



**PRESIDENT'S REMARKS AT THE ANNUAL RULE OF LAW
SYMPOSIUM**

**THEME: *Getting on the Radar: Effective remedies in
advancing the Right to Health in Uganda***

The Guest of Honour Dr. Diana Atwine

The Attorney General Hon. Kiryowa Kiwanuka

The Hon. Justice Musa Ssekaana

The Keynote Speaker Prof. Ben Twinomugisha Kiromba

The Chairperson of the Rule of Law Committee

Past Presidents Present

Representatives of the various Civil Society Organisations

Diplomats and Dignitaries in their respective capacities

The Executive Council of the Uganda Law Society

The Membership of the Uganda Law Society

All protocol observed,

Ladies and Gentlemen

A very good morning to you all.

I am delighted to stand before you today in the midst of great minds that have come together for what I believe is one of the most noble causes. I am quite eager to witness the insightful deliberations on issues of health that run to the very core of our existence. To our guest of honour, speakers and panelists that have sacrificed their precious time to be a part of this great event, thank you very much.

Our presence here is as a result of the dedication and selflessness of the members of the Rule of Law Department and Secretariat as a whole in organising this event. Please stand up for recognition wherever you are. Ladies and Gentlemen, a very big round of applause to the wonderful team.

The Covid-19 pandemic that plagued the nation over the past year and a half, has exposed the vulnerability of the health sector. The theme of this symposium could therefore never have been more relevant as it is in the prevailing circumstances.

At the inception of this symposium's theme, I was elated that such a theme had been developed reason being, there is nothing we can ever fully achieve as people if we are not in the best health conditions for a healthy mind is a healthy body and a healthy body is one full of unlimited potential.

I am alive to the fact that the Constitution of Uganda does not expressly provide for a right to health. This is despite the fact that Uganda is a signatory to the Abuja Declaration on health financing in which it committed to designate 15% of its budget towards the right to health. I therefore believe that this anomaly in the Constitution will be a key as we commence today's proceedings into the right to health.

Mahatma Gandhi rightly stated that, ***"It is health that is real wealth and not pieces of gold and silver"***

Understanding health as a human right creates a legal obligation on states to ensure access to timely, acceptable, and affordable

health care of appropriate quality. It also alludes to the provision of the underlying determinants of health, such as safe water, sanitation, food, housing, health-related information and education, and gender equality.¹ My humble appeal is that we do not let the right to health be a state issue but one that concerns each and every one.

I am confident that by the end of the day, we are going to come up with a very clear roadmap on the way forward from the various sessions and key take-away therein.

In line with its objective to uphold the Rule of Law, the ULS is also proud and honoured to launch the third quarterly Rule of Law Report. This report is aimed at shedding light on the salient rule of law issues that have occurred during the review period.

With these brief remarks, please allow me to now take you through some of the highlights of the ULS Third Quarterly Rule of Law Report 2021.

SUMMARY OF THE THIRD QUARTERLY RULE OF LAW REPORT 2021

The Rule of Law Report considers four pillars which include;

- Checks and Balances;
- State of Human Rights;
- Transparency and Accountability;
- Due Process and Climate of Legality

Having addressed the rule of law issues, the report proceeds to offer recommendations to both the state and non-state actors, in a bid to ensure that the Rule of Law is upheld.

The report being launched today is the 3rd Quarterly rule of law report for the year 2021 and weighs in on the events that occurred between the month of July and September.

Please allow me to first take you all through the positive developments that were registered during this review period.

