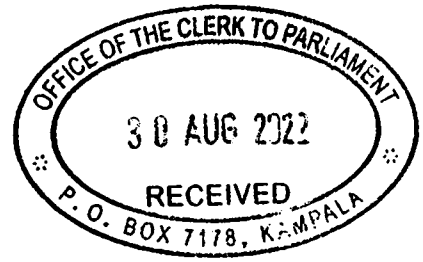




PARLIAMENT OF UGANDA



**REPORT OF THE SECTORAL COMMITTEE ON LEGAL AND
PARLIAMENTARY AFFAIRS ON THE INSOLVENCY (AMENDMENT) BILL,
2022**

**OFFICE OF THE CLERK TO PARLIAMENT
PARLIAMENT BUILDING
KAMPALA-UGANDA**

AUGUST, 2022

1.0. INTRODUCTION

The Insolvency (Amendment) Bill, 2022 was read for the first time on 23rd August, 2022 and pursuant to Rule 129 (1) of the Rules of Procedure of Parliament of Uganda and the same was referred to the Sectoral Committee on Legal and Parliamentary Affairs for scrutiny. In accordance with Rule 129 (2) of the Rules of Procedure of Parliament of Uganda, the Committee has examined the Bill and hereby presents its report with observations and recommendations.

2.0. BACKGROUND

A company which cannot pay debts it is owed is taken to be insolvent. This also applies to individuals. Where a company or an individual is unable to meet his or her liabilities, the Insolvency Act, 2011 grants such individual or entity various options, including administration, compromise/arrangement, restructuring, amalgamation or voluntary liquidation.

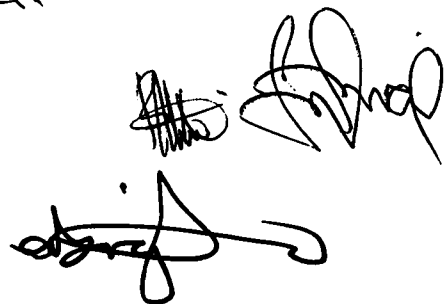
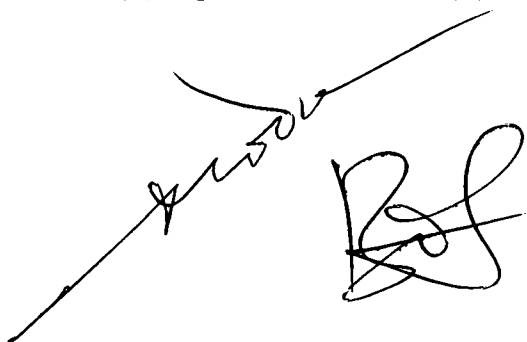
All the above processes are governed and guided by the Insolvency Act, 2011, a law that regulates insolvency matters in Uganda, specifically matters related to receivership, administration, bankruptcy, arrangements and cross-border insolvency.

The Insolvency (Amendment) Bill, 2022 seeks to amend the Insolvency Act, 2011 to make it compliant with the United Nations Commissions on International Trade Law (UNCITRAL) Model Law on cross border insolvency, the World Bank recommendations on ease of doing business and international best practices on insolvency.

3.0. THE OBJECT OF THE BILL

The object of the Insolvency (Amendment) Bill, 2022 is to:

- (a) amend the Insolvency Act, 2011 to provide for a creditor's right to set-off a debt subject to preferential debts;
- (b) repeal Section 12 (2) of the Act;



- (c) empower administrators and supervisors to avoid transactions under Sections 15, 16, 17, 18 and 19 of the Act;
- (d) provide for the offence of unlawful dealing with assets;
- (e) provide for post arrangement financing;
- (f) provide for post administration financing;
- (g) provide for Court to make administrative orders;
- (h) provide for the right of a creditor to apply for an interim order or appointment of a provisional administrator;
- (i) empower the Minister to prescribe additional qualifications for a person to be appointed or act as an insolvency practitioner;
- (j) repeal Sections 212 to 224 relating to reciprocal arrangements;
- (k) provide for the issuance of certificates of dissolution;
- (l) empower the official receiver to act and exercise the powers of an insolvency practitioner in respect of assets discovered after liquidation.

