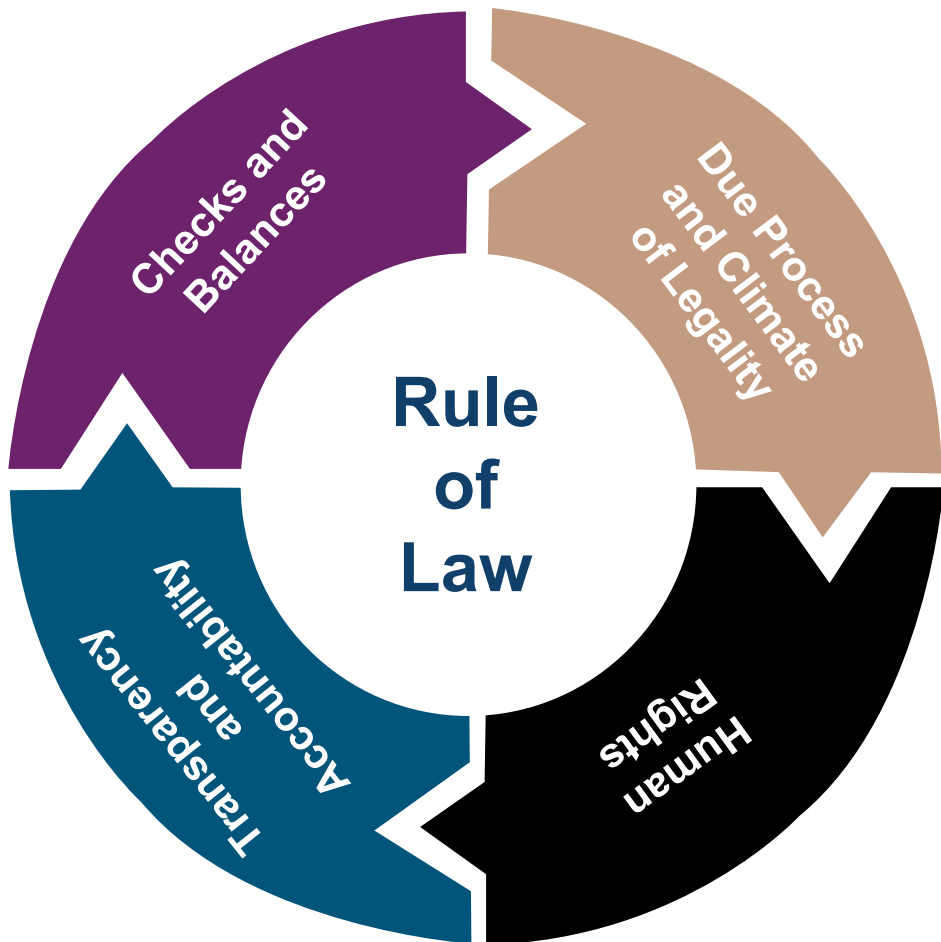




**THE STATE OF THE RULE OF LAW IN UGANDA  
FIRST QUARTERLY REPORT**



*With Support from*



**JANUARY- MARCH 2021**

## TABLE OF CONTENTS

<b>FOREWORD</b> .....	<b>2</b>
<b>ACKNOWLEDGEMENTS</b> .....	<b>3</b>
<b>INTRODUCTION</b> .....	<b>4</b>
<b>OVERVIEW OF ISSUES</b> .....	<b>5</b>
<b>THE STATE OF HUMAN RIGHTS</b> .....	<b>5</b>
a) Women’s Rights .....	5
b) Media Freedoms .....	6
c) Unlawful Arrests, Illegal Detentions and Disappearances During the 2021 General Elections .....	9
i) Arrest of opposition leaders and politicians in the 2021 general elections.....	9
ii) Disappearances, arrests and detention of citizens .....	10
d) Civic Rights and Activities .....	12
e) Breach of Economic Rights under the East African Community (EAC) .....	13
<b>DUE PROCESS AND CLIMATE OF LEGALITY</b> .....	<b>15</b>
a) The Jurisdiction of the Court Martial to try Civilians.....	15
b) The Procedure of the Right to a Fair Hearing.....	17
<b>CONCLUSION</b> .....	<b>18</b>

## FOREWORD



***"Being democratic is not enough, a majority cannot turn what is wrong into right. In order to be considered truly free, countries must also have a deep love of liberty and an abiding respect for the rule of law." ~ Margaret Thatcher***

The Uganda Law Society (ULS), believes that sustainable social, political, and economic progress can only exist in societies where the Rule of Law exists. It is from this premise that I am honored to present to you the First Quarterly Report for the year 2021 and the seventeenth issue overall on the State of the Rule of Law. The report presents and analyses issues affecting the rule of law as well as the developments that transpired around the country in the period of January to March 2021.

My sincere gratitude goes to the ULS Rule of Law Strategic and Litigation Committee for their continued invaluable support to the Secretariat team during the compilation of this report.

The review of this quarter covers the State of Human Rights as well as Due Process and Climate of Legality. This quarter specifically points to the human rights abuses that include infringements to media freedoms, arbitrary arrests, detention and disappearances of citizens during the 2021 general elections. The issue of civic rights as well as issues regarding the legality of the court martial to try civilians are also addressed in the report.

Saddening as the foregoing pinch of examples may be, the focus of this report provides a critical analysis and evaluation of the performance of this country post the lock down period more so during the recent election season in terms of protecting and promoting the rule of law in Uganda. In lieu of the Rule of Law issues highlighted in the report, necessary recommendations have also been made to the relevant stakeholders for action. We target both state and non-state actors in ensuring that they adopt a more proactive approach in dealing with human rights and rule of law challenges in the country.