¹ <https://www.who.int/news-room/fact-sheets/detail/human-rights-and-health>

- **The Judiciary and Access to Justice.** On July 7, 2021, the Judiciary through the Chambers of the Principal Judge issued a circular *NO.3 of 2021* regarding the retention of National Identification Cards of sureties by courts. the Judiciary forbade Judicial Officers from requesting the deposit of National Identification Cards as a condition for grant of bail.
- **Appointment of the Chairperson of the Uganda Human Rights Commission.** The Uganda Law Society also commends His Excellency the President of Uganda, Yoweri Kaguta Museveni for appointing the Chairperson of the Uganda Human Rights Commission Ms. Marriam Wangadya on July 15, 2021.
- **Promotion of Human Rights at Police and Uganda Prisons Services.** Uganda Police Force is taking steps to curb the vice of human rights infraction by setting up a Human Rights and Complaints Desk, which is to be implemented across all districts in Uganda. The Uganda Prisons Services has had the setting up of Human Rights Committees, which were established in all of the 259 prisons across the country
- **The Right to a Clean and Healthy Environment.** Over a year ago while at the 21st Conference of Parties in Paris, the government of Uganda pledged to address challenges and opportunities to ensure Uganda's development trajectory is sustainable, in accordance with the Sustainable Development Goals and the ambitious climate change commitments. The Uganda Law Society particularly welcomes the cabinet decision during this review period to evict encroachers in government forest reserves, ban rice growing and other crops in wetlands, as well as cancelling

of illegal land titles that were issued in wetlands and forest reserves.

- **Closure of Wakiso Land Office.** The Uganda Law Society commends the Ministry of Lands, particularly the State Minister of Lands, Hon. Sam Mayanja for taking notable steps against corruption within the lands office. This was following his decision to temporarily shut down the Wakiso land office. This move was also monumental as the ULS Executive Council had paid a courtesy visit to the Ministry of Lands on 27th July 2021. ²Several points had been discussed during this meeting including; the need to deal with corruption at land offices, as well as the need to reinstate the land tribunals by the Judiciary.

The positive developments notwithstanding, the Uganda Law Society notes several rule of law issues that have persisted during this review period; particularly continued incidents of human rights violations and breaches of due process and legality as illustrated below:

THE STATE OF HUMAN RIGHTS

Freedom from Torture, Respect for Human Dignity and Protection from Inhuman Treatment

The Uganda Law Society in this reporting period condemns acts of torture that were meted out on the suspects in the attempted assassination of General Katumba Wamala which incident led to the death of his daughter Brenda Nantongo and his driver Haruna Kayondo. The suspects who included Muhammad Kagugube, Siriman Kisambira, Abudallah-Aziz Ramadhan Dunku, Kamada Walusimbi and Habib Ramadhan Marjan appeared before Dr. Douglas Singiza at the Chief Magistrates Court of Nakawa on July 8, 2021, displayed marks of beatings on their

² <https://www.uls.or.ug/uls-meeting-officials-ministry-lands-housing-and-urban-development>

backs, legs, feet, hands and buttocks and were crying through the proceedings.³

Legal issues arising:

- i. Whether the use of torture on suspects as a tool of interrogation as highlighted above is justified.
- ii. Whether the court, the Uganda Police Forces and the Uganda Prisons Services should entertain suspects who have been severely tortured.

Recommendations:

- i. Such torturous actions call for re-skilling of all security agencies to enable them to move away from the archaic method of police investigations that emphasizes confessions (guilt finding) rather than obtaining the truth (fact-finding) using more scientific methods. Torturing suspects is cruel, inhuman, degrading, and unconstitutional and compromises the proper prosecution of cases.
- ii. The perpetrators of the acts of torture particularly the security officers should be brought to book and the persons whose fundamental rights and freedoms that were violated should be compensated as is provided for in Article 50 of the 1995 Constitution of Uganda. The Uganda Law Society is currently engaging the Office of the Director of Public Prosecutions to prosecute the persons who were involved in acts of torture against the suspects. We refer to Section 10 of the Human Rights Enforcement Act which provides that a public officer who individually or in association with others, violates or participates in the violation of a person's rights or freedoms shall be held personally liable for the violation notwithstanding the state being vicariously liable for his or her actions.

³ Hanninton Mbabazi, "Hon. Katumba Shooting suspects were Tortured in Custody," The Capital Times, July 9, 2021. Available at <https://thecapitaltimes.co.ug/2021/07/09/pictorial-how-gen-katumba-shooting-suspects-were-tortured-in-custody> last accessed on July 26, 2021.

