

**OFFICE OF THE  
LEADER OF THE OPPOSITION**

**ALTERNATIVE MINISTERIAL POLICY STATEMENT FOR JUSTICE  
AND CONSTITUTIONAL AFFAIRS FY2022/2023**

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## EXECUTIVE SUMMARY

There are clogs hindering the administration of justice that are inlying within the judicial set up itself in Uganda. These have far reaching implications on the people economically, politically and socially. These hindrances are emergent as issues within the system itself creating an unsafe situation of justice seeming to be done and without really being done as required of the system set up.

The Courts of Uganda are clogged with a big case backlog so serious that by the end of financial year of 2020/21 only 156,875 of 317,929 cases which is just 49% were handled out of the system.<sup>1</sup> Some of these cases have been existent in the system for decades thereby locking not only justice but even monetary value out of the economy.

This case backlog has also taken hold in the Director of Public Prosecution (DPP) office and also in the Judicial Service Commission (JSC) disciplinary tribunal for judicial officers with DPP being affected most, having more than 2 million cases to handle by the start of financial year 2020/21.<sup>2</sup> Therefore the Judiciary and DPP should adopt a Case Weighting System (CWS) and start incentivizing of courts to best manage the issue of Case backlog. The weighing of cases is based on the needs of each case, in terms of time and resources before distributing them to the judicial officers concerned. It is something other countries have applied and tremendous results have been achieved.

The government has enormous amounts awarded against it to be paid out to successful litigants against the office of Attorney General. These amounts by 30<sup>th</sup> June, 2020 were standing at UgShs. 392,428,099,424/=<sup>3</sup> and some of the people to be paid have been waiting for decades. On this the Government should prioritize payment of the subsisting debts and officials who cause unnecessary litigation against the government should be penalized.

Uganda Human Rights Commission (UHRC) are lagging in playing its constitutional roles with UHRC being slow in handling cases of human rights violations and abuses. UHRC should intervene into issues of human rights violations as fast as when they happen and should not just wait for reports from

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<sup>1</sup> Statement of the Hon. Chief Justice at the launch of the judiciary annual performance report for the F/Y 2020/2021, held at Judiciary headquarters, High Court building, Kampala on 15<sup>th</sup> November, 2021, pg. 2.

<sup>2</sup> Report of the Auditor General on the financial statements of the office of the Director of Public Prosecutions for the year ended 30<sup>th</sup> June, 2020. Pg. 13

<sup>3</sup> See, Report of the Auditor General on the financial statements of Ministry of Justice and Constitutional Affairs for year ended 30<sup>th</sup> June, 2020. Pg.13

the public to investigate and act but play its mandate of taking on these cases at its accord under the authority given by the Constitution. Also as an alternative the constitutional provision on appointment should also be amended to provide for a body appointed by Parliament to handle those appointments instead of the President.

The Electoral Commission has been found at fault too; it has been inefficient in handling voter registration exercises, it is struggling against great skepticism from the public with 43% of Ugandans found to trust its processes in 2020<sup>4</sup> just before the general elections of 2021, moreover it refused to grant permits to international observers in the 2021 general elections. It has also fallen short in handling electoral violence that is rampant in the periods of general elections which is usually occasioned by government forces. The appointment of the Commissioners is so flawed with the head of state being charged by the Constitution to carry out the appointments. As alternatives EC should carry out state wide voter education which should be a continued process, it should issue electoral observers with permits every election for a well supervised and transparent electoral process and to improve its public trust. The appointment of Commissioners should be on merit and conducted including vetting by an independent body appointed by parliament for the role.

Uganda Registration Service Bureau (URSB) has fallen short in sensitizing people about its services leaving several businesses remaining unregistered and operating as informal, denying the government and the economy some appreciable sums to boost the economy. Actually with just a section of 42% of Ugandans knowing the existence of URSB and its registration services.<sup>5</sup> URSB has also been faulted for the slow process of company liquidation by the Auditor General leaving most creditors for years pressed in decades unpaid.<sup>6</sup> It's enforceability of Intellectual Property Rights (IPR) is weak leading to losses to creative and inventors as their works are infringed upon. As alternatives URSB should carry out massive sensitization of the public about its services and existence, should be strict in enforcement of Intellectual property Rights by fully operationalizing the IP Enforcement Unit which is directly charged with enforcement of the same and all the pending liquidation processes with URSB should be expeditiously completed.

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<sup>4</sup> Afrobarometer News release. Kampala, Uganda. 18<sup>th</sup> December, 2020

<sup>5</sup> Annual Performance report 2020/2021; Justice Law and Order Sector (JLOS)

<sup>6</sup> See, Report of the Auditor General on the financial statements of Uganda Registration Services Bureau – companies in liquidation for the year ended 30<sup>th</sup> June, 2020 Pg.8

Law Development Centre (LDC) has been faulted for high failing rates of students of the years which to the public seems deliberate by LDC to limit the number of lawyers entering practice. As an alternative LDC should adopt the pupillage/apprenticeship for lawyers as another option for the bar examination to ensure transparency in passing out lawyers for practice in this country.

The National Consultative Forum lacks a clear policy and legal framework on the operations of the National Consultative Forums and as an alternative, its funding should be increased to empower it to fast track its statutory mandate under the Political Parties and Organizations Act to improve its operations

Local Council Courts (LCC) have also been found greatly incapacitated to handle legal matters as they arise before them yet with a large section of the public trusting them for delivery of justice. As alternative, there should be specialized training offered to LC officials and LCC should be provided with permanent paralegals to manage those courts and offer legal advice to the courts when sitting from time to time.

It has been noted with concern too that there are emerging human rights abuses of unlawful and forceful land evictions, abduction and kidnaps and torture of Ugandans by government forces being carried out on an unprecedented scale. As an alternative, a commission of inquiry should be established to investigate all land matters and find out the plight of the evicted people and necessary provisions made to them. Meanwhile the Committee Human Rights in Parliament should be led by a member of the official opposition party to best hold the government accountable in human rights matters.

Those issues are emerging and hindering serious delivery of justice in Uganda and their implications coming with down grading effects that are economic, political and social, creating a very poor unsafe precedent for Uganda's posterity.

The proposed alternatives should not be shelved but rather proactive steps be taken by government through its various departments charged with the same to have them incorporated within the system.

## LIST OF ACRONYMS

AG	–	Attorney General
CWA	–	Case Weighting Analysis
DPP	–	Director of Public Prosecution
FY	–	Financial Year
JSC	–	Judicial Service Commission
LC	–	Local Council
LCC	–	Local Council Courts
LDC	–	Law Development Centre
UHRC	–	Uganda Human Rights Commission
URSB	–	Uganda Registration Service Bureau

## **CHAPTER 1: BACKGROUND TO ALTERNATIVE POLICY STATEMENT**

### **LEGAL PROVISIONS**

This Alternative Policy Statement for Justice and Constitutional Affairs is the Opposition response to the Ministerial Policy Statement for the Financial Year 2022/2023 presented to Parliament by the Minister for Justice and Constitutional Affairs. In line with section 6E (2) of the Administration of Parliament Act (2006), which requires and empowers the various Shadow Ministers to present alternative policy statements on the floor of the House for consideration and possible implementation. Rule 147 of the Rules of Procedure of Parliament, allows the Shadow Ministers to submit their Alternative Policy Statements to Parliament by the 29<sup>th</sup> day of March every year. In view of the above, the Shadow Ministers for Justice & Constitutional Affairs and Human Rights present this Alternative Policy.

### **SECTOR OVERVIEW**

Rule of law and justice may not be the wheels on which the society moves forward but economic development and transformation thrive better in an environment where citizens have confidence in the rule of law and the justice system<sup>7</sup>. Without justice the society is stranded and lost. A just society ensures that everyone is equitably treated, everyone's rights are regarded with the highest esteem, protected, guaranteed and enforced by the State and non-state actors. When justice is purely and well administered the state wins and everyone wins.

In that regard Uganda through the 1995 Constitution and Acts of Parliament has indeed established various MDAs right under the Justice Law and Order Sector (JLOS) to ensure that justice is optimally administered, that is, the Judiciary, the Office of the Director of Public Prosecution (DPP), Uganda Human Rights Commission (UHRC) and many others. Despite a plethora of promises from the ruling government for revamping the rule of law and administration of justice, there are emerging issues seriously hindering administration of justice in our country ranging weak policy, legal and regulatory frameworks for effective governance; weak business support environment; low respect for and observance of human rights and fundamental freedoms; limited access to and affordability of justice; high crime rates; weak societal security structure and low recovery rate of public funds from individuals implicated in corruption<sup>8</sup>

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<sup>7</sup> Opposition Response to the National Budget Framework Paper FY2018/19 – 2022/23, pg. 38.

<sup>8</sup> Third National Development Plan 2020/21 – 2024/25, Pg. 191



Therefore in that light, in this policy statement, here below we examine those issues and their implications on the people and the growth of the country and offer possible recommendations that if seriously considered by the relevant MDAs the Country shall fully realize the rule of law and, the dispensation of justice will be smoothened.

## **STATEMENT OUTLINE**

The Alternative Policy Statement is structured as follows:

**Chapter 1:** Background to the Alternative Policy Statement provides legal provisions under which the Shadow Ministry of Justice and Constitutional Affairs presents the Alternative Policy Statement and sector overview.

