



THE CEPIL  
RULE OF LAW  
FORUM 2021



Centre for Public  
Interest Law

# RULE OF LAW THE YOUTH'S PERSPECTIVE

The Rule of Law Journal 2021



FORD  
FOUNDATION



## OUR VISION

A Uganda where the rule of law is practiced and nurtured in public interest.

## OUR MISSION

To be the leading catalyst for social change in the political and economic sphere through research, advocacy, Public Interest litigation, technology and legal aid for vulnerable groups in Uganda



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FORUM 2021**

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## Executive Summary and Forward from acting Executive Director



**Democracy must be built through open societies that share information. When there is information, there is enlightenment...”**

**Obonyo Francis Alphonse, Acting ED - CEPIL**



The Centre for Public Interest Law (CEPIL) is a non-profit, non-partisan and non-religious organisation that aims at ensuring that all citizens have equal access to social, economic and political opportunities without discrimination on the basis of their ethnicity, social standing, religion, political opinion, or membership of a political party or organisation.

There seems to be a growing tendency to make questionable statements about the rule of law by actors in the political spheres that have thus far been considered to be governed by rule of law. One need not look beyond the headlines to see that rule of law is under siege. Although the rule of law cannot exist without being challenged, there might be some reasons for concern. It seems to be more important than ever to emphasize the significance of rule of law especially to young lawyers.

The Centre for Public Interest Law (CEPIL) envisions a Uganda where rule of Law is practiced and natured in public interest, and with the growing numbers of young lawyers in the country, grooming young lawyers on the canons of rule of law is needed now more than before and as such CEPIL designed a training course for young lawyers with the aim of equipping and imparting knowledge on the current state of rule in the country. This year's Rule of Law Champions initiative attracted 5 enthusiastic lawyers that were trained among other things the tenets of rule law and its applicability in our society today. The training was successfully carried out online, and it was from this that the participants came up with articles, where they shared their minds on the current state of rule of law in the country. The articles are insightful and need not to be missed.

Lastly, I wish to extend my sincere gratitude to the team at CEPIL, this year's rule of law facilitators and the year's participants for making this a reality.

As the Centre for Public Interest Law, a Uganda that strives and governed by rule of law is the ideal Uganda and with the growing numbers of young people in the country, nurturing and training will help us achieve this. I leave you with the words of the former president of Kosovo Atifete Jahjaga who says that where there is information, there is enlightenment and I believe this year's rule of law champions were enlightened.

Thank you



## BACKGROUND

Centre for Public Interest Law (CEPIL), in March 2019 launched a Rule of Law Champions Initiative in partnership with Uganda Law Society aimed at empowering and equipping young lawyers with practical leadership skills tailored towards creating a society that respects the Rule of Law. A team of 10 lawyers who expressed interest in the program and were carefully selected were trained in the first cohort to be advocates of the Rule of Law in Uganda. CEPIL envisions a Uganda where the Rule of Law is practiced and natured in public interest.

We believe that an investment in young people will secure the respect, protection, promotion and observance of the Rule of Law in Uganda in the future. It is on this basis that another cohort of 5 was trained by the already trained Champions.

The education system dictates that the lawyers have a theoretical training which poses as a challenge, therefore in a bid to fill in this gap, CEPIL aims at imparting practical and hands on experience to the young lawyers in order to enable them to bring justice closer to the people. Furthermore, the law is an evolving art that requires continuous education hence the initiative to train young lawyers

We are confident that the lawyers who have undergone this training have been well equipped with leadership skills that best places them to train the subsequent cohorts of the rule of law champions and in turn this ensures sustainability of the initiative. The pioneer Champions of 2019 therefore took on the mantle to train the 2021 Champions which creates a ripple effect and ensures sustainability of the program.

## Participants

CEPIL rolled out a call for young lawyers to express interest in the program. A total of 5 were selected and were able to attend a one week's training. These participants were graduates and law students from different Universities namely; Mr. Mugisha Joshua, Ms. Tumusiime Shellinah, Ms. Aromorach Fancy Sheila, Ms. Nakasinde Alice Mary and Mr. Ssentongo Yakubu. These lawyers were selected based on their education background and passion about issues pertaining to the rule of law. The expression of interest shared by these lawyers also verily indicated that they were enthusiastic about acquiring knowledge, skills and sharing it with any other concerned stakeholders.

## ABOUT THE FACILITATORS

### Akullu Esther

Esther is a seasoned legal practitioner with 7 years of experience in legal research, legislative drafting and project management. She holds a post graduate diploma in project planning and management from Uganda Management Institute, a Bachelor of Laws degree (LLB) from University of Dar es salaam and a Diploma in Legal Practice from Law Development Centre and is an advocate of the High Court of Uganda.



In the past she has worked for the International Law Institute-African Centre for Legal Excellence and currently at Parliament of Uganda as a Technical Assistant attached to the Department of Legislative and Procedural Services in the Office of the General Counsel to Parliament. She has worked with various legal system development projects and provided targeted management and technical services to coordinate the capacity building for local council courts covering 30 districts in Uganda. Esther is an experienced legal draftsman, people and project manager and has practical experience in; managing and organizing voluminous document review projects, preparing legal opinions on the law, legislative processes and procedures and drafting legislative instruments such as petitions, motions, resolutions, proclamations, rules and regulations.

A results-driven, confident and dedicated lawyer with a strong sense of values, passion for the truth and the thirst for justice, Esther has authored more than 80 legal opinions and 5 bills analyses and over 20 bills whilst tracking the bills throughout the legislative process using appropriate tools.

### Aber Ruth

Ruth is an advocate of the High Court of Uganda having completed her undergraduate studies from school of law Makerere University. She holds a post graduate diploma in legal practice from the Law Development Centre, Kampala.



Over the years, she has worked in law firms in Kampala and has volunteered in legal aid activities in and around Kampala, Mubende, Lwengo. She is currently working at evidence and methods lab, a civic tech organisation that simplifies, visualizes shares and measures information in areas of social justice, transparency and accountability. She delights in sharing information while advocating for social justice and equity especially for marginalized groups in society.

In 2019, she was among the Rule of Law Champions that were mentored by CEPIL under the Rule of Law Champions Initiative program and she was pleased to mentor other young lawyers in this path of law.

Through this program she was able to gain more knowledge on the rule of law and the need to promote the respect and observance of the Rule of Law and the need to promote the respect and observance of the rule of law in our country. With much focus on promoting transparency and accountability of the government, she was able to take the mentees of the 2021 Rule of Law Champions Initiative through an extensive understanding of the rule of law in the context of constitutional justice, Rule of law as a tool of promoting access to justice for women, persons with disabilities and vulnerable communities, the role of democracy and good governance to promote accountability and transparency as well as identifying best practice areas on various thematic areas of law.

