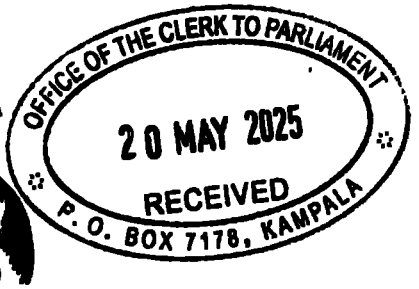


PARLIAMENT OF UGANDA

DISSENT FROM THE DECISION OF THE MAJORITY OF THE JOINT COMMITTEE ON LEGAL & PARLIAMENTARY AFFAIRS AND DEFENCE & INTERNAL AFFAIRS ON THE UGANDA PEOPLE'S DEFENSE FORCES (AMENDMENT) BILL, 2025

20th May 2025

1.0. INTRODUCTION

Rt. Hon. Speaker and Hon. Colleagues, this is the statement of the minority Members of the joint Committee of Legal and Parliamentary Affairs and the Committee of Defence and Internal Affairs on the decision of the majority in respect of the Uganda People's Defence Forces (Amendment) Bill, 2025(In herein referred to as the UPDF (Amendment) Bill). This statement is made pursuant to Rules 214 and 215 of the Rules of Procedure of Parliament of Uganda.

The UPDF (Amendment) Bill, 2025 was read for the first time on Tuesday the 13th of May, 2025 and in accordance with Rules 134 and 200 referred to the Joint Committee of Legal and Parliamentary Affairs and the Committee of Defense for scrutiny.

The object of the UPDF (Amendment) Bill, 2025 is to amend the Uganda Peoples' Defence Forces Act, Cap. 330 is to majorly give effect to the decision of the Supreme Court in **Constitutional Appeal No.2 of 2021: AG Vs Hon. Micheal A. Kabaziguruka** among others.

2.0. DECISION OF THE SUPREME COURT IN CONSTITUTIONAL APPEAL NO.2 OF 2021: AG VS HON. MICHEAL A. KABAZIGURUKA

This was an appeal from the decision of the Constitutional Court arising from the decision in Constitutional Petition No. 45 of 2016.

The brief facts in this matter are that Hon. Michael Kabaziguruka, a civilian and former Member of Parliament together with others including members of the UPDF was charged with offences relating to security and Treachery contrary to sections 130(1)(f) and 129(a)of the Uganda People's Defence Forces Act before the General Court Martial (GCM).

He objected to his trial on grounds that he was not subject to military law and the GCM was not clothed with jurisdiction to try the offences with which he was charged with. The GCM overruled this objection and he filed the petition stating that:

(i) Section 197 of the UPDF Act was inconsistent with articles 28(1), 126(1), 129(1) and 257 (1) (d) of the Constitution to the extent that it purported to create a court of law without Constitutional authority.

(ii) The GCM and other military courts established under part VIII of the UPDF Act are not courts of law within the meaning of article 126(1), 129(1), 210 and 257 of the Constitution.

(iii) Sections 2, 179 and 119(i)(g)& (h) of the UPDF Act are inconsistent with and in contravention of the Constitution to the extent that they define a service offence to mean any offence under the laws of Uganda, and confer jurisdiction unto the court martial to try any offence, and jurisdiction over every person.

(iv) The act of arraigning and/or charging the Respondent before the GCM was inconsistent with and in contravention of his rights of a fair hearing under article 28(1) of the Constitution.

In July 2021, the Constitutional Court partly ruled in favor of the petitioner (Hon. Kabaziguruka), declaring that the GCM's jurisdiction is limited to enforcing military discipline and trying service offences specified under the UPDF Act, applicable only to persons' subject to military law. The court further held that civilians are not subject to military law, unless they aid and abet service members in committing service offenses, as outlined in Section 119(1) (g) of the UPDF Act (now S.117 (g)). Consequently, the court ordered that civilians' currently facing trial in military courts have their cases transferred to civilian courts under the direction of the Director of Public Prosecutions.

The Attorney General appealed this decision to the Supreme Court, arguing that military courts play a unique role in safeguarding national security and that certain circumstances may warrant the trial of civilians in Military Tribunals.

In its judgment delivered on 31st January 2025, the Supreme Court partly upheld the Constitutional Court's decision, affirming that the trial of civilians in military courts is unconstitutional. In particular, the Court held that:

a) Article 210 restricts the jurisdiction Parliament may confer on the Court Martial. The jurisdiction is limited to military disciplinary offences and imposition of disciplinary sanctions.

b) The General Court Martial, created under s.197 (now s.195) of the UPDF Act, is a subordinate court of law with specialized jurisdiction.

c) The jurisdiction of the Court Martial as currently conferred by the UPDF Act exceeds the constitutional limits under Article. 210(b) of the Constitution.

d) Section 179 of the UPDF Act exceeds the constitutional limits in as much as it confers jurisdiction on the CM to impose punishment beyond what is contemplated under the Constitution.

e) Sections 2, 119 and 179 of the UPDF Act are inconsistent with the Constitution and therefore null and void.

f) The General Court Martial as currently set up cannot accord a free and fair trial as guaranteed under article 28(1) and 44 of the constitution, and its exercise of judicial powers over civilians is unconstitutional. The members of the Court Martial are not independent.

g) Civilians cannot be tried by the Court Martial for aiding and abetting of military offences. (This is a departure from the judgement of the Constitutional Court which saved the jurisdiction of the Courts Martial under s. 117(1)(g) which confers powers to the Court Martial to try civilians where an individual voluntarily submits to military law or is an accomplice to a service member in committing a service offence).

h) The Court made the following orders:

i. Going forward, only cases relating to disciplinary offences by members of UPDF should be tried by the Courts Martial.

ii. Suspended all trials of civilians in the Courts Martial and sentences for those already convicted should be subjected to judicial review by civil courts, except those sentences that have been served.

iii. All charges, or ongoing criminal trials, or pending trials, before the Courts Martial involving civilians must immediately cease and be transferred to the ordinary courts of law with competent jurisdiction.

The decision of the Supreme Court meant that some provisions of the UPDF Act could not be enforced without amendment. The provisions that need to be amended in order to bring the Act in conformity with the Constitution are-

- The provisions of ***s.179 (1) & (2) (now 177(1) & (2))*** of the UPDF Act, read together with ***s. 197 (2) (now s.195 (2))***, which grant the subordinate military courts jurisdiction over capital offences.
- The provisions of the UPDF Act constituting and providing for the trial procedure of the GCM, the Division Court Martial, and the Court Martial Appeal Court, do not contain any or sufficient constitutional guarantees and safeguards for them to exercise judicial functions with independence and impartiality, which is a prerequisite for a fair hearing provided for under Arts. 21, 28(1), 44(c), and 128(1) of the Constitution.

