A CRITIQUE OF THE CONCEPT OF THE RULE OF LAW IN UGANDA SINCE 1986 TO PRESENT

BY

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DEDICATION

I dedicate this dissertation to my late grandmother Jeresy Kanyanga, my late Mzee Yorum Byendugu Kashasha, my mum Mrs. Aidah Nahabwe, and my brothers and sisters especially Ahikiriza Johnson and Nahabwe Safrah and Twesigye Nicholas and friends who have made me reach this far in providing all that I needed for my education.

DECLARATION

I NUWAGABA MORDECAI, the undersigned, do solemnly declare that the material presented is my original work, both in substance and form, and that to the best of my knowledge it has never been presented in Kampala International University or any other institution of learning for the award of Bachelors degree.

Signed: 

NUWAGABA MORDECAI

Date: 5th/07/2012

APPROVAL

I declare that I have supervised and read this study and that in my opinion, it conforms to acceptable standards of scholarly dissertation in partial fulfillment for the award of Degree of Bachelor of Law of Kampala International University.

Signed:.....

MR. CHIMA

SUPERVISOR

Date:.....

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LIST OF ACRONYMS

PRA	:	People's Redemption Army
CA	:	Constituent Assembly
CAP	:	Chapter
CJ	:	Chief Justice
FDC	:	Forum for Democratic Change
HRW	:	Human Rights Watch
ICCPR	:	International Convention on Civil and Political Rights
ICJ	:	International Commission of Jurists
JA	:	Justice of Appeal
JSC	:	Justice of the Supreme Court
UJSC	:	Uganda Journalists Safety Committee
UN	:	United Nations
UPDF	:	Uganda People's Defense Forces
ULS	:	Uganda Law Society
PJ	:	Principle Judge

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ABSTRACT

The study was aimed at establishing the position of the concept of the rule of law by critiquing the concept with the critical analysis majorly on the doctrine of separation of powers and independence of judiciary since 1986 to present.

During the research, the following objectives were to be studied: to analyze the concept of the rule of law, independence of the judiciary and the doctrine of separation of powers.

The variables were tested using both primary data from the field and secondary data from physical books and internet and other literature.

The study was both significant to the researcher, judiciary, government and the general public.

The researcher found out that judicial independence is important in the administration of justice.

Therefore, the finding of the study showed that judicial independence is not strictly observed and the separation of powers is not to the expected standards and therefore this has affected the performance of the judiciary and sabotaged the application of the concept of the rule of law since 1986 to present.

It was recommended that, the doctrine of separation of powers be upheld as provided for in the Constitution of the Republic of Uganda, 1995. This therefore will create an independent judiciary so that justice is administered without fear, favor and or ill will.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Introduction

Closely associated with the doctrine of separation of power is the theory of the rule of law. The first issue to be settled about is that the rule of law is not "a **rule**" in a sense that it binds anyone;

It is merely a collection of ideas and principles propagated in the so called free societies to guide law makers, administrators, judges and law enforcement agencies.

The overriding principle (consideration) in the theory of the rule of law is the idea that both the rulers and those governed are equally subject to the law of that very land. This theory has gained substantial momentum in the last four centuries; it was well known and practiced in the ancient civilization.[1]

According to the legal theory **lexicon**, the rule of law may not be a single concept. It is thus correct to say that the rule of law is a set of ideas connected more by what has been termed **family resemblance**, then a unifying conceptual structure. Thus **Rowls** examines the idea of the rule of law as the regular, impartial, and in this sense fair administration of public rules.[2]

Taiwo, while echoing other writers on the subject, recognizes the concept as founded upon the theories of early philosophers dating from the Aristotelian period and summarized the concept as the principle of the supremacy of law.

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[1] Justice Prof. G.W. Kanyeihamba, Constitution and Political History of Uganda Pg. 301-302
[2] The Uganda Living Law Journal Vol. 6 No. 1 of 2008 pg. 6

This means the subordination of the acts of government officials to the discipline of law. In other words, offered acts must strictly comply with the procedure and requirements of established law.[3]

Black's law dictionary defines the rule of law as;

A legal principle, of general application sanctioned by the recognition of authorities and usually expressed in the form of a maxim or logical proposition. Called "**a rule",** because in doubtful or unforeseen cases it is a guide or norm for their decision. The rule of law sometimes called the supremacy of the law, provides that decisions should be made by the application of known principles of laws without the intervention of discretion in their application.[4]

From the above it is imperative to note that the rule of law connotes guidance **on** part of the law maker, the judge or administrator to arrive at a legally sound solution through the instrumentality of established principles of law, without invoking the personal whim but rather what the law dictates.[5]

Under the Uganda Living Law Journal, the writer underscores the equalizing attribute to the rule of law, when he mentions the equality of the law maker with the ordinary citizens. **He says that law is**;

A set of rules of conduct determined and enforced by the government (state), in the general administration of justice as well as defining rights and duties of the members of the community. If such rules are observed by both the rulers and the ruled, there is order in a country and we can bodily say that there is rule of law.[6]

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[3] L.O. Taiwo Democracy, Court and Rule of Law in Nigeria, E. African Journal of Peach and Human Rights Vol. 13 No. 2, Pg 270 & Pg. 274

[4] Black's Law Dictionary, Henry Campbell Black (Editor)

[5] Uganda Living Law Journal Vol. 6 No. 2 2008

[6] Ibid pg. 7 See also G.W.K.L Kasozi (Editor) Introduction to the Law of Lesotho. 1999 LPg. 3

The rational is that law is not only important, but that all people should subject themselves under the law for the rule of law to prevail, which I entirely consent to.

Theoretical approach on the concept argues that, like **Dicey** that he identifies three major principles namely;[7]

1. The absolute supremacy of the regular law
2. Equality before the law or the equal subjection of all classes to the ordinary law of the land administered by ordinary courts and
3. The law of the constitution is the consequence of the right of individuals as defined and enforced by the courts.
   Whereas as justice **Mohamed[8],** revisits. Aristotle formulation of the rule of law and attempts to expand the promises of the concept.

He argues that the rule of law to exist, law should be sovereign or overall authority; clear and certain in its content and accessible and predicted for the subject and the law should be general in its application.

Alongside, he recognizes a need for independent judiciary without which the rule of law will be impossible, and finally, he submits that in order for the rule of law to be realized, law must have procedural and ethical content.

In any society for the rule of law to thrive, these concepts must exist, that is;

[7] A.V. Dicey, The law of the constitution, 10th Edition 1959 pgs. 187
[8] Senior Counsel and President of Lesotho court of Appeal. He later became the first Chief Justice of the Republic of South Africa after democratic elections in 1994

1.2 The separation of powers and the independence of judiciary

Separation of power. Means that the powers of the organs of the state must be clearly described in the constitution and these powers must be exercised by the different persons as laid down in the constitution.

The three organs of the state are;

(a) Executive

(b) Legislature

(c) Judiciary

These organs are established under the 1995 constitution of Uganda[9], legislature is established under **Art. 76, 77, 78 and 79** with its composition and functions, the executive under **Art. 99, 98** and equally chapter seven of the constitution and judiciary is under chapter eight of the constitution and under **Art. 126 and 128** the essence of the above provisions is to the effect of separation of power.

The doctrine of separation of power is fairly a dated one and to first normative expression can be traced under Art. 16[10] of the final declaration of the right of man and citizens of the 1797, which provided that **"any society in which there is no safeguard of right is not assured and the separation of power is not observed has no constitution".**

Even before this provision there was a French declaration, in a French political text **"The spirit of the law"**[11] That when the executive and legislature powers were registered in one person, there could be no liberty and freedom and that any fusion of powers can lead to tyrannical and arbitrary government.

In relation is the notion by **Justice Odoki said**[12];

[9] The constitution of Uganda 1995

[10] The Final Declaration of Men and citizen 1797

[11] French Political Text "The Spirit of the Law"

[12] Justice Odoki

"Although the rules and the responsibilities of the organs of the state are far different, they are closely related or connected, none of them can work properly on its own, they are like three stones under a cooking pot, each play a distinctive role but always incorporation with each other so that if anyone is removed the pot collapses".

The rationale behind is that through closely connected they are different and therefore any fusion of power under one organ would be spearing on the naked body of the concept and total blood shed and final death of the rule of law.

Independence of Judiciary

This is generally a broad term based on the judicial power enshrined in the most world-wide constitutions. In Uganda this notion has its roots under art **128 (1) of the 1995 constitution**[13] which stipulates that in the exercise of judicial powers, the courts shall be independent and shall not be subject to the control or direction of any person or authority.

Many scholars, authors and jurists have preferred to describe rather than defining it but end up meaning the same notion.

According to **Justice Odoki**[14], independence of judiciary is an indispensable requisite of a free society under the rule of law. Independence here implies from freedom interference by the executive or legislative in exercise of its judicial function.

Independence in the aspect does not construe to mean that judiciary is entitled to act in arbitrary manner; its duty is to interpret the law, impartial administration of dispute between citizens and between citizens and the state.

[13] The constitution of Uganda 1995
[14] Odoki Quotation

In accordance with the law, as is deemed as the custodian of the law and the constitution.

Barnabas .A. Samatte describes the concept of judicial independence with five elements that;
Independent from the legislative and executive including institutions of local governments, this type is known as external independence.

Independence from judicial colleagues and superior, this is known as internal independence.

Independent from society or groups thereof.
Personal independence (security of tenure and reasonable condition of service and remuneration).

And

That it may be useful to say a word or two on the independence from judicial colleagues and superiors and tie one from society or group thereof as these two types of judicial independence are more technical in character than the other three.

Whereas other mothers outside legal fraternity have tried to define the concepts of judicial independence. **Paul D. Wiebe** and **Cole P. Dodge**[15] puts it as a custodian of law, and justice reside in the institution of judiciary, as an arm of the state the judiciary is supposed to be independent and encumbered by the whims of policy makers and implementers.

[15] Paul .D. Wieb & Cole .P. Dodge Beyond Crisis Development Issues in Uganda.

Without the realization of the judicial independence, equality of all citizens before the law and mutual confidence, then the rule of law would be a fallacy and this is recognized in every civilized society.

Finally to the effect, **Art 112** of the soviets socialist constitution stipulates that judges are independent and subject only to the law, **Art 64** of the constitution of Poland lays down that judges are independent for execution of their judicial duties and sentences of courts may not be or nullified by other organs or authorities.

Therefore, judicial independence to be envisaged and expressed, judge must keep clear of political bias judges must be kept free from speaking bodily in their judicial capacity, and should be invited to give decisions only between litigants of flesh and blood and not on hypothetic cases put to them by the executive or anyone else if the concept is to be realized.

Contextual background

Or

1.3 The Background of the rule of law since 1986 to present in Uganda.

Once the National Resistance Movement **(N.R.M)** government, had set itself up as the dejure government, it started to consolidate its power base. The political stage was introduced and it would be a fallacy if not baseless not to say that politics or political position of the country is fundamental factor for the rule of law to exist. Thereafter the constituent assembly was convened to discuss the political future of Uganda[16].

[16] Constituent Assembly Statute 1993

The period under examination is probably the most checkered dispensation in uganda's political history. **Oloka – Onyango,** writing 10 years after the inception of the N.R.M regime attest to this when he says:

Celebrating 10 years in power, Yoweri Museveni's Resistance Movement **(NRM)** Government is the largest serving since independence in 1962; it has also produced the most varied dimension of social, political and economic transition Uganda has ever experienced.[17]

It is for this reason that the research decided to focus on this period, it is also important to say that this period followed achetic era in Uganda's history between 1966 and 1986. Detention, deportation regulation and emergency powers all over Uganda became the order of the day, after the introduction of 1966 constitution deportation, emergency powers and detention of people without trial become eminent and the evident of such is **Ibingira** and other two were detained, **the case of Uganda vs. commission of prisoners exparte Matovu (1966) E.A**. 514 justified the state of affairs in Uganda.[18]

It is the expert **Matovu's case** that invoked the **Kelsenia pure theory of law** of extra-constitution changes that led the legitimatization of 1966 Interim Constitution and 1967 constitution respectively, that abrogated the 1962 constitution, is this theory that opened gates for political diffusion. Therefore the introduction of legal notice **No. 1/71** that abrogated the 1967 republican constitution, still under the **U.N.L.F legal notice No. 1 of 1979** abrogated legal Notice No. 1/71 and 1995 constitution, that returned the **Article 1 of 1966 and 1967 constitution,** Uganda had been in political chaos and the rule of law in dilemma. Security of persons and individual liberties hang in a balance in the said period and the rule of law deteriorated considerably, after ascendance to power by the late president of Uganda, **field Marshal Idi Amin**

[17] J. Oloka Onyango, Uganda Human Rights in Developing countries Year book 1996
[18] (1966) E.A. 514 and Ibingira & Ors.

Dada, the situation did not improve much after the fall of Amin as had been expected[19].

1.4 Statement of the Problem

There is substantial evidence satisfying that there is a rule of law which is constituted by the both separation of powers and the independence of judiciary as entrenched in the **1995 constitution** of the republic of Uganda. Nevertheless, it is vividly observed that the application of the rule of which is both the separation of power and the independence of judiciary has been unjust, unbecoming and regrettable.

After Uganda's independence, the rule of law begun to suffocate, the judiciary permanently experienced the erosion of its independence and thereafter 1986the situation did not change to better up to present. The fusion of powers, the interference and erosion has not only been orchestrated by the executive and legislative but also by individuals and other factor on the other hand for instance the removal, remuneration of judges and other judicial officers, or interference in the judiciary's independence by way of bribing judicial officers or judicial officers asking many things, this has created a corrupt atmosphere within judicial system which endangers the concepts of the rule of law.

