



REPORT ON THE UGANDA LAW SOCIETY 7TH ANNUAL RULE OF LAW HIGH LEVEL STAKEHOLDERS MEETING HELD AT THE KAMPALA SERENA HOTEL KAMPALA ON 6TH OCTOBER 2017

INTRODUCTION:

Seven years ago, owing to a series of events that threatened the rule of Law in Uganda, the Uganda Law Society (ULS) as handmaidens of justice found it pertinent to introduce an annual roundtable discussion between key State and non State stakeholders that would serve as a free but confidential communication channel to address topical rule of law issues. This event was intended to be a candid but objective forum for stakeholders to devise ways to amicably work together on issues affecting the people of Uganda in a bid to foster the Rule of Law.

The High Level Stakeholders forum was therefore introduced in October 2011 and has since been successfully held. This event has been a source of useful recommendations offered by State and non State actors; which recommendations have been advanced by the ULS in promoting the Rule of Law in Uganda.

On **October 6, 2017**, the ULS held its 7th High Level Stakeholders Forum at the Kampala Serena Hotel. Participants at this meeting comprised members of the ULS Rule of Law Advisory Panel, the ULS Executive Council, representatives from the Judiciary, Parliament of the Republic of Uganda, the Directorate of Public Prosecutions, the Civil Society specifically Human Rights Defenders including the Human Rights Centre Uganda, the African Centre for Treatment and Rehabilitation of Torture Victims, Chapter Four and the Platform for Labour Action, and members of the Uganda Law Society.

This event was held with great technical and financial support from the Human Rights Centre Uganda; our partner in fostering Human Rights and the Rule of Law in Uganda.

This report provides a summary of the discussions held and the recommendations emerging from the meeting.



SUMMARY OF PROCEEDINGS

Welcome/Opening Remarks by the ULS Vice President

The meeting commenced at **8:46 am** with a welcome note from Mrs. Alice Namuli-Blazevic - the ULS Vice President. In her opening remarks Mrs. Blazevic conveyed greetings from the ULS President who was in Sydney for the IBA Annual Conference.

She informed participants that a decade ago the ULS decided to begin an active conversation on the state of affairs of the Rule of Law in Uganda when it became apparent from the events at the time that there was an urgent need to address Rule of Law challenges.

She noted that the ULS had launched its new Strategic Plan (2017 – 2021) and initiated additional programmes with the intention to fine tune its interventions in relation to the rule of law and adopted a more proactive approach in dealing with rule of law issues.

She added that the ULS would continue to advance this cause through research, advocacy and strategic litigation, generating evidence-based position papers to highlight weaknesses in the rule of law; as well as providing practical recommendations for the attention of policy and decision makers.

She informed the meeting that at the start of 2017, the ULS commenced compilation of its first Quarterly Report on the State of the Rule of Law in Uganda and had so far

published 3 editions; which highlighted key topical issues of concern as well as gaps in the law and recommendations for action. She added that these reports had recurrently highlighted the following issues and that this meeting was convened to consider action points for the same.

- The Right to Property (focusing on Land Matters);
- Freedom from Torture;
- Due Process and the Rights of Suspects;
- Security of Persons; and
- Freedom of Expression and the Access to Information.

She thanked the participants for making time to participate at this meeting and wished them fruitful deliberations.

Presentation of key issues from the ULS Quarterly Rule of Law Reports with Recommendations and Resolutions

The meeting received a brief on the above issues by Mr. Samuel Olumo - the Executive Director of the Uganda Law Society. Mr. Olumo welcomed the participants and conveyed his gratitude to the Human Rights Centre Uganda (led and represented by Mrs. Margaret Sekaggya) for their continued support toward this event each year.



He noted that from the start of the year, the ULS had generated quarterly reports on the State of the Rule of Law. Five issues were recurrent in these reports and the ULS found it pertinent to bring the same to the attention of this meeting. He

highlighted the issues as follows:

A. The Right to Property (focusing on Land Matters)

He informed the participants that the ULS has over a period of time examined issues of land ownership against the prescription set by the Constitution of the Republic of Uganda and noted inconsistencies. There have been several incidents pertaining to land grabbing and use of other under hand methods by individuals, local and foreign investors as well as Government for its infrastructure and investment projects; without due regard to the rights of land owners. He cited examples of the Amuru Land

wrangles, land grabbing in Soroti involving University land as well as several other incidences in the Albertine region. He noted other commendable developments such as the set up and commencement of business by the Commission of Inquiry appointed by the President to look into land matters; which has revealed gaps in due process relating to acquisition and registration of land not to mention lack of capacity of officials involved.