- The provision ***of s.119 (1) (g) (now s. 117 (1) (g))***, of the UPDF Act, under which the Respondent, a civilian, was charged and arraigned in the General Courts Martial should be deleted, having been struck down by the Supreme Court. Any attempt to resurrect them would be offensive to Article 92 of the Constitution, a bar against retrospective legislation.

- The jurisdiction conferred by **ss.2, 179, and 119(1) (h), (now ss.1,10 177,** and 117 (1) (h), of the UPDF Act, on the GCM to try persons' subject to military law for civil and, or, non-disciplinary offences committed in Uganda, are unconstitutional; as they contravene Articles 209 & 210 of the Constitution. The said Sections should be deleted and cannot be amended because they ceased to exist upon being struck down by the Supreme Court.

In addition, the Supreme Court in its advisory orders guided on possible areas of amendment to bring the Act in conformity with the Constitution and these included;

i. **Establishing the General Court Martial (GCM) as a Division of the High Court** with jurisdiction to handle criminal offences involving both military officers and any civilians.

ii. Limit the functions of Unit Disciplinary Committees (UDCs) and Summary Trial Authorities (STAs) to handling strictly disciplinary offences, with no power of imposing sentences of imprisonment.

iii. Utilize the existing magistracy to handle the rest of the criminal cases (other than disciplinary offences) committed in Uganda (which are currently falling within the docket of the UDCs). The subordinate military Courts can handle criminal cases at the level of Chief Magistrate's Courts (for offences attracting life imprisonment and below). Or;

iv. With the advice of the Judicial Service Commission (JSC), appoint civilians with the requisite professional legal qualifications to serve as judicial officers in the current subordinate military courts. They would exercise jurisdiction over offences triable by subordinate courts. They should have the same privileges and safeguards as their counterparts in the civil courts. Or;

v. Amend the Constitution to establish superior Courts within the military Court system under Art 129; and clothe them with the requisite jurisdiction and guarantees of independence and impartiality to try specific military offences of a capital nature and all other capital offences under existing laws, committed by military personnel. Or;

vi. Provide in the UPDF Act for the High Court to sit as a Court martial with power to try all criminal capital offences within the High Court jurisdiction, and those unique to the military that attract a maximum of life and death sentences. Grant the Chief Justice Powers to assign Judges to the military courts. A select number of military personnel can act as assessors. Appeals to the Court Martial Appeal Courts would follow the same format, with the Court of Appeal sitting as

such. Magistrate's Courts would assume the jurisdiction over all other offences of a subordinate Court.

vii. Make provision in the UPDF Act for trial of civilians in military courts to be only under limited circumstances; and only after the State has concretely demonstrated to the court by verifiable facts, and by objective and serious reasons, the need and justification for recourse to the military court. This must only apply where in relation to the specific class or category of persons and offences in question, ordinary courts are not in position to undertake such trial.

viii. Make provision in the UPDF Act for appeal from military courts and tribunals, corresponding to appeals in ordinary Courts.

3.0. POINTS OF DISSENT

Our dissent from the majority is guided by the 1995 Constitution of the Republic of Uganda and the Supreme Court judgement in ***Attorney General vs Hon. Michael A. Kabaziguruka, Constitutional Appeal No. 2 of 2021*** **(arising from Constitutional Petition No. 45 of 2016)** as the *locus classicus* case in addition to other authorities.

The points of dissent are-

(1) Contravention of the Constitution;

(2) Illegality in Military Trials ;

(3) Offending the doctrine of separation of powers;

(4) Lack of Public participation

(5) Unconstitutional Expansion of Military Court Jurisdiction;

(6) Constitutional Limitations on Parliament's Powers;

(7) Lack of Independence and Impartiality of the Courts Martial.

(8) Non Compliance with Judicial Advisory Orders of the Supreme Court Ruling.

1.0 Contravention of the Constitution;

(i) Article 92 of the Constitution provides

"Restriction on retrospective legislation

Parliament shall not pass any law to alter the decision or judgment of any court as between parties to the decision or judgement".

The above provides a bar on the legislative power of Parliament in enacting any law that has the effect of overturning or altering the judgement of court.

Clause 30 of the Bill proposes to introduce a new section 117A in the UPDF Act to provide for **"other persons who are subject to military law"**. The provision requires that "a *person, other than a member of the Defence Forces, shall be subject to military law under the following exceptional circumstances—*

(a) where the person voluntarily accompanies any unit or other element of the Defence Forces which is in active service in any place;

(b) while serving with the Defence Forces under an engagement by which he or she has agreed to be subject to military law;

(c) where the person in unlawful possession of arms, ammunition or equipment ordinarily being the monopoly of the Defence Forces, prescribed in Schedule 7A to this Act or classified stores prescribed in Schedule 7B to this Act, commits an offence under any written law;

(d) where the person aids or abets a person subject to military law in the commission of, or conspires with a person subject to military law to commit the following offences—

(i) murder;

(j) aggravated robbery;

(k) kidnap with intent to murder;

(l) treason;

(m) misprision of treason; or

(n) cattle rustling;

(e) where the person, without authority, is found in possession of, sells or wears a uniform of the Defence Forces; or

(f) where the person is found in unlawful possession of—

(i) arms, ammunition or equipment ordinarily being the monopoly of the Defence Forces, prescribed in Schedule 7A to this Act; or

(ii) classified stores as prescribed in Schedule 7B to this Act; or

(g) where the person is serving in the position of an officer or militant of any force raised and maintained outside Uganda and commanded by an officer of the Defence Forces."

The above clause is an attempt to re-enact S.117 of the UPDF Act which was struck down by the Supreme court for offending Articles 28 (1),44 (c) and 128(1) of the Constitution. Such action is inimical to the rule of law and good governance which are a cornerstone of our democratic dispersion and that of other civilized nations and communities across the globe. It also constitutes and egregious attack on judicial independence there by contravening Article 128(2) and (3) of the Constitution which provide that no person or authority shall interfere with the courts or Judicial officers in the exercise of judicial functions and that all organs and agencies of the state shall accord to the courts such assistance as maybe required to ensure effectiveness of the courts. "See Article 128(2) and (3) of the Constitution. This action amounts to contempt of the Supreme court which is criminal, a path that must be avoided by our decent Parliament.

In **Liyanage Vs the Queen (1967) 1 AC,** the Sri Lankan Parliament passed retrospective laws affecting the trial of individuals accused of an attempted Coup. The Privy Council struck down the laws on account that they sought to alter the course of particular proceedings and effectively overturn the court's jurisdiction. The Indian Supreme court in **Indira Nehru Gandhi vs Raj Narain (1975) SC 2299,** after an election was invalidated by Allahabad High Court a constitutional amendment was passed to validate that election. The Supreme

court struck down the amendment holding that Parliament cannot enact legislations that overturn specific judicial decisions. Any legislation passed with the objective of nullifying the effect of a judicial decision has been held to be an encroachment on the judicial power and is unconstitutional **(See the Supreme court of India in State of Bihar vs Bal Mukund Sah Air 2000 SC 1296, Kumar Padma Prasad vs Union of India AIR 1992 SC 1213 and R v Secretary of State for the Home Department,exparte fire brigades union (1995)2 AC 513),**a decision of the House of Lords warning the Executive and the Legislative arms against interfering with decided cases.