**Chapter 2:** Budget analysis.

**Chapter 3:** Emerging issues and proposed Alternative policies

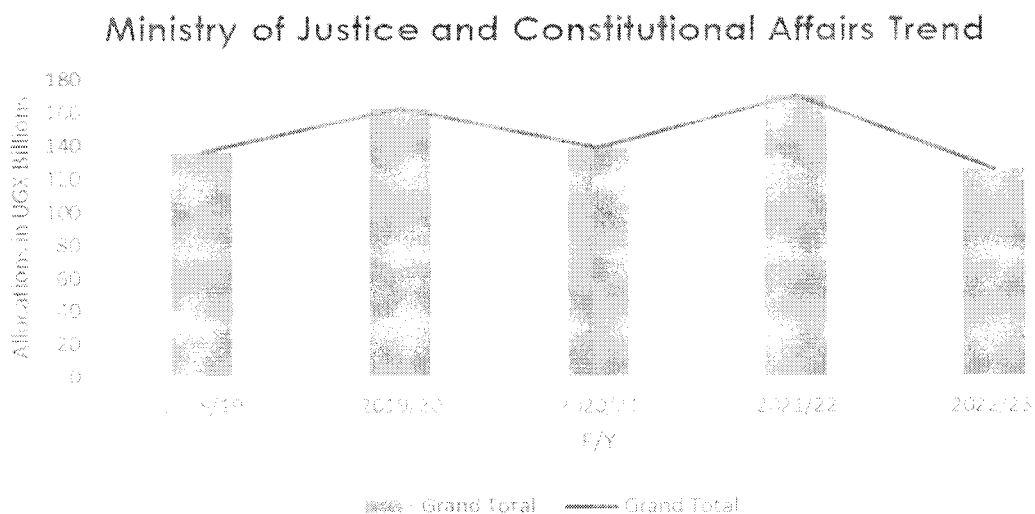
**Chapter 4:** Summarizes of the Alternative Policies and Conclusion

## CHAPTER 2: SITUATIONAL ANALYSIS OF MINISTERIAL POLICY STATEMENT

The budget allocations for the FY 2022/23 under MoJCA can be summarized as follows;

Ministry of Justice and Constitutional Affairs					
FY	2018/19	2019/20	2020/21	2021/22	2022/23
Wage	4.606	8.82	8.82	8.865	8.86
Non-wage	44.47	49.543	55.097	110.172	94.632
Dev. GoU	84.382	83.902	74.729	40.229	11.74
Dev. Ext. Fin	0	0	0	0	0
GoU Total	133.458	142.265	138.647	159.266	115.24
Grand Total	136.159	162.274	138.647	170.212	125.748

**Source:** Data from MoFPED, Ministerial Policy Statement for the Ministry of Justice and Constitutional Affairs F/Y 2022/23.



As observed in the figure above, budget allocations for the proposed FY 2022/23 have reduced by 26.1% from FY 2021/22 with a variance of Ushs 44.464 Billion cut. Considering the vote performance report for the Ministry of Justice and Constitutional Affairs FY 2021/22, there are issues in budget execution since at the end of the second quarter of the FY 2021/22, out of the approved total budget of Ushs 170.212 billion, Ushs 92.6 billion had been released representing 45.6% meaning that 54.4% had not been released. Only Ushs 33.241 billion had been spent meaning that 80.5% of the total approved budget had not been spent by the end of the second quarter. This therefore implies that by the end of the 4<sup>th</sup> Quarter (end of the financial year), only Ushs 66.482 will have been spent representing 39.1% of the approved budget.

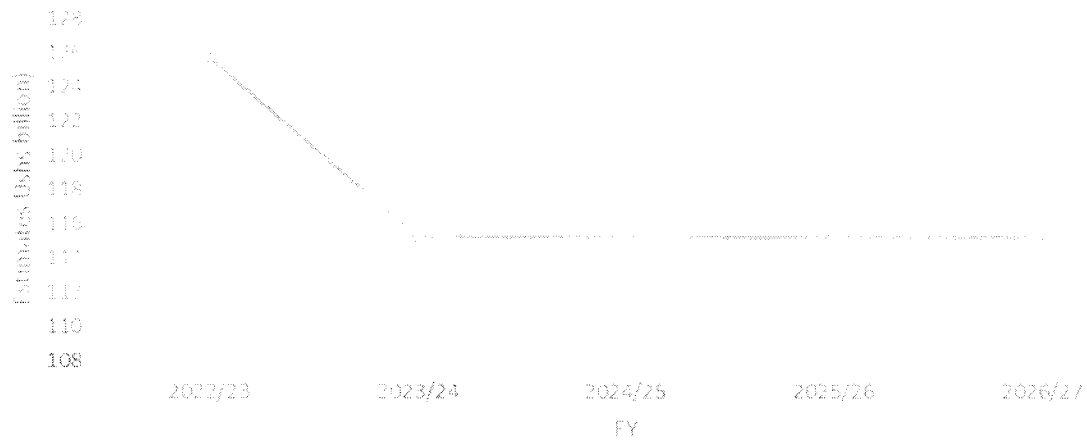
SUB SUB PROGRAMME	FY 2021/22 (Bn)	FY 2022/23 (Bn)	Variance (Bn)
Policy, Planning and Support Services	54.84	92.367	37.527
Access to Justice and Accountability	28.33		-28.33
First Parliamentary Counsel/Legislative Drafting	4.07	3.154	-0.916
Court Awards (Statutory)	9.35		-9.35
Administration of the Estate /Property of the Deceased	2.36	2.04	-0.32
Civil Litigation	55.83	2.65	-53.18
Legal Advisory and Consultancy Services	3.17	3.008	-0.162
Regulation of the Legal Profession	1.31	1.284	-0.026
<b>Total</b>	<b>159.26</b>	<b>104.503</b>	<b>-54.757</b>

This similar scenario cuts across all other votes i.e., Law Reform Commission, Uganda Human Rights Commission, Law Development Center, Uganda Registration Service Bureau, National citizenship and immigration control, Judicial Service commission, Directorate of Government Analytical laboratory, Directorate of Public Prosecution and many more.

Going forward, the Ministry must make it a point to attach estimated figures in terms of allocations for planned outputs/plans of the particular financial year for proper budget discipline and execution otherwise the budget cuts are more likely to continue and this will eventually will stall the operations of the sector and derail the strategic objectives of providing effective legal representation to Government, its agencies and allied bodies in national, regional, international courts of law, tribunals and commissions, providing legal advice and legal services to government and many more.

This can be illustrated well in the figure below for Medium Term Expenditure Framework Budget allocations where there is a flat and stranded growth of the Ministry.

## MTEF Budget Projection



These uncoordinated budget cuts will grossly affect performance of the Ministry of Justice And Constitutional Affairs since this does not commensurate with the proposed interventions. Additionally some pertinent aspects under access to justice have not sufficiently covered like payment of court awards, settlement of compensation orders in cases of human rights abuses, provision of pro bono services, security for Magistrates and witness protection among others.

## CHAPTER 3: EMERGING ISSUES AND PROPOSED ALTERNATIVES

### 3.1 Perennial Case backlog in Courts of law

Articles 28(1) and 126(2)(b) of the Constitution provides for delivery of justice without delay, however this has become a fallacy due to the overly delayed handling cases filed in courts of law. During the FY 2020/21, Courts disposed of **156,875 cases** out of a caseload of **317,929**. This accounted for **49%** of all cases in the system.<sup>9</sup> The delayed trials and case backlog accounted for **152,582** cases brought forward from FY 2019/20.<sup>10</sup> In addition, the Courts recorded a 4% increase in case registration from **159,543** cases in FY 2019/20 to **165,347** cases in FY 2020/21.<sup>11</sup> This therefore means that the pending cases in the system remain high and increase annually.

This stagnation has tremendously hindered the economic development of the country since a lot of resources are wasted and unnecessary kept out of the economy. In November 2021, the Chief Justice reported that in the Commercial Court alone, over UGX 5 trillion was locked up in the 6,094 unresolved cases<sup>12</sup>.

The volume of pending land cases as of 30th June 2021, stood at 32,413 broken down as follows: 15,966 at the High Court, 10,944 at the Chief Magistrates Court 5,419 at the Magistrate Grade One Court. This means that a vast amount of land and resources is locked up and not contributing to the economic development of the country. The volume of pending land cases as at 30th June 2021, stood at 32,413 including 15,966 cases with a minimum value of UGX 51,000,000 at High Court level. This is without considering the value of money locked up in unresolved land disputes at the lower Courts.

	<b>2019/20</b>	<b>2020/21</b>
<b>Registered cases</b>	159,543	165,347
<b>Brought Forward cases</b>	123,908	152,582
<b>Completed cases</b>	130,869	156,875
<b>Pending cases</b>	152,582	161054

*Source: Annual Performance Report for Judiciary FY 2020/21*

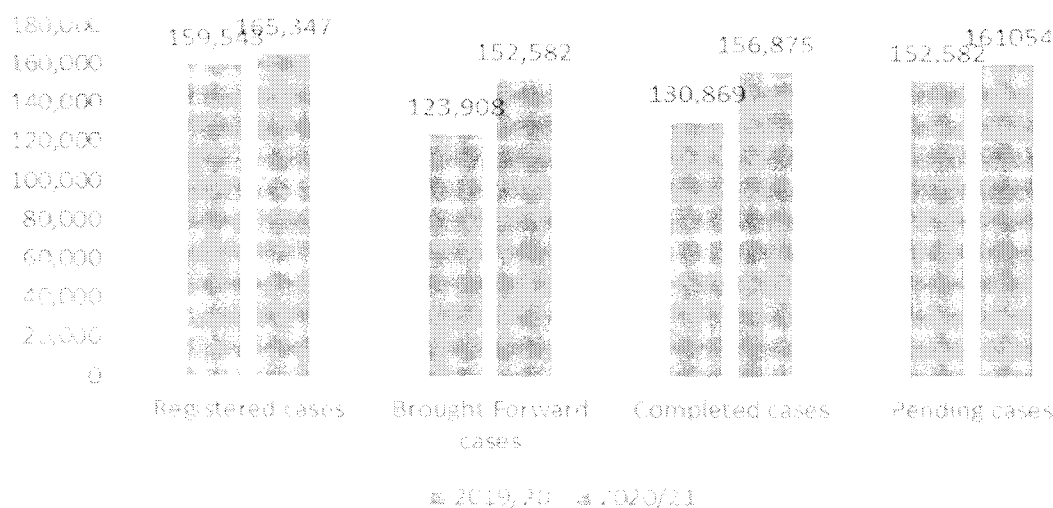
<sup>9</sup> Statement of the Hon. Chief Justice at the launch of the judiciary annual performance report for the F/Y 2020/2021, held at Judiciary headquarters, High Court building, Kampala on 15<sup>th</sup> November, 2021, pg. 2.

<sup>10</sup> Ibid, pg. 5.

<sup>11</sup> Ibid, pg. 2.

<sup>12</sup> Ibid, pg. 7.

Comparison of the FY2019/20 and FY2020/21



An efficient judiciary is critical to encouraging the entry of new firms, providing firms the confidence to invest and supporting the exit of unproductive firms. In contrast, a system of slow and unpredictable resolution of legal disputes raises significant risks to firms, causing them to behave in an economically inefficient way. The consequence is a diversion of productive investments and reduced competitiveness and innovation.<sup>13</sup>

### 3.2 Overwhelming case backlog at the Office of Public Prosecution (DPP)

The DPP like all other bodies exercising judicial/prosecution powers suffers from case backlog and this is mind boggling. Constitutionally the office of the Director of Public Prosecution is charged with handling of all criminal cases in this country and that the mandate the office serves<sup>14</sup> As per the Auditor General's report<sup>15</sup> it is reported that a four year trend analysis of the schedule of cases increased from **1,999,572** to a boggling amount of **2,373,434** with 19% increase of cases registered during the year under review alone. The Auditor General indicated that **1,999,572** cases were carried forward from the previous financial year, **379,861** cases were recorded during the year making a total of **2,373,233** and of that wholesome total, and only **168,286** cases were worked upon and cleared by close of the year which is just a 7%. That left a total of **2,205,147** cases to be carried into the next financial year of 2020/2021.