### Brenda Marunga Atwooki

Brenda Marunga Atwooki is a young trained lawyer who holds a Bachelor of Laws degree from Makerere University and Post Graduate diploma in legal practice from the Law Development Centre, Uganda. She previously worked with the Uganda Association of Women Lawyers (FIDA) as a legal officer at the Justice Desk in Nabweru.



While at the desk, she was exposed to the different injustices within the legal system faced by the vulnerable persons in society. These experiences helped her acquire vast knowledge and skills in respect of the rule of law principle. In 2019, Brenda alongside other young lawyers participated in the Rule of Law Champions Initiative organized by CEPIL in conjunction with the Uganda Law Society. Through this program, she got an opportunity to undergo a mentorship with different experienced lawyers in Uganda, an opportunity that sharpened her understanding of the Principles on Rule of Law & Constitutionalism. She was able to author different articles on Rule of Law. She has also participated as a facilitator on different panels discussing the principles of rule of law in Uganda.

Brenda is a strong advocate of social justice. She is passionate about the right treatment of all persons regardless of their social standing most especially the women, children and older persons. She believes that the administration of social justice plays a big role in upholding the Rule of Law.



## Gad Arthur Kisaalu

Gad Arthur Kisaalu is a seasoned human rights lawyer with 3 years' experience in human rights, litigation and advocacy. His practice focuses on human rights, litigation and advocacy, strategic public interest litigation, evidence-based research and social justice issues.



He is a fellow at the Centre for Strategic Litigation in Zanzibar under the East Africa Emerging Public Interest Advocates Program and just concluded another fellowship with KAS Uganda & Sudan under the Youth4Policy Program.

Gad leads the litigation department at CEPIL and was at the forefront in the case where CEPIL was challenging the legality of the law that was passed by the Minister of Energy and Mineral Development in 2020 and in another case challenging the media council guidelines issued against journalists to cover the 2021 President Elections.

Gad Arthur is also recognised for using social media (twitter) to advocate for democracy and social justice issues. He placed his mark when he moderated several twitter-chat conversations during the months of the Covid-19 pandemic lockdown in Uganda. Significant of them among others was one on the theme; "The Constitution and Covid-19: To declare a State of Emergency or not?" where legal experts; Dr. Busingye Kabumba, a lecturer of law at Makerere University and Mr. Elison Karugaba, a partner at Kampala Associated Advocates, both endowed with knowledge on constitutional interpretation, deliberating on government and its response to the Covid-19 pandemic. Gad Arthur holds a Bachelor's Degree in Law (LLB) and a Post Graduate Diploma in Legal Practice (PG Dip.LP) from the Law Development Centre.

## Atukunda Rita Katureebe

Rita is a public interest lawyer currently working with the Centre for Public Interest Law as the Programme Officer; Research. She holds a post graduate diploma in project planning and management from Uganda Management Institute, a Bachelor of Laws degree (LLB) from Makerere University, Kampala and a Diploma in Legal Practice from Law Development Centre



Rita leads the research department at CEPIL including but not limited to the research on the performance Scorecard Initiative carried out throughout Uganda using a robust and technical research methodology involving quantitative and qualitative research tools. She has in the past also had hands on experience in a law firm and Judiciary. Needless to say that she is passionate about social justice and this led her to attend the Rule of Law Champions Initiative mentorship programme in 2019, a programme that elevated her understanding of social justice and public interest issues. She has since been dedicated to promotion of social justice and advocating for the rule of law.



## ABOUT THE PARTICIPANTS

### Fancy Sheila Aromorach



Fancy Sheila Aromorach is a 24 year old young lawyer in the making with unquestionable passion of social justice and change, empowerment of girls and women and generally, a responsible society. My strong passion for these have continuously led me to volunteering spaces in making my society a safe space for young people which I have done under Girl Up Initiative Uganda and Plan International Uganda as an advocate of negative social norm transformation as an Adolescent Girls Program coach and a Champions of Change facilitator in Kampala. I served as the Minister of Women Affairs Faculty of Law Islamic University in Uganda-Kampala Campus 2019/2020 where, I organized and hosted the First Ever Female Law Students Dialogue.

Currently, I am the vision bearer of an association of female student of law from over eight universities in Uganda called SheLaws. We use mentorship as a tool to build and guide each other through our four years of Bachelor studies.

My aspirations evolve around responsibility and accountability of persons in Society, be it young or old - which I am certain will enable more young people better their livelihoods in Society hence Safe Communities for all especially the girl child.

### Niwamanya Joshua Mugisha,



Niwamanya Joshua Mugisha is a young enthusiastic lawyer, a legal researcher, a freelance writer and a rule of law champion. Niwamanya attained his ordinary level of education at St Mary's College Lugazi, Advanced Level at Namirembe Hillside, and his legal education from Uganda Christian University. He is currently pursuing a diploma in legal studies at the Law Development Centre.

His focus area of litigation is on public interest litigation and Intellectual property. He is passionate about civic work and has done so through promoting livelihoods of people in the community. Through various projects, he has been able to positively impact on the lives of many through extending pro-bono services to the people and research.

Niwamanya has had the opportunity to work with the Parliament of Uganda as an intern. He has also worked at Asingwire and Kakuru Advocates as a clerkship student. He is currently working with Centre for Public Interest Law.



### Tumusiime Shellinah

Tumusiime Shellinah is a lawyer by profession, she completed her degree from Uganda Christian University Mukono. Shellinah awaits to be awarded a diploma in legal practice from the law development center. She participated in the rule of Law Champion training with Centre for public litigation (CEPIL) and is passionate about advocacy for human rights and enforcement of the same.

Tumusiime is a golfer, she is a member of Jinja Club Golf Club and aspires to become a successful business woman, arbitrator and Judge in Uganda.



### Ssentongo Yakubu

Ssentongo Yakubu is a lawyer by profession, holding a Bachelor of Laws from Kampala International University. A researcher, a pragmatic thinker and among others Ssentongo is a writer with Dreamchaser Magazine with interest in motivational and inspirational articles. He is the former Legal Research Assistant and the Personal Assistant to the former Head of Department Public & Comparative law at Kampala International University. He is the author of a number of Articles at the local and international level e.g. the Rights of Inmates to Conjugal Rights: UGANDA in perspective published with the Unilag Law Review (2018) Unilag Law Review Vol.2 No.1 among others, He represented Kampala International University and his country in the 2019 International Criminal Court Moot Court Competition in the Netherlands.



### Alice Mary Nakasinde

Alice Mary is a law student in her final year at Makerere University, where she served on the Student Council as the IGG of the Makerere Law Society and had the pleasure of interning at Airtel Uganda in the legal department.