The Supreme Court in ***Constitutional Appeal No.2 of 2021: AG Vs Hon. Micheal A. Kabaziguruka,*** *the Supreme Court* made various findings and orders pertaining to the trial of civilians by Courts Martial. The net effect of the decision is that the S.117 which conferred jurisdiction is unconstitutional for the reasons given in the judgement, what the Bill presents in Clause 30 is a reincarnation of the provision struck down by the Supreme court of the land. Such is not the conduct of civilised nations. Parliament must summon its tenacity, sensibility and sensitivity nerves to confront the vice as an evil scheme that must be defeated on behalf of the Nation.

The minority have analyzed the proposals made in clause 30 of the Bill as discussed above as against *the decision of the Supreme Court in* ***Constitutional Appeal No.2 of 2021: AG Vs Hon. Micheal A. Kabaziguruka*** *and find that the proposals contravene the letter and spirit of both the constitution and the Supreme court judgement and contemptuously disregarding the direction of*

the Supreme Court in so far as the trials in Military courts is concerned. The memory of Parliament must be re-ignited to remember that the decision was an indictment for passing an unconstitutional Act in 2005, a mistake we are being tempted to redo, a temptation we must vigorously and courageously refrain from by rejecting the Bill.

***(ii)* Illegality in Military trials;**

The question of illegality in military trials was ably canvassed by the Supreme in the Kabaziguruka case above. Owiny-Dollo, CJ in his lead judgement at pages 180-185 had this to say;

"There are also other vital reasons militating against trial of persons subject to military law for all offences. This Court has previously held that there are certain offences that are not triable by the Court martial. This is so where a particular Act grants jurisdiction under it only to a specific Court. It would therefore be wrong for Parliament to cause a conflict by conferring on courts martial jurisdiction to try such an offence. For instance, since terrorism can only be tried by the High Court, which is an ordinary or civil court, it would be contradictory to try it in the military courts as well; and also it would be self-defeating for an offence similar to terrorism to be created under the UPDF Act, and then persons are tried under it".

I find that this holding by Mulenga JSC is still the correct position of the law that where jurisdiction is expressly excluded or where the DPP's

consent is a pre-requisite, the courts martial are not competent to handle that matter so excluded irrespective of the provision to the contrary under the impugned sections 1, 177, and 117 (1) (g) and (h) of the UPDF Act. It amounts to a duplication to grant jurisdiction to the courts martial over it, when owing to gravity of these offences Parliament conferred jurisdiction over them to ordinary Courts. The other issue for consideration is the danger posed by concurrent jurisdiction; where the military court could try a case that is also before the ordinary Court. This would necessitate the establishment of a mechanism between the courts martial and DPP to manage the cases, beyond the mere provision in the UPDF Act that the jurisdiction of the courts martial does not take away that of the civilian courts. Concurrent trials in both military and ordinary courts for a civil offence would also be prejudicial to an accused for the simple reason that it could lead to double jeopardy as each court could potentially come up with a guilty verdict.

Additionally, as already noted, the GCM and other military courts are all subordinate Courts. See A.G V ULS Const. Appeal No. 1 of 2006. However, I do not agree with Mulenga JSC's finding where he held that the GCM is subordinate but not lower than the High Court. According to the Black's Law Dictionary, Brayan A. Garner, Eight Edition 'subordinate' means "Placed in or belonging to a lower rank, class or position" or "subject to another's authority or control." Assigning the ordinary English meaning to the word 'subordinate,' all Courts martial as subordinate

courts created under 129 (1)(d) can only have jurisdiction that is lower than the High Court. Saying that it is subordinate but not lower than the High Court is contradictory and has the potential to create an absurdity when it comes to the hearing of capital offences. If Parliament desires to grant them the jurisdiction to handle capital cases then it would need to do so in line with the Constitution. I will return to this later in an advisory opinion to explore the options that could be undertaken by Parliament to achieve this effect Constitutionally. With this finding, the hearing by all Courts martial of offences within the jurisdiction of the Courts of record is unconstitutional under Arts. 28(1), 44(c), 128(1) and 129 91) (d).''

"the general rule is that ordinary Courts alone have jurisdiction to try civilians". The Supreme Court was unable to find any rational or justifiable link between the need to maintain discipline in the army or the maintenance of security of the Ugandan borders, and trial of civilians in the military courts tribunals generally; (Pg 148).

Having held as above, the Chief Justice made the following orders-

(a) The provisions of s.179 (1) & (2) (now 177(1) & (2)) of the UPDF Act, read together with s. 197 (2) (now s.195 (2)), which grant the subordinate military courts jurisdiction over capital offences contravene Art. 129(1) (d) and Art, 126(1), of the Constitution; hence they are unconstitutional.

(b) The provision of s.119(1) (g) (now s. 117 (1) (g)) is unconstitutional to the extent that it permits trial, in the courts martial, of civilians who have allegedly aided and abetted the commission of a service offence, or

ordinary criminal offence, in which a person subject to military law is a principal offender.

(c) Sections ss. 2, 179, 119 (1) (h) and (g) (now respectively ss.1, 177, 117 (1) (h) and (g)) of the UPDF Act, are unconstitutional since they confer blanket jurisdiction on Courts Martial to try civilians.

(d) The jurisdiction conferred by ss.2, 179, and 119(1) (h), (now ss.1, 177, and 117 (1) (h), of the UPDF Act, on the GCM to try persons' subject to military law for civil and, or, non-disciplinary offences committed in Uganda, unconstitutional; as they contravene Articles 209 & 210 of the Constitution.

The minority observe that the Supreme Court decision had the following effects-

- The trial of civilians by Military courts is only permissible in exceptional circumstances and only after the State has concretely demonstrated to the court by verifiable facts, and by objective and serious reasons, the need and justification for recourse to the military court;
- Military courts can only have jurisdiction in relation to the specific class or category of persons and specific offences which ordinary courts are not in position to try;
- The jurisdiction of military Courts cannot extend to cases reserved for specialized Courts, such as the Anti-corruption Court under the Anti-corruption Act, International Crimes Division under the Anti-Terrorism Act;
- Military Courts cannot have jurisdiction over offences which require the consent of the DPP;

- Civilians cannot commit or be tried for service offences, even when they abet or aid the commission of service offences;
- Where civilian and military personnel have committed a crime, other than a service offence, both should be tried in the civil courts;
- Parliament cannot duplicate offences prescribed in other Acts of Parliament and introduce them in the UPDF Act.

