

A CALL FOR SUSTAINABLE CONSTITUTIONALISM AND RULE OF LAW IN UGANDA

(Promoting a Common Good for All)

A Concern of the National Catholic Commission for Justice and Peace of the Catholic Bishops of
Uganda on the Continued Violation of the true Principles of Democracy

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*"This is what God asks of you: only this, to act justly,
to love tenderly and to walk humbly with your God." (Micah 6:8)*

1.0. Greetings and Addressee

1.1. This message is addressed to you the people and citizens of Uganda but especially decision makers and the legislative arm of government. We greet you in the name of God the Creator and Father of all, and the Love of Jesus Christ our Liberator and in the unity of the Holy Spirit our Teacher and the Truth.

1.2. Our message is about the urgent need of upholding the culture of constitutionalism and rule of law as a prime value by all people as: one of the preventive measures, on one hand while on the other is as one of the curative measures to most of the disorders in this country. As for Parliament, which is the highest legislative organ of our country, it must be respected beyond personal and individual inclinations. Therefore the storming out of parliament at a time when key important decisions affecting the country are being taken has done no good at all and continues to violet the collective will and trust of the people who elected such representatives to deliberate on their behalf.

1.3. A call for sustainable constitutionalism and rule of law for a participatory promotion of the common good for all is a life-long process that is NOT based on the system of confrontation and battling it out on majority bases. On the contrary it is rather based on the principle of dialogue, mutual respect and mutual trust guided by a spirit of reaching a consensus in view of obtaining the common good for all and not a few. This, however, demands that one has to rise above personal or party interests. Such values create an environment and a legal framework conducive to empowering all politicians and the electorate alike to participate in genuine elections that aim at building a prosperous Uganda. (*cfr. African Charter for popular participation in development and transformation, Arusha 1990, pg.7-9*)

1.4. There is an urgent need to shift from the Western colonial and anti-religious mentality and attitude that is geared towards the political / economic system that favours a few and is a major root cause of politics being branded 'a dirty game'. On the contrary according to the African understanding and experience, politics and economics are rooted in the African religion, which is God, people, and environmental centred; for religion is the greatest of all means for the establishment of order in the world and for the just and peaceful contentment of all people and environment. That is why Jesus Christ came into the world to liberate humanity and the environment from political or economic enslavement (*cfr. Lk.*

4: 18-19; Rom. 8: 18-22) to restore the original political and economical order and transform the people into agents of integral development.(cfr.Col.1:13-20).

1.5. The wide consultation, the participatory formulation and the constitutional assembly's deliberations and consensus gave birth to the Uganda 1995 Constitution. This process together with the African and Christian religiosity paved a new way, culture and space of understanding and doing clean politics. In addition, this process has enabled Ugandans to develop a new system of generating relevant political and economic knowledge and skills which empower politicians, the electorate, civil society and all faithful to participate meaningfully in working together for the common good for all.

1.6. It is therefore, a genuine concern of the National Catholic Commission for Justice and Peace of the Catholic Bishop of Uganda, that the delayed implementation of the proposed Electoral reforms, accompanied by a continued lack of a political will of the legislators to seriously scrutinize some of the tested Constitutional provisions with gaps, is a deliberate violation of the true principles of democracy in the country.

2.0. The Prophetic Role of the Church in Politics towards Sustainable Constitutionalism and Rule of Law for the Common Good

2.1. It is vital at this moment in time to make it clear to every Ugandan that politics for good governance must be perceived as faith in God put into action. This is one of the sure strategies to erase the language of 'dirty politics' from our daily vocabulary. It should be understood from the beginning that when paganism is at work then bad governance, which is a child of 'dirty politics' takes precedence. In such a case any economic or political system of governance that contradicts the kingdom values is not acceptable to the Christian faith. Therefore, the Church has a right by virtue of her mission to remain critical of all social order to ensure that the dignity of the human person is respected and defended at every moment in time. Needless to say, the promotion of the human dignity and equality of people's human rights and participation is not interference in politics, as many politicians do think, but an integral part of the mission of the Church. It should further be well understood that whenever any system of governance goes against the kingdom values and violates the rights and dignity of the human person, Church has all rights to intervene. The leaders as "conscience" of the nation have to play their prophetic role.