It is therefore imperative to identify factors that have led to the undermining of the rule of law which is the doctrine of separation and the independence of judiciary.

The study therefore examined the extent to which the principle of independence and the doctrine of separation of powers has been addressed under the 1995 constitution and equally or further determined the applicability of the concept of the rule of law in Uganda since 1986 to present.

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[19] Legal Notice No. 1/71 and No. 1/1979 and No. 1/86

1.5 Research Question

i. What is the principle of the concept of the rule of law?

ii. Is the concept or the principle of the rule of law respected and upheld in Uganda?

iii. What should be done to ensure that the principle of independence of judiciary and separation which is the concept of the rule of law is respected and upheld?

1.6 Objectives of the Study

The main objective or targets of this study was to look forward to achieve at the end of the study or during the course of the study to analyze the concept of the rule of law since 1986 to present (under NRM).

The specific objectives are;

(i) To analyze the concept of the rule of law in Uganda since 1986 to present.

(ii) To examine the relationship between the judiciary and other arms of government. The executive and legislature under the NRM regime.

(iii) To identify factors affecting the independence of judiciary

(iv) To identify the root causes of factors affecting the independence of judiciary.

(v) To examine the applicability of the concept of the rule of law to Uganda under NRM regime.

(vi) To recommend possible solutions or remedies towards the maintenance of the rule of law and strengthening the independence of judiciary in Uganda.

1.7 Scope of the Study

The study covered the period 1986 to present being the post 1995 constitution era. The researcher chose the year 1986 because this was the year in which the current 1995 constitution derives its basis which restored the rule of law and order. This constitution expressly provided for the establishment of judiciary[20] and its independence[21].

Further, the researcher choose this period because this was a period when the rule of law has to some extent diminished, the independence of judiciary has been greatly undermined by the other arms of government especially the executive. This period has seen a direct involvement of the military in the affairs of judiciary caused by the executive's attempt to protect its self greedy centred interests at the expense of the rule of law.

1.8 Justification of the Study

The study was triggered by the feelings and conscious about the unpleasant and favorable situation under which the judiciary operates and exposes the challenges encountered by the judiciary and factors undermining the independence of judiciary and the rule of law and to find solutions for the same in Uganda.

It is deemed necessary that recommendations will not only strengthen and protect the rule of law but also safeguard judicial independence as a means of reform in Uganda's legal system.

The study will be relevant to policy makers, government planners, politicians, lawyers and academia or scholars in assisting them to understand how the independence of judiciary, the doctrine of separation of powers should operate in Uganda and to understand the rational of the concept of the rule of law.

[20] The Constitution of Uganda 1995
[21] Ibid

The study further proved that through upholding the concept of the rule of law, the following were to be identified[22].

- **Attainment of sustainable development in any state**
- **Securing individual liberty**
- **Equality before the law both the subjects and the government officials**
- **An effective system of checks.... And balances as far as the exercise of state of power is concerned.**

[22] Uganda Living Law Journal

CHAPTER TWO

LITERATURE REVIEW

2.0 The Rule of Law, separation of powers and the independence of judiciary.

This research was carried out at the time when the rule of and the independence of judiciary has been interfered and in diminishing state.
Suffice to note is that this literature is relevant in understanding the doctrine of separation of powers and the principle of judicial independence which is hence complementing the concept of the rule of law.

A number of authors have written about the subject or on the concept of the rule of law, but little has been done in relation to analyzing the rule of law in Uganda since 1986 to present.

Justice Kanyeihamba on the concept of the rule of law had this to say[23].

"Experience in the developing countries of which Uganda is one reveals a number of challenges relates to the rule of law. The rule of law is not a rule in a sense that it binds anyone. It is merely a collection of ideas, and principles propagated in the so-called free societies to guide law makers, administrators, judges and law enforcement agencies" the overriding consideration in the theory if the rule of law is that both the rulers and the governed are equally subject to the same law of the land.

Therefore experience of the law teaches us that in criminal just ice and administration, one can never be too careful. Presumptions of innocence and the necessity to prove criminal charges beyond reasonable doubt can only be

[23] Commentaries of Law, Politics and Governance Pg. 14

put for the general good of the society. Mistaken identities of the suspect, malicious entrapment by investigating agencies, false confession and errors in presenting and assessing evidence are occurrences that lead to innocent person having to pay very heavily for crimes they may not have committed or participated in[24].

Like what occurred to **Col. Kiiza Besigye** who was charged and tried of rape, then with treason and the other 22 suspects of People's Redemption Army **(PRA).**

That view is often hailed in the nation of western civilization, the exercise of government powers may be legitimate and constitutional but the manner of it and its consequences may have to be buttressed by the rule of law and constitution.[25]

The separation of power. This doctrine closely associated is the concept of the rule of law. The effect is that the three arms of government though interconnected but they are distinctive, they evolve under principle that liberty and the rights of individuals were protected if government powers were distributed amongst the three arms of the state or government with each largely confined to its sphere of activity and influence.

M.J.C Vile notes that "a government which controls all the powers that is the executive judiciary ad legislature and which decides to act arbitrary, will pass any laws it wishes".

It will therefore administer and enforce these laws ruthlessly without regard to the rights and freedom of the people and should anyone oppose, criticize or deviate from those laws the same government will judge him corruptly and in

[24] Ibid Pg. 25
[25] Ibid

violation of human rights or minimum standards required by the rule of law. The author contends that the accumulation of government powers in the same hands result in tyranny[26]. The author however, does not critically address the concept in Uganda.

Dennis Lloyd recommends that in order to avoid usurp of powers, it is necessary to distribute government function and powers amongst the three arms of government and to adjust their relationship to one another in such a way that system of checks and balances is exhibited or established between them[27]. It has been established that the essence of constitution rests in the limitations of which the doctrine imposes on the arms of government as well as a certain amount of diffusion of power.

Theorists on the concepts of the rule of law have identified corresponding concepts or principles, which inform and establish the rule of law. **According to Halsburry's laws of England**, which in many respects is the reinstatement of English common law, the rule of law, the rule law also, be viewed as the upholding of principle of legality[28].

Professor Dicey[29] is one of such theorists. He identifies three major principles namely:

1. The absolute supremacy of regular law, contrary to the influence of arbitrary power.
2. Equality before the law or the equal subjection of all classes to the ordinary law of the land administered by ordinary courts and

[26] M.J.C Ville Constitutionalism & Separation of Powers, Mugobera Charles Musa. The Application of the Doctrine of Seperation of Powers in Uganda June 2010 in his dissertation.
[27] See de Smith & Brazier, constitutionalism and Administrative Law, 6th Edition, Chapter 4
[28] The Law of England, constitutional Law and Human Rights.
[29] A.V. Dicey, The Law of the Constitution, 10th Edition, 1959 at Pg. 187

3. The law of constitution is the consequence of the rights of individuals as defined and enforced by the courts.

Justice Mohamed[30], revisits Aristotle formulation of the rule of law and attempts to expand the premises of the rule of law, he argues that the following are the main features of the rule of law, that is the law should be sovereign[31] and all authorities, clear and certain in its content and accessible and predictable for the subjects and that law should be general in its application.

Alongside these he recognizes the need for an independent judiciary without which the rule of law is impossible. He finally submits that in order for the rule of law to be realized, law must have procedural and ethical context[32].

The characterization offered by **Mohammed** may be supplemented by **Lord Bingham's eight sub-rules of rule of law**[33]. This includes; the law must be accessible and so far as possible, intelligible, clear and predictable, questions of legal rights and liability should be resolved by application of the law and not exercise of discretion, that the laws of the land should apply equally to all, save to the extent that objective difference justifies differentiation, that the law must afford adequate protection of fundamental human rights; means must be provided for resolving without prohibitive costs or inordinate delay, bonefide civil disputes which the parties themselves are unable to resolve, ministers and public officers at all levels must exercise the power conferred on them reasonably, on good faith, for the purpose for which the powers were conferred and without exceeding the limits of such powers. Adjudicating procedure provided by the state should be fair and the state must comply with its

[30] Senior Counsel and President of Lesotho, Court of Appeal and 1st Chief Justice of South Africa after democratic elections 1994

[31] wikipedia.org/wiki/ruleoflaw pg.4-7

[32] Ismeal Muhamed S. C, Preventive Detention and the Rule of Law, Lesotho Law Journal, Faculty of Law Naitonal University of Lesotho vol. 5 No. 1 1998 pg. 2 – 3.

[33] See lord Bentham's speech on November 16th 2006 for Sr. Daudi William Lecturer Faculty of Law Cambridge University.

obligations in international law, the law which whether deriving from treaty for international custom and practices governs the conduct of the nations[34].

When we talk about an independent judiciary we are in essence talking about the doctrine of separation of powers which is closely the concept of rule of law. This has been discussed by **Montesquieu**, who argues that in order to have an effective government, the three arms of government must exercise influence on one from the other. He argues against concentration of all powers in one organ of government. That these powers should be separated from and independent upon each other such that one power does not exceed the other and vice versa.[35]

The doctrine of separation of powers and the concept of the rule of law is upheld in the common law confines as well as civil law systems. The United States, which is largely characterized as an **Anglo-American Legal system** subscribes to these doctrines. For example, **John Adams**, in drafting the constitution of the common wealth of Massachusetts, justified the principle of separation of powers when **he said.**

In the government of this common wealth, legislative department shall never exercise the executive power and judicial powers or either of them the executive shall never exercise the legislative powers or judicial powers or either of them. The judiciary shall never exercise executive powers or legislative power or either of them to the end it may be growth of laws are not of men[36].

In reiterating the importance of the rule of law, for all confines of the world **Thomas Carotherers** argues that in the **U.S** one may not go far without hearing it **(the rule of law)** being fronted as the solution to most of the

[34] Ibid and the Uganda Living Law Journal Vol. No. 12008 at pg. 15
[35] Ibid, see also the spirit of the law and Wikipedia/wiki/Charles de secondat – baron de Montesquieu
[36] Massachusetts Constitution, the first part at XXX (1780) and Uganda Living Law Journal Vol. 6 No. 1 2008 at pg. 16

problems encountered in their foreign policy. He says, without the rule of law, societies may not experience peace and prosperity. However he quickly points out that the rule of law is not a quick fix. He also acknowledges that the rule of law may be difficult to come by in societies without history of it, **(rule of law)** and that there must be a change of attitudes of the majority of people, including the elites. He particularly observed that;

The primary obstacle to such reforms is not technical or financial, but political and human. Rule of law reform will succeed only if it gets at the judicial problem of leaders who refuse to be ruled by the law. Respect for the law will not easily take root in a system rife with corruption and cynicism since entrenched elites lead their traditional impunity and vested interests only under pressure.

Even the new generation of politician, arising out of the political transition of recent years is reluctant to support reforms that create competing centerss beyond their control[37].

It is observed that there is a tendency to assume that rule of law presupposes fairness. **Hammerstrom** is of the view that the rule of law does not seem to mention justness as a condition precedent for the subsistence of the rule of law[38], he further argues that the **rule** of law is not necessarily democratic.

He says, we who seek to build democracy must not be bound by the false assertion that the rule of law is democratic. A re-examination of history teaches us that our powerful legal system is a massive fortress against popular

[37] See Thomas Corothers, The Rule of Law Revival from Foreign Affairs published by council on foreign affairs March/April 1998
[38] The Uganda Living Law Journal Vol. 6 No. 1 2008

sovereignty. One of our important tasks is to revisit fundamental questions that were resolved by undemocratic means in the past[39].

Black's law dictionary has this to say on the concept, it defines the rule of law as a legal principle, of general application, sanctioned by the recognition of authorities and usually expressed in the form of maxim or logical proposition called "a rule", because in doubtful or unforeseen cases it is a guide or norm for their decision. That the rule is sometimes called "The supremacy of law", which provides that decisions should be made by the application of known principles of laws without the intervention of discretion in their application[40].

From this definition, it is apparent that the rule of law consists guidance on part of the law maker, the judge or the administrator to arrive at legally sound solutions through the instrumentality of established principles of law, without invoking personal whims, but rather what the law dictates[41]

Kasozi also in defining law underscores the equalizing attribute of rule of law, when he mentions equaliy of the law maker with the ordinary citizens. He says that law is;

A set of rules of conduct determined and enforced by the government (state) in the general administration, and the administration of justice as well as defining rights and duties of members of community, if such rules are observed by both the rulers and he ruled, there is order in the country and we can bodily say that there is rule of law.[42]

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[39] Ibid 39

[40] Black's Law Dictionary. Henry Campbell Black (Editor) St. Paul Minni West Publishing Co. 1979 pg. 1196

[41] Uganda Living Law Journal

[42] Ibid and see George W.K. Kasozi (Editor) Introduction to the law of Lesotho and a basic text on the law and aspects of judicial conduct and practice Vol. 1 1999 pg. 31

These views not only show that law is important, that all people should subject themselves under the law for the rule of law to prevail[43].

2.1 Independence of judiciary.

This research was carried out at a time when the judicial independence has been interfered with by other arms of government. Authority has written about on the independent of judiciary in Uganda but in relation to realizing the substance and true subject matter since 1986 to present little has been realized.

The principle is not a new phrase in Uganda's legal system; the principle is well established in he doctrine of separation of powers and the rule of law, thus the three arms of government, that is the execution, the legislature and the judiciary must be independent from each other. The judiciary is a district and independent arm of government with constitutional mandate and judicial authority to administer and deliver justice to the people of Uganda.