She volunteered under the CLAPMOC program with PILAC Makerere which facilitated her passion for the rule of law. The Rule of Law training with CEPIL Uganda has been insightful and has helped her understand the rule of law better in both theory and practice. She is passionate about both commercial and human rights law and looks forward to using the knowledge, as a lawyer, to make Uganda a better place in terms of accountability and transparency as well as access to justice.

# THE STATE OF THE MEDIA AND PRESS RIGHT TO FREEDOM OF EXPRESSION UNDER THE CONSTITUTIONAL PRINCIPLE OF RULE OF LAW IN UGANDA

By SsentongoYakubu

## Introduction

The Rule of Law is simply defined as a situation where all individuals and all organizations within the state whether public or private are bound by and entitled to the benefit of laws prospectively promulgated and publically administered in the courts.<sup>1</sup> Similarly, it can also be defined as the authority and influence of law in society, especially when viewed as a constraint on individual and institutional behavior; (hence) the principle whereby all members of a society (including those in governments) are considered equally subject to publicly disclosed legal codes and processes.

## Freedom of Expression and Press

According to Mulenga, J.S.C<sup>2</sup> (as he then was) stated that, in the 1967 Constitution, and before that, in the Independence Constitution of 1962, the freedom of expression was defined as “freedom to hold opinions and to receive and impart ideas and information without interference ...”

Similarly, in under the same case ODOKI, CJ(as he then) was held that the freedom of the press is special freedom within the scope of freedom of expression. Freedom of the press is considered as the right to investigate and publish freely. He further borrowed Lord Denning’s definition in *Schering Chemicals vs Falkman Ltd* (1981) 2 W.L.R. 848, where he stated that the freedom of the press “covers not only the right of the press to impart information of general interest or concern but also the right of the public to receive it”.<sup>3</sup> The freedom of expression and then the press is enshrined and protected by various instruments and at the international level everyone has the right to freedom of opinion and expression; and this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.<sup>4</sup>

Locally the freedom is protected by the provision that everyone has the right to freedom of opinion and expression; and this right also includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.<sup>5</sup> In the same spirit, any person has the right to publish a newspaper<sup>6</sup> that is part of the press and this press or any person may have access to official information even in the hands of government subject to any law in force relating to national security, secrecy or confidentiality of information.<sup>7</sup> Most importantly, it should be noted that the law requires that the rights and freedoms of the individual and groups including the freedom of expression and freedom of the press enshrined under Chapter four of the Constitution of Uganda 1995 as amended have to be respected, upheld, and promoted by all organs and agencies of Government and by all persons.<sup>8</sup>

1 Lord Bingham- The Rule of Law lecture available at <https://www.youtube.com/watch?v=XIMCCGD2TeM> retrieved 15th June

2021

2 Charles Onyango Obbo & anor Vs AG Constitutional appeal No. 2 of 2002

3 id

4 Universal Declaration of Human Rights Article 19

5 The Constitution of Uganda 1995 as amended Article 29(1)

6 Press and Journalist Act cap 105 Section 2(1)

7 id Section 4

8 The Constitution of Uganda 1995 as amended Article 20(2)

## The State of the Media and Press Right to Freedom of Expression in Uganda

The importance of freedom of expression including freedom of the press to a democratic society cannot be over-emphasized. Freedom of expression enables the public to receive information and ideas, which are essential for them to participate in their governance and protect the values of democratic government, based on informed decisions. It promotes a marketplace of ideas. It also enables those in government or authority to be brought to public scrutiny and thereby hold them accountable.<sup>9</sup>

With the above-mentioned importance of the freedom of expression including the freedom of the press, many journalists have been subjected to violence and acts of harassment on several occasions which have resulted in direct violations of the freedom of expression and in turn freedom of the press. The most recent violation being on February 17th when several journalists suffered grave bodily injuries and psychological trauma when the military police pounced on them as they covered the handing over of a petition against the deteriorating human rights situation in the country, to the United Nations Human Rights Office in Kampala, by the National Unity Platform (NUP) leader, Robert KyagulanyiSsentamu, also known as Bobi Wine.<sup>10</sup> During the scuffle, broadcast journalists John Cliff Wamala – NTV, Josephine Namakumbi - NBS TV, Joseph Sabiti -NBS and their print colleagues Irene Abalo - Daily Monitor and Timothy Murungi - New Vision among others, were left bleeding and with sprained limbs after they were chased and beaten by military police.<sup>11</sup>

The other recent occasion with direct violations of the freedom of expression was during the campaign for the election in mid-January 2021, in which Yoweri Museveni, Uganda's president for the past 34 years and one of the world's longest-serving rulers, was seeking yet another term. The victims included documentary filmmaker Moses Bwayo, who had to be hospitalized on 5 November 2020 when his right cheekbone was hit by a shot fired at almost point-blank range by a policeman as he was filming one of the main opposition candidates, Robert Kyagulanyi, a popular musician better known as Bobi Wine.<sup>12</sup>

Lastly, the other journalists were attacked on 18th November 2020 while covering Bobi Wine's arrest for allegedly violating coronavirus regulations. Radio One's Saif-Ilah Ashraf Kasirye was pepper-sprayed and beaten while Sam Balikowa of City FM and Nile TV were arrested. Later that evening, goons threw a huge log at Daily Monitor news editor YasiinMugerwa's car as he was driving home. His newspaper belongs to one of Uganda's leading independent press groups. In total, 17 press freedom violations in Uganda were tallied since the start of November, including seven attacks, four arbitrary arrests of journalists, and many cases of their being obstructed.<sup>13</sup>

## Conclusion

The freedom of expression and the resulting freedom of the press are legally protected and recognised internationally and locally. Under the constitutional rule of Law principle, it is required that all individual and all organizations within Uganda whether public or private must be bound by and entitled to the benefit of laws prospectively promulgated and publically administered in the courts. However, with the spike in the number of committed violations to the freedom of the press by state agencies with impunity, it is as clear as daylight that Uganda is failing at upholding the rule of law, and that the 117th positions held globally by Uganda out of 128 countries in the recently released World Justice Project Rule of Law Index 2020 is justified and well-deserved

9 Charles Onyango Obbo&anor Vs AG Constitutional appeal No. 2 of 2002

10 Reliefweb; Uganda: FAJ condemns violent attacks against journalists available at <https://reliefweb.int/report/uganda/uganda-faj-condemns-violent-attacks-against-journalists> retrieved 15th June 2021

11 id

12 RSF Reporters Without Borders; Uganda: Crackdown on reporters threatens Ugandan election's credibility available at <https://rsf.org/en/news/uganda-crackdown-reporters-threatens-ugandan-elections-credibility> retrieved 15th June 2021

13 id



# The Impact of Alternative Dispute Resolution (ADR) on Access to Justice in Uganda

By SsentongoYakubu LLB

## 1.0 Introduction

In recent years, alternative dispute resolution (“ADR”)<sup>14</sup> processes, particularly mediation, have been promoted in developing countries under the banner of access to justice.<sup>15</sup> One result is that many African countries are experiencing a transformation of their civil justice systems as modern dispute resolution gains a strong foothold throughout the African continent. ADR’s informality and focus on non-adversarial justice have captured the imagination of many African states concerned with spiraling rates of litigation, backlogged court calendars,<sup>16</sup> and citizens’ lack of meaningful access to justice.<sup>17</sup> Influenced by promises of increased flexibility and efficiency in resolving disputes, greater access to justice, and in some cases, promotion of foreign investment, legislators and policy-makers have become active both in promoting and in privatizing modern dispute resolution processes.<sup>18</sup> The Article is going to define the concepts of Alternative Dispute Resolution (ADR) and Access to Justice, lay down the different Alternative Dispute Resolution Mechanisms/ Processes and review the impact of ADR on Access to Justice.