He invited the participants as key stakeholders to consider the land acquisition matter further to support Government by proposing lawful avenues to its initiatives moving forward. He noted that while the law gives Government leeway to compulsorily acquire land for public use, there are rights to be considered as well. He noted that there was need to ascertain how to balance the State's privilege to acquire land for public projects and the rights of land owners in affected areas. He mentioned the proposed Constitutional Amendment Bill seeking to legalise compulsory acquisition by government; highlighting that the ULS' position is that the Land Acquisition Act is sufficient in itself to address the processes of acquiring land and adequately compensating the affected communities. What needs to be done is to ensure that this is managed appropriately and in accordance with the law. The move to amend should therefore be stayed so that the law is properly enforced to achieve its objectives.

He observed that the proposal to deposit money with the courts so that payouts in compensation are made directly to affected land owners is not viable as this money would have to be channeled to the consolidated fund and the issue of timeliness, promptness and adequacy will always arise.

B. Freedom from Torture

He observed that over the past several months, the media had reported several horrific incidences of torture and accusations leveled against State security agencies/operatives especially the police as the main perpetrators of torture and ill-treatment as well as against some individuals.

He cited the case of the Mayor of Kamwenge who was tortured on suspicion of involvement in the murder of the late AIGP. Judging from the turn of events, the question arising was whether he was a proper suspect or a case of mistaken identity. Subsequent reports indicated that the mayor after his release denied being tortured by the Police. Mr. Olumo observed that this inconsistency in testimonies poses a constraint to bringing the culprits to book as well as documenting issues for advocacy for policy and legal reforms.

He pointed out that Media reports also indicated that this practice was on the increase; with most victims being suspects and detainees. Most cases occurred in varied

detention centres, especially the infamous Nalufenya Prison. He added that the Police were alleged to use torture in criminal investigations; which is deemed a means of “solving” crimes expediently by securing a confession.

He informed the participants that in investigating this matter, the ULS held a consultation with key stakeholders and the information received from the Deputy Director of Criminal Investigations was that on a daily basis suspects are interviewed all over the country and that there had been no reports of torture but what he admitted to was a group named “Flying Squad” which is currently manning the Nalufenya facility and Mbuya military barracks and that suspects were sometimes picked from one detention facility to another. Queries about the bodily state of these suspects arose and it was pointed out that according to the police forms, where suspects are brought from another facility, they must be subjected to medical examination to ensure that they are in fit to be retained at that station. This requirement is however not observed. These issues need to be addressed by the JLOS Sector in collaboration with the Police to ensure that these systems are observed.



C. Due Process and the Rights of Suspects

Mr. Olumo informed participants that several incidents of breach of due process were noted and that a number of cases had been filed before the Constitutional Court relating to detention of suspects beyond the constitutionally prescribed 48 hour rule without any formal charges preferred against them. He noted that the police have expressed having constraints in taking suspects through due process which suggest investigation and manpower gaps; leading to this outcome. He suggested to the justice

sector to first consider conducting investigations followed by arrest if the suspect is found to have a case to answer.

Lastly, he added that it has been observed that priority is given to civil matters; leaving many suspects languishing in jails on remand, many cases unheard for many years, and resulting in denial of justice to many; most of whom should not be in jail in the first place. And when the time to handle criminal cases arises, inadequate financial facilitation is given and moreover given to judges, some of whom rush through hearings to say the least, in a bid to attend to as many cases as possible. This has unfortunately become a cash-minting exercise with little regard to dispensation of quality justice to suspects or accused persons.

D. Security of Persons

Mr. Olumo mentioned that there has been a spate killings around the country that remain unaccounted for; including those of the former Police Spokesperson and Asst. Inspector General Andrew Felix Kaweesi (together with his bodyguard and driver), Maj. Muhammad Kiggundu (with his bodyguard), the Asst. Director of Public Prosecutions Joan Kagezi, several Muslim clerics and most recently the serial killings of women and teenage girls who were reportedly raped and murdered in Entebbe, Kampala and Wakiso districts in a disturbingly recurring and similar pattern.

