A COMPENDIUM OF CONSTITUTIONAL REFORM PROPOSALS UNDER THE 1995 CONSTITUTION OF UGANDA

By Kituo cha Katiba

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New Vision and Publishing Company
P. 0. Box 9815
Kampala Uganda
Plot 19/21 First Street, Industrial Area
www.newvision.co.ug

On behalf of

Kituo cha Katiba Eastern Africa Centre for Constitutional Development
P. 0. Box 3277,
Kampala, Uganda
Tel: +256-414-533295
Fax: +256-414-541028
Email: kituo@kituochakatiba.org
Website: www.kituochakatiba.org

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Abbreviations and Acronyms

4GC	For God and My Country
AG	Attorney General
AHA	Anti-Homosexuality Act
AMLA	Anti-Money Laundering Act
APA	Anti-Pornography Act
CA	Constituent Assembly
CAOs	Chief Administrative Officers
CP	Conservative Party
CRC	Constitutional Review Commission
CSOs	Civil Society Organisations
CSSA	Civil Society Strengthening Activity
DENIVA	Development Networks of Indigenous Voluntary Associations
DISO	District Internal Security Officer
DNMC	District Non-Governmental Organisations Monitoring Committee
DP	Democratic Party
DPP	Director of Public Prosecutions
DSC	District Service Commission
EAC	East African Community
EC	Electoral Commission
EWMI	East West Management Institute
FDC	Forum for Democratic Change
FIA	Financial Intelligence Authority
FOWODE	Forum for Women in Democracy
GISO	Gombolola Internal Security Officer
GLISS	Great Lakes Institute for Strategic Studies
GoU	Government of Uganda
IG	Inspectorate of Government
IGG	Inspector General of Government
IGP	Inspector General of Police
JSC	Judicial Service Commission
KCCA	Kampala Capital City Authority

KcK	Kituo cha Katiba – Eastern Africa Centre for Constitutional Development
KICK	Kick Corruption out of Kigezi
LCs	Local Councils
MDAs	Ministries, Departments and Agencies
MoJCA	Ministry of Justice and Constitutional Affairs
MP	Member of Parliament
NCC	National Consultative Council
NCHE	National Council for Higher Education
NDF	National Democrats Forum
NEC	National Executive Committee
NGOs	Non-Governmental Organisations
NIRA	National Identification and Registration Authority
NOTU	National Organisation of Trade Unions
NRA	National Resistance Army
NRM	National Resistance Movement
OPM	Office of the Prime Minister
PEA	Parliamentary Elections Act
POMA	Public Order Management Act
PSC	Public Service Commission
PWDs	Persons with Disabilities
QuAM	Quality Assurance Mechanism
RDC	Resident District Commissioner
SNMC	Sub- County Non-Governmental Organisations Monitoring Committee
UHRC	Uganda Human Rights Commission
UJCC	Uganda Joint Christian Council
ULRC	Uganda Law Reform Commission
UN	United Nations
UNNGOF	Uganda National NGO Forum
UPC	Uganda People's Congress
UPDF	Uganda People's Defence Forces
USAID	United States Agency for International Development
UYEP	Uganda Youth Empowerment Project
W2W	Walk-to-Work

Acknowledgment

Constitutional reform is at the heart of Kituo cha Katiba's work. Our mandate over the years has revolved around countries in East Africa having progressive constitutions that address the needs and aspirations of the people but more fundamentally adherence to them. This compendium, one of the outcomes of the activities under the project titled, *Strengthening Civil Society Organizations Engagement on the Constitutional Reform Process (SCEC),* is supported by the United States Agency for International Development (USAID) through the USAID /Uganda Civil Society Strengthening Activity (CSSA) and implemented by the East West Management Institute (EWMI).

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Chapter One: Introduction

This compilation and embedded analysis are inspired by a project implemented by Kituo cha Katiba: Eastern Africa Centre for Constitutional Development (KcK), with the support of the United States Agency for International Development Civil Society Strengthening Activity (USAID/CSSA). The main idea behind the inquiry is to generate an analytical compendium of past constitutional reform proposals under the 1995 Constitution of Uganda and to ascertain their relevance in the current context as well as new reform proposals relevant to Uganda's trajectory on its path to democracy. In terms of its focus, the compendium will look at the amendments and proposals made to revise the 1995 Constitution since its ratification on 22 September 1995. Areas of interest include electoral reforms; the system of governance (i.e. governance architecture); safeguards for transition; and assembly and associational freedoms as well as civil and human rights. These include revisions of the actual text of the document, reform proposals by the Courts of Judicature, the Executive branch, as well as enactments and amendments whose net effect has been to amend the constitution "by implication or infection".[1]

For purposes of this compendium, constitutional reforms are proposals for amendment, proposals for enactment, actual amendments and enactments (including of subsidiary legislation) that have the effect of altering, in a fundamental way, the existing constitutional order. To qualify for inclusion in this study, the proposal, amendment or enactment in question must have a substantial effect on the areas of focus earlier alluded to, namely: elections management; the system of governance (i.e. governance architecture); safeguards for transition; and assembly and associational freedoms as well as civil and human rights.

1 Amendment by implication or infection refers to a situation where "an Act of Parliament has the effect of adding to, varying or repealing any provision of the Constitution. This is irrespective of whether the Act is an Ordinary Act of Parliament or an Act intended to amend the Constitution. The two are treated the same under Article 137(3) of the Constitution. The amendment may be effected expressly, by implication or by infection as long as the result is to add to, vary or repeal a provision of the Constitution. It is immaterial whether the amending Act states categorically that the Act is intended to effect a specified provision of the Constitution," per Chief Justice Benjamin Odoki, *Paul K Ssemogerere and Others* v. *Attorney General* (Constitutional Appeal No. 1 of 2002) [2004] UGSC 10 (28 January 2004).

Suffice to say, this compendium expands the interpretation of constitutional reform beyond the conventional definition that is described by Chapter Eighteen of the 1995 Constitution which restricts itself to changes occasioned by Parliament, district councils and referenda. The novel areas included are the concept of amendment by implication or infection enunciated by Chief Justice Benjamin Odoki in the case of *Paul K Ssemogerere and Others v. Attorney General (Constitutional Appeal No. 1 of 2002)*. Accordingly, any amendment or enactment (including subsidiary legislation) that has a substantive effect on the existing constitutional order – for example, on due process rights, which are protected constitutionally – amounts to a constitutional reform, even though it is not explicitly enacted with the stated intention of having an impact on the 1995 Constitution or prevailing constitutional order.

The compendium will support planned and future activities by like-minded organisations that intend to engage and participate effectively in the revived discussion about a national dialogue and constitutional review by the Government of Uganda (GoU) through the Ministry of Justice and Constitutional Affairs (MoJCA). While the scope of this assignment is limited to constitutional reforms relating to the 1995 Constitution, Uganda's formative constitutional reform process dates as far back as 1962 in the run-up to independence from British colonial rule. The electoral reforms in the post-independence epoch in particular have had a continuous impact on the electoral reforms made in the 1995 Constitution and continue to affect the country's constitutional and electoral terrain.

The compilation of this compendium is part of a broader process that will entail the production of the compendium itself; engagements with non-state stakeholders (like civic organisations, the media, academics, professional associations) and relevant Government ministries, departments and agencies (MDAs) like the Ministry of Justice and Constitutional Affairs and relevant Committees of Parliament. The outcome of the foregoing three processes is to contribute towards strengthening democratic processes that promote citizens' rights, freedoms and liberties in Uganda.

Through this publication, the project aspires to achieve a triad of objectives, which are enumerated below:

i) Provide readers and users with a one-stop resource on constitutional reform proposals in Uganda since 1995;

ii) Equip citizens with knowledge regarding reform processes in Ugandan jurisdiction since 1995 to date; and

iii) Bolster civil society engagement on constitutional reform processes to improve the quality of interactions with policymakers, legislators and other relevant stakeholders.

This compendium has adopted a policy-oriented posture in its relation of the chronology, nature and effect of constitutional reform proposals. While reviewing relevant legislation, court judgments, Government papers, policy statements and published reports, this study places a premium on process tracing, observation and policy analysis in making its deductions. Additionally, the exploration, where necessary, infuses socio-economic as well as foreign policy-related and political developments in its text.

Chapter Two: Brief History on Constitutional Reforms from 1962–1995

The designation of Uganda as a British Protectorate on 18 June 1894 was a watershed moment that set the pace and tone for the territory's political, social and economic trajectory, whose ripples are still evident 129 years later.

With independence came the 1962 Constitution. It reformed the former Protectorate by providing for a system of a parliamentary democracy fused with a constitutional monarchy. The Kingdom of Buganda was vested with devolved powers of self-Government whereas Bunyoro, Acholi, Tooro, Ankole and Busoga became federal states. The remainder of the country was placed under the direct control of the Central Government. The 1962 Constitution was amended thrice: in 1963, to replace the Queen of England as Head of State with the President; in 1964, to provide for the dissolution of the legislature of the Tooro Kingdom; and in 1965, to ratify the return of the counties of Buyaga and Bugangaizi to the Bunyoro Kingdom, following the referendum of 1964.

However, the Independence 1962 constitutional compromise collapsed in less than a decade following the attack on the Kabaka's Palace by Obote's Government in 1966, an event that still reverberates in the country's public affairs.[2] The ensuing tensions in the political arena prompted the 'Pigeonhole' Constitution of 1966, the country's second constitution, followed a year later by the 1967 Constitution (The Republican Constitution).

The 1966 Constitution was dubbed the 'Pigeonhole' Constitution because it was not debated, but was instead inserted into the pigeonholes of Members of Parliament (MPs). Some of the regressive reforms that came with it were the fusion of the position of Head of State and Prime Minister,which concentrated executive power in one person; the same person whose

2 Godber Tumushabe, Job Kiija, "Uganda's Political Transition Scenarios to 2026 and Beyond: The Flying Crane, Storm in a Teacup, or Warrior Mad King?", Great Lakes Institute for Strategic Studies, Policy Paper Series 1 of 2021

party also had the highest number of MPs in the National Assembly, thus, emasculating parliamentary scrutiny. The same constitution also whittled down Buganda's privileged status by outlawing the Kingdom's High Court and rolled back Buganda's latitude of directly electing its representatives to the national Parliament. Busoga's status which, under the first constitution, was a federal state, was revised to a district. With the 1966 crisis that witnessed the abolition of kingdoms, the hitherto envisioned five-yearly elections were never held in 1967.

The 1966 Constitution met its end following Prime Minister Milton Obote's decision to suspend it. Obote arbitrarily promulgated a new constitution, which was Uganda's third, enacted in 1967. Different from its predecessor, this constitution was debated over three months. It gave effect to two major reforms: it outlawed all traditional rulers and local parliaments and increased the powers of the Executive. It was under the 1967 Constitution that Obote's party, the Uganda People's Congress (UPC), was declared sole political party – effectively making Uganda a single-party state in 1969.

The country's dalliance with multiple constitutions was disrupted by military rule following Idi Amin's takeover in 1971. For the nine years of his reign, Amin ruled by decree. Some of the revisions to the existing constitutional order included the Constitution (Modification) Decree No. 5 of 1971which vested all executive power in the chairman of the Defence Council and Parliament, as per Decree No. 8 of 1971. Amin was both chairman of the Defence Council and constituted the institution of Parliament.

Following the ouster of Idi Amin in 1979, Legal Notice 1 of 1971 recognised the 1967 Constitution as supreme. It vested executive powers into the new president, Yusuf Lule, and gave the legislative mandate to the National Consultative Council (NCC). However, the NCC chose to dispense with the 1967 Constitution. President Lule was deposed by the NCC and replaced with Godfrey Binaisa. Under the latter's presidency, Legal Notice No. 5 provided that where a conflict arises between it and the 1967 Constitution, the provisions of the Legal Notice would prevail.

For 68 days after the overthrow of Idi Amin, Uganda was governed under what is generally referred to as the Moshi Consensus which had been arrived at by Ugandan exiles involved in the anti-Amin liberation struggle meeting in the Northern Tanzanian town of Moshi. The successive short-lived Governments of Yusuf Kironde Lule, Godfrey Lukongwa Binaisa and the Military Commission under Paul Muwanga lasted until December 1980 when elections were held. Legal Notice No. 1 of 1979 created the Military Commission and conferred the executive mandate on one of the leading protagonists, Yoweri Museveni. The 1980 elections, in which the UPC was declared winner, ushered in the second presidency of Apollo Milton Obote but were heavily contested.

The embattled 1967 Constitution got a new lease of life following Milton Obote's return to power in 1980, but was suspended again in 1985 by the Bazilio Olara-Okello junta. In January 1986, the National Resistance Army (NRA) overthrew the short-lived Government of Gen. Tito Okello Lutwa. The NRA acknowledged the 1967 Constitution, but partially suspended it. Under Legal Notice No. 1 of 1986, Yoweri Museveni was given the executive mandate as President, thereby reaffirming Legal Notice No. 1 of 1979.

On 8 October 1995, the 1995 Constitution was promulgated after an elaborate consultative process led by former Chief Justice Benjamin Odoki, and this constitution has been in place to-date, albeit with some amendments. It is important to highlight that despite the new and remarkably progressive 1995 Constitution, Uganda's political system remained a *de facto* single party state until 2005 when a referendum decided in favour of a return to political pluralism – thereby bringing the Movement system to its supposed end.

Chapter Three: Constitutional Reforms from 1995 to the Present

In the early years of the National Resistance Movement (NRM) Government, there was an attempt to build minimum consensus on key constitutional norms to guide the country. The process of developing a new constitution was initiated, which later culminated in the adoption of the 1995 Constitution, after directly elected members of the Constituent Assembly (CA) debated it. The new constitution provided for several crucial checks and balances. Examples include the increased autonomy of Parliament from the Executive, parliamentary oversight over executive appointments and decisions, improved security of tenure for judicial officers, and the introduction of caps on presidential terms and age.

