



**ISLAMIC UNIVERSITY
IN
UGANDA**

**COMPARATIVE LAW
JOURNAL**

IUIUCLJ

IUIUCLJ. VOL 6, ISSUE 2, 2019

SAFEGUARDING THE RULE OF LAW AND DEMOCRATIC GAINS: LESSONS FROM SUBSAHARAN AFRICA

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Abstract

While discussing the safeguards of the rule of Law and democracy in Africa ,I would like from the very beginning to point out that I am constrained to assert that democracy is an essential element of rule of law, since the basic element of rule of law is that rules are binding on all members of a society, including those who have economic or political power. Therefore those who violate rules have to be sanctioned. As such, an independent and efficient judiciary is very necessary. It is up to each people to ask for democracy within its specific historical, cultural, economic and political situation. I am not convinced about “exporting” the European style of democracy to Africa. One of the worst examples is the first elections in DR Congo which brought Joseph Desire Kabila to power protected by French and German troops. I will cite some examples from Sub-Saharan Africa as opposed to making broad, universal claims about safeguarding rule of law and democracy gains because it is through the application of democracy that it achieves its meaning. Unless applied to the lives of ordinary people in a specific situation, rule of law and democracy remain an indefinable and untested concepts. Last but not least, in my view it is first of all up to citizens of a given country to try to organize themselves (and may be create networks with citizens of neighbouring countries), if each one million people realizes one little step forward, that might create a big impact.

Introduction

This first section contains general introduction and definition of key terms. Safeguarding the *rule of law* and (*democracy*) democratic gains is part and partial of the major tenets in the debate on development and foreign policy. This is largely because the rule of law is a basic prerequisite for any form of democratic system to thrive. Numerous national and international development institutions are placing the ever greater emphasis on promoting rule of law and democratic governance. For instance, the UN, World Bank, Organization for Cooperation and Development (OECD) and even the European Union have made it one of their key fields of action. In particular, UN continues to work towards making rule of law and democracy a crosscutting issue in all of its areas of activity.¹

Furthermore, the New Partnership for Africa’s Development (NEPAD) affirms Africa’s Commitment to the promote democracy and its core values, which include the

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¹ ‘Supporting the Rule of Law Worldwide’, Konrad Adenauer Stiftung ev., 2016, Rathausesallee 12 Berlin Germany.

enforcement of rule of law, individual and collective freedoms, the inalienable rights of individuals to participate by means of free credible and democratic political process of electing their leaders for a fixed term of office, adherence to the separation of powers and the protection of independence of judiciary.²

It should be noted that rule of law and democratic gains must not be measured in terms of what they are intended to achieve, but by what they actually achieve. This means that certain operational conditions are to be deemed part and parcel of these processes namely;

- (i) access and openness of public institutions to the citizenry without discrimination or intimidation;
- (ii) transparency in the workings of public institutions;
- (iii) integrity of the processes; and
- (iv) accountability mechanisms capable of effecting outcomes and effectively redressing wrongs

Therefore, it is imperative to note that the justification of these two celebrated principles of rule of law and democracy is that they both lay the best path for good governance, peace, stability, prosperity, shared growth and development.

Historically, human beings have continuously structured their activities along social lines in search of systems which can best contain and mediate the competition for resources and power as fundamental factors of social existence. And as such, in the recent past rule of law and democracy have been widely accepted as the most appropriate vehicle to play such a role.³ In spite of this acceptance, there has been neither consensus nor what rule of law and democracy entail or their universal implementation.

Briefly, before we delve into measures of safeguarding rule of law and democratic gains, it is appropriate that I state working definitions for the terms '*rule of law*' and '*democracy*.'

The '*rule of law*' is one of the fundamental principles that cannot be overturned even by amending the constitution...the concept of rule of law centers on 'the requirement the state to exercise its sovereignty in the form of law.'⁴ This means that the state must govern according to the laws in place. On the other hand, the contemporary interpretation of the doctrine of the rule of law refers to a cluster of ideas namely; the principle of legality, prescription of procedural standards in the administration of justice, the separation of powers, promotion of material justice and individual rights

² NEPAD, '*Declaration on Democracy, Political, Economic and Corporate Governance*', AHG/235 (XXXVIII) Annex 1, para 7.

