



THE UGANDA LAW SOCIETY

5th ANNUAL RULE OF LAW DAY

Assessing the Progress of the Rule of Law in Uganda 50 Years after Independence

Monday, 8th October, 2012

Imperial Royale Hotel, Kampala

Organized by Uganda Law Society (ULS)

and

**Supported by Konrad Adenauer Stiftung &
Justice, Law & Order Sector**

A Synthesized Report of the Proceedings

“The Judiciary is doubtless the pre-eminent player in any discussion of the Rule of Law. It is she who is the midwife to the birth of the Rule of Law. It is she who is the diligent nurse that feeds the baby with the milk of nurturing. And it is she is the trustworthy steward, the chief custodian, entrusted with the authority and privilege to shepherd the population and the state in matters touching on the Rule of Law.”

Hon. Justice James Ogoola; Chairperson, Judicial Service Commission

1. Introduction

As part of the activities to mark Uganda’s fifty years of independent nationhood and also the customary commemoration of the annual rule of law day that was inaugurated by the Uganda Law Society, the legal fraternity together with their partners Konrad Adenauer Stiftung and Justice, Law and Order Sector found it pragmatic to reflect and take stock of the developments of the rule of law over the past 50 years. Organized under the theme **“The Rule of Law in Uganda: 50 years after Independence”** on Monday, 8th October, 2012 at the Imperial Royale Hotel, Kampala. The event sought to provide an opportunity for candid discussion of the past, present and proffer options for the future with regard to the Rule of Law in Uganda. The symposium was attended by over 300 participants from across the country from both state and non-state fields of the legal fraternity.

The opening was presided over by Mr. James Mukasa Ssebugenyi the President of Uganda Law Society and Dr. Angelika Klein - the Resident Representative of Konrad Adenauer Stiftung in Uganda. The keynote address at the symposium was delivered by Hon. Justice James Ogoola, the Chairperson of the Judicial Service Commission and was complemented by eminent panelists: Mr. Peter Mulira, Dr. Miria Matembe, and Mr. Moses Byaruhanga, followed by a plenary. The presentations and plenary were unanimous that the legal fraternity as a part of the intelligentsia in Uganda needs to play a pivotal role in entrenching the rule of law in Uganda as a pathway to economic, social, and political transformation of the country.



ULS Members at the 5th Annual Rule of Law Day Event

Official Opening

*“Just imagine for one moment where Uganda would be and the levels of development we would reach if we just “**do**” the rule of law, “**think**” the rule of law, “**feel**” the rule of law,”*

James Mukasa Ssebugenyi, President Uganda Law Society

Having welcomed participants to the event, the President of ULS expressed his gratitude to Konrad Adenauer Stiftung and the Justice, Law & Order Sector for their technical and financial support towards the event. In his brief opening remarks, he indicated that the event was meant to review, reflect and re-focus on the state of the rule of law in Uganda over the last 50 years.



ULS President James Mukasa Sebugenyi makes his opening remarks at the 5th Annual ULS Rule of Law Day Event

Over the years there were indicators of a flawed system of the rule of law; marred by widespread and consistent abuse of the law, human rights and freedoms, institutional systems and procedures, and resistance to full accountability by the State or the powers that were. Adherence to the rule of law was the yardstick by which true democracies measured the quality and enforcement of their law, their political, economic, social governance and accountability; and the performance of the three arms of government. Therefore, this was an opportune moment for the ULS and Ugandan citizens to critically analyze the state of the country's Rule of Law and objectively but candidly highlight areas for improvement and to recommend and devise ways to achieve absolute rule of law.

All African constitutions without exception embrace the doctrine and practice of the rule of law. In the same vein, almost all African nations without exception pay lip service to the rule of law.

A Word from Konrad Adenauer Stiftung

In her remarks, Dr. Angelika Klein of Konrad Adenauer Stiftung begun by acknowledging the essence of the rule of law in relation to sustainable democracy. She called for effective and independent judicial systems that guaranteed and truly enforced rule of law in the country. While she celebrated the Ugandan Constitution, the supreme law of the land as a model in the whole of Africa, she decried the large implementation gap that has negatively impacted on the rule of law. She therefore noted that it was crucial to identify these gaps and identify strategies to address them. More so, the rule of law required a sound political environment for the efficient operation of all institutions. She therefore proffered that it was imperative to secure a conducive environment to allow platforms for critical assessment and consensus building to flourish. She hoped for and wished the participants a fruitful, but reflective discourse and applauded the ULS for using the unique moment to explore the opportunity- the rule of law in Uganda.



