



THE TEN REASONS

**WHY THE UGANDA PEOPLE'S DEFENCE FORCE
(AMENDMENT) BILL, 2025, SHOULD NOT BE PASSED,
IN ITS CURRENT FORM**

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2025

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FOREWORD

The constitutional and human rights implications of the Uganda People's Defence Force (Amendment) Bill, 2025, demand careful scrutiny and informed public debate. This document presents a rigorous legal analysis that highlights the fundamental threats posed by the Bill's proposed expansion of military courts' jurisdiction over civilians. Such a shift undermines core principles of judicial independence, separation of powers, and the fair trial rights guaranteed under Uganda's Constitution and international law.

The authors provide a thorough examination of the Bill's provisions, juxtaposed against constitutional mandates and binding Supreme Court precedent. Their analysis reveals that the Bill, in its current form, not only defies judicial authority but also risks institutionalizing arbitrary and discriminatory justice practices. The paper serves as a vital resource for policymakers, legal practitioners, civil society actors, and all stakeholders committed to safeguarding democratic governance and human rights in Uganda.

It is our hope that this analysis will inform ongoing discussions and contribute to preserving rule of law and the protection of civilian rights in Uganda.

INTRODUCTION

The Uganda People's Defence Force (Amendment) Bill, 2025¹, proposes to significantly expand the jurisdiction of military courts over civilians, a move that threatens to upend constitutional guarantees, defy binding judicial precedent, and violate Uganda's international human rights commitments. This legal analysis sets out ten compelling reasons why, in its current form, the Bill should not be passed.

Military courts are institutions designed to enforce discipline within the armed forces, not to adjudicate the rights and freedoms of civilian populations. Extending their reach over civilians undermines core principles of the rule of law, including the right to a fair trial before an independent and impartial judiciary, and disrupts the constitutional separation of powers. The Supreme Court of Uganda has already ruled that the blanket trial of civilians in military courts is unconstitutional, ordering the immediate cessation of such practices². Despite this clear judicial guidance, the Bill attempts to circumvent these protections under the guise of "exceptional circumstances," while making only superficial reforms to court structures and appeal mechanisms. This approach risks institutionalizing injustice, entrenching discrimination, and opening the door to arbitrary prosecutions.

This analysis critically examines the Bill's objectives, provisions, and implications, demonstrating that it fails to address the Supreme Court's concerns in any meaningful way. Instead, it perpetuates unconstitutional practices, weakens judicial independence, and violates international human rights norms. The Bill, as drafted, poses a grave threat to the legal rights of Ugandan civilians and must be rejected in its entirety³.

1 Uganda People's Defence Force (Amendment) Bill, 2025.

2 Constitutional Appeal No. 2 of 2021, Attorney General Vs. Hon. Michael A. Kabaziguruka.

3 See United Nations Human Rights Committee, General Comment No. 32: Right to equality before courts and tribunals and to a fair trial (Article 14), UN Doc CCPR/C/GC/32 (2007), which affirms that military courts should not have jurisdiction over civilians except under very exceptional circumstances and where full fair trial guarantees are respected.

THE TEN REASONS WHY THE UGANDA PEOPLE'S DEFENCE FORCE (AMENDMENT) BILL, 2025, SHOULD NOT BE PASSED, IN ITS CURRENT FORM

1. Objectives: A Façade of Compliance?

The stated objectives of the proposed bill represent a superficial attempt to align with the Supreme Court's ruling against the blanket trial of civilians in military courts. While they acknowledge the need for "exceptional circumstances" and address issues of "independence" and "appeals," a closer examination reveals that they may fall far short of genuinely addressing the concerns that underpinned the Court's decision⁴.

The Supreme Court's invalidation of the blanket trial of civilians stemmed from a fundamental recognition that military courts, by their inherent nature, are ill-suited to provide fair and impartial justice to civilians. These concerns revolve around three core issues: ⁵

1. **Lack of Independence:** Military courts are subject to command influence, potentially compromising their ability to act independently of the military hierarchy.
2. **Lack of Impartiality:** Military courts are primarily designed to maintain discipline within the armed forces, creating a potential bias against civilian defendants.
3. **Lack of Competence:** Military courts may lack the specialized legal expertise necessary to handle complex civilian legal issues.

⁴ Uganda People's Defence Force (Amendment) Bill, 2025.

⁵ Constitutional Appeal No. 2 of 2021, Attorney General Vs. Hon. Michael A. Kabaziguruka.