4.0. METHODOLOGY

In the process of analyzing the Bill, the Committee

(a) met and held discussions with the following stakeholders:

- (i) Attorney General;
- (ii) Ministry of Justice and Constitutional Affairs
- (iii) Ministry of Defence and Veteran Affairs
- (iv) Ministry of Internal Affairs
- (v) Ministry of Trade, Industry and Cooperatives
- (vi) Ministry of Finance, Planning and Economic Development
- (vii) External Security Organisation (ESO)
- (viii) Internal Security Organisation (ISO)
- (ix) Uganda Revenue Authority (URA)
- (x) Bank of Uganda (BoU)
- (xi) Financial Intelligence Authority(FIA);
- (xii) Uganda Registration Services Bureau (URSB);
- (xiii) Uganda Bankers' Association (UBA)

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(xiv) Uganda Microfinance Regulatory Authority (UMRA)

(b) reviewed the following relevant documents:

- (i) The Constitution of the Republic of Uganda, 1995;
- (ii) The Insolvency Act, 2011;
- (iii) Written submission by Attorney General; and
- (iv) Written submission by Financial Intelligence Authority (FIA).

5.0. ANALYSIS OF THE INSOLVENCY (AMENDMENT) BILL, 2022

This part of the report analyses the proposals made in the Bill, considering each clause and identify legal and practical issues that may affect its implementation.

5.1. Incorporation of international best practices

The Bill seeks to incorporate international best practices in the Insolvency Act. The Committee notes that various amendments proposed by the Bill are intended to incorporate best international practices in insolvency practice in Uganda.

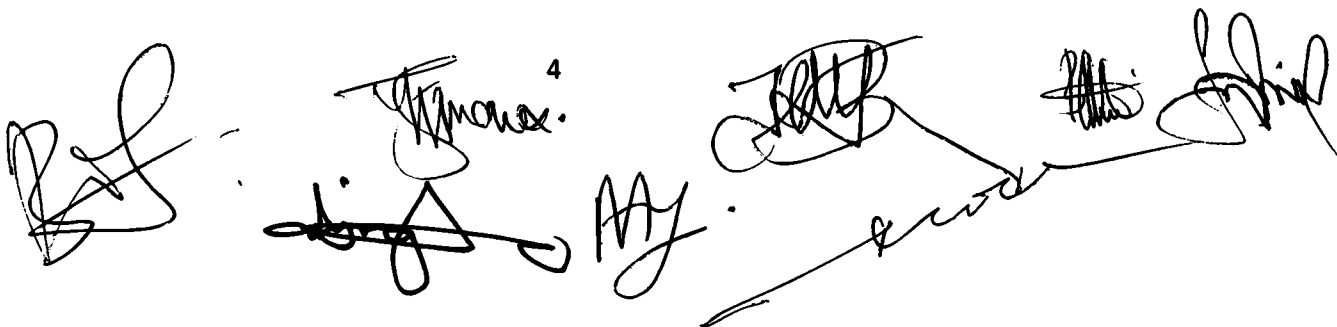
For instance, clause 2 of the Bill which seeks to amend Section 12 of the Insolvency Act to provide for prioritization of the payment of secured creditors over other preferential debts is intended to conform to international best practices which require the prioritization of secured creditors over preferential debts.

Furthermore clause 24 which proposes to repeal Sections 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223 and 224 of the Principal Act on reciprocal arrangements in cross-border insolvency is intended to fully incorporate and adopt the UNCITRAL Model Law, an international best practice on cross-border insolvency which does not require reciprocity.

The adoption of international best practices should be supported since it improves Uganda's standing internationally and aids insolvency practice.

5.2. Enhanced protection of assets of an insolvent

The Bill makes various amendments which are intended to protect the assets and transactions of an insolvent.



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The Committee observes that various provisions of the Bill protect assets and transactions of creditors. For instance, clause 8 of the Bill which seeks to insert a new Section 19A in the Principal Act criminalizing the unlawful dealings with the estate of an insolvent to ensure that the value of the estate is preserved and maximized for the benefit of creditors.