## 1.1 Definitions and Concepts

Access to justice is defined as the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances in compliance with human rights standards.<sup>19</sup> In Uganda, judicial power is exercised by several courts of judicature including the Supreme Court of Uganda, the Court of Appeal of Uganda, the High Court of Uganda, and such subordinate courts as Parliament may by law establish, including qadhis’ courts for marriage, divorce, inheritance of property and guardianship<sup>20</sup>

For any individual or parties to approach the courts of judicature a dispute must arise first. A Dispute is a natural and inevitable part of all social relationships. It may arise when the interests of more than one person clash with others or when there is a disagreement between two or more parties regarding differences of opinions.<sup>21</sup> Professor J.G. Merrills defines ‘dispute’ as a specific disagreement concerning a matter of fact, law, or policy in which a claim or assertion of one party is met with refusal, counter-claim, or denial of another.<sup>22</sup>

14 The term “ADR” refers to non-judicial dispute resolution. It is variously defined as “alternative dispute resolution,” “appropriate dispute resolution” or “amicable dispute resolution.” In this Article the term “ADR” refers to alternatives to the court adjudication of disputes. These processes include negotiation, mediation and arbitration and various hybrids of these processes. See Stephen B. Goldberg Et Al., *Dispute Resolution: Negotiation, Mediation, Arbitration, And Other Processes* 2–3 (6th ed. 2012).

15 William Davis & Helga Turku, *Access to Justice and Alternative Dispute Resolution*, 2011 J. DISP. RESOL. 47 (2011).

16 Patrick Tabaro, *Alternative Dispute Resolution is the Magic Wand to Solve Case Backlog in Our Courts*, THE OBSERVER (Sept. 14, 2012), [http://www.observer.ug/index.php?option=com\\_content&view=article&id=20722&catid=57](http://www.observer.ug/index.php?option=com_content&view=article&id=20722&catid=57) (describing ADR as the “magic wand” for getting rid of crowded case dockets);

17 Richard C. Crook, Kojo Asante & Victor Brobbey, *Popular Concepts of Justice and Fairness in Ghana: Testing the Legitimacy of New Or Hybrid Forms of State Justice* 2 (Afr. Power & Pol. Programme, Working Paper No. 14, 2010) [hereinafter *Popular Concepts of Justice*].

18 AmadouDieng, *ADR in Sub-Saharan African Countries*, in *ADR IN BUSINESS: PRACTICE AND ISSUES ACROSS COUNTRIES AND CULTURES* 611, 614 (Arnold Ingen- Housz ed., 2d ed. 2011) (saying it is a viable alternative to litigation). Ngor A. Garan, S. Sudan’s Chief Justice Calls for Speedy Dispute Resolution, SUDAN TRIBUNE, (Sept. 13, 2011) <http://www.sudantribune.com/spip.php?article40137>.

19 United States Institute of Peace; *Necessary Condition: access to Justice*

20 The constitution of the Republic of Uganda 1995 as amended Article 129(1)

21 Syed RobayetFerdous, *An Empirical Study On Dispute Resolution Methods (DRM) From The Perspective Of Employee And Employer: Special Emphasis On Alternative Dispute Resolution (Adr) Volume Viii, Issues 1 And 2, January-June, July-December, 2013*

22 Merrills, J.G., ‘*International Dispute Settlement*’, Cambridge University Press (2000), p. 1.

## 2.0 Alternative Dispute Resolution Mechanisms/ Processes

Alternative dispute resolution is simply defined as a procedure for settling a dispute by means other than litigation, such as arbitration or mediation.<sup>23</sup> The term Alternative dispute resolution can also refer to everything from facilitating settlement negotiations in which disputants are encouraged to negotiate directly with each other before some other legal process, to arbitrations systems or mini-trials that look and feel very much like a courtroom process. Processes designed to manage community tension or facilitate community development issues can also be included in the rubric of ADR<sup>24</sup>

The following are the examples of Alternative Dispute Resolution Mechanisms; Arbitration, Collaborative Law, Negotiation, Mediation, Mini trials, Summary jury trials, Conciliation and lastly Early neutral evaluation

The Legal Framework that establishes or requires the use of the different Alternative Dispute Resolution Mechanisms includes the Constitution of the Republic of Uganda, 1995 as amended, the Labour Disputes (Arbitration and Settlement) Act, 2006, the Arbitration and Conciliation Act, Cap 4, the Workers Compensation Act 2000, the Employment Act 2006, the Judicature (Mediation) Rules, 2013, and the Land Act Cap 227.

The Institutional Framework mandated with the employment or use of the various Alternative Dispute Resolution Mechanisms in solving disputes include the Ministry of Gender Labour and Social Development, the Centre for Arbitration and Dispute Resolution, Labour Officers, Industrial Court, the Medical Arbitration Board, and mediators.

## 3.0 Impact of ADR on Access to Justice

The Impact ADR has had on access to justice in Uganda is both positive and negative and it covers several areas including first and foremost, the proliferation of new districts in recent years, which has deeply and negatively affected the delivery of labor administration services in the districts. As a result and despite the existence of a legal framework for labor dispute resolution, the labor dispute resolution system at the labor officer's level is in a wanting condition. The limited resources also affect the appointment of the legally provided mediators per district.

Also, despite having adequate legislation largely in compliance with international labor standards; there are inadequate measures to enforce ADR decisions or rulings taken by labor officers within the Employment Act of 2006 or provisions for sanctions to compel compliance with the labor law.

Also, there are many new laws and regulations that have been recently adopted in the field of dispute resolution by ADR. This implies additional responsibilities on the Ministry of Gender, Labour and Social Development (MGLSD), and other ADR institutions mentioned above, and particularly with the ADR labor dispute resolution function, to apply the new statutes. Yet there is already a general lack of awareness on the part of labor officers on the content and application of the law.

