

THE 6TH ANNUAL RULE OF LAW SYMPOSIUM

Assessing the Progress of the Rule of Law in Uganda 51 Years after Independence

Friday, 4th October 2013
Golf Course Hotel, Kampala



Organized by Uganda Law Society (ULS)

**Supported by Konrad Adenauer Stiftung and Ministry of
Justice/JLOS**

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1.0 INTRODUCTION

One year into the next half-century since the Union Jack was lowered—as the Uganda flag was hoisted—the legal fraternity together with their partners Konrad Adenauer Stiftung and the Justice, Law and Order Sector convened the sixth annual Rule of Law Symposium. The overall objective was to provide a platform for critical thought, discussion and space within which to muster a clearly defined set of action points towards making the legal fraternity the vanguard for the development of a political culture that espouses the Rule of Law, Constitutionalism and Democracy.

Convened on Friday, 4th October 2013 at Kampala Golf Course Hotel, it was attended by over six hundred lawyers and invited guests from within and outside Uganda. As planned, the papers presented by distinguished scholars and the subsequent deliberations from the floor were consistent with the need to accelerate current efforts by the fraternity towards defending Constitutionalism as well as comprehensive approaches geared towards the amelioration of the socio-economic and political predicaments that have been pervasive in Uganda’s past and current dispensation.

The event featured a keynote presentation by Hon. Paul Kibugi Muite, a renowned expert in Constitutional Law and veteran Kenyan politician. The keynote address was followed by a panel of experts including; Ms. Margaret Sekaggya, the former Chairperson of the Uganda Human Rights Commission and currently United Nations Special Rapporteur on the situation of Human Rights Defenders; Mr. David Mafabi, a Political Scientist and Presidential Advisor on Political Affairs to the President of Uganda who made the case for “a revolutionary approach to development” and the final discussant, Mr. Peter Walubiri, a seasoned Land Law expert and Lecturer at Makerere University whose presentation’s mainstay was the inconsistencies and impracticalities of the legal regime governing land (both in the Constitution and the Land Act) whose adverse effects have been borne by the ordinary Ugandan.

2.0 OFFICIAL OPENING

2.1 Welcome Remarks

The Symposium commenced with a hearty welcome by Ms. Ruth Ssebatindira, the President of the Uganda Law Society (ULS) who in addition to thanking partners Konrad Adenauer Stiftung and the Ministry of Justice/Justice, Law and Order Sector for their technical and financial support towards the event, proceeded to underscore the importance of having the legal fraternity play a lead role in championing the observance of the Rule of Law by checking the adherence of state institutions to democratic

principles and good practice. She noted that the Annual Rule of Law Day provides an important avenue through which to assess Uganda's performance.

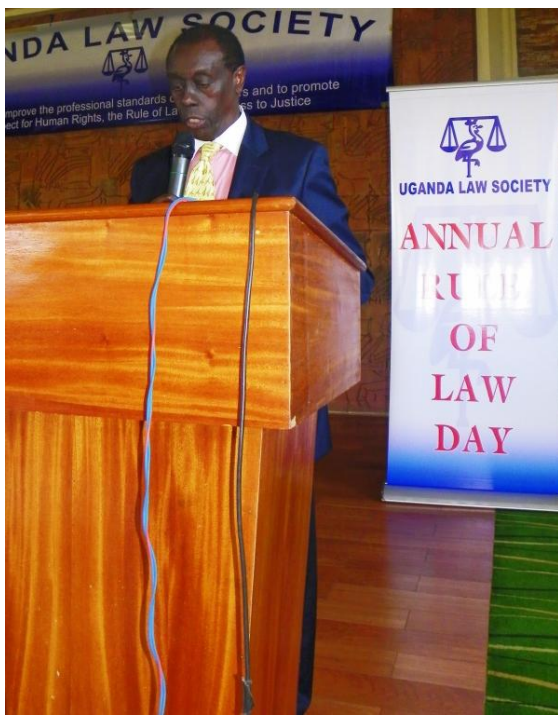


2.2 Opening Remarks

On his part, Mr. Peter Wendoh, the Project Advisor from the Konrad Adenauer Stiftung Rule of Law Programme for Sub-Saharan Africa Office acknowledged and encouraged the legal fraternity in Uganda to continue with ongoing efforts towards safeguarding the observance of the Rule of Law since it is necessary for progress and development.

3.0 KEYNOTE ADDRESS BY HON. PAUL K. MUIE - CONSTITUTIONAL LAWYER AND FORMER KENYA PRESIDENTIAL CANDIDATE

Hon. Muie commenced his address with an observation that a common thread that runs through Tanzania, Kenya, the Democratic Republic of the Congo, Uganda and Burundi



is the penchant for undertaking much-touted Constitution making processes within the recent past, with Kenya being the latest to promulgate a new Constitution.