Equally significant were the constitutional provisions in Chapter One. For the first time, the constitution explicitly vested all power in the people of Uganda. It guaranteed the sovereignty of the people and upheld the supremacy of the constitution and its defence by the citizens. It declared that all authority of the state emanates from the people, who shall be governed through their will and consent that would be exercised through free and fair elections or referenda. The constitution also granted citizens the right and duty to at all times defend the constitution, including doing all in their power to restore it after its suspension, overthrow, abrogation or amendment done contrary to its provisions. It particularly absolves from offence any person or group of persons who resist such suspension, overthrow, abrogation or amendment of the constitution.

The National Objectives and Directive Principles of State Policy were yet another key novelty of the new constitution. Though not justiciable, these exist to guide the state, citizens, organisations and bodies in the application or interpretation of the constitution or other law and in the implementation of policy decisions for the establishment of a just, free and democratic society.

A comprehensive Bill of Rights (comprising *Articles 20* to *58*) was also introduced. It stipulated several civil liberties and rights, including crucial ones that had been routinely violated since independence, for instance the freedom of expression, movement and association. Third-generation rights were also introduced. These comprise collective or group rights such as the right to a clean environment and development; those of the vulnerable and marginalised, including women, the youth and persons with disability; and cultural heritage. There were also assurances of public accountability through a slew of institutions. These ranged from Parliament's Public Accounts Committee (PAC) to the Inspectorate of Government and the Auditor General.

The following entities were created: Uganda Human Rights Commission (*Article 51*); Equal Opportunities Commission (*Article 32(2)*); the Constitutional Court as an extension of the Court of Appeal (*Articles 50 and 137*); the Electoral Commission (*Article 60*); the Directorate of Public Prosecutions (*Article 120*); the Advisory Committee on the Prerogative of Mercy (*Article 121*); the Judicial Service Commission (*Article 146*); the Public Service Commission (*Article 165*); the Education Service Commission (*Article 167*); the Health Service Commission (*Article 169*); the Local Government Finance Commission (*Article 194*); the Uganda Land Commission (*Article 238*); the Law Reform Commission (*Article 248*); the Disaster Preparedness and Management Commission (*Article 249*); the National Planning Authority (*Article 125*); the National Security Council (*Article 219*); the Inspectorate of Government (*Article 223*); and the Auditor General (*Article 163*).

Noteworthy among the innovations was the Leadership Code of Conduct (*Article 233*), to be enforced by the Inspectorate of Government. The new constitution under Articles 78 and 79 also gave Parliament a powerful mandate of oversight, appropriation, legislation and representation. Also important to note are the significant strides in the area of women's empowerment made under the new constitution. *Social and Economic Objective 24 (on the role of women in society), Articles 33 (on the rights of women), 180(2)(b)* created a requirement for each Local Government council to reserve one-third of its membership for women.

As part of the new decentralisation system, new structures such as the District Service Commission (*Article 198*) and the office of the Chief Administrative Officer (*Article 188*) were created in each district in Uganda. Local Governments were also given the power to levy and appropriate taxes under *Article 191*, as laid down by *Articles 189* and *190* on delegated authority of Local Governments, district councils and the finances of Local Governments, respectively.

In the drawn-out process of developing the 1995 Constitution generally, and the run-up to its promulgation specifically, the debate on its text pitted three camps against one another. The process of developing the new constitution generated immense optimism at the beginning. Indeed, as Oloka-Onyango notes, the beginning was smooth-sailing: "The process of collection, dissemination and debate over constitutional issues and the dynamics that produced a Constituent Assembly give some confidence that traditional perceptions of power and its control in Uganda had undergone a measure of transformation."[3]

Discussions revolved around salient questions pertaining to the centrality of the citizen, the protection and observation of human rights, the management of electoral processes (which had been a thorn in the flesh of the country's body politic) and respect for the judicial branch of Government that had for a long time been either ignored or altogether suppressed.

However, as the process of the debate on the constitution progressed, three distinct camps emerged – the Movement supporters, proponents of multi-partyism and the traditionalists – and each jostled for their interests to be taken into account. Oloka argues further, that "despite attempts to decentralise power and control the executive, the draft constitution manifests the executive-centred and autocratic philosophy that underpinned earlier constitutional enactments. Such conceptual loopholes paved the way for the dictatorship and the eventual complete abandonment of the notion of constitutionalism in

3 Joe Oloka-Onyango, "Constitutional Transition in Museveni's Uganda: New Horizons or Another False Start?", Journal of African Law, 1995, Vol. 39, No. 2 (1995), pp. 156-172, published by: School of Oriental and African Studies.

Uganda."[4] This might have come off as an overly pessimistic prediction, but the present state-of-affairs confirm Oloka-Onyango's misgivings. The old ghosts Uganda had sought to exorcise in the new process had resurrected. Given Uganda's history of strongmen, it was a major test for the person of Yoweri Museveni who, as President, had the task of being a steward for a process that sought to nurture civic participation and empowerment.

Nevertheless, for all this constitutional promise, most of the above creatures of the new constitution were hamstrung by procedural, political, funding and partisan challenges. The Electoral Commission, for example, lacked a complete voter register, among other limitations, which adversely affected its ability to effectively deliver the elections of 1996.[5] The Constitutional Court drew the ire[6] of the ruling establishment, epitomised by no less a person than the President, for rendering judgements that faulted the Government or directed it to make good its indiscretions, such as the successful challenge to the *Referendum Act of 1999*[7] which court had found unconstitutional.

Also worth noting is the enactment of contradictory provisions within the constitution itself, regressive subsidiary legislation and the tabling of proposals that were manifestly at odds with the letter and spirit of the newly-created constitution. Cardinal among these was *Article 269* of the constitution, whose provisions were so contentious that it led to a walkout from Parliament by the Democratic Party (DP) President, Dr Paul Kawanga Ssemwogerere.

The said Article precluded political parties from holding public rallies; opening or operating branch offices; convening delegates' conferences; sponsoring or offering support for candidates in any election during the continuance of the Movement system; and any activities that had the effect of interfering with the Movement political system. Furthermore, the Uganda Human Rights Commission (UHRC), a would-be watchdog against repressive

4 Ibid., p. 4

5 Laurie Cooper and Daniel Stroux," International Election Observation in Uganda Compromise at the Expense of Substance, Africa Spectrum", Vol. 31, No. 2 (1996), Sage Publications, Ltd.

6 Juma Anthony Okuku, "Beyond 'Third Term' Politics, Constitutional Amendments and Museveni's quest for life presidency in Uganda", Institute for Global Dialogue", 2005

7 *Ssemogerere and Others* v. *Attorney General*, Constitutional Appeal 1 of 2000

tendencies, has not been as successful owing to a perennial lack of adequate funding and, on many occasions, uncooperative Government officials.[8] It is commonplace now for recommendations of the UHRC to be ignored by Government officials. At present, the commission is increasingly becoming the embodiment of the problems it was created to resolve. For example, amidst an avalanche of recent media reports, individual complaints and suits filed against state security agencies for the illegal arrest and detention of members of opposition parties and dissenters, during and in the aftermath of the 2021 general election, the current chairperson of the UHRC, Mariam Wangadya, had this to say[9]: "There are people trying to tarnish the name of security agencies by portraying them as the leading abusers of human rights in Uganda!"

This statement, in the prevailing operating environment, is not exclusive to the Human Rights Commission but is typical of many of the institutions that were created by the 1995 Constitution. Many are underfunded, inadequately staffed, disregarded by sister agencies, and have their work occasionally interfered with by the Executive.

The conclusion that can be drawn from Uganda's post-1995 experience, as subsequent chapters elaborate, is that there has been a contradiction between the aspirations of the people of Uganda, the socio-political realities of a nascent democracy, and the safeguards (like checks and balances) against the abuse of power. The result, as the experience shows, has been the sacrifice of these very ideals on the altar of political expediency.

8 FX Birikadde, "Challenges of national human rights institutions in monitoring international conventions on human rights: Case study of Uganda Human Rights Commission", Makerere University School of Law, June 2011, accessed on April 4, 2023 at http://makir.mak.ac.ug/handle/10570/2594

9 Arthur Arnold Wadero, "My life is in danger, rights boss tells Parliament", *Daily Monitor* newspaper, February 25, 2022, accessed on April 4, 2023 at https://www.monitor.co.ug/uganda/news/national/my-life-is-in-danger-rights-boss-tells-parliament-3728968

3.1 Bills by Government and Government Papers/Reports 1996–2000

The period between 1996 and 2000 was a prototype for the effectiveness of the new constitution. Specifically, this was a trial period for the core constitutional features like decentralisation/devolution, judicial independence, subordination of the military to civilian rule, Parliament's oversight, representation, appropriation and legislative roles. It was a mixed bag in terms of results. For example, Parliament censured Minister Sam Kutesa for misuse of office and influence peddling, but did not challenge the spate of new districts, the creation of which has led to the spiralling of the country's public administration wage bill. Secondly, whereas the Judiciary had been given a demonstrably independent mandate as contained in Article 128 of the constitution, the Bench was still plagued by the phenomenon of the Political Question Doctrine.[10] The following section explores several pieces of statutory law that gave force to the provisions of the new constitution.

i) Local Government Act of 1997

The 1997 Local Government Act (Chapter 243 of the Laws of Uganda) was the centrepiece of the decentralisation programme. The Act reforms the Resistance Councils into a five-tier system. Resistance Councils were a creature of the Local Governments (Resistance Councils) Statute, 1993. Under Section 3 of the Local Government Act, the five-tier system is organised as follows:

- The Local Governments in a district rural area shall be the district council, and the sub-county councils.
- The Local Governments in a city shall be the city council, and the city division councils.
- The Local Governments in a municipality shall be the municipal council, and the municipal division councils. The Local Government in a town shall be the town council.

10 *In Ghosts and the Law: An Inaugural Lecture*, Joe Oloka-Onyango talks about the tendency of Ugandan courts to shirk responsibility whenever they are confronted by questions that have political implications by ruling that "certain disputes are best suited for resolution by other Government actors".

- A city shall be equivalent to a district, and a city council shall exercise all functions and powers conferred upon a district council within its area of jurisdiction; a division shall be equivalent to a sub-county, and shall exercise all relevant functions and powers conferred upon a sub-county.
- A municipal or a town council shall be a lower Local Government of the district in which it is situated.

It is through the Local Council system – whose positions are elective – that citizens at the community level are expected to engage in, conduct and influence the decision-making processes of Government at the local level. The downside is that these structures have increasingly become an extension of the overbearing and all-powerful Executive that towers over public affairs in the Ugandan polity.

- Women's empowerment under the Local Government Act

Stemming from the constitutional provisions to advance the rights of women, remarkable reforms in the area of public policy were introduced and subsidiary legislation enacted to advance women's empowerment in the areas of representation, inclusion and protection. Section 10 (3), (4) and (e) of the Local Governments Act provide for the inclusion of women representatives in district councils. Besides the political arena, strong affirmative action programmes in formal education were introduced that have raised the level of social and labour mobility for women. For example, in 1990, the Affirmative Action Policy was introduced. It gave qualified woman an additional 1.5 points for college admission. Its purpose was to increase the participation of women in higher education.

ii) The Movement Act of 1997

This Act was among the most controversial, suspicious and divisive laws. It created a second set of structures, mirrored along the structures of Local Councils (referred to earlier as Resistance Councils), duplicating the entire pyramidal structure of Local Government created by the aforementioned *Local Government Act of 1997,* albeit with political intent.

It gave the Movement a set of structures starting from the village through to the parish, sub-county and division, up to district level.

Local Councils (LCs) have some executive, legislative and judicial powers under the Local Governments Act.[11] LCs, among other duties, serve as communication channels between the population and the Central Government; help in the maintenance of law and order; recruit for the Uganda People's Defence Forces (UPDF) and security forces; and initiate self-help projects. The law sets up a village council (LC1) comprised of a Secretary for Information, Mobilisation and Education, a Secretary for Security and a chairperson, who is the political head of the village.[12]

In addition to the aforementioned Local Council structures, each district is headed by a Resident District Commissioner (RDC), appointed by the President, who serves as the representative of the Central Government, and whose duties include sensitising the local populace to national Government policies and programmes, and oversees the operation of the Local Councils.[13] With such a comprehensive programme of representation at all levels of Government, it is difficult to see the role of the Movement (now National Resistance Movement) party structure, which essentially duplicates the Local Government one, except as a form of partisan party structure normally associated with one-party states. This NRM structure was crowned by the National Movement Conference and its secretariat. The National Movement Conference is the NRM's highest organ comprising a national chair, vice-chair, political commissar, all Members of Parliament (MPs), chairpersons of all division, municipal, town or sub-county movement committees, all RDCs and representatives of women, youth, trade, the army, the police, the prisons service, business and veterans. For MPs, membership of the National Conference was, until the end of the Movement system in 2005, mandatory, as was membership of their village Movement Council by all Ugandans.[14]

11 Section 7 of the Local Governments Act of 1997
12 Section 70 of the Local Governments Act of 1997
13 Article 203 of the 1995 Constitution
14 Erica Bussey, "Constitutional Dialogue in Uganda," Journal of African Law, 2005, Vol. 49, No. 1 (2005)

The *Movement Act* in effect replicated the political administration structures of the country, thereby making it a mirror image of the Ugandan State. This is the fusion of the party and State, which makes it unclear where the State begins and ends. The Movement Act created a state-sponsored political organisation disguised as a "political system". In practice, the principal duty of the Movement structures was to mobilise support for the NRM Government system and for a vote in favour of the retention of this system in the referendum. This role was the responsibility of the NRM's national secretariat, which, despite the end of the Movement system, continues to function as the state-funded "Office of Political Mobilisation".

Elections for the Movement structures under the *Movement Act of 1997* first took place in July 1998. The national Movement Conference which selected the national Movement leadership consisted of more than 1,600 delegates, whose selection ensured that most delegates were Movement supporters.[15] President Museveni, who has been chairperson of the NRM since its creation, was elected chairperson of the party unopposed. Al Hajji Moses Kigongo, who had also been vice-chair of the NRM since its creation, was re-elected in the position unopposed.[16] In effect, the Movement elections allowed the NRM to consolidate its grip on power.

iii) The Land Amendment Bill of 1998

The Bill proposed granting the occupants of *mailo* land an ostensibly more secure form of tenure, thus limiting the powers of the Kabaka over *mailo* land. Government attempted to muzzle public debate and stop public protests organised in opposition to the Bill. A public lecture on the Bill sponsored by the Uganda Youth Environment Project (UYEP) planned at Luzira

15 The national conference of the Movement consists of all Members of Parliament; all RDCs; all members of every District Executive Committee; the chairpersons of all division, municipal, sub-county and town council Movement committees; ten representatives of the UPDF; five representatives each from the National Women's Executive Committee, the National Youth Executive Committee, the National Organisation of Trade Unions (NOTU) , the National Association of Disabled Persons, the Uganda Police Force and the Veterans' Association; three representatives of the Uganda Prisons Service; and ten representatives of the private business sector. Many seats were thus reserved for organs created by the Movement Act or interest groups closely aligned with or organised by the NRM.

