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Judicial independence undermined: A report on Uganda

September 2007

An International Bar Association
Human Rights Institute Report

Supported by the
Foundation Open Society Institute



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Acronyms and Abbreviations

ACHPR	African Charter on Human and Peoples' Rights
AComHPR	African Commission on Human and Peoples' Rights
CID	Criminal Investigations Directorate
CMI	Chieftaincy of Military Intelligence
DPP	Directorate of Public Prosecutions
EAC	East African Community
EACJ	East African Court of Justice
FDC	Forum for Democratic Change
GCM	General Court Martial
HRI	IBA Human Rights Institute
IBAHRI	International Bar Association's Human Rights Institute
ICCPR	International Covenant on Civil and Political Rights
ISO	Internal Security Organization
JATT	Joint Anti-Terrorist Team
LRA	Lord's Resistance Army
NRA	National Resistance Army
NRM	National Resistance Movement
PRA	People's Redemption Army
RDC	Resident District Commissioner
UHRC	Uganda Human Rights Commission
UJOA	Uganda Judicial Officers Association
ULS	Ugandan Law Society
UPC	Uganda People's Congress
UPDF	Uganda People's Defence Forces
VCCU	Violent Crime Crack Unit

Executive Summary

The International Bar Association's Human Rights Institute (IBAHRI) commissioned a high level delegation to visit Uganda under its rapid response mechanism to investigate the circumstances and implications for judicial independence and the rule of law, arising from reports that in March 2007 armed government forces had invaded the Kampala High Court in an apparent attempt to intimidate the Judiciary and disrupt the proper discharge of its functions. This followed similar action in November 2005. Both incidents were highly criticised and the subject of considerable adverse publicity.

The events in question relate to the trial of the opposition leader, Dr Kizza Besigye, who stood as a candidate in the Presidential elections of 2001 and 2006. On 14 November 2005, Dr Besigye, together with 22 suspected rebels with whom he was reportedly linked, was arrested and held on remand. He was charged with treason and rape. On 16 November 2005 when Judge Edmond Ssemu Lugayizi granted bail, the Court's premises were surrounded by armed members of the Joint Anti-Terrorist Team (JATT) also known as the 'Black Mamba Urban Hit Squad'. The JATT tried to rearrest the suspects on the grounds of new charges before the General Court Martial. A few days after the incident, Judge Lugayizi withdrew from the case, citing interference by the military.

Dr Besigye and his coaccused were charged with terrorist offences before the Court Martial despite parallel proceedings still taking place before the High Court. When Dr Besigye was granted bail by the High Court later in November 2005, the prison authorities refused to release him whilst the Court Martial proceedings continued. In proceedings before Uganda's Constitutional Court in January 2006 it was ruled that the trial of Dr Besigye and his coaccused before the Court Martial was illegal. President Museveni was publicly critical of the decision.

The following month a second Judge involved in the High Court proceedings resigned, citing pressure and allegations being put about that he was politically biased. In the Presidential elections later the same month, President Museveni won by 59 per cent of the votes.

There followed a confrontation between the High Court and the military court as to who was trying Dr Besigye and his coaccused. On 5 January 2007 proceedings resumed at the Court Martial but with Dr Besigye's name struck off. The Constitutional Court repeated its earlier ruling on the illegality of the Court Martial proceedings and ordered the release of the suspects. The authorities refused and the government appealed the decision. On 1 March 2007 the accused were granted bail, but in a move reminiscent of the deployment of the JATT at the High Court on 16 November 2005, the High Court was invaded by a large contingent of uniformed armed men. These forces stormed into the court chamber itself and thereafter

tried to force their way into the registrar's office. The PRA accused were taken captive. They were later rearrested on fresh charges.

During its visit the delegation identified threats to the independence of the Judiciary in 'political' cases in the following ways:

- The defiance of court orders;
- Direct interferences with the discharge of the Judiciary's duties;
- Repeated criticism of Judges and court decisions;
- Allegations that some members of the Judiciary have been pressured to collude with the police where opposition politicians have been arrested;

Further, the delegation identified a number of obstacles to the proper functioning of the Judiciary:

- A lack of funding and shortage of judges has led to a backlog of cases undermining the administration of justice;
- Failure to appoint senior judges, the power for which lies largely within the remit of the Executive, has meant there is no quorum to handle constitutional appeals;
- Politicisation of the appointment of Judges.

During its visit, the delegation was also confronted with a series of other concerns directly related to the rule of law and which are covered in the body of the report:

- The use of military courts to try civilians for the possession of illegal arms;
- The continued existence of so called 'safe houses', where individuals are detained outside the usual legal framework and are at particular risk of mistreatment.

During its meetings and interviews the delegation noted a tendency to judge the government's actions leniently by comparing with previous dictatorships that have ruled the country. Undoubtedly Uganda's current government is to be commended for bringing some degree of peace and stability to a country beset by decades of strife, for boosting the country's economy, for combating the scourge of AIDS, for instituting major constitutional reforms and ultimately for relaxing the grip on power that the National Resistance Movement had held for a generation. However, the IBAHRI is of the view that judging the Government by the poor standards of previous regimes is not the proper benchmark against which to assess its performance. The Ugandan people should assess their government's performance by the standards reflected in the Constitution and the human rights treaties the government has undertaken to respect. A history of past atrocities should not limit the horizons of Ugandan society or the aspirations of the government in bringing about democracy.

The IBAHRI's main recommendations are as follows:

1. The IBAHRI urges the government of Uganda to abide by judicial decisions- this is fundamental to the maintenance of the rule of law. Any disagreement over court decisions should be settled within the channels provided for by law.
2. Whilst criticism of judicial decisions should be possible in a democratic society, the Executive should carefully respect the boundaries which the separation of powers calls for. Any comments on judicial decisions should not exceed the limits of constructive criticism. The IBAHRI urges the government to refrain from attacking judges personally.
3. The IBAHRI recommends in the strongest terms that the Executive and government desist from direct interferences with decisions of the court especially in such circumstances where their actions were designed to intimidate and frighten those present.
4. The government is urged to investigate the circumstances surrounding the deployment of forces to the High Court as a matter of urgency and publish its findings.
5. Having noted a potential lack of coordination between the police and the Directorate of Public Prosecutions, the IBAHRI recommends that the government review policies, practices and procedures to ensure better management of suspects and defendants.
6. The government must ensure that the Judiciary has sufficient monetary and human resources to enable it to function without the risk of having its independence curtailed, and which will allow it to clear the backlog of cases which has serious human rights implications.
7. The procedure for the identification of candidates for judicial office should be conducted in a transparent manner from the outset to completion. The criteria for potential candidates should be transparent and in line with the UN Basic Principles on the Independence of the Judiciary.
8. The government must cease the use of courts martial to try civilians.
9. The government must immediately ensure the closure of any remaining 'safe houses'. Where such detention centres exist, the government is urged to mount an independent investigation to determine the persons responsible and bring them to justice.
10. All sectors of civil society should hold the Ugandan government accountable to the standards set out within the Constitution and in its regional and international treaties. Where remedies have been exhausted domestically, cases should be brought before international monitoring bodies, such as the African Commission and Court for Human and Peoples' Rights, or the UN Human Rights Committee.

1. Introduction

- 1.1 This report is the result of a rapid response fact-finding visit to Uganda carried out by the International Bar Association's Human Rights Institute (IBAHRI) from 20 to 25 May 2007. The visit was funded by the Open Society Institute.
- 1.2 The International Bar Association (IBA) is the world's largest lawyers' representative organisation, comprising 30,000 individual lawyers and over 195 Bar Associations and Law Societies. In 1995, the IBA established the Human Rights Institute (HRI) under the Honorary Presidency of Nelson Mandela. The HRI is non-political and works across the Association, helping to promote, protect and enforce human rights under a just rule of law, and to preserve the independence of the Judiciary and legal profession worldwide.
- 1.3 The IBAHRI's decision to send a high level delegation followed reports in March 2007 that armed government forces had invaded the Kampala High Court in an apparent attempt to intimidate the Judiciary and disrupt the proper discharge of its functions. This followed similar action in November 2005. Both incidents were highly criticised and the subject of considerable adverse publicity.
- 1.4 The terms of reference for the visit were the following:
 1. to consider whether there are any impediments either in law or practice to the administration of justice or the independence of the Judiciary;
 2. to investigate whether there have been any threats to the independence of the Judiciary or legal profession;
 3. to review the role of civil society in protecting the independence of the Judiciary and the fair administration of justice;
 4. to analyse the international, regional and domestic legal norms applicable to this situation; and
 5. to write a report with recommendations.

Members of the Delegation

1.5 The HRI is grateful to the delegation members who accepted the invitation to participate in the mission. The delegation comprised:

- Justice Johann Kriegler, former Judge of the Constitutional Court of South Africa
- Beatrice Mtetwa, President of the Law Society of Zimbabwe
- Michael Topolski QC
- Lorna McGregor, IBA Programme Lawyer
- Michael Duttwiler, Mission Rapporteur, Judicial Law Clerk, Switzerland

Meetings and Interviews

- 1.6 This report focuses on the situation in the capital of Uganda, Kampala. Administration of justice structures and institutions are weak and virtually non-existent in the rural areas.¹ This is especially true for the conflict region in northern Uganda and the north-eastern region of Karamoja, which is in general characterised by a virtual absence of central government structures.² In both regions there is a significant lack of judicial personnel.³
- 1.7 The members of the delegation met a wide range of people and organisations involved in the justice system, including: members of the Judiciary, the Directorate of Public Prosecutions, the Electoral Commission, the Uganda Human Rights Commission, the Judicial Service Commission, members of Parliament, members of the legal profession, civil society, the international community and the media. The Attorney-General did not respond to the delegation's requests for a meeting.
- 1.8 This report is based upon an analysis of information gathered by the delegation from those with whom they met in Uganda, publicly available sources, and relevant Ugandan, regional and international law. The conclusions and recommendations of this report are set out in Section 7.

1 OHCHR, 'Report on the work of the Office of the High Commissioner for Human Rights in Uganda', UN doc A/HRC/4/49/Add.2 (2007), at para 31.

2 Ibid, at para 3.

3 Human Rights Watch, 'Uprooted and Forgotten - Impunity and Human Rights Abuses in Northern Uganda' (September 2005), at 50. Available at: <http://hrw.org/reports/2005/uganda0905/uganda0905.pdf>.

2. Country Background

Recent Political History

- 2.1 Uganda has a post colonial history which is sadly marred by civil war, economic decline, social disintegration and human rights violations. An estimated 1 million Ugandans have been killed by war; 500,000 seriously injured and 2 million uprooted as refugees.
- 2.2 In January 1986 the National Resistance Army (NRA) under the leadership of Yoweri Museveni took power. Museveni was installed as President and leader of the renamed national Resistance Movement (NRM), a position he still holds today following two national elections.

The Conflict in northern Uganda

- 2.3 The situation in the north of Uganda has been characterised by ongoing conflict and serious human rights violations. The Lord's Resistance Army (LRA), led by Joseph Kony, has been held responsible for widespread and systematic child abduction, rape, murder and mutilation.⁴ Uganda's military, the Uganda Peoples' Defence Force (UPDF) has similarly been accused of wilful neglect of the situation as well as killings, torture and mistreatment, rape, arbitrary arrests and detention of civilians.⁵ In 2003, the Ugandan government referred the situation of northern Uganda to the International Criminal Court (ICC). The Office of the Prosecutor began its investigations in July 2004, issuing five arrest warrants against leaders of the LRA a year later in July 2005. To date, no-one has been detained or prosecuted. On 30 June 2007, the LRA and the Ugandan government adopted an Agreement on Accountability and Reconciliation as part of the most recent spate of peace talks between the two parties.