Professor Agbede. In summarizing the concept of the rule of law points out that, the judiciary function should be separated and vested in one organ different and distinct from the executive and legislative organs and must be allowed to operate in an atmosphere of freedom from external inference which guarantees its impartiality and independence[44]. This institutes the core of the principle of judicial independence. Its proper to note that by separation roles and functions, it is possible to determine or point out errors, wrongs and excess by any organ, of the state; However, the rigidity seems to be different from practice, while the author lays down good principles, he does not give any

[43] The Uganda Living Law Journal

[44] Quoted by Justice Benjamin Odoki C.J of Uganda in his key note address to the Pan African Forum for Common Wealth Principles in the accountability of relationships between the three organs of government. And Mugobera Charles Musa on the Application of the Doctrine of Separation of Powers in Uganda June 2010.

empirical evidence of how it has been applied in the modern day democracies in Uganda.

H.W.R Wade and C.F Forsyth. In their writing about the rule of law and economic development, enumerated that the distribution of the powers and functions of the government among its various organs, namely the executive, legislature and the judiciary and the existence of independence of judiciary in execution of the duties to interpret and apply the law and to check the abuse of power and to provide redress for aggrieved individuals are one of the substantial tenet of the rule of the law. From the author it can be submitted that existence of independent judiciary promotes not only sanity in the legislature and checks and balance within the activities but also ensure the rule of law. That ensuring that all the other organs of the state play their roles to the well established rules.

Commenting on the rule of law, the author further states "that disputes as to the legality of acts government are to be decided by judges who are wholly independent of the executive... the right to carry a dispute with the government before the ordinary courts manned by the judges of he highest independence is an input element in the agro-American concept of the rule of law"[45].

The author, however, does not elucidate the extent to which the judiciary's decisions on the legality of acts of government can be or have been implemented or even respected, especially where they concern political case. The above position is fortified by **Chief Justice Benjamin Odoki,** in his illuminating discourse (written about the rule of law;) the Honorable chief justice observes that the branch of government which is best suited to protect and strengthen the rule of law is the judiciary.

[45] Ibid and H.W.R. Administrative Law (1998) pg. 24

It should be clear first that the role of an independent judiciary needs to be lauded, but the authors do not take into account that in countries like Uganda, judges are appointed by the president and this gives room for partiality in case of political cases, secondly the author do not point out the extent to which the independence of judiciary should be applauded and the factors which impede its effective promotion.

2.2 The doctrine of separation of power

According to **Hon. Mr. Justice S. Z Lubuva**, he states that in almost every society which believes in the rule of law, the concept of the doctrine of separation of powers is almost a horse hold terminology[46].

The doctrine of separation of powers dates far and its acknowledged that its history dates back to the 17th century at the time of Greek political scientific and philosophers **Aristotle, John Lockie** and later a French philosophers and **jurist Montesquieu**, where he expanded the doctrine in the following terms.

"Political liberty is to be found only when there is no abuse of power; but constant experience shows us that every man invested with power is liable to abuse it and to carry his authority as far as it will go ".... To prevent this abuse, it is necessary from the nature of things that one power should be a check to another... when the executive and legislature power are united as the same person or body... there can be no liberty if the judiciary power is not separated from the legislative and the executive... there would be an end to everything if the same person or body whether of the nobles or of the people were to exercise all three powers[47].

[46] D.Z. Lubuva J.A. (Tanzania) The doctrine of Seperation of Power is a myth and reality. A paper delivered at the Emjua Conference Kampala, produced in Hakim Journal of Magistrate and Judges assistant March 2007.

[47] Quoted by M.K. Tumusiime in "The Independence and accountability of the judiciary in Uganda. Opportunities and challenges.

Montesquieu therefore exhibits and apprehends that if powers and functions of the three organs of state are centered on one of the state organs, the risk of having despotism and tyranny was great. He argues that in order to have an effective government, the three organs must exercise their powers independently without influence on one from the other. He argues against concentration of all powers in one organ of government, that those powers should be separate from and dependent upon each other such that one power does not exceed the other two and vise versa.[48]

The effect is that the principle that liberty and rights of individuals were best preserved and protected if government powers were equally distributed between those organs of state each confined to its sphere of activity and influence.

The doctrine is closely associated with the rule of law protection of human rights and good governance in democratic state. In the true sense of the argument, the separation of powers means a rigid compartmentalization of he organs of the state which are independent.

According to **Denies Lloyd** recommends that in order to avoid usurp of powers, it is necessary to distribute government functions and powers amongst the three arms of government and adjust their relation to one another in such a way that system of checks and balances is established between them[49]. It has been observed and its on record that the essence of constitution rests in the limitations which imposes on the arms of government as well as a certain amount of diffusion of power[50].

However, according to **Justice Lubuv** states that, the doctrine, if practiced in a strict and pure sense would paralyze the government business, in this sense

[48] Uganda Living Law Journal Vol. 6 No.1 2008 pgs. 16
[49] See the Smith & Brazier, Constitutionalism and administrative law, 6th edition chapter 4
[50] See Denis Lloyd Introduction to Jurisprudence 5th edition, 1985 chapter 4

the doctrine is hardly put in practice, it is in this context that even what recognized to be the theory of checks and balance should be so effective rather than a theory and perhaps a myth.[51]

2.3 Applications of the doctrine of separation of power.

The doctrine of separation basically is to the effect that three arms of government, the executive, legislature and judiciary should be independent of each other. It is a general requirement and acknowledged that democracy in any state is closely associated with the rule of law which is a pre-requisite of good government and separation of power.

It is a common phenomenon practice in the constitutions of various democratic countries to find provision which prescribes for recognition of the principle of separation of powers. This invokes pertinent questions as to whether the doctrine of separation of power is enshrished in the constitution of the republic of Uganda 1995.

Uganda's constitution incorporates the concept of separation of powers and the system of checks and balances as essential of ensuring democracy and ultimate sovereignty of the people.

There are substantial provisions in the 1995 constitution which contains the principle of separation of powers in relation to three organs of government. This is arranged in different chapters of the constitution, indeed with the legislature[52], the executive[53], and the judiciary[54], and the judiciary,

[51] D.Z Lubuva J.A. (Tanzania) The Doctrine of Seperation of Powers – Myth or reality a paper discussed at E.A. M.J.A Conference, Kampala
[52] Art. 77(1) (2) of the 1995 Constitution of Uganda
[53] Ibid Art. 98(1) & Art. 142
[54] Ibid Art. 126

demonstrates not only an intention to separate judiciary powers from the legislature and the executive but also the rationale for its separation.

Firstly **Art. 98(1)** of the 1995 constitution provides for the presidency of the republic of Uganda. **It provides, thus;**
98(1) there shall be a president of Uganda who will be Head of the State, Head of Government and Commander in Chief of the Uganda People's Defense Force and the fountain of Honor.

The Same Articles provide for the exercise of executive authority of the republic of Uganda. It provides inter alia that, 99(1) the executive authority of Uganda is vested in the president and shall be exercised in accordance with this constitution and the laws of Uganda.

Different Articles Under **chapter seven** provides for the republic of Uganda and its authority, the executive or cabinet consists of the president, Vice President, Prime Minister and such number of ministers as may appear to the president to be reasonable necessary for the efficient execution of the state duty, and other ministers to assist state ministers in the performance of their function[55].

The essence or rational as the name suggests or implies, the executive or the cabinet is the organ of the state which is charged with administrative function of the government, and determination, formulation and implementation of policy upon which laws are eventually enacted by parliament.

Chapter six[56] concerns the legislature. **Article 77 to 97** provides inter alia, for the composition[57], function[58], power[59] and procedure[60], privileges and

[55] D.L. Lubuva J.A. Op at P.15
[56] Bugobela Charles Musa, Application of the Doctrine of separation of power in Uganda, June 2010
[57] Art. 78 of 1995 Constitution of Uganda
[58] Ibid Art. 79
[59] Ibid ART 91

immunities[61] of parliament, speaker and deputy[62] speaker and the clerk of parliament and other staff[63]. Its common knowledge that legislature is the organ of the state which enacts laws in the national assembly based on the policy formulated by the executive arm of government. Equally the legislature is empowered to monitor the activities of the executive with a view to ensure its accountability[64].

Judiciary is embodied under **chapter eight** of the constitution. Under the chapter provision establish courts of ad judicature, which consists of the supreme court of Uganda, the court of appeal, the High court of Uganda and subordinate courts as parliament may by law prescribe, or establish including Qadhis courts as may be prescribed by parliament[65] and the details of court structure are dealt within chapter four.

It is known that the basic function of judiciary is to adjudicate over disputes arising between parties in accordance with the laws enacted by the legislature, the courts which constitute judiciary are empowered to interpret the constitution the supreme law of Uganda and other laws of similar relevance enacted by parliament.

The three organs of government as they exist the supreme role of judiciary is exhibited under **Art 126(1)[66]** of the constitution which is to the effort that judicial power is derived from the people and shall be exercised by the courts established under this constitution. In the name of the people and in conformity with the laws of Uganda and with values, norms and aspirations of

[60] Ibid ART 94
[61] Ibid ART 97
[62] Ibid ART 82
[63] Ibid ART 87
[64] Ibid ART 97
[65] Ibid ART 129
[66] Ibid ART 126

the people. More to the effect, **under Art 128** of the constitution[67] establish the independence of judiciary that it will be independent and not subject to the control of or direction of any person or authority in the exercise of their judicial function.

The provision mentioned above manifest an intention to secure in the judiciary a freedom from political, legislative and executive powers, thus a satisfactory. Empirical evidence within the provision of the constitution that judicial powers shall be rested only in the judicature.

Its my submission to the effect that judicial independence is not only a substantial requirement for the separation of powers but a cardinal principle rooted in the rule of law. It is therefore imperative to note that for the independence to thrive, it requires an atmosphere in which judicial functions are performed of judicial functions.

[67] Ibid ART 128

CHAPTER THREE

3.0 Methodology

This chapter indicates how the data was collected and analyzed, how the research was designed, the survey population, sampling procedures data collection and analysis.

3.1 Study design

This study is mainly a traditional desk, a study where description and qualitative method was essential in establishing a critical understanding of the rule of law in Uganda since 1986 – to present. Though the study is mainly qualitative both qualitative and quantitative methods was used, this study focused on the stakeholders involved in the dispensation of justice especially the judiciary. Qualitative method was used for documentary analysis during and after the field study especially in finding out the facts, challenges and bottleneck affecting the rule of law in Uganda since 1886 – to present.

3.2 Study Population

The study intended to critique or assess the concept of the rule of law in Uganda with specific reference to the judicial independence, separation of powers and the applicant of the doctrine of separation of powers and the protection of human rights. A sample of forty five respondents in total was contacted.

3.3 Data Collection

Data was collected using both primary and secondary source, library research was extensively and intensively used to collect substance and information related to the rule of law, dissertations were contacted and other materials were accessed and the research on other various database covering the rule of law.

Existing laws, journals, textbooks, judiciary and annual reports to authenticate or refute information from primary source. Data collected was critically analyzed to determine the extent to which the concept of the rule of law exists and determine the applicability of the concept of the rule of law exists and determine the applicability of the concept of the doctrine of separation of power in Uganda since 1986 to present.

3.4 Sample design.

Questionnaire will be administered to both staff and non staff; purposive sampling will be used to minimize subjectivity and objectivity responses.

3.5 Questionnaires

Questionnaires were administered especially on the top management of selected members of stakeholders, officers of the courts of judicature, Human Rights Commission, Uganda Law Reform Commission, Ministry of Justice and Constitution affairs, officers of the military council, Attorney Generals, Inspector General of Police, this were to help in the document analysis and observation.

3.6 Data Analysis and processing

Field notes were written and other interviews were tape recorded and the work was analyzed, edited and transcribed, companying and sorting was effective in eliminating irrelevancies duplication and disorder this ensured accuracy and consistence in Information given by the respondents.

3.7 Encountered constraints or limitation of the study

There were several constraints and obstacles that the researcher encountered in carrying out his research and these included time factor, financial factors, negative attitude of some people, but the researcher tried to explain, that is

purely academic and promised anonymity for those who do not want their names to be tagged to their viewers, and disappointments among others.

The time allocated to this study was short for example time that was spent to collect relevant information and analyze it and final presentation of the report among others, and the researcher being a finalist in law school, the schedule become unreasonable, financial and other logistics to facilitate the research during the exercise of the research such as printing, transport, photocopying and internet surfing all those were encountered. ,

CHAPTER FOUR

REPRESENTATION AND DISCUSSION OF FINDINGS

4.0 An Overview of the concept of the Rule of Law and analysis of the principle of Judicial Independence and separation of power since 1986 to present.

4.1 Introduction

This chapter gives an overview of the critique of the concept of rule of law, an overview of the principle of independence of Judiciary and the doctrine of separation of powers. This was done by citing various definitions expounded by different scholars and legislation. It majorly and substantially hints on the characteristics of the independent judicial system.

The functions, duties, authority and constitutional mandate of the Judiciary are explained in this chapter.

The chapter also highlights the administrative organization of the Judiciary of Uganda, the judicial structure and the conceptual framework of the concept of the rule of law and this was done by critically analysing the provisions of the 1995 constitution of Uganda the provisions of the 1995 constitution of Uganda and other legislations.