16 Robert Mukasa and Pius Muteekani Katunzi, "Museveni, Kigongo take top movement jobs", *Monitor*, July 14, 1998.

Primary School was halted before it got started by plainclothes policemen, who claimed they were acting on orders from "higher authorities". Herman Ssemujju, chair of the National Freedom Party, was expected to address the meeting. According to the Government-owned *New Vision* newspaper, prior notice of the meeting had been given to the police by the organisers.[17]

The Bill provoked widespread public outrage. Two MPs from Buganda, John Lukyamuzi and Yusuf Nsubuga Nsambu, were arrested and charged with "inciting a rally to do acts calculated to bring death or physical injury" after they had addressed an anti-Land Bill rally, though no violence had resulted.[18]

iv) The Political Organisations Bill of 1998

This draconian piece of legislation re-echoed many of the restrictions on political party activity previously contained in *Article 269* of the constitution. *Section 24(a)* of the Bill provided that under the Movement system, "no political organisation and no person on behalf of a political organisation shall sponsor or offer a platform to or in any way campaign for or against a candidate in any presidential or parliamentary election or any other election", a restriction similar to that contained in *Article 269(d)* of the constitution. *Section 24(b)*) of the Bill banned candidates for public office from using "any symbol, slogan, colour or name identifying any political organisation for the purpose of campaigning for or against any candidate" in an election.

These limitations on the activities of political parties and their candidates struck at the very heart of political party activities in the country. The *Political Organisations Bill* itself defined a political party as "a political organisation the objects of which include the sponsoring of, or offering a platform to, candidates for election to a political office and participation in the governance of Uganda at all levels", only to ban the very political party activities it set out to achieve.

In addition to requiring political parties to notify the local police commander 72 hours before holding any meeting, the proposed legislation sought to

17 "Land Bill Lecture Stopped", *New Vision*, May 25, 1998.
18 "Two Uganda Deputies Charged with Incitement to Violence," Agence France Presse, May 7, 1998.

prohibit political parties from holding meetings in the same place at the same time (*Section 22(2)*). While notice requirements are justifiable under international law, the Bill exemplified the tendency to misuse such provisions to interrupt and disperse political events.

The Bill gave the Minister in charge of elections and referenda wide-ranging powers to further regulate political organisations, with the approval of Parliament, as deemed necessary. In particular, Section 32 (2) (a) of the Bill gave the Minister powers to regulate "the opening of branch offices, holding of delegates' conferences, public rallies and any other activities of political organisations as may be reasonably necessary to prevent interference with the operation of the movement political system when that system is in existence in Uganda". The said *Section 32(2) (a)* of the Bill mirrored the restrictions contained in *Article 269 of the Constitution*. Because of the frequent hostility shown by the NRM administration to opposition political parties, the appointment of a Minister to regulate these political parties led to the imposition of further restrictions on political organisations, as shall be seen in the subsequent sections of this compendium. At the height of the debate stirred by the Bill, the Uganda Human Rights Commission (UHRC) recommended the appointment of an independent and impartial body to oversee the regulation of political organisations, a measure to avoid the imposition of further arbitrary or abusive restrictions on political organisations.

v) Referendum and Other Provisions Act of 1999

The *Referendum and Other Provisions Act* was adopted amid controversy on 2 July 1999, the legislative deadline for the adoption of the legislation. The law required each "side" to the referendum to form a National Referendum Committee whose duties would include "organising the canvassing for its side, and to appoint agents for the purpose of canvassing". Under the Act, such committees were not considered a substitute for opposition political parties. Rather, political parties were allowed to canvass support for themselves in a referendum.

The *Referendum Act* did not allow "any agent ... either alone or in common with others" to publish canvassing materials such as books, pamphlets, leaflets or posters.[19] Furthermore, when using the private electronic media during canvassing, agents were prohibited from making false or reckless statements, malicious statements, statements containing sectarian words or allusions, abusive, insulting or derogatory statements, exaggerations, caricatures, or words of ridicule, or using derisive or mudslinging words.[20] These prohibitions on speech were overly broad and vague, and inconsistent with freedom of speech standards, which could sanction the suppression of speech. As was the case with the draft *Political Organisations Bill*, the Minister responsible for elections under this Act, was, with the approval of Parliament, empowered to make additional regulations relating to the canvassing process.

The constitution envisioned the adoption of two pieces of legislation: legislation to regulate the holding of referenda and that to regulate the functioning of political parties. For political parties to freely campaign during the referendum period, however, it was necessary to pass the *Political Organisations Bill* prior to the beginning of the campaign for the referendum. While the *Political Organisations Bill* was introduced in Parliament long before the *Referendum Bill*, the Government chose to withdraw this Bill shortly before the passage of the Referendum and Other Provisions Act. Through this maneouvre, the NRM succeeded in ensuring that political parties would continue being handicapped by the restrictions of *Article 269* of the constitution during the referendum campaign period. Thus, there would be no level playing field for opposition political parties during the referendum campaign period.

The NRM's bold manipulation of the legal framework for the referendum led to a rejection of the referendum by all six major opposition political organisations in Uganda then – the Democratic Party (DP), Uganda People's Congress (UPC), The Free Movement, the Conservative Party (CP), the National Democrats Forum (NDF) and the Justice Forum.

19 Section 21(1) of The Referendum and Other Provisions Act, No. 2 of 1999
20 Ibid., Section 21(5)

Based on the above facts, it is evident that the ruling NRM establishment moved to amend the 1995 Constitution and relevant subsidiary legislation in less than a decade after its promulgation. This was motivated by an overarching desire to stifle the emergence of a formidable political opposition.

The coming chapter will explore how the foregoing spirit and letter of legislative manipulation impacted the country's constitutional development, with respect to:

i) Behaviour and conduct of the ruling establishment towards civil liberties and rights;

ii) State-citizen relations;

iii) The place and role of law enforcement in the country's governance; and,

iv) The functionality of Local Governments, relative to service delivery, social protection and the integrity of attendant processes.

All the above four aspects were to play out in significant ways in the coming years and decades, as subsequent chapters reveal.

2001 – 2006

Under this period of review, many Government actions stirred public furore, including from the opposition, civil society and the general public – triggering several public interest litigation suits, a number of which were successful. Notably, this period registered some of the triumphant moments in the defence of constitutionalism and, paradoxically, the country's descent into major pitfalls.

In March 2003, in *Ssemogerere and Others v. Attorney General*[21], the court struck down sections of the *Political Parties and Organisations Act* that suppressed activities of opposition political parties. Earlier in *Ssemogerere and Others v. Attorney General*[22], the court supported the contention that the Referendum Act 1999 was unconstitutional; and a third ruling in *Ssemogerere*

21 Constitutional Petition 5 of 2001

22 Constitutional Appeal 1 of 2000

and Olum v. Attorney General[23] found that the *Referendum Act of 2000* was unconstitutional and the referendum itself, which sanctioned the continuation of the Movement system, invalid. The Supreme Court, however, reversed[24] the third decision[25] in the former case (i.e. *Paul K. Ssemogerere and Others v Attorney General (Constitutional Appeal No.1 of 2002) [2004] UGSC 10*).

Before recounting the other two constitutional amendments (namely, the lifting of the presidential term limits and the return to multiparty politics), it is important to highlight important developments that occurred in the run-up to this, alongside the aforesaid two amendments during the period 2001–2006.

i) The Kiyonga Committee Report of 2002

This Committee, eponymously named after its chair, Crispus Kiyonga, then National Political Commissar, was appointed with the single task of responding to the issue of whether to retain the Movement system or revert to a multiparty dispensation. Ironically, the Constitutional Review Commission had this question as part of its assignment in 2001. At the end of its assignment, the Kiyonga Committee, except for one dissenting opinion held by Jaberi Bidandi Ssali, unanimously recommended the retention of the Movement system[26] as opposed to transitioning to multiparty politics. This was followed by an interesting turn of events. General Yoweri Museveni, while addressing the Movement members at a retreat in Kyankwanzi, rejected Kiyonga's report and instead supported the return to multiparty politics. Museveni's view was founded on two motivations: First, the NRM wanted to expel dissenting voices and maintain a lockstep adherence to the aspirations of its leadership. They felt it was best to have the dissenters expelled from the NRM. Second, Uganda was under pressure from the West to transition to pluralist politics, and this was a precondition for much-needed budget support. Having endorsed a transition to multiparty politics, Museveni

23 Constitutional Petition 3 of 2000

24 Constitutional Appeal 3 of 2004

25 Constitutional Appeal No.1 of 2002) [2004] UGSC 10

26 Alfred Wasike, "Movement Hands Report to Constitutional Review Commission", *The New Vision,* May 7, 2003, accessed on April 4, 2023 at https://www.newvision.co.ug/news/1268621/movt-hands-report-crc

astonishingly called for consideration to be given to lifting of presidential term limits.[27] This was a Trojan Horse from Kyankwanzi!

ii) Constitutional Review Commission of 2001

As earlier mentioned, in this report, the Prof. Ssempebwa-led Constitutional Review Commission reviewed the 1995 Constitution, and handed in its 279-page report. Key among the recommendations for reform were the following:

- Removal of restrictions on political party activities for a smooth transition from a Movement system to multiparty politics.
- Parliament and district councils to change the political system from Movement to a multiparty dispensation because it is cheaper.
- Regarding this point, the report stated that a referendum was not necessary following the resolutions of the Movement's National Conference and the Cabinet's recommendation for the opening up of political space.
- Buganda districts be deemed to have agreed to form a regional Government. It also recommended that Kampala be recognised as one of the districts of Buganda.
- Government should refer the question of lifting the presidential term limits to the people to determine through a referendum, reasoning that the referendum would give those for and against term limits the platform to campaign widely among the people.
- Parliament should review laws on political participation, notably *Article 269* of the constitution, the Parties Act, the Police Act and the election laws for purposes of a smooth transition. It called for the repeal of the *Movement Act of 1997*.
- Transition processes should not be managed exclusively by the Movement Organisation and the traditional political parties. New groups and civil society organisations (CSOs) should be included.

27 Godfrey B. Asiimwe, "Of Fundamental Change and No Change: Pitfalls of Constitutionalism and Political Transformation in Uganda, 1995-2005", *Council for the Development of Social Science Research in Africa, 2014*, No. 2 of 2014

- Establishment of the Office of the Prime Minister in the constitution.
- In the interest of the doctrine of separation of powers, Ministers should not serve concurrently as Members of Parliament.
- A censured Minister should not be eligible for reappointment during the tenure of the Parliament that censured them and a subsequent Parliament.
- The President should not be given powers to issue executive orders, which have a force of law in investment, environment, public health and historical or archeological sites.
- The President should not be given powers to dissolve Parliament. Instead, disputes between the President and Parliament over fundamental issues should be decided in a referendum.

Notable about the *Constitutional Review Commission* process were the disagreements between its members that led to the publication of two minority reports to the main report.[28] One minority report was authored by the chair, Frederick Ssempebwa, the other by a member, Sam Owori. Ssempebwa's view was that the people through a referendum, could resolve the question of term limits a position Owori contested on grounds that whereas it could be justified because of the country's history, Parliament was not vested with the mandate to make such amendment to the constitution, to resolve the issue of presidential term limits. Owori further noted that since there was little support for federalism outside Buganda, the *Constitutional Review Commission (*CRC) recommendation for regionalism was in complete disregard of public opinion. Owori also disagreed with the use of the word "deemed" in reference to Buganda's presumed acquiescence to being given a federal status. A reading of Oloka-Onyango's aforementioned report suggests that both men (Sempebwa and Owori) prevaricated on this matter and preferred not to take a decisive stance, opting to defer the decision to a referendum, or other process that did not require their direct involvement or responsibility.

28 Joe Oloka-Onyango, "From Whence Have We Come, and Where Exactly Are We Going? The Politics of Electoral Struggle and (Non)Transition in Uganda", *Human Rights and Peace Centre,* Rights and Democratic Governance Working Paper Series, Number 1, 2005

iii) Government White Paper of 2003/4

The Government White Paper was essentially a response to the CRC report. It rejected some of the recommendations of the CRC, namely: Ministers to be made ex-officio, without the power to vote in Parliament; the grounds for the censorship of a Minister to be expanded to include indiscipline, incompetence and corruption; political deadlocks between Parliament and the Presidency to be resolved by referendum; the Army to be excluded from Parliament; the quorum for parliamentary meetings to be at 50 per cent instead of one-third of the House's membership; and inclusion in the Constitution of a provision relating to the improvement of conditions for detained persons.

The *Government White Paper*, however, accepted the following CRC recommendations: that referenda should be given binding force and for Government to be given the power of referral to referenda for any sensitive matter; and a convenient and/or confidential voting system to be relied on for parliamentary votes – except when voting on matters relating to elections.

Finally, the *Government White Paper* can be claimed to have had ulterior motives: it reiterated the proposal to give the President legislative powers over environmental, investment, public health, historical and archaeological sites.[29] It also hinted on how the NRM intended or preferred to relate with the Judiciary when it proposed that the power of the Court of Appeal, when sitting as the Constitutional Court, be limited to declarations and not binding decisions; and the establishment of a special tribunal for the trial of terrorism suspects.

In December 2004, 119 constitutional amendments were tabled, including the removal of the presidential terms limit (*Article 105(2)*); the repeal of *Article 269* and eventual lifting of restrictions on political party activity; a switch from the Movement to a multiparty system (affecting *Articles 69-74*); and providing for culpability of cultural leaders who violate the Constitution's delimitation of their roles.

