

THE UGANDA LAW SOCIETY 2ND

ANNUAL RULE OF LAW DAY

‘The Rule of Law as a Vehicle for Economic, Social and Political Transformation’

Implemented by

Uganda Law Society

With Support from Konrad Adenauer Stiftung and DANIDA

WORKSHOP REPORT

Kampala Serena Hotel

**8th October 2009
Kampala – UGANDA**

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1. Welcome Remarks – President Uganda Law Society

The Workshop was officially opened by the President of the Uganda Law Society, Mr. Bruce Kyerere. Mr. Kyerere welcomed the participants and gave a brief origin of the celebration of the Rule of Law Day in Uganda. The idea was conceived by the Uganda Law Society after the High Court was invaded by the infamous Black Mambas in November 2005. ULS organised the inaugural Rule of Law Day which took place on October 5th 2006.

Mr. Kyerere pointed out however that the rule of law in Uganda leaves a lot to be desired as evidenced by the numerous riots in the city; the case of an abducted girl in Masaka; and rumours of safe houses.

Furthermore, various reports by human rights activists show that respect for human rights in Uganda is not at par with the requisite international standards.

He added that the theme for this year's Rule of Law Day is *'The Rule of Law as a*

Vehicle for Economic, Social and Political Transformation'. Mr. Kyerere hoped that the issues of separation of power; due process; accountability; and freedom and liberty of expression would feature in the discussions held under this theme.

Mr. Kyerere then introduced the guest speaker Hon. Justice Prof Kanyeihamba. The speaker was selected because of his unique position in society as an accomplished scholar, a fearless and courageous defender of human rights. In closing, Mr. Kyerere took the opportunity to introduce a special invitee to the workshop, Prof. Roshmann who is the Regional Director for the Rule of Law Programme of the Konrad Adenauer Stiftung; and invited him to say a few words.

2. Remarks from a Representative of Konrad Adenauer Stiftung

Prof Roshman begun by stating that Konrad Adenauer Stiftung (KAS) is a political foundation close to the ruling party in Germany. KAS is an international organisation with over one hundred offices all over the world. Prof. Roshmann pronounced that he was honoured to participate in the celebrations of the Rule of Law Day in Uganda.



The President, Uganda Law Society Mr Bruce. K. Kyerere(Centre) welcomes guests to the 2nd Annual Rule of Law day Symposium. To his left is Mr. Nobert Mao one of the panelists for the day.

Although Rule of Law is a broad topic, Prof. Roshmann explained that KAS is active in the specific areas of human rights and regional integration and achieves its objectives through workshops, visits and conferences.

Prof. Roshmann summed up by commending the Uganda Law Society in making Rule of Law Day an annual event and choosing a relevant but unique theme for discussion among the shareholders.

3. Presentation of Main Discussion Paper – Hon. Justice Prof. G. Kanyeihamba

Prof. Kanyeihamba's presentation titled '*The State of the Rule of Law in Uganda- Emerging Patterns*' covered a definition for the rule of law; independence of the judiciary as enemy of authoritarianism; powers and tolerance of government; constitutionalism; changing priorities after independence; strengthening resolve against corruption and the challenges of civil society.



Prof. Justice George Kanyeihamba presents his paper titled '*The State of the Rule of Law in Uganda: Emerging patterns*'.

Citing the case of Zimbabwe, the presenter decried the way African leaders continue to support and hail dictators. He attributed this to the fact that the survival of President Mugabe as a leader reflects directly upon that of other African dictators. Prof. Kanyeihamba stated that a direct relationship exists between the manipulation of the appointment of judicial officers by politicians and the independence, courage and impartiality of the Judiciary. Furthermore, the independence of the Judiciary from other arms of Government is vital for the Rule of Law. Evidence from several African countries suggests that this has not been the case. Research has also shown that governments in developing countries are often under great pressure to transform their societies in the shortest time possible. This sometimes causes governments to consider the rule of law as an impediment to their goals, and thus causing them to ignore it.

Other salient points arising from the presentation are: the importance of selflessness in public service; the informal concept of institutional independence of judicial power; the changing priorities of African leaders after independence from liberation from oppression to longevity in power; principles of governing activity in public life in the fight against corruption; and the role of civil society in upholding the Rule of Law in Uganda.

Prof. Kanyeihamba wound up his presentation by declaring that he has continuously pointed out violations of human rights in an attempt to guide the ruling party where they have erred. The presenter also appealed to participants to shy away from the zeal to appease big wigs as this has led to disarray and destruction of the environment.



Justices Mulenga, Bahigeine and Wangututsi at the Rule of Law day day Symposium

4. Discussion of the Paper by Hon. Norbert Mao

Hon. Mao begun his presentation with a definition of the rule of law which he believes is *‘a legal-political regime under which the law restrains the government by promoting certain liberties and creating order and predictability regarding how the affairs of the country are managed’*. The presenter suggested that the rule of law is meant to act as a defence and a sword for the people that it protects. Giving an example of a contestant for the Presidential seat of the Uganda North American Association (UNAA), the presenter narrated that although the candidate sought an injunction against the election, he still went ahead to stand thus contradicting himself.