The ratio from the above, with a sober appreciation of the provisions Article 28 of the Constitution leads to one inevitable and incontrovertible conclusion that all persons militant or otherwise facing criminal trials have a right to appear before a competent, independent, fair and impartial court or tribunal. With a decision of the Supreme court the trial of persons with offences within the exclusive jurisdiction of civil courts particularly the High court, military courts are not competent to try such cases. It goes therefore without saying that any such trial will still be unconstitutional and will offend the principles of fair trial. Accordingly, enacting the proposed legislation into law will be a legislation in vain.

The common theme amongst the Justices of the Supreme Court was that the GCM is a tribunal and should be kept as such;

> *"Let me conclude on this note. Courts-martial should be specialised disciplinary tribunals with restrictive functions to handle disciplinary matters that are peculiar to and connected with the discipline and regulation of the armed forces."* Per Justice Catherine Bamugemereire, JSC at page 41 of her judgment.

"Going forward, only cases involving members of the UPDF and related to disciplinary offences under Part VI of the UPDF Act should be tried by the General Court Martial and other military Courts, and that only the disciplinary sanctions as described at (c) above can be imposed by the military courts in those cases." Per Justice Elizabeth Musoke, JSC at page 22 of her judgment.

The offences proposed by the Bill to be prosecuted before the courts martial are capital offences within the exclusive jurisdiction of the High court to which the Courts martial are subordinate and cannot have co-current jurisdiction with the High court.

It is the view of the minority that in compliance with the constitution and in view of the judgement of the Supreme court this House finds pleasure in rejecting the proposal to try persons in military courts contrary to the law and finds that the proposed Bill is inappropriately placed before us.

The proposal section 117A (1) (c) and (f) of the Bill

The proposed section 117A (1) (c) allows military courts to try civilians who are found in unlawful possession of arms, ammunition or equipment ordinarily being the monopoly of the Defence Forces, prescribed in Schedule 7A to this Act or classified stores prescribed in Schedule 7B to this Act.

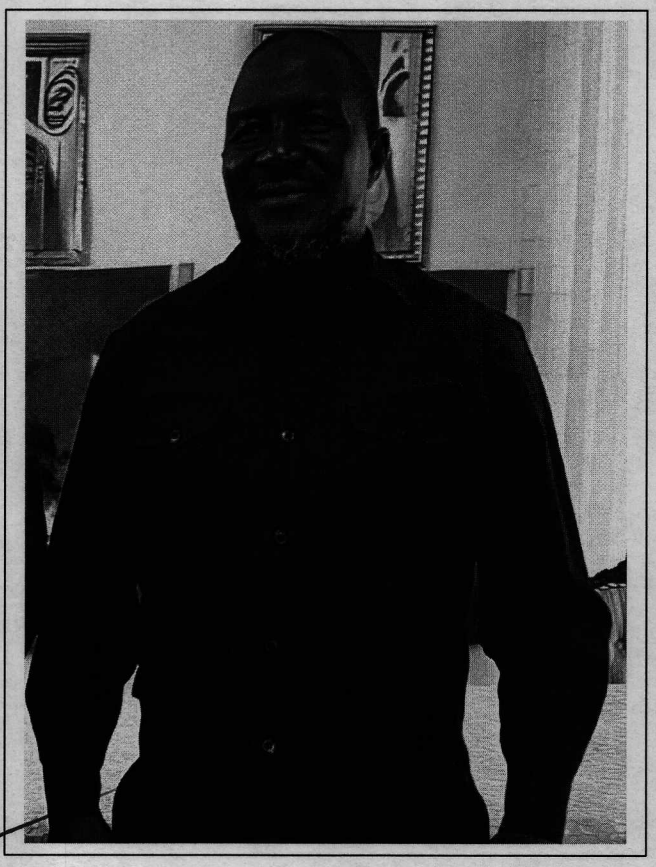
This provision contravenes the letter and spirit of the Supreme Court decision since it is not an exceptional circumstance envisaged by the Supreme Court

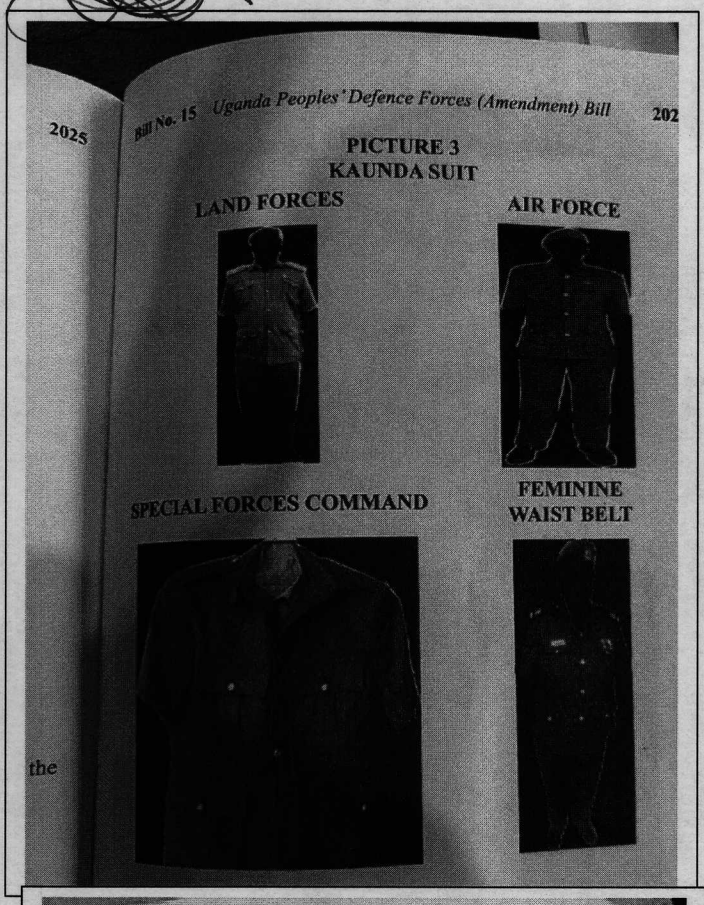
owing to the fact that the civilians who are found in possession of firearms and can be tried by civilian courts under the Firearms Act, the Explosives Act and the Penal Code Act. These Acts contain provisions that effectively deal with the unlawful possession of arms, ammunition and classified stores, thereby making the proposal to grant the trial of such offences to military courts untenable.