29 The Government White Paper on Constitutional Review and Electoral Reforms, accessed at https://www.parliament.go.ug/cmis/browser?id=7b1c3a93-e270-4238-b18d-a19ce228d9ca%3B1.0 on April 4, 2023

iv) The Constitutional (Amendment) Act, 2005

Constitutional (Amendment) Act, 2005[30] paved the way for the second major amendment of the constitution. It, among others, saw the removal of term limits on the tenure of the office of President; the creation of the Anti-Corruption Court, the Office of the Prime Minister and the Deputy Attorney General; and the holding of the referendum on the system of Government. The major reform outcomes of this amendment were:

- The repeal of *Article 287*, which recognised the controversial 1967 Constitution.
- The repeal of the problematic *Article 269*, which prevented political parties from mobilising, organising and operating freely, as well as several provisions under Chapter 19 of the Constitution that relates to Transitional Provisions.
- The introduction of *Article 255* to give citizens freedom to demand national or regional referenda on any contentious issues.
- The granting of powers to Parliament to make laws for the holding of a referendum by the Electoral Commission (EC) upon reference by Government.
- A far-reaching reform was the vesting in Government of proprietary rights over all minerals and petroleum. A rider was contained in *Article 26* on protection from deprivation of property. It stipulated that if the minerals are on a citizen's property, the Government would compensate them promptly before exploitation.

v) Constitutional (Amendment) (No.2) Act, 2005, No. 21 of 2005

This was the third amendment to the 1995 Constitution. Its key objectives were to provide for Kampala Capital City, new districts of Uganda and the creation of regional Governments as the highest political authority in the regions.

30 Act No. 11 of 2005

vi) The Parliamentary Elections Act, 2005, Act No.17 of 2005

This Act provides for the conduct of parliamentary elections and related matters in accordance with *Article 76*[31] of the constitution. It repealed and replaced the *Parliamentary Elections Act No. 8 of 2001*.

Several amendments were made to different statutes hereunder, but which, because of the timelines of their enactment, are contained in the subsequent sub-chapter. These include *the Parliamentary Elections (Amendment) Act, 2006, Act No.1 of 2006, The Parliamentary Elections (Amendment) Act 2010, Act 12 of 2010, The Parliamentary Elections (Amendment) Act 2015, Act 15 of 2015, The Parliamentary Elections (Amendment) (No.2) Act, 2015, Act 25 of 2015, The Parliamentary Elections (Amendment) Act, 2020, Act 12 of 2020, The Parliamentary Elections (Amendment) (No.2) Act, 2020, Act 16 of 2020.* The statutory instruments hereunder include*: The Parliamentary Elections (Amendment of Third Schedule) Instrument, 2020, SI No.140 of 2020, The Parliamentary Elections (Appeals to High Court from the Commission) Rules, SI No.141–1, The Parliamentary Elections (Election Petitions) Rules SI No.142–2 as amended by SI No.24 of 2006, The Parliamentary Elections (Prescription of Forms) Regulations, SI No. 141–4, the Parliamentary Elections (Special Interest Groups) Regulations, 2001, S.I. No.31 of 2001.*

Over and above every other amendment or reform referred to in the previous paragraph, the one that loomed largest over the country's political destiny was the absurd removal of the two five-year term limit for the presidency.

In hindsight, it is apparent that this amendment (i.e. removal of term limits) occurred for a number of reasons – some of them geopolitical, the commencement of the exploration of petroleum deposits which the incumbent repeatedly boasted of, and the spectre of the International Criminal Court (ICC). This amendment shaped the course of subsequent critical reforms, as successive sections of this chapter illustrate.

31 Parliament may, subject to the provisions of this Constitution, enact such laws as may be necessary for the purposes of this chapter, including laws for the registration of voters, the conduct of public elections and referenda and, where necessary, making provision for voting by proxy.

2006–2015

The period between 2006 and 2015 represented a consolidation of the reforms enacted in the previous periods examined by this compendium. The year 2006 saw the most hotly contested election between the major protagonists at the time, the incumbent Yoweri Museveni and the main challenger, Kizza Besigye. The Supreme Court confirmed the widespread nature of malpractices and interference by the military and vigilante/paramilitary groups aligned with the ruling NRM. The subsequent election of 2011, although not as hotly contested, was fraught with widespread reports of vote-buying, intimidation and other malpractices.

As enumerated in this section, the Local Government (Amendment) Act of 2015, the Registration of Persons Act and the Constitution Amendment Bill of 2015 were tabled and enacted in this period.

i) The Constitution (Amendment) Bill of 2015

The Bill heralded the third amendment to the *1995 Constitution*. The first constitutional amendment as recounted in previous sub-chapters, led to the return to multiparty politics. The second one, among other changes, lifted the presidential term limits. This third effort was aimed at changing the name of the Electoral Commission to the Independent Electoral Commission; prescribing a procedure for the removal of members of the Independent Electoral Commission; increasing the retirement age for Justices of Appeal and the Supreme Court and Judges of the High Court; providing for the corporate status of the Inspectorate of Government; the establishment of City Land Boards; and the establishment of a Salaries and Remuneration Board. The Bill also sought to regulate the criteria for the nomination and vacation of independent members of Parliament as well as their participation. It further sought to amend provisions concerning the composition of the Supreme Court when hearing appeals from the Constitutional Court, and expanded the functions of the Judicial Service Commission (JSC).

However, beyond the new name, the Bill did not elaborate on best practices or administrative reforms that were going to be put in place to ensure the independence of the Electoral Commission and, by extension, the

credibility of the processes it would be in charge of. Yet, the appointment of commissioners through a more open process that provides for the participation of other political parties, as was proposed by the Leader of Opposition, would have been a great stride, especially since the existing law that makes the President the appointing authority, followed by parliamentary approval, does not inspire much confidence.

Furthermore, although Clause 1 of the Memorandum of the Bill prescribed the removal of commissioners in a manner similar to the removal of judicial officers (on referral from the Judicial Service Commission), this process is regrettably at variance with the process proposed in the body of the Bill for the removal of members of the EC. In other jurisdictions, such as South Africa, the removal of a member of the electoral body requires the petition to do so to be subjected to legislative oversight and thereafter referral to the President, who constitutes a tribunal to conduct investigations and make binding recommendations.

- Requirements for independent candidates for parliamentary positions

The requirement for independent parliamentary candidates to have their bids endorsed by at least 1,000 registered voters in the constituency contravened the right to participate in public affairs and created double standards when compared to party-sponsored candidates whose nomination only required support from ten registered voters in the constituency they aspire to represent. This would give candidates fielded by political parties an incomparable advantage over the independent candidates. Any amendment made in respect to nomination of candidates should be general in nature and apply to all candidates who wish to be nominated as MPs without specifically targeting aspiring independent MPs.

- Creation of City Land Boards

Potential conflict was envisaged where a new city is declared where a district land board already exists. This, in effect, implies the creation of two land boards. The geographical scope of the City Land Board vis-à-vis the District Land Board was a key contention – whether the City Land Board only covers

the area within the city or if the District Land Board would cover the area outside the city but within the district in which the city is located.

- Conferring the status of a body corporate on the Inspectorate of Government (IG)

Clause 9 of the Bill sought to confer the status of 'body corporate' upon the Inspectorate of Government. This was aimed at giving the Inspectorate legal capacity and further guarantee its independence. The foreseen challenge here was that as a body corporate, the Inspectorate of Government could find itself in a situation where its findings and recommendations are untenable and open to challenge once brought before a court of law. Yet, under the existing law, the Inspectorate enjoyed protection from such court challenges. As an anti-corruption watchdog, it would be best that the IG received a measured corporate status that enabled it to remain insulated from prosecution.

- Creation of a Salaries and Remuneration Board

Clause 11 of the Bill sought to establish a Salaries and Remuneration Board charged with determining the salaries of public servants. Since the work assigned to the Commission was of a sensitive nature and could make it susceptible to undue influence, the need for its independence and representative composition was underscored.

- The proposal to increase the time within which an arrested person should be arraigned, from 48 hours as prescribed by Article 23(4)(b).

The problem is not with the time, i.e. 48 hours, but with the routine practice of conducting arrests before carrying out proper and conclusive investigations. This is further compounded by the fact that in spite of breach of the 48 hours, investigations remain inconclusive. Fortunately, this particular amendment was not passed into law.

- Amendment of *Article 26 (2) (a)*

The Bill sought to amend the above provision relating to the right to property to allow for compulsory acquisition of property for purposes of investment. In a context where land and property grabbing are/were commonplace, the dangers of such a proposal could not be overemphasised.

ii) The Local Governments Act Cap 243

This Act was enacted to amend, consolidate and streamline the existing law on Local Governments in line with the constitution and to give effect to the decentralisation and devolution of functions, powers and services.

Sections 138 to 188 provide for elections and the processes that ought to be followed in the conduct of the same. Offences capable of being committed during the electoral process are also provided herein. *Section 172* provides that for any issue not provided in the Act, the *Presidential Elections Act* and the *Parliamentary Elections Act* in force shall apply to the elections of Local Councils with such modifications as may be deemed necessary. The actual interpretation of the said provision remains a source of controversy in the practice of elections at the Local Council level.

It should be noted that the *Local Government (Amendment) Act, 2015, Act 16 of 2015* introduced *Section 111(2)***,** which provides that the elections of the village or cell council and parish or ward council chairpersons shall be by the electorate lining behind the candidates nominated for office, their representatives, portraits or symbols. This was a significant departure from the universally and regionally recognised principle of voting by secret ballot. There were no convincing justifications for this departure.

iii) The Registration of Persons Act, No. 4 of 2015

This Act was created to harmonise and consolidate the law on registration of persons; to provide for registration of individuals; to establish a national identification register; to establish a national registration and identification authority; to provide for the issue of national identification cards and aliens' identification cards and for related matters. The Act provides that its data may be used by the Electoral Commission. Indeed, the Supreme Court, in

Amama Mbabazi v Kaguta Museveni & 2 Others[32], ruled that it was lawful to generate voter data using the data provided by the National Identification and Registration Authority (NIRA), the registration body created to do so under this law.

There are other Acts of Parliament that provide for the election of MPs representing special interest groups, specifically the youth, the elderly, the disabled and workers. These are the *National Women's Council Act Cap 318, The National Youth Council Act Cap 319, and the National Council for Older Persons Act, 2013, Act No.2 of 2013*.

As indicated in the previous sub-chapter, several amendments have arisen out of the *Parliamentary Elections Act (PEA) 2005, Act No. 17 of 2005*. The parliamentary elections Act (PEA) has been the subject of successive amendments as enumerated here below:

The Parliamentary Elections (Amendment) Act, 2006, Act No.1 of 2006;

The Parliamentary Elections (Amendment) Act 2010, Act 12 of 2010;

The Parliamentary Elections (Amendment) Act 2015, Act 15 of 2015;

The Parliamentary Elections (Amendment) (No.2) Act, 2015, Act 25 of 2015; and

The Parliamentary Elections (Election Petitions) Rules SI No.142-2 as amended by SI No.24 of 2006.

2016–2022

This period was a decisive period in the constitutional development of Uganda's young democracy. This period begins with the volatile aftermath of the 2016 election. It features the enactment of some reforms, not least the Supreme Court recommendations on electoral reform, and the consideration of the Constitution Amendment Bill of 2019, tabled by Wilfred Nuwagaba, Member of Parliament and Shadow Attorney General.

32 Presidential Election Petition No. 1 of 2016

This section begins with amendments to the Parliamentary Elections Act of 2005 and revisions to the process of challenging elections through petitions in courts of law.

i) Amendments to the Parliamentary Elections Act, 2005

As seen in the preceding sub-chapter, the *Parliamentary Elections Act (PEA) 2005, Act No. 17 of 2005* has been a consequential piece of legislation for the conduct of parliamentary elections and matters incidental thereto. For the period under review, the amendments included *The Parliamentary Elections (Amendment) Act, 2020, Act 12 of 2020* and *The Parliamentary Elections (Amendment) (No.2) Act, 2020, Act 16 of 2020.* The statutory instruments under this process are *The Parliamentary Elections (Amendment of Third Schedule) Instrument, 2020, SI No.140 of 2020* and *The Parliamentary Elections (Appeals to High Court from the Commission) Rules, SI No.141-1.*

ii) Supreme Court Constitutional and Electoral Reform recommendations

Following the delay by the Executive branch to enact the recommendations of the Supreme Court contained in the Presidential Election Petition Judgements of 2001 and 2006[33], the court, in the Amama Mbabazi case of 2016, reiterated its previous recommendations. Their Lordships made orders directing the Attorney General (AG) and the Executive as a whole on the course the electoral reforms should take. Guided by the submissions of the amici curiae, mainly from the Makerere University School of Law, the Supreme Court issued ten recommendations aimed at improving the framework for election management in Uganda as follows:

- The time for filing and the determination of a presidential election petition be increased from 30 to at least 60 days.
- Accept the use of oral evidence in addition to affidavit evidence in court.
- The time for holding a fresh election where the previous elections has been nullified be increased from the currently prescribed 20 days.

33 *Besigye Kiiza* v. *Museveni Yoweri Kaguta & Anor*, Election Petition No.1 of 2001 and *Rtd. Col. Dr. Kizza Besigye* v. *Electoral Commission, Yoweri Kaguta Museveni*, Election Petition No. 1 of 2006

- The use of technology in elections be backed by law.
- Sanctions against any State organ or officer who violates provisions of the law with regard to access to State-owned media be provided.
- Election-related law reform be undertaken within two years of the establishment of the new Parliament.
- Laws be enacted to prohibit the giving of donations (during campaign periods) by all candidates including a President, who is also a candidate.
- Laws prohibiting public servants from getting involved in political campaigns be made more explicit.
- Laws be amended to make it permissible for the Attorney General to be made respondent in a presidential election petition where necessary, and the Attorney General be the authority to follow up the Supreme Court's recommendations.

The foregoing recommendations encapsulated previous recommendations for constitutional and electoral reform of various actors, including Cabinet (2005, 2009 and 2015); the 7th, 8th and 9th Parliaments; the Electoral Commission; the Uganda Law Reform Commission; the National Consultative Forum; the Uganda Law Society; the Inter-Party Organisation for Dialogue; the Inter-Party Cooperation; Citizens' Coalition for Electoral Democracy in Uganda; and various international election observation groups.