In agreement with Prof. Kanyeihamba, the presenter stated that it is the role of everyone in society to uphold the rule of law. Providing a comparison between the Black Mambas who attacked the High Court in 2005 and lawyers who take bribes, Hon. Mao said there is no difference between the two, as both groups disregarded the rule of law with their actions. However, Hon. Mao was proud to share two experiences in his district where the rule of law prevailed in situations where powerful individuals attempted to take advantage of more vulnerable citizens.

Other points arising from Hon. Mao’s presentation included a set of eight preconditions that the rule of law must follow (The Morality of Law by Lon Fuller, 1977 edition). He however stated that informal constraints such as local culture are vital as interplay with the rule of law. The presenter also highlighted the importance of the rule of law as a promoter of economic development; and the components of the rule of law in court and donor reforms.

Hon Mao concluded his presentation by summarising the key concepts of rule of law as: separation of power; checks and balances and the respect of human rights. He stated that the

challenges affecting the rule of law in Uganda are corruption, militarism, a donor-driven economy and the wide gap between law and justice. And finally, that law is not equal to justice and order is not equal to peace. The presenter suggested that Uganda needs peace founded on consensus and not just order for the rule of law to be effective.

5. Discussion of the Paper by Hon. Miria Matembe

Hon. Matembe began by thanking ULS for the privilege to discuss Hon. Kanyeihamba's paper. She agreed with the presentation on the issue that the clergy and judges should be involved in politics. Taking an example from the Bible, Hon. Matembe felt that Jesus Christ was an exemplary religious leader but also a politician who had a programme and stayed focussed on it. Furthermore, the presenter pointed out that most laws are based on religious principles, therefore making religion and rule of law inseparable.

Hon. Matembe defined the rule of law as providing the right to free assembly and expression, hence making the media an essential tool to public debate; freedom from fear and intimidation whether imagined or real.

The presenter also stressed that individuals have a big role to play by investing power in good leaders and demanding accountability. Referring to the amendment of the Members of Parliament Constitution, Hon. Matembe stated that corrupt systems cause



Prof. Justice G.W. Kanyeihamba confers with the two discussants. To his left Hon. Miria Matembe and to his right Hon. Norbert Mao.

suffering to the needy and that law enforcement mechanisms are a vital part of the rule of law. Without a rule of law, there can be no justice and hence no peace.

Discussing separation of powers, Hon. Matembe was in agreement with the previous presenters and stated that Uganda does not have an independent Judiciary. She declared that political interference in the Judiciary and Parliament of a Nation results in a state with no rule of law.

The presenter summed up by mentioning the major challenges to the rule of law in Uganda as corruption, a lack of independent institutions; and insufficient budget. Furthermore, she felt

that the State tended to nurture corruption by promoting corrupt political leaders and will need more than mere words as a demonstration of political will to wipe it out.

6. Keynote Address by Hon. Attorney General & Minister of Justice and Constitutional Affairs Representing H.E the President of Uganda.

The keynote address from the President of Uganda was delivered by the Hon. Attorney General and Minister of Justice and Constitutional Affairs Mr. Khiddu Makubuya. In his speech, the President called upon the legal fraternity to focus on education of the masses, particularly the youth on adhering to the rule of law. He reiterated the Governments' commitment to the modernisation of agriculture and industrialisation as a means of promoting employment and thus reducing unrest among the youth. Furthermore, as a means

of increasing household incomes, the NRM Government in the 'Prosperity for All' Programme is encouraging linkages that promote socio-economic transformation in the Ugandan society. This he said can only be protected by adhering to the rule of law by all stakeholders.



The Hon. Attorney General and Minister of Justice and Constitutional Affairs delivers the keynote address on behalf of the President of Uganda.

H.E added that the NRM fought for and re-established the rule of law and the independence of the Judiciary in 1987. As has been witnessed in Uganda since, peace and the rule of law are a pre-requisite for development. The Government continues to fight against corruption and to ensure harmony, effectiveness and efficiency of all arms of government. The Government is also committed to develop human resource through education and health for all as well as infrastructural development. Finally, the President expressed the need for the rule of law in achieving all these goals and wished the participants fruitful discussions.

7. Plenary Debates

The plenary was chaired by the President ULS and involved members asking questions to the presenter of their choice, or making a comment on any of the points discussed. The presenter

to whom the question was directed would then take a few moments to answer or make a comment.