As the Uganda Law Society, we remain devout to the implementation of the ULS Vision and its strategic objectives. In this regard therefore and on behalf of the ULS membership, I wish to urge all the relevant stakeholders to take note of the recommendations made in this report and ensure that we adopt a Faithful, Available and Teachable (F.A.T) approach towards the necessary adjustments to enable us to uphold the rule of law in Uganda at all times.

**"To be a Proficient Bar Association in Fostering Access to Justice, the Rule of Law and Good Governance in Uganda"**

**For God and My Country**

A handwritten signature in black ink, appearing to be 'Pheona Nabasa Wall'.

**Pheona Nabasa Wall  
ULS President**

## ACKNOWLEDGEMENTS

This report was generated with guidance from the ULS Rule of Law Strategic and Litigation Committee, the ULS Management and the entire Secretariat. Special thanks goes to the Rule of Law Department including Ms. Leah Nasasira Bitu, Ms. Mary Nalwoga and Ms. Rita Aligo for compiling the report.

The ULS would like to appreciate the Justice Law and Order Sector for supporting the compilation and publication of this first edition of the report for the year 2021.

## INTRODUCTION

The First Quarterly Report for the year 2021 and the Seventeenth Issue overall on the state of the Rule of Law presents and analyses issues affecting the rule of law and the developments that transpired around the country in the period of January to March 2021. The Report reviews the State of Human Rights as well as Due Process and Climate of Legality.

This quarter specifically points to the human rights abuses that happened during the 2021 general elections which include infringements to media freedom, arbitrary arrests, detention and disappearances of citizens during the 2021 general elections. The issue of civic rights as well as issues regarding the legality of the court martial to try civilians are also addressed in the report.

In lieu of the Rule of Law issues highlighted in the report, necessary recommendations have also been made to the relevant stakeholders for action.

The ULS commits to continue monitoring and documenting issues affecting the Rule of Law as part of its 2017 – 2021 Strategic Plan under Strategic Objective 3 which is “to promote the Rule of Law and Human Rights protection,” that was adopted for a more proactive approach in dealing with issues relating to the Rule of Law.

## OVERVIEW OF ISSUES

### THE STATE OF HUMAN RIGHTS

Human Rights are the bedrock principles of all societies where there is the rule of law, good governance and democracy. These are norms that aspire to protect all people everywhere from several political, legal and social abuses.<sup>1</sup> It is therefore important that the government, its agents and the public be firmly grounded in human rights and should comply with the binding obligations they have contracted when ratifying international human rights treaties.

Uganda has ratified most of the international human rights treaties. Of particular importance among these is the Universal Declaration of Human Rights which, according to Article 1 & 2 states that “All human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth in this declaration.” The protection and promotion of fundamental and other human rights and freedoms in Uganda was also adopted in Chapter Four of the 1995 Constitution of Uganda. Governments and other duty bearers are under an obligation to respect, protect and fulfil human rights, which form the legal basis for legal entitlements and remedies in case of non-fulfillment.

That notwithstanding, during this period, the country has witnessed some cases of human rights violations including violations of freedom of association, assembly and expression as authorities introduced new regulations on both physical and online activities given the restrictions that were imposed on accessing social media and internet generally and stifling independent media in addition to arresting opposition politicians. The above restrictions as well as government’s failure to ensure accountability for past abuses do not bode well especially in light of the recently concluded 2021 general elections. These are highlighted below;-

#### a) Women’s Rights

The period under review has witnessed cases of abuse and killing of women under unclear circumstances. Article 33(1) and (3) of the 1995 Constitution states that women shall be accorded full and equal dignity of the person with men and that the State shall protect women and their rights, taking into account their unique status and natural maternal functions in society. However, despite the volley of legislations designed to protect women’s rights, the ULS has noted three cases of dead bodies of women dumped in the areas of Nakulabye and Rubaga Division in Kampala.<sup>2</sup> The deceased who were later identified as Mclean Ahereza, Kansiime who was killed together with her three months old child and Mutesi were first tortured, killed and later burnt by the perpetrator beyond recognition to extinguish evidence.<sup>3</sup> After thorough investigations, police discovered and identified the perpetrator as Musa Musasizi who had killed the three women and a child in a period of one month.<sup>4</sup> It is alleged that Musasizi confessed to have killed them as stated by the Criminal Investigations Department Spokesperson, Charles Twine.<sup>5</sup>

The ULS has previously reported rampant murders of women and teenage girls in Entebbe, Kampala

<sup>1</sup> Available at <https://plato.stanford.edu/entries/rights-human> last accessed on March 10, 2021

<sup>2</sup> Kenneth Kazibwe, “Inside arrest of a man who had sex with several women in Kampala before killing them,” Nile Post, March 25, 2021. Available at <https://nilepost.co.ug/2021/03/25/inside-arrest-of-a-man-who-had-sex-with-several-women-in-kampala-before-killing-them> last accessed on March 25, 2021.

<sup>3</sup> Ibid

<sup>4</sup> Ibid

<sup>5</sup> Ibid

and Wakiso districts especially in the suburbs of Nansana and Abayita Ababiri which cases have never been resolved.<sup>6</sup>

It should be noted that the State has a fundamental obligation to ensure that women's rights are protected and upheld. The ULS therefore applauds the efforts made by the police to locate the perpetrator and we hope that justice shall prevail as it ought to be.

**Legal Issue arising:**

- Whether women's rights are protected.

