

Militarization of Uganda's Public Service

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Speaking Notes

by

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1. Introduction

A number of scholars, from across various disciplines, have grappled with the definition of the concept of 'militarism'.¹ According to Benjamin, for instance, militarism can be understood as: '... the compulsory, universal use of violence as a means to the ends of the State'.² For his part, Vagts observes that militarism: '... presents a vast array of customs, interests, prestige, actions and thought associated with armies and wars and yet transcending true military purposes ... It may permeate all society and become dominant over all industry and arts'.³ Similarly, to Garner, militarism denotes the: '... characteristic of a process of dynamic social change in which a number of aspects of political, economic and social life are transformed in the direction of a heightened sense of importance of the military in national life; the development of a more centralized and hierarchal process decision-making, and a greater willingness to appeal to use of force to resolve internal and external disputes with the State'.⁴

From the foregoing definitions, militarism can be understood as a fundamental philosophy which considers that political, social and indeed, a whole range of challenges that may confront a State are best solved through primarily military means.⁵ At its core, therefore, militarism refers to the prioritization of the military, and the use of force more broadly, to the detriment of other spheres of national life.⁶

Militarism is not a new phenomenon in Uganda's political life. Indeed, in many ways it was the central way through which the State was founded and maintained throughout the colonial and post-colonial period.⁷

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¹ See B Kabumba, D Ngabirano and T Kyepa (2017) *Militarism and the dilemma of post-colonial statehood: The case of Museveni's Uganda* 3.

² W Benjamin 'Critique of violence' in P Demetz (ed) (1978) *Reflections: Essays, aphorisms, autobiographical writings* 284 cited in Kabumba *et al* (n 1 above) 3.

³ A Vagts (1959) *A history of militarism: Romance and realities of a profession* 13 cited in Kabumba *et al* (n 1 above) 3.

⁴ E Garner 'Correlates of State terror: Militarism, geopolitics and national security ideology' (1984-1987) 32-35 *Chity's Law Journal* 42-43 cited in Kabumba *et al* (n 1 above) 3.

⁵ Kabumba *et al* (n 1 above) 4.

⁶ As above.

⁷ Kabumba *et al* (n 1 above) 9-151.

2 Militarism and the Law

The following account by Uganda's three-time Chief Justice, Samson William Wako Wambuzi provides an important insight for understanding the relationship between militarism and the law:

As a young lawyer I looked at the 1962 Constitution and I was mesmerized. I had studied a little constitutional law at college, but the Uganda constitution was in a class of its own. There were four Kingdoms, Ankole, Buganda, Bunyoro, and Toro, and the territory of Busoga. These five were in a federal relationship and the rest of the country was in a unitary form. In effect, there were seven constitutions in one. The central government, the four kingdoms, the territory of Busoga, and the local governments.

I had the audacity to ask the then Attorney General Dreschfield, if memory serves me right, 'What sort of Constitution have you left us?' His reply, 'The strongest will govern.' His prediction came to fruition when first Obote unilaterally overthrew the constitution in 1966 and then followed changes of government through military might beginning with Idi Amin in 1971.⁸

This prediction would come to pass several times in Uganda's history – 1966, 1971, 1979, 1986 – at all of which times unconstitutional changes of power were accompanied by legal instruments, founded upon the Kelsenian theory of a revolution in law.

In the NRM era, the military basis of politics and governance was perhaps best captured by Ondonga Ori Amaza in the following terms:

The NRM-NRA was formed to bring about a revolutionary transformation of Ugandan society ... Such a fundamental change entails the dismantling of the internal (socio-economic) structure of the society, along with the political power structure that holds it together ... A revolution is thus always a process rather than an event. Apart from running its course and realizing itself, a revolution can equally fall by the wayside, if those who initiated it, consciously or unconsciously, abandon their original cause, or if it is hijacked or overthrown by forces opposed to it.

At the time the NRM-NRA captured power, objective conditions for the derailment of the revolutionary process it had initiated were not wanting. The State as the embodiment of political power is composed of the army, police, intelligence services, prison services, the bureaucracy and judiciary as its main components. In a thoroughgoing revolution, all these components of the State are dismantled and reconstituted to respond favourably to the demands and objectives of the revolution. In the case of the NRM-NRA's capture of power, however, it was only the old army that was dismantled and replaced with a new army. This meant that when it captured power and embarked on the exercise of dismantling the country's neo-colonial socio-economic structure, the NRM-NRA had to rely on the very social forces whose presence and continued existence depended on the survival of the socio-economic structures whose dismantling the revolution demanded ...