He proceeded to question what he called the obsession with Constitution making processes yet incumbents have mastered a plethora of manipulative methods of prolonging their stay in power including the invariable rigging of elections. He underscored the urgency with which lawyers ought to lead the rest of the citizenry in the defense of the Rule of Law,

Constitutionalism and the broader subject of Democracy.

He explained that part of the problem is historical. Whereas the past was punctuated by illiteracy, poverty and suffering, overt military dictatorships, one-party states have, over the last twenty years, been abandoned for one form or other type of elected government.

He concluded that the pervasive African Paradox of having Constitutions and elaborate legal regimes but without Constitutionalism is antithetical to political stability. Fundamentally, Constitutional mechanisms revolve around the basic organs of government: Legislature, Executive and the Judiciary. Constitutionalism is not just about laws and following them. It is about the legitimacy of the laws: ultimately, unjust laws are illegitimate.

The Citizen's Duty is to muster and use civic courage; stand up to oppressive designs. Quoting Justice Oliver Wendell Holmes, he stated that "*... when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas -- that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out.*"

He also called upon the legal fraternity network with the Civil Society, the Media and the Citizen around issues of public interest such as the illegal re-appointment of a retired Chief Justice as Chief Justice as well as the lifting of term limits.

4.0 PANEL DISCUSSIONS

4.1 Ms. Margaret Sekaggya - UN Special Rapporteur on the situation of Human Rights Defenders

In her remarks, Ms. Sekaggya explained the origins of the 1995 Constitution of Uganda which was developed against the back drop of mass human rights violations and a history of turbulence. She averred that the Justice Odoki Commission that was put in place then sought to establish;

- i) The Legislature, Executive and Judiciary;
- ii) Commissions including the Human Rights Commission;
- iii) Constitutional safeguards, checks and balances.

She also noted that on the international front, Uganda has signed, ratified and domesticated a number of international instruments such as the Convention on the Elimination of all forms of

“It is the work of the State to inculcate values...the Rule of Law cannot be realized when basic values are not appreciated.”

MARGARET SEKAGGYA

Discrimination against Women (CEDAW); Convention on the Elimination of Racial Discrimination (CERD); Convention on the Rights of the Child

(CRC); and Universal Declaration of Human Rights (UDHR) among others.



This then begs the question: with the above policy and legal framework, have the Rule of Law, Democracy and Constitutionalism taken root? Article 1 of the Universal Declaration of Human Rights stipulates that “*All human beings are born equal in dignity and rights.*” This is reiterated by the 1995 Constitution by guaranteeing equality and freedom from discrimination.

However, she observed that the requisite values haven’t been inculcated into the population. It is the work of the State to inculcate values otherwise the Rule of Law cannot be realized when basic values are not appreciated. Further she noted that impunity is another limitation because in spite of trial processes and Commissions of Inquiry, no culprits are brought to book in a manner that resolves disputes to a logical and satisfactory conclusion. Coupled with impunity, Ms Sekaggya noted that it is corruption that is impeding the enjoyment of human rights and hence an avenue for disenfranchisement. This she argued is because corruption emasculates institutions and thereby eroding democracy. Thirdly, she argued that the rule of law has been hampered by lack of adequate security and law enforcement as flagged by successive Uganda Human Rights Commission Reports.

Finally she decried the development of oppressive legislation such as the Public Order Management Act, Non Governmental Organizations Act, Interception of

Communications Act et-cetera; all of which give unfettered discretionary powers to the Police and serve to stifle the enjoyment of rights.

Needless to add, assaults to the independence of the Judiciary, closure and harassment of media houses and journalists, fusion of the arms of government/disregard for the Rule of Law have been prominent as manifested in the High Court siege of 2007.

4.2 Mr. David Mafabi - Political Scientist and Presidential Advisor on Political Affairs

Mr. Mafabi begun his presentation by referring to three quote which read as follows: *“The Sabbath was made for man and not man for Sabbath”*; found in the Book of Mark, 2:27 in the Bible; *“ Seek Truth”* by Mao Tse Tung and *“ The truth must be solid”* by Anon.