This will enhance the beneficial value of insolvents to their creditors.

5.3. Enhanced protection of creditors, members, contributory, supervisors and administrators

The Bill contains various provisions which enhance the protection of creditors, members, contributory, supervisors and administrators.

For instance, clauses 3, 5, 7 and 8 of the Bill provide for inclusion of a member, contributory, administrator, supervisor and a creditor as persons who can apply to court to set aside voidable transactions and charges. This is a good proposal since currently, it is only the creditor, receiver, liquidator or trustee who can undertake such action. More so, clause 4 also enhances the protection granted to supervisors and administrators by empowering them to apply to court to set aside undervalue transactions.

The Bill in clause 15 also protects creditors by allowing such creditors to apply for an interim protective order. Currently, a creditor cannot undertake such orders and cannot interfere where his or her debtor is becoming insolvent in order to arrest the situation and commence reorganization proceedings. This provision will now allow such creditors to step in and initiate reorganization efforts where they determine that the debtor may be headed for insolvency.

The enhancement of the rights of creditors, members, contributory, supervisors and administrators as indicated above will make insolvency practice better and increase the beneficial value of insolvents.

5.4. Recovery from insolvency

The Bill makes provision for the encouragement of an insolvent to recover from insolvency.

The Bill in clause 13 provides for post arrangement financing and post administration financing to enable an insolvent recover from the insolvency by

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allowing a supervisor, with the consent of the creditors and with the approval of Court, to obtain or borrow finances and grant security over the property of the debtor for the purposes of implementing the arrangement. The Committee observes that when persons are insolvent, financial institutions are hesitant to advance credit to them due to the low chances of recovery yet this credit can facilitate the transition front insolvency or enable implementation of the administration deed.

Furthermore, the Bill in clause 9 proposes to amend Section 45 to provide for a reduction in the number of years an insolvent is barred from occupying certain offices. Section 45 currently bars a debtor who is adjudged bankrupt from being appointed or acting as a Judge of any court in Uganda or being elected to or holding or exercising the office of the President, a Member of Parliament, Minister, a member of a local government, council, board, authority or any other government body. The period imposed in Section 45 is 5 years from the date of discharge of the bankruptcy. The Bill now proposes to reduce this period to only 2 years. The Committee has examined this and supports the reduction since it will reduce the stigmatization of bankrupt and allow for the rehabilitation of a bankrupt.

6.0. Conclusion and recommendation

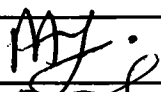



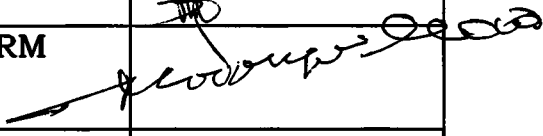
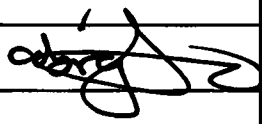
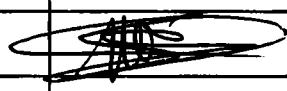
Hon. Speaker and Honourable Members, the Committee has examined the Insolvency (Amendment) Bill, 2022 and recommends that it is passed into law.

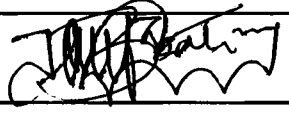
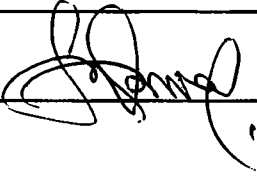
The Committee observes that this Bill, when passed into law, will go a long way in making insolvency practice in Uganda more effective.