The chapter gives a theoretical overview of the concept of the rule of law, it also insists on the definition of the concept of the rule of law and the independence of judiciary, the test for judicial independencies and the necessity for judicial independence which is a magnificent proof of the rule of law.

Finally, the chapter explains how the law guarantees the independence of the judiciary, a critical analysis of constitutional provisions and other legislation and international law principles pertaining to the independence of Judiciary which is a major ingredient for the rule of law to suffice.

4.2 An Overview of the concept of the rule of law.

The concept of the rule law. Theorist have embraced the concept by identifying corresponding concepts or principles, which inform and establish the rule of law. According to **Halsbury's laws of England**[68], which in many respect is a restatement of English common law, the rule of law may also be viewed as upholding the principle of legality. **Dicey** identified three major principles namely[69]. The absolute supremacy of regular law contrary to the influence of arbitrary process: Equality before the law or the equal subjection of all classes to the ordinary law of the land administered by the ordinary courts and

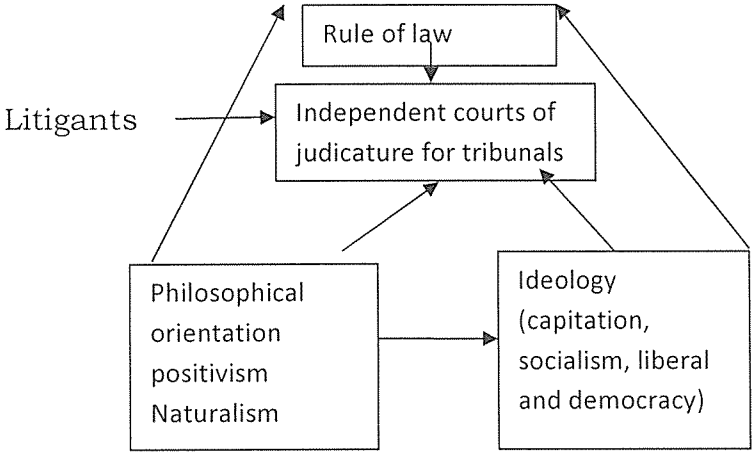
The law of the constitution is the consequence of the rights of individuals as defined and enforced by the courts. The rule of law is therefore not a rule in essence that it binds anyone. It is merely a collection of ideas and principles and aspirations propagated in so called free societies to guide law makers, administrators, judges and law enforcement agencies and the overriding consideration is the theory of the rule and law is the idea that both the rulers and the ruled are subject to the same law.

As mentioned above, the concept of the rule of law means or refers to the right reasoning of the free society, and the rational behind is that whatever is to be done should reflect the societies consciousness and the societal will and the constitution since democratic constitution are made out of the will and, power of the people, it is not law that binds any one but a well settled will of the general society.

[68] See Halsbury laws of England, vol. 1 constitutional law and Human rights, paragraph 6 footnote 1
[69] A.V. Dicey. The law of the constitution 10th ed. 1959 P. 187

4.3 The general conceptual framework of the rule of law.

Following below is a simple conceptual framework to explain the rule of law and how it should be understood in the context of Uganda[70].



[70] The Uganda living law journal vol. 6 No. 1 June 2008 Pg. 13

Explanation of the conceptual framework

The above general conceptual framework which usually represents the influence of the philosophical orientation and ideology on the rule of law may be applicable to Uganda. For example, in a society under socialist orientation, the rule of law is said to be for the common good, under a society that is purely capitalists, the rule of law seeks to preserve the interests of controllers of capital, whereas under a liberal democratic orientation, society advocates and cherishes values such as good governance, individual human rights promotion and protection and the expression is on the dignity of every one irrespective of status and this pursuits fits our country Uganda.

We may add that[71], in a state, where there is no ideological commitment, and where the state is arbitrary and tyrannical, such was the case in Idi Amin's Uganda (1971-1979) in which environment the rule of law is jettisoned although such a state may profess to uphold the rule of law. This then leads us to the conclusion that the rule of law. This the leads to the conclusion that the rule of law does not consist in claims and counterclaim on the part of state functionaries but it is manifested by the said state functionaries commitment and actions.

The state functionaries cut across the three arms of government, although these in the executive are the main actors because their action results in violation of human rights, of which violation is antithetical to the rule of law.

4.4 The test for the concept of the rule of law.

According to **justice Mohamed**[72], he argues the following are main facts or features of the rule of law, that is law should be sovereign over all authority, clear and certain in its content and accessible and predictable for the subjects and that law should be general in this application, alongside these he

[71] Ibid pg. 14
[72] Ibid pg. 15

recognizes the need for an independent judiciary, without which the rule of law is impossible; he finally submits that in order for the rule of law to be reduced, law must have procedural and ethical content.
His supplemented **by Lord Bingham's** eight sub rules of the rule of law: These include;[73]

The law must be accessible and, so far as possible intelligible, clear and predictable; questions of legal right and liability should be resolved by application of the law and not exercise of discretion: The law of the land should apply equally to all, save to the extent that objective difference justify differentiation; the law must afford adequate protection of fundamental human rights; means must be provided for resolving, without prohibitive costs or in ordinate delay, alongside civil disputes which parties themselves are unable to resolve; ministers and public officers at all levels must exercise powers conferred on them reasonably, in good faith, for the purpose for which the powers were conferred and without exceeding limits of such powers, adjudicature, procedures provided by the state should be fair and the state must comply with its obligations in international law, the law which whether deriving from treaty or international customs and practice govern the conduct of nations.

4.5 The necessity for the concept of the rule of law.

On the issues of the necessity and significance of the concept of the rule of law, it appeared on the report of conference held **at Mombasa Kenya on 12th – 16th September 2007**, the following necessities were identified.

- Attainment of sustainable development in any state.
- Capacity to maintain world wide peace, law and order.
- Securing individual liberties

[73] Ibid pg. 16

- Equality before the law and
- An effective system of checks and balances as far as the exercise of state power are or is concerned. Therefore it my submission that where the concept exist the above will automatically thrive and exists.

4.6 Theoretical overview of the independence of the judiciary.

4.6.1 Definition of independence of the judiciary

The principle of independence of judiciary has its origin in the doctrine of separation of powers, which basically states that the three arms of government, that is the executive, legislature and the judiciary must be independent from one another.

The phrase, independence of judiciary has bee defined by several writers amongst is **Kanyeihamba** who defines judicial independence as a state of affairs where the courts and judges are free to function without fear or favor and or ill will to anyone individual or authority. Independence or lack of it should not be confused with limitation of jurisdiction[74].

According **to justice Nyalali**, independence of the judiciary means self-rule, means being accountable – judges must exercise self discipline as a corollary to the fundamental principle of the judiciary. This is because independence means self-rule and self rule means self-discipline.[75]

The above offers sufficient definitive Materials for the phase independence of judiciary, independence of judiciary in our conceptual overview therefore refers to the circumstances where courts, judges, magistrates and any other person

[74] Kanyeihamba Constitutional and Political History of Uganda from 1894 - 2003
[75] Justice Nyalali, a former Chief Justice of Tanzania gave this definition in a paper he presented in Entebbe on the Independence of the Judiciary.

charged with judiciary power adjudicate and determine cases before them based on facts, evidence and the relevant law applicable to them without any fear or favor.

The first principle of independence of judiciary flows directly from the judiciary constitutional mandate, constitutional democracy depends upon the limitation on government imposed by the constitution through separation of powers between government institutions.

When we talk about an independent judiciary we are in essence talking about the doctrine of separation of powers[76]. This has been discussed by **Montesquie**u, who argues that in order to have an effective government, the three arms of government must exercise their powers independently and without influence on one from the other.

He argues against concentration of all powers in one organ of government, that these powers should be separated from and independent upon each other such that one power does not exceed the other two and vice versa

The doctrine of separation of powers is upheld in the common law contain, as well as in civil law systems, the United States which is largely characterized as an Anglo-American legal system, its therefore imperative to acknowledge that one will only talk of the rule of law where the above submission are evidence since 1986 to present in Uganda.

[76] The Spirit of the law by Montesquieu and the Uganda Living Law Journal Vol. 6. No.1 June 2008. Pg. 16.

4.6 The Test of judicial independence

According to **R Bader – Ginsburg**[77] the real test of judicial independent comes when judges are led by their understanding of the law, the finding on facts and the pull of consciences to a decision which is contrary to what other branches of government or other powerful interests in the society want something different from what the home crowd wants.

4.6.3 The necessity for judicial independence to realize the rule of law.

1. Judicial independence is necessary for impartial and fair adjudication of disputes.
2. The judiciary is the custodian of the constitution, which must be jealously graded if it is to act as the basis for orderly conduct of affairs in a democracy and uphold the rule of law.

3.Courts cannot act as an effective check and balance against the executive and legislature if they are not independent and strong.

4. Litigants who refer their disputes to courts require a decision maker who is competent, independent is a charade wrapped in a farce inside oppression.

5. Judicial independence promotes the respect and promotion of human rights. The courts are often the only line of defense against the excesses of executive or legislative power. Wronged citizens can only be assured of redress and protection against violation of their fights through an independent judiciary.

6. Judicial independence promotes the cultures of rule according to the law or what is commonly known as the rule of law.

[77] Remarks on the independence of Judiciary (1998) quoted in Kirby's paper-Independence of the Judiciary, Basic Principles, New Challenges.

4.7 Guarantee of the independence of the Judiciary in Uganda?

4.7.1 The 1995 Constitution of the Republic of Uganda:

The Constitution provides for an independence Judiciary

Article 128(1) of the Constitution provides that:

In the exercise of judicial power, the Courts shall be independent and shall not be subject to the control or direction of any person or authority.

Article 128(2)

No person shall interfere with the Courts or judicial offices in the exercise of their judicial functions.

The Constitution obliges all organs and agencies of the state to accord the Courts such assistance as may be required to ensure the effectiveness of the Courts[78]. The Constitution further provides for other individual and institutional guarantees of the independence of the judiciary. The Constitution provides for security of tenure for judges and magistrates, entrenched procedures of removing judges[79], parliament determines judicial salaries; judiciary expenses are chargeable on the consolidate fund and judicial officers and recruited by an independent Judicial Service commission.

Judicial Immunity is provided for under clause (4) of Article 128 of the 1995 Constitution which provides that any person exercising judicial power shall not be liable to any action or suit for act or omission by that person in the exercise of judicial power.

[78] Article 128 (3) Constitution of the Republic of Uganda, 1995

[79] Magistrates and other Judicial officers may however be removed by the Judicial Service Commission.

4.7.2 Other Uganda Legislations

1. Judicature Act provides for judicial immunity[80]. Section 46 of the Act provides, inter alia that a judge or other persons acting judicially shall not be liable to any action or suit for any omission by the person in the exercise judicial powers in the discharge of his or her judicial function whether or not within the limits of his/her jurisdiction.

2. Similarly under the Penal Code Act judicial officers are insulated from criminal liability for anything done or omitted to be done by him or her in the exercise of his or judicial function, although the act done is in excess of his or her judicial authority or although he or she is bound to do the act omitted to be done. [81]

The Penal Code Act also provides for offences against the administration of justice. Besides, the Penal Code provides for the offence of contempt of Court and subjudice, which insulate judicial offices and prohibit undue interference from the public and press into the adjudicating mechanism[82], thereby protecting the due process of law. According to Justice Kanyeihamba [83]– the subjudice rule enables the judges to administer justice without fear of public clamour, political prejudice or social or other means of propaganda.

3. The Uganda Code of Judicial Conduct also has principles providing for judicial independence and impartiality.

4. The recent decision of **Masalu Musene and others Vs. Attorney General**[84] provides that taxation of judicial officer's is a violation of the independence of the judiciary.

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[80] Cap. 13 Laws of Uganda
[81] Section 13. Cap 120 Laws of Uganda
[82] Ibid, Chapter x.
[83] G.W Kanyeihamba (Supra
[84] Constitution Petition No. 5/2004
[84]

4.8 International Law Principles on the Independence of the Judiciary

International law reorganizes the independence of the judiciary as an indispensable tool for enforcement of human rights, maintenance of international peace, rule of law and the torchbearer for giving effect to the right to a fair trial before an impartial and independence tribunal.

Inspite of this, the international community has not come up with a comprehensive enforceable instrument on the independence of the judiciary.

Nonetheless, there is a **General Council Resolution on the Independence of the Judiciary** which was approved by all members of the General Assembly[85]. This resolution is a codification of international customary law principles on the independence of the judiciary. I will briefly address this resolution, suffice it is mention there are other important conferences that have expounded on the independence of the judiciary, which will also be addressed.

4.8.1 UN Based Principles on the Independence of the Judiciary

The UN Basic Principles on the independence of the Judiciary are standards, which he United National General Assembly approves as minimum standards that must apply to any national judiciary if the rights to equality before the law, presumption of innocence and the right to a fair and public hearing are to be enjoyed to their maximum.

The principles are meant to foster judicial independence; inspire public confidence in the judicial systems; increase realization of th3 right in the international covenant on Economic, Cultural and Social Rights and the International Covenants on civil and Political Rights, and the declaratory rights in the universal Declaration of Human Rights, which are contained in the Bills of Rights of most Constitutions of the World.

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[85] General Assembly Resolution 40/32 of November 29th 1985

The Principles reorganize the important role judges play in the administration of justice and are premised on the ground that independence of the judiciary is indispensable because judges are charged with the ultimate decision over life; freedoms, rights, duties and property of citizens, and that no effort should be spared by national jurisdictions to guarantee independent judiciaries.