2.2. In addition, the Church is part of Christian witness, within the political sphere, to evaluate prophetically all political systems from the perspective of the kingdom values. These values include, among others, love and unity, equality and human dignity, justice and peace, reconciliation and option for the poor and marginalized.

2.3. "The Church values the democratic system in as much as it ensures the participation of citizens in making political choices, guarantee the governed the possibility both of electing and holding accountable those who govern them, and of replacing them through peaceful means when appropriate. Authentic democracy is possible only in a State ruled by law and on the basis of a correct perception of the human person."¹

¹ John Paul II, Encyclical Letter Centesimus Annus, 46: AAS 83 (1991), 850.

2.4. From the theological point of view, in their book "Cast Away Fear"² the African Synod of bishops made a significant contribution to the 1994 first African Synod discussions that came out with very important resolutions that laid a basis for Church's intervention into finding possible ways and means of resolving Africa's problems. Their teaching continues to be very vital in positively responding to a number of frequently asked questions.

2.5. Furthermore, the prophetic witness and critical solidarity of the Church are essential to the future wellbeing of the democratic society in Africa. The Church both as God's institution and as people of God has an obligation to help bring about a more democratic political order which can enhance life and human rights.

2.6. In any case, democratization cannot be left to politicians alone. The Church is called upon by her own mission to promote individual rights and rights of communities and sections within the community. The Church in Africa must become an effective agent of human rights education and promotion, and a powerful advocate of popular participation of all people at all levels of social, economic and political life.

2.7. Therefore, the Justice and Peace Commission within the Church has a mandate to undertake the mission of reflecting on the political realities, of educating the people in democracy and human rights, of promoting leadership at all levels of society and of denouncing all forms of oppression, dictatorship and discrimination.

2.8. Further still, the Church in Africa, but specifically in Uganda, should promote a critical theological reflection on democracy using both the African experience and the Christian tradition which should constantly guide it in the promotion of democratic government and culture.

2.9. With understanding that it is through active participation that the people of God could be truly committed to good governance and democratic principles, the Church in its human existence, therefore, commits herself to eliminate all forms of autocracy that may be an abuse to the ways of fostering the said participation of the people in their own governance and development.

3.0. The Current Situation

3.1. The principle of Constitutionalism and Rule of Law in Uganda binds all citizens irrespective of status, race, political or any other differences. However an authentic democracy is not merely the result of a formal observation of a set of rules but is the set of convinced acceptance of the values that inspire democratic procedures without which the deepest meaning of democracy is lost and its stability compromised.³ Currently, the said conviction and commitment to the common good is often getting submerged by selfish drives that are pushing some individuals and groups into behaving as if they are above the law. The result is the rampant social disorder that is not only among the electorate but even inside the legislative house.

3.2. Uganda being under representative democracy, the citizens are expected to participate in policy making processes through their elected representatives. Therefore the people's trust in their members of parliament need to be put at the fore front before, during and after any action in regard to legislative

² 'African Theologians, Cast Away Fear. A Contribution to the African Synod, New People Media Centre, Nairobi-Kenya, March/April, 1994.

³ Pontifical council for Justice and Peace, Compendium of the Social Doctrine of the Church, #407

processes. This means that the collective will and trust of the citizens must be highly respected by their representatives. All the said cannot exist without the legislators themselves having that adequate knowledge of the national constitution and the corresponding provisions that are supposed to guide any undertaking while inside or outside the house.

4.0 Democracy and Rule of Law

4.1. Democracy, rule of law and constitutionalism have received valuable inputs from various sources, the most prominent one being the Arusha Conference on popular participation and the Kampala African Leadership Forum. The Common Wealth has contributed to the debate on Democracy, the rule of law and Constitutionalism not only in the recently concluded Heads Of Government Meeting that took place in Kampala but also expressed in a number of declarations and publications with clear messages with a strong desire for good governance and democratization. Good governance embraces democracy, pluralism, political accountability, and efficient administration, rule of law and respect of human, political, civil, social and economic rights.