<sup>13</sup> World Bank. 2020. *Judiciary of the Republic of Uganda: Rapid Institutional and Economic Assessment*. World Bank, Washington, DC. © World Bank. <https://openknowledge.worldbank.org/handle/10986/34154> License: CC BY 3.0 IGO; pg. 14.

<sup>14</sup>Read; Article 120 of the 1995 constitution of the Republic of Uganda.

<sup>15</sup>Report of the Auditor General on the financial statements of the office of the Director of Public Prosecutions for the year ended 30<sup>th</sup> June, 2020. Pg. 13

Basing on that projection in more 3 financial years, the case backlog would increase to around 4 million cases. The Auditor General explained that over the years, DPP has had a higher rate of case registration with a non-commensurate rate of case disposal resulting in case backlog hence affecting the timely delivery of justice to the affected persons. The Auditor also recognized the problem of inadequate staffing to handle the cases. Given that there has been significant increase in the backlog in a space of four years that should have been time enough to increase on the staff levels to handle the cases. That not being the case, it is clear a laxity and somewhat unwillingness by government to recruit more prosecutors to handle the cases. Such an omission by the appointing authority has dire consequences that are endangering to administration of justice in this country.

It should be noted that given we are talking about criminal prosecutions, in most cases the accused persons who at that moment are still presumed innocent are always on remand, in prison languishing without any joys of freedom. It should also be noted that fundamentally under the constitution, cases should be handled expeditiously to fulfill the right to fair hearing.<sup>16</sup> It preposterous that one has to be tormented by remand for years only to be found innocent, such a time lost can never be recovered and these are people of good potent to their families' wellbeing which makes it even economically bothering.

### **3.3 Backlog of cases of human rights abuse/violations with UHRC**

Like most bodies with somewhat judicial powers to exercise, UHRC tribunal is chocking on some voluminous backlog of cases pending handling. Article 53<sup>17</sup> is quite elaborate in providing Uganda Human Rights Commission with powers of a court to deal with matters relating to abuse or violations of human rights. It is elaborately provided with those powers of court indeed that on many occasion members of the public have sought redress from it on matters relating to the same violations. However it's now chocking on a bulk of such cases. According to the Auditor General's report<sup>18</sup> it is reported that UHRC had tribunal case backlogs of **1,673** cases at the beginning of financial year 2019/2020 and **150** cases were added during the run of the year making a total of **1,823** cases for the tribunal to resolve. However of that much bulk only **67** cases which is **3.7%** of the bulk were investigated and disposed of by close of the year. Therefore from that report by the close of FY 2019/2020 an overwhelming number of **1,756** cases

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<sup>16</sup>Article 28 of the 1995 Constitution of the Republic of Uganda.

<sup>17</sup>1995 Constitution of the republic of Uganda.

<sup>18</sup>Report of the Auditor General on the financial statements of Uganda Human Rights Commission for the year ended 30<sup>th</sup> June, 2020 Pg. 11

remained for the tribunal to handle which the Auditor General translated into **96.3%** of underperformance. It suffices to say that that is indeed overbearing to the tribunal and that underperformance a great demoralization to the struggling justice system of this country.

The implications of such backlog are crippling really to the pursuance of enforcement of the fundamental human rights in this country. It is a constitutional principle that matters before court should be handled expeditiously<sup>19</sup> in fulfillment of the right to fair hearing in this land. Therefore it is risking to good justice when cases remain unworked on of a human right violation nature; it allows the perpetrators to roam freely and can be a precedent for future violators to violate the same with knowledge that such an issue will never be handled first and at the end it will rot in the UHRC system.

Additionally no serious mechanism has been put place to enforce orders made by the UHRC. In most cases the victims continue suffering as the perpetrators continue walking scot free.

### **PROPOSED ALTERNATIVES**

#### **i. Adoption of a Case Weighting Analysis (CWA)**

To manage the problem of case backlog best in the Uganda's judiciary system, the judiciary should adopt a Case Weighting System to best manage the problem. According to the World Bank report<sup>20</sup>, the Case Weighting Analysis is a technique first developed in the United States in the 1970s; it helps courts to estimate needs, adjust staff distribution and support requests for more human resources. Case Weighting Analysis was developed so as to address serious output inefficiencies resulting from inadequate staffing, caseload distribution, work units and human resources relative to actual demand for judicial services.<sup>21</sup> These inefficiencies CWA deals with are not strange issues to our very judiciary hence CWA should be an option adopted by the judiciary to sufficiently deal with the problems of case backlog resulting from inadequate staffing and under funding.

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<sup>19</sup>See; Article 28 of the Ugandan Constitution of 1995

<sup>20</sup> Case Weighting Analyses as a tool to promote judicial efficiency: Lessons, Substitutes and Guidance; World Bank Group. Pg. 5

<sup>21</sup> Ibid. Pg. 5



The Case Weighting Analysis is premised on the fact that not all cases require same amount of effort from judicial officials; some cases require time and lots of research, and resources both financial and human to be disposed of and while some are actually simple and easy requiring less time and resources to be dealt with. This is where CWA is used to define the level of effort invested in each case type, then converted to average case weights and then the results can be used to determine the reasonable caseloads and distribution of staff.<sup>22</sup> This means with CWA judicial officers are distributed accordingly; dividing the caseload fairly among them depending on the effort required of each case and they would be able to work efficiently and faster. This also helps in curbing the bad practice by judicial officers to handle easy cases and then leave the complex ones in the system for long.

According to the SATURN Steering Group report<sup>23</sup> in Croatia a precise categorisation of cases is provided and a definition of a minimum annual number of cases to be dealt with per judge is established depending on the complexity of each case category. It is reported that given that Case Weighting system, between 2004 and 2018, Croatia judiciary has been able to reduce its caseload drastically from 1.6 million cases to 400,000 cases. This shows how efficient CWA can be at case backlog if well implemented and it's our belief that even in Uganda it could produce great results. In Finland a questionnaire is said to be sent regularly to judges to assess their workload under CWA. All that shows how judicial systems across the world are taking CWA seriously and the same should be adopted in Uganda as well to well handle the case backlog problem.

## **ii. Incentivising of courts.**

There should be incentivising of courts to help get rid of the backlog problem within Uganda's judiciary system. In Serbia according to World Bank report<sup>24</sup> having been confronted with delays and backlogs across the judicial system, it's Supreme Court of Cassation introduced a rewards' system to encourage individual courts across

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22 Ibid. Pg. 5

23 Case Weighting in European Judicial systems prepared by Mr. Francesco DEPASUALE (Malta); <https://rm.coe.int/cepej-saturn-2017-7erev10e-case-weighting/16808ccb22>

24 Case study from the global report; incentivizing Courts to reduce backlogs: Serbia's court rewards program. pg. 2

the country to improve their performance in case disposal. Starting 2016, the program gave prizes to courts that made the largest improvements of backlog reduction and cases resolved per judge.<sup>25</sup> According to the report as of 2018 even if it was still early to really declare the initiative a success, Serbia registered more than 20% reduction in court backlogs an indication that the program of incentivising courts could have a positive impact.<sup>26</sup> It was realised that the program encouraged competition between courts and the awards bestowed a degree of prestige on those that performed well. Receiving awards at ceremonies and being mentioned in the media were found to be motivating factors for judges to drastically improve their performance.<sup>27</sup>

Incentivising seems to work everywhere that it's well implemented as people are much driven by reward of beating competition. Likewise, in the judicial sector to beat the problem of backlog on top of other measures, incentivising could be implemented. The judges and courts doing well in reducing cases with effectiveness could be rewarded and it would go a long in encouraging others to perform to the required standards hence in the long run reducing the country's case backlog. However as a recommendation, it would need to be well researched on how best it could be implemented so as to achieve the best results as intended.

### **iii. Address the land question as an issue contributing to case backlog.**

The Uganda Land tribunal should be operationalized so that it can handle some of the cases to do with land to reduce on case backlog in courts of law. In 2020 as per the World Bank report<sup>28</sup> the land division had the highest number of pending cases amounting to **11,655** even after a commendable clearance rate of 79% in the previous year of 2019. Therefore the Uganda land Tribunal ought to be operationalized to take on some cases on land to ease on the number of cases having to go to courts of law.

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25 Ibid. Pg. 2

26 Ibid. Pg. 2

27 Ibid. Pg. 2

28 Judiciary of the Republic of Uganda; rapid institutional and economic assessment. June 2020. Pg. 23

#### iv. Increase the pecuniary jurisdiction (monetary limits) of Magistrates' courts.

The pecuniary jurisdiction of lower courts is broadened with lowest going up to UgShs. 50 Million and the highest up to UgShs. 200 Million. These courts include the Chief Magistrates Court, Grade 1 Magistrate Court and Grade II Magistrate Court such that they can reduce on the load of mostly commercial cases pending in the High Court. In 2020 the High court had **69,526** pending cases a number higher than any of the Magistrates courts with Chief magistrate at 51,181, Grade 1 at **17,308** and Grade II just at **1,029**.<sup>29</sup> By increasing the pecuniary jurisdiction of the lower courts, it will ease pressure of the pending cases in the High court and evenly distributes the cases for faster disposal. At the moment the Chief Magistrate Court stands at UgShs. 50 Million, UgShs. 20 Million for Grade 1 and just UgShs. 500,000 for grade II.<sup>30</sup>

**NB:** There are case backlogs in office of the Director of Public Prosecution (DPP), judicial service commission disciplinary committee of judicial officers and also with Uganda Human Rights Commission Tribunal. The same recommendations for Case Weighting Analysis and Incentivising for the Judiciary should likewise be applied in those departments to solve the overwhelming problem of case backlog. Failure to deal with the same in those departments just like with the judiciary has ripple effects in the proper and effective administration of justice as required by the 1995 constitution of Uganda.<sup>31</sup> It is demanded in the right to fair trial that hearing of cases should be expeditiously done as justice delayed would of course amount to justice denied of the parties involved in the case.