His first port of call was the prospects and challenges of the Nexus between achieving middle income status in Uganda by 2017. He noted the significance of the nexus between economics, politics and society; stating that the biggest problem with Uganda and Africa at large was that the elite suffer from ideological disorientation. He proffered that lawyers ought to contribute to the progress of their continent by taking a revolutionary approach to democratization. Economics pre determines the politics; that is why the NRM Government is focusing on economic growth which will resultantly deliver a

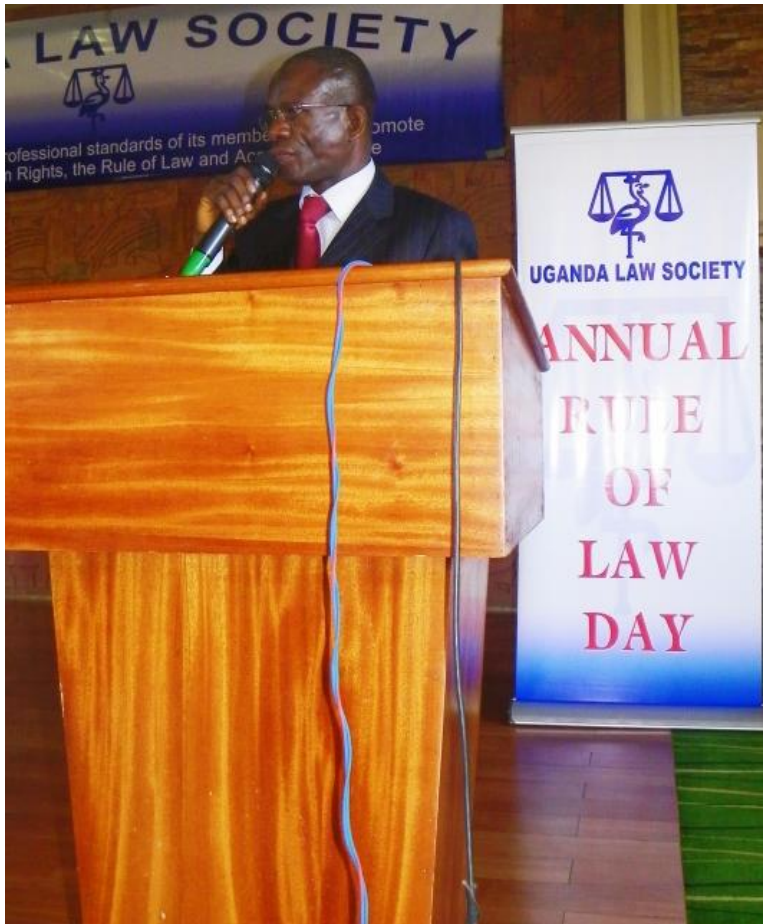
stable polity.

He further added that the leadership of Uganda is preoccupied with energy, peace and security, increase in foreign direct investment and exploration of new frontiers like cybernetics, metallurgy, nuclear energy, regional integration and petroleum exploration.

In conclusion, he stated that the NRM's landslide victory of 68% is a testimony of the citizens' trust in the current regime, and the peace and security that has been pursued by the National Resistance Movement. The Middle Class must participate in the socio-economic struggle for liberation. They must emulate Amilcar Cabral, Meles Zenawi and of course, Yoweri Museveni...as well as Ugandans deep in academia but at the forefront

of liberation such as Prof. Dan Nabudere. That we must steer clear of becoming “peasants in suits” because of ideological disorientation and emphasized that the economy must be liberated first.

4.3 Mr. Peter Walubiri, Land Law Expert and Lecturer



In his presentation, Mr. Walubiri approached the theme from the Land rights angle and argued that Uganda cannot solve the land question by resolving the conflicting rights created by the 1995 Constitution. Why then are we discussing the land question(s)? There are two contestations going on:

- **Between landlords and tenants;**
- **Between the central government and kingdoms.**

He noted that the foregoing questions have their origins in the Colonial Settlement (Buganda Agreement) which created categories of land tenure systems

without elaborate safe-guards for all attendant interests. The *Busuulu* and *Envujjo* laws in Buganda, *Tooro Landlord and Tenant Law*, *Ankole Landlord and Tenant Law* were shattered by the 1975 Land Reform Decree thereby creating a vacuum. By designating “public land”, the stage was set for mass evictions which have continued to this day.

The obtaining Land Act is unconstitutional because it legalizes trespass in purporting to protect occupants. The lawful occupant/bona fide occupant is an unproductive marriage. It is a retrogressive law. Summarily, the Land Act creates a dispensation of the Rule by Law not the Rule of Law. There is no security of tenancy for either interest/occupant.

On how government can resolve the contest between government and districts where land acquisitions are taking place, he noted that we must realize that this is a political question that must be debated openly and exhaustively. The simmering contests between the occupants of Amuru and a government-backed investor should be resolved against that background. This is a microcosm that proves the fact that the 1995 Constitution didn't resolve the land question. Disregard for the Rule of Law and maladministration of public resources only make an already combustible situation more volatile.

