

**OFFICE OF THE
LEADER OF THE OPPOSITION**

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

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EXECUTIVE SUMMARY

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

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

This case backlog has also taken hold in the Director of Public Prosecution (DPP) office and also in the Judicial Service Commission (JSC) disciplinary tribunal for judicial officers with DPP being affected most, having more than 2 million cases to handle by the start of financial year 2020/21.² Therefore the Judiciary and DPP should adopt a Case Weighting System (CWS) and start incentivizing of courts to best manage the issue of Case backlog. The weighing of cases is based on the needs of each case, in terms of time and resources before distributing them to the judicial officers concerned. It is something other countries have applied and tremendous results have been achieved.

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

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

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

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

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

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

The Electoral Commission has been found at fault too; it has been inefficient in handling voter registration exercises, it is struggling against great skepticism from the public with 43% of Ugandans found to trust its processes in 2020⁴ just before the general elections of 2021, moreover it refused to grant permits to international observers in the 2021 general elections. It has also fallen short in handling electoral violence that is rampant in the periods of general elections which is usually occasioned by government forces. The appointment of the Commissioners is so flawed with the head of state being charged by the Constitution to carry out the appointments. As alternatives EC should carry out state wide voter education which should be a continued process, it should issue electoral observers with permits every election for a well supervised and transparent electoral process and to improve its public trust. The appointment of Commissioners should be on merit and conducted including vetting by an independent body appointed by parliament for the role.

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

⁴ Afrobarometer News release. Kampala, Uganda. 18th December, 2020

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

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

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

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

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

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

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

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

LIST OF ACRONYMS

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

CHAPTER 1: BACKGROUND TO ALTERNATIVE POLICY STATEMENT

LEGAL PROVISIONS

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

SECTOR OVERVIEW

Rule of law and justice may not be the wheels on which the society moves forward but economic development and transformation thrive better in an environment where citizens have confidence in the rule of law and the justice system⁷. Without justice the society is stranded and lost. A just society ensures that everyone is equitably treated, everyone's rights are regarded with the highest esteem, protected, guaranteed and enforced by the State and non-state actors. When justice is purely and well administered the state wins and everyone wins.

In that regard Uganda through the 1995 Constitution and Acts of Parliament has indeed established various MDAs right under the Justice Law and Order Sector (JLOS) to ensure that justice is optimally administered, that is, the Judiciary, the Office of the Director of Public Prosecution (DPP), Uganda Human Rights Commission (UHRC) and many others. Despite a plethora of promises from the ruling government for revamping the rule of law and administration of justice, there are emerging issues seriously hindering administration of justice in our country ranging weak policy, legal and regulatory frameworks for effective governance; weak business support environment; low respect for and observance of human rights and fundamental freedoms; limited access to and affordability of justice; high crime rates; weak societal security structure and low recovery rate of public funds from individuals implicated in corruption⁸

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

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

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

STATEMENT OUTLINE

The Alternative Policy Statement is structured as follows:

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

Chapter 2: Budget analysis.

Chapter 3: Emerging issues and proposed Alternative policies

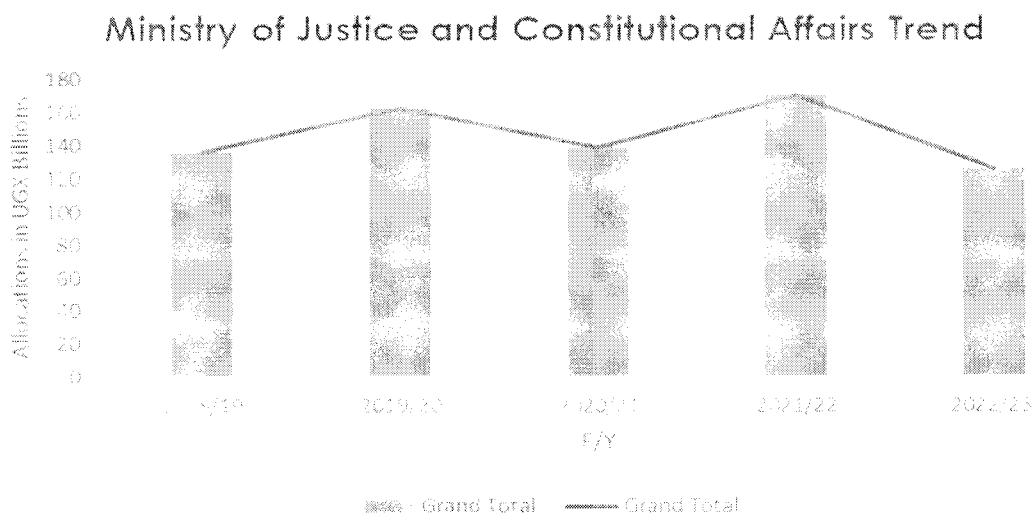
Chapter 4: Summarizes of the Alternative Policies and Conclusion