**Recommendations:**

- The government through the Ministry of Gender, Labour and Social Development and the Uganda Police should thoroughly investigate the increasing cases of criminal activities against women and girls to ensure that safeguards are in place to protect them.
- The ULS calls upon all civil society actors, community based organizations, traditional and spiritual leaders to work towards a holistic education that addresses the needs of women including physical, mental, spiritual, moral and social needs.
- The Uganda Police together with the office of the DPP should ensure that perpetrator are swiftly brought to justice by investigating and prosecuting matters in a timely manner

## **b) Media Freedoms**

Uganda has a number of laws that promote and protect media freedoms as well as the right to access information by every citizen. Most notable of these is Article 41(1) of the 1995 Constitution of Uganda which states that every citizen has a right of access to information in the possession of the State or any other organ or agency of the State except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person. Article 29 (a) of the Constitution also provides for freedom of speech and expression which shall include freedom of the press and other media.

However, it appears that the same aforementioned laws have been used to criminalize the freedom of expression guaranteed under the Constitution. This is particularly the case with the Press and Journalist Act 2000. This Act was intended to professionalize journalism, creating structures and processes through which one becomes a journalist and practice journalism as a profession. However, this Act has instead been misused by authorities to criminalize the practice of journalism as was seen during this reporting period. This was seen through several cases in which the voice of the media was shut down; with several restrictions being made on who is lawfully considered a journalist. There were also instances where broadcasting licenses were revoked without the due process of law. Several journalists were arrested and tortured during the review period thus threatening the independence of journalism.

Of particular note was the shutdown of all social media platforms in Uganda;<sup>7</sup> an act that was approved by the President of Uganda in response to Facebook's shutdown of the official NRM accounts.<sup>8</sup> The act was justified by the President during a presidential address made on January

---

<sup>6</sup> The State of The Rule of Law in Uganda, Third Quarterly Report for July to September 2017

<sup>7</sup> David Lumu, "Government blocks social media sites," New Vision, January 13, 2021 at page 3

<sup>8</sup> Available at <https://www.aljazeera.com/news/2021/1/12/unprecedented-violence-as-uganda-gears-up-for-elections> last accessed on March 12, 2021



UCC House  
Plot 42-44 Spring Street  
Rugindi  
P.O. Box 2726  
Kampala, Uganda

Our Ref: C  
12th January 2021

Dear Sir,

**SUSPENSION OF THE OPERATION OF SOCIAL MEDIA**

In exercise of its functions under section 5(1) of the Uganda Communications Act of 2013, Uganda Communications Commission hereby directs you to immediately suspend any access and use, direct or otherwise, of ALL social media platforms and online messaging applications over your network until further notice.

Thank you for your cooperation

Yours faithfully

  
Irene Kagame Sswankambo  
AG. EXECUTIVE DIRECTOR

**Letter from the Uganda Communications Commission**

that was allegedly led by Lt. Col. Franklin Namanya.<sup>12</sup>

12, 2021 ahead of the presidential and parliamentary election.<sup>9</sup> Social media platforms like Facebook, WhatsApp, Twitter and Viber were forced to shut down; following a letter written by the Executive Director of the Uganda Communications Commission ordering all telecommunications companies to suspend any access to social media and online messaging platforms.<sup>10</sup> This was therefore a curtail to media freedom which is a very crucial element to enable transparency elections to take place.

Furthermore, on February 17, 2021; the ULS also noted the case wherein some army officers and police officers attacked journalists who were covering an event in which the former Presidential Candidate Hon. Robert Kyagulanyi Ssentamu was delivering a petition to the Office of the United Nations High Commissioner for Human Rights in Kololo, Kampala.<sup>11</sup> As a result, over twenty journalists were left in clutches with others nursing wounds for the injuries they sustained in the operation



**A picture of Military assaulting journalists (Left - Picture by Human Rights Network for Journalists – Uganda) and Paul Murungi (Right) a journalist working with the New Vision newspaper at their offices after he was injured by security forces at the Office of the United Nations High Commissioner for Human Rights in Kololo, Kampala.**

Incidents of torturing journalists have gradually increased over time as is reported in media bulletins, like Ronald Kakooza a Vision Group reporter was roughed up and arrested at the Forum for Democratic Change Party headquarters in Najjanankumbi, Moses Bwayo a freelance journalist was shot in the face with a rubber bullet, Daniel Lutaaya and Thomas Kitimbo were attacked by unknown thugs in Lira while Saif-Ilah Ashraf, a radio one journalists were beaten and pepper sprayed by police<sup>13</sup> and all these were covering the campaign trails of opposition politicians. Since then, no accountability has been made and efforts to reduce cases of torturing journalists have become futile. Such threats coupled with a wide range of tactics have stifled critical and independent reporting in the country.

<sup>9</sup> Ibid

<sup>10</sup> "UCC orders social media shut down ahead of tense poll," The Daily Monitor, January 12, 2021. Available at <https://www.monitor.co.ug/uganda/news/national/ucc-orders-social-media-shutdown-ahead-of-tense-poll-3254532> last accessed on March 15, 2021.

<sup>11</sup> Clare Muhindo, "Eight journalists beaten on orders of military officer at UN Human Rights office," African Centre for Media Excellence, February 17, 2021. Available at <https://acme-ug.org/2021/02/17/eight-journalists-beaten-on-orders-of-military-officer-at-un-human-rights-office> last accessed on March 15, 2021.

<sup>12</sup> Monitor Reporters, "Unmasking commander behind journalists beating," Daily Monitor, February 19, 2021. Available at <https://www.monitor.co.ug/uganda/news/national/unmasking-commander-behind-journalists-beating--3297516> last accessed on March 15, 2020.