The crucial question is whether the bill's objectives, even if fully implemented, would adequately address these underlying concerns. Simply stating an intention to "prescribe exceptional circumstances" is not enough. The *definition* of those circumstances is paramount. If the "exceptional circumstances" are defined too broadly, they could effectively swallow the rule, allowing for the routine trial of civilians in military courts under a thinly veiled guise of "exceptionality."⁶

Furthermore, the objectives relating to "independence" and "appeals," while laudable on their face, may prove to be insufficient. Cosmetic changes to the structure or procedures of military courts will not necessarily address the inherent problems of command influence and institutional bias. True independence requires more than just formal pronouncements; it requires a fundamental shift in the culture and mindset of the military justice system.

The bill's objectives also fail to address the issue of competence.

There is no indication that the bill seeks to ensure that military courts have the necessary expertise to handle complex civilian legal issues. Subjecting civilians to courts that lack this expertise would undermine their right to a fair trial⁷.

In conclusion, while the bill's objectives *appear* to respond to the Supreme Court's ruling, a deeper analysis suggests that they may be inadequate to address the underlying concerns that led to that ruling. The success of the bill in achieving genuine compliance with the Supreme Court will depend entirely on the *specific provisions* of the bill, particularly the definition of "exceptional circumstances" and the measures taken to ensure the genuine independence, impartiality, and competence of military courts. Without a clear and convincing demonstration that these concerns have been adequately addressed, the bill is likely to face further legal challenges and could ultimately be deemed unconstitutional.

6 <https://www.hrw.org/news/2011/07/27/uganda-end-trials-civilians-military-courts>, Human Rights Watch

7 Article 28(1) of 1995 Constitution

2. Unconstitutionality Under Article 28: Right To A Fair Hearing

Article 28 of the Constitution of Uganda guarantees the right to a fair hearing before an independent and impartial court or tribunal. Military courts, by their nature, are ill-equipped to provide such a hearing to civilian defendants. The hierarchical structure of military courts and the command influence inherent in their operations compromise their independence and impartiality when adjudicating cases involving civilians. Subjecting civilians to military courts therefore violate Article 28 of the Constitution of Uganda⁸.

3. Violation of the Separation Of Powers Doctrine

The Constitution of Uganda divides governmental power among the executive, legislative, and judiciary. Delegating judicial authority over civilians to military courts, which are part of the executive branch, violates the separation of powers doctrine⁹. This commingling of powers undermines judicial independence and threatens the integrity of Uganda's democratic institutions¹⁰. Transferring judicial power to the military is an unconstitutional encroachment on the judicial branch's authority¹¹. The separation of powers is a core tenet of democratic governance, designed to prevent the concentration of power and the potential for abuse¹². By vesting judicial authority in the military, a branch primarily responsible for defence and law enforcement, the proposed law creates an inherent conflict of interest and a risk that justice will be subordinated to military objectives.

8 Constitution of the Republic of Uganda, 1995. (as amended)

9 Constitution of the Republic of Uganda, 1995, Art 126(1); Art 128(1).

10 Uganda Law Society v Attorney General [2009] UGSC 2, holding that military courts exercising judicial authority over civilians violates the independence of the judiciary.

11 *ibid*; see also Art 129(1) of the Constitution, which vests judicial power exclusively in courts established under Chapter Eight.

12 Montesquieu, *The Spirit of the Laws* (Cambridge University Press 1989) bk XI, ch 6.

4. Disregard For Supreme Court Precedent And Article 92

The Supreme Court of Uganda, in its 2025 decision, unequivocally held that the trial of civilians in military courts is unconstitutional¹³. This decision is binding on all state organs under the doctrine of *stare decisis*¹⁴. Legislative enactments that contradict a standing judgment of the Supreme Court are unlawful and erode judicial authority. The proposed bill's attempt to expand military court jurisdiction over civilians directly defies judicial supremacy and undermines the rule of law. Furthermore, while the Constitution of Uganda lacks a specific article explicitly prohibiting Parliament from enacting laws that effectively overturn court rulings, Article 92 prohibits Parliament from passing any law that would alter the decision of a court or render it ineffective¹⁵. Even if the proposed law does not explicitly overturn the Supreme Court's decision, it circumvents it by continuing to allow the practice that the court deemed unconstitutional. This renders the court's decision meaningless, violating the spirit and purpose of Article 92.