CHAPTER 2: SITUATIONAL ANALYSIS OF MINISTERIAL POLICY STATEMENT

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

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

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



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

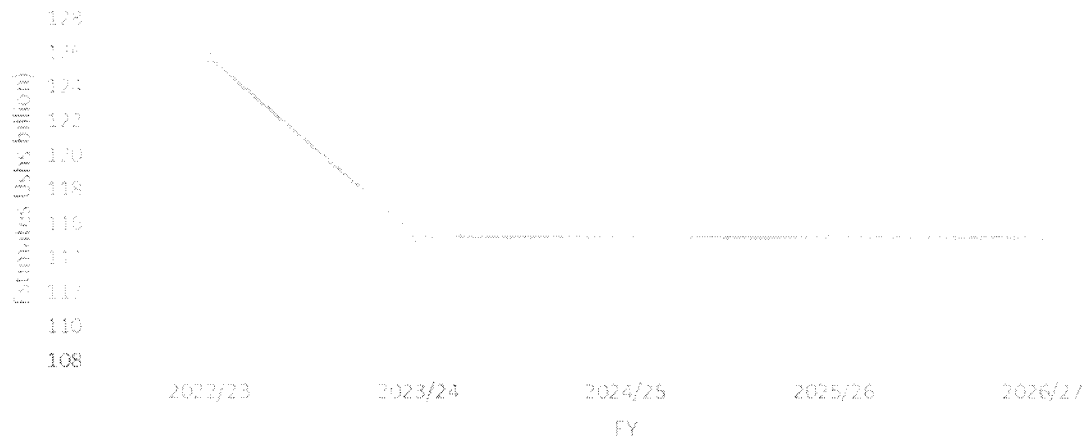
| SUB SUB PROGRAMME | FY 2021/22 (Bn) | FY 2022/23 (Bn) | Variance (Bn) |
|--|-----------------|-----------------|----------------|
| Policy, Planning and Support Services | 54.84 | 92.367 | 37.527 |
| Access to Justice and Accountability | 28.33 | | -28.33 |
| First Parliamentary Counsel/Legislative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

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

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

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

MTEF Budget Projection



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

CHAPTER 3: EMERGING ISSUES AND PROPOSED ALTERNATIVES

3.1 Perennial Case backlog in Courts of law

Articles 28(1) and 126(2)(b) of the Constitution provides for delivery of justice without delay, however this has become a fallacy due to the overly delayed handling cases filed in courts of law. During the FY 2020/21, Courts disposed of **156,875 cases** out of a caseload of **317,929**. This accounted for **49%** of all cases in the system.⁹ The delayed trials and case backlog accounted for **152,582** cases brought forward from FY 2019/20.¹⁰ In addition, the Courts recorded a 4% increase in case registration from **159,543** cases in FY 2019/20 to **165,347** cases in FY 2020/21.¹¹ This therefore means that the pending cases in the system remain high and increase annually.

This stagnation has tremendously hindered the economic development of the country since a lot of resources are wasted and unnecessary kept out of the economy. In November 2021, the Chief Justice reported that in the Commercial Court alone, over UGX 5 trillion was locked up in the 6,094 unresolved cases¹².