<sup>13</sup> Ibid



Under the international human rights law, namely the International Covenant on Civil and Political Rights (ICCPR), governments are allowed to restrict speech in specific instances to protect narrowly determined interests, such as national security or public morals. However, such restrictions must meet several high hurdles. These include the fact that the restriction must be prescribed clearly and narrowly by law. The restriction must also have a genuine purpose and effect of protecting such determined interests. It must also be the least restrictive means available.

**Legal issue arising:**

- Whether the rights of journalists are guaranteed by the State?

**Recommendations:**

- The ULS recommends for the immediate ending of the harassment, threatening and abuse of the rights of journalists. Those found culpable and guilty for these crimes should subsequently be prosecuted.
- The ULS recommends that the UPDF and Uganda Police cease from interfering in the work of journalists. The UPDF should concentrate on protecting the borders and the people of Uganda rather than interfering with the rights of citizens.
- Uganda Communications Commission acclimatizes itself with the relevant laws to avoid further arbitrary exercise of authority or power not vested in it by law.
- Due process should be followed in the event of the suspension of broadcasting licenses, media platforms and telecom companies, taking into consideration the rights of both the journalists and media owners.
- Revise the structure of the Broadcasting Council and the Media Council to establish them as independent bodies that can protect the media from illegitimate government interference and promote diversity in and access to the media.

## c) Unlawful arrests, illegal detentions and disappearances during the 2021 general elections

Articles 25(a), (b) and (c) respectively of the International Covenant on Civil and Political Rights state that every citizen shall have the right and the opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives, to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; and to have access on general terms of equality to public service in his country. In addition, Article 38 of the 1995 Constitution of Uganda protects the rights of citizens to participate in the affairs of the government and to participate in peaceful activities to influence the policies of government through civic organizations. However, despite the fact that Uganda is a party to a number of international instruments, during the review period, the ULS has noted the abuse of the right of citizens to participate in government affairs as was seen during the 2021 general elections. These abuses were quite apart and contrary from the substantive provisions of the Constitution and international instruments. These are highlighted below;

### i) Arrest of opposition leaders and politicians in the 2021 general elections

The recently concluded 2021 general elections were marred with arbitrary arrests, police brutality and the torturing of some of the opposition leaders that occurred during the elections. On Thursday January 7, 2021, the security officers arrested over 17 members of the National Unity Platform<sup>14</sup> at Kakoli village in Budaka District during a campaign trail.<sup>15</sup> This followed the arrest of 126 supporters of the National Unity Platform by security officers in the islands of Kalangala District and later taken to Mbale Central Police Station.<sup>16</sup> They later appeared at Masaka Magistrate's Court after five days in detention, where some appeared to have been tortured as others displayed wounds on various parts of their bodies before court<sup>17</sup>. Other opposition leaders were also arrested by security officers and blocked from reaching their campaign grounds. These included Hon. Patrick Oboi Amuriat who was tear gassed in Nakawa and also arrested in Nakasongola campaign on 2nd January 2021 as well as Hon. Norbert Mao of DP and Hon. John Katumba independent.<sup>18</sup>



*Hon. Patrick Odoi Amuriat arrested during one of his campaigns in Gulu district (on your left) and the 133 NUP supporters<sup>19</sup> arrested from Kalangala (on your right). Photo by Daily Monitor*

<sup>14</sup> Derrick Wandera, "Bobi Wine's lonely walk to election day," Saturday Monitor, January 9, 2021, Page 4

<sup>15</sup> Ibid

<sup>16</sup> Ibid

<sup>17</sup> Ibid

<sup>18</sup> Ibid

<sup>19</sup> Report on Governmental abuse, violations and misconduct in advance of the January 14, 2021, Presidential Election and its aftermath. Available at <https://s3-eu-west-1.amazonaws.com/s3.sourceafrica.net/documents/120896/Report-on-Governmental-Abuse-Violations-and.pdf> last accessed on March 26, 2021.



**NUP president Hon. Kyagulanyi Robert Sentamu under house arrest**

The ULS was also particularly concerned when the National Unity Platform flag bearer, Hon. Robert Kyagulanyi's home was taken over by security forces as Hon. Kyagulanyi himself was placed under "House Arrest" amidst tense general elections.<sup>20</sup> This is more so as the security officers undermined the constitutional rights to privacy of Mr. Kyagulanyi provided for in Article 27 and Article 29(2) (a) of the 1995 Constitution of Uganda which provide for freedom to move freely throughout Uganda.

Furthermore, during this period, Hon. Kyagulanyi was unable to contact his lawyers and family. Moreover, media reports reported the brutal arrest and torture of Hon. Francis Zaake when he attempted to access Hon. Kyagulanyi's home.<sup>21</sup> It is therefore imperative that security forces ensure that human rights and freedoms are respected even as they observe national security, whilst they execute and perform their functions.

## ii) Disappearances, arrests and detention of citizens



**A picture of families of missing people gather during a press conference at the National Unity Platform Headquarters (Photo by Al Jazeera)**

During the 2021 general elections, there was also a marked increase in the number of disappearances, arrests and detention of citizens that were predominantly from opposition groups as was reported by several media outlets. Many of the abductees and detained citizens were placed either in ungazetted areas or thrown in prisons across the country by security forces, which act was confirmed by the President during a Speech that he made on February 13, 2021.<sup>22</sup> Moreover, many of those that had been reported missing and were later released, have re-counted incidents of excessive use of force and torture by security forces.<sup>23</sup>

Social media platforms have also been awash with videos of severely injured citizens who were kidnapped, whilst some videos show relatives crying in pain alleging murder of their loved ones at the hands of security forces.