³ Cyril R., '*The Main Elements of Democracy: A South African Experience*' Published in *Democracy: Its Principles and Achievements, Inter-Parliamentary Union, Geneva, 1998.*

⁴ '*Supporting the Rule of Law Worldwide*', Konrad Adenauer Stiftung ev. 2016, Rathausesallee 12 Berlin Germany.

Available at:

and the maintenance of public order.⁵ In the same vein, the UN recently provided a detailed definition towards attaining uniformity and understanding of the term rule of law thus;

The ‘rule of law’ refers to “a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international humanrights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.”⁶

This thoughtfully presents rule of law as a collection of principles that can be used to inform the structure, operation, reform, and evaluation of law related institutions across societies. Emphasis is placed on equality, accountability, and avoidance of arbitrariness, and it is embedded in fundamental principles of human rights, as well as the more traditional concepts of supremacy of law.⁷

‘Democracy’ just like its “counterpart” the ‘rule of law’ there are various interpretations of democracy.⁸ Some scholars consider democracy within the broader social, economic, political, gendered and cultural context. In this article, *democracy* may be taken to mean the form of government in which the supreme power is vested in the people and for the people.⁹

Accordingly, democracy necessitates that the government should be open, accountable and participatory. It also entails the state being administered according to the will of the people who have delegated their sovereign political power to leaders elected by them. The people take part directly or indirectly in the formulation of policies by means of secret, free and fair elections of representatives who remain in office for a specific length of time.¹⁰ Democracy also entails the ability of political institutions to articulate the diversity of interests or opinions with the unity of the law and of the government. Democracy makes it possible for individuals holding different interests and beliefs to

⁵ Fombat, M.C., ‘Challenges to Constitutionalism and Constitutional Rights in Africa and Enabling Roles of Political Parties: Lessons and Perspectives from Southern Africa’, 2005.

Available at: http://www.saifac.org.za/docs/res_papers/RPS%20%.2018.pdf.

⁶ UN Secretary General in his report to Security Council in 2004.

⁷ Chukwuma, I., Ebai, E., ‘Promoting Rule of Law through Evaluation and Performance Measurement in Nigeria: Challenges and Prospects’. (Available at:

[promoting_the_rule_of_law_through_evaluation_and_performance_measurement_in_nigeria_chukwuma_ebai.pdf](#).

⁸ AH Birch, *The concepts and theories of modern democracy* (1993); BO Nwabueze *Democratisation* (1993);

Issacharoff *et al The law of democracy: Legal structures of the political process*, 2001.)

⁹ Twinomugisha. B., K., ‘The Role of the Judiciary in Promoting Democracy in Uganda.’

Available at: [ahrj_vol19_no.2009_ben_k_twinomugisha.pdf](#).

¹⁰ Supra

live under the same laws in harmony.¹¹ In other words, democracy is a system whereby people agree upon a means of coexistence in association together without destroying each other.¹² Rule of law and democracy institutions cannot be created overnight. It also depends on continuous support and endorsement by people.¹³

The article discusses how to safeguard rule of law and democratic gains citing selected examples from Sub-Saharan Africa. It recognizes that the safeguarding rule of law and democratic gains requires the involvement of different stakeholders which among others include; the three arms of government¹⁴ and civil society. However, it is argued that the judiciary plays a fundamental role in safeguarding rule of law and democratic gains through the protection of fundamental human rights and the resolution of disputes and ensuring that people and institutions abide by these laws. The courts are arenas for safeguarding rule of law and democratic gains.

It is against this background that I attempt to discuss ways of safeguarding rule of law and democratic gains with reference to some examples from Sub-Saharan Africa.

This piece of work is divided into four sections. The first is this introduction and definition of key terms. The second discusses ways of safeguarding rule of law and democratic gains. The third highlights the challenges to safeguarding rule of law and democratic gains. The final section contains concluding remarks.

II. Safeguarding Rule of Law and Democratic Gains

The second section discusses ways of safeguarding rule of law and democratic gains;

(i) Maintaining an Effective and Independence Judiciary

There is an increasing acknowledgement that an independent judiciary is the key to upholding the rule of law in a free society. This independence may take a variety of forms across different jurisdictions and systems of law. For example the protection of human rights is dependent on the guarantee that judges will be free and will reasonably be perceived to be free to make impartial decisions based on the facts and the law in each case, and to exercise their role as protectors of the Constitution, without any pressure or interference from other sources, especially government. This basic premise is crucial to the maintenance of the rule of law.¹⁵

The independence of the judiciary is paramount in the promotion and sustenance of democracy and is guaranteed by the Constitution. The primary objective of

¹¹ Supra.