Furthermore, even with the establishment of the ADR process for example court-based mediation, almost all the courts of judicature are overwhelmed and facing a huge case backlog, labor officers in some instances are overwhelmed by conducting hearings and delivering rulings on matters which would ordinarily be under the purview of this specialized court.

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<sup>23</sup> Black's Law Dictionary 9th ED Pg. 91

<sup>24</sup> NishitaMedha, Alternative Dispute Resolution in India, A study on concepts, techniques, provisions, problems in implementation and solutions Pg. 9





It has been found that part of the Institutions that apply ADR including arbitrators, conciliators, mediators, and labor officers are not sufficiently trained if at all to conciliate or mediate disputes. In several instances, employer and worker representatives have suggested that most disputes could be resolved through conciliation if labor officers were properly trained in dispute resolution

The Medical Arbitration Board was established and fully functioning, but its role has essentially been limited to cases arising in Kampala or the central region and there is poor or lack of awareness as to its role and functions.

There is a finding that the majority of the cases that make up the current case backlog mostly in the land cases is caused by the limited number of mediators at the High court land division, low/no funding for the mediation department of the court, and the lack of enough judges and money to hear cases at the division.

Lastly, due to the recent outbreak of the deadly pandemic known as COVID 19 the entire alternative dispute resolution system has been hampered setting it back years. With gatherings outlawed solving disputes using ADR processes is close to impossible.

## 4.0 Conclusion

ADR was established to increase Access to Justice considering all its advantages. However, with all these expectations stemming from the alleged advantages that could be realized from its use like it be cheap, and fast, it has had little or no impact whatsoever on increasing Ugandans' quest for a remedy through formal or informal institutions of justice for grievances in compliance with human rights standards.

# EARLY MARRIAGES AND THE COVID 19 PANDEMIC; The Tears and Agony of the Girl child.

Alice Mary

“One day our parents will exchange us for cows” A joke my friends and I make all the time, but it speaks volumes. It is in many of our cultures that when a girl is getting married the groom brings gifts for the family as a sign of appreciation. The Covid-19 pandemic has aggravated challenges in the social and economic sector in Uganda due to the stringent measures invoked by the government to curb the spread of the virus. These mostly affect people living below the poverty line and those that live from hand to mouth. The closure of schools has worsened the position of the girl child in a traditional patriarchal society like Uganda.

The causes of child marriages are deeply embedded in our cultures and norms. It is also driven by the precarious social economic position of women, the major gender role of women as portrayed by society entails being a wife and mother. After being married off, many young girls become prone to sexual and gender based violence because it is difficult or almost impossible for the girl to keep in school yet she has parental and wife duties of which most girls cannot multi task at that young age and it is no wonder that they are beaten up by their husbands because they cannot live up to the expectations of a wife.

It is notable that Uganda is a signatory to most of the laws which prohibit child marriages and seek to protect children and women these include The Convention On the Rights Of the Child which sets a minimum age of marriage to be 18 years and the Convention on the Elimination of All Forms Of Discrimination Against Women which asserts that women must consent to marriage and prohibits early marriages as well. The state is also a signatory to the African Charter on the Rights and Welfare of the Child whereby Article 21 prohibits child marriage. On national level, Article 31 of the 1995 Constitution asserts that the minimum age for marriage should be 18 years and should be with free consent of each party to the intended marriage Uganda has the Gender In Education Policy 2009 which facilities the re- entry of girls who drop out of school as a result of child marriages and is willing and committed to eliminate early child and forced marriages by 2030 in line with target 5.3 of the Global Sustainable Goals but the practice continues and yet there are laws in place to protect the children.

Young girls are entitled to enjoy special protection and are to be given opportunities and facilities by law and by other means to enable them to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity with the backbone being the best interest of the child principle.

In order to address such an atrocity that we need to look beyond the pandemic. We live in a patriarchal society and often times the girl child is not given an opportunity to communicate their feelings on their nuptials and in their marriage, it is difficult to deliberate on issues with their spouse because most of the time they are unfledged and as a result they undergo domestic violence

Why then do we have the numbers of child marriages increasing and what should be done? Enforcement of these laws is still lacking; the paperwork creates an ideal vision of stopping child marriages and many of these works remain in writing. It is evident that some people are ignorant about their rights and some children are still denied a chance of getting in school and yet this is one of the ways to reduce early marriages. These

laws should be put into practice by sensitization of the public in every language so that people and children are able to understand their rights and know when their rights have been infringed upon. There should also be shelters for children that face this challenge where they are protected from their parents in case, they are disowned by their families for refusing to settle for the marriage and men who attempt to marry these under-aged girls should be arrested. While at these shelters, the young girls should be empowered with knowledge on sex education so that they understand their sexual and reproductive rights as well as empowered with skills that can assist them earn a living.

Conclusively, the rise of cases in child marriages should serve as a wake- up call to the government and the National Children Authority to execute their obligations towards the girl children in Uganda and help them realise their full potential.

## ACCOUNTING FOR THE MISSING PERSONS; An outcry for help and a quest to find Justice.

This year Uganda had its election campaigns and as a country we witnessed political unrest. As a result, several lives were lost and there were several people that went missing and until now are still missing. These people are said to have been picked up by unknown armed un -uniformed men and driven off in a car that did not possess a number plate, and which eventually came to be recognized as a “drone”

The obligations of the state which are most of the times summarized as the obligation to Respect, Protect and Fulfill in the promotion and attainment of human rights were put to test. The obligation to respect essentially means that states must refrain from interfering with or limiting the enjoyment of human rights and freedoms, the obligation to protect requires states to protect individuals and groups against human rights abuses by others in particular private actors and the obligation to fulfil which asserts that states must take measures to facilitate the enjoyment of human rights.

The process of arrest is articulated under Article 23 of the 1995 constitution, it asserts that the suspect should be detained in an authorized place, arraigned before court within 48 hours and their family members ought to be informed about their whereabouts. The concept of safe houses is not new, and these are basically unknown places of detention where suspects are taken for interrogation while investigations are happening, sometimes, for long periods of times. If the suspects are lucky to return, they often return with several injuries physically and psychologically which tantamount to torture that is prohibited by the constitution and violates human rights.

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**We cannot despair of humanity since we ourselves are human beings.”**

**(Albert Einstein)**

According to the human rights watch, on 8th March 2020, the president said that 50 people were being charged with committing treasonable acts well as the minister of internal affairs accounted for 177 people before the Parliament. However, this number does not seem to resonate with the outcry of the general public. This could tantamount to crimes against humanity particularly an enforced disappearance which is defined by three elements namely deprivation of liberty against the will of the person, involvement of government officials at least by acquiescence and refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person. Many families seem to have lost trust in the security organizations and have resorted to acknowledging painfully that they have lost their loved ones because the Police, which many would resort to as a primary security organization for help disassociated themselves from the arbitrary arrests.