Although a list of persons alleged to have been abducted by security was tabled before Parliament by the Minister of Internal Affairs Hon. Jjeje Odongo totaling 177, its authenticity was disputed by several Members of Parliament<sup>24</sup>.

Article 20 of the 1995 Constitution of Uganda states that the fundamental rights and freedoms of the individual are inherent and not granted by the state and therefore these rights and freedoms enshrined in Chapter Four of the Constitution shall be respected, upheld and promoted by all organs

<sup>20</sup> Daily Nation, "Uganda's Bobi Wine says food supplies over amid 'house arrest,'" Daily Nation, January 18, 2021. Available on <https://www.theeastafrican.co.ke/tea/news/east-africa/uganda-s-bobi-wine-says-food-supplies-over-amid-house-arrest--3260354> last accessed on January 18, 2021.

<sup>21</sup> Andrew Bagala, "60 arrested over attack on bus, police vehicle," Daily Monitor, January 18, 2021, Page 3

<sup>22</sup> Hamza Kyeyune, "Uganda: Bobi Wine issue list of 243 missing people," AA, February 16, 2021. Available at <https://www.aa.com.tr/en/africa/uganda-bobi-wine-issues-list-of-243-missing-people/2147146> last accessed on March 15, 2021.

<sup>23</sup> Ibid

<sup>24</sup> Job Bwire, "Minister Odongo tables before Parliament a list 177 missing Ugandans," Daily Monitor, March 4, 2021. Available at <https://www.monitor.co.ug/uganda/news/national/minister-odongo-tables-before-parliament-list-of-177-missing-ugandans-3311826> last accessed on March 15, 2021.

and agencies of Government and by all persons at all times. The acts of the State in abducting citizens under the auspice of curbing schemes of criminality is unconstitutional. Such incidences should not be ignored. The recent remarks by the Minister of Justice and Constitutional affairs justifying the abductions as a way of curbing crime are not only unfortunate but reckless and disappointing.

No person should be subjected to any form of torture, cruel, inhuman or degrading treatment or punishment and any person found guilty of an offence should immediately be informed of the nature of the offence immediately, in a language that the person understands, be permitted to appear before the court or, at that person's own expense, by a lawyer of his or her choice as per Article 28(3) (b) and (d) of the Constitution. It is therefore imperative that due process be followed to enable citizens receive fair treatment through the normal justice systems.

#### **Legal issues arising:**

- Whether citizens' rights to take part in the conduct of public affairs especially to vote and to be elected is protected as provided for in the 1995 Constitution of Uganda.
- Whether the arrests and detentions of several Ugandans during the 2021 general elections were in line with their right to a fair hearing as is provided for in Article 28 of the Constitution, Article 10 of the Universal Declaration of Human Rights, Article 9 of the International Covenant on Civil and Political Rights as well as Article 7 of the African Charter on Human and People's Rights.

#### **Recommendations:**

- There is need for the state to carry out an independent investigation and commission of inquiry into the disappearances, arbitrary arrests and detention of citizens during the election period.
- The Government and its agents ought to put an end to the violent abductions, harassment of political activists and human rights defenders. Subsequently, the police should investigate cases of human rights violations and prosecute the alleged perpetrators.
- The security forces should abide by the constitutional and international standards and principles on the use of force and firearms by the law enforcement officers, which require that the law enforcement officers should apply non-violent means and to use only when unavoidable to protect life. The government should also ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offense under national law.
- The Security Forces, Ministry of Internal Affairs and the Director of Public Prosecutions ought to work together to ensure that all those that are held in detention and have exceeded the mandatory period of 48 hours should be released unconditionally. A full list of people held in detention should be released to the public and all those in cells charged and produced before courts of law per their constitutional rights.
- The citizens are urged to seek legal assistance to take on errant officers who have been involved in the kidnap and torture of Ugandans.

## d) Civic Rights And Activities

It's the duty of all adult citizens to participate in the civic decision-making process of the country. Any decision made that is likely to affect them and their children, should therefore be in line with the constitutional mandate.

Article 38(1) of the 1995 Constitution of Uganda states that every Ugandan citizen has the right to participate in the affairs of government, individually or through his or her representatives in accordance with law. The same Constitution provides duties to ensure that regular, free and fair elections are held as per Article 61 of the Constitution. Additionally, Article 35 (1) of the constitution states that persons with disabilities have a right to respect and human dignity and that the state and society shall take appropriate measures to ensure that they realize their full mental and physical potential. Moreover, Article 29 of the convention on the rights of persons with disabilities requires state parties to guarantee opportunity to enjoy them equally with others.

The ULS participated in the observation of the 2021 presidential elections and noted that some people with disabilities, the elderly, breastfeeding and pregnant mothers were unable to vote in some areas due to the high terrains. They were unable to access polling stations, lacked guidance and effective voter education which made it difficult for some of them as vulnerable people to vote.



*A picture of voters exercising their right to vote in a train area in Zombo District*

It is crucial for every citizen to be involved in civic duties and know their constitutional right to ensure the positive and constructive outcome of an election. However, due to the ban of gatherings by the government to prevent the spread of COVID-19, the country witnessed unprecedented level of violence meted out on opposition politicians, activists and media personnel.<sup>25</sup> Several members of the opposition were arbitrary detained towards the 2021 general elections which issue affected vote turn up, many feared that violence may break out.