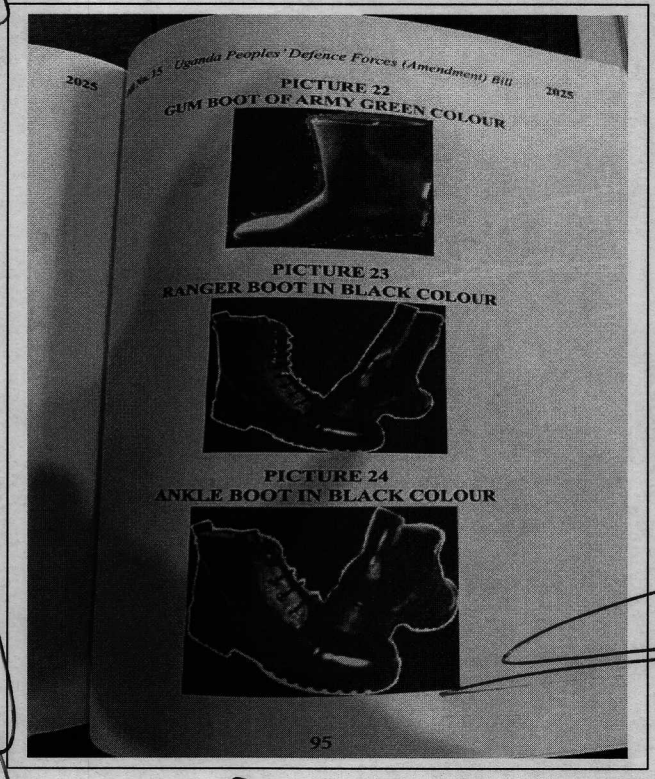
Similarly, the provision makes reference to a schedule 7B on classified stores which contains matters that are ordinarily for civilian use. For instance, the Bill declares all black shoes, belts, green Kaunda suits, army green gum boots, black ranger boots, ankle boots in black colour and jungle boots of all colour to be the preserve of the army and possession of which renders a person to be tried in the court martial. ***(See page 94, 95 and 96 of the Bill).*** This is an absurdity since the shoes and other apparel are in common usage and ownership by civilians and the blanket inclusion of the same as military stores has the effect of criminalising a huge section of the Ugandan population for items they lawfully own.

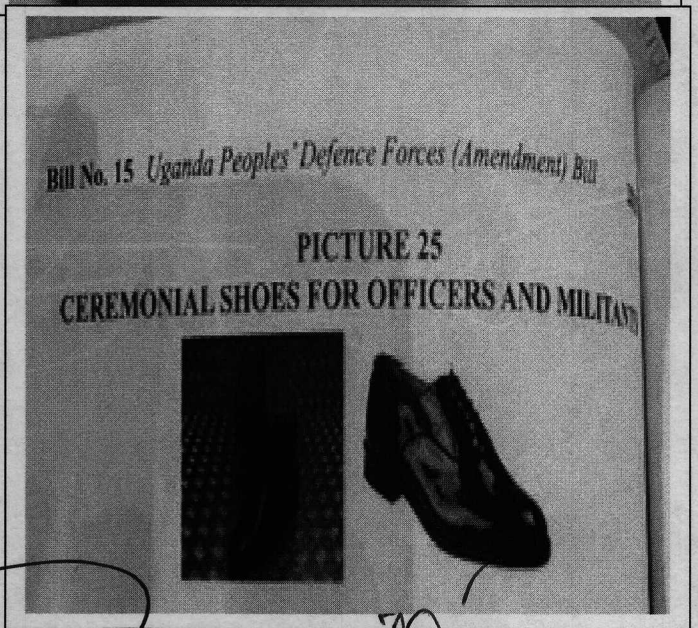
The description given to the offending items is too general and imprecise to support penal provisions and attract criminal liability, it would therefore be struck down on account of being void for vagueness. The military cannot be permitted to simply gazette colours, names and designs to constitute classified stores without reference to any insignia, mark, logo or other distinguishing features.

SCHEDULE 7B - KAUDA SUITS, GUMBOOTS AND SHOES AS CLASSIFIED STORES









The proposed section 117A (1)(d) of the Bill The proposed section 117A (1) (d) of the Bill allows military courts to try civilians who aid or abet a person subject to military law in the commission of, or conspires with a person subject to military law to commit the offence of murder, aggravated robbery, kidnap with intent to murder, treason, misprision of treason and cattle rustling.

The minority find that this provision equally contravenes the letter and spirit of the Supreme Court decision since it is not an exceptional circumstance envisaged by the Supreme Court owing to the fact that the civilians and militants and officers who are found to have committed murder, aggravated robbery, kidnap with intent to murder, treason, misprision of treason and cattle rustling can be tried under the Penal Code Act.

The minority note that the clause has the effect of expanding service offences beyond disciplinary matters, contrary to the directions of Court. The proposal also has the effect of expanding service offences to capital offences created under other Acts, contrary to the specific findings of court. The minority note that this matter was canvassed by the Supreme Court and directed that that sections 2, 179, and 119(1) (h) (now ss.1, 177, and 117 (1) (h)) of the UPDF Act are rendered unconstitutional for duplicating offences triable by other enactments; and also for providing the military tribunals with judicial power to try all offences in other enactments that are triable by civilian Courts. The Supreme Court noted that this can lead to a violation of Article 28 of the Constitution which does not allow double jeopardy and also denies some persons the right to appear before the ordinary or civil courts of law. (Pg 184). In the same vein, the Court found that where an offence attracts the death penalty, a court martial should have no jurisdiction to try it due to the fact that

no right of appeal to the Supreme Court is provided for by the UPDF Act (Pg 184).

Further the fact that the Court martial is a subordinate court cannot entertain capital offences which are a preserve of the High court and therefore military courts cannot exercise concurrent and equivalent jurisdiction.

The minority note that the proposal to include the offence of murder, aggravated robbery, kidnap with intent to murder, treason, misprision of treason and cattle rustling as service offences has the effect of conferring to military courts jurisdiction to try non-disciplinary offences committed in Uganda, thereby contravening Articles 209 & 210 of the Constitution.

The proposed section 117A (1) (e) of the Bill

The proposed section 117A (1) (e) of the Bill allows military courts to try civilians who, without authority, are found in possession of, sell or wear uniform of the Defence Forces. This provision contravenes the letter and spirit of the Supreme Court decision since it is not an exceptional circumstance envisaged by the Supreme Court owing to the fact that the civilians who are found in possession of, sell or wear a uniform of the Defence Forces can be tried by civilian courts under section 152 of the Penal Code Act. The provision further duplicates offences prescribed in other Acts of Parliament and introduces them in the UPDF Act. The minority note that the proposal also has the effect of expanding service offences to offences created under other Acts, contrary to the specific findings of the court. The minority note that this matter was canvassed by the

Supreme Court and court directed that that sections 2, 179, and 119(1) (h) (now ss.1, 177, and 117 (1) (h)) of the UPDF Act are rendered unconstitutional for duplicating offences triable under other enactments.