The first question was posed by Hon. Erias Lukwago; MP Kampala Central and Shadow Minister of Justice and Constitutional Affairs. Mr. Lukwago's question was directed at Prof. Kanyeihamba. He wondered whether the Judge did not fear for his safety after retirement; whether the victory of FDC was subverted; and why the Judiciary just sits back after making decisions in court. Reacting to these comments, Prof. Kanyeihamba stated that it is not the role of Judges to contest court decisions; and he encouraged individuals and or civil organisation to come up and challenge decisions through public advocacy. The Professor also challenged individuals to avoid



Hon. Erias Lukwago makes a point in the plenary. Flanking him is the President General of the Conservative Party Hon. Ken Lukyamuzi.

re-electing corrupt leaders into power as a means of achieving an independent Executive. He also stated that the role of the judiciary lies in enforcing electoral reforms and not in reforming them.

Speaking about the recent riots in Kampala caused by the refusal of the Kabaka to visit his people in Kayunga district, the presenter pointed out that it was against the Constitution of Uganda which provides for freedom of movement to all individuals. The Kabaka as a cultural leader is tasked with spearheading development and should therefore have been free to visit the Baganda living in Kayunga as one of his roles. Hon. Matembe added that mixed messages were delivered to the public and no official statement was made by the Government on the issue. This left a lot of people confused and a big number of people killed or hurt by the riots. Furthermore, the decision by the Government to stop public debate on radio through the 'Bimeeza' will increase the risk of rioting as there is no longer a means of letting out steam by the common man. On the arrests made after the riots, another member of the plenary pointed out that the Inspector General of Government erred by not publicly announcing the threat of violence and instead arresting various people after the threat had passed.

The plenary was also in agreement that not many people as individuals and particularly as lawyers came out to fight for the rights of those who were abused during the riots. One discussant suggested that the rule of law should be considered first at a personal level, among families and neighbours for it to be successful at the national level.

Another issue raised during the plenary was whether freedom of expression is in totality or should be regulated. Prof. Kanyeihamba reacted to this by suggesting that there are other legal means of getting a message across.

Discussing which tools the Judiciary has put in place to fight corruption; Prof. Kanyeihamba told the plenary that although a Judiciary Integrity Committee existed, it was useless without the personal commitment of all the members to make it work.

The Leader of Opposition in Parliament, Hon. Latigo commented that all the ideas that had been

expressed in the plenary were issues that he felt passionately about and supported.

He also agreed with the other presenters that there is an urgent need for individuals to do something positive about the



Even the law has a lighter side!(L-R) Mrs Deepa Verma Jivram, Hon. Secretary Uganda Law Society; Prof. Morris Ogenga Latigo, Leader of Opposition in Parliament; and Rubanda West MP Hon. Henry Banyenzaki.

current situation in order to correct the political condition. Only with an agreeable political environment can the rule of law in Uganda thrive. Prof. Kanyeihamba encouraged the opposition to work harder so that they are more attractive to the voting individuals. He also encouraged the elite and educated to inform other members of the public on their rights and guide them in choosing the right political candidates to represent them in Parliament. On the case of the Electoral Commission case, Prof. Kanyeihamba advised the opposition to concentrate on rights issues instead of insisting on reforms. The existence of a partisan Electoral Commission should be a point of contention for the opposition until it is changed. He also advised the opposition to have a checklist that they should refer to until the presidential elections in 2011 and base on that to decide whether or not they will take part in the elections.

Finally, on the FDC vs. Government case in which he was a sitting Judge, Prof. Kanyeihamba said all the information about the case was available to any literate person who wanted it. He however informed the plenary that he was not convinced by the arguments on either side.

8. Closing

The President of ULS officially closed the ceremony. He encouraged the participants to continue

promoting the rule of law in both their personal and professional lives. Prof. Kanyeihamba gave a few parting words to the participants, who he encouraged to take responsibility at an individual level and not



A cross section of participants at the Uganda Law Society 2nd Annual Rule of Law Symposium.

wait for others to act on their behalf. Hon. Mao in his final words also advised that members must avoid falling into the trap of corporate comfort and get out of their social cocoons to fight for the preservation of the rule of law as citizens of Uganda. The workshop was concluded with a cocktail to which all the participants were invited.

Annex 1

PROGRAMME

| TIME | ACTIVITY |
|---------|---|
| 1:45 pm | Members of ULS take their seats |
| 2:00 pm | Arrival of Invited Guests |
| 2:30 pm | Welcome Remarks – President ULS |
| 2:40 pm | Remarks from a Representative of Konrad Adeneur Stiftung |
| 2:50 pm | Presentation of Main Discussion Paper – Hon. Justice Prof. G. Kanyeihamba |
| 3:40 pm | Discussion of the Paper by Hon. Norbert Mao Hon. Miria Matembe |
| 4:00 pm | Keynote Address by Hon. Attorney General & Minister of Justice & Constitutional Affairs Representing H.E The President of Uganda. |
| 5:00 pm | Plenary Debates |
| 6:00 pm | Closure & Cocktail. |

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