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

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

Source: Annual Performance Report for Judiciary FY 2020/21

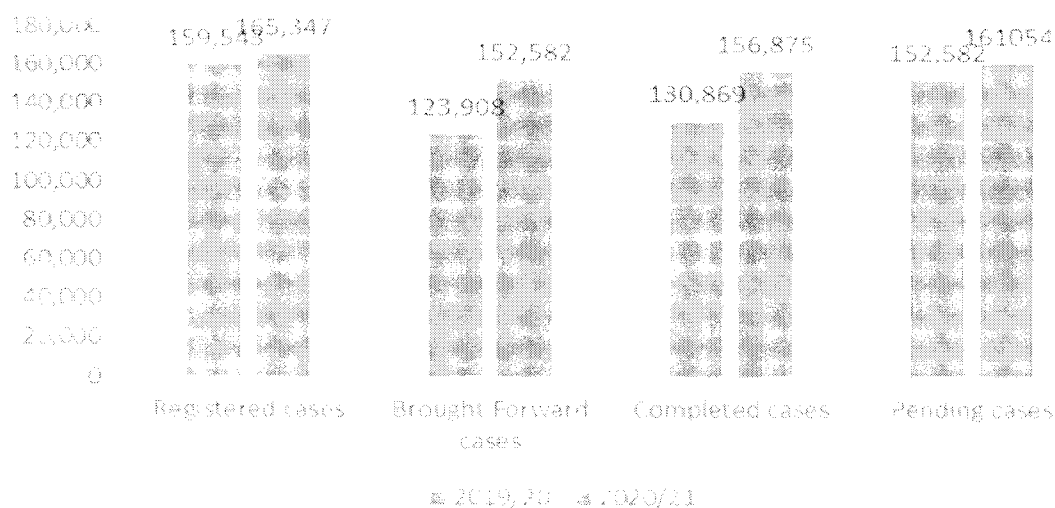
⁹ Statement of the Hon. Chief Justice at the launch of the judiciary annual performance report for the F/Y 2020/2021, held at Judiciary headquarters, High Court building, Kampala on 15th November, 2021, pg. 2.

¹⁰ Ibid, pg. 5.

¹¹ Ibid, pg. 2.

¹² Ibid, pg. 7.

Comparison of the FY2019/20 and FY2020/21



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

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

The DPP like all other bodies exercising judicial/prosecution powers suffers from case backlog and this is mind boggling. Constitutionally the office of the Director of Public Prosecution is charged with handling of all criminal cases in this country and that the mandate the office serves¹⁴ As per the Auditor General's report¹⁵ it is reported that a four year trend analysis of the schedule of cases increased from **1,999,572** to a boggling amount of **2,373,434** with 19% increase of cases registered during the year under review alone. The Auditor General indicated that **1,999,572** cases were carried forward from the previous financial year, **379,861** cases were recorded during the year making a total of **2,373,233** and of that wholesome total, and only **168,286** cases were worked upon and cleared by close of the year which is just a 7%. That left a total of **2,205,147** cases to be carried into the next financial year of 2020/2021.

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

¹⁴Read; Article 120 of the 1995 constitution of the Republic of Uganda.

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

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

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

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

Like most bodies with somewhat judicial powers to exercise, UHRC tribunal is chocking on some voluminous backlog of cases pending handling. Article 53¹⁷ is quite elaborate in providing Uganda Human Rights Commission with powers of a court to deal with matters relating to abuse or violations of human rights. It is elaborately provided with those powers of court indeed that on many occasion members of the public have sought redress from it on matters relating to the same violations. However it's now chocking on a bulk of such cases. According to the Auditor General's report¹⁸ it is reported that UHRC had tribunal case backlogs of **1,673** cases at the beginning of financial year 2019/2020 and **150** cases were added during the run of the year making a total of **1,823** cases for the tribunal to resolve. However of that much bulk only **67** cases which is **3.7%** of the bulk were investigated and disposed of by close of the year. Therefore from that report by the close of FY 2019/2020 an overwhelming number of **1,756** cases

¹⁶Article 28 of the 1995 Constitution of the Republic of Uganda.

¹⁷1995 Constitution of the republic of Uganda.

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