Uganda's Constitution

- 2.4 Uganda is a republic governed by a constitution adopted in 1995. Constitutional amendments can be made by an act of Parliament. Additionally, amendments that relate to certain key constitutional principles require a referendum and others require the support of two thirds of local councils.⁶
- 2.5 The Constitution of Uganda is the supreme law of the country and every law or custom that is in conflict with its terms is null and void to the extent of the inconsistency.⁷

4 Ibid, at 15 – 22.

5 Ibid, at 24 – 42.

6 The Constitution of Uganda 1995, Art 260.

7 Ibid, Article 2(1) (2) and Art 137(3).

The Executive and Legislature

2.6 Executive power is constitutionally vested in the President, who is Head of State, Head of government and Commander-in-Chief of the Uganda Peoples' Defence Forces and the Fountain of Honour.⁸ The President's powers include:

- entering into international agreements and treaties;⁹
- appointing judges with the approval of Parliament (see below);
- direct control of the Internal Security Organisation (a domestic state security body); and
- direct control of the External Security Organisation (external state security body);

2.7 The Prime Minister¹⁰ and Cabinet¹¹ are both appointed by the President with the approval of Parliament.

2.8 Parliament consists of 332 members¹² who are elected every five years.¹³ Currently the NRM holds a majority of parliamentary seats.

The Judiciary

2.9 Judicial independence is guaranteed in Article 128 of the Constitution.

2.10 The Chief Justice, the Deputy Chief Justice, the Principal Judge and judges of the Supreme Court, Court of Appeal and High Court are appointed by the President acting on the advice of the Judicial Service Commission and with the approval of Parliament.¹⁴ Judges remain in office until they are 70 years old and may retire on reaching the age of 60.¹⁵ Article 144 of the Ugandan Constitution stipulates that judges may be removed by the President only on the grounds of inability to perform the functions of his or her office arising from infirmity of body or mind; misbehaviour or misconduct; or incompetence.¹⁶

The Judicial Service Commission

2.11 The Judicial Service Commission is a constitutional body that advises the President on judicial appointments and regulates the Judiciary. It is required to be independent and 'shall not be subject to the direction or control of any person or authority'.¹⁷ Its

8 Ibid, Article 98(1).

9 Ibid, Article 123.

10 Ibid, Article 108A(1), as amended by the Constitutional Amendment Act 2005, section 30.

11 Ibid, Article 111(2).

12 See the Parliament's website: www.parliament.go.ug.

13 The Constitution of Uganda 1995, Article 77(3).

14 The Constitution of Uganda 1995, Article 142(1).

15 Ibid, Article 144(1).

16 Ibid, Article 144(2).

17 Ibid, Article 147(2).

members are appointed by the President with the approval of Parliament and must be of ‘high moral character and proven integrity’.¹⁸

Constitutional Mechanisms to Safeguard the Rule of Law

The Uganda Human Rights Commission

2.12 The Uganda Human Rights Commission (UHRC) is an independent, constitutional body established by Article 51 of the Constitution. The Commission’s mandate encompasses a range of activities including the investigation of alleged human rights violations, visiting places of detention, raising awareness of the Constitution; and monitoring the government’s compliance with international human rights treaties.¹⁹

The Inspectorate of Government

2.13 The Inspectorate of Government is an independent body created under Article 223 of the Constitution. Its mandate encompasses, inter alia, the promotion of ‘strict adherence to the rule of law and principles of natural justice in administration’ and the stimulation of ‘public awareness about the values of constitutionalism in general and the activities of its office, in particular, through any media and other means it considers appropriate’.²⁰

The Court System

2.14 The highest court in Uganda is the Supreme Court, followed by the Court of Appeal (which also functions as the Constitutional Court for cases of first instance involving constitutional issues), the High Court, the Chief Magistrate’s Court and local council courts. Specialist tribunals also sit in addition to the military court system.

2.15 The Supreme Court is Uganda’s court of final appeal and hears appeals from the Court of Appeal both in its ordinary capacity and when sitting as the Constitutional Court (see below). There are presently six Justices of the Supreme Court including the Chief Justice who is head of the court and presides at each sitting.²¹ The Court of Appeal has appellate jurisdiction over the High Court and also hears constitutional cases at first instance.²² The High Court is divided into the Civil, Criminal, Commercial, Family and Circuit Divisions. The Circuit Division is based at seven regional centres in Uganda. The High Court has unlimited original jurisdiction in all matters and appellate jurisdiction over magistrates and other lower courts.²³ Magistrate’s Courts handle the bulk of civil and criminal cases in Uganda. There are 26 areas administered by Chief Magistrates who have general powers of supervision over all three levels of magistrate courts within the

18 Ibid, Article 146(5).

19 Ibid, Article 52(1).

20 Ibid, Article 225(1) (a) and (f).

21 Republic of Uganda Courts of Judicature website www.judicature.go.ug/supreme.php

22 The Constitution of Uganda 1995, Arts 134 and 137.

23 The Constitution of Uganda 1995, Article 139.

area of their jurisdiction.²⁴ Local Council Courts (LCCs) are not courts in the proper sense and are more of an executive body. They adjudicate on minor civil matters and by-laws.

Military Courts

2.16 There is a military judicial system with a hierarchy of military courts established under the Uganda People's Defence Forces Act 2005 and Regulations. The only link from the military system to the civilian judicial system arises from an appeal from the Military Appeal Court (the highest appeal court in the military system) to the Supreme Court where a death sentence or life imprisonment has been handed down.²⁵

Uganda's international and regional human rights obligations

2.17 Uganda has ratified all the major international human rights treaties currently in force, including the International Covenant on Civil and Political Rights ('ICCPR') and its First Optional Protocol; the International Covenant on Economic, Social and Cultural Rights; the Convention for the Elimination of All forms of Discrimination Against Women; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention against Torture, Cruel, Inhuman and Degrading Treatment or Punishment; the Convention on the Rights of the Child including the two Protocols; and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

2.18 Uganda has also ratified the African Charter on Human and Peoples' Rights ('ACHPR'); the African Charter on the Rights and Welfare of the Child; the OAU Convention on Specific Aspects of Refugee Problems; and the Protocol to the ACHPR on the Establishment of an African Court on Human and Peoples' Rights to which Ugandan Supreme Court Justice, George W Kanyeihamba was elected a judge on 22 January 2006. Uganda has signed, but not ratified, the Protocol to the Charter on Human and Peoples' Rights on the Rights of Women in Africa.

2.19 Uganda is furthermore a party to the Cotonou Agreement 2000, which is an agreement between the European Union and African, Caribbean and Pacific developing countries.

24 Makerere University Report 'The Legal and Institutional Context of the 2006 Elections in Uganda' (2005) www.cmi.no/pdf/?file=/uganda/doc/court-administration-uganda-October-05.pdf

25 Information from New York University website www.nyulawglobal.org/globalex/uganda.htm#_Present_Structure_of_Legal%20Educatio

3. Events related to the incidents under examination

3.1 In order to put into context the events upon which the IBAHRI has focused attention, this section provides a brief overview of the relevant political background.

The Move to Multiparty Politics

3.2 When the NRM came to power its leaders introduced a political system known as ‘movement’, or ‘no-party’ democracy, the basic premise of which is that representatives were to be elected on the basis of merit rather than political affiliation. While political parties were not banned outright, their activities were severely restricted.

3.3 The 1995 Constitution, however, provided the possibility for the Ugandan people to decide between the movement system and a multi-party political system by means of a referendum to be held during the last month of the fourth year of the term of Parliament [ie in July 2000]. When the restrictions on campaigning by the opposition was not lifted, opposition groups attempted to block the Referendum Bill 1999, which was supposed to prepare the referendum. The Bill was adopted by Parliament but the opposition claimed that the necessary quorum had not been met. The Act was challenged and declared unconstitutional by the Constitutional Court.

3.4 In the meantime, however, Parliament had pre-emptively enacted an almost identical referendum law, The Referendum (Political Systems) Act 2000. This Act was again challenged before the Constitutional Court in June 2000 by the leaders of the Democratic Party. However, due to procedural reasons, the case was only heard in 2004. The national referendum was held as planned on 29 June 2000²⁶ with the people of Uganda voting to uphold the movement system. In June 2004 the Constitutional Court unanimously declared the Referendum (Political Systems) Act 2000 unconstitutional on the basis that Parliament had violated procedural rules in the course of enacting the law. Judge Amos Twinomujuni found that,

‘In this case, the Act is null and void. [...] Anything which was done under the authority of that Act was invalid. To rule otherwise would be tantamount to authorising the stampeding of Parliament (as was the case here) to pass Kangaroo style legislation oblivious of the Constitution, perform unconstitutional acts allegedly under the authority of such legislation, all with impunity. That would be licensing anarchy.’²⁷

²⁶ For a more elaborate discussion of the reasons for this delay see E Bussey, ‘Constitutional Dialogue in Uganda’, 49 *Journal of African Law* 1 (2005), 1, 11 et seq

²⁷ Constitutional Petition No 3 of 2000, Paul K Ssemogerere & Another v Attorney General (Judgment of Twinomujuni, JA), at 48.

3.5 The implications of the decision were interpreted by many Ugandans to mean that the referendum was invalid and that as no political system was put into place by the referendum, the current government was illegal.²⁸ A discussion erupted around the question as to whether the Constitutional Court ruling had triggered a constitutional crisis.²⁹ In the days that followed, central actors like Chief Justice Benjamin Odoki³⁰ and Minister of Justice Janat Mukwaya³¹ asserted that the Constitutional Court ruling had not precipitated a constitutional, political or judicial crisis in the country. Some days after the decision, the government filed an appeal against the Constitutional Court ruling.³² On 2 September 2004, the Supreme Court overturned the decision of the Constitutional Court, holding that while the Referendum Act had indeed been unconstitutional, the result of the referendum was nevertheless still valid.³³ In 2005, another referendum, this time supported by the government, introduced the multi-party-system.

The Trial of Opposition Leader Dr Besigye

3.6 A second relevant political development involved Dr Kizza Besigye, a Presidential candidate. Dr Besigye played a role in the NRA's guerrilla war where he acted as Yoweri Museveni's personal physician. After the latter became president in 1986, Dr Besigye was appointed to several ministerial offices. In 2001 Dr Besigye, ran for president losing to President Museveni. In a petition to the Supreme Court Dr Besigye unsuccessfully contested the results.

3.7 Following the elections, Dr Besigye was reportedly under surveillance by the military and intelligence services.³⁴ He went into exile in South Africa until October 2005.

3.8 Between 2003 and the beginning of 2005, a number of alleged rebels were caught in the Democratic Republic of Congo and Uganda, and were subsequently detained. The government alleged that they had links to a rebel group called the Peoples' Redemption Army (PRA), which purportedly had associations with Dr Besigye.

3.9 When Dr Besigye returned from exile he was nominated as presidential candidate for the Forum for Democratic Change (FDC) in the forthcoming 2006 elections.³⁵ On 14 November 2005, Dr Besigye was arrested, together with 22 alleged PRA rebels and later charged with treason and rape. which was alleged to have been committed in 1997.³⁶ All of the accused were committed to the High Court for trial.³⁷

28 Gloppen/ Kasimbazi/ Kibandama, 'The Evolving Role of the Courts in the Political Transition Process', (CHR Michelsen Institute, Makerere University, Uganda) 2006, at 18.

29 A Mugisa/ H Kaheru, 'Govt not illegal, say law experts', New Vision, 8 July 2004; J Etyang, 'No constitutional crisis, says Law Society', New Vision, 29 June 2004; Kulumba-Kiingi, 'If Referendum is null and void, what now?', New Vision, 7 July 2004.