¹² Luis, V., 'Which Democracy? Published in *Democracy: Its Principles and Achievements*, Inter-Parliamentary Union, Geneva, 1998.

¹³ Bojan Bugaric, 'Protecting Democracy and Rule of Law in the European Union: The Hungarian Challenge', 2014, LEQs Paper No.79/2014.

¹⁴ Arms of Government; The Legislature, Judiciary and Executive.

¹⁵ Préfontaine, D. C., Q.C. & Lee, J., 'The Rule of Law and the Independence of the Judiciary', Paper prepared for World Conference on the Universal Declaration of Human Rights', the International Centre for Criminal Law Reform and Criminal Justice Policy 1822 East Mall, Vancouver, B.C. Canada Montreal, December 7, 8, & 9, 1998.

guaranteeing the independence of the judiciary is to ensure the effective maintenance of law and constitutional order so that there is no necessity or justification for a resort to extra-judicial means in the resolution of political disputes.¹⁶

The independence pertains to the judiciary as an institution (independence from other branches of power, referred to as institutional independence) and to the particular judge (independence from other members of the judiciary, or individual independence).¹⁷ It is written that; *“a country without a respected judiciary is a country with no honor, or justice. This is because people believe in a judiciary which is independent, respected, fearless and impartial. This explains why the Constitution and laws for instance in Uganda made provisions to ensure that there is actual and real integrity, reputation and transparency of the Courts and judicial officers.”*¹⁸

The judiciary is the third arm of the government, under the doctrine of separation of powers the other two being the legislature which makes the law, and the executive which enforces the law.¹⁹ The judiciary is clothed with a constitutional mandate to administer justice through resolving disputes between citizen and citizen on one hand and between the State and citizen(s) on the other, interpret the Constitution and other laws of the land, promote rule of law, contribute to maintenance of order in society, protect human rights (of individuals and groups), develop and implement training programmes for the development of judiciary staff, as well as collect government revenue accruing from courts among others.²⁰

In any given country, the judicial system is an essential in safeguarding rule of law and democratic governance through checks and balances which is the bedrock upon which the requirements of judicial independence and impartiality rests must also be guaranteed.²¹ To this end, the judiciary plays a central role in safeguarding rule of law

¹⁶ PT Mukubwa *‘Ruling from the grave: Challenging antiquated constitutional doctrines and values in Commonwealth Africa’* in J Oloka-Onyango (ed) *Constitutionalism in Africa* (2001) 288. Note that whereas the concept of judicial independence has many prerequisites, in this paper they are generally categorized into four major categories namely;

- (a) *First and foremost, the State must guarantee judicial independence by entrenching clauses in the Constitution on the tenure, security, emoluments and independence of judges and*
- (b) *Secondly, the State should surrender through constitutional provisions the function of administering justice to the judiciary. It should also guarantee fundamental rights and freedoms of individuals in the Constitution. This is important especially in cases of conflict of interest between the State and an individual or group of citizens collectively;*
- (c) *Thirdly, there must be relative non-partisanship on the part of the judiciary in adjudication of disputes where individual rights are in conflict with those of the State and*
- (d) *Last but not least is the attendant prerequisites which must be in place viz; Rule of law, Separation of powers, Creating Awareness of the people and the open court requirement.*

¹⁷ Rugege, S., *‘Judicial Independence in Rwanda’*, Paper presented at the Judicial Independence and Legal Infrastructure: Essential Partners for Economic Development conference, University of the Pacific, McGeorge School of Law, Sacramento, California, October 28, 2005.

¹⁸ Kanyeihamba, G.W., *‘A speech delivered to the Uganda Parliamentarians’ Seminar on Peaceful Transition and Constitutionalism’*, March 18, 2004, p.15.

¹⁹ Chapters 6, 7, & 8, and of the Constitution of Republic of Uganda, 1995.