The Principles are stated as below:

1. Each state shall guarantee the independence of the Judiciary.
2. The judiciary shall decide matters before it impartially, based on facts and in accordance with the law, without any restrictions, improper influence.
3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have the exclusive authority to decide whether an issue submitted for its decision is within its competence.
4. There shall be no unwarranted or inappropriate interference with the judicial process, nor shall judicial decisions be subject to revision.
5. Everyone shall have the right to be tried by ordinary Courts or tribunal using established legal procedure.
6. Judicial proceedings must be conducted fairly and rights of the parties respected.
7. The judiciary shall be accorded adequate resources to perform their functions.
8. Members of the Judiciary are entitled to freedom of expression, belief, association, and assembly provided that in exercising such rights, judges shall always conduct themselves in a manner as to preserve the dignity of their office and impartiality and independence of the judiciary.
9. Conditions of service, qualification for appointment to judicial office and the training offered to judges shall promote and enhance judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure.

4.8.2 The burgh house principal on the independence of the international judicial

The burgh house principal of the independence of the judiciary related to international judicial tribunal but are relevant to national judiciaries because there is no difference between international and national justice.

The principal are follows:

1 Independence of the judiciary promotes legitimacy and effectiveness in the adjudicating process.
2 Judge must be independent of the parties to cases before them.
3 Judge must be free from undue influence from any source .
4 Judge shall decide cases impartially ,based on the facts of the case and the law applicable
5 Judge shall avoid conflict of interest and shall not place themselves in situation, which might give rise to any conflict of interest .
6 Judges shall refrain from impropriety in their judicial and related activity.
7 Allocation of cases should promote independence of the judiciary.
8 Courts must be free to determine the condition for its internal administration recruitment, funding and information.
9 Judges shall be recruited in a transport manner among person of higher moral integrity and conscientiousness, which are academically and professionally competent.
10 Judges shall have security of tenure.
11 .A judge salary and other condition of service shall not be varied to his disadvantage.
12 Judge shall receive adequate remuneration which shall be adjusted periodically to suit the cost of living.
13 Judge shall enjoy judicial immunity.

14 , judge shall enjoy freedom of association and expression while in office but it must be consistent with judicial functions and should not affect judicial independence or impartiality.

15 Judges shall not engage in extra judicial activity that is incompatible with their judicial functions, or the efficiency and timely functioning of the Court.

16 Judges shall note exercise any political function.

17 Judges shall not serve in case where they have previously served as agent, counsel, and advocate, expert or in any way connected with it.

18 judges shall not serve in a case where they have interest in the outcome of the case (material, financial or professional interest).

19 Judges shall avoid contact with the parties and avoid expert communication with the parties.

4.8.3 Bangalore Principles of Judicial conduct 2002

The preamble of the Bangalore principles draws its aspirations from the Universal Declaration of Human Rights, especially from the right to full equality to a fair trial and public hearing before an impartial tribunal.

The Code highlights ethical conduct and judicial accountability as the bedrock of the independence of the Judiciary.

Principles on Judicial Independence

1. Judicial independence is a perquisite to the rule of law and fundamental guarantee of a fair trial.
2. A judge shall therefore uphold and exemplify judicial independence in both his individual and institutional aspect.
3. Judges shall exercise judicial functions independently based on the fact ad applicable laws free from any inducements, pressure, threats or interference from any person.

4. A judge shall be independent in relation to society in general and in particular to be dispute, which the judge has to adjudicate on
5. A judge shall be free from inappropriate connection with the executive and legislative branches of government, but must also appear to a reasonable observer to be free there from.
6. In performance judicial duties, a judge shall be independent of judicial colleagues in respect of decisions, which the judge is obliged to make.
7. A judge shall uphold safeguards that maintain and enhance institutional and operational independence
8. A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the Judiciary, which is fundamental to maintenance of judicial independence.
9. Judges shall maintain high standards of impartiality and integrity

4.8.4 Caracas, Venezuela Conference on the Independence of lawyers and judges held under auspice of the United Nations on january 1989 at caracas venezuela.

The Conference made worth resolutions on the independence of he Judiciary, some of which are

1. An independent Judiciary was the firmest guarantee of the rule of law and protection of human rights.
2. The indepdence of the Judiciary can be guaranteed if the legal community and public are committed to sustaining free and democratic institutions.
3. Imposition of a state of emergency poses a fundamental threat to the independence of the judiciary.
4. Judicial guarantees should be made non-derogable in the constitution.
5. Judges should not allow abrogation of the constitutions because they are the guardians of the constitution.

6. The legal profession should work for the common good of maintaining a vibrant and independent judiciary.

The tents of an independent judiciary are spelt out in three distinct elements each of which must exist and be practiced before any judiciary can be said to be constitutionally independent and adequate. The first two elements, namely, security of tenure and financial security of both offiers and the institution of the judiciary are formalized and secured by the provisions of the Constitutions. The third element which concerns the relationship between the Judiciary and other branches of government and, the public has been termed institutional independence.

Institutional independence in major democracies of a world is not founded or prescribed by formal provisions of the Constitution or any written law. It is founded in the minds and belief of the people. It is based on the culture of the people and their successive government over the years.

4.9 Analysis of the principle of Judicial Independence

The judiciary as third arm of Government relates to the other organs of the state, namely, the Executive and the Legislature, thereby addressing the concept of judicial independence in Uganda. The research focuses on the functional relationship between the Executive, legislature and the Judiciary, and how this relationship interferes with the independence of the judiciary.

4.9.1 The Relationship between the Judiciary, Executive and Legislature

In 1994 the Constitution Commission under the Chairmanship of Justice Benjamin Odoki (as he then was), now The Chief Justice of Uganda, collected Constitutional view from the citizens of Uganda all over the country and later made recommendations to the constituent Assembly which accepted and enacted the Presidential System of Governance. Central to that system are the cardinal principles of:

1) Separation of power
2) The rule of law
3) Independence of the judiciary

The Constitution of the Republic of Uganda, 1995 provides for separate provisions on the Executive, the Legislature and the judiciary. It suffices to note that the Constitution (Supra) contains elaborate provisions designed to enshrine the principles of separation of powers, the rule of law and independence of the judiciary as already stated above. All the above a preliquisite evidence of the existence of the rule of law.

The powers exercisable by the three organs of government are distinctly demarcated, and controls against excess and misuse of powers have been put in place. The executive powers are vested in the president who is directly elected by the people. Parliament is also elected by the people. It is vested in the legislative powers as well as an oversight role. Neither organ of state has legal powers of control over the other.

It recognized that judicial power is derived from the people and is exercised by the Courts in the name of the people[86]. Judicial functions relate to the other functions of governance through the principles that the Judiciary is independent of control and direction from any person or authority.[87] No person or authority must interfere with the exercise of judicial functions. The judiciary in exercising its independence must put into account of the three arms of government each having separate powers. The judiciary always tries to maintain its autonomy while at the same time refraining from making decisions over issues reserved for the other arms of government.

Against the background set out above, and the clear and unambiguous provisions entrenched in the 1995 Constitution, the practical application of the doctrine separation of powers in Uganda is not free from difficulties. In the

[86] Art. 126 of the 1995 Constitution of the Republic of Uganda
[87] Ibid Art. 128

course of dealing with constitutional and legal disputes, the courts (or Judiciary) have at times encountered problems with the executive and the legislature. This results from the apparent clamor for supremacy among the state organs which hampers the application of the doctrine of separation of powers in Uganda.

There is a misconception on the part of the executive (and perhaps the legislature) that it has exclusive authority and ownership over the Constitution and other legislation such that no other individual or organ has the right to challenge the constitution or any legislation. In that light, when the Court deals with such a case it is perceived by the executive as treading on other's territory. It is not surprising therefore that whenever, the court declares some part of the legislation null and void on grounds of it being unconstitutional the court has met the unprecedented scathing attack. At times the court's decision is nullified by an Act of parliament.

4.9.2 Incidents of interfering with Judicial Independence in sabotaging the rule of law in Uganda.

The case **of Semwogerere and Olum V. Attorney General**[88] aptly sets out this point.

In this case, the petitioners challenged in the Constitutional Court that the Referendum and other **Provision Act 19 99** has been passed by Parliament in total disregard of the procedures of Parliament without the required quorum[89].

In the petition challenging the constitutionality of the Act, the Constitutional Court showed that it was not prepared to lock horns with the Executive and declared the Act as being unconstitutional and therefore null and void. The Court was hesitant to rule that the Act was passed in unconstitutional manner and therefore null and void. It upheld the preliminary objection raised by the

[88] Constitutional Petition No. 1999 (Unreported)
[89] Art. 88 of the 1995 Constitution of the Republic of Uganda

Attorney General that the Court had no power to entertain the case in which the internal workings and privileges of parliament were questioned. It dismissed the petition as being incompetent and held that it had no jurisdiction to handle the matter.

On appeal by the petitioners[90], the Supreme Court held that the Constitutional Court had jurisdiction to hear the matter and directed the Court to hear the petition on its merit.

This showed the fear/lack of impartiality by the Justices of the Constitutional Court had vehemently declared what the Parliament had passed irregularly void because it serves the interests of the executive. However the Supreme Court displayed their sobriety by directing that the Constitution court hears the petition on its merit. Hence some degree of judicial independence was exhibited.

Apparently, the Executive did not take kindly the decision of the Supreme Court. The Court was loudly criticized for what was referred to as the Court's (or judiciary's) interference with the Legislature.

In a series of events that were reminiscent of the **Ibingira saga of 1960's** perhaps in the bid to avert an impending constitutional crisis, the government (or the executive) through the Legislature hastily enacted the Referendum (political Systems) Act, No. 3 of 2000 before the Constitutional Court could rule on the matter. In other words, it can be rightly construed that the Legislature circumvented the decision of the Supreme Court and in effect the Act No. 3 of 2000 nullified the same, and pre-empted the decision of the Constitutional Court.

In August, 2000, the Constitutional Court redeemed itself and in a manner that left Semwogerere and fellow opposition politicians clapping with glee rose to the occasion. The Court held that the Referendum Act 1999 had been

[90] Constitutional Appeal No.1/2000

passed improperly on the ground that there was no quorum as required by the Constitution and the that the Speaker of Parliament was in error in determining the quorum by using wrong methods of it.

It declared the Referendum Act, 1999 unconstitutional and therefore null and void.

The constitutional Court ruling prompted the President to blast the Judiciary (and Parliament) for trying to cause a constitutional crisis. While meeting the Movement Parliament caucus at the International Conference Centre, Kampala, President Museveni said the ruling of Constitutional Court on Referendum and other provisions Act could cause a legal disorder, court litigations and political anxieties. **"They (judges) are not sensitive what they have done shows legal bandruptcy and insenstiveness to the aspirations of the ordinary people"**[91]

In the same vein on June, 25 2004, the Constitutional Court declared the 2000 Referendum (Political System) Act, No. 3 null and void.\

He immediate repercussions of the ruling were enormous and this further escalated criticism against the Court (Judiciary). The executive and/or the government reacted like it had been slapped in the face and decided that it would not take the ruling lying down. As construed by the learned Professor Law of Makerere University, Tumusiime Monica, never before had the government (or the Executive) come out to confront the Judiciary in such a blatant manner[92]. It was alleged that the court (Judiciary) was insensitive to issues of public importance and that the decision would paralyze the business of parliament. In the week following the landmark judgment, the Movement or the government/mobilized its supporter for a big demonstration against the judiciary. In a clear act geared at intimidating the Constitutional Court, on June, 2004, hundreds of Movement supporters poured on the streets of

[91] The New Vision, Vol. 15 No. 196 Friday August, 18th 2000. Lead story Museveni blasts Jusiciary
[92] M.K. Tusiime, Independence and Accountability of the Judiciary in Uganda.

Kampala to protest the ruling. They chanted anti-judiciary slogans and appealed to the President to sack the five judges who presided over the case.

They presented a petition to the Speaker of Parliament demanding that punitive action be taken against the judges. In a show of co-called "people's power" against the Judiciary, some judges were forced to stay away from their chambers and the Courts, Nevertheless, the Judiciary too came out to defend itself. Chief Justice Benjamin Odoki called upon the government and the people to leave the Courts to function without intimidation. He encouraged the judges to execute their duties without fear or favor. He also attempted to calm the storm by assuring the nation that there would be no Constitutional crisis as a result of the judgment.

The Judiciary was also put to test in Constitutional Petition No. 7.2000, in which the petitioners (Ssemwogerere and Olum) challenged the validity of the Constitutional (Amemndment) Act, No, 13 of 2000 which sought to amend Articles 80-90 of the 1995 Constitution. The Bill for the Act was debated, passed and assented to by the President on the same day. It was published in the Gazette the following day and thereby became law. Semwogerere and Olum petitioned the Constitutional Court for a declaration that the Act was invalid for failure to comply with the constitutional requirements for amendment of the constitution. The Constitutional Court held that the amendment had been made in accordance with the law and that there was nothing wrong in passing the Act in two days.

In his lone dissenting judgment **Twinomujuni, J.A**, described the amendment as a coup against sovereignty of people and the supremacy of the Constitution. On appeal the Supreme Court, the declared that the Act No 13 of 2000 was null void because it was passed in total disregard of the Constitution.

Needless to mention the ruling caused a lot of excitement among opposition members of parliament and among the legal fraternity. According to the petitioners' lawyers, the Supreme Court ruling was a "landmark" judgment,

notable not just for its ruling on parliamentary voting procedures, but because it reaffirmed the Judiciary as a protector of human rights and a bulwark against Executive impunity acting the cahoots with the Legislature[93] and they are exhibits of the rule of law.