- iii. All stakeholders especially the security forces should ensure that safeguards against cruelty and torture in the first hours of detention are implemented. These include but are not limited to; charging all suspects within 48 hours, prompt access to an advocate, access to medical treatment, and access to family members.

Continued Arbitrary Detention of National Unit Platform Supporters

Article 9 of the Universal Declaration of Human Rights (1948) to which Uganda is a signatory states that no person shall be subjected to arbitrary arrest, detention or exile. The same was also adopted in Article 23 of the 1995 Constitution of Uganda which states that no person shall be subjected to arbitrary detention without reasonable cause.

ULS notes the continued irregular and arbitrary detention of the National Unit Platform supporters who have been in custody for over 120 days contrary to Section 15(4) (b) of the Human Rights (Enforcement) Act 2019 which states that a person shall not be unreasonably detained or charged with an offence triable by a subordinate court.

Legal Issue arising:

- Whether the right to personal liberty was violated.

Recommendations:

- Efforts geared towards training professionalism among the security forces including the Uganda Prisons Services, the Uganda Police force should be increased to address the problem of prolonged detention.
- The Judiciary should not tolerate cases that are coupled with violations of human rights which include long detention and torture despite their operative restrictions during lockdown. They should consider such cases to be

urgent and should unconditionally release the suspects as required by the Human Rights (Enforcement) Act 2019.

Children's Rights

The government of Uganda has ratified a number of international and regional laws which uphold children's rights including the Rights of the Child which was ratified in 1990.

However, inspite of the fact that there is a solid framework, robust implementation of the legislations remains a challenge as is reflected in the review period. During this review period, the ULS has yet again noted several issues affecting the right of children. These including child trafficking, torture, defilement and sexual abuse; which have affected the children's ability to achieve their full potential in society are thus highlighted below;

i. Child Trafficking on the Rise

On July 24, 2021, it was reported that the Uganda Police Force had rescued fourteen girls aged 14-19 years from a one Ndagire Dorothy who was suspected to be a human trafficker and had kept the girls at a guest house in Muyenga, Makindye Division, and Kampala District.⁴ It was mentioned by the Kampala Metropolitan Deputy Police Spokesperson, ASP Luke Owoyesingire that Ndagire aged 27, a resident of Kawala Central Zone in Rubaga Division had through her Non-Governmental Organization (NGO) named 'Maya Project Uganda Chapter' which was later discovered by police that it was not a registered with the NGO Board and had partners in London had been used to kidnap and traffick girls.⁵

The 2020 Police Annual Crime Report indicated that close to 700 individuals were victims of Trafficking in Persons. Despite efforts made by the government and Non-Governmental Organizations to curb cases of child trafficking, cases are on the rise.

⁴ David Vosh Ajuna, "Police rescue 14 teenage girls from suspected human trafficker in Kampala," Daily Monitor, July 24, 2021. Available at <https://www.monitor.co.ug/uganda/news/national/police-rescue-14-teenage-girls-from-suspected-human-trafficker-in-kampala-3484514> last accessed on July 26, 2021.

⁵ Ibid

i. Defilement and Sexual Abuse of Children Among the Batwa Community

In the Police Annual Crime Report of 2020, it was indicated that 14,134 cases of defilement had been reported to police compared to 13,613 cases reported in 2019, therefore noting an increase in defilement cases by 3.8%.⁶

Legal issue arising:

- Whether children's rights are protected as is provided for in the 1995 Constitution of Uganda.

Recommendations:

- The government through the Uganda Police Force, the Ministry of Gender, Labour and Social Development in partnership with Non-Governmental Organizations should remodel its approach and intensify investigations into human trafficking and focus to prosecute child traffickers on the judicial side. In addition, survivors of child trafficking should be assisted. There is need for political will to ensure that cases of child trafficking decrease in the country by enforcing of bilateral agreements with different nations to ensure that cases are well managed. This would also enable for the reduction in budgetary resources as well as the proper legal handling of these cases through training of stakeholders.
- The government should consider reopening schools to avoid exposing girls to defilement and sexual abuse. Furthermore, there is need for increased empowerment of girls in the Batwa community which is considered as one of the tribal minority in the country.
- The establishment of human rights centers/bodies where cases of child abuse, sexual abuse and defilement particularly within the Batwa community would be very crucial. These would be vital in expediting cases concerning the infringement of children's' rights.