Dr. Anjelika Klein, the representative of Konrad Adenauer Stiftung makes her remarks at the Rule of Law Day Event.

The official opening ceremony was then followed by the keynote and panelist presentations. Following the presentations, the participants were accorded an opportunity to seek clarification on the presentations, affirm or challenge the presenters' views and proffer solutions for the way forward. The highlights of the presentations and key discussions are captured here below.

2. "The Rule of Law in Uganda: Fifty Years of Trial & Tragedy"

The remarkable keynote address was presented by the **Hon. Justice James Ogoola** the Chairperson, Judicial Service Commission who provided a comprehensive reflection of the past 50 years through his assessment of the judiciary and executive arms of government as implementers of the rule of law. The post independence judicial epoch was divided under five different ages: *Age of Reason; Age of Tension; Age of Chaos, Anarchy, and Tyranny; Age of the Calm before the Storm; and Age of the Twilight preceding the Jubilee Year*. While the Judiciary was a pre-eminent player in the discussion of the Rule of Law, it was by no means the exclusive actor on the constitutional stage where the drama of Law was daily played out. There were other equally significant players that occupied the constitutional space and played a critical role in the evolving drama. Most notable of these others was the Executive arm of the State - particularly so the Presidency, the Army and the Police. For that matter, it was important to take stock of the scorecard of the Executive and its organs and agencies.

But, without a shadow of a doubt, the Judiciary's reputation in this modern Age of the Jubilee's twilight will stand vindicated and redeemed by its courageous resolve to respond with extraordinary bravery and boldness to the Black Mamba's brazen invasion of the Temple of Justice. That, seemingly fleeting moment will forever illuminate the tides of time to tarry as the shining pearl in the Country's judicial crown of jewels.

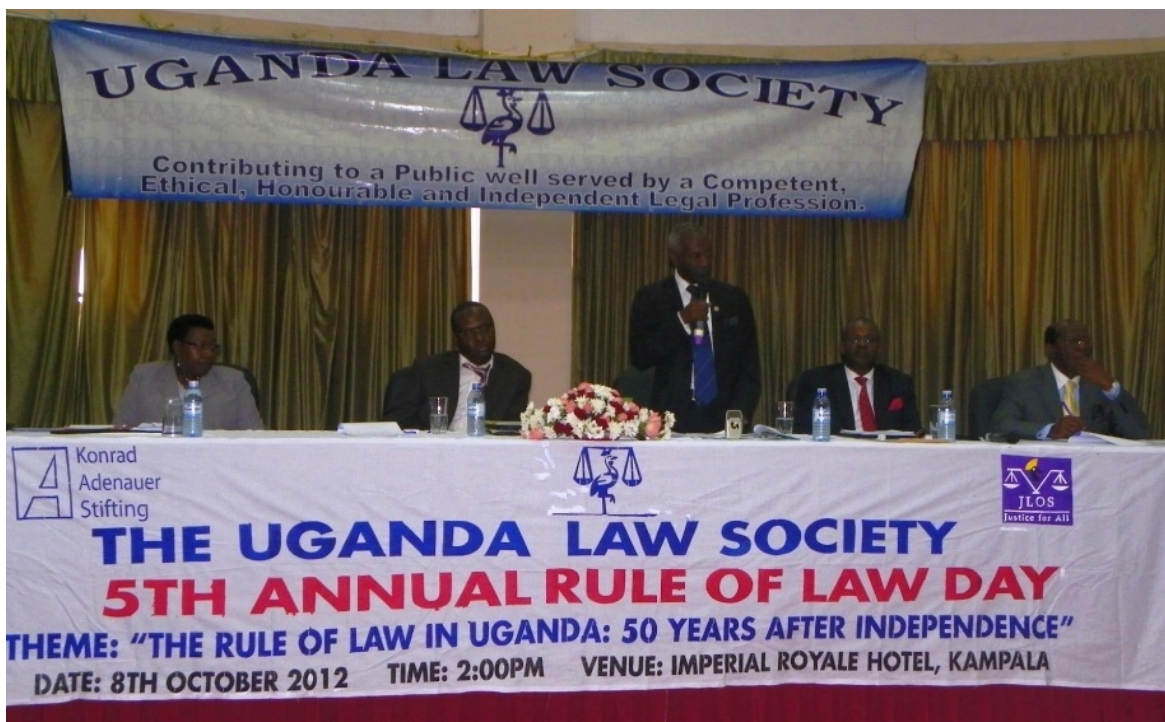
Hon. Justice James Ogoola

Important to note was the fact that each and every President in Uganda had sworn an oath to bear true allegiance to the country and fidelity to the law; in particular, to uphold, to protect and to defend the Nation's Constitution as by law established. However the reality as observed from the myriad of presidents and presidencies was nothing but shear abuse of power and seismic political-cum-Constitutional crisis. The Executive suffered the power of presidency hence colored by the rule of guile and

intrigue; the Age of Chaos and Anarchy; the Age of Terror and Horror; the Age of Tension; and Age of the Rule of Teargas, rather than the Rule of Law.

