

## STATEMENT BY ACADEMIC STAFF, SCHOOL OF LAW, MAKERERE UNIVERSITY ON THE CURRENT POLITICAL CRISIS

### 1) The Rape of the Sanctity of Parliament

The grave occurrences in Uganda since discussion commenced of the proposed constitutional amendment to Article 102(b) have exposed the violation by the Executive, and lack of commitment on the part of some Legislators to the Rule of Law. This has eroded the doctrine of the separation of powers and checks and balances which are critical tenets of any democracy. The 1995 Constitution of the Republic of Uganda envisaged that power would never be concentrated in any single arm of Government but that each would be sufficiently autonomous and yet have its powers checked.

The events at Parliament on 26<sup>th</sup> and 27<sup>th</sup> September, 2017 where members of the Special Forces Command and the Police invaded Parliament to forcefully evict Parliamentarians is a repeat of the 1966 overthrow of the 1962 Constitution and replacement with the “Pigeon Hole” Constitution. Effectively, Prime Minister Milton Obote usurped parliamentary power using the military. The military in turn then overthrew the Executive in the 1971 *coup d’etat*. A year later, Chief Justice Benedicto Kiwanuka was murdered in cold blood. The trend of militarization of politics is being re-enacted starting with the 2005 “Black Mamba” invasion of the High Court and now the siege of Parliament and invasion of its chambers.

All evidence points to the fact that the rape of the sanctity of Parliament was deliberately planned to intimidate the legislators to pass an amendment that favours a single individual. We thus condemn in the strongest terms possible the actions of the Executive, the military and Police. It is actions like these which destroy the independence of institutions that are critical for democratic governance. We foresee that if such attacks are not unequivocally denounced, the military may be tempted to usurp the powers of the same Executive that is currently using them as happened in 1971.

We equally condemn the actions of the Speaker of Parliament, Hon. Rebecca Kadaga for surrendering her powers and thereby exposing Parliament to the whims of the Executive arm of Government and in particular to sections of the army and police. It is now in the public domain that members of the Cabinet met with the Speaker on the morning of 27th September 2017. Whatever was discussed is claimed to be “privileged”, which fuels perceptions of bias and partiality on the part of the Speaker.

It is notable that the same Speaker, had rejected piece-meal amendments of the Constitution when on 26th September 2016 Nakifuma Member of Parliament Hon. Ssekitooleko sought permission to table a Bill to amend the constitutional mandatory retirement age for judicial officers and members of the Electoral Commission. In her words:

*Other than expediency I have failed to see the urgency of this Bill. The danger with granting you leave to table this Bill is that tomorrow I will have no ground to deny other members seeking to amend different clauses of the Constitution .... Most of these reforms are contained in the Citizens Compact on Free and Fair Elections and were submitted to the Legal and Parliamentary Affairs Committee ahead of the 2016 elections. I have set a*

*precedent, this is a house of repute. It is a serious House and not a playing field.*

Evidently, the Speaker backtracked on her position above by allowing the "Magyezi proposal" thus turning Parliament into "a playing field" for the Executive.

We condemn the failure by the Speaker to follow the proper procedure laid down in the Parliamentary Rules of Procedure in suspending members. We further condemn the assault on members of Parliament by the security forces. We equally condemn the Members of Parliament who applauded the Speaker in the subsequent sitting for such disregard of the Rules.

We condemn the ban by the Executive Director, Uganda Communications Commission, of live coverage of these important debates on the proposed removal of the age limit. This was unwarranted and unconstitutional as it violates the right to freedom of expression and information. In addition, the directive to media houses not to host any of the expelled members of parliament is an outrageous violation of the Constitution.

## **2) Our Position on the Lifting of the Age Limit**

As citizens and Law teachers, we are also concerned with the broader issue of the proposed constitutional amendment to favour a single individual. It is not coincidental because in 2005 when the Constitution was amended to remove presidential term limits, the sole beneficiary of that amendment was Yoweri Museveni. Twelve years later, as the same person is approaching ineligibility to contest the position of President, the only Article that would stand in his way is being removed. Fifty-five years after independence, Uganda has never witnessed a peaceful transfer of power from one president to another. In order to stem this history of violent change of presidents, President Museveni, who would have been in power for 35 years in 2021, needs to set an example and hand over power peacefully to another elected president.

It is also absurd that some members of the Legal fraternity are intentionally misleading members of the public that Article 102(b) is discriminatory and that the amendment is in line with the Supreme Court ruling in the case of *Amama Mbabazi v. YK Museveni & Others*. It should be emphasized that the issue of age was never an issue in the Amama Mbabazi petition and the same should therefore not be an issue for amendment. The view that Article 102(b) is discriminatory is legally unsound and untenable because it makes a mockery of all standard-setting provisions in the Constitution. The Constitution has many provisions that impose limitations relating to age, capacity, soundness of mind, the qualifications and retirement for public servants, etc.

Every democratic and peace-loving Ugandan should not forget the history of the country. The Constitution was enacted bearing in mind that history of political turmoil and Constitutional instability. Having removed the term limit safeguard in 2005, Uganda continues to face the danger of life presidency and the continued violent change of leadership.

**Recommendations:**

1. That Parliament rescinds the motion allowing presentation of a Private Member's Bill to amend Article 102(b).
2. That all organs of the State and private actors respect the freedoms of expression of all including media freedom.
3. That the Uganda Human Rights Commission should take immediate action against all violators of human rights both within and outside Parliament in connection to the age limit debate .
4. That the Security forces desist from engaging in partisan politics and the political persecution of citizens opposed to the age limit amendment.
5. That all citizens of Uganda exercise their rights and duty under Article 3 to defend and protect the Constitution.

**Signed this 3rd Day of October 2017**

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