²⁰ Supra

²¹ Attorney General v. David Tinyefuza, Supreme Court Constitutional Appeal No.1 of 1997 (U), per Justice Kanyeihamba

and democratic gains. In order to ensure proper safe guard of the rule of law and democratic gains, an independent and impartial judiciary must be in place.²²

(ii) Observance of Free, Fair and Regular Elections

On the importance of elections for democracy. Hence Geist observes that;

*“An election addresses the issue of periodic reaffirmation of or alteration in the presentation of the public in the institutions of policy making and governance. Elections confer legitimacy on governance by providing a chance for the citizenry to alter the composition of the government. They can also provide channels for citizen input on policy issues directly, through referenda, or in the extreme case to alter the nature of the government itself, through constitutional exercises.”*²³

In determining whether an election is free, fair, and regular, it is crucial to look at the entire electoral process, not the polling exercise on polling day alone. The electoral process starts with the enacting of the relevant laws and ends with the declaration of the results. Government employees and officials involved in the electoral process must be competent, honest, open, transparent and impartial in the implementation of the electoral laws and the conduct of the electoral process. The Chairperson and other commissioners of the Electoral Commission must be non-partisan and competent to deal with the situation.²⁴

The entire election process must be free of bribery, violence, coercion or anything intended to subvert the will of the people. Fairness and transparency must be adhered to in all stages of the electoral process. Elections should be conducted regularly in a free and fair manner. It should be noted that democracy is not merely the right to vote and seize power.²⁵ Free, fair and regular elections are therefore an indispensable pre-requisite in safeguarding rule of law and democratic gains.²⁶

(iii) Protecting Fundamental Human Rights and Freedoms

The nexus between rule of law, democracy and human rights has been emphasized at various fora. For example, the United Nations High Commissioner for Human Rights (UNHCHR) recognizes that ‘democracy, development and respect for all human rights and fundamental freedoms are interdependent and mutually reinforcing. This is due the fact that ‘democracy fosters the full realization of all human rights and *vice versa*. That democracy includes ‘the rule of law, including legal protection of citizens’ rights, interests and personal security, and fairness in the administration of justice and the

²² The courts may be a feasible arena for the political opposition to challenge unconstitutional measures taken by the ruling regime to restrain their activities.

²³ G Judith ‘Political significance of the Constituency Assembly elections’ in HB Hansen & M Twaddle (eds) *From chaos to order: The politics of constitution making in Uganda* (1994).

²⁴ Twinomugisha. B., K., ‘The Role of the Judiciary in Promoting Democracy in Uganda.’ Available at: ahrlj_vol19_no.2009_ben_k_twinomugisha.pdf.

²⁵ Supra.

²⁶ Supra.

independence of the judiciary²⁷. Among the fundamental human rights and freedoms mainly include ‘freedom of thought, religion, belief, peaceful assembly and association, as well as freedom of expression, freedom of opinion, and free, independent and pluralistic media’.²⁸

The mass media is one such mechanism, for safeguarding rule of law and democratic gains. For the media to play a constructive role, it needs to be free from any legal or political constraints. It should be protected by freedoms of speech, association and publication. It needs to be protected from censorship or banning. The media needs to be independent from government control, and needs the institutional capacity to represent a broad diversity of perspectives and views.

Apart from the judiciary, there must be a Human Rights Commission has the responsibility of investigating any allegations of human rights violations, and seeking redress where such violations are found and perhaps a Commission for Gender Equality. These institutions are intended not only to provide means of redress for people whose rights have been violated.

There must be freedom of expression and access to information. Most Constitution in Sub Saharan Africa guarantee the right for every person the right to freedom of speech and expression which shall include freedom of the press and other media. It is a watch dog over the government. The media draws the public attention to areas where they should demand accountability. It helps to bring to the attention of the public excesses of mismanagement. The media constitutes a vital political space and freedom of expression is crucial in promoting rule of law and democracy.

The right of access to information in the possession of the state ‘except where the release of the information is likely to prejudice the security or sovereignty of the state or interfere with the right to the privacy of any other person must also be in place. Finally, the freedom of assembly and association should not be curtailed.’²⁹

(iv) Allowing full Participation of Civil Society

²⁷ UNHCR ‘Promotion of the right to democracy’ Commission on Human Rights Resolution 1999/57 [http://www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.RES.1999.57.En?](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.RES.1999.57.En?)

²⁸ *Commission Resolutions 2001/41, 2002/46 & 2003/36*. UNHCHR ‘Promoting and consolidating democracy’ Commission on Human Rights Resolution 2000/47 [http://www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.RES.2000.47](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.RES.2000.47).