5. Parliamentary Overreach and The Undermining of Judicial Authority

While the Constitution of Uganda lacks a specific article explicitly prohibiting Parliament from enacting laws that effectively overturn court rulings, the spirit and structure of the Constitution safeguard judicial independence and the rule of law. Article 126(1) affirms the judiciary's independence, subjecting it only to the Constitution itself. Article 128(1) further reinforces this independence and impartiality. Moreover, Article 2(b) underscores the Constitution's supremacy¹⁶.

13 Constitutional Appeal No. 2 of 2021, Attorney General Vs. Hon. Michael A. Kabaziguruka.

14 Constitution of the Republic of Uganda, 1995, Art 132(4) – decisions of the Supreme Court are binding on all other courts.

15 1995 Constitution of the Republic of Uganda, 1995, Art 92.

16 1995 Constitution of Uganda as amended

Therefore, any attempt by Parliament to use legislation to undermine or circumvent court rulings can be construed as a violation of these fundamental constitutional principles. Such actions not only challenge the judiciary's role as the ultimate interpreter of the law but also threaten the balance of power carefully established within the Ugandan government. This proposed expansion of military court jurisdiction, in direct contradiction to the Supreme Court's 2025 ruling¹⁷, represents a dangerous overreach of parliamentary power and a direct assault on the integrity of the judicial system.

6. Breach of International Legal Obligations

Uganda is a party to the African Charter on Human and Peoples' Rights (ACHPR), which guarantees the right to a fair trial (Article 7), freedom from arbitrary detention (Article 6), and protection against discrimination (Article 26)¹⁸. The African Commission on Human and Peoples' Rights, in Communication 339/2007, specifically directed Uganda to cease trying civilians in military courts¹⁹. Article 123 of the Constitution of Uganda recognizes ratified international treaties as part of domestic law. The proposed bill contravenes these international obligations and is therefore constitutionally impermissible. Beyond Article 7, the potential for military courts to impose harsher penalties than civilian courts could violate Article 5 of the ACHPR, which prohibits cruel, inhuman, or degrading punishment²⁰. Additionally, the lack of a clear right of appeal to a civilian court from a military court decision may violate Article 26, which guarantees equality before the law and equal protection of the law²¹.

17 Constitutional Appeal No. 2 of 2021, Attorney General Vs. Hon. Michael A. Kabaziguruka.

18 African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (ACHPR), Arts 6, 7, and 26.

19 Communication 339/2007: Patrick Okiring & Agupio Samson Vs. Republic of Uganda

20 See also Uganda Human Rights Commission, Annual Report 2016 (UHRC 2017) 44–47.

21 1995 Constitution

7. Creation of a Discriminatory Justice System

The proposed bill creates a two-tiered justice system in which civilians are subjected to military courts while military personnel are tried in specialized military forums or regular courts. This differential treatment violates the constitutional guarantee of equality before the law, as enshrined in Article 21 of the Constitution of Uganda. Subjecting civilians to courts with diminished procedural safeguards and limited transparency is arbitrary and unjust.

8. Lack of Independence In Military Courts

The composition and operational framework of the General Court Martial raise serious concerns regarding its independence. The Bill's proposed Amendment of Section 192(3) of the principle Act stipulates that "The members of the General Court Martial shall be appointed by the High Command, in consultation with the Judicial Service Commission."²² This appointment process is subject to executive influence, thereby impacting the court's independence²³. The presence of military personnel within the court inherently questions its impartiality.

9. Addressing Potential Justifications And Concerns Regarding Competence of the Court Martial

Proponents of expanding military court jurisdiction might argue that it is necessary to address specific threats, such as terrorism or insurgency, or that civilian courts are overburdened. However, existing laws already provide mechanisms for trying civilians in civilian courts for such offenses, with appropriate safeguards²⁴. Overburdening the

²² Uganda People's Defence Forces (Amendment) Bill, 2025.

²³ Constitution of the Republic of Uganda, 1995, Art 128(1); see also Uganda Law Society v Attorney General [2009] UGSC 2, where judicial independence was affirmed as a cornerstone of fair trial rights.

²⁴ Anti-Terrorism Act, ss 6–14; Penal Code Act Cap 128, ss 23–25.

courts is not a justification for violating constitutional rights²⁵. The competence of the Court Martial is also a significant concern. While the Bill's proposed amendment of Section 195 (1)(a) requires that the Head of the General Court Martial be "a person qualified to be appointed a judge of the High Court," and Section 195(1)(b) indicates that the court martial includes "two members, who shall be advocates of the High Court not below the rank of Colonel," the bill lacks comprehensive information on the actual competence of the court martial. There is no mention of specific training or expertise required for members of the court martial in essential areas such as military law, human rights law, or basic judicial procedures. The bill also fails to provide detailed information on the procedural rules governing the Court Martial proceedings. This lack of transparency and detail raises serious questions about the court's ability to fairly and competently adjudicate complex legal issues involving civilians.