(iii)Offending the doctrine of separation of powers;

Modern democracies are typically organised around three branches of government with each playing a crucial but distinctive role.

Adjudication in particular is a function and a preserve of the judicial branch of government overriding or intrusion would by any of the other two would inevitably offend the constitution.

The judgement of the Supreme Court covers situations where the military under the UPDF Act may depart from this position but only in very exceptional circumstances that are consistent with demonstrable justification. The CJ at page 78 to 79 quoting R. Naluwairo in his work; *Improving the Administration of Justice by the Military in Africa; An Appraisal of the Jurisprudence on Human and People's Rights (2019) 19 African Human Rights Law journal 43-61* and a host of other authorities, held that separation of powers helps to provide sufficient safeguards to ensure a fair hearing by instruments enunciating the law on independence and impartiality of the court martial. Such are cardinal and core to the administration of justice.

The minority are of the view that granting the military through Courts martial the unlimited power to try persons with offences beyond disciplinary ones would be a violation of the separation of powers

doctrine beyond its functions envisaged under Article 209 of the Constitution.

Article 210 of the Constitution pursuant to which the UPDF Act was enacted did not envisage the establishment of a military with a judicial function. Such an extension therefore can only be the hand work of an overzealous but mischievous stretch of imagination rooted, brewed and bred in imperfection by proposing an amendment which doesn't meet the test of legitimacy and we invite Parliament to reject this Bill to this extent.

3.0 Impartiality and Independence of Military Courts.

Impartiality and independence are not decorative ideals, they are constitutional imperatives grounded in Article 28 of the Constitution (right to a fair hearing) and Article 128 of the Constitution (independence of the judiciary). Military courts, as creatures of statute and subordinate to constitutional principles, are bound by these standards.

Article 128 (1) of the Constitution also imposes a requirement as to objective independence of the Courts or tribunals exercising judicial power as a safeguard to a fair hearing. It states 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."*

The Bill, in clauses 35, 36, 38 and 45 provides for various amendments to the UPDF Act specifically to provisions establishing courts Martial. It creates the following courts martial-

(a) A Unit Court Martial;

(b) Division Court Martial;

(c) General Court Martial;

The Bill removes the following courts and trial processes

(a) commanding officer or officer commanding,

(b) trial by superior authority;

(c) Court Martial Court of Appeal;

(d) field court martial;

(e) summary trial;

Despite the aforementioned, the Bill did not respond to the orders and recommendations of the ***Constitutional Appeal No.2 of 2021: AG Vs Hon. Micheal A. Kabaziguruka as far as independence and impartiality are concerned.*** The court made findings about the structure, independence, qualifications, funding, security of tenure, mode of appointment and other matters of the courts Martial established under the UPDF Act.

The Chief Justice at page 80, citing the European Court of Human Rights case of *Findlay v United Kingdom (1997) 24 EHRR 221 at 244-245 that held that*

"...in order to establish whether a tribunal can be considered as 'independent', regard must be had inter alia to the manner of

appointment of its members and their term of office, the existence of guarantees against outside pressures and the question whether the body presents an appearance of independence. The concepts of independence and objective impartiality are closely linked and the court will consider them together as they relate to the present case."

He further held that: -

"I am bound to follow the route that will ensure an impartial and fair trial both objectively and subjectively viewed by any reasonable person. Active service men are under the chain of command and maybe influenced through the chain of command. The law and history shows us how influential the chain of command is on justice in military courts. Furthermore, the oath taken by the members of a military court under r. 27 of the UPDF (Rules of Procedure) Regulations binds them to their chain of command. The oath of allegiance taken by the military is in the 5th Schedule thereof; and provides for allegiance to the President who is also a member of the High Command and convener of the military Courts." Page 94

"I find that the presence of military personnel as members of the Courts martial is not, by itself, evidence of the Court's lack of independence and impartiality. However, when viewed by an objective reasonable person, there is a difference between active servicemen under the chain of command, and former servicemen who are in retirement, or

about to retire, and are therefore not influenced by any hope of promotions. This is exacerbated by the lack of provisions in the law, which would operate to reduce the pressure of outside influence; and, as well, the lack of other safeguards, e.g. security of tenure. This, taken together with the non-inclusion of a legally qualified judge on the panel to rule on legal issues, denies the Courts martial the independence and impartiality, which would have clothed them with competence." Page 95

"...the provisions for the appointment of personnel on the Courts martial must be in conformity with the provisions for the appointment of judicial officers in the civil Courts; and thereby avoid having two parallel Court systems pursuing the same or similar subject matters. Third, the effect of the appointment must be considered alongside other safeguards, such as the term of office, and security of tenure. Admittedly, the President who is the Commander in Chief appoints the judicial officers of the civil Courts. However, these judicial officers do not take oath of allegiance to the President; but to the Constitution. Furthermore, they are not bound to take orders from the President. It is the safeguards provided for in Article 128 (8) (1)- (9) of the Constitution that insulates them from external influence or consequences; thus guaranteeing their independence." Page 97.

This requirement is in line with the doctrine of separation of powers, which in context demands a separation of judicial from executive functions and powers

in order to have a proper system of checks and balances. The critical aspects to consider in determining whether military courts are truly independent from the executive are the method of appointment/designation of their members; the length of their tenure; the existence of protection against external pressures; and the issue of real or perceived independence.

Whereas the minority note that the issue of qualifications has been partially addressed (where some members are not required to have requisite academic qualifications therefore not technically competent), guaranteeing the independence, impartiality and competent of military courts goes to the root of their jurisdiction. The fusion of the military courts with the executive arm of government is therefore a fundamental disqualification against military courts. Under their military code of conduct, officers and men are obligated to respect the military chain of command.

These military personnel are not adequately insulated from orders, commands and threats of retribution whether during or after their tenure at the court martial. This would greatly have an overbearing influence while performing their judicial functions.

Clauses 35, 36, and 38 of the Amendment empower the High Command, an executive and military organ to appoint members and chairpersons of court-martials, with only non-binding consultation with the Judicial Service Commission. Clause 38(3) entrenches this further: "members of the General Court Martial shall be serving members of the Defence Forces." These are not independent judges they are command-bound officers.