Following the inaction of the Attorney General for over two years after the issuance of the above directives by the Supreme Court, a remarkable development occurred. Two law professors, Frederick Ssempebwa and Frederick Jjuuko, together with *Kituo cha Katiba: The Eastern Africa Centre for Constitutional Development*: filed a case before the Supreme Court to hold the Attorney General to account for not implementing the same.

In their petition, the applicants wanted the Supreme Court to issue new orders that would cause the 2016 recommendations to be implemented. Whereas the court did not find the Attorney General in contempt, it issued new critical

orders that triggered the tabling of some of the reforms. Specifically, court ordered that the Attorney General, in consultation with other organs of the State, ensure that priority is given to the implementation of all the Supreme Court's electoral reform recommendations. In the same spirit, court ordered that the proposed legislation for implementation of the recommendations be laid before Parliament within a month from the date of the ruling. Within the same ruling, the Attorney General was required to report on the progress of the proposed legislation within three months from the date of the ruling, and to submit a final report to court on the progress of the proposed election legislation within six months. It is important to note that in 2019, the Attorney General tabled proposed electoral reforms to several laws. The tabled Bills were the Presidential Elections (Amendment) Bill No.17, 2019; the Parliamentary Elections (Amendment) Bill No.18, 2019; the Electoral Commission (Amendment) Bill No. 19, 2019; the Political Parties and Organisation (Amendment) Bill No. 20, 2019; and the Local Governments (Amendment) Bill No. 21, 2019.

iii) Constitution Amendment Bill, 2019

This amendment was proposed by Wilfred Niwagaba, Member of Parliament and Shadow Attorney General. The proposed amendment is given elaborate prominence further ahead in section 3.4 of this report.

3.2 Proposed Reforms by Civil Society

In the 2016–2015 period, CSOs mounted lobbying and advocacy drives that were targeted at the enactment of electoral/constitutional reforms, as captured in the Citizens' Compact on Free and Fair Elections and the Constitutional Amendments Reference Book of 2014 published by Kituo cha Katiba: Eastern Africa Centre for Constitutional Development.

This sub-chapter also includes the proposals made by the Forum for Democratic Change (FDC) and GoForward political parties because of the import of the constitutional reforms contained in their manifestos. In terms of scope, the Citizens' Compact was tailored to improve election management through constitutional reform, while the KcK initiative was a broader and

more comprehensive venture that looked at the 1995 Constitution in its entirety. Both outcome documents were submitted to the relevant institutions of Government for consideration.

Below is an enumeration of the crucial propositions by civil society in Uganda.

3.2.1 Uganda Citizens' Compact on Free and Fair Elections: National Consultation on Free and Fair Elections

The National Consultation for Free and Fair Elections was a 2014 advocacy drive led by the umbrella body of non-Governmental organisations (NGOs), the Uganda National NGO Forum (UNNGOF) and the Great Lakes Institute for Strategic Studies (GLISS). These, together with likeminded NGOs countrywide, including the Uganda Joint Christian Council (UJCC), Kick Corruption out of Kigezi (KICK), Forum for Women in Democracy (FOWODE) and Development Networks of Indigenous Voluntary Associations (DENIVA), held regional consultations with citizens. The objective of the consultations was to involve Ugandans in the process of formulating a raft of reforms for the reconstruction of the elections management system in Uganda. The Uganda Citizens' Compact on Free and Fair Elections was borne out of this and was formally presented to Parliament for appropriate enactment into legislation.

The Citizen's Compact made a number of recommendations, some of which are highlighted below:

i) New Electoral Commission

- It recommended that a new independent and impartial Electoral Commission be established. The selection of commissioners and the Electoral Commission staff must follow a process of open application, public hearings and scrutiny conducted by the JSC. The successful applicants were to be finally vetted by Parliament and, upon approval, their names submitted to the President for issuance of instruments of appointment. No commissioners were to be beholden to any political affiliation.

- Commissioners should serve for a guaranteed one, non-renewable seven-year term.
- A commissioner may only be removed from office in exceptional circumstances for gross misconduct or incompetence. Such removal process should follow the same criteria and procedure applied in the removal of a Judge of the High Court.
- The new Electoral Commission must carry out a complete overhaul and review of staff of the existing Commission, including the returning and presiding officers.
- The selection of staff of the Electoral Commission Secretariat at all levels as well as that of the returning and presiding officers and polling assistants must go through a competitive recruitment process which should be open to the public at all stages.

ii) Integrity of the voting process

- The new Electoral Commission must compile a new, clean and verifiable register of voters, which should include eligible Ugandan voters in the diaspora. This should be done in a completely transparent and accurate manner. In pursuant of this noble cause, more stern measures must be taken to ensure that violations of the rights of citizens to register to vote, incidents of unlawful or fraudulent registration, and fraudulent removal or any other alterations of persons' identifications in the Voters Register are stopped. In the event of violations, expeditious measures must be put in place to remedy the wrong.
- The new Voters Register should be comprehensive, inclusive and up-to-date and compiled through a transparent process with full participation of stakeholders, particularly political parties, civil society and the public.
- The new Voters Register must be a public document accessible to all, that can be inspected at no cost. It must be displayed at selected public places and all Electoral Commission offices. Before the new register is finalised, a two-month period of public display must be

allowed for the public, political parties and potential candidates to verify, object to or seek to add eligible names. The final, clean and verified register must be ready six months before election day.

- A comprehensive and continuing civic and voter education programme should be developed and funded from the national budget.
- The voting for LC III, LCV, Parliament and the President should be conducted on the same day to avoid influence peddling and patronage in the electoral process.

iii) Role of security forces and militias

- The military should have no involvement whatsoever in the electoral process and should remain focused on its constitutional duty of securing our borders and defending our sovereignty. Ensuring law and order during elections should be exclusively the responsibility of the regular police. The police personnel deployed to provide security, law and order during the election period should be placed under the supervision and direction of the Electoral Commission.
- The role of the police should be strictly to act impartially to ensure public order. The Electoral Commission should monitor and direct police operations regarding elections during the campaigns and in all other aspects of the electoral process.
- The military and the police should vote at regular polling stations as any other ordinary citizen; they must not bear arms or wear uniforms during this process.
- The movement and deployment of the army should be restricted and monitored in the period before, during and after the elections, under arrangements agreed upon as part of the reforms enacted to implement these proposals.
- The formation and deployment of any militia (informal armed groups constituted outside the law) is absolutely illegal; this prohibition must be strictly enforced in practice.

- Stakeholders should agree to codes of conduct for security forces during the campaigns and elections. The Electoral Commission should then independently, strictly monitor and secure compliance with the agreed codes of conduct.

iv) The Chief of Defence Forces must be in charge of all men and women in service.

- The President should relinquish tactical command and control of the armed forces to the Joint Chiefs, and must not serve as chairman of the UPDF High Command. Membership of the UPDF High Command should not be personal to holder.
- An Independent Security Services Commission should be established as part of the implementation process of these reforms. The Independent Security Services Commission should be vested with the mandate to determine discipline, promotions and commissions, as well as to handle complaints and all other matters related to the army, police, intelligence agencies and all other security agencies.

v) Integrity of the campaign process

- A mechanism must be established to monitor and prevent raids for funds from the Central Bank, ministries and international assistance accounts, in the period before and during election campaigns.
- An office of Comptroller of Budget should be established to keep track of money trails and prevent diversion of funds from the Treasury, ministries etc. for partisan political purposes and activities.
- Restrictions should be placed on the resort to supplementary appropriations in the two financial years period preceding general elections.
- In the period of two financial years preceding general elections, classified appropriations and appropriations for the presidency and State House should be restricted and strictly monitored, including funds that facilitate presidential patronage.

vi) Public servants should resign their positions at least six months before their being nominated to contest in an election.

- All public officials nominated to contest in an election should hand over public assets in their possession before they proceed for campaigns.
- The constitution expressly prohibits any political party from using state resources to conduct business that is purely for the political party.

vii) Combating patronage through public hearings for public service appointments

- Independent commissions, agencies, regulatory bodies and independent offices should have separate selection, approval and appointment processes that are based on the principles of open competition and public scrutiny through public hearings.

These bodies include:

- All Service Commissions, including the Education Service Commission, Judicial Service Commission, Health Service Commission, Public Service Commission and District Service Commissions.
- The Electoral Commission;
- The Salaries and Remuneration Commission
- The Local Government Finance Commission
- The Uganda Land Commission
- The Uganda Revenue Authority
- Bank of Uganda
- The National Environment Management Authority

- The role of Parliament in the appointments process should be restricted to providing oversight on the appointments process through an open and transparent vetting process, while the role

of the President should be limited to issuance of instruments of appointment with strict rules regarding the exercise of veto powers.

- An independent body should be vested with the power and responsibility to advertise, interview and conduct public hearings with regard to the appointment of commissioners for constitutional bodies.
- Political offices created by the President but not provided for in the constitution, should be approved by Parliament.
- No new political offices shall be created in the last year of the term of the President.
- Any presidential donation above 500 currency units[34] shall require the prior approval of the relevant parliamentary committee.
- The annual budget for presidential donations shall not exceed 0.5 per cent of the budget for the Office of the President for any given financial year.
- Current 'regional' ministries (for example, Luwero Triangle and Bunyoro Affairs) and the so-called Ministry for 'Mobilisation' should be abolished. Ministries should be organised as specialised fields (departments) for providing defined public services.
- An independent Salaries and Remuneration Board should be established and vested with powers to determine the salaries, allowances or any other emoluments of public servants, including political leaders such as the President, Ministers, MPs and Local Government political leaders.
- Cabinet Ministers should not be Members of Parliament and, in case an MP is appointed to Cabinet, such MP should resign his or her seat before taking over the Cabinet position.

34 A currency point is 20,000 Uganda shillings

viii) Dissociating the State from the ruling party

- LC I and LC II elections must be held within a prescribed time-frame and Parliament should appropriate funds to ensure that this process is conducted as a matter of priority to cure illegalities that courts may have declared.
- Elections of LC I (village) and LC II (parish) committees should be conducted on a multiparty basis.
- The Patriotism Secretariat under the President's Office should be abolished and patriotism training should be integrated into the national education curriculum.
- The office of Resident District Commissioner (RDC) should be abolished or transformed into a public service job to be managed by the Public Service Commission. After all, CAOs have the power to appoint district administration officials.
- The National Institute for Political Education (NRM Political School) at Kyankwanzi should be abolished. Instead, there should be established, under an Act of Parliament, a National Institute for Administration, registered under the National Council for Higher Education (NCHE), with an independent Board of Directors and a curriculum approved by Parliament, with advice from the NCHE.

ix) Restriction on demarcation of electoral boundaries

- For purposes of the next general elections (then 2016), no new administrative units, i.e. districts, counties and sub-counties, should be created beyond the number that existed during the 2011 elections.
- The responsibility for creating new electoral constituencies should only be exclusive to the Electoral Commission, applying current criteria under the law.
- In demarcating constituencies, the Electoral Commission should judiciously take into account population size, geographical size and number of voters, financial implications and the management of the electoral exercise.

- The law should not tie electoral constituencies to administrative units such as districts or municipalities.
- The size of Parliament should be reduced in keeping with the modest resources of the State.

x) Freedom to organise and assemble

- The *Public Order Management Act (POMA) 2013* must be repealed.
- The *Police (Amendment) Act (2006)* must be amended and brought into full conformity with the *Bill of Rights* under *Chapter Four of the 1995 Constitution*.
- Police operating procedures in ensuring public order in the context of campaigns and throughout the electoral process, should be transparent and made public.
- The guidelines for public order management prepared by the Uganda Human Rights Commission in 2007 should be operationalised.
- The media oversight agencies should be required to establish a bipartisan ad hoc committee to assume an oversight role over the media for a period of one year preceding any general election and to ensure that all competing parties have equal access to the media. Such a committee should be enjoined to produce and publish a report on compliance with requirements for equal access to the media.
- There should be penalties for media houses that fail to comply with the constitutional requirement for equal, fair and balanced coverage. The licensing regime should also be used to secure compliance.

xi) Selection of presiding officers

- The selection of presiding officers and polling assistants should follow the principles of transparent competitive and merit-based recruitment.
- In order to qualify for selection, a person must not be or should not: have been an executive or member of a political party's National Executive Committee (NEC) or Secretariat; have run for elective political office on a political party ticket in the last five years; have been convicted of an electoral crime or serious misconduct or crime involving moral turpitude; have been a Resident District Commissioner (RDC), District Intelligence Security Officer (DISO), Gombolola (Sub-County) Intelligence Security Officer (GISO), a member of the security services or militia, or an appointee charged with partisan political responsibility or leader of a party in the last five years.

xii) Processing of election materials

The processing and procurement of electoral materials, including designing, printing and distribution of all materials, should at all levels and stages, ensure the participation, scrutiny and observation of key stakeholders, particularly political parties, civil society, election observers and the media.

xiii) Ensuring integrity of the tallying process

- Polling station committees must be set up to monitor the voting, counting and tallying process and deal with complaints and disputes in the voting and tallying process, including the determination of valid, invalid or spoilt ballots. These should be composed of political parties, civil society and the presiding/ returning officers.
- Votes must be counted and tabulated accurately and transparently in the presence of stakeholders, i.e. political parties, civil society, observers, the media and the public.

- Votes must be counted and announced at polling stations in the presence of political parties, election observers, civil society and the public. Observers and representatives of political parties and candidates and the media must be given certified tabulation and tally sheets.

- The media must be permitted to report in real time the votes counted and winners announced at polling stations and certified by the presiding officer/polling assistant. Representatives of political parties and candidates must be free to publicise certified results and tally sheets from polling stations.

- All results, including presidential, parliamentary and Local Council election results, must be declared at the constituency level.

xiv) Independent, credible Judiciary to adjudicate election disputes through open vetting for judicial officers

- A credible and independent Judiciary able to competently and credibly adjudicate all electoral disputes expeditiously should be realised. Members of the Judiciary should be subjected to an open process of selection and appointment, including public scrutiny. The remuneration of judges should be such as to ensure their independence.

