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**THE SOCIO-POLITICAL CONTEXT OF THE 2006
ELECTIONS**

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NOTE ON WORKING PAPER AND AUTHOR

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TABLE OF CONTENTS

- I. INTRODUCTION
- II. A BRIEF NOTE ON OUR HISTORY
- III. ASSESSING THE 'TRANSITION' TO A MULTIPARTY SYSTEM
- IV. POLITICAL CORRUPTION AND MILITARY COERCION
- V. SOME THOUGHTS ON THE ELECTORAL PROCESS
- VI. SOME THOUGHTS IN CONCLUSION

I. INTRODUCTION

Since this is a gathering of lawyers, I would like to begin my talk today by invoking the ‘spirit’ of the late James Wambogo Wapakhabulo. By the time ‘Wapa’ (as he then was) died, he was 3rd Deputy Prime Minister and Minister of Foreign Affairs, and previously served as Speaker of Parliament and National Political Commissar (NPC) of the now defunct Movement system of governance. He especially shone as a great statesman when he steered the Constituent Assembly (CA) through turbulent waters to eventually enact the celebrated 1995 Constitution.

I invoke Wapa’s spirit because he left a warning to us all. Unfortunately, it is a warning that we have failed to heed, and which failure has led to the situation of political tension and stress in which we are currently operating. Many of you will recall the discussion—infamously referred to by the Press as the ‘Peasants vs. the Elite’ debate—about who should have the power to amend the 1995 Constitution. The debate ranged people like Prof. Mathias Ssemakula Kiwanuka, Fox Odoi Oywelowo and Moses Byaruhanga on the one hand, against Justice George Kanyeihamba, the late Abu Mayanja and myself, on the other.

The debate began when Kiwanuka ridiculed Wapa’s last published letter to President Museveni, and argued that Wapa was mistaken to state that the issue of the 3rd term should not be subjected to a referendum. Kiwanuka argued that there were basically two reasons as to why there was a need to subject the matter to referendum. In the first instance, the provisions of Art.1 of the Constitution state: *“All Power belongs to the People.”* Secondly, he felt that a referendum was necessary because the 3rd term issue had become ‘controversial.’ President Museveni also weighed in on the issue, arguing that the rejection of the referendum on term limits was done by ‘greedy politicians’ trying to deny people their rights.

But what exactly did Wapa say? First, he said that there was no need to subject the 3rd term issue to a referendum, as this would merely be of ‘propaganda’ value only. Secondly, he said that the issue of the 3rd term would unnecessarily divide the Movement down the middle. Finally, he stated that the issue would also embroil the whole country in an intractable debate that would also result in continuing political conflict and apprehension, placing the courts under considerable stress and tension. Looking back over the last two

The Socio-Political Context of the 2006 Elections

years, it is clear that Wapa's foresight and vision on this issue run very deep. While we reflect on the present political context in which we are witnessing the first multiparty election to be held in 26 years, it would do well to recall Wapa's words, particularly because he was one of this country's most distinguished lawyers.

The overall objective of my talk is to subject to a critical analysis certain of the basic assumptions that prevail about the socio-political situation existing in the country today. Among those assumptions, the following are the most prominent:

- That the present government is a civilian one and that it is using civic and non-conflictual methods of governance by which to stay in power;
- That given the relative peace and calm of the run-up to the election (and the death of *only* three people so far) this will be Uganda's freest and fairest election since independence, and
- That the balloting on election day will produce Uganda's first multiparty government in more than two decades.

II. A BRIEF NOTE ON OUR HISTORY

As a starting point, I believe that it is important for us to begin with a short lesson in history and to ask the

following question: *What have been Uganda's most serious political and social problems?*

1. The tendency to create *Political Monopoly*, which essentially means the desire to absolutely dominate the political arena to the exclusion of any contending force, and particularly to eliminate all forms of opposition to the existing system of governance. This has been true regardless of the kind of political system we have had in operation.
2. Legal Manipulation and the misuse and abuse of law and of Constitutions in order to achieve sectarian political objectives. In particular, Uganda has been plagued by this problem of politicians shifting the goalposts when the existing ones do not suit the achievement of a particular political objective, e.g. the overthrow of the independence constitution in 1966, or more recently, the removal of secret balloting on constitutional matters in Parliament, and their re-imposition barely a month later when the NRM was electing its officials; and
3. The use of coercive (particularly militaristic) methods to achieve political objectives, of which we have seen numerous examples, starting with the 1964 Nakulabye Massacre and most recently manifested in the Bulange Slaughter last week.