The state has the duty to search for those who are missing even when they may be dead. The International Commission on Missing persons issued draft guidelines for the search for disappeared persons of which they emphasized an exhaustive and participatory search. The International Convention for the Protection Of all Persons from enforced Disappearance (ICCPED) to which Uganda is a signatory provides that state parties have to take appropriate measures to search for, locate and release disappeared persons and in the event of death to locate, respect and return their remains. Signatories are obliged to take appropriate measures to investigate acts of enforced disappearance and bring those responsible to justice. Within this is the right of families to know the whereabouts of their people, their fate and cause of their death. The primary responsibility for preventing disappearances lies with state authorities. In as much as Uganda has not yet ratified the ICCPED, being a signatory shows that it has the willingness to be bound and as a result creates an obligation to refrain or act in good faith not to defeat the purpose of the treaty.

“Patience and perseverance have a magical effect before which difficulties disappear and obstacles vanish.”

John Quincy Adams

Families of the victims need to keep on asking for accountability from security organizations as well as the government and if at all it is futile then in my opinion it would be prudent to reach out to international bodies such as the Committee on Forced Disappearances as it is given the mandate not only to monitor the implementation of the Convention but to also receive and consider individual as well as alleged violations of the Convention.

Therefore, having laws in place is one thing and doing justice is another. It is not enough that Uganda is a signatory and has ratified many of these International Human Rights treaties. It is important to domesticate these laws and to acknowledge their presence in the legal system to enhance the Justice system in Uganda.

# RE: CIVIL SOCIETY ORGANISATIONS AND THE RULE OF LAW IN UGANDA

**Dear Community Based Organizations, Non-Government Organizations, Religious and Cultural institutions, Academia, Small Business and social enterprises, Multi-billions Companies, the Media, a one Okello, Musoke, Namanda, Ayikoru, and Aber.**

**As the above matter refers.**

It has come to my humble concern that the fulfillment of our obligations towards promotion of the Rule of Law in Uganda as non-state actors is impaired.

First, allow me bring to your attention the fact that we have an identity by virtual of our registration with the Uganda Registrations Services Bureau, or the NGO Forum, KCCA or the National Identification and Registration Authority as citizens of Uganda, We therefore have a core role to see that we foster the principles of the Rule of Law in our country.

The Rule of law is not an ideology for Politicians, Lawyers or Human Rights Activists, it is one that lives among us all, to create an equal and fair society with easily accessible justice and just laws for every Ugandan. This should be illustrated into lawful procedure of arresting an accused, implementing a preventive mechanism towards sexual harassment in work places, freely holding our area members of parliament accountable, practicing natural justice in resolving disputes in administrative decisions, not shutting down the internet during national events like elections, experiencing justice under an independent judiciary among others.

Therefore, when we talk of penny like or multi-billion transactions made on a daily, ownership and enjoyment of property rights, running of government projects like the food and monetary relief packages during the two lockdown instances, arbitrarily arresting Ugandans for defying presidential guidelines, torturous acts upon accused on remand, are all these being done within the auspice of the Law?

As players in civic space, there are a number of independent wings that can be used to strengthen the existence of the Rule of Law as drawn from the principles. Every existing formal institution should consider having internal policies that superintend the works of the organization.

These will support institutions in having impartial and independent mechanisms and procedures to prevent and resolve disputes arising from crimes like bribery, assaults, embezzlement of monies, instead of the common practice by CSOs resorting to litigation to resolve their matters yet there are other dispute resolution methods they can adopt (if they started by having impartial committees) for instance mediation, arbitration thus promoting the exercise of Alternative Dispute Resolution thereby the practice of access to justice as a principle of Rule of Law.



Religious and Cultural institutions can take up the mantle, preach to their followers and subjects respectively of the importance of having Just laws and participation of everyone in promotion, protecting and respect of such laws (this is because many, if not all people strongly identify themselves under these two institutions.) this can be done as sensitization programs in places of worship and inclusive of cultural projects in partnership with the Uganda Law Society which will create legal certainty as well as inclusion of different people in decision making process towards achieving the Rule of Law. Religious cultural leaders should also never remain silence about any form of injustice in society for the role they play in enabling access to justice cannot simply be undermined.

Many of the youth for a long time till to-date are seen and taken as a homogeneous and “unserious” group of Ugandans in this country which becomes a hurdle to us accessing justice as by law, in addition to peacefully and respectfully being accorded a chance to participate in the Politics of this country.

For CSOs to uphold the Rule of Law principle while having the youth in picture, our energies and skills should be considered and appreciated and the youth should be given political, economic, professional, social space to explore opportunities so as to be able to contribute to the Uganda’s build-out and success. There is a litany of how much youth have done and can still do which can be determined by including them in decision making process.

We each have a solid responsibility to not only promote the Rule of Law but demand for good governance in a Nation like Uganda with a well-structured system of governance

I hope to see these and the other obligations you owe the country towards having a consistent Rule of Law governed state.

Yours faithfully,  
Aromorach Fancy Sheila,  
Rule of Law Champion.





# THE GEAR TO THE RULE OF LAW IS LAW REFORM.

Part of the preamble in our grand norm makes mention of being constructed on principles of unity, peace, equality, democracy, freedom, social justice and progress which on the surface of it initiate the promotion of the Rule of Law in Uganda.

The Secretary General to the UN defined Rule of law as “a principle of governance in which all persons, institutions and entities, private and public, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated and which are consistent with international human rights norms and standards...” Rule of law in a layman’s understanding is the act and practice of living within the spheres of the law.

The presence of the Rule of Law in the 1995 Constitution of Uganda is one that can never be looked for. For instance, the Principle of Accessible and Impartial justice can be seen as stated in Articles 126(1) and 127 on Exercise of Judicial Powers and Participation of people in administration of justice respectively. Supremacy of the Law as another principle is cited in Article 2(1) of the Constitution. Other Principles that make sound in the Constitution are, Separation of Powers, Equality before the Law, Accountability, Independent Judiciary all within the “excitement” the preamble sets us into, as for a Country governed by Law. Important to note is, even as the constitution directs us into upright living of the Rule of Law, we are flogging a dead horse with existence of certain statutes as by the Legislature. Domestic workers for example exist in almost every average or well-to-do household in Uganda under a contract of service like the ‘red lipsticked’ bank teller in Centenary Bank Entebbe Road branch or Mrs. Jane Kibirige the Clerk to Parliament. This working class, (the house helps, baby sitters, shamba boys) many of whom are women aren’t recognized by the Employment Act 2006 thus a vivid discrimination in the Law.