- Provisions in the law that require subjective evaluation by judges on whether particular violations and electoral malpractices were 'substantial' and in 'a manner' that would alter the results of an election, entail the exercise of subjective rather than legal judgement. For this reason, Section 59 of the Presidential Elections Act, which contains this provision, should be amended to the effect that once evidence of malpractices has been adduced to the satisfaction of court, the prescribed penalties or remedies should be rendered by the presiding judicial officer(s).

xv) Internal party democracy

The EC should closely monitor all political parties for compliance with the constitutional and electoral law relating to internal democracy in their entities. This includes adherence to the requirements for holding regular delegates conferences.

xvi) Relationship between citizens, Members of Parliament and political parties

- A Member of Parliament primarily represents the voters in his or her constituency.
- A member who has been expelled from a party should not lose his or her seat in Parliament on that basis.
- Internal party disciplinary procedures should not be used to thwart the will of the voters.

xvii) Representation for special interest groups

- Representation of special interest groups of women, youth and the disabled should be maintained as the form of affirmative action.
- The process of electing representatives of persons with disabilities (PWDs) should be reformed to make it more accountable to the constituents they are designated to represent.
- PWDs should use regional electoral colleges to elect one woman and one male. The Persons with Disabilities Act should be amended to cater for the election of PWDs at the municipality level.
- All MPs representing special interest groups should be eligible for re-election only once (should serve up to two terms of office only) whether in Parliament or Local Councils.
- Workers should be removed from special interest group representation since issues that affect workers can be represented by all MPs.

- The army representatives should be removed from Parliament.

xviii) Funding for Local Governments and service delivery

- Local Governments should receive their funding directly from the Consolidated Fund as a percentage of the national budget. This will enhance their autonomy and authority to deal with issues of service delivery. The money should not be conditional and the disbursements must be timely, to allow for utilisation of the same. Funds returned to the Consolidated Fund should be accounted for and should not be reallocated without the approval of Parliament.
- The proposed share of the national budget to be allocated to Local Governments should be in the range of 30 to 40 per cent based on serious negotiations and a budget amendment by Parliament.

xvix) Restoration of the two five-year presidential term limit

The tenure of Office of the President should be restored to two five-year terms and must be entrenched in the constitution.

3.2.2 Constitutional Amendments Reference Book 2014 by Kituo cha Katiba: Eastern Africa Centre for Constitutional Development

This crucial contribution towards scholarship on constitutional reforms in Uganda focuses on the constitutional amendment process that began in 2014, following a call for proposals for amendments by the Government of Uganda. Kituo cha Katiba constituted a pool of experts who conducted a review of the 1995 Constitution in its entirety. At the conclusion of the process, Kituo cha Katiba published and presented the reform proposals to the Legal and Parliamentary Affairs Committee of Parliament.

The said proposals are reproduced below in an abridged but explained format. The compilation of these proposals was serialised/clustered along the 18 chapters of the 1995 Constitution, which format has been maintained in the presentation below:

Chapter One: The Constitution

Regarding the Government proposal to introduce a clause under Article 4 on the promotion of the constitution in any other appropriate manner besides translation and promotion through teaching and publication in the media, the experts recommended that the Government proposal should be dropped. Their view was that the addition was unnecessary. While the Government justification was that the existing methods for promotion were limiting, it was argued that there was no evidence to show that the State had attempted to use any of the methods to actually promote the constitution.

On the Government proposal to include Article 4(b) providing for the teaching of the constitution in all educational institutions and armed forces training institutions, it was recommended that this should be extended to include the civil service, which is an important sector of society that should understand and appreciate the constitution.

It was further proposed that a new clause to provide for involvement of other relevant stakeholders such as civil society in the promotion of the constitution be inserted because the inclusion of new actors will enhance efforts to promote the constitution.

Chapter Two: The Republic

As far as the proposal to prescribe a penalty for contravention of the duties of a citizen as contained under Article 17(3) is concerned, it was recommended that such a proposal be dropped because the duty to engage is accompanied by a right to disengage, hence vitiating the need for penalties. In any case, Parliament can use its broader mandate to impose sanctions even without this provision.

Chapter Four: Fundamental and Other Human Rights and Freedoms

In addition to the current framing of Article 20(1) on the inherence of human rights, it was proposed that the provision be amended to show that in addition to rights not being granted by the State, human rights are universal, interrelated

and indivisible. This phraseology is in line with modern approaches which emphasise not only the inherent nature of rights but also the fact that all categories of rights, civil and political, and economic, social and cultural, are dependent on each other and should be accorded equal measures of protection.

It was proposed that Article 20(2), which stipulates that the rights and freedoms of individuals and groups enshrined in this chapter to be respected, upheld and promoted by all organs and agencies of Government and by all persons, to be amended to reflect all the duties of the State to respect, protect, promote and fulfil the same. This is in line with international human rights law and is a useful tool for understanding the nature of the obligations of the State and violations in particular cases. The State is guided on what it has to do to ensure that the rights are realised. There is abundant guidance of each of these duties in respect of specific rights.

It was further proposed that a third clause be introduced to cater for other persons as duty bearers to bind individuals and juristic persons to the obligations arising from the Bill of Rights. This is also in line with the modern approach that extends the scope of human rights and the Bill of Rights to enhance protection. This is important because individuals and artificial persons are becoming important role-players in both public and private lives and are increasingly responsible for many violations. Some corporations have become so powerful and perform functions traditionally preserved for the State and should therefore be responsible when executing these functions.

Further, it was proposed that a fourth clause be introduced into Article 20 to guide the courts on how they should interpret the Bill of Rights. The clause should indicate that in interpreting the Bill of Rights, the courts should adopt interpretations that maximise enjoyment of the rights over interpretations that limit their enjoyment. This clause should also require the courts to be guided by the country's international undertakings and to develop all laws to ensure compliance with the Bill of Rights. This is in addition to shifting the burden on to the State to justify its failure to realise rights on the basis of limited resources.

The experts added that this will help the country to adhere to its international undertakings and to ensure that the courts appreciate these obligations and discharge their duty of ensuring that the obligations are given domestic legal effect. So far, the courts have not adequately sought guidance from international law and the country's human rights obligations.

It was proposed that Article 21(2) which provides that a person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability should be reviewed. The review should indicate additional grounds such as HIV or other health status and should be left open by indicating that the grounds listed are inclusive and not exclusive of other grounds.

It was argued that it is important for the grounds upon which discrimination is prohibited to remain as open-ended as possible because, over time, grounds which were not previously thought about emerge and require that persons falling into that status are protected. An example is HIV and other health status, and so is age and marital status. These are what have been referred to as analogous grounds.

Article 21(2) should be amended to prohibit not "discrimination" but "unfair discrimination". This is because human rights law does not prohibit "discrimination" but rather "unfair discrimination". There are circumstances when discrimination is allowed. For instance, it is discrimination to say that persons with disabilities board the bus first, yet it is not illegal since it is not "unfair". Human rights law defines the phrase "unfair" and this is the same approach our courts have followed. It was further proposed that the definition of discrimination under Article 21(3) be reviewed to define not "discrimination" but "unfair discrimination". "Unfair discrimination" is giving people differential treatment based on the mentioned attributes which has the effect of impairing their dignity as human beings and marginalising them from the rest of society. This is the approach which human rights law has adopted in dealing with discrimination. In this regard, guidance can be sought from comparative jurisdictions which have advanced equality jurisprudence such as South Africa and Canada.

Reference was made to the South African case of *Hoffman* v. *South African Airways*[35]. It was recommended that Article 21(4) be amended to apply to all the governance systems. The current provision limits application to the Bill of Rights. Refer to Article 20(3) of the Kenya Constitution[36] for lessons.

The pool of experts recommended that Article 22(1) on the right to life be amended to abolish outright the death penalty. There is need for outright abolition of the death penalty because the trend in most democracies is now to abolish the penalty. In South Africa, the Constitutional Court in the case of *S*. v *Makwanyane*[37] held that the death penalty was unconstitutional to the extent that it impaired the dignity of the person. That it was also discriminatory because in many cases it was the poor who were not properly represented that got the penalty.

In Uganda, the Supreme Court outlawed the mandatory penalty in the Susan Kigula[38] case. Yet, by then, Uganda in effect had a moratorium, having last carried out the penalty over ten years prior in 2003. This in itself was seen an indication of a move towards abolition. Some neighbouring countries, such as Rwanda, have abolished the penalty.

Regarding the proposal to extend the 48-hour rule within which suspects should be released or arraigned in court, the experts' view was that the proposal should be dropped. They contended that Article 23(4) should not be amended to extend the 48-hour rule as has been argued by some agencies, including the police. According to them, the problem is not with the time but the practice of the police who effect arrests before carrying out proper investigations. This rule has been abused in many cases, in which investigations are inconclusive.

35 It was held that the refusal by South African Airways to employ the appellant (as a member of the airline's cabin crew because of his HIV-positive status) violated his right to equality as guaranteed by Section 9 of the Constitution. The Court further held that the appellant, having been denied employment solely because of his HIV status, should be entitled to the fullest redress available, namely reinstatement from the date of the court order.

36 In applying a provision of the Bill of Rights, a court shall—(a) develop the law to the extent that it does not give effect to a right or fundamental freedom; and (b) adopt the interpretation that most favours the enforcement of a right or fundamental freedom.

37 ZACC 3, 1995 (3) SA 391 (CC)

38 *Susan Kigula & 416 Ors* v *Attorney General* (Constitutional Petition No. 6 of 2003) [2005] UGCC 8 (10 June 2005)

There are also many cases of persons on remand whose cases have been dismissed after many months because investigations were not complete. The problem is therefore with the investigative capacity of the police, which, if not enhanced, may not be improved much by extension of the time.

Pertaining to the proposal by the Government to abridge the right to property as provided for by Article 26, the proposal by the Government to amend Clause (2)(a) to allow compulsory acquisition for purposes of investment was rejected by the experts. This is because the phrase "public use" in the provision is good enough and should encompass investment, provided that such investment is in the public interest. Using investment as a ground is likely to result in abuse and property grabbing, especially by the rich, to the detriment of the poor. Moreover, the increased number of cases of land grabbing could also be legitimised by the proposed amendment. It was also recommended that the amendment of Article 26(b)(i) should include "prompt payment of fair and adequate compensation prior to taking of possession or acquisition of property in the case of physical structures in permanent materials" should be dropped.

The experts also found that the proposal for a new provision that reads "payment of prompt, fair and adequate compensation within one year to person's property in temporary materials has been taking possession of or acquired by Government for public use" is problematic on a number of grounds:

First, what amounts to "permanent" or "temporary" materials was found to be vague and could be hard to define. For instance, where do food crops fall? Second, in some cases, the materials that may be considered to be temporary such as food crops may be the most important to the person's livelihood. Third, the one year proposed for compensation of temporary materials could be problematic. This is because in some (if not many) cases when payment is not made within the one year, the person may have to sue the State. Besides the case taking many years to resolve, it would be expensive for poor persons, who in most cases are the victims of these violations.

It was recommended that Article 27 on the right to privacy of person, home and other property be amended to introduce clauses that cater for protection of personal data that may be in the possession of either the State or private entities. The amendment should include non-physical invasion of privacy. The constitution should also require Parliament to adopt laws to provide for penalties for those who abuse personal data and for compensation of victims.

Increasingly, personal data is getting into the hands of both State and private entities without proper protection being extended to the individual. An example is the SIM card registration process which was botched by telecom companies. Yet, increasingly, the individual is required to give personal information for various purposes. If no protection is extended, the data may be misused to the detriment of the individual.

The right to a fair hearing should be amended to make access to legal aid a right for all those who deserve it in both criminal and civil cases. A State Legal Aid Board should be introduced as a constitutional body and facilitated to provide legal aid services to the indigent. This change would guarantee the indigent a fair trial and yet would simply be entrenching as constitutional some of the proposals which appear in the Draft Legal Aid Policy.

Article 28(3) should be amended to provide for accused persons to have access to evidence in the possession of the State. A clause should be introduced to authorise courts to exclude from trial all cases in which violations of human rights occurred in pre-trial situations. It supports the right to a fair hearing. It will discourage the police from violating rights in the process of investigation.

It was recommended that a provision on the rights of victims of crime under Article 28 be introduced to guarantee the rights of victims of crime. Victims of crime should be guaranteed the right to be treated with respect, dignity and care as they interact with the criminal justice system. They should also be entitled to protection, reparation, compensation, counselling, rehabilitation and appropriate medical care at the expense of the State. This is in addition to ensuring that their cases are heard in a timely manner and in a manner that

does not traumatise and victimise them further when interacting with the justice system. The protection should be extended to their family members whenever appropriate.

The protection of victims of crime is something which has not been given appropriate attention, creating the perception that the criminal justice system is more concerned with the rights of suspects ("criminals") than with those affected by crime. This is partly responsible for the loss of confidence in the criminal justice system. There is need for appropriate balancing to ensure that both suspects' and victims' rights are respected.

The right of freedom of movement as contained in Article 29(2) should be amended to extend the right to refugees. This will, in addition to ensuring compliance with international law, be a reflection of what is already indicated in Section 30 of the Refugee Act of 2006.

Articles 32, 33, 34, 35 and 36 on affirmative action for special groups should be expanded to protect groups that were not considered in the 1995 Constitution. These include older persons and youth. These groups have special needs that should be attended to. The elderly need to be assured of care and access to such social goods as healthcare. People above a certain age should be entitled to free medical services at public facilities and to take part in public affairs.

Additionally, those retiring from employment should have access to retirement benefits without delay. The employment needs of the youth, too, need to be attended to, in addition to their education and training needs, and they should be facilitated to take part in public affairs and decision-making.

These two groups deserve protection. Increasingly, older persons are being neglected and live at the margins of society. At the moment, there are no comprehensive programmes to cater for the needs of this group. The same could be said of the youth, who form the biggest proportion of the population. Comparatively, constitutions such as the Kenyan one have comprehensive provisions which protect these groups.

Article 33(1), which stipulates that women shall be accorded full and equal dignity of the person with men, should be amended to include a phrase at the end of the provision which reads: "such measures shall be designed to achieve specific objectives and shall be guided by clear time-bound targets which may be reviewed from time to time".