30 J Etyang, 'Odoki calls for calm', New Vision, 30 June 2004.

31 New Vision, 'Govt explains position', 30 June 2004.

32 Ibid

33 The Attorney General v Paul K Ssemogerere and Hon Zachary Olum, Constitutional Appeal No 3, 2004.

34 R Naluwairo, 'The Trials and Tribulations of Rtd Col Dr Kizza Besigye and 22 Others', HURIPPEC Working Paper No 1, Human Rights & Peace Centre (2006), at 4.

35 F Osike/ A Wasike, 'Besigye Returns', New Vision, (27 October 2005).

36 The Charge sheets have been reprinted in New Vision, 'Besigye Charge Sheets' (17 November 2005).

37 High Court Criminal Case No 955 of 2005.

- 3.10 On 16 November 2005, the accused appeared before the High Court to make an application for bail. When the sitting Judge Edmond Ssempe Lugayizi declared that the accused had a constitutional right to be released on bail, the Court premises were surrounded by armed members of the Joint Anti-Terrorist Team (JATT) also known as the 'Black Mamba Urban Hit Squad'. The JATT tried to rearrest the suspects on the grounds of new charges before the General Court Martial. This event which is central to the visit of the delegation is analysed in more detail in Section 4.³⁸
- 3.11 A few days after the incident, Judge Lugayizi withdrew from the case, citing military interference.³⁹ In his place, Principal Judge Ogoola took over temporarily.⁴⁰
- 3.12 On 18 November 2005, Dr Besigye's coaccused were charged with terrorism before a court martial.⁴¹ Five of the accused petitioned the Constitutional Court on the basis of double jeopardy, given the parallel proceedings in the High Court.⁴² On 24 November 2005 Dr Besigye was similarly charged at the General Military Court at Makindye. During the proceedings, his two defence lawyers were sent to the dock and fined 1,000 Ugandan Shillings (approximately 30 pence, Sterling) for contempt of court over procedural disagreements with the chairman.⁴³ The following day Dr Besigye was granted bail in the High Court proceedings by Judge Ogoola. However, pending the Court Martial proceedings, the prison authorities refused to release him.⁴⁴ As a next step, Dr Besigye's lawyer applied to the High Court for bail in respect of the terrorism charges before the court martial, citing the provisions of the Constitution which stipulate that the High Court is higher than the military court.⁴⁵ On 2 December 2005, High Court Judge Remmy Kasule found that Besigye had raised 'serious issues as to whether the military court has powers to try him' and ordered the army to stop the Court Martial proceedings. He refrained, however, from ordering Dr Besigye's release.⁴⁶
- 3.13 Both trials were then resumed in January 2006 with Judge John Bosco Katutsi now appointed. Judge Katutsi ordered the release of Dr Besigye from custody. The remand ordered by the Court Martial had expired, and according to Judge Katutsi, the renewal issued by the army was void, given that the Court Martial's proceedings had been stopped by the High Court. Dr Besigye was released.⁴⁷
- 3.14 In a judgment of 31 January 2006, the Constitutional Court ruled that it was unconstitutional to subject the PRA accused to criminal proceedings in two courts on

³⁸ See below section 4.

³⁹ H Kiirya, 'Ogoola Takes Besigye Case', *New Vision*, (22 November 2005).

⁴⁰ *Ibid*

⁴¹ S Muyita/ H Bogere, 'PRA Suspects Charged With Terrorism in Court Martial', *The Monitor*, 19 November 2005.

⁴² P Nyanzi, 'PRA Suspects File Petition Over Court Martial Trial', *The Monitor*, 24 November 2005.

⁴³ I Mufumba, 'How Besigye Lawyers' Trouble Unfolded', *The Monitor*, 26 November 2005.

⁴⁴ H Bogere/ L Mukisa/ S. Muyita, 'Besigye Gets Bail, Remains in Jail', *The Monitor*, 26 November 2005.

⁴⁵ H Kiirya, 'Besigye Applies for Bail', *New Vision*, 2 December 2005.

⁴⁶ S Muyita/ L Mukisa, 'High Court Blocks Besigye Army Trial', *The Monitor*, 3 December 2005.

⁴⁷ S Muyita/ S Kasyate/ S Lubwama, L Mukisa/ H Bogere/ F Nyakairu, 'Besigye Free at Last', *The Monitor*, 2 January 2006.

charges based on the same facts. This decision drew criticism from President Museveni and the Coordinator of Security Services, General David Tiniefuza, which is discussed in more detail below.⁴⁸

- 3.15 On 3 February 2006, Judge John Bosco Katutsi withdrew from hearing the treason case citing pressure and allegations being put about that he was politically biased.⁴⁹ In his place, Justice Vincent Kagaba was assigned the treason case.⁵⁰ Shortly after, the treason trial was postponed until after the presidential elections of 23 February 2006.⁵¹
- 3.16 After the elections, in defiance of the Constitutional Court ruling, the Court Martial ordered Dr Besigye to reappear before it.⁵² But shortly afterwards, President Museveni assured the international community that Dr Besigye would not be tried by military court.⁵³
- 3.17 On 6 March 2006, Dr Besigye was acquitted of the rape charges.⁵⁴ Judge Katutsi commented that the investigations had been conducted in a ‘crude and amateurish’ way which revealed ‘the intentions behind this case’. He found that, ‘[t]he evidence before this court is inadequate even to prove a debt - impotent to deprive of a civil right - ridiculous for convicting of the pettiest offence - scandalous if brought forward to support a charge of any grave character - monstrous if to ruin the honour of a man who offered himself as a candidate for the highest office of this country.’⁵⁵
- 3.18 On 5 January 2007, the proceedings in the Court Martial started again but without Dr Besigye who had been removed from the list of accused. On 11 January 2007, the Constitutional Court repeated its earlier ruling on the illegality of the Court Martial proceedings and ordered the release of the PRA accused.⁵⁶ When the accused were still not released, the High Court ordered that they be produced before it.⁵⁷ When the prison authorities continued to refuse the request, the High Court summoned the Commissioner General of Prisons to explain his continued reluctance to release them.⁵⁸ The government appealed against the Constitutional Court ruling,⁵⁹ and the army defended the continued detention of the PRA accused.⁶⁰
- 3.19 On 25 January 2007, Solicitor General Lucien Tibaruha filed an application with the Deputy Registrar of the High Court seeking to cancel the bail granted to the PRA accused in November 2005. On 1 March 2007, the PRA accused were granted bail, but the High Court was invaded by a large contingent of uniformed armed men. These

48 See section 4.

49 The Monitor, ‘Besigye Judge Quits’, 4 February 2006.

50 New Vision, ‘Kagaba to Try Besigye’, 11 February 2006.

51 S Muyita/ L Afedraru/ S K Lubwama, ‘Besigye to Be Tried After Poll’, The Monitor, 16 February 2006.

52 S K Lubwama, ‘Besigye Faces Army Court Martial Again’, The Monitor, 2 March 2006.

53 S Kasyate/ S K Lubwama, ‘Museveni Says No Court Martial’, The Monitor, 8 March 2006.

54 J Amutuhaire/ E Ssekalo, ‘Besigye Acquitted of Rape Charge’, The Monitor, 7 March 2006.

55 The judgment is available at www.judicature.go.ug/uploaded_files/1142236737Besigye-rape%20case-judgement.pdf.

56 H Kiirya/ H Nsambu, ‘Release PRA Suspects, Court Orders’, New Vision, 12 January 2007.

57 S Muyita/ J Luggya/ J. Miti, ‘Produce PRA Suspects, Court Orders Luzira Prison Authorities’, The Monitor, 16 January 2007.

58 S Muyita/ L. Mukisa, ‘Court Summons Prisons Chief Over PRA Suspects’, The Monitor, 17 January 2007.

59 S Muyita, ‘Govt Appeals Against Release of PRA Suspects’, The Monitor, 18 January 2007.

60 Vision Reporter, ‘Tiniefuza Defends Continued Detention of PRA’, New Vision, 24 January 2007.

forces stormed into the court chamber itself and thereafter tried to force their way into the registrars office. The PRA accused were taken captive. They were later re-arrested on fresh charges. This event will be analysed in more detail below.⁶¹

3.20 The treason trial against Dr Besigye and others was to resume on 4 June 2007,⁶² but was postponed indefinitely because the judge who had been assigned the hearing of the bail application was away.⁶³ The trial is ongoing.

61 See section 4.

62 S Muyita/ L Mukisa/ S Lubwama, 'Besigye Treason Case Resumes Today', The Monitor, 4 June 2007.

63 S Muyita/ S K Lubwama/ L Mukisa, 'Besigye Treason Case Fails to Take Off', The Monitor, 5 June 2007.

4. Concerns for the Independence of the Judiciary

4.1 Against the political developments highlighted in Section 3, the delegation was told of threats to the independence of the Judiciary with respect to: repeated criticism and defiance by government officials of judicial decisions; allegations that some members of the Judiciary have been pressured to collude with the police in the arrest of opposition politicians; and cases of direct interference with the discharge of the duties of the Judiciary. Further, the delegation identified additional obstacles to the proper functioning of the Judiciary.

Criticism and Defiance of Judicial Decisions

Constitutional Court voids referendum 2000

4.2 When the Constitutional Court on 25 June 2004 handed down a judgment ruling that the Referendum (Political Systems) Act 2000 was unconstitutional,⁶⁴ this provoked harsh criticism from the President directed specifically at the court and judiciary. In a televised speech delivered on Sunday 27 June 2004, President Museveni stated:

‘A closer look at the implications of this judgment [...] shows that what these judges are saying is absurd, doesn’t make sense, reveals an absurdity so gross as to shock the general moral of common sense. [...] In effect what this means, is that this court has usurped the power of the people [...]. This court has also usurped the power of parliament, to amend the constitution. Government will not allow any institution even the court to usurp the power of the constitution in any way.’⁶⁵

4.3 A few days later, President Museveni was quoted as saying that ‘the major work for the Judges is to settle chicken and goat theft cases but not determining the country’s destiny’.⁶⁶

4.4 Many sectors of society are believed to have interpreted this statement as a threat to the independence of the Judiciary in contravention of Uganda’s Constitution.

4.5 The Uganda Law Society (ULS) declared that it was ‘gravely concerned about the unwarranted attack by the Executive on the Judiciary in the performance of their constitutional duties’. The Society stated that ‘[i]t is a duty of all governmental and other institutions to respect and observe the independence of the Judiciary. The President was therefore out of order when he stated that the judges have usurped the power of the people to choose their political system.’ It stressed that article 137 of

64 See supra note 28 and the accompanying text.

65 An edited version of the speech is reprinted in The Monitor, ‘Museveni mad with Judges over nullifying 2000 referendum act’, 30 June 2004.