²⁹ In any case, freedom of expression is one of the core essentials of a functional democracy. As the court observed in the Nigerian case of *State v. Ivory Trumpet Publishing*: 1984) 5 NCLR 736.51 Freedom of speech is, no doubt, the very foundation of every democratic society, for without free discussion, particularly on political issues, no public education or enlightenment, so essential for the proper functioning and execution of the processes of responsible government, is possible. Freedom of the media entails freedom to seek, receive and impart information and ideas.

Building and safeguarding the rule of law and democratic gains requires a sustained involvement of the civil society in the creation of basic political institutions.³⁰ A successful approach to safeguarding rule of law and democratic gains has to involve all key segments of the society. This includes the involvement of the civil society in the creation of basic political institutions. Non-state actors whether in formal associations, community based organizations or in other institutions can be key interlocutors to channel citizen input to governments and contribute to policy formulation. The role of other sections of civil society in safeguarding rule of law and democratic gains is equally important. The existence of a large, vocal, independent and varied sector of non-governmental organizations can play a profound role in anchoring any rule of law and democracy. For instance, in South Africa, NGOs played a central role in bringing about the end of apartheid, and creating a democratic culture among the country's people. Whereas the dominant models of civil society led action and assistance typically over emphasize the adversarial role of the civil society in checking state overreach, rather than supporting forums for dialogue and joint policy formulation.³¹ However, the civil society must play a role not only in criticizing inaction or abuses of power, but also as active partners in crafting and implementing policies to safeguard rule of law and democratic gains.³²

(v) Recognition of Outstanding Leaders

One way of safeguarding rule of law and democratic gains is to recognize and award outstanding leaders for supporting the promotion of rule of law and democratic governance. These Leaders should be identified and recognized for their outstanding performance especially with regard to advancing rule of law and democracy. For instance, in 2008, former President of Botswana Festus Gontebanye Mogae received the Ibrahim Prize for Achievement in African Leadership.³³ The Foundation assesses Sub-Saharan leaders on their exercise of leadership and their country's performance during their term of office.³⁴ It is stated that:

“Botswana’s democracy was strong, stable and rooted in the rule of law. Botswana was widely regarded as one of the more effective countries in the world in combating corruption...the Prize Committee believes that good governance requires an environment conducive to peace, security and development based on the rule of law and respect for human rights. This has been helped by the independence and integrity of its institutions which bodes

³⁰ Mike Jobbins, *Upholding Good Governance: Democracy, Elections and Local Institutions under Political and Social Uncertainty*, Chapter 6, available at global_20170109_fore sight_africa_chapter-6.pdf.

³¹ E.V. Edroma, *Aid Effectiveness and Civil Society, Experiences from the JLOS Uganda*, 2007. See also: Goran Hyden, *The Challenges of Domesticating Rights in Africa*, Published in *Human Rights and Governance in Africa*, 1991, University Press of Florida.

³² Mike Jobbins, *Upholding Good Governance: Democracy, Elections and Local Institutions under Political and Social Uncertainty*, 2016, Chapter 6. (available at global_20170109_fore sight_africa_chapter-6.pdf)

³³ Daniel Howden, *Former Botswana President Wins Award*, INDEP (UK), Oct, 21, 2008 (Available at: <http://www.independent.co.uk/news/world/africa/former-botswana-president-wins-award-967692.html>).

³⁴ The Foundation also considers granting an additional \$ 200,000 per year for 10 years to leaders who take on public interest activities and espouse good causes.

well for further progress towards spreading wealth and opportunity across all sectors of Botswana in society."³⁵

(vi) Enhancing Public Accountability System

It should be noted that all public offices shall be held in trust for the people. And all persons placed in positions of leadership and responsibility shall, in their work, be answerable to the people. All lawful measures should be taken to expose, combat and eradicate corruption and abuse or misuse of power by those holding political and other public offices. There is need for a strong system of accountability where holders of public office, such as legislators, electoral officials and political leaders, are accountable and answerable to the public for their decisions and actions. Public officials must be kept in check to guard against bad governance and abuse of office. This will go a long way in safeguarding rule of law and democratic gains.

III. Challenges to Safeguarding Rule of Law and Democratic Gains

This third section highlights the challenges encountered in safeguarding rule of law and democratic gains.

