



The Uganda Law Society Annual Rule of Law 2012

High Level Stakeholders' Meeting Report

11th October 2012

1. Introduction

Following the 5th Uganda Law Society Annual Rule of Law Event held on *October 8, 2012* at the Imperial Royale Hotel, the ULS held a high level stakeholders' meeting on the morning of October 11, 2012 at the Sheraton Hotel.

This meeting was organized and held as part of the ULS' rule of law activities which in addition to this meeting included four regional radio talk shows and the main Rule of Law Day Symposium under the theme *"The Rule of Law in Uganda: 50 years after Independence"*; which attracted a large attendance of the ULS membership. The Symposium featured an excellent keynote address delivered by the Honourable Justice James Ogoola; three guest presentations delivered by Dr. Miria Matembe, Mr. Peter Mulira and Mr. Moses Byaruhanga and a plenary session where the legal practitioners, lawyers, constitutional scholars and other distinguished socio-economic and political observers and actors in this country openly and candidly discussed the development and state of the Rule of Law in Uganda and related issues over the past 50 years post independence.

The High Level Stakeholders' forum was held to draw heads and representatives of select institutions to a candid but objective round-table discussion on three issues namely communication and summary of the newly enacted *Prohibition and Prevention of Torture Act* of 2012, comments on the Constitutional right to bail and the law on Preventive Arrest; and a discussion of the state of Remand Homes in Uganda.



A cross section of the people that attended the ULS Rule of Law High Level Stakeholders' Meeting on the morning of October 11, 2012 at the Sheraton Hotel- front centre is hon. Hillary Onek Minister of Internal Affairs.

1.1 The High Level Stakeholders' Meeting

The round-table commenced with opening remarks from the ULS President – Mr. James Mukasa Sebugenyi; who welcomed the invited guests and highlighted the objectives of this meeting.

The meeting was attended by the Minister of Internal Affairs, representatives of the Chief of Military Intelligence, the Head of the Legal Department of the Uganda Peoples' Defense Forces, as well as members from Uganda Human Rights Commission and other stakeholders in Civil Society. During this meeting participants were able to collectively propose solutions to strengthen the rule of law in Uganda.

2.0 ULS President's Opening and Welcome Remarks

Having welcomed the guests, Mr. Sebugenyi began his official opening remarks by thanking those present who were mainly civil society actors for honoring the invitation to this meeting and informed them that in the interest of time, the meeting would begin as they awaited the arrival of other crucial invitees especially from the State Security agencies and Government departments without whom the purpose of this meeting would not be achieved.



The President Uganda Law Society poses for a picture with the Minister of Internal Affairs Hon. Hillary Onek at the ULS Rule of Law High Level Stakeholders' Meeting

He then briefed those present about the Rule of Law Day event that had been held four days before, its purpose and what was achieved from this event. He mentioned and expressed his appreciation that the entire Rule of Law activities including this high level round table were funded by Konrad Adenauer Stiftung and the Justice, Law and Order Sector without whose support, these events might have not been practicable.

President Sebugenyi then mentioned that this being Uganda's golden jubilee, the timing of this meeting was opportune since human rights have always had a rich history in modern Africa, having been one of the leading causes of the anti-colonial struggle in most of the countries on the African continent in the 1960s and 1970s. He noted that human rights had played and continue to play a central role in the critiquing and revolution of repressive regimes in Africa and that civil society organizations and individuals have continuously used human rights as a rallying call for change. Further, that the objectives of this meeting therefore were to review the Prohibition and Prevention of the Torture Act 2012, the right to bail and the state of remand homes in Uganda and that this meeting was aimed at gathering key stakeholders' views to further enrich the work done by their respective institutions.

He reminded the meeting about the ULS' mandate which among others is to; protect and assist the public in Uganda in all matters touching, ancillary or incidental 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. He commended the stakeholders present for the great work done by their respective institutions and mandates at the risk of and despite being misunderstood and minimized. He added that just like their respective institutions, the ULS is often mistakenly considered anti government and yet all that it is doing is guiding the public and State alike in ensuring the Rule of Law as stipulated by the supreme law of the land, the 1995 Constitution.

He mentioned that the current Executive Council of the ULS had resolved to continue dealing with rule of law matters in the country by engaging all the relevant actors in a candid but constructive exchange of ideas; and that this kind of meeting had been held successfully last year and would continue to be held annually.

Mr. Sebugenyi then set the scene for discussion by making a brief presentation (*annexed to this report*) on the selected topics on the agenda and called on members present to suggest any additional related topics that they found necessary discussion. Mr. Nicholas Opiyo, an advocate with a passion for human rights issues in Uganda then suggested adding the issue of Human Rights Defenders to the agenda which was then adopted by the participants.