66 I Ssuuna, ‘Judges Favour Ssemu, Says Museveni’, The Monitor, 30 June 2004.

the Constitution gave the Constitutional Court exclusive jurisdiction to interpret and ‘determine the constitutionality of Acts of Parliament or any other law or anything in or done under the authority of any law.’⁶⁷ Mr Moses Adriko, the then-President of the ULS, was quoted as saying that President Museveni’s statement amounted to a fundamental misunderstanding of the powers and the role of the Judiciary ‘which if acted upon would amount to usurpation by the Executive of the judiciary powers’.⁶⁸

- 4.6 Two days after the President’s speech, HURINET, Uganda Women’s Network and the Anti-Corruption Coalition published a statement calling on President Museveni to respect the Judiciary’s independence. The networks, comprising over fifty NGOs, stated the President’s remarks contained aspects which undermined the authority of the courts.⁶⁹
- 4.7 The G7, a group of seven mainstream political organisations, and the Parliamentary Advocacy Forum (PAFO), went so far as to state that the President’s rejection of the Constitutional Court ruling was ‘tantamount to overthrowing the constitution’.⁷⁰ The Foundation for African Development (FAD) stated that the President’s reaction had the potential to cause disrepute to the Judiciary and to incite the people against their only point of resort for seeking justice.⁷¹
- 4.8 The President’s statement also drew criticism from sectors of the international community. The Secretary General of the East African Community, Major Nuwe-Amanya Mushega, criticised the government for undermining the independence of the Judiciary, stating that the Executive, the Legislature and Judiciary, should be independent of one another if democracy and development are to be realised.⁷² The US Ambassador in Uganda was quoted as affirming that ‘[t]he constitutional authority of Parliament and of the courts needs to be recognised to prevent political violence and to stymie attempts to shortcut or circumvent constitutional procedures’.⁷³
- 4.9 Amongst Government supporters the President’s speech inspired a demonstration in Constitutional Square where hundreds protested against the Court’s ruling. The streets were blocked for over six hours by bicycle taxi drivers. A boy who had shouted an anti-government slogan was reportedly beaten and killed by demonstrators. Proceedings at the High Court had to be suspended and security was tightened. The demonstrators later presented a petition to the Speaker of Parliament which accused the Judiciary of trying to ‘thwart and reverse the progress of the people’ and demanded ‘that the Chief Justice takes disciplinary action against all the corrupt, sectarian, partisan, and political judges who participated in this absurdity’. The memorandum added, that ‘the

67 J Etyan, ‘No constitutional crisis, says Law Society’, *New Vision*, 29 June 2004.

68 *Ibid*

69 M Narunkuuma, ‘Civil Organisations Support Court Ruling’, *New Vision*, 1 July 2004.

70 H Kaheru, ‘Respect Ruling – G7’, *New Vision*, 29 June 2004.

71 *Ibid*

72 R Kanyambu, ‘Govt Wrong On Judges’, *The Monitor*, 6 July 2004.

73 B.D. Mulumba, ‘US Tells Govt to Respect Courts’, *The Monitor*, 4 July 2004.

appointing authority of the judges H E the President should dismiss those judges for attempting to usurp the people's power'.

4.10 After the demonstrations, Chief Justice Benjamin Odoki publicly asked the government and Ugandans to leave the courts to function without any intimidation, and urged the judges to continue working normally as per their judicial oath of executing their duties without fear or favour.

4.11 The government appealed the Constitutional Court ruling.

The President threatens to suspend Judges

4.12 At the beginning of October 2005, President Museveni, in a move to counter the widespread eviction of customary inhabitants of land parcels, directed an immediate end to all evictions of lawful and bona fide land tenants across the country. In June 2005, President Museveni had already warned landowners not to exploit the tenants' ignorance of land law.⁷⁴

4.13 He also directed warnings at judicial officers who issued what he called 'bogus eviction warrants'. A State House statement quoted the President as saying that he 'will suspend a judge who colludes in illegal evictions and institute an inquiry'.⁷⁵ The President repeated his stance in his Statement of Acceptance to the NRM National Delegates Conference in November 2006 at which he was elected the Presidential Candidate for the forthcoming Presidential elections.

4.14 The statement was criticised by the ULS on the basis that under the Constitution, the President had no power to take disciplinary action against judges; rather this power lay within the domain on the Judicial Service Commission.

4.15 In a statement the Uganda Judicial Officers Association (UJOA) complained of continued threats against Judges, which they said undermined the principle of independence of the Judiciary as enshrined in the Constitution. The statement added, '[w]e specifically condemn threats of firing judicial officers when handling in land matters, for the state should be the last to call for mob justice when there are avenues of due process for one who is dissatisfied with a decision of court'.⁷⁶

The Ruling on the Illegality of the Proceedings before the General Court Martial

4.16 On 31 January 2006, the Constitutional Court ruled that the Court Martial proceedings against the PRA accused were illegal.⁷⁷ The President is quoted as stating that, '[t]he ruling of the Constitutional Court that the army can't try civilians with guns is something

74 J Namutebi, 'Museveni Warns Landlords', New Vision, 11 June 2005.

75 Ibid

76 H Kiirya, 'Judges, Magistrates Cite Repeated Threats', New Vision, 8 December 2005.

77 See supra Section 3.

we can't agree with. This means the methods we have been using in Karamoja to court martial warriors with guns should be stopped. I don't agree'.

- 4.17 Shortly after the ruling, General David Tiniefuza, a presidential advisor and the Coordinator of Security Services, accused Ugandan judges of supporting the accused instead of helping the State tackle terrorism. During a radio interview, General Tiniefuza questioned why judges did not 'see the problem of terrorism? Why don't they want to give the State a chance to prove its cases? Why are they looking as if they are always siding with the offenders?'⁷⁸ He added that the army respected the ruling of the courts but would not accept 'this business of being ordered' by the Judiciary.⁷⁹ General Tiniefuza originally claimed to be speaking on behalf of the President,⁸⁰ but the government later distanced itself from his statements. The Minister of State for Information, Mr Nsaba Buturo, said that Tiniefuza had expressed his 'private views', which did not in any way reflect the government position. Mr Buturo further denied that this represented a deliberate attempt by the government to systematically intimidate the Judiciary through Executive sanction and via the military.⁸¹
- 4.18 At the Judges annual conference held a week after the Constitutional Court ruling, Chief Justice Benjamin Odoki called on the government to respect and safeguard the independence of the Judiciary, 'which is essential to the maintenance of the rule of law and the protection of the fundamental basic rights and freedoms'.⁸²
- 4.19 The delegation was told that the Executive's criticisms and threats had created a climate of fear within the Judiciary. It noted that two judges, Judge Lugayizi and Judge Katutsi, withdrew from the case citing 'military interference',⁸³ and 'pressure'.⁸⁴

The Defiance of Judicial Decisions

- 4.20 The delegation noted that the government has disregarded the following court orders:
- On 16 November 2005 the High Court granted bail to the PRA accused. JATT tried to rearrest them.
 - On 2 December 2005 the High Court ordered a cessation of the Court Martial hearings against the PRA accused.
 - On 31 January 2006 the Constitutional Court declared illegal the Court Martial trial of Dr Besigye and the other PRA accused.
 - The Constitutional Court order of 11 January 2007 to release the PRA accused.

⁷⁸ S Muyita/ P Nyanzi, 'Besigye Ruling Angers Tiniefuza', *The Monitor*, 3 February 2006.

⁷⁹ Ibid

⁸⁰ R Mwanje, 'Tiniefuza Fires Back At Besigye', *The Monitor*, 5 February 2006.

⁸¹ S Muyita, 'Judges up in Arms', *The Monitor*, 7 February 2006.

⁸² J Etyang, 'Chief Justice Raps Govt', *New Vision*, 8 February 2006.

⁸³ H Kiirya, *supra* note 40.

⁸⁴ *The Monitor*, 'Besigye Judge Quits', 4 February 2006.

- On 1 March 2007 the accused were held captive in the court and then subsequently rearrested by the police following the granting of bail.

4.21 In view of these occurrences, one interviewee offered the delegation his conclusion that ‘judgments against the government are not executable’.

The Pressuring of Judges to Collude with the Police

4.22 On 20 April 2007, Mr Erias Lukwago, a defense counsel for Dr Besigye, and the Shadow Attorney General and Shadow Minister of Justice and Constitutional Affairs, was arrested by the police. The arrest followed an incident where a traffic officer had told Mr Lukwago and another member of Parliament, that the road was closed to traffic, but the two continued to drive through. Mr Lukwago was consequently detained on charges of failing to comply with traffic directions given by a police officer, even though, the delegation was told, he was only a passenger in the car and not the driver. As Mr Lukwago told the delegation, he was arrested at around 1000 on Friday morning. He was then held for several hours at the police station and later brought to the headquarters of the Criminal Investigations Department for interrogation. He was eventually produced in court at 1645 for his bail hearing. The magistrate reportedly refused to release Mr Lukwago on court bond, although it was a minor offence and Mr Lukwago had produced four members of Parliament as sureties. When the magistrate fixed the bail fee to 100,000 Ugandan Shillings, it was already too late to deposit the amount with the bank. Notably, the delegation was told that the Court’s cash office does not accept the depositing of bail fees in order to prevent theft or corruption internally. As such, in cases such as Mr Lukwago’s in which bail applications are heard late on a Friday afternoon, it is impossible to deposit the bail fee. As a consequence, Mr Lukwago was remanded to Luzira prison until Monday.

4.23 The delegation was told by a number of people it interviewed that several other opposition members of Parliament were subjected to bail procedures for minor offences which were timed so that the accused were forced to spend a night or even the weekend in prison, despite the fact that they had been granted bail. Mr Lukwago told the delegation he had information that certain magistrates were put under pressure to collude with the police in order to effectuate this bail practice in what seemed to be an attempt to harass opposition politicians.

Direct Interferences

4.24 The events which provoked the delegation’s visit, namely the two intrusions of government forces on 16 November 2005 and on 1 March 2007 at the Kampala High Court are analysed below.

The Deployment of JATT at the High Court – November 2005

- 4.25 On the morning of 16 November 2005, the date of the bail application of the PRA accused, a detachment of around 30 armed men in black uniform arrived at the High Court premises. They remained in the background at first, but when the sitting Judge Edmond Ssempe Lugayizi declared that the accused had a constitutional right to be released on bail, the troops surrounded the Court premises, wielding Uzi machine guns and AK-47 assault rifles. The roads around the court premises were sealed off. The troops' commanders reportedly insisted that they had orders to take the accused away as soon as they were released.
- 4.26 When some of the armed men tried to force their way into the holding cells of the court several judges were reportedly evacuated from the premises. Prison guards were believed to have held the troops at bay and managed to lock them out of the holding cells. Faced with this situation, the accused's sureties refused to sign the bail documents, in order to keep the accused in the custody of the civilian authorities rather than handing them over to the armed men.
- 4.27 The events were witnessed by 15 foreign diplomats, including 13 envoys from the European Union.
- 4.28 An army spokesman, Major Felix Kulaije, later explained that the armed men were special joint forces of army, police and secret service called the Joint Anti-Terrorist Team (JATT), a unit newly formed to fight terrorism.⁸⁵ The army later confirmed that the JATT were deployed with the intention of rearresting the PRA-accused in the event that they were granted bail by the High Court. According to the major, the PRA accused had violated military law and were to be brought before the Court Martial.⁸⁶ A different explanation was offered by Fox Odoi, presidential legal assistant, who told the ULS that the JATT were at the High Court to avert a planned terrorist attack. The government had purportedly received information that an attack was imminent and believed the diplomats' lives to be in danger.⁸⁷

Reactions after the Event

- 4.29 The following day, Chief Justice Benjamin Odoki and Inspector General of Government Faith Mwendha condemned the deployment of the JATT.⁸⁸ The High Court's Principal, Judge James Ogoola, stated that the deployment of the JATT at the High Court as 'the most naked and grotesque violation of the twin doctrines of the rule of law and the independence of the Judiciary', the extent and content of which was simply 'unprecedented'. He said the armed commandos had unleashed 'terror' and that '[n]ot