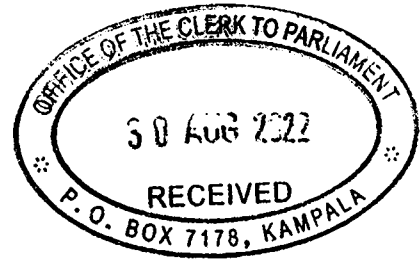


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SIGNATURES OF MEMBERS ENDORSING THE REPORT OF THE COMMITTEE ON LEGAL AND PARLIAMENTARY AFFAIRS ON THE INSOLVENCY (AMENDMENT) BILL, 2022

1	Hon. Rwakoojo Robina Gureme	Gomba West County	NRM	
2	Hon. Mutembuli Yusuf	Bunyole East	NRM	
3	Hon. Okiror Bosco	Usuk County	NRM	
4	Hon. Nkwasiibwe Zinkuratire Henry	Ruhaama County	NRM	
5	Hon. Odoi Benard	Youth Eastern	NRM	
6	Hon. Odoi Oywelowo Fox	West Budma North East	NRM	
7	Hon. Oseku Richard Oriebo	Kibale County	NRM	
8	Hon. Baka Stephen Mugabi	Bukooli County North	NRM	
9	Hon. Cherukut Emma Rose	DWR Kween	NRM	
10	Hon. Kajwengye Twinomugisha Wilson	Nyabushozi County	NRM	
11	Hon. Okia Joanne Aniku	DWR Madi Okollo	NRM	
12	Hon. Obigah Rose	DWR Terego	NRM	
13	Hon. Achayo Lodou	Ngora County	NRM	
14	Hon. Kasaija Stephen	Burahya County	NRM	
15	Hon. Teira John	Bugabula North County	NRM	
16	Hon. Silwany Solomon	Bukhooli Central	NRM	
17	Hon. Kwizera Paul	Kisoro Municipality	NRM	
18	Hon. Werikhe Christopher	Bubulo West	NRM	

19	Hon. Malende Shamim	DWR Kampala	NUP	
20	Hon. Lubega Medard Ssegona	Busiro East	NUP	
21	Hon Ssekitoleko Robert	Bamunanika County	NUP	
22	Hon. Ssemujju Ibrahim	Kira Municipality	FDC	
23	Hon. Adeke Ann Ebaju	DWR Soroti	FDC	
24	Hon. Lt. Gen. James Mugira	UPDF		
25	Hon. Asuman Basalirwa	Bugiri Municipality	JEEMA	
26	Hon. Alum Santa Sandra Ogwang	DWR Oyam	UPC	
27	Hon. Shartsi Musherure Nayebare Kutesa	Mawogola North County	INDEP.	
28	Hon. Abdu Katuntu	Bugweri county	INDEP.	
29	Hon. Acrobert Kiiza Moses	Bughendera County	INDEP.	
30	Hon. Niwagaba Wilfred	Ndorwa County	INDEP.	



PARLIAMENT OF UGANDA

**MINORITY REPORT ON THE REPORTS OF THE
SECTORAL COMMITTEE ON LEGAL AND
PARLIAMENTARY AFFAIRS ON THE PARTNERSHIPS
(AMENDMENT) BILL, 2022, INSOLVENCY (AMENDMENT)
BILL, 2022 AND TRUSTEES INCORPORATION
(AMENDMENT) BILL, 2022**

**OFFICE OF THE CLERK TO PARLIAMENT
PARLIAMENT BUILDING
KAMPALA-UGANDA**

AUGUST, 2022

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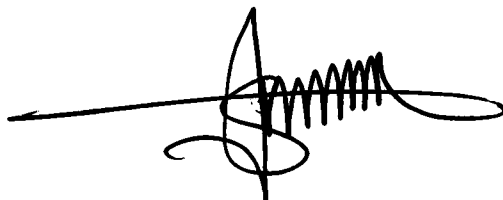
1.0. INTRODUCTION

The Partnerships (Amendment) Bill, 2022, the Insolvency (Amendment) Bill, 2022 and the Trustees Incorporation (Amendment) Bill, 2022 were read for the first time just last week on 23rd August, 2022 and pursuant to Rule 129 (1) of the Rules of Procedure of Parliament of Uganda and the same were referred to the Sectoral Committee on Legal and Parliamentary Affairs for scrutiny.