There is however no apparent resolve on the part of the security forces to put an end to these killings. Additionally, no report has been released on investigations conducted and whether any culprits have been arraigned has been released. This begs the question as to why these investigations are not yielding results and whether there is sufficient political will and commitment to have these matters concluded expeditiously.

E. Freedom of Expression and the Access to Information

Mr. Olumo stated that whereas the law provides that every person shall have the right to freedom of speech and expression, which shall include freedom of press and other media, citizens especially journalists in Uganda continue to face threats, restraint, assault, arrest and detention for covering and reporting on unfolding events. Media houses have also been broken into; the latest being the break in the year at the Observer offices by unknown assailants who took property including desktops, laptops, cameras and hard drives.

In addition to prior directives by the Uganda Communications Commission, a fortnight prior to this forum, the Commission also issued a directive to all broadcasters to immediately stop and refrain from broadcasting live feeds which it deemed in breach of the minimum broadcasting standards and the best practice guidelines for electronic media coverage/ reporting and broadcasting of live events. This directive came hot on the heels of the age limit debate and the ensuing protest by members of Parliament. This is no doubt is intended to deny the public access to information -- not to mention following debates held by their representatives. In due time, if the public is not allowed to access information about what transpires in Parliament, they will not be able to hold their members of Parliament accountable.

In conclusion, he informed the forum that the ULS position is that this directive infringes on the citizens' right to information and is certainly not a permissible delegation under the Constitution. He then invited members to deliberate the above issues and make recommendations on the same.



Plenary Session:

In consideration of issues raised, participants were urged to focus their responses on the following questions:

1. What is the role of Civil Society Organisations and the ULS in ensuring that the above issues are brought to the attention of the authorities and actually dealt with?
2. What is the role of the Judiciary in adding value to the process of access to justice?

3. What is the role of the Police and other institutions of the Executive in relation to the above issues?

Participants raised the following points and recommendations:

1. Role of Civil Society Organisations and the ULS

- The Civil Society should work toward improving the efficiency of institutions by creating awareness of the law. This can be done through sensitization sessions especially with law enforcement agencies. For instance, the Human Rights Centre Uganda in partnership with some actors in the Justice, Law and Order Sector conducted an awareness creation programme on a set of laws including the Public Order Management Act, the Prevention and Prohibition of Torture Act and the Anti Pornography Act; as it was established that most of the actors (Police, Magistrates etc..) involved in law enforcement are very ignorant of the content of these laws.
- In consideration of recommendations raised by the Universal Peer Review Mechanism and the current state of affairs, CSOs can together with the Law Society invite the UN Special Rapporteurs on Torture and on Freedom of Expression to investigate and make recommendations to the State on the same. Additionally, CSOs can engage and utilize the UN and African Union Special Mechanisms on human rights and make referrals to the African Court on Human and Peoples rights.
- CSOs can commence private prosecutions for some torture cases (if the DPP does not prosecute them) since the Anti Torture Act provides for personal/individual liability of culprits. The “name and shame” mechanism can be employed.
- The Law Society should consider conducting training for Government agencies in collaboration with CSOs like the HRCU and ACTV which have trained the staff at the Office of the DPP.
- The Law Society should undertake public interest litigation in matters arising from the foregoing discussion and work closely with the civil society to identifying action areas and build strong cases.
- The ULS was urged to point out gaps in the law (if any) and seriously demand a national dialogue and consensus about these issues.

- Concerning detention beyond 48hrs, lawyers were urged to invoke the writ of habeas corpus.



Additional observations:

- It was observed that the ULS has abdicated its role of litigating in public interest and has instead resorted to merely issuing press statements, drafting reports and conducting trainings which should be mainly a preserve of the NGO world. In the IGP case lawyers were nearly lynched and the best the ULS did was issue a press statement rather than institute litigation in the public interest and create precedents.
- Sensitization and education of the law enforcement agencies and masses is critical to the rule of law and will address issues such as the proposition to amend the Constitution to facilitate government acquisition of public land from the public in the existence of the Land Acquisition Act which sufficient to address this. Similarly, the difference between notification and obtaining permission under Section 5 of the Public Order Management Act which has been a source of contention is due to ignorance of the content of the law.
- Relating to the law making process, the practice is that consultations should be conducted widely with the masses before a law is made rather than introducing a law and then working backwards.
- Participants expressed a concern that private prosecutions may be hindered in cases which are politically motivated leading to delays or dismissal for want of

prosecution. For instance following the raid of the High Court, a private prosecution was instituted by the Uganda Law Society and the DPP took over the case which ended up being dismissed for want of prosecution. The ULS then petitioned the Constitutional Court on the powers of the DPP to take over a case instituted by private. This matter has been pending for 8 years.