While ancient history is useful, more recent events will tell us even more. Understanding the socio-political context of Uganda today requires that we take a few

steps back to the situation when President Museveni was still a prominent critic of the multiparty system of government, which was not very long ago. While there can be little debate that the Movement achieved the stabilization of the Ugandan political arena, it also manifested several acute failings. I think the most prominent failure of the Movement was to imagine that it could be a permanent answer to Uganda's problems, and thus completely eliminate the idea of organized political opposition. This belief informed the ban on political party activity, and it also led to the increasing single-person rule that came to characterize the movement, and which today is captured in the idea that there is only one valid 'vision.'

III. ASSESSING THE 'TRANSITION'

Against the above background, the so-called transition from the Movement to a multiparty political system has been fraught with problems, and I would like to elaborate on only a handful of them. At a conference held here in Kampala in 1999 (just before the referendum confirming the Movement system), Prof. Ali Mazrui said that whatever the case, Uganda would eventually have to return to a multiparty political system. However, he warned against Uganda's 'plunging back'

into pluralist politics, arguing that it was necessary to prepare the ground for an orderly transition. This warning was not given any attention. Indeed, when President Museveni declared that Uganda was to return to a multiparty system, he took even his Movement colleagues by surprise. Consequently, not only was the incumbent single party (the Movement) not prepared for pluralism, but neither were the opposition parties. The issue of Uganda's preparedness for multipartism is crucial. Multipartism is not simply a structure; you cannot simply proclaim: 'let there be parties' and imagine that pluralism or a pluralistic system will automatically come into existence. Indeed, Uganda runs the very serious danger of having a system of multiple parties, but absent any genuine multipartism or pluralism. Part of the explanation for why this will be the case is that the reasons for returning to a multiparty system were all wrong. Among the reasons we were given by President Museveni when he made the announcement at Kyakwanzi in early 2003 were the following:

- (i) to get rid of opponents within the Movement (*baleke bagende*);
- (ii) external pressure, and
- (iii) to justify the lifting of presidential term limits (we should not have a 'double transition')

The Socio-Political Context of the 2006 Elections

in both the system and in the leadership of the country).

What becomes very quickly clear is that none of the reasons given for the transition to a multiparty political system related to the belief that it is the better political system, even with all its imperfections. The president did not even have the courtesy to acknowledge the internal (non-Movement) opposition which pushed for a return of political parties virtually from 1986. That lack of acknowledgement, and the president's utter contempt for political opposition makes it clear that President Museveni has not made the conversion to genuine multiparty competition.

When examining what kind of multiparty system we are constructing we also need to ask ourselves several additional questions among which are the following:

- (i) How long have our parties been in existence? While UPC and DP are old parties, they have been severely crippled in operation for the last 20+ years; in-fighting has been their major characteristic. FDC is less than a year old; its leader has been in the country for only 3 months, and the party is struggling to set up basic structures. The only party that has been in steady and unchallenged operation is the NRM-O in its various incarnations; in essence, the populace really has the experience of only one party. Thus, if one takes the most important feature of

a party in the current election exercise (the symbol), it is really doubtful that many people actually knew the symbols of the parties competing in the election—with the possible exception of the bus, and maybe the key—before the *Sunday Vision* published the ballot paper yesterday. One student in my class thought that the FDC symbol was the handcuffs! These problems are compounded by the fact that political parties (with the exception of the NRM-O) were only permitted to operate from November 21, 2005 when the Political Parties & Organization Act, 2005 came into operation, meaning that they have only been in existence for three months!

- (ii) What structures do the parties have on the ground? For the past 20 years, grassroots politics in Uganda has been dominated by the Local Councils, while national politics has been the monopoly of the Movement secretariat, the National Political Commissar and the Presidency. Since the idea of individual merit long went into extinction (indeed as far back as the 1993 CA election), it means that the only party with any meaningful and grounded structures is the NRM. Coupled with the infrastructure of state control and patronage which continues in existence up to the present time, the fact is that political activity on the ground is controlled by the Movement/NRM-O.
- (iii) Where is the movement system? Despite the alleged transition, as a matter of fact, the old movement is very much alive and lurking behind every RDC, LDU and

LC1. When the President boasts of having 1.5 million officials, he is not talking about the government; he is talking about the party. Unfortunately, the government and the party (Movement) are still one and the same thing, effectively meaning that government officials have been conscripted to carry out party work!