(ii) Lack of Judicial Independence

The Judiciary must be allowed to enjoy its independence as an institution in order for it to effectively exercise judicial power. Accordingly, the test for independence is whether a reasonable, informed person would perceive that a court is independent.³⁶ However, in most Sub Saharan African countries the judiciary is not independent. It is stated that judicial independence is the "lifeblood of constitutionalism in democratic societies"³⁷ and is "one of the pillars upon which our constitutional democracy rests."³⁸ Yet the judiciary is the most vulnerable of the three branches of government. It has no means by which it can generate revenue to sustain itself. It is entirely reliant on the other branches of government for almost all its most basic and practical needs. Judicial appointments are made by the executive with recommendation from judicial service commission. Additionally, the judiciary does not possess power to enforce its own judgments given the doctrine of separation of powers. For instance, in Uganda, whereas the parliament is endowed with the power to make laws 'on any matter for the peace, order, development and good governance of Uganda.' The court may declare certain legislation or some of its provisions unconstitutional, but parliament may not repeal the Act or the invalidated provisions.³⁹ These are some of the indicators of lack of judicial independence which is a challenge in safeguarding rule of law and democratic gains.

³⁵ *Supra*.

³⁶ Drolet, K., 'Submissions of the Senior Presiding Justice of the Peace to the 2010 Judicial Compensation Commission', Part 1: Constitutional and Legislative Overview of the Commission Process, Drolet Law Firm, Eldred Barristers, Business Suite 415 – 171 West Esplanade, North Vancouver, British Columbia, Canada, V7M 3J9. Accessed on: http://www.justice.gov.yk.ca/pdf/Submission_of_Senior_Presiding_Justice_of_the_Peace.pdf

³⁷ Mackin v. New Brunswick (Minister of Finance), 2002 SCC 13 at para. 34.

³⁸ *Ell v. Alberta*, 2003 SCC 35 at paras. 18-19.

³⁹ *Association of Women's Lawyers and 5 Others v Attorney-General*

(iii) Non observance of Free, Fair and Regular Elections

In most Sub Saharan Countries, the principle of observance of free, fair and regular elections is violated most especially during presidential elections. What now remains is a ‘mock’ election which drains country of her resources and perpetuates the incumbents in power. These elections are always controversial with a common characteristic of the incumbent imposing himself on the citizens for life. Some commentators have said that the incumbent apply ‘political super glue to their seats till death doth them apart. The incumbent use the economic advantage, suppression of the opposition parties, intimidation, the harassment of candidates’ agents, voters and supporters, abusive language, hooliganism, destruction of property, and the involvement of military and high-ranking government officials in the electoral process characterizes these campaign. Coupled with lack of independence of judiciary, the electoral laws and systems in most African countries, including Nigeria, Uganda, Rwanda and many other African countries have not provided fair ground for democratic accountability and the rule of law. There is also the prevalence of widespread impunity for government actors and elites, increasing violent crime, political instability, pervasive corruption, disease, and poverty, all of which present huge challenges to safeguarding the rule of law and democratic gains in Africa. And through the state appointed electoral commission, they have an upper hand in influencing the finale results of the poll. This undermines the process of safeguarding ruling rule of law and democracy and democratic gains.

(iv) Inadequate constitutionalism and constitutional democracy

One of the major challenges to safeguarding rule of law and democratic gains is the inadequate of constitutionalism and constitutional democracy. The problem has not been the absence of constitutions, but rather the ease with which constitutional provisions are abrogated, subverted, suspended, or audaciously ignored.

(v) Challenge to efficacy of civil society

The efficacy of the work of civil society depends on the extent to which such associations are autonomous or institutionalized. When they have relatively formal links to the State or political parties, they lose some of their autonomy and thus their ability to intervene in all freedom in the management and conduct of public affairs and in the working of institutions according to arrangements deriving from their governing principle of special interests which is a challenge to safeguarding rule of law and democratic gains.

(vi) Technological Advances & Adoption of Western Rule of Law & Democracy The development of our societies is marked by technological advances, which are the underlying factors behind industrial and agricultural production, progress in communications and urban expansion. However, technology is beginning to impinge upon fields that have previously been the reserve of social scientists and politicians. All

these technicians base their proposals on considerations relating to output and effectiveness, which are far from being social values. The fact that society is becoming more technological has considerably narrowed the range of decisions that can be taken by the man or woman in the street. The ideal of democracy is to give each member of society the capacity to decide freely on all the matters affecting her life or his. In contrast, technology is making it necessary to abide by the decisions of specialists in increasingly extensive fields. As a result, the role of citizens is being confined to that of obedient consumers of ideas and products, who are incapable of deciding for themselves on the majority of matters of common interest. As such, the western interpretation of the concept of rule of law and democracy has no roots in the traditions of Africa and this explains why in reality they often plays a minor role in the political culture of Africa.⁴⁰

Also, having obtained independence, the adoption or creation of Western-style state structures in African cultural contexts can often seem artificial, imposed and quite alien; for this reason, Western rule of law and democracy are not always met with acceptance.