⁸ SWW Wambuzi (2014) *The odyssey of a judicial career in precarious times: My trials and tribulations as a three-time Chief Justice of Uganda* 74 cited in Kabumba *et al* (n 1 above) 34-35.

Rather than marking the end of the NRA's bush war, the 1986 NRA capture of power only set the stage for continuation of the war by other means.⁹

2. Militarism and the 1995 Constitution

The 1995 Constitution represents the more sophisticated model of militarism under the NRM era. On the face of it, the process of making the Constitution appeared democratic. As Moehler has observed:

From February 1989 to December 1992, the [Uganda Constitutional Commission] (1) held 86 district seminars; (2) attended educational forums in all 870 sub-counties; (3) returned to each sub-county to collect oral testimony and written memoranda; (4) analyzed 25,547 memoranda; (5) officiated over a student essay contest; (6) organized regular media discussions; and (7) prepared a draft constitution. The second stage of the process began with nationwide campaigns for a Constituent Assembly (CA). After the CA election and 16 months of intense debate, a final constitution was promulgated on 22 September 1995, almost ten years after the NRM had taken power.¹⁰

On the other hand, as Tripp has observed, the Uganda Constitutional Commission was, 'almost to a person ... made up of strong supporters of the Movement system' and 'included both the political commissar of the NRM and his counterpart in the National Resistance Army (NRA)'.¹¹ Further, critics of the process noted that: i) the constituency tours undertaken by the Constitutional Commission were focused more on 'educating people about the constitution rather than consulting with them';¹² ii) the Commission appeared to ignore memoranda that raised controversial questions;¹³ iii) memoranda generated at sub-county level were 'vetted' by NRM leaders before they reached the Commission;¹⁴ and iv) the Commission's questions to the public were biased in favour of positions supported by the NRM.¹⁵

The same illegitimacies would attend the process of electing delegates to the Constituent Assembly – which would debate the draft Constitution and adopt a final text. Under the Constituent Assembly Elections Act of 1993 and the rules made thereunder, organizing under political parties was banned, candidates being required to stand and be voted for 'upon personal merit'.¹⁶ In addition, candidates were only permitted to conduct campaigns at

⁹ O Ori Amaza (1998) *Museveni's long march from guerilla to statesman* 148-149.

¹⁰ DC Moehler 'Participation and support for the Constitution in Uganda' (2006) 44 (2) *Journal of Modern African Studies* 281 (footnotes omitted) cited in Kabumba *et al* (n 1 above) 78.

¹¹ AM Tripp 'The politics of constitution making in Uganda' in LE Miller (ed) (2010) *Framing the State in times of transition: Case studies in constitution making* 162 cited in Kabumba *et al* (n 1 above) 78-79.

¹² Tripp (n 15 above) 163 cited in Kabumba *et al* (n 1 above) 79.

¹³ As above.

¹⁴ As above.

¹⁵ As above.

¹⁶ Human Rights Watch (1999) *Hostile to democracy* available at <https://www.hrw.org/legacy/reports/1999/uganda/> (last accessed 27 April 2017) 39 cited in Kabumba *et al* (n 1 above) 83.

rallies organized by the government, and no other forms of public outreach to voters were permitted outside these events.¹⁷

The result was that, through the careful orchestration of a constitution making process that was publicly participatory but in reality extremely controlled, the NRM/A strived to enhance its democratic legitimacy.

A similar level of control was apparent in the text of the 1995 Constitution.¹⁸ The text of the Constitution attempted, at least nominally, to democratize the NRA and to bring it under the control of civilian authority. The former guerilla army that had been known as the National Resistance Army, would now be called ‘the Uganda Peoples’ Defence Forces’ (UPDF).¹⁹ The implicit promise in the name change – modeled along the Tanzanian Peoples’ Defence Forces (TPDF) which under Nyerere had been so instrumental in liberating Ugandans from the brutality of Idi Amin – was that from then on, the army would not advance the narrow political agenda of the NRM, but would rather serve as a truly non-partisan, professional army at the service of all Ugandans without distinction. To this end the Constitution also stipulated that the UPDF would be ‘nonpartisan, national in character, patriotic, professional, disciplined, productive and subordinate to the civilian authority’²⁰ and that UPDF soldiers had to be ‘citizens of Uganda of good character’.²¹