Aside from the overlap between the state and the Movement, there is the problem of INCUMBENCY, which is made worse by the 3rd/life term project. Once the constitutional amendment went through, then the context for the election became even more unlevel. Why is this so? First, Museveni must prove that he is still popular, and thus disprove the internal Movement politicians who opposed him, the traditional opposition, and the international community. Not only must he win this next election; he must win it by a wide margin, and thus he will do anything to secure outright (1st round) victory. Secondly, incumbency within the 3rd term project has meant that not only is President Museveni able to use the resources of his office, but also that the NRM-O has privileged access to state funding through the continued existence of the Movement. This means that we are faced with a very desperate individual, supported by a very desperate party.

IV. POLITICAL CORRUPTION AND MILITARY COERCION

As if the above is not problem enough, Uganda has also been afflicted by the malady of political corruption, i.e. the disease which views political office as a means to economic advancement. In such a context, bribery and inducements have become the order of the day and accepted by both the electors and the (prospective) elected. President Museveni has become a specialist in offering direct bribes, whether these come in the form of completely unviable districts, the promise to pay LC1s, dishing out jobs to his supporters, or making direct monetary inducements (for example, the Shs.5,000,000/= bribe of parliamentarians on the eve of the Kisanja vote). At the moment former Vice President and ex-wife of Engineer Charles Kazibwe (Specioza Wandira-Naigaga) has become the Presidential Advisor in charge of the Materialization of 2001 Promises, and is dishing out money left, right and centre to all and sundry.

However, the most important issue of all is the problem of coercion, because this has featured so prominently in Ugandan politics for so long. A number of observers fear that in the event President Museveni

The Socio-Political Context of the 2006 Elections

loses the February 23rd election there will be a military *coup d'etat*. As a matter of fact, that coup has already taken place. There is no other country in the world that lays claim to being a democracy which so extensively relies on the military. So many examples suffice to show this; the notoriety and prominence of institutions such as the Chieftancy of Military Intelligence (CMI) and of para-military shadow militias like the Black Mambas; the prominence of the Presidential Guard Brigade (PGB) and our 'Generals,' in political life and the reluctance to remove the UPDF directly from politics as should normally be the case in a functioning multiparty system.

All the above factors explain why the UPDF has been placed on Class 1 standby for the upcoming election, and yet this is a category reserved for the threat of external assault. With whom are we going to war on Thursday? What are the external threats to Uganda's sovereignty posed by the election? And finally, what business do people like Elly Tumwine, David Tinyefuza, Caleb Akandwanaho, and Aronda Nyakairima have interfering with civilian bodies such as the courts and the elections? Their utterances and actions are a clear violation of the independence of the judiciary, not to mention constituting insubordination of the civilian

authority by the armed forces. (Art.208). Indeed, it is my considered opinion that at a minimum Generals Tumwine and Tinyefuza should be arrested and charged for contempt of court.

If one takes the totality of these developments, then it becomes clear that we have returned to a situation of military government. When you hear declarations such as the army is the 'core' of the state, you know what message is being sent out. The government's denials of the charge that Uganda has become overly-militarized ring hollow against the utterances of these generals; how can you even think that an election can be free and fair in such circumstances?

My final point on the general situation in the country must relate to Northern Uganda. A report that was issued just last Thursday says that each week more than 900 people die in the camps of the north. We should be ashamed of ourselves to even claim that we can have a 'free and fair' electoral exercise when we have a war raging in a part of Uganda that covers nearly one third of the geographical mass of this country.