85 E Allio/ S Candia/ C Musoke, 'Anti-Terrorism Unit Formed', *The Monitor*, 18 November 2005.

86 Ibid

87 M Nalugo/ S Muyita, 'Lawyers to Hold Anti Court Siege Demonstration', *The Monitor*, 22 November 2005.

88 E Mulondo/ E Masumbuko/ S Kasyate, 'Besigye: Chief Justice Condemns Court Siege', *The Monitor*, 18 November 2005.

since the abduction of Chief Justice Ben Kiwanuka from the premises of Court during the diabolical days of Idi Amin had the High Court been subjected to such horrendous onslaught as witnessed last Wednesday'. He said this 'most reprehensible affront to the independence of the judiciary' had had a chilling effect on the administration of justice in the country.⁸⁹ As noted earlier Judge Lugayizi, who had presided over the bail application, withdrew from the case as a result of the military interference.⁹⁰

4.30 The ULS condemned '[t]he heavy unjustified deployment of armed men in the Court during the hearing of bail applications' as 'an act of crude intimidation that undermines the independence of the judiciary'.⁹¹ The Society's then president, Mr Moses Adriko, called the incident a 'heinous and repugnant assault on the judiciary' and an 'egregious desecration of the High Court by a group of heavily armed men'.⁹² The Society held a meeting to discuss the steps to be taken and resolved to strike in protest on 28 November 2005. It was further decided to take legal action against the government over the events; write protest notes to the Judiciary, Parliament and to President Museveni; and blacklist 'all the violators of the rule of law and human rights' in the country.⁹³ The ULS declared the 23 PRA accused, including Dr Besigye, as 'Prisoners of Conscience' and resolved to work alongside their lawyers to defend the group as well as help halt the proceedings at the Court Martial.⁹⁴

4.31 In their endeavour to blacklist violators of the rule of law, the ULS announced that they had formally withdrawn their recognition of the Attorney-General, Dr Khiddu Makubuya, as head of the Bar, and called on him to resign. In the ULS's view, 'as the principal legal adviser of the government, the Attorney-General has abdicated his responsibility to advise the government on the constitutionality of various actions'. The ULS further stated the Attorney General had failed to ensure the government's adherence to the rule of law and various international treaties, including human rights covenants, to which Uganda was a signatory.⁹⁵

4.32 The lawyers' strike on 28 November 2005 was observed by the majority of legal chambers and practices. At a rally at the High Court in Kampala, the ULS demanded that the Executive unequivocally condemn the acts of intimidation, threats and attacks and apologise to the Judiciary, the Bar and citizens of Uganda. It also called upon the government to appoint an independent commission of inquiry comprising national and international jurists to investigate the incidences, including the assault on the High Court premises that took place on 16 November 2005.

89 E Mulondo, 'Judge Withdraws From Besigye Case', *The Monitor*, 19 November 2005.

90 H Kiirya, *supra* note 40.

91 E Mulondo/ E Masumbuko/ S Kasyate, *supra* note 88.

92 M Nalugo/ S Muyita, 'Lawyers to Hold Anti Court Siege Demonstration', *The Monitor*, 22 November 2005.

93 *Ibid*

94 *Ibid*

95 S Muyita/ S Kasyate/ M Nalugo/ A Nanduto, 'Besigye Bail Bid Flops As Lawyers Go On Strike', *The Monitor*, 29 November 2005.

4.33 Some international NGOs expressed concern at the events. The East African Law Society sent a mission to Uganda to investigate. Human Rights Watch called on the US government to sever relations with the Ugandan police, military and security personnel ‘who participated in the outrageous assault on the court’, and affirmed that ‘[i]ntimidation of judges and defendants cannot be tolerated’.⁹⁶

4.34 In mid-December 2005, two of Uganda’s donors, Sweden and the United Kingdom announced that they would withhold substantial amounts of aid due to concerns ‘about the country’s democratic development’,⁹⁷ because of concerns over ‘the government’s commitment to the independence of the Judiciary, freedom of the press and freedom of association following the events surrounding the arrest and trial of the leader of the Forum for Democratic Change’.⁹⁸

The Deployment of Police at the High Court – March 2007

4.35 As briefly referred to above, on 1 March 2007 a hearing was scheduled to discuss the government’s appeal against the decision to grant bail to the PRA accused. The hearing, which was presided over by Justice Eldad Mwangusya, was adjourned and the accused were granted bail in the interim. After the Judge’s ruling, the PRA accused proceeded to the Registrar’s office in order to sign their bail papers. Six of them were able to sign all bail papers, three of them failed, because their sureties were absent.

4.36 What followed was reminiscent of the deployment of the JATT at the High Court on 16 November 2005. According to reports, around 60 police officers, some with dogs, were deployed on the premises of the High Court, and the roads around the courts were sealed off. Shortly after the PRA accused signed their bail papers, the troops stormed the court chambers and then attempted to enter the Registrar’s office in order to seize the men. They were deterred from doing so by the accused’s lawyers, relatives and supporters. The confrontation led to a standoff inside the Registrar’s office where the bail applicants remained stranded for the afternoon. There followed scuffles between the police troops, journalists and the supporters of the PRA accused.

4.37 During the standoff, Deputy Chief Justice Laetitia Kikonyogo addressed a press conference in which she condemned the heavy police presence on the premises of the High Court. A crisis meeting was held between the most senior judicial officers, Court registrars, the Director of Public Prosecutions and senior police and security officers in Justice Kikonyogo’s chambers. Members of the Judiciary tried to negotiate a peaceful solution for the release of the PRA accused. It was agreed with the security personnel and the defence lawyers that security personnel and the public were to evacuate the premises. At around 2030, the accused were handed over to their respective counsel.

96 Human Rights Watch, ‘Uganda: Political Repression Accelerates’, Press Release, 23 November 2005, available at <http://hrw.org/english/docs/2005/11/24/uganda12089.htm>.

97 H Bogere, ‘Sweden Withholds \$8.2m Aid’, *The Monitor*, 20 December 2005.

98 D K Kalinaki, ‘Britain Cuts Shs 64b Aid Over Besigye, Transition’, *The Monitor*, 21 December 2005.

However, shortly thereafter, they were taken captive, thrown into the back of a police pickup and driven away.

4.38 Reports emerged that the State would bring fresh charges of murder against the PRA accused. The following day, it was announced that they would face charges in two courts outside of Kampala. The official reason for their transfer to courts of some 394 and 523km away was that they were the closest courts to the location of the alleged murders. In one of the interviews conducted by the delegation, however, the interviewee claimed that the removal of the accused from Kampala reflected an attempt to deflect public attention from the cases.

4.39 In an interview with an eye witness, the delegation was told that scuffles in the High Court resulted in glass doors along the corridors being broken. When the witness asked a commanding officer for the arrest warrants, it turned out that the police had no warrants on them, so it was necessary to call the DPP. The DPP said that he had issued the arrest warrants, but was unable to explain why they had not been shown to the judge presiding over the bail applications of the PRA accused before he had granted bail.

Reactions after the Events

4.40 On 2 March 2007, senior members of the Judiciary held a crisis meeting at the High Court following which they released a statement in which the judges demanded that the Executive apologise for the events, give assurances that they would not be repeated and that the security personnel responsible for the criminal acts of violence and assault to property be cited in contempt of court, and/or prosecuted.⁹⁹ The statement explained that these demands were not motivated by the rearrest and recharging of the PRA accused per se¹⁰⁰ but by the ‘repeated violation of the sanctity of the court premises’, the ‘disobedience of court orders with impunity [...] the constant threats and attacks on the safety and independence of the Judiciary and judicial officers [...] the savage violence exhibited by security personnel within the court premises [and] the total failure by all organs and agencies of the state to accord to the courts assistance as required to ensure effectiveness of the courts under article 128 of the constitution’.

4.41 It is understood that at this crisis meeting those in attendance considered collective resignation, the boycotting of all government cases including those against the PRA accused and the calling for mass mourning and prayer for the Judiciary. It was decided that Judges would strike for a week in a nationwide protest. This action commenced on 5 March 2007. Several interviewees suggested to the delegation that the decision to strike would not have been possible had the Chief Justice been in the country at the time.

4.42 In response the Government issued a statement which read, ‘[i]f it is true, however, that the courts have taken industrial action to lay down their tools, then it is unfortunate,

⁹⁹ See Appendix I for the full statement.

¹⁰⁰ An arrest on fresh charges is legally permissible even if an accused had been granted bail for a different offence.

unprecedented and legally questionable. Government wishes to note that there are proper channels through which the Judiciary can articulate its grievances. Industrial action is certainly not one of them.’¹⁰¹ The Minister of Internal Affairs, Dr Ruhakana Rugunda, went on record with stating that ‘the Executive has always obeyed the orders of courts and will continue to do so’. He called it ‘unfortunate’ that ‘[t]he actions of some judicial officers, including aiding and escorting the accused into escape vehicles and entertaining members of the public to cause confusion and commotion in the High Court premises’. He further stated that ‘[t]he security officers who were at the High Court premises exercised maximum restraint and acted professionally’.¹⁰²

4.43 In the President’s first public statement on the issue, he conceded that it was ‘possible that government lawyers and security officers could have overreacted’ in the process of arresting the PRA accused on fresh charges, and announced an investigation of the events. However, he denied that the government was in defiance of court orders and attributed ‘the original mistake’ to the High Court judge who released the PRA accused on bail, mentioning Judge Edmond Ssemu Lugayizi by name.¹⁰³ A number of interviewees told the delegation that the Executive repeatedly singled out Judge Lugayizi for criticism in that period. Some felt that this was an objectionable measure designed to damage the Judge’s reputation and career.

4.44 Four days into the Judiciary’s action, on 8 March 2007, the President wrote a letter to the Chief Justice in which he raised six points:

1. Government is concerned and regrets the unfortunate events, which took place on 1 March 2007, concerning the release of PRA suspects. The original mistake, however, was for the Court to release the people on bail who were facing very grave criminal charges. Happily, the Constitutional Court has rectified this mistake.
2. Government assures the Judiciary and the general public that it undertakes to do all in its power to ensure that no repetition of such incidents will take place.
3. Government reaffirms its adherence to the safety and independence of the Judiciary as an institution and of individual judicial officers, and to uphold the rule of law.
4. All organs and agencies of the State will always accord to the courts such assistance as may be required to ensure the effectiveness of the Courts as provided by Article 128(3) of the Constitution.
5. The Judiciary objected to the manner in which the arrest of the PRA accused was effected. It is possible the government lawyers and security officers overreacted in this process. Government will investigate the matter and determine if there were

101 C Ariko/ H Nsambu, ‘Courts Suspend Work Over PRA Suspects’, *New Vision*, 2 March 2007.

102 *The Monitor*, ‘Govt Reacts to Judiciary Strike’, 4 March 2007.

103 *New Vision*, ‘Museveni Speaks Out On High Court Scuffle’, 5 March 2007.

breaches of the law or procedure in the process of re-arresting these accused and if indeed there were breaches, it will take corrective measures.

6. Legal and transparent modus operandi for re-arresting accused released by the courts will be formulated and agreed on by the agencies involved in the administration of justice.¹⁰⁴

4.45 In a number of interviews, the delegation was told that the President's allusion to the judge's 'original mistake' was a blatant attempt to shift the blame. His apology was seen as insincere in light of the action by armed troops who must have acted under his orders or those of a senior official at his behest.

4.46 On 9 March 2007, Chief Justice Odoki announced that the Judiciary would resume work the following Monday following receipt of the President's letter.

4.47 When the delegation met with the Directorate of Public Prosecutions (DPP), it was told that the fresh murder charges against the PRA accused had existed before 1 March 2007. The DPP officials, while affirming that the DPP was not responsible for the way the police effect arrests, admitted that it would have been preferable for them to bring the fresh murder charges to the attention of the judge granting bail well before the bail hearing. The delegation was advised that the police intrusion should not have taken place.