Although the constitution has had this phrase for quite some time now, there is no evidence of clearly defined affirmative action programmes with clear objectives and time-defined targets. It is therefore impossible to evaluate whether the measures in place are realising their objectives and targets and whether they are benefitting the people they were designed for.

Articles 33(2) and (3) on the protection of rights of women should be amended to give horizontal application in order to extend the obligations to private entities as much as they do for the State. It is important for the obligations to be given horizontal application to extend the protections beyond the public sector and into the realm of the private sector, such as employment. Article 35 on the rights of persons with disabilities should be amended to indicate some of the basic rights of PWDs beyond respect and human dignity. These rights include access to inclusive education, medical care and health services, accessible infrastructure and places, sign language and reasonable accommodation.

Article 36 on protection of rights of minorities should be revised to extend its application to "Minorities and Marginalised Groups" and not just "minorities". Secondly, the provision should sketch out some of the basic rights, which these groups deserve, such as access to education, access to economic and social goods and services such as water and healthcare, to culture and participation in public affairs and decision-making. This is important because the use of the word "minorities" excludes groups which may be numerically strong yet live on the margins of society. An example includes the Karamojong, who although many in number, have been marginalised for some time. The provision in its current form is inadequate and does not give guidance on the rights of this group.

Article 38 on civic rights and activities should be amended to introduce a clause acknowledging NGOs as one of the means of ensuring civic engagement and a recognition of their right to operate and to be supported by the Government in their operations. This is important because the Government needs to acknowledge the role which NGOs have played in promoting civic engagement. At the moment, although the Government knows about the contribution of NGOs, it has not openly acknowledged this.

Article 40 on economic rights should be renamed "Labour Rights" and not "Economic Rights". Secondly, it should be amended to extend the rights to persons in informal employment who should also be protected to ensure their proper working conditions. Third, the provision should reflect all labour rights, including the right to work and to social security and retirement benefits.

Use of the word "economic" is not a true reflection of the rights being protected and may be misleading in some respects as these are labour or employment rights. The majority of the labourers in Uganda work in the informal sector where they have not been protected adequately. The failure to ensure the protection of the right to work violates international law since this right is provided for in the international instruments Uganda has ratified. It would also guide the state in taking measures towards job creation.

Article 41(1) on the right of access to information should be amended to include information in the possession of private actors and companies as long as they infringe on human rights and freedoms. Many private actors perform public duties or contracts and execute tasks that impact on the rights and freedoms of other persons.

Article 43 on general limitations on fundamental and other human rights and freedoms should be amended to introduce a clause to the effect that international human rights instruments to which Uganda is a party shall be applied by the courts of law in Uganda. This will streamline court practice and give more meaning to such instruments.

The Government's proposal regarding Article 51 pertaining to the Human Rights Commission to include a clause that "(2) The Commission shall be composed of a Chairperson, a Deputy Chairperson and such other members as Parliament shall by law prescribe, all of whom shall be appointed by the President with the approval of Parliament" does not go far enough with ensuring the integrity and independence of the commission.

A more comprehensive process of appointment of people to such offices is required to ensure that the process is independent, public and shielded from political interference. There should be an independent process and body through which these offices are filled in an open and transparent process involving public scrutiny and this should be done in a competitive manner rather than hand-picking, as is the practice now.

It is important that holders of offices such as the Uganda Human Rights Commission (UHRC) are seen to be independent in order to win public confidence, and for such office holders not to feel duty-bound to pay allegiance to the appointing authority.

The proposal by the Government to subject the removal of UHRC commissioners to a stricter process (in addition to the current provisions of Article 56) is supported because it will make the commission more independent.

At the tail end of the analysis on the Bill of Rights, the experts made a series of recommendations about the inclusion of various economic and social rights in Uganda's Constitution.

They proposed rights were:

Right to the highest attainable state of mental and physical health.

Right to sufficient water and sanitation.

Right to adequate food.

Right to adequate housing.

Right to social security and assistance.

Right to intellectual property and benefits of science.

Rights of consumer to protection.

Right to economic and social development.

Right to use public facilities.

The right to education is also protected in Article 30 but needs to be enhanced in line with international human rights law.

It is important to include these rights in order for the constitution to protect all categories of rights and for Uganda to live up to its international undertakings. Yet, these rights are so important to human wellbeing, and civil and political rights would be meaningless if people's economic and social welfare are not guaranteed. Although many of the elements of these rights are included in the National Objectives and Directive Principles of State Policy, the justiciability of these objectives is still a subject of debate. The 2005 introduction of Article 8A, which seemingly makes the objectives justiciable, has not been enough.

Yet, the mere fact that the bulk of these rights are in the National Objectives is an indication that the country recognises them and should take a bold step and include them in the Bill of Rights. Uganda has even taken steps to illustrate its commitment to these rights by, for instance, submitting a state report to the UN Committee on Economic, Social and Cultural Rights, which was to be considered in July 2015. Inclusion of these rights would also enhance the fight against poverty by empowering citizens in line with the concept of the human rights-based approach to development.

Chapter Five: Representation of the People

Article 60 regarding the composition and tenure of the Electoral Commission should be amended to provide for the members of the Electoral Commission to be publicly vetted and selected by an independent body, in this case the Judicial Service Commission (JSC). Members of the Electoral Commission should be appointed for a fixed and non-renewable term of seven to 10 years. This will improve on the credibility of the EC and promote transparency in electoral processes. It will also strengthen the independence of commissioners. All provisions on the Electoral Commission should be moved to the proposed separate chapter on Independent Commissions.

Regarding Article 63(1) on constituencies (which provides that Uganda shall be divided into as many constituencies for the purpose of election of Members of Parliament), a reduction in the number of constituencies to have a sizeable and manageable Parliament was proposed. Also suggested was the need for an upper limit on the number of constituencies. This will save the country several expenses associated with the growing number of constituencies, while at the same time guaranteeing effective representation.

It was recommended that Article 67, which requires that all presidential candidates be given equal time and space on the State-owned communication media, should be expanded to ensure the provision of equal time and space to all candidates and not just presidential candidates. This should include private media. The intent is to create a level playing field for candidates from all parties.

Article 68 on voting at elections and referenda and which affords Parliament the power to exempt any public election, other than a presidential or parliamentary election, from the requirements that it shall be held by secret ballot, should be repealed. Parliament should not have power to dispense with the secret ballot. This will enhance transparency and ensure the protection of voters from intimidation and undue influence.

Articles 69, 70, 73 and 74 on political systems should be repealed. There is a tacit presumption that Uganda is already in a multiparty political dispensation, which makes these provisions redundant. The whole constitution design is based on representative democracy and a multiparty system. Maintaining these provisions creates room for political manipulation.

Article 71 on a multiparty political dispensation, which would require a political party to have a national character, should be repealed. It infringes on freedom of association without justification. There is need for flexible political arrangements so that people are able to easily organise themselves as they deem fit.

The proposal to introduce Article 72(4) on the right to form political organisations should be dropped because its effect is to disallow unsuccessful party members from running as independent candidates. Attempts of this kind have been made in the recent past, and they are antithetical to democratic freedoms.

Chapter Six: The Legislature

Article 77(4), which gives Parliament the right to extend its life where a state of war or emergency would prevent a normal election, should be repealed because it undermines democracy and may be subject to abuse. Parliamentary terms will be susceptible to unnecessary extensions. Our history supports this fact.

Article 78(1)(b), which provides that Parliament shall consist of one woman representative per district, should be repealed. This proposal is in line with proposals on Article 63(1) that support reducing the number of MPs.

Regarding Article 78(1)(c), which provides for Parliament to consist of representatives of the army, youth, workers, PWDs and other groups as Parliament may determine, it was proposed that the provision should be revised since it was a stop-gap measure that was supposed to be reviewed. At the time of making the constitution these groups were considered vulnerable. Secondly, the army is required to be non-partisan and, as such, should not be included among these groups.

It is recommended that Article 79 on the functions of Parliament feature a new clause to guide Parliament in its functions of making laws that promote the national interest. The functions of Parliament are not adequately spelt out.

Article 80 on qualifications and disqualifications of MPs should have a new clause to bar persons disqualified by courts of law from contesting for Parliament where such persons were directly involved in cases of electoral malpractice and dishonesty. It will be a step forward in promoting integrity and building a high-calibre cadre of legislators.

With respect to Article 82(2), (7)(d) on the election and vacation of office of the Speaker and the Deputy Speaker of Parliament, it was proposed it should be repealed, and instead provide for the Speaker to be elected from outside Parliament. In short, the Speaker should not be a Member of Parliament. A new clause providing for a Speakers Panel should then be introduced. This will ensure impartiality of the Speaker and strengthen the independence of the Speaker. The then Speaker and her deputy were over-stretched by House business. A panel would reduce this challenge in the future.

The experts recommended that the Government proposal for MPs to lose seats upon leaving or being expelled from a political party should be dropped. The current provision should instead be entrenched. Members of Parliament are elected to represent their constituencies and not political parties.

Article 85 on the emoluments of MPs should be repealed so that the question of emoluments of Parliament is left to the determination of the proposed Salaries Board. This will promote the harmonisation of remuneration with other public offices.

Article 87(1), which provides that the Clerk to Parliament shall be appointed by the President with advice from Public Service Commission, should be repealed and instead provide for the Clerk to Parliament be appointed by the Parliamentary Service Commission. An appointment by the President goes against the doctrine of separation of powers.

Article 88 on the quorum of Parliament should be amended to the pre-2005 position. The current position[39] defeats the parliamentary role of being a representative of the people.

A proposal was made for the 10-day deadline within which to challenge a presidential election as stipulated by Article 104 to be repealed, and replaced with provisions that extend the time for lodging a petition to 30 days. The period of 10 days was deemed insufficient to gather all the evidence needed to challenge a presidential petition. Thirty days is more realistic.

39 Quorum shall be one third of all Members of Parliament

Article 104(3), which requires the Supreme Court to inquire into and determine a presidential petition expeditiously and declare its findings not later than 30 days from the date the petition is filed, should be repealed and, in its place, a new provision introduced granting court up to 60 days to declare its findings. This will enhance fair dispensation of justice.

Article 105(2) regarding the tenure of office of the President should be repealed and term limits reinstated.

With respect to Article 108(2), which provides that the President shall, with the approval of Parliament, appoint a Vice President, it was observed that this will deprive the electorate of an opportunity to vote for the Vice President. Regarding the proposal to provide for the position of a running mate who automatically assumes the position of Vice President, it was observed that this will deprive the electorate of an opportunity to choose (vote for) the Vice President. The electorate must have confidence in the Vice President as a person to take over in the event of a vacancy. The proposal to vote for the Vice President is therefore supported.

Article 108A which provides for the position of Prime Minister should be repealed to scrap the position of Prime Minister because the functions of a Prime Minister can be performed by the Vice President. The Office of the Prime Minister is therefore unnecessary.

Article 113(2) pertaining to returning the size of Cabinet to the stipulated number of 21 was endorsed by the pool of experts because a small Cabinet is more effective and maintaining it would save the State a lot of resources.

Article 113 on the appointment of Cabinet Ministers by the President with approval of Parliament should be amended to provide for Cabinet Ministers to be appointed from outside Parliament, as was ably articulated by the Justice Benjamin Odoki Commission Report. By extension, for the reasons given above, Article 114 should be amended by deleting the words ‘except with the approval of Parliament’ so that the total number of Ministers appointed under this article shall not exceed twenty-one.

It was recommended that Article 118 (on Parliament's power to censure a Minister) be strengthened through the introduction of a clause that bars any person who has been censured from a ministerial position from being appointed Minister again. This proposal is intended to encourage public confidence and uphold integrity in leadership.

Article 119(1), which stipulates that the Attorney General shall be appointed by the President with approval of Parliament, should be repealed and replaced with a new provision that vests the power to appoint the Attorney General in an independent commission.

The Attorney General should not be a Cabinet Minister but an ex-officio Member of Parliament to give technical advice. The qualification for Attorney General should be for a person qualified to be appointed Supreme Court judge. This will ensure that credible and competent persons hold the office, and will avert, or at least mitigate, conflict of interest, and provide clarity between the Attorney General and the Minister of Justice.

Regarding Article 120(3)(d) on the power of the Director of Public Prosecutions (DPP) to discontinue criminal proceedings at any stage before judgement is delivered, it was recommended that Article 120 (3)(c) be amended to provide that the DPP's mandate to discontinue proceedings should be subject to approval by court. The current provision leaves this power to be easily abused.

Chapter Eight: Judiciary

Articles 129 and 137 should be reviewed and provision made for a separate Constitutional Court. The court should be at the level of the Court of Appeal and would facilitate the determination of constitutional matters in a timely manner. This will help reduce the workload of the court and make it more efficient.

Article 130 on the Supreme Court of Uganda should be amended to include the Deputy Chief Justice (DCJ) as a member of the Supreme Court and not the Court of Appeal as it is under the current arrangement. This will enable the Deputy Chief Justice to exercise effective control over all courts.

Article 134 should be amended to introduce a President of the Court of Appeal as the head for the efficient running of the court. Article 142 on the appointment of judicial officers should be amended to provide that the Chief Justice be appointed through an open and competitive process by the JSC. Where the President does not approve the recommended candidate within 60 days, the JSC should directly submit the name of the recommended candidate to Parliament for approval. This will enhance transparency and the independence of the Chief Justice. It would also help resolve and avert the occurrence of gridlock or stalemates, as has been witnessed in recent times.

Article 143 on qualifications for appointment of judicial officers should be amended to provide that a High Court judge of not less than 20 years' standing can qualify for appointment as Chief Justice. There is a gap because the current provision only makes reference to an advocate who has practised for a period of not less than 20 years.

Under Article 146, the Government proposal to make the Chief Justice chair of the Judicial Service Commission (JSC) should be dropped and the JSC left as it is. The Chief Justice is likely to be a complainant before the JSC and there would be a conflict of interest if he is the same person to head it.

Regarding the functions of the JSC, an additional clause should be included to grant the commission powers to recruit court clerks, interpreters and all other staff of the Judiciary. This will augment the independence of the Judiciary.