The Judiciary has had a fair share of rebuke as noted from the Udo Udoma Court that set to conceive, gestate and give birth to a new dispensation of real justice and genuine Rule of Law amidst the imperial impudence; The Ben Kiwanuka Court that left the bold Chief Justice to pay the supreme price with his own life; The Jeffreys Jones Commission of Inquiry that produced the scathing report testifying the lifeless rule of law; The Court in Electoral Petitions with its discretion in weighing the “substantiality” of the litany of electoral offences; the infamous double invasion of the High Court premises in December 2005 and March 2007 by the elite agents of the Army and The Justice Oder Commission of Inquiry with its diligent and well-researched report that made bold forays into the dark dungeons of this Country’s past extra-judicial exploits of impunity. Unimaginably, all this was done by mere pronouncement of executive fiat, without an iota of or pretence for any due process.

This indeed was a synopsis of how Uganda had fared over the first fifty years of its history as an independent sovereign entity. Therefore, the struggle to salvage the nation’s status in her illustrious journey into the second Jubilee, the Platinum Jubilee, was to ensure that the population, institutions and leadership truly aspired to uphold, defend and protect the Nation’s fundamental tenets of Justice and the underlying precepts of the Rule of Law as established in the 1995 Constitution and in all associated international legal instruments-to which Uganda is party.



The distinguished panel of presenters at the 5th Annual ULS Rule of Law Day Event

The keynote presentation was followed by presentations by eminent panelists who complemented their interventions to specific angles of Uganda's Rule Of Law over the 50 years as presented below.

2.1 Constitutionalism in Uganda presented by Mr. Peter Muliira

Mr. Peter Muliira's presentation re-affirmed the need for government's authority to work in tandem with the constitutional limitations that sought to protect and promote citizens' rights and freedoms. He decried the mixed sovereignty by the government contrary to the constitutional limitation where power belonged to the people. Furthermore, the Executive arm of Government had faulted in adhering to the rule of law as observed from the unconstitutional presidential advisors' appointment, overruling the powers of other institutions and interference in land cases. However, amidst all these slipups, it was important to note that the contribution of the legal profession to the rule of law was mostly by particular individuals who had taken bold and courageous steps in this affirmation.

He added therefore that there was need to revisit and reform certain laws but also identify ways and real performance measures for improving law and policy execution. Generally, there was need for adherence to the rule of law by promoting equality for all, access to justice, independence of the judiciary, greater parliamentary scrutiny and supremacy of the law.

2.2 The Contribution of Women in the past 50 Years towards the Rule of Law

Dr. Miria Matembe's presentation highlighted the women's journey alongside the passage the country had traversed through the 50 years to date. She noted however that it was sad that Uganda hadn't received its ideal independence due to the irregularities within the rule of law. Throughout this journey, women played a great role by working side by side the men in the struggle to recognize the rule of law. Women sacrificed a lot with their rights being trampled upon during the reign of terror where several of them were martyred and paid with their own lives.

Further she mentioned that women's contribution was greatly recognized during the Constitution making process in 1995 and this involvement is lauded highly for being gender sensitive. She added that, women's visibility and audibility had influenced several policies and laws like the Domestic Violence Law, and Land Act among others. More noteworthy is the fact that FIDA- a women lawyers' federation was the first organisation to provide free legal aid services.

She said however, the women's movement was slowly disappearing because of the narrowing operating space that has been entrenched by politics of patronage. Therefore, the legal fraternity needed to take bolder steps and confront the situation to deal with the apathy and hopelessness within citizens where the women were most affected.



Hon. Miria Matembe, one of the panelists at the Rule of Law Day event makes her presentation

2.3 Rule of Law as a Predominant Factor towards Economic Development

Mr. Moses Byaruhanga focused on the importance of the rule of law for economic development since it promoted investment. He mentioned that Investors required confidence in the judiciary for fair hearing in case of property disputes.