A statute like the Public Health Act 1935 Cap 281 is out of current context since it was drafted and adopted many years ago and hasn’t been amended to fit into serving the massive population of 47,000,000 especially during the COVID19 pandemic causing inconsistent and ineffective implementation plus limited context interpretation of the law.

Another encounter is, many a times certain provisions of the law are ambiguous creating an unclear implementation of such law. Among them being the well-known Public Order Management Act of 2013 which lawyers didn’t give a chance to peacefully transpire “in creating an orderly society” More recent though is Clause 25 on Penalties of Breach of the Code under - Leadership Code Act (Amendment) Bill 2020. It’s always said that the Law is a living creature, and these do change and develop. So in order to achieve a Sovereign Uganda, it’s upon us to make ardent changes in the Laws when potential need arises which will keep us in shape of achieving the Rule of Law Culture. As a step in taking up reform of the Law, we need to answer questions like;

Why do statutes like the Witchcraft Act Cap 124, Whistle Blowers Act 2010, Sugar Act 2020, The Emoluments and Benefits of the President, Vice President and Prime Minister Act exist? Is it because there was a problem in society prior its drafting or we had to have such Laws like any “normal and responsible state” Figuring this out will help us to understand the usefulness of such law translating into knowing our responsibility in implementing and easy navigation when the need to reform comes to light.

The strength of written laws and its reform in promoting the Rule of Law in Uganda is unleashed in three brackets as follows; clarity of the Law as the first. For whenever there is a space for ignorance or misunderstanding and misinterpretation of the law, a line is to be drawn between right and wrong. When laws are clear and certain, citizens get to know, and accountability becomes easily practiced.

Secondly, organization of the state which guarantees access to justice as well as ensuring procedural fairness in administrative decision making. We can distinguish humans from animals and societal events because of the rules and regulations in place which is a portrayal of the principle of procedural and legal transparency. Simply practicing the Rule of Law in as far as protecting citizen rights comes as the third bracket of the need of law reform in promoting the Rule of Law. Only till we prioritize passing Laws that closely speak to Human Rights Promotion, then achieving Rule of Law remains a mere vision. Bills like the Human Rights Defenders Protection Bill should have been passed in the previous Parliament. A reminder to policy makers is that written Law protecting duty bearers enable free revelation of the Rule of Law.

Therefore Uganda Law Reform Commission and her stakeholders should make haste, break the peace-less silence on exclusive, ancient, ambiguous laws and proceed to their reform, for as a country we are endowed with a good number of laws though part of the ineffective implementation lies in the urgent need to reform them, setting a ground for the Rule of Law to blossom.

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## ENHANCING ACCESS TO JUSTICE IN UGANDA THROUGH TECHNOLOGY.

### Tumusiime Shellinah

The ability of human beings to use tools and technology since the dawn of time has always set it apart and ensured its success. Technology has, for the most part been with us for millions of years, evolving as we do and changing with every subsequent generation. The same could be said for justice, which is our human notions of what is fair and what is right.

It is essential in our rules and law-based society that every single individual is able to access justice and the courts of law. Access to justice shouldn't be viewed through a narrow lens of access to lawyers and legal representation. An expansive definition of access to justice includes not only one's ability to access the courts and legal representation, but also one's ability to engage effectively with law enforcement officials and to make use of informal, non-state justice mechanisms as well. Access to justice, however, remains a pipe dream for millions of people, and it is necessary to use technology to bridge that gap.

The COVID-19 pandemic has tested our court systems and the traditional norms and standards of procedure that we usually follow in our courts. Despite the challenges that it has brought, it has also provided an opportunity for us to rethink the way we view the courts and encouraged us to embrace the use of technology in the adjudication of disputes.

It has encouraged judges and lawyers to embrace online hearings. Given that the High Court has stations in only a few major towns, online hearings have helped to extend justice to people in more remote parts of the country and enable their matters to be heard. The quantity of suits brought to courts every year is daunting, especially considering that the number of judges is limited, and each courtroom bends under the weight of so many cases. This may be seen, inter alia, by the absurd length of time a case takes to wend its way through the court, from the moment it is filed until it is finally resolved. Embracing online hearings therefore can help to reduce on the case backlog and ensure efficiency in the courts.

The process of filing and institution of a suit can be streamlined through the use of technology. In an era where social distancing is the new societal norm, the use of electronic authentication of court documents could help to ease the filing process and make it more efficient.

Electronic filing is being embraced in several other jurisdictions to cope with the effects of the pandemic. E-authentication of documents bring services closer to people and reduce the time people spend travelling between government offices and places. The basic principles of Authentication of the record of an electronic communication requires that a court can, if necessary, be satisfied: “ that the contents of the record have remained unchanged since it was sent (the integrity of the record); “ that the purported sender of the communication is identifiable (the identity of the sender); “ that the identified sender agreed to its contents (attribution of the communication to the sender); and “ in some cases, that extraneous information, such as the apparent date of the transmission, is accurate. In order to provide extra security for the documents, an electronic signature can help to provide evidence of whether data received has been tampered with after being signed by its original sender. The use of these systems in the court would make court processes less opaque to the litigants and remove the age-old problems of files disappearing, and make it easier for people to check on the progress of their files.

Technology in the courts, however, should not be viewed as a silver bullet that will help us solve many of the problems that we face with our legal and justice systems today. Although several processes like scheduling, mention and filing of documents can be done online, certain aspects of the trial like witness examinations rely on verbal and non-verbal cues that cannot easily be spotted on an online trial. These would very easily dampen the value of witness evidence in trials and should be carefully implemented in the context of online trials. Although certain areas of Uganda still face challenges with their internet connections, this will get better overtime and therefore the implementation of these procedures should be phased, taking those factors into account.

In conclusion, Increased access to justice in a society increases people’s confidence in the justice system and encourages them to seek out more formalized dispute adjudication mechanisms. Embracing technology will increase people’s access to the courts and enable them to access justice.

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## HOW THE YOUTH CAN PROMOTE RULE OF LAW IN UGANDA

### Joshua Niwamanya Mugisha

The world today is home to the largest generation of young people in history. According to UN’s department of Economic and Social Affairs, approximately, 1.8 billion people in the range of 10 to 24 years contribute to the global population. For the case of Uganda, According to Ugandan Youth Statistics there are approximately 7 million youths who take up a big chunk of the total population making them the world’s youngest population. It is also important to note that 77% of these are under the age of 25.

There has been increased recognition of the importance of involving young people in the affairs of their countries. International development projects such as the 2030 Agenda, the Sustainable Development goals, the 2018 United Nations Youth Strategy have all called for the involvement of young people. That notwithstanding, in the past, we have seen formidable young people propose innovative solutions, drive social progress, and inspire political change. A good example is that of Alaa Salah the Sudanese woman who sparked off protests that ousted the longest serving Sudanese president Bashir or Greta Thunberg who has championed the campaign for climate change etc.