The relationship between the Judiciary and the Executive was put to a litmus test in the case of **Uganda V. Kiiza Besigye**[94] and others, in which a key opposition politician and a presidential candidate[95] and others were charged inter alia with treason and misprision of treason. On 16th November, 2005 during the bail application and consideration of the suspects, the Executive deployed heavily armed military personnel[96] at the High Court in anticipation of the release of the suspects on bail by the High Court. This was intended to re-arrest the suspects in the event of being lawfully released on bail, apparently in order to charge the same suspects in the General Court Martial.

This act of besieging the High Court did not augur well with the Judiciary. The chief Justice Benjamin Odoki and the Principal Judge James Ogoola condemned the act on separate occasion. The Principal Judge James Ogoola, called the act a **"naked rape" defilement", desecration" and a horrendous on slaughter"** on the Judiciary constituting "the most naked grotesque violation of the twin doctrines of the Rule of Law and the Independence of the Judiciary[97]. He rightly construed that without doubt **the "Rape of the Temple of Justice"** is one such event in the judicial history of this country. To put it briefly, it is human to remember, purchase to block a repetition[98]. In that regard Principal Judge composed some verses-poetry-to put on record the terrible events that befell the judiciary on that inauspicious day of November

[93] Ibid
[94] High court Criminal Case No. 95/2005
[95] Dr. Kiiza Besigye was a presidential candidate for FDC 2006, Presidential Elections.
[96] Heavily armed military personnel were deployed later known to be the "Black Mambas".
[97] The Daily Monitor, No. 358, Saturday December 24th, 2005 at Page 2.
[98] Key note address by The Hon. Justice James Ogoola PJ during the official launch of the Rule of the Law Day Organised by ULS-reported in the UJOA Journal Vol. 13. March, 2007 at page 107.

16, 2005 and to commemorate the said Tragedy[99]. The **"Poem"** summarizes the events of the tragedy and the embarrassment and pain inflicted on the judiciary. It further indicates that such a tragedy has never occurred at any given time anywhere in the world since the Age of Enlighten and that was a total thunder to the concept of the rule of law.

The judges of the Supreme Court, the Court of Appeal and the High Court of Uganda held an extra-ordinary meeting on 16th December, 2005, under the chairmanship of His Lordship the Honorable Mr. Justice Benjamin Odoki, the Chief Justice of Uganda, during which they reviewed a number of events that threatened to undermine the independence of the judiciary and the Rule of Law in this Country. In particular, the judges considered circumstances and the impact of the 16th November, 2005, military siege of the High Court.[100]

In their deliberations, the judges perceived the siege of the High Court to be the fiercest act of intimidation to the Ugandan judiciary since 1972, when the then Chief Justice Benedict Kiwanuka was abducted by armed men from his chambers at the High Court and satisfaction, the prompt and public statements that their Lordships, the Chief Justice of Uganda and the Principle Judge, made condemning the siege. They (Judges) unanimously endorsed and supported both statements and reiterated that the Rule of Law and Judicial Independence, which violation had a chilling impact on the administration of justice and ought to be unreservedly condemned by all.

The judges viewed the events in the context of the constitutional mandate of the Judiciary which is described in **Article 126(1) of 1995 Constitution of the Republic of Uganda** and the doctrine of separation of powers of the Executive, Legislative and Judicial arms of Government which is enshrined in the Constitution, and the principle of Judicial Independence entrenched under Article 128 of the Constitution.

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[99] The poem is produced in Appendix I

[100] Statement by the Judiciary 22nd Dec,2005 issued by the Ag. Chief Registrar Courts of Judicature Published in the Daily Monitor Friday Dec, 2005 at Pg. 27

Further, the judges, recalled that the Ugandan Judiciary has at all time faithfully executed its constitutional mandate to uphold the said principle without fear or favor, despite intermittent acts of interference and intimidation particularly from the Executive arm of Government. Those acts of interference and intimidation have intensified since 2001, so the judge's perceived the 16th November siege of the High Court not as an isolated incident but as a culmination of a trend that threatened to whittle away judicial independence unless every effort was made to arrest the trend and uphold the concept of the rule of law.

In that connection the judges appreciated and commended the reactions of the Uganda Law Society, the East Africa Law Society, the Ugandan Judicial Offices Association, the Uganda Christian Joint Council, the International Commission of Jurists, and the other diverse organizations and institutions in Uganda, the United Kingdom and the United States of America, and above all the many individuals, all of whom has spoken out firmly in defense of Judicial Independence and condemned intimidation against the judiciary, and all forms of interference by the Executive arm and its organs and agencies in the administration of justice.

In conclusion, the judges resolved:-

1) To strongly condemn the deployment of military and other security personnel within court premises for interfering with judicial process and to resist all past present acts and conduct calculated to intimidate the Courts or otherwise to interfere with the proper administration of justice.
2) To call upon the Executive arm of Government to abide by its Constitutional obligation to uphold and promote principles of the Rule of Law and judicial independence and to accord to the Judiciary the assistance required for ensuring the effectiveness of the Courts and to restrain its organs and agencies from perpetrating any form of

interference with judicial process and harassment against the Court and perceiving the concept.

3) To urge Ugandan public to cherish and vigilantly defend the Independence of the judiciary, recognizing that it is a fundamental element of the Rule of Law and that the principle is not a privilege to or for the benefit of judicial personnel, but rather the guarantee of the people's right to have an impartial judiciary that ensures equality of all before the law and protects the human rights and fundamental freedoms enshrined in the Constitution.
4) To assure the Ugandan public that notwithstanding the past and present interference and intimidation, the judges will individually and collectively continue to adhere to and collectively continue to adhere to and uphold the principle of Judicial Independence and to administer justice impartially without fear or favor in accordance with the judicial oath and uphold the rule of law.

The statement by the Judiciary highlighted hereinabove drove the Executive into a paroxysm of rage, to the extent of accusing judges of supporting the opposition politician Dr. Kizza Besigye and taking an antagonistic action against the Executive. This clearly manifested itself in the words of the Government spokesman Dr. James Nsaba Buturo during a press briefing at president's office Nakasero.

"By supporting the position and actions of the Law societies the Judiciary is upholding its legal position on the case. These organizations have expressed political support for Dr. Besigye against the government.... The statement of the Judiciary is unprecedented. There is a case between government and the Uganda Law Society before the Courts of Law. The public advertisement is an antagonistic action. It is a commentary that reveals the Judiciary has taken sides... In this case who will make a

judgment?"[101] It should be noted that earlier, the 800- strong Uganda Law Society (ULS) members had on the 28th November 2007 held a demonstration outside the High Court protesting against what thy called the "deterioration of the Rule of Law" in the country and in condemnation of the 16th November Military siege of the High Court.

The Uganda Law Society petitioned the Constitutional Court[102], challenging inter alia, the invasion of the High Court military personnel. The petitioners, contended that the acts of the Anti-Terrorism Task Force (the infamous Black Mambas) were calculated to intimidate and inculcate fear in the minds of the judges and other judicial officers to induce them to be partial in their judgment and to feel dependent on the state (Executive) for their positions and as a warning that if they did not enter into judgment in their favor, they would be in danger and that the acts, were to compromise the Independence of the Judiciary in contravention of the Constitituion of the Republic of Uganda. Wherefore, the petitioners prayed to Court to make a declaration which will in effect restrain any further occurrence of these acts.

The constitutional Court held that the invasion of the High Court was illegal Justice Byamugisha J.A, held:

"It was in my view a threatening scenario that interfered with the normal operation of Court.... The military had no right whatsoever to interfere with the Independence of the Judiciary."

DCJ Leticia-Kikonyongo held that" .. the execution of the surprise' deployment was not the best method. It appears it fostered fear and anxiety especially as the security personnel even went beyond their security intentioned limits and they entered the criminal registry and cells where it's alleged they interrupted the course of the court's normal duty of processing

[101] Daily Monitor No.358 Sat. Dec. 24th, 2005 Lead story titled Government accused judges of supporting Dr. Kiiza Besigye at Page 12.
[102] Constitutional Petition No. 18 2005, Uganda Law Society Vs. Attorney General.

bail of the accused persons... I find that on the 16th November 2005, the acts of the security agents at the High Court premises constituted, acts of security interference that contravened Articles 23(1) (2) and (3) of Constitution. This glaringly points to the political interference by the state in the exercise of the discretion by courts and thereby undermines their functions and this instituted a residue in the trend and passage for the concept of the rule of law to thrive in the pearl of Africa.

It follows therefore that the PRA suspects who were being detained then were being held illegally in contravention of their constitutional right to bail as granted by the court which went to depict the continued failure of the state to heed to the judiciary's sobriety on constitution and in promoting judicial independence in Uganda.

According to Justice Engwawu J.A in the same case, **"the manner of invasion was deplorable and prejudicial to the independence of the judiciary"**

In the same vein, the Constitutional Court declared the trial of Dr. Kiiza Besigye and 22 others before the Military General Court Martial unconstitutional and therefore illegal. It held thus:

'' The General Court martial was established by an act of Parliament as a disciplinary organ to deal with the Uganda Peoples Defence Forces (UPDF) but not civilians[103] who have committed offences of terrorism and illegal possession of fire arms".

Nevertheless,the military general court marital defied the constitutional court ruling and continued with the trail of the civilians suspects. This came in the wake outburst by army general against the judiciary in reference to the ruling of the constitutional court. The coordinators of security services, **General David Tunyefuza** accused the judge of siding with wrong does instead of helping the state get ride of terrorism .

[103] Only one of the 22 accused jointly charged with Dr. Kiiza Besigye a retired Colonel was a soldier.

'why don't they want to help the state , why don't they see the problem of terrorism .. why are they looking as they are always siding with offenders[104] ?

General Tunyefuza who is also a senior presidential advisor was in Wednesday, February 1st 2006 appearing on a live Radio talk show tonight with **Andrew Mwenda live on 93.3 KFM** , to discuss the implication of the constitution court ruling. The general who kept on referring to judge angrily as these fellows said the army respect the ruling of the court but that judge have no power to order the army. That the army will not accept "this business of being ordered by the judges". He further dismissed claims by the Principal judge, Justice James Ogoola that the army raped and defiled the Temple of Justice, calling it rubbish.

The defiance of the constitutional court by the General Court Martial prompted the media. "the Fourth Arm of the state" – to implore the Chief Justice to act swiftly to salvage the tattered image of the Judiciary that "was being continually pierced by an impudent Army Court at the behest of a belligerent Executive".[105]

Indeed, Justice John Bosco Katutsi withdrew from hearing the case of Uganda V Col (Rtd) Dr. Kiiza (supra), citing pressure and irresponsible talk' that he was favoring the FDC president. His lordship stated, it is my sincere wish that I step down from this case. The withdrawal came teo days after the coordinator of security agencies; General David Tunyefuza accused the judiciary of siding with 'terrorists' instead of helping the state to fight terror.

Before justice Katutsi's withdrawal, Justice Edmond Ssempa Lugayizi had withdrawn from the trial of the rape and treason cases involving Dr. Kiiza

[104] Daily Monitor No. 35 Friday February 3rd, 2006 Lead story titled "Besigye ruling Angers Tinyefuza at Page 1-2.
[105] Ibid

Besigye following the siege of the High Court by the 'Black mambas[106]. This shows not only interference with the exercise and performance of judicial functions as well as judicial independence, but also entails an attempt by the security organ (of course under the control and direction of the executive) to direct how the judiciary should perform its functions. That is, they should heed to their whims and when hey reach different conclusions, it means that they are not promoting justice.

This is an unfortunate state of affirs and greatly undermines the very purpose of having he judicial arm of government and its independence and this a total prophecy of doom in regard to concept of the rule of law in Uganda.

The interference of the executive in he affairs of the judiciary through the Military resurfaced on march, 20, 2007 when the High Court was in the process of ruling on the bail application of the suspects in the case of KIIZA Besigye and Others (supra). "Police" developed heavily at the High Court long before Eldad Mwangusha ruled on the matter. With ambiguity looming large and policemen getting on the ready outside Court, the state was set for scenes that almost replicated the events of November 16, 2005 High Court siege by a shadow Para-military group, the "Black Mambas" when 14 PRA suspects were granted bail only to be returned to prison because the siege made it impossible for them to walk to freedom.

This time round the Court ordered the release of the suspects on bail in accordance with the Court's earlier order of November, 16, 2005 and in obedience to the Constitutional Court decision[107] ordering the release of the suspects on bail. As the Registrar was processing the documents, security personnel surrounded the Criminal Registry insisting that they had orders to return the suspects to prisons under any circumstances. Fights ensued

[106] The Editorial of "Daily Monitor" April 26th 2006. And Daily Monitor No. 035 Saturday 4th, February, 2006. Titled "Besigye Judge Quits"
[107] Constitutional Petition No.12/2006 Col. (Retired) Kiiza Besigye

between the security personnel and members of the public and in the process doors and other Court property were damaged.

Eventually six out of the nine suspects fulfilled bail conditions while three did not and were surrendered to prison authority by their counsel. However, the six were prevented fro leaving on account of the heavy military deployment in the High court premises. In meantime, the Acting Chief Justice, Honorable **Lady Justice Leticia Mukasa Kikonyogo,** convened the top managers in the Judiciary in a crisis meeting, which was also attended by the DPP, the Regional Police Commander and Prisons personnel, to consider the developments. The meeting was informed by the officer in charge of eh Prisons that they had been directed by the Commissioner General of Prisons to take back the suspects.

