal charges.

As citizens, we're expected to know and obey all of these laws, in addition to state and local statutes and the relevant court opinions that interpret the breadth and depth of all of those laws. But what happens when law enforcement officials don't know the law? What happens when they illegally detain, arrest, and charge you even though you've done nothing wrong? Unlike you, their ignorance doesn't result in arrest or jail. And unless the violation is pretty egregious, they're unlikely to be punished for it.

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