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(vii) African Social Political Traditions

In Africa, there exists a unique concept of the “big man”. This is rooted in the African social and political traditions. It implies an authoritarian political leader who acts indiscriminately, concentrates as much power as possible in his hands and builds a protective apparatus around himself by creating personal dependencies. He is the absolute contrast to the constitutional institution of the head of state or government in parliamentary democracies. The traditional role of these leaders appears to involve disregarding rules with impunity or creating their own rules to serve their own interests.

In this regard, Ochieng writes that, 2017 will be an important year for the advancement of democratic government in Africa because several key elections will determine whether the region experiences rule of law and democratic erosion or consolidation.⁴² Although, averagely over the last 25 years the general trend the trend in Sub-Saharan Africa as can be moving towards greater rule of law and democratic consolidation, this is without challenges. With several countries scheduled to hold elections, however, these elections will continue to mirror the divergent trends in rule of law and democratic consolidation.

For instance, Rwanda and Angola’s post conflict incumbent presidents will seek to consolidate their hold onto power having done away with third term limits as was in

⁴⁰ Supra.

⁴¹ Kabwegyere, B., T., *The Politics of State formation and Destruction in Uganda*, 1st ed.1974, East African Literature Bureau.

⁴² Ken Ochieng Opalo, *African Elections: Two Divergent Trends*, Journal of Democracy, Vol.23, No.3, pp.80- 93(2012).

the case of Uganda. Nevertheless, a different set of post conflict states; Sierra Leone and Liberia will have open contests as the incumbent presidents will be term limited.

In Kenya and Senegal, competitive general and legislative elections will likely lead to greater levels of intra-elite political accountability and democratic and rule of law consolidation. On the other hand, Liberia and Sierra Leone are both weak post conflict states that will face the normal challenges of holding elections under weakly institutionalized systems of electoral management. Last but not least, Chad, the Gambia and the Republic of the Congo, elections will serve the purpose of consolidating autocratic rule.

In the countries not holding elections this year, government effectiveness in providing public goods and services and horizontal accountability through legislatures and courts will be crucial for continued democratic consolidation. In case of failure, there will be protests which will likely be met by state repression, thereby eroding the values of accountable democratic government.

(viii) Insecurity and Political Instability

Another Challenge to safeguarding rule of law and democratic gains is insecurity. This may be due to civil wars, urban crime, terror attacks or insurgencies and elected governments in the region will be willing to use insecurity as a reason for curtailing freedoms of speech and movement in the region.⁴³

Despite a few setbacks, many post-election transitions in 2015-2016 like Nigerian, Tanzania, Burkina Faso and Zambia have been generally peaceful. However, that was not true everywhere; in Burundi, incumbent President Pierre Nkurunziza sought and obtained controversial constitutional amendment that paved way for him to win another term in office hence the ongoing civil war.

In 2016, Gabon, Presidential election in which the opposition candidate lost by only 6,000 votes produced massive violence. Although the riots abated considerably, the opposition parties have to enter into negotiations with the government. Sudan's 2015 election was boycotted by a significant part of the opposition and was highly criticized by international community on claims of an environment not conducive for fair, free and credible elections. Now the Gambia is struggling with a president that conceded the election before rejecting the results a week later.⁴⁴

Although the 2013 presidential elections were peaceful, many Kenyans remain without hope, distrust of government and feel marginalized by the policies of Kenyatta jubilee government. Many feel that Kenyatta administration has performed quite poorly in reducing corruption, safeguarding rule of law, democracy, fighting terrorism and improving domestic security and eradicating poverty especially among urban youth,

⁴³ADB African Economic Outlook, 2016.

https://www.afdb.org/fileadmin/uploads/afdb/documents/publications/AEO_2016_Report_Full_English.pdf.⁴⁴ John Mukum Mbaku, *'Election Spotlights: Kenya and Rwanda.'*

rural inhabitants and their historically marginalized groups.⁴⁵ The most recent 2017 elections in Rwanda and Kenya are likely to have significant impact on peace, security and governance and economic growth and development in this region in the near future as the opposition parties are left with no option other than use of force.⁴⁶ However, opponents fear that a third term for Kagame's suffocating and military style approach to governance could derail the motivation of the country's embryonic democracy.⁴⁷