### 3.4 Inadequate judicial disciplinary process

The Judicial Service Commission is constitutionally mandated to receive and investigate plus hear any kind of complaints brought against judicial officers.<sup>32</sup> This helps to promote the easy flow of administration of justice in this country as the judicial officers are kept in check despite their law given discretion in the

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<sup>29</sup> Ibid. Pg. 24

<sup>30</sup> Section 207 of the Magistrates Courts Act

<sup>31</sup> See; Article 28

<sup>32</sup> section 9 of the Judicial Service Act

handling of cases. However according to CEPIL report<sup>33</sup> it revealed that the commission has been so slow in handling those cases over the years in fact with a huge staggering backlog.

By the close of business for the year 2013/2014, the commission's back log stood at 749 cases and that having received more 137 in 2014/2015 it rose to 886 for the commission to handle.<sup>34</sup> However judicial service commission<sup>35</sup> reported that 2017 and 2018 saw quite a tremendous fall of the back log indicating that of the 550 complaints they had by close of FY 2016/2017, 323 of those complaints been disposed by close of FY 2017/2018. Whereas indeed there is quite an improvement registered in that area it remains still contended that those disciplinary cases of judicial officers should be handled immediately and expeditiously as they come in to ensure proper administration of justice as expected and provided for under the constitution.

The JSC report<sup>36</sup> itself indicated that of those 323 cases disposed of in 2017/2018, 318 of the them were closed for reasons among others of loss of interest in the matter by the complainant, death of the complainant or respondent, retirement of the judicial officer or complainant could not be traced all. All those reasons point to the possibility that complaints took long to be handled by the judicial service commission and by the time they were tabled those reasons inevitably and most unfortunate to the administration of justice arose. This poses serious implications that are crippling and rippling to the administration of justice in this country, upon the whole judicial set up being brought under scrutiny, public trust is immediately lost. There is no way justice can be said to be availed to the public when judicial officers are not being ably checked and on time upon complaints for their possible misdeeds in administering justice.

### **3.5 Incapacitation of Local Council (LC) courts**

Local council courts are the courts of first instance in Uganda and have real power to handle some matters as required under the laws of Uganda in line with principles of administration of justice as enshrined under the 1995 constitution of the Republic of Uganda. The *local council courts are established at every village, parish, town, division and at sub county level*<sup>37</sup>. However they seem not

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<sup>33</sup> State of Judiciary Report, 2016. Pg. 16

<sup>34</sup> *Report of the Auditor General 'Report Of The Auditor General On The Financial Statements of The Judicial Service Commission For The Financial Year Ended 30th June 2015*

<sup>35</sup> Judicial Service Commission Annual report. 2017/2018 Pg.8

<sup>36</sup> Ibid. Pg. 9

<sup>37</sup> According to **Section 3** of the Local Council Act, 2006

regarded seriously by the government of Uganda in the system of administering of justice yet the public really finds them easy to approach for any complaints arising.

According to a report by CEPIL<sup>38</sup> in the selection of mechanisms for actual dispute resolution 46% of members of the public entrust local council courts with resolution of their disputes and only a shaky 8% percent entrust courts. This shows how most Ugandans trust and would go to local council courts for handling of their disputes; they find them easy to approach and they are within their areas of reach. Coincidentally the very year the Local council Act came into force is the very year the offices of LC1 and LC2 had their term of office expire. It took government more 10 years to have new members elected to those offices and that explains how disregarding it is towards the local council courts as they were in that period of time incapacitated to handle matters. The problem may have been long solved by election of new people to those offices but it is telling so much of the government's unwillingness to facilitate and ensure development of the same.

Furthermore local council officials lack specialized training in handling of legal matters as they come in for remedy in their offices. This was reiterated by then Principal Justice Hon. Justice. Dr. Yorokamu Bamwine<sup>39</sup> as he called and advocated for specialized training of all members in operation of Local Council Courts during a dialogue on the role local council 1 in dispute resolution. He also noted that there was need of proper record keep by local council courts as their information would be needed in case of an appeal. The whole point is that the government has been reluctant to properly equip local council courts with training in handling of their judicial duties. Without that specialized training in handling of judicial matters and in proper keeping of records it becomes hard for proper administration of justice at local council level effectively. This has great implications on the principles of justice as enshrined under the constitution and can go as far as violating rights of individuals involved like the right to be heard and fairly yet a large section of the public trusts local council courts in handling of their disputes.

## **PROPOSED ALTERNATIVES**

### **i. Specialised Training for Local Council (LC) officials.**

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<sup>38</sup>In dire straits? The state of the judiciary report, 2016. Pg. 33 – 36

<sup>39</sup> <http://www.judiciary.go.ug/data/news/600/LCs%20Need%20Specialized%20Training%20in%20Dispute%20Resolution%20-%20PJ.html>

The Judicial Service Commission should introduce specialised training for local council (LC) officials. This would go a long way in making the judicial system an efficient one bottom up. It suffices to also note that the officials should be trained case recording so as to ensure that cases are well recorded and reported which makes work easier and faster should an appeal arise. It would also curb issues of res judicata.

ii. **Equip Local Council Courts (LCC) with permanent paralegals.**

Local Council courts also as a recommendation, need to be equipped with paralegals to help in day to day management of those courts and also to provide basic legal advice in handling of legal matters at those lower levels. As it is at the moment, LC officials are elected and their terms of office are due every five years which could hinder proper record keeping and case management. With a paralegal hired as a public servant stationed at each LC office such problems could easily be dealt with if those courts are to really be taken serious in this country.

### **3.6 Unpaid court awards and compensation.**

The ministry of Justice and Constitutional Affairs houses the Attorney General (AG) who is mandated to provide legal advice and legal services as well as buttress the machinery that provides the legal framework for better governance of Uganda.<sup>40</sup> According to the Auditor General's report of 2020<sup>41</sup> the outstanding amount in court awards and compensation resulting from cases involving government accumulated over the previous 9 years to monstrous amounts that are chocking to the ministry and the government as whole. Studying the auditor's it was indicated that the trend of accumulation of the debts was 100% in 2013, falling to 57% in 2014, again rising to a significant 75% in 2015, a slight fall in 2016 to 54% and then the accumulation falling significantly for the years, 2017 to 2020 up to -28%. So as of 30<sup>th</sup> June, 2020 the outstanding amount but still stood monstrously and menacingly at **UgShs. 392,428,099,424**, a chocking debt indeed. The OAG added in the same report that delayed settlement of court awards and compensation obligations have resulted in accumulated interest on the principal amounts, penalties and damages. In fact

<sup>40</sup> Article 119 of 1995 Constitution of the Republic of Uganda

<sup>41</sup> Report of the Auditor General on the financial statements of Ministry of Justice and Constitutional Affairs for year ended 30th June, 2020. Pg.13

it was shown that given the rate of interest at which courts awarded those compensations against the government, over time the interest rate in some instances had exceeded the principal amounts.<sup>42</sup>

It was also unraveled that some court awards owed had pended with the ministry for 10 years or more and never had they ever been considered for payment with some partly paid and as a result had born a mind boggling interest of **UgShs. 185,258,661,841** with interest rates ranging from 6% - 30% per annum. Those debts are crippling not just to the Ministry or government but to the economy of the country too.

Money is a medium known to depreciate as the economy changes over time. So by the time this money reaches to its rightful parties who perhaps are even long dead it can barely achieve the initially intended plans and projections.

Furthermore with those amounts remaining unpaid, it is monies locked out of the economy that have the potential to multiply and transform the economy as the economic status of the beneficiaries is improved. Quite sadly, those amounts at the end of the day with their staggering interests come back to the tax payer which is burdensome and disorienting. The government should be paying those amounts as they come in and avoid reckless acts of its officers that lead to litigation in court in the first place.

### **PROPOSED ALTERNATIVE**

#### **i. Prioritise unpaid awards/compensations against the government in budget allocations.**

The government should avoid unnecessary litigation in courts of law, and if suits indeed must arise, other means of settling out court should always be given priority and court should rather be a last resort. As of 30<sup>th</sup> June 2020 Ugandan government owed a total of **UgShs. 392,428,099,424** in unpaid awards/compensations arising from lawsuits lost to in court<sup>43</sup> with accruing interest of **UgShs. 185,258,661,841**. These monies continue to be locked out of the economy with serious negative implications. The government should always prioritise payment of such debts in its budgetary allocations so as avoid that interest that keeps accruing

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<sup>42</sup>Ibid. Pg.14

<sup>43</sup> Report of the Auditor General on the financial statements of Ministry of Justice and Constitutional Affairs for year ended 30th June, 2020. Pg.13

which at the end of the day becomes a burden to the tax payer. Alternative dispute resolution of conciliation, arbitration, negotiation and mediation could be taken on as an approach by government always as first priority in legal matters involving it. This somehow mitigates the monstrous amounts that are likely to be awarded by courts of law in case it is adjudged against.

**ii. Penalise government officials causing unnecessary litigation against the government.**

The government officials causing unnecessary litigation against the government should be penalised. A number of cases arising from the public against the government arise from actions and omissions of government officials while in their line of duty. Government needs to come with a way of penalising these overly errant officials that lead to such litigations unnecessarily especially in human right cases involving violation of those rights. For instance in the case of Rights Trumpet & 2 others V AIGP Asan Kasingye & 5 others and Mucunguzi Abel & 9 others v Attorney & 2 others<sup>44</sup> Court awarded up to UgShs. 300,000,000/= against the attorney general for violating the right to peaceful demonstration, unlawful arrest and detention for no offence committed by the applicants for police officers' negligence/recklessness while duty. These cases can be avoided yet for reckless actions of government agents they always find a way of surfacing. They lead to unnecessary expenditures in form of court fees, costs, research costs from the government to facilitate court processes and even compensations in case of the government losing the litigation. These penalties can be in form of demotions, dismissals or pay cuts to compensate for the amounts lost. However these penalties need to be well-structured within the operational guidelines and contracts in the various government departments for effective implementation.