4.2. All the above are accompanied by Church's conviction that political representation must have a strong moral dimension which consist in the commitment to share fully in the destiny of the people and seek solutions to social problems other than run away when things turn out to be more than earning allowances. In this perspective, responsible authority that comes from the people's power invested in their representatives should be exercised with those virtues that make it possible to put power into practice as service. Such virtues include, among others, patience, modesty, moderation, charity and sharing. However such values are possible only to those who are able to accept the common good and not prestige or the gaining of personal advantages as the true goal of their work.⁴

5.0. The role of Parliamentarians in Upholding major principles of Democracy:

5.1. In order to promote democratic development in Uganda, we hereby put across some concerns and recommendations that can help the country to continue pursuing the path of democracy and foster good governance, the rule of law and constitutionalism.

5.2. Parliament as a legislative arm should be the supreme organ of the state because it consists of the people's representatives. Consequently, whatever is done in Parliament should be in the name of the people. Therefore if the country is to develop, the people must be actively involved in discussing, deciding and implementing national policies on matters that affect their destiny and direction of the country.

5.3. We now applaud the parliament on some positive steps undertaken to address many issues of national concern including, the continuous struggle against corruption, though with less tangible results, and the enactments of some progressive and people oriented legislations.

5.4. We note with concern that the foundation and growth of this country entirely depends on strong pillars of the three arms of government. These are the Judiciary, the Executive and Legislative. They represent a system of democratic governance. It is through these organs of government that ideal good governance, the rule of law and constitutionalism can be realized. Our concern this time is not on all the three arms of the government. Special attention has been given to the legislative arm which plays a key role in the law making process.

⁴ Pontifical council for Justice and Peace, Compendium of the Social Doctrine of the Church, #408

5.5. The institution of parliament is provided under Chapter 6 of the Constitution of Uganda. It is a legislative organ of government. It consists of various members of parliament including those elected directly by the citizens of Uganda and who represent specific electoral constituencies, district women representatives, the youth who are elected through the national youth council, members representing the people with disability, legislators elected to represent workers and also members elected by the UPDF high Command to represent the army. We should therefore understand that all members of parliament are called representatives because they act as mouth-piece and advocates for the people of the areas they represent.

5.6. Under Article 79 (1) the 1995 Constitution of Uganda, the Institution of parliament is charged with the power to make laws on matters concerning peace, order, development and good governance of Uganda. In most democracies laws are always a result of deliberations, debates, compromise and cooperation among members representing the different constituencies and the different interest groups.

6.0. The People's Power:

6.1. "All Power belongs to the people ..." states the 1995 Uganda National Constitution. This in itself, when understood in context, justifies the fact that demands for democracy are in many cases and should be action oriented. The people need to see things happen in accordance with their expectations. For this, they are justified when they practically make demands in a way of their choice. For example, in the Philippines, unarmed rosary carrying civilians under the banner, People Power, demonstrated undeterred by Marcos' military machine and managed to successfully demand for democratic change. Many other more changes have occurred world wide under the pressure for meaningful democratization.

6.2. Members of parliament must always know that they are in parliament by the will and power of the people. It is this that reflects a true democracy of people's power through their representatives. Members of⁵ parliament must portray the characteristics of a democratic citizenship. We should therefore understand that citizenry is the backbone upon which true democracy is established. We need skilful, honest, responsible and committed members of parliament with the ability to bring about change through mutual agreement for the benefit of the electorate. The electorate must be active participants in the democratic process through their representatives as part of their civic duty.

6.3. The electorate must be kept informed of the issues of the day by their respective parliamentarians as their representatives. It should also monitor the performance of these representatives by talking to them, sharing with them about the concerns of the community and task them to explain the progress of some of the key issues affecting the people. Under the national objectives and Directive Principles of state policy in the 1995 Constitution of the Republic of Uganda, one of the duties of the Member of Parliament, as a citizen of Uganda, is to acquaint him/herself with the provisions of the Constitution and to uphold and defend the constitution and the law.

6.4. Uganda's problem is still the leadership bottleneck. To what extent have the Members of Parliament contributed towards ensuring political accountability? Although freedoms are recognized and guaranteed by the Constitution of this country, the freedom of the people to choose leaders who must do the will of the people is always infringed upon by several anti-democracy, anti-peace and anti-development forces. In Uganda members of parliament have hardly encouraged the electorate to

⁵ Constitution of the republic of Uganda, 1995, Chap 1, Art. 1. (1) (2) (3) & (4)

participate in their own government, be it at local level or at national level through their representatives. This demands from both the people and the parliamentarians themselves a serious examination and correction.