The Judiciary was therefore urged to treat such cases as a priority because they tag on the Constitutional mandate of various institutions and must be determined in the interest of the Rule of Law.

The Director of Public Prosecutions was also urged to commit not to take over cases that are deemed politically inclined, such as was the case with the matter instituted against the Inspector General of Police at the Makindye Magistrates Court for presiding over various incidents of Police brutality.



2. Role of the Judiciary

The Judiciary obtains its mandate from Article 26 of the Constitution and is enjoined to enforce laws made by Parliament; which should reflect the values, norms and aspirations of the people. However, in executing its mandate the Judiciary faces challenges due to limited resources. With the creation of more districts in 2016, more High Court circuits and magisterial areas were created. Accordingly, the Judiciary is at pains to be everywhere with an insufficient number of judicial officers.

Nevertheless, due process is at the core of the Judiciary's role and there are some factors the Judiciary has control over in ensuring that the law is observed.

From the foregoing discussions on the above selected topical issues, participants proffered the following recommendations on the role of the Judiciary.

- When structuring its District Chain linked Committees (DCCs), the Judiciary's needs to deliberately consider bringing in key stakeholders to serve on these Committees to ensure that the law is observed in the course of their duties. There should be a follow up mechanism to ensure that they are functional. This will curb issues arising in different localities that infringe the rights of the people under the watch and acquiescence of these key stakeholders/officials who should be in charge such as the Resident Judge, the District Police Commander, Resident District Commissioners, District Security Officers etc.. and yet no action is taken against the culprits.
- The Judiciary should interpret the law for the benefit of the citizens in the communities where it has presence, and also contribute to improving legal awareness among other Government institutions through the Judiciary Training Institute.
- The Judiciary should take a stand against torture and other human rights violations to send a message that these acts will not be tolerated even by the courts and to set a precedent for law makers, CSOs. There are progressive decisions in Kenya to this effect.
- The Judiciary should prioritize cases of human rights violations perpetrated by government entities because they tag on the Constitutional mandate of various institutions and must be determined in the interest of the Rule of Law.



Additional observations:

- Regarding the Judiciary, it was observed that there is an unnecessarily high enthusiasm for sessions which amounts to judicial corruption. During High Court criminal sessions, the Judges are efficient in handling about 40 cases in two months due to the financial incentives and yet in the ordinary function of the courts, they do not hear even 40 cases in one year. There is need to review the modus operandi on criminal sessions. Many suspects are left languishing in jails and end up serving longer periods on remand than prescribed by law, while judicial officers are more motivated by the number of cases they can cover in a day at the sessions.
- Some judicial officers have acquiesced in human rights violations in relation to investigations and detention of suspects. Judicial officers accept lame excuses given by prosecutors that cases are still being investigated. Some suspects are detained for more than 48hrs or on remand for offences that are yet to be established or for a longer time than prescribed by the sentence for the offence for which they are charged. While there are complaints about arrests before investigations, there are also concerns about charging people before investigations and many are jailed or remanded for offences they have not committed. He urged the DPP and the Judiciary to revisit these operations making emphasis on refusing to charge suspects in cases which have not been fully and properly investigated and in compliance with the 48 hr rule.
- Additionally, it was noted that there is a big impediment to justice in the Prevention and Prohibition of Torture Act 2012. It is apparent that the provisions of the Magistrate's Court Act were literally transplanted to the Torture Act. Specific reference is made to the requirement for presiding Magistrate in a torture case to first establish whether the local authorities in the area where the victim was tortured are aware of the incidence of torture before she/he can exercise discretion to allow the prosecution to proceed. This requirement defeats justice as it is not clear whether local authorities refer to local council chairpersons or the prison. Furthermore, can it be expected of the latter facility to give leave to this exercise? This poses a challenge where suspects are tortured and there is a requirement of confirmation from the local Authorities. Most applications before these Magistrates have raised these and the Judiciary has by this act acquiesced in human rights violations.
- In response to the concern relating to judges and criminal sessions, participants received feedback that these sessions are a strategy for handling case backlog which has been occasioned by various factors affecting due process such as

shortage of judicial officers in some areas across the country, limited funding. Additionally, there is a challenge around funding to meet the operational costs of other institutions which work closely with the Judiciary such as prisons to ensure that suspects are brought to court. Parliament was therefore urged to join in advocacy for increased funding toward the justice system.