**3.7 Gross human rights abuses in terms of unlawful and forceful land evictions, abductions and kidnaps of Ugandans and torture.**

There are serious policy issues in the area of human rights that need serious government attention in Uganda. These go to the very heart of basic human rights of property, liberty and freedom from inhumane treatment and that is, unlawful and forceful land evictions, abductions/kidnaps of people especially

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44 (consolidated Miscellaneous Cause 17 of 2017 [2020] UGHC 42 (15 May 2020)



those opposed to the government and torture. Unfortunately all these have a heavy involvement of government or its agents. For instance more than 30,000 people have been and some still being evicted in the district of Kiryandongo by foreign agro companies using police<sup>45</sup> and in the oil graben in the districts of Hoima, Masindi, Kyenjojo and many others therein, people's land has been taken by government on account of using it for oil activities without adequate and prior compensation and where it's been given more often than less it's been late and inadequate.<sup>46</sup> Then, the period preceding and proceeding the 2021 general elections saw unprecedented disappearance of those opposed to government with some later being found dead or maimed and for some up to today have not been found. It is reported that more than 400 National Unity Platform (NUP) were abducted by security agencies of the government and this was even to government's own admission.<sup>47</sup> And reports of torture are also very frequent with people being tortured (still those opposed to government) in government illegal safe houses by the military. Human Rights watch in their recent report<sup>48</sup> recounts and retells horrifying stories of victims that were tortured at the hand of government forces in safe houses and some have since remained maimed and with scars that cannot be healed. These issues need to be dealt with systematically for Ugandans' freedoms.

### **PROPOSED ALTERNATIVES.**

- I. A commission of inquiry on land evictions should be set up as well by Parliament to go to the field and study the plight of all the evicted people so as to hold Government accountable for them. It should also study the conditions under which they were evicted and where it finds fault, give advice on how the damage can be repaired and what to do with the culprits.
- II. The Committee on Human Rights in Parliament should be led by a Member from the official opposition party like all other Accountability Committees of parliament to better check

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<sup>45</sup> Land grabs at gunpoint by Witness Radio, August, 2020

<sup>46</sup> Read; Julius, Niringiyimana; William, Muhumuza; and Rutanga, Murindwa (2019) "Oil Politics and Land Tenure Changes in Uganda:

Understanding the Curse of Dispossession in the Albertine Region," African Social Science Review: Vol. 10: No. 1, Article 7. Pg. 190 – 193 and also read; "Up against Giants" Oil-influenced land injustices in the Albertine

<sup>47</sup> UGANDA: REPORT ON RECENT ABDUCTIONS; In Connection with

Abuses and Human Rights Violations, Torture, Kidnapping and Killing of the Political Opposition by the Government of Uganda and Its Officials, March 17, 2021 by counsel to Robert Kyagulanyi

<sup>48</sup> "I Only Need Justice" Unlawful Detention and Abuse in Unauthorized places of Detention in Uganda. Pg. 22

government excesses as far as human rights are concerned in this country.

### **3.8 Lack of an enabling law and weakness of Police in investigating matters preferred for action by the DPP**

It is also a concern that the DPP mainly relies on police to carry out investigations.<sup>49</sup> The Ugandan police has on several occasions from various reports been accused of arresting people and then conducting investigations later. This leads to the accused's rights being violated as they are incarcerated at the DPP sanctioning of the police files pending further investigations. It deeply affects the expedient administration of justice in this country.

### **3.9 Limited awareness of the office of the Director of Public Prosecution (DPP)**

According to the JLOS annual report of 2020/2021<sup>50</sup> only 32.6% of the public know of the existence of the DPP. This is a very big concern especially in a country of high criminality rate whereby tens of cases are reported on a daily basis for one not to be aware of the office in charge of criminal proceedings. In one way or the other it is likely to occasion problems in the administration of justice, for instance where does one run to when their case stuck in court?

## **PROPOSED ALTERNATIVES**

### **i. DPP should be restrained from sanctioning files pending police investigations**

The DPP as should be restrained from sanctioning such files lacking evidence. This will put the police on task to do thorough investigations in criminal matters to ensure that rights of the accused are not abused. The police has been caught in the habit over time of effecting arrests and then investigate later while the accused rot away on remand. It is a constitutional provision<sup>51</sup> for the DPP to direct police investigations and then institute criminal proceedings in any criminal matter. So the Office of the Director of Public Prosecutions, has had a share too in the vice as they sanction police files without concrete evidence against the accused in criminal matters. As of 30<sup>th</sup>

<sup>49</sup> <https://www.hrw.org/report/2013/10/21/letting-big-fish-swim/failures-prosecute-high-level-corruption-uganda>

<sup>50</sup> Annual Performance report 2020/2021; Justice Law and Order Sector (JLOS)

<sup>51</sup> See; Article 120 of the 1995 Constitution of the Republic of Uganda.

June 55.8% of inmates in Ugandan prisons were suspects on remand awaiting trial of their cases in court, their number bigger than that of the convicts and civil debtors.<sup>52</sup> It also helps in the smooth flow of the cases when presented before the courts of law.

#### ii. **Sensitisation of the public about the Office of the DPP**

State wide sensitisation of the public should be done in regard to the office of the DPP and its roles in prosecution of criminal cases. Only 32.6% of Ugandans are aware of the office of the DPP<sup>53</sup>. This could be done in conjunction with other civil society organisations through seminars, outreach activities, media adverts and many other exercises. This would help the public to follow up especially the victims and families of the accused with the proceedings and seek clarification where possible in the effective administration of justice.

### **3.10 Inefficiencies in voter registration.**

The major concern with Electoral Commission over the years is the issue of discrepancies in voter registration which is usually in the form of duplicate names, missing names and names registered in wrong constituencies.<sup>54</sup> This usually leaves many Ugandans without exercising their constitutional right of voting in this country. It suffices to note that out of a population of close to 42 Million people eligible to vote only 17 Million are registered voters.<sup>55</sup>

### **3.11 Skepticism by the public about the Electoral Commission**

Questions of trust of the electoral commission always find a way of chipping in overall the last years of elections. These mistrusts seem to persistently arise at all levels of elections in this country. According a report by Afrobarometer of 2017<sup>56</sup> only a shaky 42% of Ugandans were reported to trust the Independent Electoral Commission down from 54% during the 2015 survey concluded before 2016

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<sup>52</sup> Combating Prolonged Pre-trial detention by Uganda Law Society and Advocates Sans Frontiers Pg. 2

<sup>53</sup> Annual Performance report 2020/2021; Justice Law and Order Sector (JLOS)

<sup>54</sup> <https://reliefweb.int/report/uganda/uganda-s-complicated-elections-six-underlying-issues-watch>

<sup>55</sup> Projection as at Mid-year 2020. by UBOS; <https://www.ubos.org/uganda-profile/> accessed on 07<sup>th</sup> February 2022 at 11:45 pm. <https://www.ec.or.ug/electoral-commission-statistics>

<sup>56</sup> Thomas Isbell and Francis Kibirige; Election Commission: Ugandans skeptical of back December 2017, Dispatch No. 182 | 19 quality, Pg. 7.

general elections. In 2020 again after another by Afrobarometer<sup>57</sup> reported that only 43% of Ugandans trusted the Electoral commission. This consistence of the skeptical feelings by most Ugandans leaves many questions flaring and hanging every time an election is concluded. It was again reported to further buttress the skeptical feelings that actually 41% of Ugandans thought that the electoral commission makes decisions that are favoring to particular people, parties or interests with just a slim of 52% saying it is actually a neutral body guided by the law.<sup>58</sup>

Such feelings of discontentment atop skepticism have dire consequences on the public as most decide to shun away from voting for their candidates hence not fulfilling their given constitutional right and of course that decides the kind of leaders we get at the end of the day. It is indeed incumbent on the electoral commission to organize free and fair elections and this would too be effectively or sufficiently demonstrated through openness that should be demonstrated over time even through prior sensitization.

This skepticism would in fact explain the ever dropping voter turn up every time an election is held. According to Election Guide<sup>59</sup> having studied the voting patterns of presidential elections, it was indicated that in 2001 70.31% of the voters turned up, 69.19% in 2016, 59.09% in 2011 and there was a slight increase in 2016 with 63.5% turning up but again tremendously dropped to 57.18% in 2021 to make the lowest voter turn up ever. All that in summation corroborates together to explain the mistrust towards the electoral commission and it would mean that people are in fact not sufficiently represented in this country because it would be only in an election that one gets the real tangible chance to choose the leader of his or her choice. That choice decides ultimately the kind of service delivery one chooses to have.

### **3.12 Transparency in the election activities**

It has always been the norm, an accepted one internationally for electoral commission to accept international election observers to come into the country and observe the conduct of Uganda's elections. However for 2021 elections such a precedent was denied standing when the electoral commission granted permission to a few that could not ably traverse all the areas of the country. In

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<sup>57</sup>News release. Kampala, Uganda. 18<sup>th</sup> December, 2020

<sup>58</sup>Ibid. Pg.1

<sup>59</sup><https://www.electionguide.org/countries/id/222/>

an exclusive report<sup>60</sup> it was indicated that the electoral commission refused to accept American electoral observers by denying them permits and only granting 15 without sufficient reason or explanation hence on 13<sup>th</sup> of January, 2021 the United States recalled its election observers. It was further reported that of the 1,900 NGO and Ugandan applications that were made for election observers, only 10 were granted and the report concluded that given Uganda has **34,344** polling stations, the government's grant of only a mere 10 permits was a palpable effort to avoid independent observers hence allowing full scope of election abuses. It could never have been said better.

Having refused election observers, internet was shut down by the government and the locals were denied even the slight opportunity of making videos of the voting process at their local polling stations. Loss of internet also meant that the media was thwarted from covering the election and its aftermath.<sup>61</sup> This insufficiency in election observation, it suffices to note that it is unforgiving when it comes to the free exercise by Ugandans of their granted constitutional right to vote for candidates of their choice.

### **3.13 Electoral violence**

It is commonplace for Ugandan elections to be marred with heart shattering violence. There is no election we can think of as not having been bloody in our modern politics. They're usually on a large scale almost systematically tinted with rival candidate persecutions with beatings and imprisonment, voter intimidation, involvement of government forces that rain on people with terror and in many other forms. In the 2021 general elections the Country witnessed sheer horror with 54 protesters including bystanders being killed in what has come to be known as the November 2020 killings.<sup>62</sup>

These jots of violence started earlier in 2020 before even the official presidential campaigns with isolated cases of extrajudicial killings of then presidential hopeful Hon. Robert Kyagulanyi during his consultative meetings; Ritah Nabukenya was knocked dead deliberately by a police truck<sup>63</sup> while Daniel Kyeyune was killed by a bullet by an LDU officer that went through his head.<sup>64</sup>

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<sup>60</sup>Report on government abuse, violations and misconduct in advance of the January 14<sup>th</sup>, 2021 Presidential Election and its aftermath by Bruce I. Afran. Pg. 31

<sup>61</sup>Ibid. Pg.5

<sup>62</sup>See; Report on government abuse, violations and misconduct in advance of the January 14<sup>th</sup>, 2021 Presidential Election and its aftermath by Bruce I. Afran. Pg. 7

<sup>63</sup>Uganda 2020 Human Rights Report by State Department at American Embassy. Pg. 2

<sup>64</sup><https://observer.ug/news/headlines/63683-one-shot-dead-as-police-battles-bobi-wine-supporters-in-nansana>

Those cases are just tip of an ice berg of an electoral situation that was turned so horrendous by the government through its forces and all that goes without mentioning of arrests of opposition supporters and numerous cases of torture.