Rule of law according to John Carey is a situation where all laws apply equally to everyone in a democracy. It is also like a gauge of how strong a democratic society is in the sense that it creates accountability between representatives and citizens. It is sad that Uganda is consistently ranked low in observance of rule of law

and judicial integrity globally. That mentioned, in 2020, the World Justice Project ranked Uganda 117th out of 128 countries. This shows that the state of rule of law in the country is wanting. The level of transparency and accountability from the Executive or even the Legislature is very low.

Young people want to and are already contributing to the resilience of their communities. The stories of young people driving change around the world is tremendous and inspirational. I therefore believe the youth can play a vital role in promoting rule of law in Uganda, but what really are the roles they have to play.

To begin with, the youth should strive to be inclusive. The youth should develop the urge of wanting to know how their country is being run. Most youth are not interested in the affairs of the country. They believe they do not have to know what is happening in the country. Recently, in one of the sessions for the rule of law champions training by CEPIL, a good number of the participants admitted in not knowing anything about the budget cycle. This was fascinating, anyway, this is just one of those examples that show the youth are detached from the political realities in their country. However, if they were a bit inclusive, their impact would be felt given their numbers.

Similarly, the youth should hold their representatives accountable. The youth should interest themselves on pertinent issues such as whether the government is acting in their interest, and where not, sanction them. Since the biggest number of the electorate is the youth, they can determine or choose who gets re-elected. That's the power the youth hold. For them to however exercise this power, they should be aware of their entitlements. In addition to this, the youth should set up impactful ways of increasing transparency from the side of government, for example setting up strategic forces that will demand for transparency. This can be done through movements among other things. These are some of the impactful contributions the youth can make.

Also, being the critical thinkers they are, the youth should engage in giving ideas and debating pertinent issues that are currently happening in the country. They should strictly question policies and government initiatives rather than accepting them at face value. Most of the policies obtained are theoretical rather than practical, thus they do not achieve the purposes they are set for. Given their numbers, youth are the most affected and I believe they have an informed perspective when debating or contributing to some of these issues. For some, these are the issues that concern them, issues they have physically faced or encountered. Therefore, extending their voices to amplify these issues will not only shape the debate on such issues but will also be a step forward in observing the presence of rule of law in the country.



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we will be  
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I leave you with the words of Hafast Abiola who says that “guard your light and protect it. Move it forward into the world and be fully confident that if we connect light to light to light and join the lights together of the one billion young people in our world today, we will be enough to set our whole planet aglow”. The youth should therefore guard and protect their light, move it forward and one day make the change they can make.

Lastly, we cannot give a blind eye to the government. The youth need them. Government has the ability and resources to unlock the hidden potential in the youth. One thing the government can do is come up and put in place policies that encourage total inclusiveness of the youth at all levels. This is important especially in a country like Uganda whose population is arguably the youngest in the world.



## OBSERVANCE OF RULE OF LAW IN UGANDA THROUGH ABSOLUTE SEPARATION OF POWERS

**Joshua Niwamanya Mugisha**

The notion of separation of powers dates to the 18th century a period where countries around the world were under monarch rule. At that time also, many revolutions sprouted around the world that ousted many monarchs leaving a vacuum of governance. The people or groups that had assumed power needed a system of governance that was convincing. Luckily for them, it was also around that same time that Montesquieu's notion of separation of powers was gaining momentum. He believed a government should have three distinctive organs which work together but with separate responsibilities. According to Montesquieu, power was not to be vested in one person or entity but rather scattered around. This idea of governance was a solution to the governance vacuum that had been created at that time.

Former colonies of European countries like Uganda borrowed all their laws and principles of what good democracy is and governance from these countries. One of the things that was borrowed was the doctrine



of separation of powers. This doctrine was adopted and envisaged in some of the Constitutions that have governed the country. For instance, Milton Obote's 1967 Constitution in which a fundamental structure of the government was put in place had organs of government with separate and independent roles. Presently, the 1995 Constitution of the country, envisaged the same principle in various articles of the Constitution. It clearly indicates the three separate arms of government namely the Executive, Legislature and the Judiciary which play unique roles and are expected to check the powers of the other. The spirit of the adoption of the principle was to keep power from consolidating in any single person or entity. But for the case of Uganda this has not been the case, the absoluteness of this doctrine is questionable.

The country has witnessed on many occasions interferences from other arms of government. For instance, in 2013, we saw Parliament enacting provisions that were declared unconstitutional by the Judiciary being reproduced in other Acts of Parliament that was Section 33 of the Police Act being reproduced in the Public Order Management Act, 2013. Then also in 2017, the country witnessed a joint force of presidential guards forcefully pulling out legislators opposed to lifting the age limit from the chambers of Parliament. This was a clear manifestation of one arm of the government interfering with the work of another arm of government.

The above instances all stem from the weaknesses in the Constitution as is now. For instance, under the 1995 Constitution, the Executive is the biggest appointing authority. Appointments of various persons is widely vested in the Executive. For example, the President is mandated to appoint a cabinet, he is also mandated to appoint Judicial officers. Half of the government is all appointed by one arm. For the case of the Ministers appointed, it envisages a situation where one person is under two arms of the government. A good example is the Minister of Health, Hon. Ruth Acheng, she falls under the Legislative arm but also the Executive arm. Whereas for the case of appointing of judicial officers, persons that have been appointed will not act on their own accord but will rather act on the accord of the appointing authority.

In such cases, there cannot be any sort of transparency and accountability or even say that there is separation of powers. Such appointing power undermines the doctrine of separation of powers in its entirety as was envisaged by Montesquieu. I believe, appointing authority should be left for designated commissions under these arms of government. To ultimately achieve absolute separation of powers in Uganda, there should be some sort of consequences provided for in the Constitution for an arm of government that acts ultra vires of its mandate. Montesquieu's notion of these arms of government as envisaged was to have not only some sort of coordination between the arms of government but to also be respectful of the other. Having, some sort of Constitutional police with the mandate to check and if possible, sanction arms of governments that stray away from their mandates would bring some sense of an absolute separation of powers.

To conclude, there have been arguments that there cannot be an absolute separation of powers. It has also been mentioned that the idea of checks and balances that was introduced to check the powers of some organs has not achieved its intended purpose. But here is the thing, different countries experience unique challenges in their governance that only their constitutions can solve, and that is the case for Uganda, there are some things that need to be changed under the constitution to achieve a sense of absolute separation of powers.

## Conclusion

This is a compendium of research, analyses, opinions and thoughts of young lawyers on the nature, context and understanding of the Rule of Law, what they need to do about it and who else is responsible in ensuring the promotion, protection, defense and advocating for the Rule of Law.

The youth are a vital pillar in shaping the future of Rule of Law in Uganda.







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