The Reaction of Civil Society

4.48 On 6 March, the ULS met to discuss the police intrusion and unanimously condemned it. At its meeting, lawyers resolved to suspend, for six months, five high-level government officials for their role in the deployment of the police forces at the High Court. Those suspended were the Inspector General of Police, Major Gen Kale Kayihura; the Minister for Security, Amama Mbabazi; the Coordinator for Intelligence Services, General David Tindefuza; the Attorney-General Khiddu Makubuya; and the Director of Public Prosecutions, Richard Buteera. A caution was also issued to the Solicitor General Lucian Tibaruha. The ULS members also resolved that proceedings would be filed against the suspended officers in the Law Council Disciplinary Committee for charges of 'conduct unbecoming of an advocate'. A further decision was taken to bring a private prosecution against the Divisional Police Commander of the Central Police Station in Kampala, Ivan Nkwasiabwe, who allegedly attacked a defence lawyer on 1 March. Finally, ULS announced that its members would strike for three days directly following similar action taken by the Judiciary.

4.49 The private prosecution against Divisional Police Commander, Ivan Nkwasiabwe, went ahead at the end of March 2007 with both the commander and Assistant Superintendent of Prisons Sam Edotu, ordered to appear before the Chief Magistrates Court on 18 April

¹⁰⁴ The Monitor, 'Museveni Writes to Chief Justice Over High Court Siege', The Monitor, 11 March 2007.

2007 The officers did not respond to the court summons, and on 18 April, the case was taken over by the Directorate of Public Prosecutions (DPP) to be investigated further.

4.50 By law, the Director of Public Prosecutions may take over criminal cases that have been instigated by private prosecution. In a number of interviews, the delegation was told that it was common for the DPP to take over private prosecutions in politically sensitive cases; these cases would then reportedly be quashed. When the delegation met the Director of Public Prosecutions, almost three months after the alleged assault, it was told that the DPP was investigating the incidents, but had not yet instructed eyewitnesses to be interviewed. To date there have been no prosecutions or disciplinary action.

Obstacles to the Proper Functioning of the Judiciary

4.51 The delegation has further identified certain obstacles to the proper functioning, and therefore the independence of the Judiciary. They concern the chronic lack of funding and the appointment of judges.

Lack of Funding

4.52 In a number of interviews, the delegation was told of the severe lack of funds available to the Judiciary in Uganda. According to the High Court's Principal Judge, James Ogoola, the Judiciary's budget was subject to severe cuts in the last three to four years. This cut in funding has consequences both for court facilities, such as the library, and for the administration of justice. According to Judge Ogoola, as a result of the cuts, the High Court has had to scale down its activities. The criminal sessions work, for instance, had been cut by 60 percent. This in turn has led to a backlog of cases at all levels of the Judiciary. In December 2006, the Deputy Registrar of the Criminal Division, Roy Byaruhanga, warned that it could take up to 300 years to clear the backlog of cases should the current conditions prevail.¹⁰⁵ This has serious implications for Uganda's 26,000 prisoners, 58 percent of whom are on remand awaiting trial.¹⁰⁶ State Minister for Justice and Constitutional Affairs, Frederick Ruhindi, stated that the length of time remand prisoners has been held as of October 2006 was as follows: 689 prisoners had spent 24-32 months detained, 513 had been detained for 32-40 months, 370 prisoners had spent 40-48 months in prison and 334 had been held for over 48 months awaiting trial.¹⁰⁷

4.53 A core problem relates to the shortage of judges. Out of the 50 recommended High Court judges only 33 are currently in post. Of these 33, five have been seconded to other positions nationally or internationally. The lack of High Court judges has led to a higher workload for individual judges, which has reportedly taken a toll on the health of some.

4.54 In addition, Principal Judge Ogoola warned that the lack of financial independence

¹⁰⁵ I Mufumba/ E Gyezaho, '300 Years to Clear Case Backlog – Judiciary', The Monitor, 16 December 2006.

¹⁰⁶ Ibid

¹⁰⁷ E Mukyala, 'Poor Facilitation Blocking Justice', New Vision, 14 December 2006.

‘whittle[s] down the independence of the Judiciary as an institution’. He said that the financial situation of the Judiciary had reduced it to a position akin to that ‘of a beggar going cup in hand to the Executive and the Legislative arms of the State in order to be able to perform its constitutional duty’.¹⁰⁸ Also Chief Justice Benjamin Odoki deplored that the Judiciary was funded ‘like a small department’ and warned that the ‘alarming shortage of judges’ had undermined the proper administration of justice in the country.¹⁰⁹ Deputy Chief Justice Laetitia Mukasa-Kikonyogo spoke of a ‘crisis in the judiciary’ created by the shortage of judges.¹¹⁰

4.55 In April 2007, Parliament passed the Judicature Amendment Bill 2006, which allows government to increase the numbers of judges at the Supreme Court from seven to 11 and in the Court of Appeal from eight to 12.

4.56 The delegation had the opportunity to witness first hand one of the consequences of the lack of funding for the courts. The library at the High Court holds an inadequate and largely outdated collection of works. The delegation was told that the library did not even hold all the necessary laws, and was hardly used by employees.

Appointing Judges

4.57 The lack of judges is to be distinguished from a failure to appoint. The budget for judicial appointments is passed by Parliament, whereas appointments are made by the Judicial Services Commission whose members are appointed by the President.

4.58 Concerns were expressed to the delegation that the process of appointing judges is politicised. The Uganda Judicial Officers Association (UJOA) in October 2006 claimed that there was a ‘trend of rewarding politicians, especially those who have lost elections’, while career judicial officers were being overlooked.¹¹¹ According to the UJOA, 98 percent of judges’ appointments since 1997 have been political.¹¹² The Chairperson of the UJOA further stated that because of the judges’ political affiliations, the public could sometimes predict the judgment of each judge on a panel before the actual ruling was made.¹¹³

4.59 Another issue which was raised with the delegation is that if political appointments are vetoed there is a failure to appoint any judges. The consequence of such inaction can be seen in the Ugandan Supreme Court. Following the death of one Supreme Court Justice and the retirement of another, the quorum of seven Judges to handle constitutional appeals is not met. It is understood that the appointment process has stalled at the Presidential level and that there are a number of appeals are pending.

4.60 As regards the remuneration for judicial personnel, the delegation learned that in November 2006, judges were accorded a 78 percent raise in their salaries.

108 I Mufumba/ I Kitimbo, ‘Judiciary Needs Financial Autonomy, Says Justice Ogoola’, *The Monitor*, 18 December 2006.

109 H Nsambu/ H Onyalla, ‘Judiciary Needs Better Funding’, *New Vision*, 17 February 2007.

110 *New Vision*, ‘Courts Need More Judges’, 9 November 2006.

111 E Mulondo, ‘Judicial Appointments Becoming Political Says Magistrates’, *The Monitor*, 16 August 2006.

112 A Mubiru, ‘Judges’ Appointments Annoy Judicial Officers’, *New Vision*, 17 August 2006.

113 *Ibid*

5. Other Concerns Related to the Rule of Law

- 5.1 During its mission, the delegation was confronted with other concerns directly related to the rule of law. The core issues shall be mentioned here, namely the use of military courts to try civilians, the use of so-called ‘safe houses’.

The Use of Military Courts to try Civilians

- 5.2 The delegation has grave concerns over the use of military court proceedings against civilians. Uganda’s recent history shows that the use of military court’s to try civilians was originally meant to counter threats against public security, namely the rampant violent crime in Kampala and its surroundings. A provision in the Uganda People’s Defence Forces Act was invoked which states that, ‘every person found in unlawful possession of arms, ammunition or equipment ordinarily being the monopoly of the Defences Forces; or other classified stores as prescribed’ shall be subject to military law. Military courts started operating on 16 September 2002. Since then they have become the norm for offences related to the possession of an illegal fire arm.
- 5.3 The delegation was told that there are hundreds of examples of civilians being subject to trial at military courts because they have been found in illegal possession of arms. The crime in question does not need to be connected in any way to the army; an armed robbery committed with an illegal weapon is sufficient for the perpetrator to be subject to trial before military court. The delegation was further told that there were plans to expand this legislation to cover the possession of toy guns and weapons such as clubs.

The Use of ‘Safe Houses’

- 5.4 There has been controversy in Uganda for some years over the existence of so-called ‘safe houses’. The term ‘safe houses’, as it is commonly understood in Uganda, describes unofficial places of detention, in which persons are detained outside of the legal framework. Often, these persons are arrested without a warrant and detained without charge or trial for months or even years. In addition, detainees in ‘safe houses’ are said to be particularly prone to various forms of ill treatment.
- 5.5 The issue of safe houses was raised with the Government of Uganda by the UN Human Rights Committee and the Committee against Torture. On both occasions, the government stated that ‘safe houses’ had been set up in response to ‘a wave of terrorist attacks’ from 1997 to 2000. The authorities stated, as it had not been possible to place the perpetrators in the same cells as ordinary offenders, the security agencies had designated places known as ‘safe houses’ where they could be held in isolation

with provision for additional security measures. Further, it was claimed that after the terrorist threat had been contained, the use of ‘safe houses’ had been phased out, ie by the year 2000. The Concluding Observations of the Human Rights Committee states ‘that State agents continue arbitrarily to deprive persons of their liberty, including in unacknowledged places of detention’. The Committee against Torture recommended that the government ‘[a]bolish the use of “ungazetted” or unauthorized places of detention or “safe houses”, and immediately provide information about all places of detention’.

- 5.6 The majority of interviewees with whom the delegation discussed the issue of ‘safe houses’ said that they were still used. However, some noted that the secretive and mobile nature of ‘safe houses’ meant that it was hard to tell the extent of their use. Only the Parliamentary Committee on Legal and Parliamentary Affairs expressed their conviction that ‘safe houses’ were not used anymore, citing that they had been assured so by the Executive. One organisation interviewed stated that it had a list of 15 ‘safe houses’ in Kampala, although it was difficult to say whether the list was complete, given that some ‘safe houses’ were mobile. The delegation was also told of a trend towards reserving individual cells in police stations either in place of or in tandem with secret detention facilities. These cells are reportedly guarded by intelligence personnel and out of bounds to the police.
- 5.7 The delegation’s findings appear consistent with other international human rights NGOs. Both Human Rights Watch in its World Report 2007 and Amnesty International in its Annual Report 2007, affirmed that Ugandan military and security forces in 2006 continued to use ‘safe houses’ to detain suspected rebels and dissidents.

6. Relevant Legal Principles

6.1 Uganda's Constitution and international and regional human rights standards provide the yardstick against which the IBAHRI forms its conclusions on the threats to judicial independence and related events.

Constitutional Standards

6.2 Article 126(1) of the Ugandan Constitution clearly defines the Ugandan courts as the only branch of the State to hold judicial powers: 'Judicial power is derived from the people and shall be exercised by the courts established under this Constitution in the name of the people and in conformity with the law and with the values, norms and aspirations of the people.' Art. 129(1) of the Constitution specifies that the judicial power of Uganda shall be exercised by the courts of judicature which shall consist of '(a) the Supreme Court of Uganda; (b) the Court of Appeal of Uganda; (c) the High Court of Uganda; and (d) such subordinate courts as Parliament may by law establish ...'.

6.3 Article 128 unambiguously guarantees the independence of the Judiciary from external interference by providing that 'in the exercise of judicial power, the courts shall be independent and shall not be subject to the control or direction of any person or authority' (para 1). In addition, 'no person or authority shall interfere with the courts or judicial officers in the exercise of their judicial functions' (para 2), and 'all organs and agencies of the State shall accord to the courts such assistance as may be required to ensure the effectiveness of the courts' (para 3).

6.4 The independence of Uganda's courts is further guaranteed in chapter 4 of the Constitution, which deals with fundamental rights. Article 28 on the right to a fair hearing provides that 'in the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law'.