V. SOME THOUGHTS ON THE ELECTORAL PROCESS

What are the problems that affect the specific issue of the election? In the first instance, I would like to say that too often we regard an election as an event, rather than as a process. In this respect, while we should welcome the so-called Election Observers (especially the foreign ones), we also need to appreciate that there is not much they can do; their presence here is a classic case of too little, too late. To understand why it is not possible against the preceding background to have a free and fair election, we need to turn to the specific context in which the exercise is to be conducted. A number of points can be made about it, including the following:

1. The election period was simply too short, especially given the fact that the main political actors (with the exception of the Movement) were essentially unable to operate politically until November 2005. It is also important to point out that the constitutional changes which took place (from the Ssempebwa report, through the White Paper, and culminating with the 2005 constitutional Amendment) did not address what needs to be changed in the infrastructure of the law and politics in

Uganda in order to establish a functioning multiparty system. e.g the composition of the Electoral Commission. Although the EC have been at pains to say that they have involved the Opposition, there is a difference between owning and sharing a house, and being invited to visit and have lunch in that house everyday; what if I don't like your menu?

2. Related to the above was the fact that the electoral laws delayed inordinately (even by the EC's own admission, this factor would definitely contribute to the unfreeness and unfairness of the process). Added to this is the misreading of the laws by the EC., as well as a degree of incompetence, as witnessed, for instance with respect to the setting of a date for the elections, or with regard to the electoral roll. The declaration by the EC chairperson Dr. Badru Kiggundu that only he can announce the election results is not only completely lacking in transparency, it also violates the constitutional right of access to information (Article 41), which can only be denied if it threatens state security or sovereignty, or the right to privacy. This pronouncement is made worse by the declaration that the tallying of results will be done in the absence of

The Socio-Political Context of the 2006 Elections

- party agents. In order to defeat this attempted assault on our fundamental right to know and on the need for a transparent electoral process, I urge all concerned citizens to relay the results from the individual polling stations to all the Media houses immediately they come in.
3. There is the absence of the necessary spirit to allow genuine multiparty competition and pluralism to flourish. The most important element for pluralism to succeed is for the government of the day to accept that it can be challenged and that such challenges do not constitute treason. In other words, it is for the existence of the necessary political will that accepts politics as a competition and not as a war.
 4. The above point is graphically demonstrated by the manifestly unfair and patently illegal manner in which the incumbent has treated its competition. Out of the three or so months of the election period, Kizza Besigye has effectively campaigned for a little over 5 weeks. To compound this disability he has been demonized and politically smeared with all manner of trumped-up charges.

The image the government has sought to paint is one of a certificate-forging, arms-dealing, army-deserting, treasonous, adulterous and non-condom wearing rapist! In elections, the most important commodity for any candidate is their image. What image have the numerous spurious charges against Besigye portrayed to the general public?

5. To crown it all, there has been no civic education for this election, whether by the Electoral Commission (EC) or by other actors. Instead, the EC has sought to target those NGOs which tried to take the initiative to place some of the issues which are of particular concern to the electorate (such as the overt presence of the military) on the table for discussion. In this regard, the confiscation of the MS civic education posters was a clear indication that competing messages(other than those in support of the Movement) were unwelcome

In sum, it is quite clear that if you take the totality of the socio-political conditions and the specific issues relating to the election in Uganda today, the only conclusion that you can arrive at is that the election cannot (by any stretch of the imagination) be considered to be free and fair

**VI. SOME THOUGHTS IN
CONCLUSION**

A few weeks ago I made the statement that I would eat my shoe if President Museveni lost the forthcoming election. The metaphorical statement was widely reported, but just as widely mis-understood. I did not mean it literally. What I meant was that I would be so thoroughly shocked that the tricks of the incumbent had failed to work that I would do something as incredible as eating my shoe. Let me put the same thought another way. If by some miracle Dr. Besigye should win the Thursday election it will not be because the election has been free and fair. Rather, it will be a victory despite the manifest irregularities, the overt and covert intimidation, the devious and unfair manipulation of the legal regime and the manifestly unlevel playing field in which the election has been conducted.

I would also like to issue a warning. Regardless of the outcome of the balloting on Thursday, Ugandans should expect more strife and tension after February 23rd. For a regime to have gone to such great lengths to prevent change clearly means that the possession of political power is of such great importance to them that they are willing to take the country down

with them when they are eventually forced to go. By the same token, if that regime remains in power, it can only do so to the detriment of civic and political freedoms in this country. Let us hope for the best, but simultaneously prepare for the worst. In so doing we will have honoured Wapa's legacy and also taken stock of his wisdom.