Case for Human Rights Defenders

Mr. Sebugenyi then requested Mr. Opiyo to submit of the issue of human rights defenders. Mr. Opiyo mentioned that the operation space for CSOs was beginning to be threatened and limited because CSOs are looked at as a national threat. He added that whereas the human rights and rule of law needs of the people needed to be spearheaded, it was becoming apparent that the safety of human rights defenders was not guaranteed and thus the need to consider defending them too to enable them carry

on their work in a fear free environment. He alluded to the NGO Amendment Act and the practices that have accrued with its enactment such as searches by security agents who storm onto some CSO office premises. He added that it would be wise to make a case for establishment of guidelines on how these searches are carried out to avoid abuse by persons who do not respect the CSOs' agenda

Reactions to President's communication (Plenary)

A. The Prohibition and Prevention of the Torture Act

In response to the President's presentation, one participant urged the team to reflect on the concept of citizenship and how it relates to the law. He mentioned that countries which appreciate their citizens always make laws with this in mind and the reverse is true. He noted that laws should be enacted with respect for the citizens of a state and for their welfare. He invited the meeting to reflect on the actions of the security agencies in Uganda citing the example of the police who have no qualms releasing teargas canisters onto members of the general public noting that this is a clear depiction of the esteem/regard they hold of the public. He highlighted therefore that there are certain foundational issues that need to be addressed such as the attitude of the security agents toward the public.

A representative from HURINET also informed the meeting that there are other institutions aside from state security agencies that are perpetrating torture and cited a case of the Uganda Revenue Authority officials using torture to obtain information from one suspected smugglers. He gave the example of a one Mr. Baguma, a businessman who was tortured by revenue collection officers on allegations of tax evasion. He reportedly had his tongue wounded with blunt objects and subjected to physical injury as a result of severe beating.

The Minister of Internal Affairs was urged to provide regulations to the Act as soon as possible to ensure its smooth implementation and to spearhead quick enactment of the law on witness protection to safeguard those who report cases of torture.

Well aware that the Minister had initiated the second phase of the Amnesty Act a participant mentioned that some former abductees had been released and were in the custody of the 4th Division Headquarters in Northern Uganda. He added that in the absence of the Amnesty Law the officials at the 4th Division were at loss of how to handle these abductees.

He further mentioned that there was need to retool or readjust the perception of the security and armed forces that seem to be fixated on torture as the only means to obtain information. He therefore recommended sensitizing them on considerations of human rights.

The Act was commended for inclusion of personal liability for torture. There was however a concern that this could result in replacement of state liability with personal liability whereby the State might exploit this provision to shift its liability onto individuals acting for and employed by the state.

The question was raised about effective implementation of the Act by agencies who themselves have been reported to use torture for example the police. Who then would police the police?

On the flip side, a participant from the UPDF in reference to the Act mentioned that it was necessary to balance practice and theory in the application of this Act. He opined that whereas the Act decried use of torture or force to obtain information, this was not realistic in addressing security concerns. He shared the challenges experienced by the armed forces in apprehending and interrogation of highly sophisticated or hard core criminals. He added that the security forces were between a rock and a hard place in ensuring security in the country and were torn on how to protect civilians while implementing the laws to the letter. He mentioned that the only method that has seemed useful in obtaining information from these criminals is use of some force. His question then was how severe is severe treatment?

A participant from the UHRC further informed the meeting of instances where hardcore criminals that have been tortured approach the Commission for compensation. She mentioned that the only way the UHRC handles these cases is through mitigated awards. Participants resolved that the UHRC being an institution of civil nature should carry out investigations as to whether these criminals were prosecuted or whether the cases have been dismissed for want of prosecution or whether the charges have been dropped.

Mr. Sebugenyi further recommended that the UHRC initiates a separate meeting for dialogue between all stakeholders present at this meeting to further discuss the matter of compensation for hardcore criminals.

There was also mention that since the inclusion of the provision on personal liability, prison warders are reluctant to apprehend criminals for fear of being accused of torture.

In response to the above a representative from Avocats Sans Frontieres recommended that each institution through its human rights unit/desk should liaise with the CSOs present to be guided on how to curb torture and be advised on other tested and proven means to obtain information.

A participant from the African Centre for treatment and Rehabilitation of Torture Victims also recommended employment of forensic experts to handle or train officers on internationally recognized methods of extraction of information from suspects.

The representative from FHRI recommended ratification of the Optional Protocol to the Convention against Torture (OPCAT) by Uganda so as to ensure standardization of handling suspects in an effort to implement the Act.