On the other hand, the Constitution had a number of inbuilt mechanisms through which the NRM/A could ensure a firm grip on the governance trajectory of the country, and safeguard its place at the helm of State power.²² Of these, perhaps the most important were Articles 269, 102 and 105 (read together with Articles 259 and 260).²³ In terms of Article 269, the Constitution restrained political parties from ‘opening and operating branch offices’, ‘holding delegates’ conferences’, ‘holding public rallies’, ‘sponsoring or offering a platform to or in any way campaigning for or against a candidate for political office’, as well as ‘carrying on any activities that may interfere with the movement political system for the time being in force’. This far reaching provision effectively ensured that the NRM enjoyed a monopoly of the political space, under the cover of the so-called ‘movement political system’, effectively creating a one party State. At the same time, by this mechanism, the extensive provisions of Article 29 of the Constitution, relating to the freedoms of assembly, speech, association and neighbouring rights, were thereby rendered inapplicable with regard to one of the most critical avenues of democratic expression – political contestation.

¹⁷ As above.

¹⁸ See, generally, Kabumba *et al* (n 1 above) 80-84.

¹⁹ Article 208 (1), 1995 Constitution.

²⁰ Article 208 (2), 1995 Constitution.

²¹ Article 208 (3), 1995 Constitution.

²² See, generally, Kabumba *et al* (n 1 above) 81-82.

²³ Another provision of note was Article 78, in terms of which the Army was granted representation in Parliament, alongside other special interest groups, that is to say, the youth, persons with disabilities, women and workers. In this way, in spite of the change of name from the NRA to UPDF, the NRC spirit in which the army was assured of a prominent role in the legislative process, was reflected in the new Constitution.

For its part, Article 102 provided an age limit for presidential candidates (75 years) while Article 105 (2) established term limits for a president (two terms).²⁴ Although these appeared to be significant achievements for preventing a life presidency, the proverbial devil was in the detail. Importantly, these two provisions were not among those entrenched under Article 260, that is to say, whose amendment would require not just a two thirds parliamentary vote but also the approval of the people of Uganda through a referendum. Through this mechanism, the NRM ensured that these otherwise important safeguards and assurances for political transition at some point, would remain open to future amendment, provided they could secure a two thirds majority in Parliament. Indeed, as we have now seen – in 2005 with the amendment of Article 105 (2) and most recently with the amendment of Article 102 – Parliament has proved to be a most pliant partner in the achievement of the NRM agenda in this respect. The democratic ‘safeguards’ provided in the text of the Constitution were, therefore, a critical part of the liberal and progressive illusion that document represented.²⁵

The making of the 1995 Constitution is perhaps one of the most concrete examples of the sophisticated nature of the NRM project – the ability to be extremely authoritarian and militaristic while having all the appearances and trappings of a democracy. Part of this strategy was well captured by a 1999 Human Rights Watch report on the period:

... the NRM has a sophisticated world outlook, and realizes that declaring Uganda a one-party State would lead to a significant loss of international support. Declaring Uganda a one-party State would place international donors and allies such as European Union members and the United States in a difficult and embarrassing position of closely supporting a declared one-party State and could lead to withdrawal of political or financial support by some donor nations. Instead, the NRM managed to achieve political dominance through a careful manipulation of the political system and an occasional resort to coercive measures, while retaining their international support.²⁶

3. Militarism and the Public Service

It should be evident, from the foregoing, that the militarization of the public service is only one aspect of a broad trend that has characterized the NRM. This particular aspect has two limbs: i) the undermining of the traditional civil service in favour of looser and more hybrid patronage-based systems; and ii) the depiction of the army as a superior form of organization, better equipped than civilian structures to deliver public goods and services.

An example of the first limb has been the cultivation of a corpus of ‘Presidential advisors’²⁷ whose numbers have grown far beyond the size of the formal cabinet.²⁸ Although potentially

²⁴ See, generally, Kabumba *et al* (n 1 above) 82.

²⁵ See B Kabumba ‘The illusion of the Ugandan Constitution’ *AfricLaw* 27 September 2012 available at <https://africlaw.com/2012/09/27/the-illusion-of-the-ugandan-constitution/> (last accessed 27 January 2017).

²⁶ Human Rights Watch (n 36 above) 62 cited in Kabumba *et al* (n 1 above) 83.

²⁷ See, generally, Kabumba *et al* (n 1 above) 119-120.