As the situation deteriorated the Judiciary directed the security officer to remove all security personnel including their dogs from the Court premises. This directive was disobeyed and instead reinforcement was intensified with the apparent intention of storming the Registry to arrest the suspects. Violence escalated to the extent that a defense counsel was assaulted and sustained an open wound in the face.

The protracted negotiations continued with the Judiciary, security personnel and defense counsel with the agreement that security personnel and the public evacuate the High Court premises to enable the peaceful release of the suspects. **Later at around 8:30pm (at night!!!)** The suspects were finally handed over to their respective counsel in the middle of precincts of the High Court and counsel received them, threw them on the back of a police pick up and drove them while they yelled to unknown destination.

These extra-ordinary events prompted the Judiciary to convene an extra-ordinary session of all judges of all courts of Judicature to consider the matter and resolved[108].

- To issue a comprehensive statement on this atrocious incident and unprecedented event;
- The executive gives assurances of the non-repetition of these repeated incidents of affront to the integrity and independence of the Judiciary.
- That all judicial offices of the rank of Chief Magistrates and above be convened at the High Court, Kampala to chart the way forward.

It was further resolved that the above actions taken had nothing to do with the re-arrest or re-charging of the PRA suspects but because of the following:-

1. The repeated violation of the sanctity of the Court premise.
2. Disobedience of Court orders with impunity (by the Executive)
3. The constant threats and attacks on the safety and independence of the judiciary and judicial officers.
4. The savage violence exhibited by security personnel within the Court premises.
5. The total failure by all organs and agencies of the state to accord to Court assistance as required to ensure effectiveness of Courts under Article 128(3) of the 1995 Constitution of the Republic of Uganda; and,
6. The recognition that judicial power is derived from the people, to be exercised by the Courts on behalf of the people in conformity with the law, the values, norms and aspirations of the people of Uganda.

Subsequently for the first time in 44 years since Uganda's attainment of independence, the Judiciary laid down its tools over gross infringement on its independence by the Executive. During the course of the Judicial strike, the Honorable Justice Benjamin Odoki, the Deputy Chief Justice.

[108] Resolution by Judicial Officers meeting held on March 2nd 2007 in the high Court Library at Kampala. Published in the Daily Monitor No. 062 Saturday 3rd March 2007 at page 2.

The Honorable Lady Justice Leticia Kikonyogo and the Principle Judge the Honorable Justice James Ogoola met President Museveni on March, 6, 2007 in an attempt to resolve the standoff.

The Chief Justice also wrote a letter to the President dated 2, March, 2007 forwarding to him a copy of the resolutions of the Courts of Judicature. On 6th March, 2007, the Minister of Internal Affairs and the Attorney General regarding the matter[109]. It was indicated that it was not the intentionof the government (the Executive) to disrespect or defy the Court orders. Wherefore the government regretted the incident that occurred at the High Court on March, 1, 2007/

Further the government promised to carryout more investigations of the events to determine if there were any breaches of the law or procedure and to take appropriate action. The statement also added that the leadership of the three arms of government have met and agreed on what to do to prevent the recurrence of similar incidents in future.

Global human rights organizations also condemned the March, 1, 2007, armed siege of the High Court, saying the act was a blatant interference with the independence of the administration of the Judiciary[110].

In a statement issued on 6th March by the office of the United Nations High Commissioner for Human Rights, it was pointed out that the government has a responsibility to fully respect and observe the independence of the Judiciary and to respect its obligations under the International Covenant on Civil and Political Rights (ICCPR) to which Uganda is a state party.

"The office of the United Nations High Commissioner for Human Rights unequivocally condemns the interference by armed security forces with the independence of the Judiciary contrary to the Constitution and International

[109] The Statement was published in the Daily Monitor No. 68 Friday 9th March, 2007 at page 4
[110] Ibid

Human Rights Principles which undermines the rule of law and administration of Justice in Uganda"[111], the statement said.

In a related development, the US based Human Rights Watch (HRW) also called upon the government to stop intimidating the civilian courts saying the siege was a blatant violation of article 128 of the 1995 Ugandan Constitution that provides for the independence of judiciary, Georgette Gagon, Dputy Director of Human Rights Watch (HRW) is reported to have said

"The Museveni government's attempt to intimidate the Courts shows its profound lack of respect of the law"[112]

In the same vein, the International Commission of Jurists (ICJ) issued a statement on March 4th 2007 in which it called upon Ugandan authorities to respect the independence of judiciary by ceasing the intimidation of judges and Lawyers[113]. The ICJ expressed deep concerns over the military deployment at the High Court, saying that this episode seriously undermines the rule of law and Constitutional Independence of the Judiciary.

It re-stated the ICCPR which obliges state parties to ensure that criminal trial are fair and to take place before independent and impartial courts, and that the UN Basic Principles on the Independence of the Judiciary affirm this principles by emphasizing that there shall be no inappropriate interference with a Court Legal authority by the Executive branch and that judgments of Courts are not subject to revision by the Executive. Similarly the Uganda Journalists Safety committee (UJSC) expressed concern over the High Court siege saying that what Uganda faced then was a breakdown of Constitutional order against state institutions which are supposed to safe guard the observance of human rights and people's freedom. The USJC supported the decision of the Judiciary to

[111] Ibid
[112] Ibid
[113] The Statement was Published in the Daily Monitor Tuesday, 6th March 2007 at page 12.

suspend judicial business, saying that it was in the right direction to fight for its independence as provided for in the Constitution of Uganda[114].

The Judiciary ended their week-long suspension of Court business (strike) on 9, March, 2007, after getting firm assurance from President Yoweri Museveni that the institution would remain independent. The decision was taken at a meeting attended by all judges, Registrars and Chief Magistrates at the High Court at Kampala. This followed a letter[115] written by the President to the Chief Justice of Uganda which was read out at the meeting. The letter was in response to the concerns expressed in the resolutions by the Judiciary. In that letter the President reiterated that' the Government was concerned and regretted the unfortunate events, which took place on 1st March 2007, the government assured that no repetition of such incident will take place.

The government re-affirmed its adherence to the safety and Independence of the Judiciary as an institution and of individual judicial officers, and to uphold the rule of law all organs and agencies of state will always accord the Courts such assistance as may be required to ensure the effectiveness of the Court as provided by Article 128 (3) of the Constitution; the legal and transparent modus operandi for re-arresting suspects released by Courts will be formulated and agreed on by the agencies involved in the administration of justice.

After calling off the "judicial strike" the Acting Chief Registrar issued the Judiciary's statement dated 9th March, 2007[116], in which it was categorically stated that the action of the strike was not intended to be a confrontational but a statement to reaffirm the values the judiciary stands for, that is, the independence of the Judiciary and the rule of law, and that the Judiciary's action was not concerned with the unchallenged rights of the Executive to arrest or charge any accused person, rather the concern was with non-

[114] See Letter of Hajj M. Katende, The Executive Director of UJSC. Published in the Daily Monitor Ibid.
[115] President Museveni's letter dated 8th March, 2007 Published in the Daily Monitor 12th March, 2007 at page 4.
[116] The Statement was published in the Daily Monitor No. 069 Saturday 10th March 2007, at Page 2.

compliance and violation of accepted procedures for re-arresting accused persons for any offence.

Finally, the Judiciary apologized to the public for the inconvenience caused by the suspension of judicial business and regretted the negative impact that this action might have caused to the public.

However, the judiciary had to act as it did not protect the Independence of the Judiciary, which is the foundation for the public's enjoyment of their fundamental rights, and further to remind the state agencies to accord the Judiciary the necessary assistance as provided in Article 128(3) of the Constitution.

The Judiciary strike was followed by a three day strike by the legal fraternity organized by the Uganda Law Society following their emergency meeting of March, 6, 2007 that condemned the Court siege calling it government interference on judicial independence. The Lawyer's strike was perceived as a "symbolic way by the Lawyers to condemn the interference with the independence of Courts.

The lawyers strike was marked with a "cleansing ceremony" of the High Court which was held by the lawyers who were clad in their professional black gowns, some to them in wigs marched around the High Court to symbolically cleanse it of the government raid. The lawyers made defiant speeches vowing to defend the independence of the Judiciary. The Honorable Chief Justice Benjamin Odoki who addressed the gathering commended the Uganda Law society for their struggle to defend the independence of the Judiciary[117]. Moreover, there is a misconception by the executive to be above the law and cannot be found guilty by the courts. This was out rightly manifested in 2007, where a magistrate in the judiciary was threatened with administrative investigation by a motley band of government Ministers for having dared find a Minister guilty

[117] The New Vision New Paper Vol. 22 No. 064 Thursday March, 15th 2007 at 1-2

of embarrassing criminal charge and giving passed sentence in the behalf, inter alia, the payment of fine. This is a clear manifest of interfering with the judicial independence and violates not only the principle of judicial independence by the executive but also the Constitutional provisions.

Conclusion

While the principle of judicial independence has been encapsulated in the Constitution, which is the supreme law of the country, there has been great interference by the executive arm of government in the independence of the judiciary directly and indirectly. This has partially affected the performance of the judiciary directly and indirectly. This has partially affected the performance of the judiciary in performance of its functions especially dispensing justice and therefore a bottleneck and a constraint to the concept of the Rule of Law in Uganda.

CHAPTER FIVE

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

5.1 Summary and Conclusions

The study was undertaken to critically analyze the doctrine of separation of powers and the independence of judicially which is a proof of the concept of the rule of law, application of the same in Uganda since 1886 to present.

In Chapter three an attempt was made to analyze the concept of the rule of law basing on different definitions expounded by different scholars. An attempt was made to define what a rule of law, the principle of independent judiciary and the separation of powers in Uganda since 1986.

The study revealed that there is a difference between constitutionalism and the Constitution. The former deals with the process and principles while the latter deals with the end product-a Constitution.

The Constitution is the fundamental law of the state establishing its character and conception of its government, laying down the basic principles to which its internal life may be confirmed regulating distributing and limiting the functions of different government departments and more especially separating the functions and powers of the three arms of government, that is the Executive, the Legislature and the Judiciary. The constitution also lays down other state institutions and distributions of power amongst them and put limitations on the exercise of those powers.

In other words, a constitution is a form in which a state is organized with regard to such fundamental matters as legislative, executive and judicial powers and authority, and it includes the body legal or traditional principles regulating the relations of state authorities to each other and to the governed.

The research covered the doctrine of separation of powers and the applicability with particular reference the independence of the Judiciary in Uganda. Broadly stated the doctrine of separation of powers means that the three organs acts independently within the limits of its constitutional powers without interference with the others, while at the same time, maintaining close cooperation and mutual respect for each other.

The study has revealed that the doctrine is closely associated with the rule of law and good governance in a democratic state. In its sense separation of powers means rigid compartmentalization of the organs of the state which are independent. The study has also revealed that there is no country in the world where there is complete separation of powers. If the doctrine is practiced in the strict and pure sense, would paralyze government business, thereby bringing the government to a standstill.

The study further revealed that in Uganda, the Doctrine of separation of powers is enshrined in the 1995 Constitution of the Republic of Uganda, which incorporates the concept of separation of powers and the system of checks and balances as essential means of ensuring democracy and ultimate sovereignty of the people. There are specific Constitutional provisions which reaffirm the principle of separation of powers in relations to the three organs of the state. The arrangement of the constitution in different chapters in the Constitution demonstrates an intention to separate judicial powers from the Legislature and the Executive.

Nevertheless, the practice in Uganda reflects a fused system of functions among the three organs of the state. For instance cabinet ministers are drawn mostly from elected members of Parliament while the unelected cabinet Ministers are ex-officio members of Parliament. The President who is also the Head of State and government, the Commander in Chief of the armed forces, is also empowered to appointed high judicial officers such as the Justices and the

Supreme court, the Justice of the Court Appeal and the judges of the High Court.

Furthermore, the judicial officers of the Lower Bench are appointed by the Judicial Service Commission established under Article 146 of 1995 Constitution. All the members of the Commission including the Chairperson are appointed by the President with the approval of Parliament.

This negates the principles of separation of powers and greatly affects the independence of the Judiciary and in disguise will affect the rule of law.

As practiced, it is not easy to draw rigid lines of demarcation between the three arms or pillars of the state. With reasonable flexibility and a proper understanding of the role of each of the organs within the scope and limit of its constitutional powers, the doctrine as practiced, has, generally worked successfully. The three arms of the state have, in spite of some incidents of conflict worked together harmoniously, each discharging its basic function.

In chapter four an overview of the Judiciary and the analysis of the independence and separation of power of Judiciary since 1986 to present were put clear.

In order to understand underlying variables that explain the current status of the judiciary viz-a-vis the judicial independence, we have discussed the background of the Court System in Uganda under the 1995 Constitution. The research revealed that all the Courts of judicature are established by Article 126 (1) of the 1995 Constitution. Further the Constitution clearly spells out the mandate, functions, composition and jurisdiction and hierarchy of the Courts of Judicature. There are also specific constitutional provisions and other legislation which insulate the Judiciary with judicial independence and judicial immunity.

The focal point of our discussion has been to critically analyze and evaluate the variables underlying the undermining of judicial independence and the

doctrine of separation of powers in Uganda. The study has revealed that political expedience and militarism in Uganda have significantly contributed to the whittling away of judicial independence and summarizing the concept of the rule of law.