⁶ <https://www.upf.go.ug/wp-content/uploads/2021/04/ANNUAL-CRIME-REPORT-2020-1.pdf?x74136>

The Right to the Highest Attainable Standard of Health

In 2011, the Ministry of Health developed the Policy and Objective of the Health Sector Strategic and Investment Plan on Health Infrastructure Development whose purpose was to provide a network of functional, efficient and sustainable health infrastructure within a 5 kilometer walking distance to every homestead.

That notwithstanding, the ULS has continued to note with concern cases of infringement of the right to health of Ugandans due to lack of infrastructure. A case in Mbale was recently reported in which three expectant mothers died in a span of two months owing to referral delays due to a lack of an ambulance as well as several other vital health equipment.⁷ In 2020, the Makerere University School of Public Health carried out a survey and revealed that 70% of ambulances used in Uganda to ferry patients to hospitals lacked equipment, medical supplies or even trained personnel.⁸

The human right to health (physical and mental) is recognized in **the International Covenant on Economic, Social and Cultural Rights (Article 12)** and Uganda ratified a number of international and regional which recognized and guarantee the right to health.

Moreover, Uganda is also a signatory to the Abuja Declaration on Health financing in which it committed to direct at least 15% of its budget towards health.

Legal issue arising:

- Whether the right to health is protected.

Recommendations:

The Ministry of Health and other stakeholders should ensure that supply of hospital equipment including ambulances is done at all levels so that all persons are able to attain the right to health.

⁷ Fred Wambede, "Lack of ambulance fuels maternal deaths in Mbale," Daily Monitor, August 19, 2021, at p.28.

⁸ <https://www.independent.co.ug/70-percent-of-ambulances-in-uganda-lack-equipment-trained-staff-survey>

Right to Life

The Police Annual Crime Report of 2020 indicated that 4,460 people were killed in 12 months of 2020 translating into 12 person killed through assault, poisoning, arson, shooting or mob action in a month. The ULS has also noted cases leading to loss of lives during this period particularly a one Magid Mugwanya who succumbed to gun shots following a scuffle that ensued while a one Moses Kirunda, Major Nelson Kyatuka a Uganda People's Defence Forces soldier attached to the Chieftaincy of Military Intelligence and a police officer were forcing Mugwanya out of his car; on refusal he was shot.⁹ The incident occurred on July 14, 2021, at Kitunzi zone, Lungujja, in Rubaga Division.¹⁰ It is alleged that Mugwanya was shot while he was trying to rescue a woman who was screaming for help and was being dragged into a car by three men at night.¹¹

Additionally, the Uganda Law Society has yet recorded cases of violence and loss of lives among the East African Community. Killings of four truck drivers between the period of July and August 2021 along Juba-Nimule highway have been noted and these include one Ugandan and three Kenyans. It is stated that while they were delivering cargo goods to Juba, the capital city of South Sudan, Musa Kalyowa, Isaac Ouma Ofwa, Haruna Abdullahi Ore and Issa Salat were shot dead by unknown gunmen while others remain hospitalized nursing gunshot wounds.¹²

Legal Issue Arising:

- Whether the right to life was violated.