²⁸ See C Mwanguhya ‘Museveni’s 98 advisers’ *Daily Monitor* Sunday, 27 October 2013 available at <http://www.monitor.co.ug/News/National/Museveni-s-98-advisers/688334-2048248-item-00-8q3dma/index.html> (last accessed 25 January 2017), noting ‘The 98 presidential advisors are not the only public officials expected to advise the President. These are in addition to the 77 Cabinet ministers, including the Prime Minister and Vice President. If the 22 Permanent Secretaries (who are government’s highest ranking technical

useful, the role of Presidential Advisor, with an assured monthly income equivalent to that paid to a lecturer at a public university, and substantially more than that paid to a medical doctor at a public hospital, has in practice been used to ensure the loyalty of persons loyal to the NRM who have either lost elections or otherwise suffered diminished political importance but who nevertheless have enough residual strength to be ‘problematic’ if left ‘in the wilderness’. As such, a number of Presidential advisors have been former Ministers, Members of Parliament or historical supporters of the NRM. The net effect of this mechanism has been to present the President with an additional means by which to maintain the support of allies and to win to the NRM fold, using public funds, a number of political actors who might have otherwise mounted significant opposition to the NRM.

Examples of the second limb are evident in the consistent trend of a creeping military takeover of a number of State institutions.²⁹ For instance, in 2001 (then Major General) Katumba Wamala, a serving army officer, was appointed to head the Police force as Inspector General of Police (IGP). After serving for close to five years in this role, he was replaced, in 2005, by yet another serving military officer, (then Major General) Kale Kayihura. This trend, of the military being deployed beyond their traditional mandate, was taken further with the appointment of General Aronda Nyakairima, an active member of the armed forces and the then immediate past Chief of Defence Forces (CDF), as Minister of Internal Affairs on 23 May 2013.³⁰ This appointment was met by significant public criticism and disapprobation. Even the traditionally deferential Parliamentary Appointments Committee, on that occasion, indicated resistance to confirming General Nyakairima in this position. Ultimately, however, after significant pressure, the Committee succumbed and ratified the appointment.³¹ A number of legal challenges to the appointment were filed but, in the nature of things, consistently delayed.³² Tragically, on 12 September 2015, General Nyakairima died aboard an Emirates flight from South Korea to Uganda.

civil servants) of the respective ministries are added, President Museveni has a pool of about 200 advisors from whom to pick advice on how to govern Uganda. At least 48 of the 98 presidential advisers are employed as full time staff, 44 are paid a retainer wage, while the status of others is unclear. The least paid presidential adviser earns Shs2.2 million while the highest paid gets Shs2.6 million every month, with the exception of former German ambassador to Uganda, Mr Claus E.P Holderbaum who is paid Shs7 million a month as Senior Presidential adviser on Special Duties.’ As of April 2017, the number of presidential advisers stood at 145, with a further proposal having been made to further increase this number to 163 – see SK Kaaya ‘MPs protest as Museveni asks for more advisers’ *The Observer* 26 April 2017 available at <http://www.observer.ug/news/headlines/52550-mps-protest-as-museveni-asks-for-more-advisors.html> (last accessed 26 April 2017) (‘President Museveni has asked Parliament to make room for another 18 presidential advisers in the next financial year. The move is in keeping with the president’s tradition of shoring up the numbers of his presidential advisers after every election cycle or cabinet reshuffle’).

²⁹ See, generally, Kabumba *et al* (n 1 above) 146-149.

³⁰ See J Barigaba ‘Gen Aronda a lame duck?’ *The East African*, July 27, 2013. Available on <http://www.theeastafrican.co.ke/news/Aronda-a-lame-duck/2558-1928664-4xleh3/index.html> (accessed on September 7, 2016). See also J Namutebi ‘Opposition MPs to go to court over Aronda’, *New Vision*, 22 July 2013, available at http://www.newvision.co.ug/new_vision/news/1326825/opposition-mps-court-aronda (last accessed 7 September 2016).

³¹ See, generally, The East African, ‘General gets his job, Uganda loses its values’ (Editorial) *The East African* 20 July 2013.

³² See A Wesaka ‘MPs in court over Aronda selection’ *Daily Monitor* 6 August 2016 available at <http://www.monitor.co.ug/News/National/MPs-in-court-over-Aronda-selection/688334-1937200-oma5bxz/index.html> (last accessed 26 April 2017).

Nonetheless, the appointment of the General, and the lack of resolution of the legal challenges to it, on account of his death, appears to have laid the foundation for even more appointments of this nature. For instance, on 10 January 2017, the UPDF spokesperson announced that General Katumba Wamala, who until that date had been Chief of the Defence Forces, had been ‘seconded to the Government and appointed as Minister of State for Works’.³³

Although the most recent appointment of the IGP is of a career policeman, the deputy IGP and according to some views, the holder of the real power in the force, is a UPDF officer.