The ULS also noted that some polling stations had malfunctioning of biometric voter verification machines, late delivery of voter materials which delayed voting and internet shutdown which limited access to civic information hence affecting voter turn up.<sup>26</sup> In some areas especially the central region, voters were not given the opportunity to interact with their candidates which left them ill informed.<sup>27</sup> In addition voter education remained a challenge as some civil society organizations like Citizen's Coalition for Electoral Democracy in Uganda were not given permission to operate prior to Election Day.<sup>28</sup>

It is consequently true that democracy is not just about the show of elections and government, but about the quality of political equality and self-determination that are delivered in the process.

### Legal issues arising:

- Whether the civic rights of Ugandans were respected in the 2021 general election?

### Recommendations

<sup>25</sup> Available at <https://gga.org/uganda-2021-election-implications-and-lessons> last accessed on April 7, 2021

<sup>26</sup> Ibid

<sup>27</sup> Ibid

<sup>28</sup> Ibid



- The civic rights of vulnerable and marginalized groups should be protected and represented in all government activities to enable them exercise their rights to vote their leaders.
- The Electoral Commission should arrange the necessary facilities for the vulnerable groups to enable their full and equal participation in the next elections.
- Civic rights should be protected, observed and the opinion of the citizens put into consideration by the Electoral Commission to ensure free and fair elections in the country.

## e) Breach of Economic Rights under the East African Community (EAC)

On March 5, 2021, the Republic of Kenya acting through its Agriculture and Food Authority directed its customs authorities to halt all importation of maize from the United Republic of Tanzania and the Republic of Uganda, both of whom are member states of the East African Community.<sup>29</sup> This came as a result of the test result on the maize imported from both countries, which had revealed that



**Maize delivered to the National Cereal and Produce Board depot after a direction halting all importation of maize from Uganda to Kenya**

high levels of mycotoxins found in the maize were consistently beyond safety limits.<sup>30</sup> The Kenyan Authority mentioned that the maize imports from Uganda and Tanzania had over 2,000 parts per billion of aflatoxin, against the recommended ratio of not more than ten parts billion.<sup>31</sup> It noted that such high levels of aflatoxin are lethal to human health. Additionally, Burundi also followed suit and imposed a ban on cereal citing the presence of aflatoxins which is feared to cause cancer.<sup>32</sup> However, the ULS notes that the Kenyan decision risks contravening

the spirit of the East African integration and the Common External Tariff whose main objective is to enable free movement of goods, people and labor; the rights of establishment and residence as well as free movement of services and capital across the EAC borders as there was no indication of any consultation with the testing and quality standards institution in the two affected countries.

The ban on maize imports into Kenya is not an isolated case; as the ULS previously highlighted a case when the Kenyan government seized a consignment of milk and other products from Uganda worth \$360,000 over fears that they were counterfeit and substandard.<sup>33</sup> It should be noted that such instances cause negative impact and damage to the economies of the EAC.

<sup>29</sup> Walter Akena, "Kenya's ban on Uganda maize," The Independent, March 18, 2021. Available at <https://www.independent.co.ug/kenya-ban-on-uganda-maize> last accessed on March 18, 2021.

<sup>30</sup> Luke Anami, "Kenya clears air on toxic maize 'ban' after EAC partners condemn action," The East African, March 15, 2021. Available at <https://www.theeastafrican.co.ke/tea/business/kenya-clears-air-on-toxic-maize-ban-3323052> last accessed on March 18, 2021

<sup>31</sup> Ibid

<sup>32</sup> Editor, "Maize ban threat to East African Community," Daily Monitor, March 13, 2021. Available to <https://www.monitor.co.ug/uganda/oped/editorial/maize-ban-threat-to-east-african-community-3321282> last accessed on March 19, 2021

<sup>33</sup> Available at <https://www.facebook.com/UgandaLawSociety/videos/rule-of-law-report-2020/250747866072680> last accessed on March 18, 2021.

The ULS commends the East African Law Society that instantly condemned the act through its statement issued on March 9, 2021 which efforts led to the instant resolution of the issue.

**Legal issue arising:**

- Whether there are sufficient measures to harmonize the economic relationship between the East African Partner states.

**Recommendations:**

- The East African Partner States, together with the organs of the community should review, align and strengthen their structures so as to effectively implement the Common Market Protocol.
- The East African Partner states should have standard procedures on how and when decision are taken to avoid unilateral decisions by one or more states without notice that affects thousands of traders within the community.
- East African traders should be trained, given capacity building especially in the areas of agronomic practices and be supported to ensure adequate adherence to set standards/ quality of produce and in terms of conducting business within the East African Community.

## DUE PROCESS AND CLIMATE OF LEGALITY

Due process requires fair treatment through the normal judicial system, especially a citizen's entitlement to notice of a charge and hearing before an impartial judge. During this reporting period, cases of due process and climate of legality were highlighted below;-

### a) The Jurisdiction of the Court Martial to try Civilians



*The picture of the opposition members who were arrested by the security forces during the 2021 presidential campaigns*

The Jurisdiction of the General Court Martial has been brought into question during this review period regarding the trial of several civilians. This has been in question since the inception of the 2021 general elections. Some citizens from opposition who were arrested, kidnapped and tortured during the election campaigns and were later tried in the court martial on offences of being in unlawful possession of arms, ammunition or equipment ordinarily being the monopoly of the defence forces per Section (119)(h)(i) of the 2005 UPDF Act.

