

THE IMPLICATIONS OF THE SUPREME COURT RULING IN
THE PRESIDENTIAL ELECTION PETITION NO. 1/ 2006 ON
THE FUTURE OF DEMOCRACY, GOOD GOVERNANCE AND
THE RULE OF LAW IN UGANDA

APRIL 28, 2006

Baraza is the Kiswahili word meaning 'dialogue' and is part of a series of meetings on issues of governance, conflict and its resolution, human rights and democratic practice, introduced by HUR�PEC as part of its *Rights, Governance and Democracy* Project.

A. INTRODUCTION

The HURIPEC *baraza* on the Implications of the Supreme Court Ruling in the Presidential Election Petition No. 1/ 2006 on the Future of Democracy, Good Governance and the Rule of Law in Uganda took place on Friday 28th April, 2006 at the Faculty of Law, Makerere University. The meeting attracted a large cross-section of the student community and academic staff of Makerere University, representatives of political parties in Uganda, Members of Parliament, and civil society activists, among others. Among those in attendance included the President General of the Conservative Party and outgoing Member of Parliament-Lubaga South (Ken Lukyamuzi), the Secretary General of the Democratic Party (Richard Ebil Otto), the Assistant Legal Advisor to the President (Hussein Kashillingi), the Member of Parliament (Elect) of Kampala Central (Hon. Erias Lukwago) and the Spokesperson of the Democratic Party (Ms. Betty Namboze).

The major objective of the *baraza* was to provide a forum to a multiplicity of stakeholders interested in streamlining democratic processes in Uganda to analyze and explore the main implications of the Supreme Court ruling with the ultimate aim of coming up with recommendations for future democratic processes.

B. OPENING AND CHAIRING

In his brief opening remarks, the Director of HURIPEC who also chaired the *baraza*, Prof. Oloka-Onyango thanked the participants for responding to HURIPEC's invitation in impressive numbers and reiterated that the idea behind the HURIPEC *barazas* was to stimulate intellectual debate and discussion on matters of democracy, good governance and the rule of law affecting Uganda as a country and the East Africa region in general.

C. PRESENTATIONS

The *baraza* featured two main presentations, namely on the Implications of the Supreme Court Ruling on the Future of Democracy, Constitutionalism and the Rule of Law in Uganda and Implications of the Supreme Court Ruling on Good Governance, Peace & Security, by Dr. Henry Michael Onoria (of the Faculty of Law-Makerere University) and that of Mr. Arthur Bainomugisha (of Advocates Coalition for Development & Environment), who discussed the broader consequences of the decision. Dr. Onoria commenced his discussion by clarifying the concepts of democracy, constitutionalism and the rule of law and observed that the three were intertwined and reinforced each other.

He highlighted the major findings of the Supreme Court where it was held that:

- There was non compliance with provisions of the Constitution, the Presidential Elections Act and the Electoral Commission Act;

- The elections were marred with a number of malpractices including bribery, vote stuffing, disenfranchisement and intimidation;
- The principle of free and fair elections was compromised;
- No illegal practice or offence was proved to the satisfaction of the court, to have been committed in connection with the elections by the 1st respondent (President Y.K. Museveni), personally or by his agents with his knowledge, consent or approval; and
- It was not proved to court's satisfaction that the non compliance with the law and the malpractices affected the results in a substantial manner as required by law and therefore the results were upheld and the petition dismissed.

Dr. Onoria argued that that an election that is found not to be free and fair can not represent the will of the people as required by Article I of the Constitution and that therefore the Supreme Court's ruling was a contradiction in terms.

He regretted that the decision of court seemed to have condoned the inefficiency and incompetence of the Electoral Commission and that this would have grave consequences for the future of democratic processes in the country. He argued that the ruling essentially means that the Electoral Commission can be at its most incompetent in conducting elections and get away with it, which was a deplorable and unacceptable consequence.

Explaining that the decision would be puzzling to the common person who may not understand the legal intricacies that informed court's decision (especially the victims and witnesses to the election malpractices which court found as a matter of fact to have occurred), Dr. Onoria emphasized that the ruling would disillusion them from participating in future elections.

He concluded his presentation by emphasizing that the Supreme Court's ruling negated the idea of constitutionalism as the letter and spirit of the Constitution had not been given effect in practical terms. He regretted that court had failed in its role to restrain acts and conduct that was inimical to democracy, constitutionalism and good governance.

On his part, Mr. Bainomugisha recalled the African Union Declaration at its inaugural summit in Durban in 2002 to the effect that democratic elections are the basis of the authority of any representative government and that regular, free and fair elections constitute a key element of the democratization process and are essential for conflict prevention, management and resolution.

He recalled the political history of Uganda which he observed had been marred with election irregularities, manipulation and outright rigging. He highlighted the importance of free and fair elections as a mechanism for choosing leaders who make decisions on behalf of the citizens and thereby providing an opportunity for choosing from an array of national policies presented by various

political parties and/or candidates and providing the freedom to choose, which right is central to the processes of democratic rule and good governance.

Within the context of peace and security, Mr. Bainomugisha emphasized that elections measure a regime's commitment to democracy and provide legitimacy to leaders and act as a conflict management, prevention and resolution mechanism. Citing the example of Algeria, he observed that while elections provide a mechanism for conflict management and prevention, if not conducted freely and fairly they could instead fan conflict

He summarized the negative implications of the ruling as: voter apathy and loss of confidence in the electoral process by the citizens which undermines democracy and good governance and usurping the electorates' power by court to determine the leaders of their choice. Unless stopped, such practices could lead to democratic reversal. In this respect, he argued, the court's ruling does not offer a sufficient conflict resolution mechanism since it produces winners and losers.

On a positive note, Bainomugisha stressed that although the ruling did not handover power to the opposition, it increased their legitimacy and gives a chance to the President to mend relations with them and to implement his manifesto.

Bainomugisha concluded his presentation by reiterating the point that free and fair elections are the cornerstone of sustainable peace and democracy in a country like Uganda. He observed that building democracy is a painful process and that countries which choose the path of democracy must be prepared to pay the full cost. He emphasized that by court having found that the elections had not been carried out according to the law and that the principle of free and fair elections was compromised, a repeat of the elections to offer legitimacy to the winner would have strengthened democracy and ensured peace and security in the country.

D. RECOMMENDATIONS FOR FUTURE DEMOCRATIC PROCESSES

From the presentations, ensuing discussion and dialogue, the following major issues and recommendations emerged:

- Government should restructure the Electoral Commission to reflect the political diversity in the country;
- There should be a review of the electoral laws (especially the Presidential Elections Act) in order to bring them into line with peoples' aspirations and the Constitution;
- Massive civic education should be conducted in order to build civic competence of the masses and to provide a firm foundation on which to support democracy in the country;

- Government should accept opposition and learn to work with it in order to build democracy and the culture of constitutionalism;
- The Opposition must move away from a belligerent approach, build their parties and engage with the critical policy issues facing the country;
- Support should be given to the efforts to organize a national peace and reconciliation process, particularly with respect to Northern Uganda;
- Courts should overcome the “ghost of *Ex parte Matovu*” (the decision which essentially legitimized the unlawful capture of power) and stop rendering political decisions on high profile cases.

E. CLOSING

The *baraza* was closed by the chair at 5:00PM. He thanked the participants for their contribution to the debate and called upon them to turn up for the subsequent HURIPEC *barazas*. Responding to the general request to organize another baraza on the same subject based on the reasoned judgment of the court, the Director promised that HURIPEC would do all it could in order to ensure that at least one of the justices of the Court attends to explain the reasoning behind the otherwise controversial decision.