These developments indicate a continuing determination, on the part of the NRM politico-military establishment, to maintain control of the political direction of the State, including through occupying and gradually dominating domains beyond those traditionally envisaged for the army.³⁴ Inevitably, the military budget has been kept consistently high which, coupled with the classified nature of its expenditure, has maintained the dominance of this State institution as a feature of Uganda’s political, economic and social life.³⁵

The militarization of the public service however, reflects another and equally problematic aspect – the ‘ethnicization’ of governance. In this regard, notwithstanding the Constitutional provisions which require that the army be, among other things, ‘national in character’,³⁶ persons from Western Uganda have for a long time appeared to dominate, especially the higher ranks, of the UPDF and its forerunner, the NRA.³⁷ Such realities, however strenuously denied or concealed, cannot have done much to build the morale of the army or enhance cohesion within its ranks.

³³ See T Bwambale ‘Muhoozi replaces Katumba as army chief’ *Daily Monitor* 10 January 2017 available at http://www.newvision.co.ug/new_vision/news/1443700/muhoozi-replaces-katumba-cdf (last accessed 26 April 2017). See also Uganda Media Centre, ‘Gen. Katumba Wamala is sworn-in as works State Minister’, 23 February 23 2017, available at <https://www.mediacentre.go.ug/news/gen-katumba-wamala-sworn-works-state-minister> (last accessed 12 April 2017).

³⁴ The military role has also been extended to include involvement in traditionally civilian arenas such as health, agriculture, infrastructure, and even, as strange as it might seem, the organization of beauty pageants - See C Onyango-Obbo ‘Why beauty contests won’t make Uganda army look good’, *The East African*, 23 August 2014, available at <http://www.theeastafrican.co.ke/OpEd/comment/Why-beauty-contests-won-t-make-Uganda-army-look-good-/434750-2428466-10klu2fz/index.html> (last accessed 7 September 2016). See also British Broadcasting Corporation ‘Uganda: Army takes over Miss Uganda beauty contest’ *BBC*, 22 August 2014, available at <http://www.bbc.com/news/blogs-news-from-elsewhere-28895595> (last accessed 7 September 2016).

³⁵ See The East African ‘Uganda, Burundi lead East Africa in military spending’ *The East African*, 16 April 2014, available at <http://www.theeastafrican.co.ke/news/Uganda--Burundi-lead-East-Africa-in-military-spending/2558-2281886-11eleji/index.html> (last accessed 7 September 2016).

³⁶ Article 208 (2), 1995 Constitution.

³⁷ See T Butagira ‘Questions still linger over top army jobs’ *Daily Monitor* 26 March 2012 (‘The Army leadership has previously explained that the top command of the UPDF - of whom five out of six generals, four out of six lieutenant generals and 12 out of 19 major generals all come from western Uganda - is an accident of history, which brought together like-minded people to join the National Resistance Army in 1981. However, the command of more recent structures in the army continues to show the same pattern, despite the officers being younger recruits who joined the UPDF long after it took power in 1986. For instance, the Special Forces Group has none from Karamoja among its 64 top leadership, who include commanders, directors, operations, intelligence, and others. Of the 64, only two come from north (including West Nile), three from the east and four from central region. The other 55 all come from western Uganda.’)

4 Conclusion

In a context where the military is such a major actor in State affairs, the above tensions in the army – ethnic, generational and others – introduce a substantial measure of uncertainty regarding the prospects for a peaceful transition in Uganda.³⁸ In the face of the above trends, it is clear that the NRM conceives itself as a long-term establishment in Uganda's governance. However, militarism is the very antithesis of democracy – and it's a very tenuous basis for the foundation of a peaceful and prosperous State.

There is thus a dire need for a genuine national conversation as to how best to begin to reverse this trajectory – of militarized governance – as a means of collectively seeking a peaceful future for ourselves, our children and our grandchildren.

³⁸ J Kigongo 'Gen Sejusa is no longer a UPDF officer, High Court rules' *Daily Monitor*, 28 May 2016. It is indeed extremely significant, in this regard, that in the February 2016 elections, Besigye obtained more votes than Museveni in a number of military barracks. See D Asimwe 'Besigye pulls a surprise in NRM strongholds, military barracks' *The East African* 21 February 2016 available at <http://www.theeastafrican.co.ke/news/Besigye-pulls-a-surprise-in-NRM-strongholds-military-barracks/2558-3086718-dy0ban/index.html>