A case in point was the arrest of 49 members of the opposition belonging to the National Unity Platform on December 30, 2020 in Kalangala<sup>34</sup> who are currently battling fabricated criminal offences in the court martial. They were first charged with the offence of inciting violence and acting in a manner likely to cause the spread of COVID-19 in the Chief magistrate's court of Masaka, which granted many of them bail,<sup>35</sup> but were then immediately rearrested and charged in a military court with an offence of possession of ammunition.<sup>36</sup>

Article 28 (1) further stipulates that in the determination of civil rights and obligation 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. That notwithstanding, the Court Martial has continued to arrest civilians using Article 119 of the 2005 UPDF Act without regard to the observance of due process and human rights. Regrettably, the Act has been used to charge political opponents and activists before military courts. The ULS commends the arrest of senior members of the Uganda Peoples Defense Forces who were implicated in kidnapping and torturing of citizens; which acts triggered wide condemnation against the acts of the security forces, who were later transferred.<sup>37</sup>



*NUP Supporters accused of military fatigues and unlawful gathering in a police truck with army officers*

<sup>34</sup> Derrick Kiyonga, "Military court: Tool for punishing opposition?" Daily Monitor, February 20, 2020. Available at <https://www.monitor.co.ug/uganda/news/national/military-court-tool-for-punishing-opposition--3298358> last accessed on March 22, 2021.

<sup>35</sup> Fahad Malik Jjuko, "Court grants bail to 11 NUP supporters," Daily Monitor, January 21, 2021. Available at <https://www.monitor.co.ug/uganda/news/national/court-grants-bail-to-11-nup-supporters-3264284> last accessed on March 22, 2021.

<sup>36</sup> Ibid

<sup>37</sup> Benson Tumusiime, "Senior UPDF officers moved," Daily Monitor, February 15, 2021. Available at <https://www.monitor.co.ug/uganda/news/national/senior-updf-officers-moved-3291508> last accessed on March 22, 2021.



It should be noted that the 2005 UPDF Act cannot override the provisions of the Constitution which is the supreme law of the land per Article 4 of the 1995 Constitution. The Constitution commands that the government and its agencies and all persons without exception to uphold human rights and follow due process when a person has been arrested which is provided for in Article 23(6) of the 1995 Constitution of Uganda.

**Legal issue arising:**

- Whether due process was followed while arresting civilians?
- Whether the General Court Martial has the power to try civilians?

**Recommendations:**

- The ULS recommends that military court release civilians detained without charge, withdraw any charges and release civilians in pre-trial detention or transfer investigation files to the Directorate of Public Prosecution (DPP) for prosecution, before civilian courts.
- The government and security forces should desist the transfer of civilian detainees to military custody.
- The Government should publicly denounce the practice of prosecuting civilians before military courts.
- The Uganda Human Rights Commission should press for the release of any civilians found in military detention and explain to military commanders the lack of legal basis for these detentions and actively follow up with all relevant government bodies until all necessary measures are taken, in accordance with this report's recommendations.
- The Judicial officers should act independently especially in political matters and stick to their oath is administering justice. Justice should not only be done but be seen to be done.
- The President of the Republic of Uganda should desist from interfering with the functions of the DPP and the Judiciary.

## b) The procedure of the right to a fair hearing

Following a disputed 2021 presidential general election, there has been a spate of abductions, kidnaps and arrests of people especially those on opposition by security operatives who appear in plain clothes and whisk away citizens in numberless vehicles which included the infamous 'drone'. Specifically, on March 21, 2021, an American national in the names of Guy Smith who was abducted from his home situate in Kitumba ward, Central Division, in Fort Portal at around 3:00am as stated by his wife Sharon Tusiime.<sup>38</sup> According to the Police spokesperson, CP Fred Enanga, he stated that Smith was arrested on allegations of being involved in anti-government subversive activities against Uganda.<sup>39</sup> However, the ULS is deeply concerned with the way the security forces are arresting people in the country. In the case of Smith, it is alleged that the security operative jumped over his fence, broke into the house and car, picked his phone, computers before arresting him.<sup>40</sup> Relatedly, the security people picked 19 people believed to be opposition supporters from Kyotera in the middle of the night, taken into unknown destinations and were later dumped in various areas after three months in detention where they emerged to meet their families.<sup>41</sup> It should be noted that all these have been arrested without clear charges against them. Multiple cases have been reported during this period where people have been arrested, tortured and dumped in remote locations without due process.

This has increased instability among citizens and a significant shake up within the Security Organs in general where some army officers are being investigated on crimes that include and not limited to kidnapping, torturing and causing grievous bodily harm to civilians.<sup>42</sup> Following on from the above actions of the security officers, questions have also been raised as to the effectiveness of the disciplinary process of security operatives and the process of one having a fair hearing. Article 28 of the 1995 Constitution stipulates the procedure of a person who has been accused of an offence where he is entitled to be informed of the nature of the offence, given adequate time to prepare his defence, appear before court and legally represented. However, all the above were not witnessed in the above mentioned cases.

### Legal issue arising:

- Whether security agencies are utilized as organs to commit human rights violations in contravention of Chapter Four of the 1995 Constitution of Uganda.
- Whether due process is followed while carrying out arrests of citizens.

### Recommendations:

- The ULS recommends for the need for an urgent review of the proliferation and blatant conflict of roles and responsibilities between the various security organs involved in policing.
- All the security officers involved in crimes of abductions, kidnapping and torturing civilians should thoroughly be investigated, perpetrators prosecuted and victims compensated fully.

<sup>38</sup> African News, "Uganda arrests American for subversive activities," Available at <https://www.africanews.com/2021/03/23/uganda-arrests-american-for-subversive-activities> last seen on March 25, 2021.