⁹ Barbara Kabahumuza & Michael Odeng, "Court bailiff Moses Kirunda charged, remanded over murder," *New Vision*, August 18 2021, at p.12

¹⁰ Ibid

¹¹ Andrew Bagala, "State House operatives arrest bailiff Kirunda over murder," August 16, 2021, *Daily Monitor*. Available at <https://www.monitor.co.ug/uganda/news/national/state-house-operatives-arrest-bailiff-kirunda-over-murder-3512948> [Accessed on August 1, 2021]

¹² URN, "Ugandans demand bodies of truck drivers killed in South Sudan," *The Independent*, August 9, 2021. Available at <https://www.independent.co.ug/ugandans-demand-bodies-of-truck-drivers-killed-in-south-sudan> [Accesses on August 2, 2021]

Recommendations:

- The right to life should be respected at all times. It's therefore recommended that the perpetrators face the full arm of the law and account for the atrocious act.
- The East African Partner states, together with organs of the community especially between Uganda and South Sudan should review, align and strengthen their structures so as to effectively implement the Common Market Protocol.

Robbery Attacks by a Group of Iron Bar-Wielding thugs in the City

During the reporting period the country recorded cases of citizens being attacked by thugs in broad day light which have in some cases led to loss of lives. Of particular note was the attack meted out on Ms. Gladys Kamasanyu, the Chief Magistrate at Utilities Court-Buganda Road on July 17, 2021 while she was allegedly going to collect her child's Primary Leaving Education result slip.¹³ It was reported by His Worship, Karemani Jamson from the Civil Division of the High Court that the suspected robbers fled off with her personal effects which included a bag and mobile phone and was later rushed Kampala International Hospital and admitted in the Intensive Care Unit.¹⁴

On July 24, 2021, a gang of 14 thugs wearing hoods, caps and were riding on motorcycles were also reported to have trailed, intercepted and attacked a business man, Jiwan Lal, an accountant working with Rigil Agro Peck Limited and robbed him of UGX 5,000,000.¹⁵ The incident, which was captured on a Police Closed-Circuit Television (CCTV Camera) made rounds on social media platforms across the country, creating fear and panic in the country.

¹³ Betty Ndagire, "Chief Magistrate Gladys Kamasanyu attacked in suspected robbery, admitted in ICU," Daily Monitor, July 18, 2021. Available at <https://www.monitor.co.ug/uganda/news/national/chief-magistrate-gladys-kamasanyu-attacked-in-suspected-robbery-admitted-in-icu-3477192> [Accessed on July 28, 2021]

¹⁴ Ibid

¹⁵ Andrew Bagala, "City Robbers Expose Flaws in CCTV Project," Available at <https://allafrica.com/stories/202107260539.html> last accessed on July 28, 2021.

Increasing criminality in Greater Masaka Region

The Uganda Law Society has again recorded increasing insecurity against criminality in the areas of Masaka region. A total of 28 residents of Masaka have been killed by these assailants in a span of one month and based on the same method and pattern of killing the vulnerable it is speculated that this would be a rebel group as was also mentioned by Mr. Charles Rwomushana the former head of intelligence at the State House.¹⁶

Legal Issue

Whether enough is being done by the government to avert the increasing crime rates in the country.

Recommendations:

The authorities should expeditiously investigate the climate of criminality and a conclusive report presented by the government for action to reduce the increasing number of cases of robbery and machete gangs. Those perpetrators of these violations should be arraigned before courts and prosecuted.

CLIMATE OF LEGALITY AND DUE PROCESS

Due process of law is a constitutional guarantee that prevents governments from impacting citizens in an abusive way. In its modern form, due process includes both procedural standards that courts must uphold in order to protect peoples' personal liberty and a range of liberty interests that statutes and regulations must not infringe. During this period, the ULS noted several cases posing a threat to due process and climate of legality in the country. Cases of robbery attacks by iron bar-wielding thugs in the city, the wave of killings in the greater Masaka region by machete men, the arbitrary arrest of Victoria University Vice Chancellor, and killing of Suspects in Gen. Katumba Wamala Assassination Attempt

¹⁶ Monitor Team, "Terror in Masaka Claims," *Daily Monitor*, August 26, 2021. At p. 4

Legal issues arising:

- Whether due process is followed by security forces while arresting and interrogating suspects.
- Whether control measures and controls have been put in place to enable a conducive climate of legality.