The token provisions in clause 45 declaring military courts "independent and impartial and prescribing a "judicial oath" not subject are cosmetic. This is so because the entirety of the structure does not speak to that independence and impartiality of the court. Clause 45 among others seeks to establish a disciplinary committee for judicial officers appointed by the High command. Such does not conform to the tenet of independence as compared to the Judicial service commission established under Article 146 of the Constitution. Without structural reforms such as protected security of tenure, appointments delinked from the High Command and prohibition against interference, such declarations are empty. Judicial Independence is not merely about how judges behave but also how they are perceived. A reasonable observer must believe the tribunal is free from control. When appointments, renewals, and promotions are tied to military command, impartiality becomes a fiction. Pursuant to Article 142 of the Constitution, civil judges are appointed by the President on the advice of the JSC and with Parliamentary approval. They take a judicial oath in accordance with the Constitution, not to the President, and are protected by Article 128 on judicial independence. Their manner of appointment, tenure of office and removal are all guaranteed and constitutionally protected. The funding of the Judiciary with the terms are all guaranteed under the constitution and delinked from the executive. The constitutional guarantees are given effect by a separate Act of Parliament enacted for that particular purpose.

In contrast, under the proposed Amendment:

- Unit, Division, and General Court Martial Chairpersons are appointed by the High Command (See Clauses 35, 36, 38),
- Tenure is only three years, and members are eligible for reappointment (Section 38(4)),
- The appointees remain serving military officers.
- The financing is fused within the military establishment.

This framework is constitutionally defective as **Alfonse C. Owiny – Dollo, Chief Justice** reasoned in *Kabaziguruka*, appointment methods must mirror those of civil judicial officers to prevent the rise of a parallel, unchecked system. An ad hoc, executive/High Command controlled appointment structure lacks the security of tenure and independence envisaged under Articles 128 and 144 of the Constitution.

Judicial independence is not a polite suggestion, it's a hardwared constitutional demand, enshrined in **Articles 128, 142, and 144** of the 1995 Constitution. These provisions insulate judges from executive interference by prescribing **appointment through the Judicial Service Commission (JSC)**, **secure tenure**, and **immunity from arbitrary removal.** The contrast between this regime and the one outlined in the UPDF (Amendment) Act is stark.

As observed herein, Clauses **35, 36, and 38** of the proposed Amendment continue the practice of allowing the **High Command**, a body chaired by the Commander-in-Chief to appoint chairpersons and members of the **Unit Disciplinary Committee (UDC)**, **Divisional Court Martial**, and **General Court Martial (GCM)**. This indicates that judicial appointments are made by a military body under the direct control of the President. This is contrary to the judgement

in Attorney *General v. Kabaziguruka*, where **Alfonse C. Owiny – Dollo, Chief Justice** cautioned that any judicial forum exercising functions similar to those of civilian courts must mirror civilian appointment standards. Anything less violates the **separation of powers** and erodes the institutional legitimacy of such tribunals.

Justice Monica Kalyegira Mugenyi, JSC held that the General Court Martial should be substantially composed of civilian judges who are directly appointed thereto by the Judicial Service Commission in accordance with the Constitution (as is presently done in respect of judges of the Industrial Court), and the member(s) of the General Court Martial from within the military should be appointed in consultation with the Judicial Service Commission. The proposed non-binding consultation with the JSC does not cure this defect. Where the JSC lacks decisional authority, it merely rubber-stamps military preferences. This is not oversight. It is camouflage.

Clause **38 (4)** of the Amendment Act stipulates that members of the General Court Martial serve **three-year terms, renewable** upon reappointment by the High Command. This model creates a fundamental problem: **expectation of renewal** becomes a lever of control. The fear of retribution becomes real and operative throughout one's tenure of service. This is the vice that **Article 144(1)** of the Constitution is meant to guard against in the civilian judicial appointments by fixing the retirement age and prohibiting arbitrary removal. The Supreme Court rightly pointed out that **true independence requires insulation from removal, reappointment pressure, or interference in administrative functioning.**

Under Clause **38(3)**, all members of the General Court Martial must be **serving members of the UPDF.** This creates **dual loyalty** to their oath and to the Chain of Command. **You cannot serve two masters and remain impartial.**

A military officer who relies on superior officers for promotion, deployment, and career progression is unlikely to decide cases involving fellow officers or politically sensitive civilians with complete detachment. This is not speculation it is institutional reality.

The proposed amendment in clause 45 seeking to insert Section **202C** provides that military courts "shall be independent and impartial." But this is legislative theatrics, not legal reform. The test is not what the law declares, but what structures and incentives it creates. As Justice Bamugemereire and **Alfonse C. Owiny – Dollo, Chief Justice** warned, safeguards are not sufficient when institutional control remains intact. The *form* of independence without *substance* is a constitutional fraud.

Under the civilian Court system, it's the DPP that is in charge of prosecution. Under Article 120 of the Constitution, the Director of Public Prosecutions (DPP) alone holds the constitutional mandate to prosecute. The amendment Bill, particularly **Clause 45 inserting Section 202B, resurrects the problem of internal, military-controlled prosecution.** The "Military Courts Department," chaired by the Court Martial Chairperson and including prosecuting officers, is not under the DPP. This offends the separation of powers and fair trial guarantees under Articles 28 and 120 of the Constitution. The protection offered to the citizens by the ODPP in avoiding abuse of court processes is not available to persons charged before military courts.

The military courts Department Falls under the administrative control of the **Chairperson of the General Court Martial,** including military prosecutors whose functions are entirely outside the DPP's purview and supervision. All other prosecuting agencies in the country including IGG, URA among others do so under license and supervision of the DPP which is not the case with the proposed Bill.

In effect, the **prosecutor and judge are drawn from the same command hierarchy,** often reporting to the same superior officers. This **militarized prosecutorial framework violates both Articles 28 and 120 of the Constitution** (fair trial guarantees), because: It **lacks prosecutorial discretion** insulated from command pressures; It places **command-bound prosecutors** in a position to decide who is prosecuted, for what offence, and how proceedings are managed; it eliminates any form of **civilian accountability or oversight,** raising red flags about impartiality and abuse of process.

To this extent, the UPDF amendment Bill fails on this count.

Recommendations

The Minority find that the provisions of clause 30, specifically the proposed section 117A is unconstitutional, irregular and illegal as far as-

(a) it allows the trial of civilians by Military courts in circumstances that are not exceptional;

(b) it extends the jurisdiction of Military courts to the entire civilian population and to all offences which ordinary courts are in position to try;

(c) it extends military Courts to cases reserved for specialized Courts, such as the High Court;

(d) it extends service offences to civilians;

The Minority cautions Parliament that the Supreme Court directed that Parliament cannot duplicate offences prescribed in other Acts of Parliament and introduce them in the UPDF Act. We therefore recommend that the same be rejected.

4.0 Lack of Public Participation

The Constitution in Article 38 (1) and (2) thereof reaffirms the right of every citizen to participate in the affairs of government in accordance with the law. This includes engaging in peaceful activities to influence the policies of Government.