(ix) Corruption in Public Institutions

The widespread vice of corruption presents huge challenges to safeguarding rule of law and democratic gains. In many African countries, policies on democracy and rule of law reforms are often formulated, implemented and discarded within no time. Last but not least, rule of law and democratic processes are fostered by a favorable economic environment; therefore, the society must be committed to satisfying the basic economic needs of the most disadvantaged, thus ensuring their full integration in the democratic process.

Conclusion

In final analysis, whereas there are several worth celebrating achievements, innovations, insights, and positive trends towards safeguarding rule of law and democratic gains, significant gaps still remain in their realization.⁴⁸ Like the African adage that states one by one makes a bundle', I am convinced that with the never relenting zeal on one hand and safeguarding the existing gains, until we attain the 'finalmark.'

In light of the foregoing discussion and conclusion, I highly recommend rethinking and reexamination of the obstacles to safeguarding rule of law and democracy gains on one hand and protecting the achievements on the other. As Hachard et al put it 'avoidance of unpromising future requires transcending not only of the unfavourable indicators...but also the unhelpful inheritance from the past.'⁴⁹ There is also need for creating awareness and capacity building of the key players in rule of law and democracy is also a vital tool. Holistic forms of reform should not be imported and implemented in Africa without the input of local realities.

⁴⁵ Alingo Peter, Hava Noor, 'Signs of Violence Ahead of 2017 Elections', ISS Africa Institute for Security studies, 17 June 2016. <https://www.issafrica.org/iss-today/signs-of-violence-ahead-of-kenyans-2017elections>.

⁴⁶ Gatehouse, Gabriel, 'Kenya Violence: Survivors' Tales, BBC, 10, Sept.2013. <http://www.bbc.com/news/world-africa-24021833>.

⁴⁷ Johannesen, Jesko. 'Fighting for recognition: Political Opposition in Rwanda' .D.W.com.Deutsche Welle 09.sept.2015.<http://www.dw.com/en/fighting-for-recognition-political-opposition-in-rwanda/a-1870235>. Kagame was expected to step down in 2017, however in Dec.2015, Rwandans approved a constitutional amendment allowing him to remain in office until 2034. Whereas Kagame has brought social economic success to the country; some Rwandans argue that third term would allow Kagame consolidate those gains and deliver more improvements.

⁴⁸ Most Sub Saharan African countries have overwhelmingly subscribed to most international and regional human rights and rule of law norms and standards, ratified numerous major human rights treaties, and enshrined these norms and standards in their constitutions and national legislations.

⁴⁹ Hachard et al, 'Comparative Constitutionalism and Good Governance in the Commonwealth, An eastern and Southern Africa Perspective', Cambridge University press, 2009.

Internationally, there is need to provide necessary support to the international rule of law systems such as the ICC so that perpetrators of the basic international standards are brought to justice. The innovation of the ICC is that it has the power to prosecute individuals who commit abuses within a signatory state as it was in the case of genocide in Rwanda and Kenya.⁵⁰

All actors must reinforce a long term emphasis on social accountability measures such as open government partnerships that increase fiscal transparency and create opportunities for citizen input into public policy are welcome. However, inculcating a culture of accountability will mean that the civil service and security structures also require fundamental shifts in the way the institutions operate more active communication with citizens, and engaging with regions and communities that do not trust their governments.

The relationship of the state with communities living at the periphery can be a threat to national, regional and international stability. African governments and aid agencies, multilateral institutions, global civil society and the broader community of the people who care about ensuring effective and inclusive democratic governance should place social cohesion at the center of their programming and policies.

The key element in the exercise of democracy is the holding of free and fair elections at regular intervals enabling the people's will to be expressed. Safeguarding rule of law and democratic gains requires a culture constantly nurtured and reinforced by education and other vehicles of culture and information. Hence, a democratic society must be committed to education in the broadest sense of the term, and more particularly civic education and the shaping of a responsible citizenry.

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⁵⁰ The Rome Convention established the International Criminal Court (ICC), in 2002 to prosecute individuals accused of genocide, war crimes, and crimes against humanity.

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