7.0. Understanding the Role of Parliament

7.1. Most people have not yet comprehended the role that parliament is supposed to play. In fact, many, including the members of Parliament themselves misunderstand it. The Parliament is always the supreme legislative body of the land. All people must appreciate its significance by upholding constitutionalism and rule of law. People should fully comprehend the role that parliament ought to play.

7.2. A Member of Parliament needs more than academic qualifications. He/she needs the ability to make thoughtful and informed decisions, think critically, and effectively communicate with others. He/she must have the capacity and untiring commitment to work with others in a spirit of cooperation. This is often times not reflected amongst some members of parliament when they opt to storm out at a time when key important decisions affecting the country are being taken. Well knowing that such action has never and will never bear good fruits at the end, they continue doing it. Would it be in the spirit and interest of the people if important decisions are taken in the absence of their representatives? Storming out of parliament means abusing the people's freedom to choose and participate through their representatives.

7.3. We may agree that moving out parliament would be one way of expressing dissatisfaction with the process but, it should be done on a clear principle. For instance when some opposition members of parliament walked out of parliament in protest against the reappointment of the chairman and some members of the electoral commission, it was not clear what they exactly protested against. Did they protest against the process of appointment or the individuals who were reappointed? What does the constitution say about the process and the action of the president presenting the commissioners to parliament? If the constitutional provisions were inadequate who then should have looked at them and moved a motion for amendment? It all comes back to parliamentarians and questions their seriousness in carrying out their roles and responsibilities for which they were elected. This is no doubt but a serious betrayal of the people's faith and trust they have in their representatives.

7.4. We don't have any incident on record where members of parliament stormed out in protest against increasing their salaries and allowances yet they have on some occasions twisted the Constitution for their own benefit. For how long shall we keep saying we are not optimistic? We must struggle on. If we claim there are bad laws must then citizens abandon their own country because there are bad laws? Should we always abandon our people because there are bad laws?

8.0. Upholding the Supremacy of the Constitution

8.1. Law makers must always work within the confines of the provisions of the Constitution under which certain duties are discharged not only by parliament but also by other arms of government. In all matters of law and policy, there are prescribed procedures which the people concerned must be well conversant with. In this respect therefore, legislators must know the relevant legal provisions and procedure under which business of parliament is supposed to be discharged.

8.2. The Constitution under Article 60(1) provides that there shall be an electoral Commission which shall consist of a chairperson, a deputy chairperson and five other members appointed by the president with the approval of parliament. Under 60(4), if the appointment of a member of the commission is to be renewed, the renewal shall be done at least three months before the expiry of the first term. It is a constitutional provision that the renewal of the term of office is supposed to be effected three months prior to the expiry of the first constitutional term and the said parliamentary approval is supposed to be effected within that period in order to avoid a constitutional crisis.

8.3. We should have a legislature which handles issues critically and on a principled point of view. All leaders must reflect principled politics and leadership. Mahatma Gandhi once commented that "one of the most prominent blunders of the world is practicing politics without principle". Members of parliament must know the difference between competition and cooperation. There is no competition in matters pertaining to discharging their duties as people's representatives, what we need is cooperation in order to achieve the common good. Opposition does **NOT** at all mean confrontation but alternative ideas and strategies for better interventions for good governance.

8.4. We all advocate for democratic principles. Democracy is like a human being in that a human being is fundamentally good but the goodness needs to be nurtured. Therefore, to build a strong democratic institution like Parliament, a high degree of balance is required. This will help to nurture the institution to play its role for the benefit of the citizenry. Constitutionalism and lasting democracy take ages to grow.

8.5. Emotions basing on ones political affiliation are contrary to the interests and wishes of the people, because among the people members represent, there is a cross section with different political ideologies which must all be catered for. The personal ambitions and interests of members of parliament must not override people's will and power. The people should not be victims of manipulation as members of parliament misuse their vote to achieve their selfish goals. Legislators must know that real leadership and representation is through mobilization of popular support and popular opinion which is a reflection of the will and power of the people. Informed citizens will bring hope for improved and quality service delivery. The action or inaction of the citizens may have underlying consequences on the future of this country.