3. Role of the Police and other institutions of the Executive

- The Executive has a duty to appoint judges to ensure access to justice. The number of Judges on a Bench is determined by the Constitution and not by discretion of Executive. Refusal to appoint judges is therefore an affront to justice.
- The Directorate of Public Prosecutions and the Judiciary should demand reports on the wellbeing of suspects and decline to charge suspects in cases which have not been fully and properly investigated and in compliance with the 48 hr rule.
- The Attorney General should advise the State and the public on the UCC's directives as it is apparent that the UCC has overridden a constitutional provision (Article 41) by issuing directives/decrees.

- In respect to the requirement to record the bodily state of suspects who are transferred from one detention facility to another, the Justice, Law and Order Sector should review procedures taken by all detention facilities to ensure that these systems are observed and cases of torture can be detected.
- Participants also proposed that in a bid to ensure access to justice, the Executive should consider recruiting retired judges in a special arrangement for short periods to support the Courts during periods when High Court judges are attending to criminal sessions.

Additional observations:

- In relation to the proposed Constitution amendment of Article 26 to allow Government to take possession of private land for public works, it was noted that the report generated by Parliament does not reflect the views of the people. MPs have been compromised and poverty has also stricken them because most of them are obligated to cater to the basic needs of their respective constituents. Most MPs therefore have allegiance crises and fear loss of their jobs and live, and are facing a conflict of interest especially those who have cabinet jobs and will sway the discussion in favour of the Executive to keep their jobs.
- Regarding torture, participants were informed that following the investigations by the Parliamentary Committee on Human Rights into allegations of torture at the infamous Nalufenya Prison, a minority report was generated alongside the Committee's report; which among other recommendations proposed the immediate release of the Mayor of Kamwenge (who was then detained for an additional period of 6 months following this report). This suggests a lack of willingness and commitment by the state to abolish torture.
- Regarding private prosecution, the Director of Public Prosecutions noted that there tends to be a lot of mischief in process as many bypass systems and that this poses a danger unto private citizens. He assured the meeting that it is in the interest of the Rule of Law and the people that the office of the DPP should handle prosecutions.
- Concerning charging persons before investigations, he noted that the reality is that Uganda does not have an established and effective national ID and physical address system. The challenge is that if one commits an offence and is not charged immediately, it is difficult to trace this person. This also leaves the gap of people taking the law in their hands.

- The DPP also noted that prosecution in torture cases is not necessarily a challenge but conducting investigations with persons or the very entities that are alleged to have perpetrated this act. He proposed the use of private investigators rather than private prosecution to support the Directorate by producing a private investigation report on torture cases as it is not easy to investigate by inquiring from the perpetrators or their colleagues.**



In conclusion, the meeting received a wrap up on the issues and recommendations; followed by closure. A group photo was taken shortly after the meeting.

THE 7TH ULS RULE OF LAW HIGH LEVEL STAKEHOLDERS' MEETING

6TH OCTOBER 2017, KAMPALA SERENA HOTEL

PROGRAMME

Time	Activity	Person Responsible
7:30 am – 8:00 am	Arrival and Registration	ULS Secretariat
8:00 am – 8:10 am	Welcome/Opening Remarks	Mrs. Alice Namuli – Blazevic - Vice President - Uganda Law Society
8:10 am – 9:50 am	Discussion of key issues from the ULS Quarterly Rule of Law Reports with Recommendations and Resolutions	<p>Chairperson: Mrs. Pheona Nabaasa Wall</p> <p>Topics</p> <ul style="list-style-type: none">• The Right to Property (focusing on Land Matters);• Freedom from Torture;• Due Process and the Rights of Suspects;• Security of Persons; and• Freedom of Expression and the Access to Information.
9:45am – 10:00 am	Wrap up of issues and Closing	Chairperson