<sup>39</sup> Ibid

<sup>40</sup> Ibid

<sup>41</sup> Ambrose Musasizi, "60 missing persons re-surface," Daily Monitor, March 24, 2021. Available at <https://www.monitor.co.ug/uganda/news/national/60-missing-persons-re-surface-3334758?view=htmlamp> last accessed on March 25, 2021

<sup>42</sup> Ibid

## CONCLUSION

During the reporting period, there is still a lot to be desired particularly regarding the protection of human rights by the State Organs especially the security forces as was seen by the notable violation of rights of journalists, unlawful arrests, illegal detentions and disappearances during the 2021 general elections.





UGANDA LAW SOCIETY



UGANDA LAW SOCIETY

Uganda Law Society

# MEMBER'S HOTLINE

CALL:

**+256 777 228205**

*You are never alone! We are here for you!*



## BRANCHES

---

**KABAROLE CLINIC:**

Plot 38/40 Kiboga Rd  
P.O. Box 183, Fort Portal  
Tel: (256) 772 059 793  
(256) 759 520 663  
E-mail: [kabarole@uls.or.ug](mailto:kabarole@uls.or.ug)

**KITGUM CLINIC:**

Plot 141 Kitgum  
Chief Magistrate Court  
Kitgum District  
Langa Langa Road  
E-mail: [kitgum@uls.or.ug](mailto:kitgum@uls.or.ug)

**SOROTI BRANCH:**

Plot No.14 Opolot Odelle Rd,  
Pamba Soroti  
Tel: +256 778 684 504  
+256 753517733  
E-mail: [soroti@uls.or.ug](mailto:soroti@uls.or.ug)

**AMURIA CLINIC:**

Health Dep't Building  
Amuria Local Gov't Hqt  
Along Amuria - Orungo Rd  
Email: [amuria@uls.or.ug](mailto:amuria@uls.or.ug)  
Website: [www.uls.or.ug](http://www.uls.or.ug)

**ABIM CLINIC:**

Abim Town Council  
New Corner cell,  
Abim District  
Email: [abim@uls.or.ug](mailto:abim@uls.or.ug)  
Website: [www.uls.or.ug](http://www.uls.or.ug)

**JINJA CLINIC:**

Plot 30 Oboja Rd  
P.O. Box 1818 Jinja  
Tel: (256) 434 141 293  
Email: [gulu@uls.or.ug](mailto:gulu@uls.or.ug)  
Website: [www.uls.or.ug](http://www.uls.or.ug)

**KABALE CLINIC:**

Plot 32, Mbarara, Rd Kigongi  
P.O. Box 979 Kabale  
Tel: (256) 0486 426 352  
E-mail: [kabale@uls.or.ug](mailto:kabale@uls.or.ug)

**GULU CLINIC:**

Plot 3 Dr. Alier Road, Limu  
P.O. Box, 896-Gulu  
Toll Free:0800100103  
Email: [gulu@uls.or.ug](mailto:gulu@uls.or.ug)

**NAPIRIPIRITI CLINIC**

Magistrate Court, Opp. CPS  
Moroto Nakapiripiriti Road  
E-mail: [nakapiripiriti@uls.or.ug](mailto:nakapiripiriti@uls.or.ug)  
Website: [www.uls.or.ug](http://www.uls.or.ug)

**ARUA BRANCH:**

Plot 12 Enyau Road, Arua,  
Tel: +256 372 280 540  
E-mail: [arua@uls.or.ug](mailto:arua@uls.or.ug)  
Website: [www.uls.or.ug](http://www.uls.or.ug)

**MOYO BRANCH**

Central II Village,  
Off Mission Road  
Next to Pentecostal Assembly  
Church

**KOTIDO CLINIC:**

Old Road Court Lane, Chief  
Magistrate Court, Kotido  
P.O. Box 36, Kotido  
E-mail: [kotido@uls.or.ug](mailto:kotido@uls.or.ug)

**MBARARA BRANCH**

Plot No.12 Rwebikona Road  
Tel: +256 0382 280 603  
E-mail: [mbarara@uls.or.ug](mailto:mbarara@uls.or.ug)

**MOROTO BRANCH**

Plot.52 Indep. Ave. Moroto  
Tel: (256) 0392 178718  
E-mail: [moroto@uls.or.ug](mailto:moroto@uls.or.ug)

**LUWERO CLINIC:**

Shammah Road Kizito Zone  
After Alpha Primary School  
E-mail: [Luwero@uls.or.ug](mailto:Luwero@uls.or.ug)

**MASINDI CLINIC:**

Ntuwa Road, Kijungu  
P.O Box 59, Masindi  
E-mail: [masindi@uls.or.ug](mailto:masindi@uls.or.ug)

**KABERAMAIDO CLINIC:**

Kaberamaido Chief Magistrate Court Kaberamaido  
District  
P.O Box 78, Kaberamaido E-mail: [soroti@uls.or.ug](mailto:soroti@uls.or.ug)  
Website: [www.uls.or.ug](http://www.uls.or.ug)

**NABRATUK CLINIC:**

Community Hall /Former Court Hall Building, Along Namalu  
Moroto Road  
Website: [www.uls.or.ug](http://www.uls.or.ug)

## HEAD OFFICE

**Uganda Law Society**  
**Block 216 Plot 610 Buye, Wamala Road**  
**P. O. Box 426, Kampala**  
**Phone: +256 312 262420;**  
**0800100150/1 (Toll Free)**  
**[www.uls.or.ug](http://www.uls.or.ug)**