8.6. While storming out of Parliament could be depicted as bravery, it however has nothing to do with the wishes or views of the people represented. This directly negates the concept of representative democracy in parliament. The honourable members should always realize the implications of their actions. This calls for educating the voters that they have a constitutional right to recall a member of the legislature. The electorate under Article 84(2b) is empowered to exercise this right to recall and remove a delinquent member of parliament. The grounds and procedure on the said constitutional right are provided under the said above Article.

8.7. We are of the opinion that the more the problems in parliament the more the law makers should stay in the house to amicable discuss and resolve the matter. This is their core duty. It is not in order for them to disassociate themselves from the very institution which is supposed to be the voice of the people. This is the time to struggle for the people since it is the era of the power of the people. Every legislator must be ready and willing to bring about change only through constitutional means.

8.8. It is clear that parliament enacted the current electoral laws. Instead of demonstrating against the very laws enacted by the same, members should instead discuss and create room for further improvement. Laws are not only good for one party but for the entire country. Leaders must interpret the law as it is but not to benefit their own interests. What we need is to advocate for quick and timely electoral law reforms. Without reforms the law cannot be amended administratively.

8.9. There are a number of legal procedures members of parliament can exploit to bring about change including, the procedure of bringing private members bills instead of waiting for the executive. This can prompt the executive to act in a timely manner. Everyone must perform his/her duty. Citizens must understand that a leader once elected must deliver in accordance with their expectations. Ugandans must ensure that the electoral process belongs to them.

8.10. We cannot have a sustainable democratic environment unless Ugandans take up their responsibility to own the process. That is what we mean by the power and will of the people as guaranteed under Article 1 of the Constitution. Parliament should invest more in the use of legal and peaceful means to resolve national problems. We desire to see constructive debate with a view to identify values and strategies that can assist the country to avoid the constitutional mistakes already identified with our past. This way a culture of constitutionalism and rule of law can be fostered and promoted.

8.11. We are of the view that what Ugandans want is a guarantee of their democracy once established. They would like to see an independent legislature, judiciary and the executive with each complementing the other in form of providing for checks and balances but not coercing each other.

8.12. A strong opposition reflects democracy. However, the opposition as part of the democratization process must see itself as the alternative government of tomorrow. We can avoid political anarchy if the opposition acts responsibly. A strong and responsible opposition can build towards consensus. It becomes ridiculous if the members of the opposition break the laws which they well know they will apply when they come into power. The opposition must respect the constitution and more so, the sovereignty of the people. People must be helped to understand and given space to exercise their power.

8.13. We need a multiparty system of parliamentary democracy which can guarantee freedom of expression, assembly, freedom of the press and freedom of participation for all Ugandans.

9.0. Electoral Reforms

9.1. One of the essential elements of electoral democracy is the establishment and existence of an independent, impartial and autonomous Electoral Commission and, commitment by Government and other players to protect and promote an environment of peace, the rule of law, harmony and civility during the entire electoral exercise. An electoral process that creates room for doubt in regard to its fairness poses a lot of danger and can be a prescription for the opportunists to cause political and social chaos in the country.

9.2. On many occasions, there have always been efforts to push for a number of reforms especially by the civil society and the opposition. It may be said that most times the opposition has, in some specific situations, been judged as having not used the correct approaches and procedure. However, it still remains your responsibility as opposition to push for things that must be done in the best way possible through your unreserved provision of alternative critical thinking, ideas and strategies. The fronting of selfish interests must be avoided at all costs. The fact that you are few, does not mean that you are wrong, what matters is the approach and procedure.

9.3. A reflection on the history of untold suffering of Ugandans, as a result of anomalies in the electoral process in the past, must be a good lesson for us all. At the moment we must all agree that there is a strong desire for electoral reforms, on the part of the people, which the ruling government must give

priority. This should be a concrete expression of its political will to support the promotion of sustainable electoral democracy and involvement of all stakeholders in their own governance and development. It should also be remembered that there have been a number of political and electoral malpractices in the past which in a way disenfranchised the voters. Therefore, it should be ensured that all national leaders in Uganda must arise through free and fair elections.