In accordance with Rule 129 (2) of the Rules of Procedure of Parliament of Uganda, the Committee was supposed to examine the Bills in detail and make all such inquiries in relation to them as the Committee considers necessary and report back to the House within stipulated period of 45 (forty five) days from the date the Bills were referred to the Committee.

Following the referral of the Partnerships (Amendment) Bill, 2022, the Insolvency (Amendment) Bill, 2022 and the Trustees Incorporation (Amendment) Bill, 2022, the Committee on legal and parliamentary affairs was not given or accorded an opportunity of meeting and receiving memoranda from relevant stakeholders for purposes of soliciting or getting sufficient views on the Bills.

The Committee on Legal and Parliamentary Affairs together with three other Committees namely; Finance, Planning and Economic Development, Trade, Industries and Tourism and Defense and Internal Affairs were summoned on a very short notice to what looked like a seminar to consider the Bills.

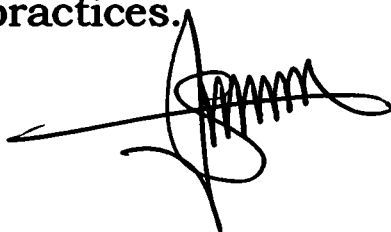
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The seminar in the Conference Hall at Parliament was convened by Deputy Speaker where the Attorney General (AG), Uganda Registration Services Bureau (URSB) and Financial Intelligence Authority (FIA) made brief presentations.

This alien method and instructions to report on the Bills almost immediately after the seminar, didn't afford us enough time to understand the fundamental nature of these Bills and to ask pertinent questions. It was quite unusual to "herd" four committees in one room to consider Bills separately referred to them.

Some of the critical stakeholders namely Uganda Law Reform Commission (ULRC) and Uganda Law Society (ULS) who in the past have made valuable contributions during consideration of Bills were not invited.

The procedure adopted in processing these Bills was foreign to the Rules of Procedure and did not afford the Committee time and opportunity to adequately consult on the Bills. In fact we were asked to Pirouette parliamentary values and practices.

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TIRED OR SLEEPING GOVERNMENT

Uganda is a member of the Eastern and Southern Africa Anti Laundering Group (ESAAMLG). ESAAMLG is an associate member of the *Financial Action Task Force (FATF)* which was established with the objectives of developing international standards and promoting policies through implementation of legal, regulatory and operational measures to protect the integrity of the of the global financial system against Money Laundering (ML); Terrorist Financing (TF); and Proliferation Financing (PF).¹

The FATF developed the 40 FATF Recommendations sometimes referred to as the “standards” which all members are obligated to implement in order to ensure that their financial systems are protected against Money Laundering, Terrorist Financing, and Proliferation Financing.²

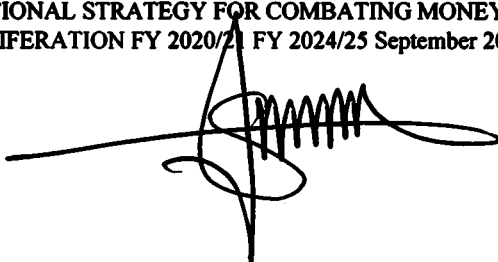
ESAAMLG is required to ensure that all its member countries subscribe to the FATF global ALM/CFT standards, which is done by conducting mutual evaluation exercises for each of its members to assess the extent to which the 40 FATF standards are being implemented.³

The mutual evaluations are conducting a methodology that was developed by FATF and the results presented in a mutual evaluation report (MER).

¹ NATIONAL STRATEGY FOR COMBATING MONEY LAUNDERING AND THE FINANCING OF TERRORISM AND PROLIFERATION FY 2020/21 FY 2024/25 September 2020, Page 13

² Ibid

³ Ibid

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In June 2016, ESAAMLG conducted a mutual evaluation assessment to evaluate Uganda's AML/CFT regime, and the MER containing the results was adopted by the ESAAMLG Plenary meeting in April 2016. The report identified Uganda's strategic AML/CFT deficiencies, and based on the FATF methodology found the "Effectiveness" of Uganda's AML/CFT to be "Low". Uganda's effectiveness in achieving the "Immediate Outcomes (IOs)" of the FATF was low for all eleven (11) outcomes. The Uganda MER 2016 provided recommendations for Uganda to address the deficient areas in her AML/CFT regime.⁴