The following were the solutions recommended by Mr. Walubiri;

- We need a new legal regime that clearly defines who owns land between landlords and tenants.
- The new law must fix a formula for compensation for both landlords and tenants.
- We must then go back to compulsory acquisition of land for development purposes.

5.0 PLENARY DISCUSSIONS

The next session captured the key discussion areas from the plenary which included the following:

5.1 Going beyond the norm to champion Constitutionalism and Rule of Law

The participants at the symposium noted the need to identify mechanisms by which constitutionalism and rule of law can be championed beyond the conventional seminars, symposia etc that can be undertaken by lawyers such as the *Future of the International Criminal Court*.

5.2 The Need for a Constitutional Review to address Current Gaps

It was noted that the 1995 Constitution of Uganda as it stands created certain gaps that need urgent review and amelioration. This could be one of the ways that the Uganda Law Society can practically champion rule of law and constitutionalism. This may include; supporting independent and bold judges; mobilizing the population around specific issues, and providing leadership to the legal fraternity and the general public.



The Lord Mayor Elias Lukwago (Right) and Hon. Betty Kamyu (left) advance their arguments during the plenary session



5.3 The Role of Civil Society

The struggle for constitutionalism and rule of law requires concerted efforts by the legal fraternity together with other likeminded civil society institutions. Governments need to find a balance between neo-liberalism and the welfare of citizens.

5.4 Balancing Economic Development and Social Welfare

Constitutionalism and the Rule of Law cannot take root in an exclusive system. The economy must be aligned along equal opportunity terms but ultimately equal access to healthcare, education and services are a guarantor of stability and the Rule of Law. Changes in the economy for instance were fundamental to the democratization and socio-economic progress of England.

5.5 Duality of Land

There is urgent need to address the question of duality of land rights that were created by the 1995 Constitution that curtail meaningful development in Uganda considering that land is a major factor of production.



A cross section of participants at the symposium

6.0 CONCLUSION AND KEY RECOMMENDATIONS

In sum, the 6th Annual Rule of Law Symposium organized by the Uganda Law Society (ULS) accorded the legal fraternity yet another opportunity to collectively assess the state of play and to agree on practical ways to advance the key tenets and principles. From the presentations and plenary discussions, an outcome document was developed that will guide the ULS Secretariat and other partners in promoting the Rule of Law in Uganda.

7.0 ANNEX 1: OUTCOME STATEMENT

The Sixth ULS Annual Rule of Law Day

Outcome Statement

A) Preamble

“Aware that in the last two decades the whole of Africa has been diligent in making Constitutions to promote dignity, growth and prosperity;

Cognizant of the fact that a number of post-independence African countries have Constitutions without Constitutionalism due to the lack of the culture of respect for established norms and the Rule of Law;

Recognizing the critical role of the legal profession in entrenching Constitutionalism and the Rule of Law the Uganda Law Society provided a platform to address the state of constitutionalism and the Rule of Law;

B) Resolutions

We the over six hundred lawyers and other key stakeholders have addressed our minds to the state of constitutionalism in Uganda and adopt the following Resolutions:

1. **Constructively** and actively engage in building enduring Constitutions by advocating for a review of the current Constitution with a view towards arriving at a sustainable and inclusive settlement of historical questions that have permanently bedeviled the Ugandan polity, the Rule of Law, Democracy and Constitutionalism;
2. **Advocate** for the creation of economic conditions for Constitutionalism by engaging in the formulation and implementation of radical, transformative policies including the thorny issues of land to bring about inclusivity on economic and social fronts;
3. **Undertake** regular, accurate and critical analysis of the state of Constitutionalism and the Rule of Law beyond academic discussions but mobilize the public on specific issues such as the presidential term limits and the attempts to impose a Chief Justice on the Judiciary;

4. **Lead** the struggle for genuine transformation for an environment for Constitutionalism and the Rule of Law to take root;
5. **Raise** the civic competence of the citizens through creating awareness together with Civil Society and the Media as well as playing a front-line role on engaging the Executive to develop common ground;
6. **Adjudication** and **challenging** the status quo in areas of glaring affronts to Constitutionalism such as the fractious Dual Land Ownership and the Tenant/Land Lord relationship;
7. **Pursue** an end to impunity by contributing towards the development of appropriate mechanisms with the ultimate objective of enshrining accountability;
8. **Strengthen** and **develop** relevant networks and partnerships with Civil Society Organizations/Media and other players in the struggle;
9. **Advocate** for and actively participate in the review of the Constitution with a view to arriving at a long-lasting and inclusive settlement of historical questions that have perennially bedeviled the Ugandan polity, the Rule of Law, Democracy and Constitutionalism.”