The point of real concern is that the electoral commission just stood by when horror was being unleashed on Ugandans for mere enjoyment of their rights very much guaranteed by the Ugandan constitution. The omission of electoral commission to take action was a direct violation of its mandate. Under Article 61<sup>65</sup> among other functions clearly stipulates as part of the electoral commission mandate to not just *ensure regular, free and fair elections but also to organize, conduct and supervise the same in accordance with the constitution*. It is an unwavering call upon the electoral commission to ensure that elections are well held without violation of constitutional rights through its adequate supervision. That responsibility stands violated and diminished in the face of electoral violence that is intimidating to the other candidates and their respective supporters. Those hellish tendencies go to the very fundamental roots of constitutionalism in this country as the rule of law is violated and basic constitutional standards eroded by the powers that be.

### **3.14 Partisan appointment of officials to the electoral commission.**

This seems to sum it all, all the disappointments suffered by Ugandans due to the inaction and inefficiency by electoral commission. From the very beginning of constituting the electoral commission, it is and already looks flawed. It is already flawed that demanding the electoral commission to play its mandate in a strict sense seems too much of an unfair demand. The electoral commission got it all wrong from the very inception of **Article 60 (1)**<sup>66</sup> which provides that *there shall be an electoral commission with a chairperson, deputy chairperson and five other members to be appointed by the president with approval of parliament*. There is the gist of the problem that curing the defect therein would almost certainly cure the whole electoral process problem in this country. The electoral commission cannot ensure its independence as enshrined in Article 62<sup>67</sup> when it is appointed by the very powers with an abundance of interest in the election that is being overseen by the electoral commission. In fact under such an unfortunate constitutional circumstance, Article 62<sup>68</sup> is rendered redundant.

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<sup>65</sup>1995 constitution of the Republic of Uganda.

<sup>66</sup>1995 constitution of the Republic of Uganda.

<sup>67</sup>Ibid.

<sup>68</sup>1995 constitution of the Republic of Uganda.

It suffices to mention that the parliament which was put to check the powers of the president in the appointment of the electoral commission is not a willing body to play such a constitutional role given that most members of parliament belong the ruling party and even if they didn't the executive always seems to have an overreaching hand in the affairs of the legislative body. The framers of the constitution got that wrong and as long as that defect continues to exist, Uganda may never be free of election unfairness which directly violets the principles of effective representation of the people.

### **PROPOSED ALTERNATIVES**

**i. Sensitisation of the public about Electoral Commission's processes and roles.**

A proper and adequate sensitization of the public about Electoral Commission's processes and role should be done. This should be a continuous activity and not just towards elections. As seen under the emerging issues, there is a lot of scepticism towards the electoral commission to the extent of only 43% of Ugandans reported as trusting it in 2020 just before the general elections in 2021.<sup>69</sup> Unfortunately, it's been a persistent trend over the years. This could be through media adverts, dialogues, and seminars and out reaches. It should also be open in its processes during elections so as to gain some appreciable trust from the public.

**ii. Electoral Commission should issue permits to electoral observers every general election.**

The Electoral Commission should duly issue permits to observers at every election to ensure the credibility of the results and the entire voting process. Electoral commission failed to issue permits to electoral observers in the previous elections which in several ways could tint the credibility of the results of that election. According to the Cater Centre journal <sup>70</sup> it is indicated that international election observing is accepted as an international norm with an overarching goal to support efforts to strengthen democratic processes and institutions and support the conduct of an election that meets international standards; peaceful and have credible results. It is argued that on the Election

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69 Afrobarometer: News release. Kampala, Uganda. 18<sup>th</sup> December, 2020

70 Observing elections

Day, credible and impartial observers can strengthen an electoral process by reassuring voters they can safely and secretly cast their ballots and electoral fraud will be detected.<sup>71</sup> Therefore observers can create some kind of reassurance in the public to trust that the results of an election will be credible enough and not letting them observe an election has the potential of discrediting the entire voting process.

**iii. Electoral commission should conduct adequate voter education prior to elections to avoid electoral violence.**

The electoral commission should carry out its mandate. It should also provide voter education to the public including the security agencies such that each party can understand their role in an electoral process. Electoral violence is a big negative factor in Uganda's elections. Unfortunately we cannot point to any tangible measure that has been taken by electoral commission to curb the vice in Uganda's elections. The perpetrators have mostly been the Ugandan forces that have been so high-handed to the extent of killing opposition supporters extra judicially in some reported cases.

According to an ACCORD journal<sup>72</sup> monitoring and education are emphasized during an election and that they should be continuous activities as violence related to electoral activities often begins way ahead of the actual elections. With proper voter education of all stake holders involved, electoral violence would be muzzled as each person understands their roles and mostly the rights of all parties involved in the election. It would really go a long way in curbing that violence. Furthermore electoral commission as an overall overseer of the election using its supervisory powers should be able to disqualify and penalise candidates that tend to cause violence in an election process. This does not just go a long way to ensure a thorough electoral process but largely protects and ensures the rights of an individual voter during elections.

**iv. There should be transparency and inclusivity in the appointment of electoral commissioners.**

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71 Ibid.

72 Policy & Practice Brief; Knowledge for durable peace. Strategies to prevent and manage electoral violence: Considerations for policy by Kristine Hoglund and Anna K. Jarstad, Uppsala University. June 2010.



The commissioners' eligibility to serve on the commission should be through a recruitment process having specifically enlisted the desired qualifications to ensure competence. It is noted that there is flaw in the appointment of commissioners of the Electoral Commission which in great way does not ensure the independence of the EC in carrying out its mandate during elections.<sup>73</sup> According to a paper by Westminster Foundation for Democracy (WFD)<sup>74</sup> as an indicator of independence of the electoral commission, the appointment of its officials must be transparent and inclusive which could be done through open adverts, public hearings, appointing body and the degree of inclusivity is in terms of opposition parties and civil society groups. Such transparency is found to be largely lacking in the appointment as it is conducted by one party basing on too broad considerations of high moral character, proven integrity with considerable experience and demonstrated competence.<sup>75</sup> Those considerations are too broad as to ensure officials that are competent for the job and moreover all the appointing powers are put in one individual – the president.

Those commissioners should be got from an open exercise that includes advertising open positions and then interested candidates vetted publicly to prove their qualifications and competence. That can be achieved with an appointing body in place created solely for purpose of vetting commissioners by Parliament. Then the names of the appointees can be taken to parliament for approval and confirmation by a select committee and not the whole parliament as it can easily be influenced by the executive. Those commissioners should then serve for a period of six years, not renewable to ensure non-complacency that is likely to result for being in office for a long time. Therefore the president should not be seen to play any part in the appointment of the electoral commissioners. This calls for the amendment of constitutional provisions providing for appointment of the electoral commission. For instance in Malawi the judicial service commission is involved by nominating the chairperson even though it is the president that appoints and the public appointments committee of parliament determines the conditions of the other Commissioners.<sup>76</sup>

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73 See; Articles 60 – 62 of the 1995 Constitution of the Republic of Uganda.

74 Understanding and assessing Electoral Commission Independence a new framework. Pg.15

75 See; Article 60(2) of the 1995 constitution of the Republic of Uganda.

76 <https://www.ecfsadc.org/members/malawi-malawi-electoral-commission/>

### **3.15 High failure rates at the Law Development Centre (LDC)**

The major persisting issue with LDC has mainly been discrepancies with students' marks. In 2021 LDC released a graduation list indicating that **90%** of the students that had failed which was more than **1,000** students which most thought to be preposterous. This led to more than 1000 students petitioning National Council Higher Education accusing LDC for breach of bar course rules on handling examination results. LDC was further accused of failing to provide window for appeals and verification of marks.<sup>77</sup> These discrepancies seem to arise recurrently over the years leaving many unsatisfied and doubtful of the standards of LDC. Furthermore the failure rates continue reducing the ratio of practicing advocates to the population thus leaving the legal fees high for the majority of Ugandans to afford.

### **3.16 Irregularities in reporting at the Law Development Centre (LDC)**

As per the budget circular for 2019/2020<sup>78</sup> accounting officers are tasked to make and submit annual monitoring reports and plans for the government programs or projects under their vote to the Office of the Prime Minister with a copy to the Ministry of Finance and National planning Authority. This is meant for monitoring and implementation the budget. However for LDC according to the Auditor General's report<sup>79</sup> it was found that the entity did not prepare and submit annual monitoring plans to the Ministry of Finance and National Planning Authority and in fact even the quarterly monitoring reports to the office of the Prime Minister and Ministry of Finance had not been submitted as required of the accounting officer. The Auditor General in the same report noted that the habit of not submitting such reports hinders the monitoring of the implementation of the budget. Such reckless behavior can easily occasion misallocation of public resources which is endangering to quality provision of services at the Law Development Centre and perhaps corruption practices.

Furthermore per the budget circular for 2019/2020<sup>80</sup> the accounting officer is required to submit quarterly performance reports by 30<sup>th</sup> day of every first month of the following quarter clearly showing quality/quantity of outputs against expenditure. However in that regard in that very report it was realized by the Auditor General that the information provided basing on the cumulative performance reports by LDC and physical inspections/verification of

<sup>77</sup> <https://observer.ug/news/headlines/70635-nche-investigates-ldc-over-student-marks>

<sup>78</sup>Sec; Par. 58

<sup>79</sup>Report of the Auditor General on the financial statements of the Law Development Centre for the Year ended 30<sup>th</sup> June 2020. Pg. 9

<sup>80</sup>Sec; Par. 55

performance was inconsistent with the results of the Auditor General's verification. This Auditor General's verification led a variance in the level of performance that was quantified and found to amount to monstrous **Ugx 1.72 Bn.**<sup>81</sup>The Auditor General commented in the report that such inaccuracies in a performance report affect the reliability of the information and mislead users of the report. That was quite light, put bluntly, those gaps and inaccuracies can be possible indicators of misuse of public funds and resources at LDC. In the face of that, it would be injuring and really burdensome to the tax payer whose money is used to run such public institutions.