Furthermore, that the security of the population also contributed to development hence the need for a stable and disciplined army. He added that the rule of law also required laws made transparently and business friendly. Therefore the parliamentary committees should involve businessmen to provide their expertise.

Mr. Byaruhanga said that it is also important to advocate for strong institutions and fight against counterfeit goods. He went on to say that the recent oil discovery in Uganda required law reforms towards equal benefits distribution. Generally, it was important that we regularly review laws and regulations to enhance business development.



A cross section of the ULS membership standing for the National Anthem

3. Key Discussion Areas

The Keynote and Panelist presentations raised a number of discussion points that were further elaborated during the plenary, below is a highlight of the key points;

- It is important for lawyers to boldly condemn unlawful acts of torture and limitations against people's freedom. Cases of unconstitutional preventive arrests, torture in prisons, lack of implementation of court orders and criminalizing walking for freedom were indicators of degenerated rule of law in Uganda. However, there is also need to find a balance between freedoms and order. In a certain sense the two were polar opposites; claims from one often came at the expense of the other.
- There is need to develop substantive laws to govern the production of oil in Uganda to ensure equal benefits distribution for all Ugandans.
- The land law requires immediate amendments to help both the "Bibanja" holders/land-owners and squatters to receive equitable adjudication in case of conflict.

- It is necessary for the legal fraternity to engage in non –partisan politics and governance matters such as the restoration of presidential term limits debate, and the narrowing CSO operating space. Participants called for the formation of the Lawyers in Politics Committee to discuss matters of politics that affected the rule of law in Uganda.
- There is need for the legal fraternity to advocate for the disarming of the police force as observed from other countries. This would counteract the current torture cases by the police. However, it was also important to condemn lawlessness and mob justice by the citizens.
- There is need to advocate for the appointment of more judges, magistrates and other judicial officers in a bid to improve on the processes of adjudicating matters. In the same regard the working environment and remuneration of these officers needs to be reviewed and increased to motivate and reward their contribution.
- It is crucial for leaders to accept self criticism and objectively assess it. The ULS also needs to consider reasons why the public had tolerated the abuse of rule of law and principles of good governance.
- While the Supreme Court is preferred against the Court of Appeal to resolve election petitions, the Uganda’s Supreme Court isn’t fully or sufficiently constituted despite the fact that the Judicial Service Commission had concluded the vetting process.
- It is crucial to rationalize the bail fees for all bail applicants. In the same regard, there was a call for the review of the rules on legal fees to bring them in tandem with the current prevailing economic environment.
- The legal fraternity should also engage in ensuring respect for court orders especially by the police, RDCs, and taxation officers mainly in land cases.
- There was need for information dissemination on how to exploit the business opportunities within the East African Community for the legal fraternity.
- It was recognized that Parliament lacked politically mature legislators therefore there is need to raise the qualifications criteria for parliamentarians.
- To ensure the rule of law, there is need for sincerity among legislators, ethical value respect, credibility and accountability.
- It was clarified that the mandate of the ULS is to advice the government and the public on all matters touching on, incidental or ancillary to the law and that engagement in matters of governance is in fulfillment of that mandate.



A Member of the Uganda Law Society makes a contribution to the discussion at the Rule of Law Day event

4. Conclusion and Resolutions

In his concluding remarks, the ULS President expressed his gratitude to the sponsors of the event and thanked all for sparing time to participate. He recognized that part of the ULS mission and mandate was to advocate for preservation of the rule of law hence the call for dignity and protection of fundamental human rights in the post jubilee epoch.

In the meantime, the following motions were proposed by members and passed in the closing plenary: Members resolved or moved that ULS should:

- Condemn all the acts of torture and limitations against people's freedoms and rights that are being witnessed currently especially those meted out against the opposition.
- Consider the formation of the Lawyers in Politics Committee to engage in matters of governance and politics.
- Continue advocating for appointment of more judicial officers especially for the Supreme Court and Constitutional Court's. Further, that it should advocate for the improvement in the working conditions of judicial officers.
- Embark on engagement with the judiciary for rationalization of the fees levied on bail applications.
- Continue actions to ensure respect of court orders especially in land matters
- Engage the Judicial Service Commission to address complaints against judicial officers engaged in abuse of office and related matters such as corruption.
- Engage the Attorney General to move the Parliament to pass laws that will further the implementation of the Constitution.
- Actively engage on the issue of the restoration of presidential term limits as a foundation to good governance and rule of law.