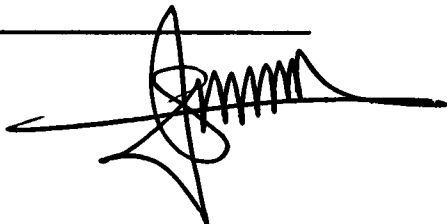
In December 2019, the FATF conducted a Post Observation Period assessment and assessed that Uganda had not made tangible progress in addressing her deficiencies and determined that Uganda be placed on the FATF observation grey list.⁵

Now, after a period of 6 (Six) years of inaction, the Government is hastily pursuing the Partnerships (Amendment) Bill, 2022, the Insolvency (Amendment) Bill, 2022 and the Trustees Incorporation (Amendment) Bill, 2022 in total contravention of the Rules. Parliament must reject this stampede.

This Parliament facilitates the President as an individual with almost a trillion shilling every year to manage the state. If he is tired, Parliament must find a solution. If his appointees are the reason, we must crack the whip. Uganda is a poor country that cannot afford a sleepy government.

⁴ Ibid

⁵ Ibid

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2.0. POINTS OF DISSENT

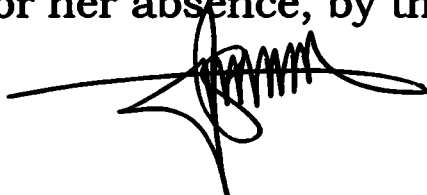
My disagreements are in the following areas.

- (1) The majority have produced reports on the above mentioned Bills without complying with the Constitutional requirements on consultation as required in Article 1 and 8A of the Constitution.
- (2) The process and procedure adopted in processing these reports offends the Rules of procedure of Parliament.
- (3) Did we even have the quorum to transact business as a Committee?

2.1. Contravention of the Rules of Procedure

The procedure adopted by the Committee in processing these Bills was in contravention of the Rules of Procedure of Parliament, particularly rules relating to the manner of calling of meetings.

Rule 203 of the Rules of Procedure of Parliament guides on meetings of Committee and requires that a Committee shall commence sittings as soon as possible after it has been assigned to consider a Bill or other matter referred to it by the House. Sub Rule (2) of the same Rule requires that meeting of the Committee shall be held at such a time and place as may be determined by the Chairperson of the Committee or in his or her absence, by the Deputy Chairperson.



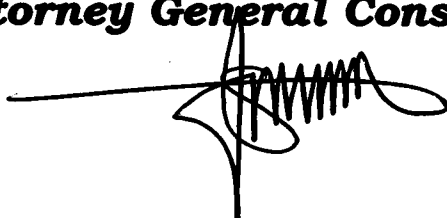
Sub Rule 3 of the same Rule further provides that unless the House is sitting, not less than forty eight hours' notice shall be given to Members of the Committee when calling any meeting.

The above Rules of Procedure where violated during consideration of the Partnerships (Amendment) Bill, 2022, the Insolvency (Amendment) Bill, 2022 and the Trustees Incorporation (Amendment) Bill, 2022 since the meeting of the Committee on Legal and Parliamentary Affairs was not called by the Chairperson as required in Rule 203 and neither was the statutory period for calling such a meeting adhered to.

The failure to abide by Rule 203 meant that the Members of the Committee did not have adequate notice of the meeting to consider the Partnerships (Amendment) Bill, 2022, the Insolvency (Amendment) Bill, 2022 and the Trustees Incorporation (Amendment) Bill, 2022.

This meant that Members of the Committee who did not participate in the processes leading to the consideration of the report were allowed to participate in report writing of the three Bills.