In his submission the Minister also mentioned that torture is abhorred by Government and that all responsible for its perpetration should be brought to book. Concerning the issue raised on the Amnesty law he expressed his support for the provision on denial of amnesty citing the example of Thomas Kwoyelo who meted gruesome acts on his victims. He commended the ULS for holding this meeting and further recommended holding this kind of meeting every six months so as to be more on track and hands on in dealing with issues and to partner better with government and at the same time not give criminals the window to commit crime.

The Minister further informed the meeting that as recommended Section 2 which granted blanket amnesty was scrapped and informed that therefore amnesty would be granted on a case by case basis. He pledged to liaise with the Amnesty Commission to discuss the matter of the children (former abductees) that are now in the custody of the 4th Division headquarters; to devise ways of resettling them into their communities. On this note, a participant underscored the fact that there is no law on amnesty and therefore even if these children could be assisted there was no legal framework to guide the process. He then urged the Minister to move the passing of a new amnesty law so as to make provision for resettling of these former abductees.

On formulation of regulations for the Act, the Minister mentioned that the Ministry of Internal Affairs would work closely with the ULS to compare notes and ensure that the regulations ensure the best standards.

Lastly there was a participant from the UPDF shared that the army is majorly ignorant of the law and requested the ULS to conduct a legal awareness programme for the Army. Additionally another participant mentioned that there is also need to sensitize the public who are also conditioned to accept torture as the only means to punish or obtain information.

B. The Right to Bail

A complaint was raised about the choice of security agencies to arrest and investigate rather than investigate and arrest. This has led to subjection of numerous innocent people to unnecessary suffering in jails only to be told that no evidence was found against them. It was recommended that investigations be carried out first and then arrests can be effected when there is evidence of a case to answer.

In response to the above the Minister mentioned that the recommendation on arrest can only be effected for some crimes and not all. He cited examples of cases such as murder

or corruption cases; adding that it was necessary to keep suspects in custody to prevent them from being harmful to society or to prevent interference with investigations in the case of corruption. He further recommended continued and more active use of community service to rehabilitate non grave offenders.

Addressing the issue of preventive arrest, the Minister highlighted the issue of politically motivated crime as opposed to political crime as most refer to it. He mentioned that whereas preventive arrest was an old British law, Government would continue to implement it as long as it is still the law.

Participants further complained and noted that the Investigation Services Unit in Kireka is difficult to access and therefore it is difficult to ensure that suspects are not tortured. Participants then agreed to notify the Inspector General of Police to adopt a mechanism similar to that of the Uganda Prisons Service for accessing inmates.



The High Level Stakeholders' meeting in progress

C. The State of Remand Homes in Uganda

Participants agreed the matter concerning the state of remand homes in Uganda had to be addressed and that it is about time responsibility was shifted from the Ministry of Gender, Labour and Social Development.

One participant observed that children cannot be considered criminals but errant and as such should be treated as child offenders and recommended reform of the law to include administration of remand homes by the Ministry of Internal Affairs. He further proposed changing the name remand homes to reformatory homes.

The Uganda Prisons Service in reaction to the ULS' recommendation to shift the management and administration of remand homes to the Prisons Service suggested training of the prison warders to reorient them in handling juveniles.

Participants inquired about how the army handles child offenders within their community and the UPDF representative informed that errant children are sent to the child protection unit designed for correctional purposes for children of army officers.

D. Case for Human Rights Defenders

On shrinking of the NGOs operating space, the Minister mentioned that it was not entirely accurate that Government was stifling the efforts of NGOs in Uganda. He added that there are indeed NGOs whose agendas are not in tandem with Government policies and therefore Government had resolved to manage their operating space.

AGREED POINTS

1. It was resolved that the Minister would provide guidelines on what amounts to torture and that the Ministry of Internal Affairs would work closely with the ULS to compare notes and ensure that the regulations ensure the best standards.
2. That the UHRC being an institution of civil nature should carry out investigations as to whether these criminals were prosecuted or whether the cases have been dismissed for want of prosecution or whether the charges have been dropped.
3. That the UHRC should initiate a separate meeting for dialogue between all stakeholders present at this meeting to further discuss the matter of compensation for hardcore criminals. The Inspector General of Police would be notified and urged to adopt a mechanism similar to that of the Uganda Prisons Service for accessing inmates.
4. Transfer of management and administration of remand homes to the Uganda Prisons Service would be advocated and that proposals to amend the law to feature this would be submitted to Government. It was also agreed that the prison warders would have to be trained to reorient them in proper handling of juveniles.
5. That institutions present would liaise to structure an initiative to train all security forces and that the ULS would lead this initiative and make communication with all stakeholders to solicit ideas to be placed as a concept note to fund this initiative.