6.5 Articles 142 et seq of the Constitution contain the provisions relating to the appointments, qualifications and tenure of office of judicial officers.

International Standards

6.6 Uganda is bound by universal and regional human rights law to guarantee the independence of the Judiciary. Article 14(1) of the ICCPR states that 'all persons shall be equal before the courts and tribunals' and that 'in the determination of any criminal charge against him, or of his rights and obligations in a suit of law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law'. Article 2(3) of the ICCPR imposes a positive obligation on the State to ensure that the right to a remedy is 'determined by competent judicial,

legal or administrative authorities’ and ‘to develop the possibilities of judicial remedy’. In its General Comment No 13, the UN Human Rights Committee specifies that the independence of courts comprises such issues as ‘the manner in which judges are appointed, the qualifications for appointment, and the duration of their terms of office; the condition governing promotion, transfer and cessation of their functions and the actual independence of the Judiciary from the executive branch and the legislative’.¹¹⁴

6.7 Article 7(1) of the ACHPR provides that ‘every individual shall have the right to have his cause heard’, which comprises, in particular, ‘(b) the right to be presumed innocent until proven guilty by a competent court or tribunal,’ and, ‘(d) the right to be tried within a reasonable time by an impartial court or tribunal’. The African Commission on Human and People’s Rights has emphasised the importance of Article 7 by holding that it ‘should be considered non-derogable’ since it provides ‘minimum protection to citizens’.¹¹⁵ Article 26 of the ACHPR provides that States Parties shall have a duty to guarantee the independence of the courts.

6.8 Uganda is also a member of the East African Community (EAC),¹¹⁶ an international organisation which aims at establishing ‘a Customs Union, a Common Market, subsequently a Monetary Union and ultimately a Political Federation in order to strengthen and regulate the industrial, commercial, infrastructural, cultural, social, political and other relations of the Partner States’.¹¹⁷ Article 7(2) of the EAC Treaty provides for principles to be observed by the member States themselves. Under this provision, the member States undertake ‘to abide by the principles of good governance, including adherence to the principles of democracy, the rule of law, social justice and the maintenance of universally accepted standards of human rights’. The EAC Treaty established the East African Court of Justice,¹¹⁸ the role of which is to ‘ensure the adherence to law in the interpretation and application of and compliance with’ the EAC Treaty.¹¹⁹ Arguably, the East African Court of Justice is therefore competent to look into issues concerning the rule of law in member States.

6.9 Uganda also has obligations under the Cotonou Agreement to promote and protect democratic principles and the rule of law. In particular, Article 9 provides that ‘respect for human rights and fundamental freedoms, including respect for fundamental social rights, democracy based on the rule of law and transparent and accountable governance are an integral part of sustainable development’. The Parties are obliged to promote and protect human rights, democratic principles and the rule of law which are stated under Article 9 to be ‘essential elements of this agreement’.

114 Human Rights Committee, General Comment No 13, ‘Equality Before the Courts and the Rights to a Fair and Public Hearing by an Independent Court established by Law (Art. 14)’, at para 3.

115 AComHPR, Civil Liberties Organisation, Legal Defence Centre, Legal Defence and Assistance Project v Nigeria, Communication No 218/98, decision adopted during the 29th Ordinary Session, 23 April – 7 May 2001.

116 Established by the East African Community Treaty of 30 November 1999, which entered into force on 7 July 2000.

117 EAC Treaty, Art 5 para 2.

118 Ibid, Art. 9 para 1 let e

119 Ibid, Art 23

- 6.10 Further interpretative guidance regarding the independence of the Judiciary can be found in international guidelines and declarations, which, insofar as they reflect principles of emerging customary international law, are for the purposes of this report also considered relevant benchmarks. The UN Basic Principles on the Independence of the Judiciary¹²⁰ provide inter alia that the government has a duty to respect and observe the independence of the Judiciary (Principle 1); that their term of office, independence, security, adequate remuneration, conditions of service, pensions, and the age of retirement must all be adequately secured by law (Principle 11); and that any complaint against a judge must be tried expeditiously and fairly under an appropriate procedure (Principle 17). It is also the duty of each Member State to provide adequate resources to enable the Judiciary to properly perform its functions (Principle 7). The Basic Principles on the Independence of the Judiciary were endorsed by the United Nations' General Assembly in two resolutions which were adopted unanimously, including by Uganda.
- 6.11 The AComHRP Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa,¹²¹ provide inter alia that the independence of judicial bodies and officers shall be guaranteed by the constitution and laws of the country and respected by the government, its agencies and authorities (Clause 4(a)), that any method of judicial selection shall safeguard the independence and impartiality of the Judiciary (Clause 4(h)), and that judges or members of judicial bodies shall have security of tenure (Clause 4(l)).
- 6.12 Uganda is also an author of the Harare Commonwealth Declaration,¹²² under which it has pledged explicitly 'to work, with renewed vigour' on 'democracy, democratic processes and institutions which reflect national circumstances, the rule of law and the independence of the Judiciary, and just and honest government'.
- 6.13 Further, the Commonwealth (Latimer House) Principles on the Three Branches of government¹²³ state that an independent, impartial, honest and competent Judiciary is integral to upholding the rule of law, engendering public confidence and dispensing justice. The Principles provide inter alia that to secure these aims, judicial appointments should be made on the basis of clearly defined criteria and a publicly declared process, arrangements for security of tenure and protection of levels of remuneration must be in place. Further, judges should be subject to suspension or removal only for reasons of capacity or misbehaviour that clearly renders them unfit to discharge their duties. Adequate resources should also be provided for the judicial system to operate effectively and that interaction, if any, between the Executive and the Judiciary should not compromise judicial independence.

¹²⁰ The Principles were adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and were later endorsed by the UN General Assembly in resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

¹²¹ AComHRP resolution, DOC/OS(XXX)247.

¹²² Signed on 20 October 1991.

¹²³ As agreed by Law Ministers and endorsed by the Commonwealth Heads of Government in Abuja, Nigeria, 2003.

7. Conclusions and Recommendations

- 7.1 During its meetings and interviews the delegation noted a tendency to judge the government's actions leniently by comparing it with past dictatorships that have ruled the country. Many pointed out the current government's background as a former revolutionary movement explains why things might not always run smoothly in today's democracy. As one interviewee said, the President is not only elected by the people, he also holds 'a mandate from the bush'. Similarly the delegation heard statements from officials brushing off infringements on the independence of the Judiciary as inevitable mishaps of a young democracy.
- 7.2 Undoubtedly Uganda's current government is to be commended for bringing a degree of peace and stability to a country beset by decades of strife, for boosting the country's economy, for combating the scourge of AIDS, for instituting major constitutional reforms and ultimately for relaxing the grip on power that the National Resistance Movement had held for a generation.
- 7.3 However, the IBAHRI is of the view that judging the Government by the poor standards of previous regimes is not the proper benchmark against which to assess its performance. The Ugandan people should assess their government's performance by the standards reflected in the Constitution and the human rights treaties the government has undertaken to respect. A history of past atrocities should not limit the horizons of Ugandan society or the aspirations of the government in bringing about democracy.
- 4.4 With respect to matters being investigated by the delegation it became clear that there are very real threats to judicial independence in political cases. The IBAHRI believes the Uganda Government must respect the separation of powers between the executive, legislature and judiciary which is so critical in upholding democracy and the rule of law.

Criticism and Defiance of Judicial Decisions

- 7.5 The IBAHRI is of the opinion that within a democratic society it must be possible to discuss and criticise court decisions. Given the nature and purpose of the principle of the separation of powers, however, the Executive has to exercise caution in criticising judicial decisions. Evidence suggests that the Ugandan Government has gone beyond legitimate criticism of court decisions and has intimidated individual members of the judiciary. Further, when the President announced that he will suspend judges (although he does not have the constitutional power to do so) he sent a powerful message to civil society suggesting that he controls the courts.
- 7.6 The IBAHRI is concerned that Judge Edmond Ssempe Lugayizi has been repeatedly singled out for individual criticism by the Executive. The principle of the independence

of the Judiciary extends to the personal independence of judges. They have the right to decide cases before them according to the law, free from fear of personal criticism or reprisals of any kind, even in situations where they are obliged to render judgements in difficult and sensitive cases. The Executive sent a clear warning to other judges who might succeed Judge Lugayizi that their reputations and careers might be put in jeopardy too if they take decisions which run counter to the government's interests.

- 7.7 The rule of law requires that all branches of the State, including the Executive, strictly abide by the judgements and decisions of the Judiciary, even when they do not agree with them. By failing to comply with court orders the government has contributed to the erosion of the independent decision-making authority of the Judiciary, and has thus put in jeopardy the rule of law in Uganda.
- 7.8 The IBA is of the view that the government has acted in contravention of articles 28(1) and 128 of the Constitution, to articles 7(1) and 26 of the ACHPR, article 14(1) of the ICCPR, article 7(2) of the EAC Treaty, article 9 of the Cotonou Agreement, to Principles 1, 2 and 4 of the UN Basic Principles on the Independence of the Judiciary, to Principles 1, 4a, 4f, and 5a of the AComHPR Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, to the Harare Commonwealth Declaration, and to the Commonwealth (Latimer House) Principles on the Three Branches of government.

Recommendations

- 7.9 The IBAHRI urges the government of Uganda to abide by judicial decisions which is fundamental to the maintenance of the rule of law. Any disagreement over court decisions should be settled within the channels provided for by law.
- 7.10 Whilst criticism of judicial decisions should be possible in a democratic society, the Executive should respect the boundaries of the separation of powers and the independence of the judiciary. Any criticism of judicial decisions should not amount to pressure, influence or harassment of the judiciary. The IBAHRI urges the government to refrain from attacking judges personally.

Pressurising Judges to Collude with the Police

- 7.11 The IBAHRI is concerned to learn of reports that opposition politicians have been detained by the police after they have been set free on bail, because they are prevented from paying the surety. However, the delegation was not able to ascertain with certainty whether these occurrences are to be explained by unfortunate circumstances, by a scheme carried out by the police, or indeed by a collusion between the police and judicial officers coerced to do so.
- 7.12 If judicial officers had indeed been pressured in order to detain opposition politicians

longer than would otherwise be legally permissible, such conduct would constitute a severe infringement on the independence of the Judiciary. It would be at variance with articles 28(1) and 128 of the Constitution, articles 7(1) and 26 of the ACHPR, article 14(1) of the ICCPR, article 7(2) of the EAC Treaty, article 9 of the Cotonou Agreement, with Principles 1, 2 and 4 of the UN Basic Principles on the Independence of the Judiciary, with Principles 1, 4a, 4f, and 5a of the AComHPR Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, with the Harare Commonwealth Declaration, and the Commonwealth (Latimer House) Principles on the Three Branches of government.

Recommendations

7.13 The IBAHRI urges the government, the Judicial Service Commission and the Judiciary to investigate alleged collusion between the police and judicial officers.

7.14 In any event, the Judiciary should take precautions so as not to become an (unwilling) participant in what might amount to arbitrary detention. As an immediate measure, the Judiciary should allow the deposition of sureties to the court to prevent a possible abuse of the bail procedure.

Direct Interferences with the Courts

7.15 The deployment of government forces in and around the High Court on 16 November 2005 and on 1 March 2007 is of particular concern to the IBAHRI. These events have compounded the climate of fear in the Judiciary and appear to be the reason two judges have withdrawn from politically sensitive cases.

7.16 The IBAHRI concludes that the deployment of government forces at the High Court was intended, beyond the aim of detaining the PRA accused, to intimidate defence counsel and the Judiciary.