10. The perilous ambiguity of the Proposed Amendments: A Breeding Ground for Arbitrary Power

Beyond the fundamental constitutional and human rights concerns, the proposed amendments are riddled with vague and ill-defined terms, creating a dangerous potential for arbitrary application and abuse of power. This lack of precision undermines the rule of law and violates basic principles of due process, as individuals cannot know with certainty what conduct is prohibited and when they might be subject to military jurisdiction. Specific instances of problematic vagueness include:

"Voluntarily accompanies": The absence of a clear definition of "voluntarily accompanies" leaves open the possibility that individuals could be subjected to military law even in situations where their presence with military forces is not truly voluntary. Journalists embedded with troops, aid workers providing assistance, or even civilians caught in

25 Constitution of the Republic of Uganda, 1995, Art 28(1)

conflict zones could be deemed to have “voluntarily accompanied” military units, regardless of coercion or duress²⁶.

“Active service in any place”: The phrase “active service in any place” lacks any geographical or functional limitation. Does it encompass combat zones, peacekeeping operations, training exercises, or even disaster relief efforts? The ambiguity of this term grants the military excessively broad authority to assert jurisdiction over civilians in a wide range of circumstances²⁷.

“Ordinarily being the monopoly of the Defence Forces”: The phrase “ordinarily being the monopoly of the Defence Forces,” used in reference to arms, ammunition, and equipment, is dangerously imprecise. It creates uncertainty about what types of items fall under military jurisdiction. Could a civilian who possesses a hunting rifle similar to a military weapon be prosecuted under this clause? The lack of a clear and objective standard invites arbitrary enforcement²⁸.

“Aids or abets” and “Conspires with”: The use of the terms “aids or abets” and “conspires with,” without further clarification, introduces significant ambiguity. The legal definitions of these terms are complex and require proof of specific intent. It is unclear how these concepts would be applied in a military court context to civilians. Could someone be prosecuted for unknowingly assisting a military member, or for engaging in conduct that is later deemed to be a conspiracy?²⁹

“Without authority”: The phrase “without authority,” in the context of possessing, selling, or wearing a military uniform, is undefined and creates uncertainty. Who has the authority to grant permission? What constitutes sufficient “authority”? How can a civilian determine whether they have the necessary authority? This lack of clarity could be used to

26 Proposed inserted Section 178A (1)(a) in the principal Act

27 Proposed inserted Section 178A (1)(a) in the principal Act

28 Proposed inserted Section 178A (1)(c) &(f) in the principal Act

29 Proposed inserted Section 178A (1)(d) in the principal Act

target individuals who are simply using military surplus clothing for artistic or theatrical purposes³⁰.

“Serving in the position of an officer or militant”: The phrase “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” is overly broad and lacks clear limitations³¹. It could potentially be used to target individuals involved in foreign conflicts, even if those conflicts have no direct connection to Uganda. The lack of clarity about the level of command and the types of forces involved is deeply concerning.

The cumulative effect of these vague and ambiguous provisions is to create a legal framework that is susceptible to arbitrary enforcement and abuse of power. The lack of clear standards and definitions grants excessive discretion to military authorities, undermining the rule of law and violating fundamental principles of due process. These amendments, in their current form, pose a grave threat to the rights and freedoms of civilians in Uganda.

30 Proposed inserted Section 178A (1)(e) in the principal Act

31 Proposed inserted Section 178A (1)(g) in the principal Act

CONCLUSION

The Uganda People's Defence Force (Amendment) Bill, 2025, poses a profound threat to Uganda's constitutional framework, judicial autonomy, and human rights. By disregarding the Supreme Court's ruling on military court jurisdiction over civilians and introducing ambiguous provisions, the Bill undermines the rule of law, entrenches systemic flaws, and creates a discriminatory justice system. Its vague language invites arbitrary application, erodes trust in the justice system, and jeopardizes democratic governance. The Bill's incompatibility with constitutional, legal, and human rights standards necessitates its outright rejection to safeguard civilian rights and uphold the Constitution's supremacy.

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