### **3.17 Transparency in the marking scheme at Law Development Centre (LDC)**

The discrepancies relating to marks at LDC result from LDC taking a none disclosure approach in how the results awarded to students are reached, that is to say, students lack a clear understanding of what is involved in the marking of their papers. The LDC should be open about the process of awarding of marks. The results should be produced in time and an allowance given for the students that would want to appeal for a review of their results.

#### **PROPOSED ALTERNATIVE**

##### **i. Introduction of pupillage/apprenticeship for lawyers as another option for the bar examination**

A system for pupillage/apprenticeship should be introduced for the intending advocates as an option to the current physical classes. In Uganda, the post graduate training in legal practice for lawyers is conducted by LDC. However that legal training at the practical level is also costly in time and money for low income students. It is to this end that pupillage/apprenticeship would come in handy as another safer and cost effective option. Under pupillage, lawyers closely work under a practicing advocate who guides them on court procedure, document drafting, court decorum and all other requirements of in legal practice.<sup>82</sup> It is usually in phases of six months conducted over a year.

In South Africa the intending law practitioners for private practice are required to undergo a period of training in pupillage with a

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<sup>81</sup>Ibid. 10

<sup>82</sup> <https://www.lawcareers.net/Barristers/Pupillage.com>

also see; <https://targetjobs.co.uk/careers-advice/law/how-pupillage-works.com>

practicing member after their LLB and thereafter immediately sit the bar examination.<sup>83</sup> This pupillage offers the intending legal practitioner a hands on training within an actual practicing environment.

In Canada, they have articling for the intending legal practitioners where they are required to work under a supervising counsel for 10 months and then after that can sit for the bar examination.<sup>84</sup> So pupillage works and has been tested in other jurisdiction as an effective option for post graduate training in legal practice. It can also help deal with numbers that LDC has to deal with in classes.

#### ii. **Penalise Accounting Officers for inaccurate reporting.**

Strict penalties should be put in place for such acts which can be in form of demotion, dismissal, and transfer upon repetition having been warned by the Auditor General. As per the Budget Execution Circular of 2019, accounting officers of all government departments are charged to variously make quarterly, monitoring and planning reports. These reports should be accurate and submitted on time for proper planning and to monitor performance vis-a-vis their budgetary allocations. It was however noted that most accounting officers' reports are inaccurate and are not submitted on time which hinders the efficiency of such departments. This would help in the proper accountability to the public of all government departments.

### **3.18 Slow intervention of the Uganda Human Rights Commission (UHRC) into human rights abuses**

The major concern with UHRC has been its slow intervention in issues relating to human rights abuse in this country especially committed by the government on the opposition politicians and activists. It has been on several occasions spotted

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83 <http://www.law.uct.ac.za/law/about/lawinSA>

84 Articling is a 12-month period of experiential learning meant to assist in the transition from law school to the actual practice of law. During articling the goal is to provide each Articled Clerk with an opportunity to gain experience in a variety of relevant areas, including (but not limited to) professional responsibility, personal practice and office management, interviewing and advising, negotiation, advocacy, legal writing and legal drafting. **As per** NOVA SCOTIA BARRISTERS' SOCIETY; *Articling Handbook, Education & Credentials*, |FEBRUARY 2020 accessed via chrome extension://efaidnbmnnnibpcajpcglclefindmkaj/viewer.html?pdfurl=https%3A%2F%2Fnsbs.org%2Fwp-content%2Fuploads%2F2019%2F11%2Farticling\_handbook\_2019.pdf&clem=265171&chunk=true

for failing to hold government accountable for abuse of human rights. In the recent illegal detentions and torture of Masereka and Kakwenza Rukirabashajja among others, it could not put government on spot for his whereabouts. Such loopholes lead to serious violations of human rights in this country to go on uncurbed.

The Uganda Human Rights Commission has grossly failed on many occasions to fulfill its constitutional mandate for its omission to act in the face of horrendous human rights violations especially by the government of Uganda. From the years leading up to 2021 general elections and even after that Uganda has witnessed gross violation of people's rights and freedoms on a very large scale and in no single case can UHRC be said to have taken action. If has as is often it is inadequate and sheer formality for public relation reasons to keep face.

There have been numerous reports of abductions and disappearances of people especially supporters of the opposition political party, National Unity Platform (NUP). In an exclusive report by counsel to Hon. Robert Kyagulanyi<sup>85</sup> it is reported at least 423 high ranking officials from NUP to be missing without any indication of their whereabouts or condition. These people in that report it was shown that they were abducted/kidnapped by plain clothed men said to belong to the military in vehicles known as drones. The victims according to the report would first be beaten and humiliated before being whisked off.

Indeed it is on record that government officials later came and admitted on holding some in an ungazetted detention facilities.<sup>86</sup> The UHRC has not taken action against the officials involved.

In the November 2020 riots, 54 people including bystanders were reported to have been killed extra judicially by men in uniform after the arrest of Robert Kyagulanyi during a campaign rally.<sup>87</sup> Still nothing is record to have been done by the Uganda Human Rights Commission. In fact in UHRC's report<sup>88</sup> in a few, short, imprecise paragraphs summarized and put the whole blame on the rioters. It reported that the protesters on 18<sup>th</sup> and 19<sup>th</sup> November, 2020

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<sup>85</sup> Uganda: Report on recent abductions; In Connection with Abuses and Human Rights Violations, Torture, Kidnapping and Killing of the Political Opposition by the Government of Uganda and Its Officials by Bruce I. Afran. Pg. 1

<sup>86</sup> Bruce I. Afran; Uganda: Report on recent abductions; In Connection with Abuses and Human Rights Violations, Torture, Kidnapping and Killing of the Political Opposition by the Government of Uganda and Its Officials, Pg. 6

<sup>87</sup> <https://www.hrw.org/news/2021/11/18/one-year-later-no-justice-victims-ugandas-lethal-clampdown>

<sup>88</sup> The 23<sup>rd</sup> Annual Report on the state of human rights and freedoms in Uganda – 2020. Pg.28

abdicated their constitutional duties under Article 17<sup>89</sup> when they attacked police, members of the public and engaged in acts of violence. Whereas it might be true that there acts of criminality were involved in the protests, it is not the entire truth. The report does not put police and UPDF officers in the spotlight for extra judicially killing 54 Ugandans including bystanders.

That kind of reporting is inadequate and conceiving of the truth and clearly demonstrates the unwillingness by the UHRC to fulfill its constitutional mandate. The report in fact in its entirety does not show the action UHRC is taking in handling the human rights question in Uganda. That omission to act by Uganda Human Rights Commission has dire consequences on the protection, respect and enforcement of human rights in this country as people would continue to be abused by the state. It erodes the very idea of fundamental civil liberties and rights.

#### **PROPOSED ALTERNATIVE**

##### **i. Quick intervention of Uganda Human Rights Commission in human rights violations**

The Uganda Human Rights Commission should be quick and fast paced in intervening into situations believed to occasion violations of human rights. It should intervene on its own in gross violation of human rights especially in cases involving government rather to wait for complaints from the public, civil society and individuals. UHRC has the power to initiate investigations on its own accord under suspicion of any nature of violation of human rights in any arising situation.<sup>90</sup> A faster way with which it handles human rights issues would be ensured by a prescription in its mandate, requiring it to be reporting to Parliamentary Committee on Human Rights every quarter of the financial year of its findings and the steps being taken on some human right concerns.

#### **3.19 Flawed appointment process of UHRC officials.**

Just like the electoral commission for a body charged with very heart of matters of fundamental importance to the people and their rights, it is crucial to note that the appointment process of its officials is greatly flawed. A gamble that is so

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<sup>89</sup>1995 constitution of the Republic of Uganda.

<sup>90</sup> See; Article 52 of the 1995 constitution of the Republic of Uganda.

risky to the people of Uganda. **Article 51(2)**<sup>91</sup> provides that *the commission chairperson and not less than three persons will be appointed by the president with approval of parliament*. At this very article, the problems of incapacitations and failure by UHRC to fulfill its mandate start. When perusing most reports by UHRC it is vivid that it struggles at all points to justify government's gross actions in violation of human rights. You can feel the pressure in the language of their reports the need not to tint government image and yet in their work and mandate it is required that UHRC is thorough, unapologetic, unforgiving, uncompromising and bluntly putting its concerns across and without any of that it is a joke to even consider it a human rights body.

For instance in its media statement <sup>92</sup> the acting chairperson justified government's action to switch off internet, giving reasons among others that it was for security measures following intelligence reports of possible outbreak of violence and did not any way show how that had in turn affected the public with their economic rights, freedoms of expression and other underlying rights that were abused. In fact he concluded the issue by giving a government apology as if he was its spokesperson that it regretted the inconveniences caused to the public.

As long as the appointment process to such offices involves the president, it does not matter who, bodies like UHRC will always play and dance to the tunes of the government to almost advance good government public relations. In the same spirit it is important to note that parliament is not an affective body to check the president on appointment of officials to UHRC given that the executive has an ever overreaching arm towards it and most members in most cases even after NRM possibly will always belong to the ruling party. This has a rippling effect on the protection, enforcement and upholding of the fundamental human rights of Ugandans as they can always be abused and violated on account of bad precedent that no action will be taken by this body that is in charge after all.

#### **Proposed Alternative**

- i. Amend the constitutional provisions on appointment of UHRC officials.**

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<sup>91</sup>1995 Constitution of the Republic of Uganda.

<sup>92</sup>Uganda Human Rights Commission Preliminary Statement on the Human rights situation of the 14<sup>th</sup> January, 2021 general elections

The whole process of appointment of UHRC officials is amended, that is, there should be a body instituted by parliament in charge of the appointment of the UHRC officials. It's of great note that the appointment of Uganda Human Rights Commission officials is faulty and defective that it hinders in a lot of ways the body from fully performing its mandate without undue influence from the appointing powers especially when cases should arise where those powers must be called to book for their gross actions.

According to the report by Asia Pacific Forum<sup>93</sup> it is noted that the appointment of the officials as per the Paris Principles must be in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation and that this appointment can be by means of an election or otherwise. Therefore the appointed officials should be a holistic representation of the country's social, economic and political dynamics. So it can not all be a one man selection committee for such a vital yet fundamental role of selecting those officials. Ideally it observed that a transparent and inclusive appointment should take the shape of; publicising vacancies broadly, maximising the number of potential candidates from a wide range of societal groups, promoting broad consultation and/or participation in the application, screening, selection and appointment process, assessing applicants on the basis of predetermined, objective and publicly available criteria.<sup>94</sup> All that ideal selection criteria is lacking in the appointment of UHRC officials. The process has to be as broad as possible unlike Uganda's that is narrow and creates doubt just from the onset.