This means that the members who participated in report writing yet they did not attend the initial meeting of the Bill did so irregularly, as was found by Court in ***Male Mabirizi & Ors v Attorney General Constitutional Petitions Nos. 49***

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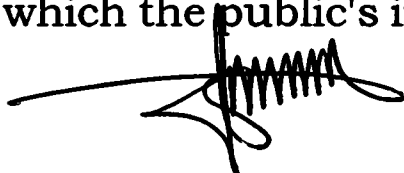
of 2017, 3 of 2018, 5 of 2018, 10 of 2018, and 13 of 2018 wherein members of the Committee on Legal and Parliamentary Affairs who did not participate in the Committee's hearings but were allowed to append their signatures on the report were found by Court to have done so irregularly and their signatures were expunged from the Committee report for purposes of determining whether the report was signed by majority of members of the Committee.

It is therefore my considered opinion that the processes leading to the taking of the decisions contained in the majority reports in the Partnerships (Amendment) Bill, 2022, the Insolvency (Amendment) Bill, 2022 and the Trustees Incorporation (Amendment) Bill, 2022 did not follow the laid out procedures and are therefore irregular and the reports are void.

2.2. Non Compliance with the Constitution

Public participation is the process by which Parliament consults with the people and interested or affected individuals, organisations and government entities before making a decision. According to their plain and ordinary meaning, the words public involvement or public participation refer to the process by which the public participates in something. Facilitation of public involvement in the legislative process, therefore, means taking steps to ensure that the public participate in the legislative process.

Public consultation, or simply **consultation**, is a regulatory process by which the public's input on matters affecting them

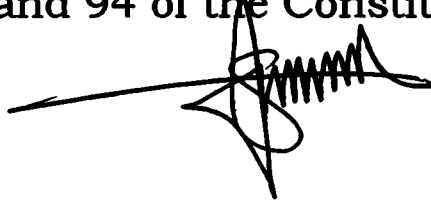
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is sought. Its main goals are in improving the efficiency, transparency and public involvement in large-scale projects or laws and policies.

It usually involves *notification* (to publicise the matter to be consulted on), *consultation* (a two-way flow of information and opinion exchange) as well as *participation* (involving interest groups in the drafting of policy or legislation).

Public participation as a democratic notion in our Constitution has its roots in international law. Under Article 25 of the International Covenant on Civil and Political Rights, states are required to establish “powers and the means by which individual citizens exercise the right to participate in the conduct of public affairs” in national Constitutions and other laws. It is for the legal and constitutional system of the State party, like Uganda, to provide for the modalities of such participation. That right, which is specified in Article 25(b) of the ICCPR, represents one institutionalization of the right to take part in the conduct of public affairs. As will be demonstrated, this is what is embodied in our Constitution.

In Uganda, our democratic government that is contemplated in the Constitution thus a representative and participatory democracy which is accountable, responsive and transparent and which makes provision for the public to participate in the law-making process hence, the provisions of Articles 1, 38, 79, 90, 91 and 94 of the Constitution.

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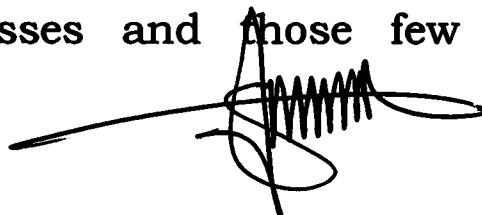
Article 1 (1), (2) and (4) of the Constitution of the Republic of Uganda make the people of Uganda sovereign and it specifically require that all power belongs to the people who shall exercise their sovereignty in accordance with this Constitution. Article 1(2) directs that all authority in the State emanates from the people of Uganda; and the people shall be governed through their will and consent.

In addition to the sovereignty of the people, Article 8A of the Constitution directs that Uganda shall be governed based on principles of national interest and common good enshrined in the national objectives and directive principles of state policy.

One such democratic principle is the democratic principle of public consultation enshrined in objective II (i) of the National Objectives and Directive Principles of State Policy which enjoins the State to empower and encourage the active participation of all citizens at all levels in their own governance.

The above mentioned provisions of the Constitution require Parliament at all time to consult the people of Uganda while enacting legislation. The Procedures adopted by the Committee on Legal and Parliamentary Affairs did not conform to those standards of public consultations since reports of the Committee were borne out of a process that was not consultative.

The Public was not given an opportunity to participate in these processes and those few that participated were

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