Recommendations:

- A proper policy and legal framework should be defined under which security forces should shoot suspects before charging and convicting them. No person shall be deprived of the right to life without due process.
- The security forces should follow what is provided for in the Constitution when arresting suspects.

Law on Bail

The Uganda Law Society has been closely following and monitoring the recent comments made by the President of Uganda, His Excellency President Yoweri Museveni on the right to bail in Uganda and several news outlets have reported the President as calling for a review of the right to bail. The President has particularly protested some court decisions granting bail to murder suspects, noting that this amounts to provocation of the public.¹⁷ The President made these remarks during the State of the Nation Address on 4th June 2021 and subsequently on the Benedicto Kiwanuka day on 27th September 2021.¹⁸

legal issues raised by the ULS in its statement include the following;

- a) That removing the right to seek bail will water down the presumption of innocence which is the cardinal principle of our criminal law and ultimately deprive a person charged with a criminal offence of the right to personal liberty.

¹⁷ <http://parliamentwatch.ug/president-museveni-questions-bail-for-murder-suspects/>

¹⁸ <https://allafrica.com/stories/202109290391.html>

- b) The rights of the individual to personal liberty and freedom must be balanced at all times against the compelling interests of the state to enforce law and order for the citizens to have confidence in the criminal justice system.
- c) The constitutional legal regime on right to bail be maintained and instead state Institutions such as the Police and Office of Director of Public Prosecutions be strengthened to carryout thorough investigations in criminal matters before committing to arrest a suspect.
- d) The right to fair hearing be strictly observed by the state in the determination of civil rights and obligations, or a person charged with a criminal offence be entitled to a fair, speedy trial before an independent and impartial court or tribunal established by law as provided for under Article 28 of the 1995 Constitution.

GENERAL COMMENTS

Mailo Land

The Uganda Law Society has noted the increasing land evictions that have intensified in the recent times on the four types of land systems across the country which include mailo, freehold, customary and leasehold as provide for in the 1995 Constitution of Uganda. Specifically, the daily evictions both lawful and unlawful have been witnessed on the mailo land system due to the entangled interests of tenant and landlord. The mailo which comprise of the *Busulu* and *Envujjo* law that was introduced in 1928 to reorganize landlord-tenant relationship. The same was adopted in the 1995 Constitution and the 1998 Land Act. However, there has been continued complaints from tenants that landlords are exploiting and are further charging exorbitant rents while; many especially the poor and vulnerable have ended up losing their land rights to the rich. In trying to disentangle the overlapping interests on mailo land by the government we

recommend a need for active involvement of all those affected (landlords, tenants, cultural leaders and other actors). Also collection of the much needed information to be able to correct power imbalances over land, achieve justice and retain the rights of all individuals on the land.

Universal Periodic Review

General Assembly resolution **60/251** of 15 March 2006 created the Human Rights Council, which is mandated to undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States. In this, States are expected to spell out steps they have taken to adopt and implement recommendations received during previous reviews and share challenges in their follow-up actions. Uganda is a member of the United Nations Human Rights Council and it's reviewed every five years. However, its compliance with its international Human Rights obligations since its last review in 2016 is uncertain. Regional and international oversight bodies contribute to state compliance and provide opportunities for redress and accountability that may be non-existent or ineffective at the national level.

Illegal detention of people defying COVID-19 regulations resulting from the Presidential Directive and criminally charged before the Minister gazzeted the Directives as a Statutory instrument and while the judge may have advised that it's a criminal defense to routinely raise it as a defense however, this is something that needs a systematic approach for such cases to be discontinued at the level of DPP or at court.

CONCLUSION

Although Uganda is making positive strides in regards to the upholding of the Rule of Law as was highlighted in the report, there remains a significant amount of work that still needs to be done to iron out the recurring rule of law issues that keep cropping up. The Government as well as other several other state

and non-state actors have a duty to continue proactively leading the charge on the Rule of Law, even as Uganda seeks to achieve Vision 2040.

Thank you very much.

Pheona Nabasa Wall