On the Tuesday the 13th May 2025 the Clerk to Parliament issued a notice inviting the Public to submit their views to Parliament by or before the 14th day of May,2025. It is clear that by the time of issuing the notice the Bill had not been presented to Parliament in the plenary which started at 2:00PM. The requirement for public participation is rooted and entrenched in our constitutional framework and must not be cosmetic reasons. Kakuru J A in Constitutional petition no 49 of 2017,3 of 2028,10 of 2018 and 13 of 2018 assailed the amendment process for lack of genuine consultation and public

participation. Various stakeholders were therefore locked out of the process due to this clearly cosmetic semblance.

In the view of the minority this didn't meet the required standard of public participation indeed apart from the Attorney General and the sponsoring Minister, the Committee interacted with only two other stakeholders that is DPP and Counsel Jude Byamukama. One would wonder why a matter of great National importance of this magnitude would only attract two external stakeholders, this is unprecedented in matters of this nature.

On this account, in addition to other reasons given the minority invite Parliament to reject the Bill to the extent proposed herein

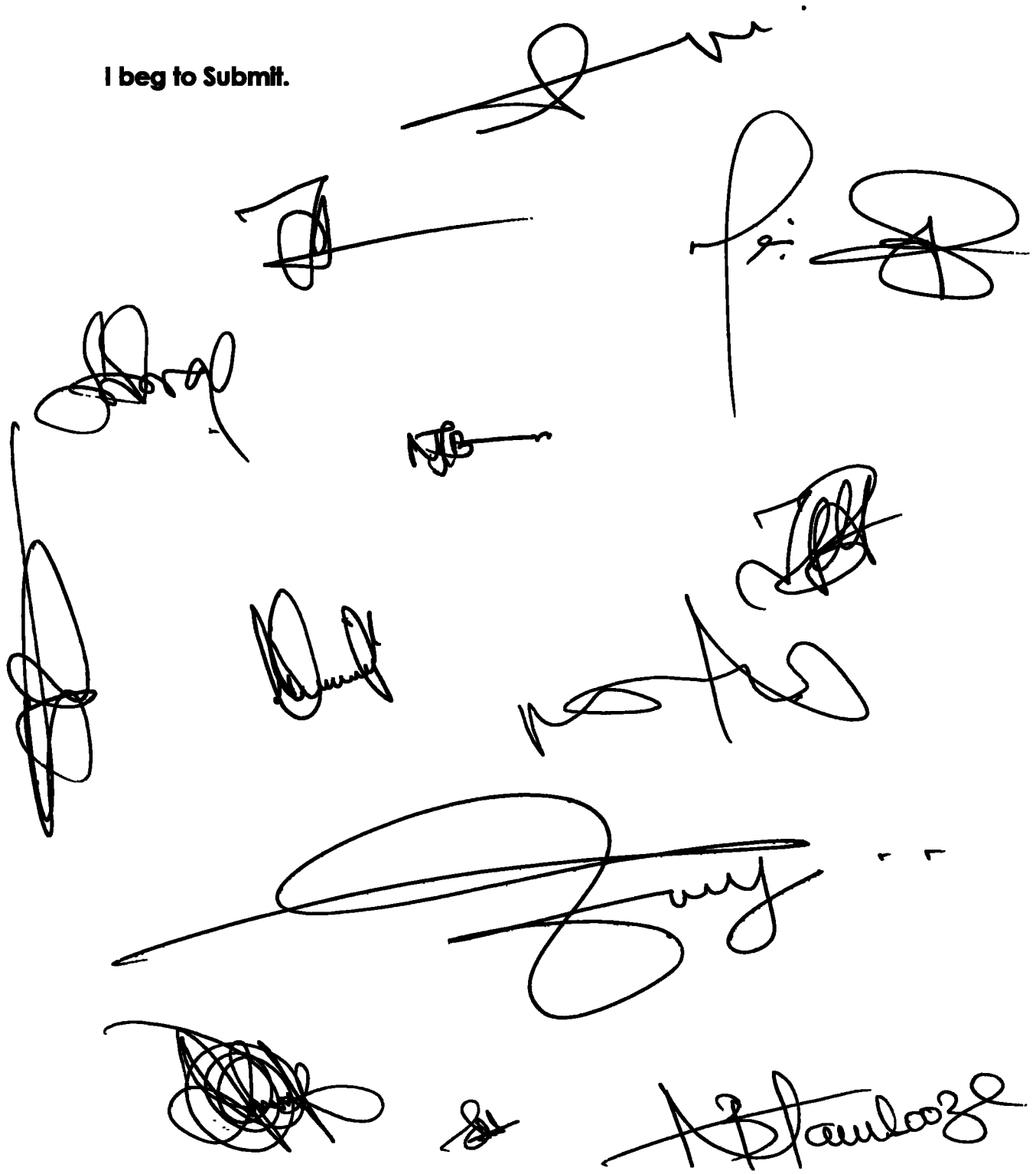
Conclusion.

Rt. Hon. Speaker, whereas reforms within the UPDF are necessary to address contemporary security challenges, such reforms must not compromise constitutional rights, judicial independence, or civilian oversight. We the minority persuade this Parliament to reconsider the provisions of the UPDF Amendment Bill, 2025, to ensure that they align with the principles of democracy, rule of law, and respect for human rights.

Therefore, the minority unanimously are of the opinion that the General Court Martial (GCM) and other military courts do not have constitutional jurisdiction to try civilians or adjudicate non- disciplinary criminal offences, even if committed by members of the Uganda People's Defence Forces (UPDF). Under Article 210 of the 1995 Constitution, Parliament's power to legislate for military courts is strictly confined to matters of discipline and removal of UPDF

members. Military courts are therefore internal disciplinary bodies, not general criminal courts, and cannot override the constitutional mandate that all criminal justice, including fair trial rights under Articles 28 and 44, lies exclusively with the ordinary Courts of Judicature.

I beg to Submit.



S/NO	NAME	CONSITUTENCY	SIGNATURE
1	Medard Lubega Sseggona	Busiro East	
2	Mpuga Mathias	Mukungwe -Nyendo	
3	Basalirwa Asuman	Bugiri Municipality	
4	Lumu Richard Kizito	Mityana South	
5	Katuntu Abdul	Bugweri	
6	Nyeko Derrick	Makindye East	
7	Kiwanuka Abdalla	Mukono North	
8	Sekitooleko Robert	Bamunanika	
9	Naboth Namanya	Rubabo	
10	Santa Alum	Oyam District	
11	Najjuma Sarah	Nakeseke District	
12	Niwagaba Wilfred	Ndorwa East	
13	Kamugo Pamela	Budaka District	
14	Peter Okeyoh	Namayingo (Bukooli Islands).	
15	Odur Jonathan	Erute South	
16	Nambooze Betty Bakireke	Mukono Municipality	
17	Okot Bitek Junior Mose	Kioga	
18	Olanya Gilbert	Kilak South	
19	Adeke Ebaju	Soroti District	
20	Nsanja Patrick	Ntenjeru	
21	Nambeshe John Baptist	Manjiya	