An attempt has therefore, been made to identify incidents that have undermined the independence of the Judiciary and the doctrine of separation of powers. Thus reference was made to the relationship between the judiciary and other arms of government, the Executive and the Legislature. The chapter provides basic clues for understanding what variables have been responsible for the undermining of judicial independence and the doctrine of separation of powers by the other arms of government.

The study revealed that the 1995 Constitution contain three separate chapters, each on the Executive, the Legislature and the Judiciary.

The chapters contain clear unambiguous and elaborate provisions designed to enshrine the principle of separation of powers, the rule of law and independence of the judiciary. The powers exercisable by each organ are distinctly demarcated and controls against excess and misuse of powers have been put in place.

The study further revealed that in spite of the above elaborate provisions; the Judiciary has at times encountered problems with the Executive and the Legislature in the course of dealing with constitutional and legal disputes. This results from the apparent clamor for supremacy among the state organs which hampers the application of the doctrine of separation of powers in Uganda and therefore hindrance to the rule of law.

There is a misconception on the part of the Executive (and perhaps the Legislature) that it has exclusive authority and ownership over the Constitution and other legislation such that no other individual or organ has a right to challenge the Constitution or any legislation. Hence whenever Court deals with

such a case it is perceived by the Executive as treading on other's territory. So whenever, the court declared some part of legislation unconstitutional and therefore null and void, the court (Judiciary) has met with unprecedented scathing attack. The study revealed that a very powerful Presidency is a threat to judicial independence in the sense hat it does not tolerate contrary views from the Judiciary which is insensitive to the needs of such an Executive is labeled as legally bankrupt, unpatriotic and therefore anti-people. It was further revealed that unnecessary criticism from the Executive and other political forces is a serious threat to the independence of the Judiciary.

At times the court's decision has been nullified by an Act of Parliament. It is therefore unconstitutional for the Executive to resort to rushing a Bill through Parliament to nullify the decision of the court instead of appealing. The study therefore revealed that the Executive and Parliament are not very forthcoming in assisting the Judiciary in its Constitutional mandate.

At times the Executive had involved military might to challenge the decision of the Courts (or the judiciary) or to interfere with the operation of Courts a trend that threatened to whittle away judicial independence and a final ..... at the back of the concept of the role of law.

On the positive note, local and international Human Rights and law organizations such as the Uganda Law Society, the International commission of Jurists, the East African Law Society, the Uganda Judicial Officers Association, the United National Commission for Human Rights, the Human Rights Watch and the Uganda Journalists Safety Commission stood behind the Judiciary, during the difficult days, to fight against the violation of the independence of the Judiciary.

In a nutshell, with a proper understanding of the principles of separation of powers, its scope and limitations provided for under the 1995 constitution, it is hoped that the members of the Executive and the Legislature would be more positive in their attitude towards the Judiciary.

5.2 Recommendations

In light of the conclusions of this study, the following recommendations are provided. The recommendations stated herein below may not be a panacea to the problems or challenges which the Judiciary in Uganda faces, but it is hoped that they will be a starting point in the quest for judicial independence. The onus is on the entire citizenry, policy makers and other concerned parties to prudently and analytically study their viability, independence for a democratic and peaceful state.

5.2.1 Separation of powers.

The doctrine of separation of powers should be strictly applied thereby de-lining the Judiciary from the other arms of government. It is therefore recommended that the president should be stripped of the powers to appoint high judicial officers- the Justice of the Supreme Court, Court of Appeal/Constitutional court and High Court Judges if total respect of the institution and the rule of law is to make a land mark in the political, legal and societal arena of the country.

5.2.2 Power of appointment.

This power of appointment should be vested in the Judicial Service Commission.

The Judiciary needs to be independent not only administratively but also most importantly financially. It is only after it is so independent that it can be able to preserve the rule of law and protect the rights and liberties guaranteed by the Constitution and other laws of the state.

5.2.3 Financial Independence.

In the premise it is recommended that the Judiciary should be made financially independent of the Executive. It is therefore imperative that the role of the that

the role of the Judiciary in society be accorded the recognition and facilitation it deserves.

5.2.4 Judicial independence.

The independence of the Judiciary should be safeguarded not merely by the provisions of the constitution but also by all the other organs of the government including their agents and operatives and entire citizenry giving due respect to the judiciary's decisions and implementing the same decisions and implanting the same decisions when directed.

Therefore Constitutional safeguards should be put in place to prevent military involvement in settling constitutional and legal affairs and there must be specific constitutional provisions which provide that the Judiciary has the right to interpret the constitution with finality and determine the constitutionality of the Executive and Legislative acts.

5.2.5 Public awareness.

Efforts should be made to create and sustain public awareness of the provisions of the Constitution on the fundamental law of the land. This will help to educate the citizens how to defend the Constitution and the independence of the Judiciary against all forms of abuse.

Civic education is essential in the creation of public awareness about the law, the administration of justice and basic human rights. The public are stakeholders and beneficiaries of the Rule of Law. Hence there is a need to create both human rights culture and respect for the Rule of Law. This would be facilitated further by the introduction of constitutional studies as an examinable subject at all educational level.

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APPENDIX (III)

THE RAPE OF THE TEMPLE

I.

From thin air they came, bedecked chameleon in black camouflage. Like a swarm of angry wasps, the Praetorian Guard descended on holy ground. Their ferocious gangs unfurled, their vicious sting darting-ready to strike warlike, they came: wearing the bellicose face of terror, the malevolent mask of horror.

Wild like, they charged: wielding awesome weapons of war: AK-17s cocked, ready to discharge the crackling cartridge: Uzi guns waving ominously in the air, ready to vomit their lethal venom.

II.

With wrath and fury they came: their hapless prey to snatch. They laid siege to the fortress of justice. Like warmongers, they darted here and they darted there; their prey to seized and abduct. They turned the temple of serenity into

a theatre of war.

They transformed the shrine of refuge, into a treacherous den of vipers! The prisoner on trial
Seeking justice from the temple, they sought to pick and pluck from the very arms of the goddess of the temple.

III.

The goddess, blindfolded and balancing the scales of justices in her hands stood still, holding her breath: stunned, horrified.

Gripped in grief and disbelief at the invaders' heretical effrontery.
The goddess is heard to lament in torment:
"It is abominable! This is sacrilege! To strip me this before my own family,
To expose my nakedness before my own family;
To expose my nakedness before my own flock!

IV

Like mystic monks in mourning, dressed in black gowns,
The temples scribes stand, distressed.
Their heads, begarted in grey wigs, they shake in anguish.
From their numbed lips, a gasp of moaning issues forth;
Bewailing the disgrace! Bemoaning the debauchery!
Be crying the desecration!

V

In the after math of the vile defilement of the goddess, the voice of one, a sage and a knight brave, from high priesthood of the temple, broke froth, shattering the still silence, in anguished rumination, in righteous rage, the shrill voice rang out; "The rape of the temple! What a day! a fateful day of woe! A day of infamy"!

VI

Abruptly, the prophetic voice of poetic knight stirred up a torrent of popular protest, Fellow knights, the temple scribes, the zealots, the Pharisees, and the elders all from the learned fraternity and all kindred souls at home and abroad: joined and swelled the public protest.

They rose as one. As one they spoke in unity and in solidarity.

They demanded: Independence for temple, and for the shrine: Virginity the true bedrock and lynchpin of the divine trinity on which rests the vulnerable virtue of:

The reign of justice: the rule of justice: the rule of reason: and under the law, Equality.

VII

Oblivious to the sanctity of the temple, Blind to the congregation's reverence for the purity of the temple, the serpentine reptiles plunge into a frenzied rampage. Obstinate, the swaggering warlords trample unholy boots on holy ground. With guns ready to rumble, they go on the Rambo.

VIII

Straight for goddess they dash, into the inner sanctum of the shine, discarding all discretion to the four winds, they charge: menacingly, disgracefully they strip her like a
harlot in a harem;
Un shame facedly, unfeelingly, they prostrate her like a common prostitute

IX

There, in broad day light: there under the wide open skies with high heaven looking on the Black Mambas commit abominable iniquity, with abnormal impunity. There, in spite of the congregation of august assembly of visiting Ambassadors: learned Advocates; the accused: their Accomplices: the temple's own administrator; and the elect Members of the tribe's supreme council of meditation there, under the very eye of the high priest himself, duly seated on the Judgment seat, the black Mambas commit the vile deed: the abomination of desolation!

X

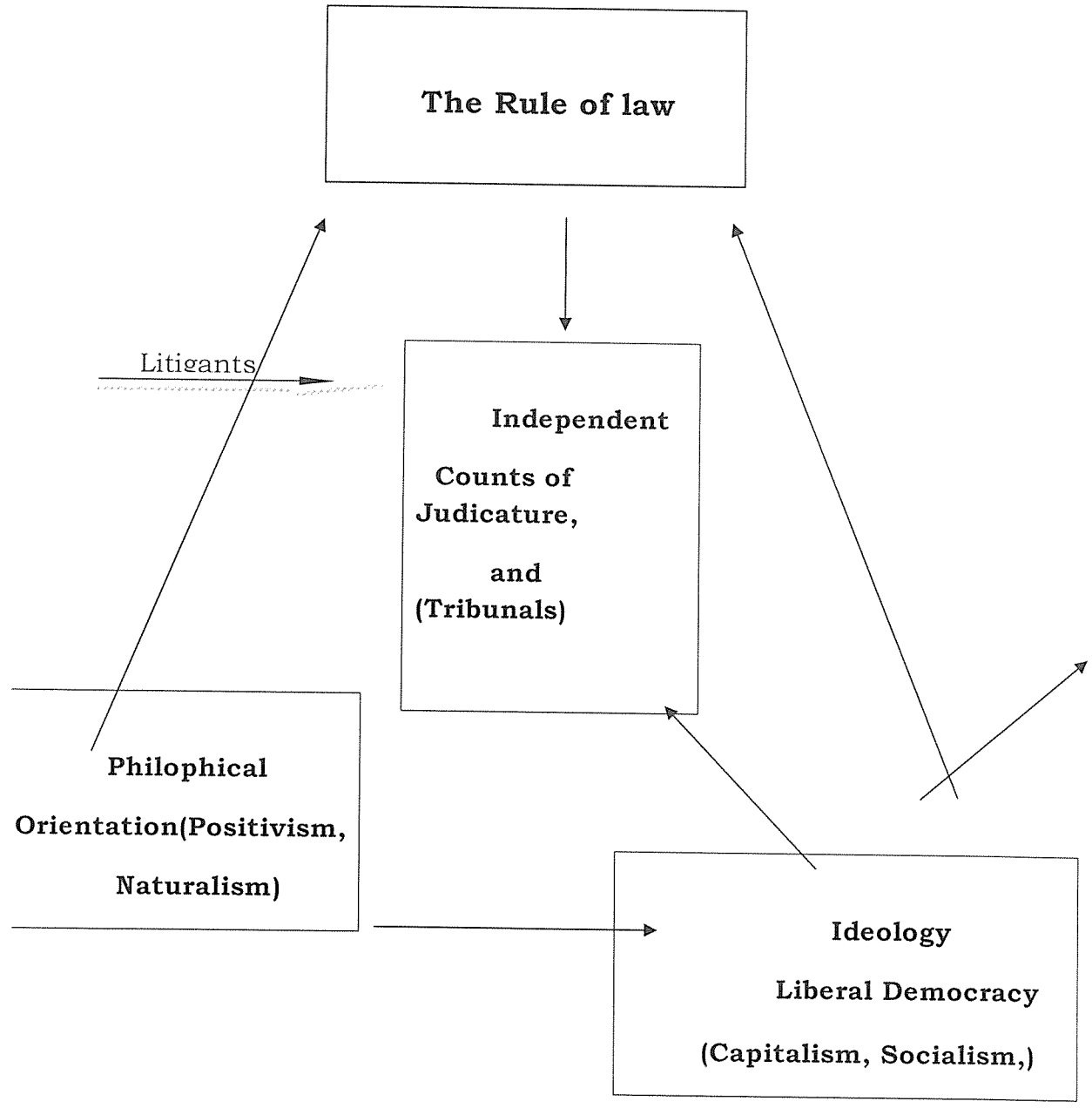
Such unutterable trespass, such unrequited transgression had not been seen before not since the sacrilegious execution of the chief priest, Kiwanuka. He was snatched, hauled and carted away from this very shrine. Like a common thief, the infidels of the military ilk dragged him from the sanctum of the shrine, to the place of the skull, they led him. There, in the slaughter house, in the hall of the holocaust, they butchered and quartered him: A martyr for judicial independence!

XI

In no other shrine: anywhere anytime was ever so callous a calamity committed? Not on this side of the equator; nor on the other. Not in the times: nor in earlier ones indeed, not since the Age of Enlightment the more the pity, to see horrific history repeated!

APPENDIX (IV)

The hierarchy And Conceptual Framework of The Rule of Law.



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APPENDIX (V)

QUESTINNAIRES

1. What are the functions, duties and constitutional mandate of the judiciary in Uganda?

2. What is the hierarchy and conceptual framework of the Rule of Law in Uganda?

3. What is the administrative organization of the judiciary?

4. Are you independent in executing your duties?

5. Is judicial independence necessary?

6. Does the law guarantee the independence of the judiciary in Uganda?

7. What are the principles of the judicial independence?

8. How has judicial independence and the Rule of Law been upheld in the recent past?

9. Has the Rule of Law and independence of the judiciary been abused, and if so by who?

10 Has there been Separation of Powers in Uganda since 1986 to present?

13. What recommendations would you advocate for the Rule of Law an independent judiciary?