This body should publicly advertise the open positions allowing sufficient time for members to apply, there should be a number of qualifications posited to be met by intending officials that are specific meeting the pluralist nature of country, those intending officials should be vetted by that body. Having vetted the body should forward the suitable candidates to a select parliamentary committee not the whole parliament for approval and confirmation without any role from the president of executive arm of government. This way we could bank on the independence of UHRC and have public trust that indeed it can fulfil its mandate to the letter.

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93 A manual on National Human Rights Institutions Pg. 44

94 Ibid.



### 3.20 Lack of clear policy and legal framework on the operations of the National Consultative Forum

The National Consultative Forum for Political Parties and Organizations established under Section 20 of the Political Parties and Organizations Act is yet to influence reforms geared at addressing government's repressive approach towards political parties in Uganda. For instance, the Forum has not weighted in or made known its position on the current indiscriminate attacks on opposition political parties, agitation of the President to curtail issuance of bail and tramped up charges of Hon. Ssegirinya Muhammed of Kawempe North and Hon. Allan Ssewanyana of Makindye West.

This is mainly attributed to the lukewarm support from the Electoral Commission which has hindered the actualization of the Forum's mandate stipulated under Section 20(4) of the Political Parties and Organizations Act. The Forum is mandated to ensure compliance with Code of Conduct, advancing complaints of political parties to the Electoral Commission and resolving disputes amongst political parties, among others. Unfortunately, the Auditor General noted that the Forum is poorly planned for by the Electoral Commission.<sup>95</sup>

#### **Proposed Alternative**

The funding of the National Consultative Forum should be increased to empower it to fast-track its statutory mandate under the Political Parties and Organisations Act. The enhanced funding would improve the operations of the Forum to build the capacities of all political parties in Uganda and propagate dialogue at the national level with the intent of wiping out political persecution and strengthening democratic values.<sup>96</sup>

### 3.21 Public unaware of existence of Uganda Registration Services Bureau (URSB)

The entity faces the notable issue of limited awareness of its existence by the public too. According to the Annual report of 2020/2021 by Justice Law and Order Sector<sup>97</sup>, it was reported that only 42% of the Ugandans that were

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<sup>95</sup> *Statement by Leader of Opposition on the Shrinking Operational Space of Civil Society Organizations in Uganda presented on 24<sup>th</sup> November 2021*

<sup>96</sup> Leader of the Opposition, **Statement by Leader of the Opposition on the Shrinking Operational Space of Civil Society Organisations in Uganda, November 2021.**

<sup>97</sup>Annual Performance report 2020/2021; Justice Law and Order Sector (JLOS)

interviewed knew of the existence of the URSB. This partly accounts for the ever growing informal sector of Uganda, persistently carrying on business without any form of registration or license to trade. In the journal published by Cogent Economics & Finance<sup>98</sup>, It was elaborately shown that **89.46%** of the businesses surveyed operating in major towns of the country were not registered in any way. This is mocking just as it is confounding for a country that boasts of a well fledged, well facilitated body in charge of registration with negative consequences on the Uganda's economy.

Therefore it is damning to say that most civil/private entities are in existence without any form of registration with the government. This accounts for the gross accumulative economic leakages the economy keeps suffering in form of lost or uncollected or unremitted revenue to the government that if indeed collected would go a long way in harnessing our economic advantages as a country. URSB owes a mandate to this country of making necessary civil registration and its role requires lots of interface/transacting with the public for it to boast of fulfilling such a mandate.

Therefore lack of public unawareness of the body really goes a long way of telling how lagging and relaxed this government body might be which has dire consequences on the economy of this country.

### **3.22 Weak enforceability of Intellectual Property Rights (IPR) by URSB**

Uganda has a number of varying laws on intellectual property which by and large is a set of a budding branch of law in this county and unfortunately unknown to most of Ugandans. There is an overall laxity from government to develop the area of intellectual property despite the existence of a quite an elaborate legal framework. According to a publication by International Trade Administration<sup>99</sup> it is contended that Ugandan law indeed protects intellectual property rights yet the same is rarely enforced by the government in regard to piracy and distribution of counterfeit goods.

Such a weak link violates serious economic rights of creative and patent holders in this country that are duly registered by Uganda Registration Services Bureau (URSB). In that publication by International Trade Administration<sup>100</sup> it was observed that while URSB provides a standardized process of registration of

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<sup>98</sup> Salmon Mugoda, Stephen Esaku, Rose Kibuka Nakimu & Edward Bbaale | Robert Read (Reviewing editor) (2020) The portrait of Uganda's informal sector: What main obstacles do the sector face?, Cogent Economics & Finance, 8:1, DOI: [10.1080/23322039.2020.1843255](https://doi.org/10.1080/23322039.2020.1843255) pg. 9

<sup>99</sup><https://www.trade.gov/country-commercial-guides/uganda-protecting-intellectual-property>

<sup>100</sup>Ibid.

each type of intellectual property while allowing investors to enforce their rights in courts, enforcement of the same remained weak. According to the national intellectual property policy<sup>101</sup> under enforcement of intellectual property rights, URSB is given the overall responsibility for enforcement of Intellectual Property legislation and regulations and in that regard URSB established in October, 2016 an IP enforcement Unity. That unity therein is a collaboration with Uganda Police Force and police officers are duly attached to URSB to facilitate the IP enforcement.

On that note there is no excuse for URSB in any way to fail to enforce the intellectual property rights in this country, it has everything within its ammunition. Therefore it is sheer laxity and carelessness for one's intellectual property rights that vary from copyright and neighboring rights, patents and trademarks not to be protected and enforced. The consequences of failure to enforce such rights is dire not just to the creative and patent holders but also to the Ugandan economy as a whole as it becomes hard to commercialize the same in face of spiraling counterfeits, duplication and piracy. It also kills the spirit of industrialization in this country as people cannot claim right to their inventions and with crippling effects to the spirit of job creation by individuals.

### **3.23 Delayed conclusion of liquidation by URSB**

Under its mandate, Uganda Registration Services Bureau is tasked with investigating the affairs of bankrupt and insolvent companies; investigate directors, shareholders, contributors plus all the present and past officers of the same. This is meant to unearth any impropriety or fraud. A report by the Auditor General<sup>102</sup> reported that there were delays in concluding of the liquidation processes before transferring them to the privatization unit. In fact the delays went way back as far as 2001. This means that there are creditors that have not been paid off for all those years awaiting the full liquidation process by URSB. Given those number of years it is possible that some beneficiaries could have long passed on without getting their dues. It is also common knowledge that money is depreciating medium of exchange. Delaying to complete such a process means the depreciation of one's dues which too has dire consequences on the economic growth of a country as that money cannot achieve the desired economical goals. The Auditor General commented that there was risk of litigation arising from delays to settle creditors which is indeed is already

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<sup>101</sup> National Intellectual Property Policy, Uganda May 2019. Ministry of Justice and Constitutional Affairs. Pg. 11-12

<sup>102</sup>Report of the Auditor General on the financial statements of Uganda Registration Services Bureau – companies in liquidation for the year ended 30<sup>th</sup> June, 2020 Pg.8

lurking and the whole burden in case of awards against such a public body would fall back to the tax payer.

### **PROPOSED ALTERNATIVES**

**i. Uganda Registration Services Bureau (URSB) should sensitise the public about its services.**

The URSB should conduct massive sensitisation of the public of its roles and most importantly the need to register businesses and why it is important. It is of note with great concern that only a fraction of 42% Ugandans are aware of URSB's existence and the services it provides.<sup>103</sup> The ever growing informal sector can be blamed on such a factor and at the moment 89.4% of businesses operating in major towns are without registration.<sup>104</sup> This massive sensitisation can also take the shape of free registrations of businesses so as to get the informal sector more captivated. Without the implementation of such Uganda would continue to lose much desired revenue that leak through an informal sector that goes operating unplanned for. This sensitisation can take the form of media adverts, seminars, public dialogues, posters in different locations and many other viable ways.

**ii. Uganda Registration Services Bureau should be strict in the enforcement of Intellectual Property Rights (IPR)**

The IP Enforcement unit should step up and exercise the powers bestowed upon it and perhaps have in place a system by URSB that gauges the unit's performance as far as IPR enforcement is concerned. There has been overarching laxity by URSB to enforce Intellectual Property Rights despite the formation of an IP Enforcement Unit in 2016 which works closely with Uganda Police Force.<sup>105</sup> This IP Enforcement unit needs to be seen in action. The officials in the unit not performing their mandate should be demoted and replaced with zealous qualified individuals to perform the task. The failure to strictly enforce Intellectual Property Rights is catastrophic to Uganda's economy as

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103 See; Annual Performance report 2020/2021; Justice Law and Order Sector (JLOS)

104 See; Salmon Mugoda , Stephen Esaku , Rose Kibuka Nakimu & Edward Bbaale |(2020) The portrait of Uganda's informal sector: What main obstacles do the sector face?, Cogent Economics & Finance, 8:1, 1843255 (<https://doi.org/10.1080/23322039.2020.1843255>) pg. 9

105 See; National Intellectual Property Policy, Uganda May 2019. Ministry of Justice and Constitutional Affairs. Pg. 11-12

infringement of those rights through duplication, piracy leads to loss of revenue to the registered owners and has an overreaching effect on revenue generated to government.

**iii. URSB should expeditiously conclude all pending liquidation proceedings.**

The URSB should give top priority to such liquidation processes so as the creditors to be able to receive their lawful dues. It's the Auditor General's report that there are a lot of delayed liquidation proceedings with Uganda Registration Services Bureau as a liquidator going as far 2001.<sup>106</sup> Without doing so URSB risks being taken on for litigation which would be unnecessary and could occasion losses to the government and tax payer.

#### **CHAPTER 4: CONCLUSION**

In conclusion, the emerging issues discussed above require urgent attention that is intentional to enable delivery of justice to the people/parties in need of the same. The issues discussed are becoming unfortunately precedented to even the officials that are charged with delivery of justice to the parties concerned. The alternatives/recommendations provided have been studied and their implementation is hoped would go a long way in exorcising the bodies concerned of the underlying issues that are emerging to block out the proper delivery of justice as required by the law. However this calls for a political will from the offices/officials concerned for implementation. It is hoped that there will be a construction of an enabling process with provision of all the required resources from the concerned to have the alternatives proposed implemented.

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106 See; Report of the Auditor General on the financial statements of Uganda Registration Services Bureau – companies in liquidation for the year ended 30<sup>th</sup> June, 2020 Pg.8