7.17 The IBAHRI concludes that these two incidents constitute serious infringements of the independence of the Judiciary. The IBAHRI is of the view that the government has contravened article 128 of the Constitution, articles 7(1) and 26 of the ACHPR, article 14(1) of the ICCPR, article 7(2) of the EAC Treaty, article 9 of the Cotonou Agreement, Principles 1 and 4 of the UN Basic Principles on the Independence of the Judiciary, Principles 1, 4a, and 4f of section A of the AComHPR Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, to the Harare Commonwealth Declaration, and to the Commonwealth (Latimer House) Principles on the Three Branches of government.

Recommendations

- 7.18 The IBAHRI recommends in the strongest terms that the Executive and government desist from direct interferences with decisions of the court especially in such circumstances where their actions were designed to intimidate and frighten those present.
- 7.19 The government is urged to investigate the circumstances surrounding the deployment of forces to the High Court as a matter of urgency and publish its findings.
- 7.20 Having noted a potential lack of coordination between the police and the Directorate of Public Prosecutions, the IBAHRI recommends that the government review policies, practices and procedures to ensure better case management of accused and defendants.

Obstacles to the Proper Functioning of the Judiciary

- 7.21 According to Principle 7 of the UN Basic Principles on the Independence of the Judiciary, it is the duty of States to provide adequate resources to enable the Judiciary to properly perform its functions. The judicial system in Uganda suffers from a lack of resources and infrastructure.
- 7.22 As regards the appointment of judges, the IBAHRI is concerned to hear allegations that the appointment procedure is politicised. Judicial appointments must be made in a transparent manner that safeguards the independence of the Judiciary and that ensures selection is not biased. The requirements of the UN Basic Principles on the Independence of the Judiciary stipulate that '[p]ersons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives' (Principle 10).
- 7.23 The Constitutional procedures which provide for judicial appointments by the President on the advice of the Judicial Service Commission, and with approval of Parliament, can be consistent with judicial independence. However, in reality there are reports that the President appoints judges who are biased towards the ruling party, the so-called 'Cadre Judges'. Where this is the case, the appointment of judges is not in compliance with the UN Basic Principles on the Independence of the Judiciary, namely in that Judges are appointed for improper motives.
- 7.24 The IBAHRI is further concerned that certain urgent appointments are not made at all. Specifically, the Ugandan Supreme Court is currently not able to meet the quorum necessary to take decisions on constitutional appeals. The delegation is aware that the Judicial Service Commission had not been properly constituted for long periods during 2005 and 2006.

Recommendations

- 7.25 The IBAHRI urges the government to accord the Judiciary the monetary and human resources which will enable it to function without the risk of having its independence curtailed, and which will allow it to clear the backlog of cases.
- 7.26 The procedure for the identification of candidates for judicial office should be conducted in a transparent manner from outset to completion. The criteria for potential candidates should be in-line with the UN Basic Principles on the Independence of the Judiciary.

The Use of the Military Courts to Try Civilians

- 7.27 The IBAHRI is concerned at the use of military courts to try civilians. Section L of the AComHPR Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa states military courts should not in any circumstances whatsoever have jurisdiction over civilians.¹²⁴ The Human Rights Committee is also of the view that military courts for civilians ‘could present serious problems as far as the equitable, impartial and independent administration of justice is concerned’. Further, the African Commission for Human and Peoples’ Right in article 7(1)(d) of the African Charter on Human and Peoples’ Rights,¹²⁵ has found that military courts contravene Principle 5 of the UN Basic Principles on the Independence of the Judiciary which states that ‘Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.’

Recommendations

- 7.28 The IBAHRI urges the government to cease the use of military courts to try civilians.

The Use of ‘Safe Houses’

- 7.29 The IBAHRI expresses its grave concern about the reports that ‘safe houses’ are still being used. The practice is contrary to article 23(2) of the Constitution which states that ‘[a] person arrested, restricted or detained shall be kept in a place authorised by law’.
- 7.30 The use of ‘safe houses’ infringe a number of fundamental rights guaranteed by the Constitution, including the right to personal liberty (article 23), the prohibition of inhuman treatment (article 26), the right to a fair hearing (article 28).

¹²⁴ AComHRP resolution, DOC/OS(XXX)247.

¹²⁵ AComHPR, Media Rights Agenda (on behalf of Niran Malaolu) v Nigeria, Communication No 224/98, decision adopted during the 28th session, 23 October – 6 November 2000, para 62; available at www.umn.edu/humanrts/africa/comcases/224-98.html.

7.31 The IBAHRI is pleased to note that Uganda has signed¹²⁶ the new Convention on Enforced Disappearances. Once the convention enters into force, the continued use of ‘safe houses’ would run counter to the government’s obligations under this Convention. The State will be under the obligation to prosecute not only the persons who committed, ordered or solicited an enforced disappearance, but also any superior who failed to prevent or repress it.¹²⁷

Recommendations

7.32 The IBAHRI urges the government of Uganda to immediately ensure the closure of any remaining ‘safe houses’. Where such detention centres exist, the Government is urged to mount an independent investigation to determine the persons responsible and bring them to justice.

The Role of Civil Society

7.33 One of the delegation’s terms of reference was to ‘[r]eview the role of civil society in protecting the independence of the Judiciary and the fair administration of justice’.

7.34 In general terms, the IBAHRI is pleased to note that Ugandan civil society is very much aware of the value to be attached to the independence of the Judiciary. Although the same may not have been true of society generally, the two incidents at the High Court highlighted more widely the importance of an independent Judiciary. Ugandan civil society fulfils an indispensable function in generating public awareness in the importance of an independent Judiciary and human rights generally.

7.35 The delegation was able to ascertain that the organisations it met are highly competent and motivated and are for the most part unafraid to speak out against the government’s attacks on the independence of the Judiciary.

7.36 The delegation learned that fundamental rights contained within the Ugandan Constitution are challenged in court by lawyers and NGOs. By contrast there is an absence of any challenge to Ugandan Courts to apply international human rights law. Uganda has ratified a variety of regional and international human rights treaties,¹²⁸ yet the delegation was told that they are hardly ever invoked in domestic courts.

7.37 There is a question as to whether the role of NGOs will be restricted by the Non-Governmental Organisations Registration (Amendment) Bill 2001,¹²⁹ a law which imposes preconditions for NGOs to operate in Uganda. The IBAHRI notes the

¹²⁶ Based on the list of initial signatories compiled by the Fédération internationale des ligues des droits de l’homme (FIDH), available at www.fidh.org/article.php3?id_article=4011.

¹²⁷ Article 6 of the International Convention for the Protection of All Persons from Enforced Disappearance of 20 December 2006 (not yet in force).

¹²⁸ See *supra* section 6.

¹²⁹ G Walulya, ‘NGO Registration Bill Passed’, *The Monitor*, 12 April 2006.

comments of one commentator who said ‘[t]he legislation could lead to a narrowing of the operational space within which NGOs can mobilise to contribute to the development of Uganda, including the promotion of a responsible and accountable government’.¹³⁰

Recommendations

- 7.38 The IBAHRI urges all sectors of civil society to hold the Ugandan government accountable to the standards defined in the Constitution and in its regional and international treaties. Where remedies have been exhausted domestically, cases should be brought before international monitoring bodies, such as the African Commission and Court for Human and Peoples’ Rights, or the UN Human Rights Committee.
- 7.39 The IBAHRI further recommends to the government to ensure the existence of a diverse and active NGO community.

¹³⁰ This quote is attributed to the Danish Ambassador in Kampala: G Natabaalo, ‘Let NGOs Operate Freely - Barlyng’, *The Monitor*, 2 December 2006.

Appendix I

'Court of Judicature

Judicial Officers Meeting held on 2 May 2007 in the High Court Library

Resolution

1. On 1 May 2007, the PRA suspects were produced to attend the hearing of Misc application No 20/07 (Attorney General and DPP vs Patrick Okiring and others) filed by the Solicitor General. The matter was then adjourned to 7 May 2007 at the request of the Solicitor General. In the meantime, court ordered release of the suspects on bail in accordance with the Court's earlier order of 16 November 2005 and in obedience to the Constitutional Court's decision ordering release of the suspects on bail. As the registrar was processing the documents, security personnel surrounded and even entered the Criminal Registry insisting that they had orders to return the suspects to prison under any circumstances. Fights ensued between the security personnel and members of the public, and in the process doors and other court property were damaged. Eventually, six out of the nine suspects fulfilled bail conditions while three did not. These three were surrendered to the prisons authority by their counsel. The six were prevented from leaving on account of the heavy deployment in the court premises.
2. The Ag Chief Justice convened the top managers in the Judiciary in a crisis meeting to consider the developments. The meeting was attended by the DPP, Regional Police Commander, Prisons personnel. The meeting was informed by a [sic] prisons officer that he had been directed by the Commissioner General of Prisons to take back the suspects to prison. Similarly the Regional Police Commander stated that he had instructions from the Inspector General of Police to rearrest the suspects on fresh charges.
3. As the situation deteriorated, the judiciary directed the security officers to remove from the court premises all security personnel including their dogs. This directive was disobeyed. Instead, heavy security reinforcement was intensified with the apparent intention of storming the Registry to rearrest the suspects.
4. In the meantime, the judiciary made phone contacts with Minister of Justice and Constitutional Affairs and the Minister for Security. Efforts to contact the Prime Minister, the Minister of Internal Affairs and the IGP were unsuccessful.
5. Meanwhile, violence escalated to the extent that defense counsel was grievously assaulted and with blood gushing from his face, he was rushed to Ag Chief Justice's chambers for refuge.
6. Protracted negotiations continued between the Judiciary, the security personnel and

the defence counsel, ending with the agreement that security personnel and the public vacate the premises to enable the peaceful release of the suspects.

7. At about 2000, the suspects were finally handed over by the Hon Principal Judge and the Court Registrars to their respective counsel in the middle of the precincts of the High Court and counsel did receive them. At that point, thereupon, security personnel pounced erociously on the suspects and manhandled them, threw them on the back of a police pickup, sat on them and drove them off, to an unknown destination amidst their yelling and mourning.
8. The morning after these extraordinary events, judicial officers of the Court of Judicature met in an extraordinary session to consider the matter and resolved:
 - to issue a comprehensive statement on this atrocious incident and unprecedented event;
 - to call on the Executive to apologize for these events;
 - to ask the Executive to give assurances on the nonrepetition of these incidents of affront to the integrity and independence of the judiciary;
 - to cite in contempt and or prosecute security personnel responsible for the criminal acts of violence, assault and malicious damage to property at the High Court;
 - to suspend with effect from the 5 March 2007 all judicial business in all the courts of Uganda; and
 - to convene a meeting on the 9 March 2007 of all judicial officers from the rank of Chief Magistrates and above at the High Court, Kampala to chart the way forward.
9. These actions have been taken not for reasons of the rearrest or recharging of the PRA suspects, but because of:
 - a. the repeated violation of the sanctity of the court premises;
 - b. the repeated disobedience of court orders with impunity;
 - c. the constant threats and attacks on the safety and independence of the Judiciary and of individual judicial officers;
 - d. the savagery and violence exhibited by security personnel within the court premises;
 - e. the failure by all organs and agencies of the state to accord to the courts assistance as required to ensure effectiveness of the courts as provided under Article 128(3) of the Constitution of the Republic of Uganda; and
 - f. the recognition that judicial power is derived from the people, to be exercised by the Courts on behalf of the people in conformity with the law, the values, norms and

aspiration of the people of Uganda.

Done at the High Court of Uganda at Kampala 2 March 2007.

Ag Chief Registrar/Secretary¹³¹

¹³¹ The resolution is on file with the IBA. It has also been reported in The Monitor, 'The Statement From the Judiciary', 4 March 2007.