9.4. Though the reappointment of the members of the electoral commission was constitutionally executed, we note with concern that giving us a full list of the previous members of the electoral commission as if there were no court rulings leaves a lot to be desired. Government should come out and inform the people about the strategies in place to improve and avoid such previous shortcomings.

9.5. The electoral commission under Chapter 5, Article 61(1a) is charged with a challenging duty of organizing free and fair elections. Citizen's participation is crucial if we are to complete the democratic process demands. Basing on the past experience of how the electoral commission has been doing its work, all democracy loving Ugandans will agree with us that there is no doubt that a more serious improvement in the electoral commission is very vital and crucial. We should all know that elections are important in promoting democracy since it is through free and fair elections that both civil and political rights are exercised. Free and fair elections are central and form cardinal pillars of a democratic society. As a young democracy, Uganda needs a smooth and democratic electoral process.

9.6. We should also understand that it is possible to have elections without democracy but it is not possible to have democracy without elections. If we don't handle the electoral process with skill and care, the country is bound to be pushed in turbulence. History proves it that mishandling the electoral process and messing up with people's votes caused anarchy in this country in the early 1980s. There have been noticeable inaccuracies in the electoral process with noticeable incidences of non-compliance with the electoral commission Act which on many occasions compromised the principles of free and fair elections.

9.7. Government therefore, should not under-look the issue of effecting the necessary electoral law reforms as its own preserve but as an un-avoidable step towards strengthening the blocks of democratic governance, rule of law and constitutionalism in Uganda. Citizens of Uganda should participate in the promotion of electoral democracy through their elected representatives.

9.8. The electoral exercise during which some leaders may lose office and others gain office remains one of the most challenging activity of the entire democratic process. There is need to establish an authority, with excellent credentials and sufficient power and resources, which can effectively arbitrate in this greatest of all political challenges. We must move away from the present unsatisfactory situation whereby, in most cases the electoral Commissioners seem to be political appointees with their independence not adequately guaranteed.

9.9. We retaliate the earlier message in the March 1989 Pastoral letter of the Catholic Bishops of Uganda *"Towards a New National Constitution; Guidelines of the Catholic Bishops of Uganda"* that we look at Jesus the master who never directly entered the political arena; yet as master and Teacher, denounced the political evils of His time and gave clear directives to His followers and to all people of Good will. He does not flinch from branding Herod "fox" denouncing Him of his bad political leadership (**Lk. 13:31-33**). He advises His disciples never to act as "pagan rulers" (**Lk.22:24-27**), **cfr.** also **Lk. 9:47ff; 17:7-10**; and warns Pilate not to forget that his power over life or death comes from God (**Jn. 19:11**). Jesus truly wills a community built on love, solidarity, justice, honesty and peacefulness. At the same time, He teaches us realism, the art of looking for the possible step which, here and now, serves the best on the road towards greater hope. In this realism He pays for Himself and for Peter the temple tax (**Mt.17:24ff**), and teaches us that we should always "give back to Caesar what belongs to Caesar, and to

God what belongs to God" (Mt.22:21). We earnestly call upon the present legislators who are charged with the responsibility of making laws to heed these directives. It is only then that government will work under God's supremacy and the common good for all be obtained.⁶

10.0. Conclusion

10.1. In conclusion, there is need to develop a culture of political maturity, and constitutionalism among legislators. It is that which will bring about hope that leaders will respect the rights of the people and work harmoniously to ensure justice and peace, constitutionalism and human rights, development and efficiency without unnecessary tensions and conflict. Leaders at all levels must become responsive to their peoples' needs and aspirations. The power, will and mandate to govern must always come from the people themselves, which are renewable through free and fair periodic elections. The people must be left to use the power reserved for them by Article 1 of the Constitution to make their own choices which must be exercised in accordance with the existing laws. The Constitution must become the ampere for both the people and their leaders so as to minimize irresponsible actions by both parties. The Constitution should be our guide towards the Common good. May the Lord bless you and keep you. May the Lord let His face shine on you and be gracious to you. May the Lord uncover His face to you and bring you peace [Numbers 6:24 -26] *For God and my Country.*

+John Baptist Odama

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⁶ The Catholic Bishops of Uganda, Towards a New National Constitution, Guidelines of the Catholic Bishops of Uganda, Marianum Press -Kisubi, 1989, pg 22.