Chapter Nine: Finance

The government's proposal to repeal Articles 155(2) and (3) to enable the President to revise estimates of revenue and expenditure from self-accounting departments before being submitting them to Parliament was rejected. Article 155(2) and (3) should be upheld. The Government proposal to introduce strict procedures for the removal of board members is supported as it will ensure financial discipline and accountability.

Article 159(4) on the power of Government to borrow or lend should be amended to include a phrase to the effect that the President shall provide information concerning the loan every six months and at such times as

Parliament may determine. The provision will ensure financial discipline and accountability.

Regarding Article 161(3), the Governor of the Bank of Uganda and the Board of the Bank of Uganda should be appointed through an open and competitive process to provide security of tenure. Article 163[40] (11) on aspects of the tenure of the Auditor General should be amended to provide for the Auditor General to be appointed for a non-renewable specific term of 10 years to provide security of tenure.

Chapter Eleven: Local Government

Overall, for this chapter, the experts recommended that most of the provisions under this chapter should be relegated to a statute, i.e. The Local Government Act. This is because the provisions in the articles are too detailed and micro-prescribed.

Article 176(1)[41] should be amended to give tangible power to ensure meaningful decentralisation of legislative powers, tax collection and quasi-judicial ability to districts. Therefore, the regions should be given substantive power. The Local Government structure has changed a lot owing to the expansion in the number of districts. What used to be counties in many cases are now districts. Federal arrangements should be revisited to create larger Local Government units with fewer councils or, alternatively, there should be a reversion to the more manageable and original 18 or so districts. This will ensure more efficient functioning and a lower public administration wage bill for the taxpayer.

Article 178(1) on regional Governments[42] should be amended to provide that two or more districts should cooperate to form a region. The requirement for cooperation should be mandatory and not discretional. The absence of this has made this provision redundant.

40 The Auditor General may retire at any time after attaining the age of 60 years, and shall vacate office on attaining the age of 70 years.

41 The system of Local Government in Uganda shall be based on the district as a unit under which there shall be such lower Local Governments and administrative units as Parliament may by law provide.

42 Two or more districts shall be free to cooperate in the areas of culture and development as set out in the Fifth Schedule to this Constitution and may, for that purpose, form and support councils, trust funds or secretariats, subject to sub-clause (a) (d).

Article 185, which pertains to the removal of a district chairperson[43], should be amended to provide that the district chairperson shall be removed by recall not by the resolution of two-thirds of council members. The election of the district chairperson is by universal suffrage and, therefore, for the chairperson to be removed by a resolution of two-thirds of the council members contravenes democratic principles. The power to remove a district chairman by resolution of two-thirds of council members was a provision made in the one-party state political system which was repealed in 2005. Therefore, under the current political system this provision contravenes the spirit of multiparty politics.

Article 186(8), which provides that a District Council shall appoint standing and other committees necessary for the efficient performance of its functions, should be amended to provide that the district chairperson should have control over the appointment of committee members. This can address potential stalemates based on political differences, which can ultimately affect the performance of the Council.

Article 188(2) should be amended to provide for Chief Administrative Officers (CAOs) and Deputy CAOs to be appointed by the District Service Commission (DSC), not by the Central Government under the Public Service Commission (PSC). This position should equally apply to Town Clerks. This will establish safeguards to ensure that CAOs are protected, accountable employees of the district. The appointment of CAOs by the PSC defeats the principle of giving power to the people. This equally applies to Town Clerks. The experts recommended a return to the spirit of decentralisation where CAOs and Town Clerks were appointed by DSCs before 2005.

Article 192 on the collection of taxes by Local Governments should be amended to revive graduated tax or any other personal tax towards Local Governments. This will boost Local Government revenue collection and encourage civic responsibility and agency on the part of citizens.

43 The District Chairperson or the Speaker of a District Council may be removed from office by the council by resolution supported by the votes of not less than two-thirds of all members of the council on any of the grounds in sub-clause (a)-(c).

Article 193 regarding grants to Local Governments should be revised so that an agreed percentage of the national budget is allocated to the districts as opposed to conditional grants, which are unreliable and restricted. Financial baskets outside the manipulation of the Central Government would improve planning and service delivery.

Article 203 relating to RDCs should be amended to provide that RDCs be placed at regional level and removed from districts. Alternatively, if they are to be kept at district level, they must be elected or appointed by District Councils. The current structure makes RDCs an imposition from the Central Government and defeats the provisions of Article 176 (2) (b) and (c) of the constitution. Power to the people was and remains an objective of decentralisation.

A clause or provision should be inserted to clearly define the role of the Lord Mayor beyond the ceremonial roles. The exercise of power by the Executive Director of Kampala Capital City Authority (KCCA) should not be outside the control of KCCA.

The Minister for Kampala should have the same powers as other Ministers. The stalemate and perennial squabbles within KCCA are a mockery of the spirit of decentralisation. This can only be resolved by the declaration/ enunciation of clear roles and chain of command of each person within the structure.

Chapter Twelve: Defence and National Security

Article 211(1) should be amended to provide for the police service to be known as the Uganda National Police Service. This is an important signal of a transition from repressive and forceful colonial policing methods to modern citizen-centered policing.

Article 211(3) on the disposition of the Uganda Police Force (which is enjoined to be nationalistic, patriotic, competent, productive and of a national character) should include non-partisanship as one of the characteristics of the Uganda Police. This is important especially in the context of the reality of the

multiparty dispensation. It will strengthen the independence and objectivity of what is now referred to as the Uganda Police Force. Article 212, which delineates the functions of the police, should be revised to provide a clear distinction between the functions of the police and the army.

The Government proposal to amend Article 212 to give the President powers to direct the police on matters of policy should be dropped. This proposal falls short of democratic policing standards. It would consolidate 'regime policing',[44] a phenomenon that is contrary to the principles of democratic policing and is completely unjustified.

Secondly, the word 'policy' under Article 213(4) is overly broad and may be construed to include police operations which place the police machinery at the disposal of the President, which amounts to overstepping the President's mandate.

Article 213(2) on the appointment of the Inspector General of Police (IGP) and the Deputy Inspector General (Deputy IGP) by the President with the approval of Parliament should be amended to provide that the appointment be transparent through public vetting. It should be amended to provide clear qualifications for the holders of the offices of IGP and Deputy IGP.

Appointments should be restricted to qualified and professionally trained persons. The adoption and implementation of such a proposal will promote trust and build public confidence.

Article 213(5) on the power of the President to summarily remove the IGP or Deputy IGP should be revised to provide that powers to remove the IGP and his deputy from office should be through a tribunal approved by Parliament. The current provision for removal at the whim of the President does not conform to the standard of removal of a person from the office of a constitutional body.

44 The phrase 'regime policing' has been used to describe the phenomenon of a police force that is captive and has been reduced to being a partisan militia that operates to protect the interests of the sitting regime (Government) often against the interests of the greater public.

The Government proposal to repeal Article 213 should be dropped. The Article should nonetheless be amended to include a clause that bars the appointment of army officers to the offices of the IGP and Deputy IGP. The offices of the IGP and his deputy are extremely important and for this reason should be provided for under the constitution. It is not necessary to repeal this provision; instead it should be strengthened. This would address the current concern of an increasingly militarised police.

The police oversight body should be reconstituted so that it is an independent civilian entity. The Professional Standards Unit (PSU) is currently manned by police officers and they cannot be impartial in carrying out investigations and related oversight roles and processes.

Article 215 on the Uganda Prisons Service should be amended to change its name to Uganda Correctional Facilities. The office of the Commissioner General is extremely important and for this reason should be provided for under the constitution.

Article 215(2) should be amended to include a requirement for non-partisanship among the key values of the Uganda Prisons Service. This is a welcome development as a reflection of the current reality under the multiparty political dispensation.

Under Article 216(2), which vests the power for the removal of the Commissioner General of Prisons and his/her deputy by the President should be amended to provide that the Commissioner General and his/her deputy be removed by the President through a tribunal with the approval of Parliament. This will promote transparency.

Chapter Thirteen: Inspectorate of Government

Article 223(4), which makes provision for the appointment of the Inspector General of Government (IGG), should be amended to the effect that the Government ombudsman be appointed through a thorough competitive and open process, including interviews and public scrutiny, before approval by Parliament.

This promotes transparency and builds public trust in the office of the IGG in the execution of their mandate. Additionally, the IGG should have powers to sue and be sued. This will address the current gap that is fuelling conflict between the IGG's Office and the Attorney General's Office.

Article 232 should be amended to include a clause that Parliament shall make laws prescribing penalties and sanctions for non-compliance with the IGG's report. This will strengthen the powers of the IGG in executing their mandate. It will also ensure compliance with the IGG's orders to promote accountability and fight corruption.

Chapter Fifteen: Land and Environment

Article 237(2)(a) should be amended to limit the total acreage of land that any person, including corporate bodies, can purchase. A clause should be introduced to provide that Parliament shall enact a law on how much land one can acquire. This will protect vulnerable people from landlessness. The current Land Act is silent on how much land one can lease.

Article 239 regarding the functions of the Uganda Land Commission should be revised through the introduction of a clause prescribing qualifications for members of the Uganda Land Commission, the chairperson and members of the commission. They should be appointed through a public vetting process. This will improve the competence of the Land Commission in management of land matters.

Article 240 on District Land Boards should be expanded to introduce a new clause to require District Land Boards when disposing of land to do so on public disposal principles. This will ensure competitiveness and value for money.

Article 241 regarding the functions of the District Land Board should feature a clause that provides for protection of communal land and land held under customary regimes as the function of the District Land Board. This will protect the rights and interests of the people.

Article 243 on Land Tribunals should be repealed; in its place, the Judiciary should be empowered to adjudicate land disputes. Their function can be performed by well-resourced magistrates. The Land Tribunal is not necessary.

Article 244 on minerals and petroleum[45] should be amended to provide for minerals and petroleum to be vested in landowners to protect the interests of the people and landowners.

It was proposed that a Land Rights Adjudication Commission to define who is a bona fide occupant be created as a temporary measure. This commission will allow/force a buyout on the bona fide occupant for the percentage of the estate they own. This will address the need to protect the economy from land speculators and money launderers.

Chapter Sixteen: Institutions of Traditional or Cultural Leaders

Article 246 should be revisited with a view to establishing a workable approach towards integrating traditional and cultural leaders into the Local Government structure.

Chapter Seventeen: General and Miscellaneous

Regarding the insertion of Article 247(A) into Article 247 for the purposes of establishing a Salaries and Remuneration Board, this should be done in line with the recommendations of the Constitutional Review Commission (CRC) of 2001. It should include representation from trade unions and from the recognised professional bodies as well as people with relevant professional human resource management qualifications and experience.

The Article should adopt the recommendation made by the CRC for the commission to be chaired by "…. a person of high moral character and proven integrity, possessing extensive experience of service in the public service or in private sector organisations…" instead of the chair being a "… person qualified to be appointed as Judge of the Supreme Court."

45 Subject to Art.26, the entire property in, and the control of, all minerals and petroleum in, on or under, any land or waters in Uganda are vested in the Government on behalf of the Republic of Uganda.

There is a need for a more equitable and inclusive representation on the Board.

There are gross discrepancies in the current civil service salary structure and a glaring need to harmonize the inequalities as well as ensure a wage structure that is more responsive to the needs and changes in the cost of living.

Article 248 on the establishment of a Law Reform Commission should be amended to incorporate the recommendations of the report of the Commission of Inquiry of 2003 in the functions of the commission. The report proposed an amendment introducing Article 248A on functions of the commission.

Article 248 should introduce a provision establishing an organ to monitor the implementation of the constitution. Under the existing legal framework, Section 11 of the Uganda Law Reform Commission (ULRC) Acts spells out the functions of the ULRC; it does not include constitution monitoring. No organ currently has that specific mandate and it is constantly left to civil society to continue drumming about unimplemented aspects of the constitution. Although to an extent ULRC exercises that function, it is not an express constitutional mandate.

Making constitutional monitoring an express function would ensure that provisions like Article 249 are annually brought to the attention of Parliament and the Executive and do not lie forgotten – almost two decades after the enactment of the constitution.

Regarding the Government proposal to repeal Article 249, which creates the Disaster Preparedness and Management Commission, the said Article should be retained and amended to provide for the composition of the Disaster Preparedness and Management Commission on the same footing as other constitutional bodies and authorities.

A Disaster Preparedness and Management Commission was envisaged as a national-level body to ensure cohesive disaster preparedness and response at policy, planning and implementation stages across sectors and across the country.

Uganda has seen ever-increasing incidents of natural hazards such as earthquakes, landslides, drought and floods, which have destroyed economic and social infrastructure and caused environmental damage due to climate change over the last 10 years. On each occasion, the response of the Government has been scattered, highly politicised and inadequate. The current mechanisms under the Office of the Prime Minister (OPM) were largely designed to do some basic relief work in the wake of various disasters. Therefore, there still remains a need for the creation of a national-level body to manage all kinds of disasters.

The Government proposal to amend the definition of 'financial year' from the current construction which means the period of twelve months, ending on such date in any year as Parliament may by resolution prescribe, should be dropped. This is a rather redundant proposal. The current provision was intended to harmonise and bring Uganda's fiscal year into line with those of other countries in the region. In the context of the East African Community (EAC), Uganda cannot unilaterally make a change to its financial year.

Further, it is not clear what the relevance of the proposed change would be: The Public Finance Bill introduces substantial changes to give Parliament sufficient time to debate and pass the budget – which should adequately address the practice of Government seeking retrospective approvals for first quarter expenditures.

Chapter Eighteen: Amendment of the Constitution

Article 262 should be expanded to include Articles 20 and 28, which provide for non-derogable rights.

Chapter Nineteen: Transitional Provisions

Article 290, which is a transitional provision relating to Kampala, should be repealed and removed from the constitution because the requirement has been met.

Spent and redundant provisions, including Articles 264, 265, 266, 267, 268, 270, 271, 272, 273, 277, 278, 279, 286 and 288, should be deleted from the constitution.

3.3 Proposals by Political Parties

In light of the proximity of the 2016 elections, the year 2015 saw reform proposals being made by political parties like the Forum for Democratic Change (FDC) and GoForward. It will be apparent to the reader that their reform proposals spoke especially about constitutional reforms whose essence would impact the country's political administration, public service and governance architecture.

3.3.1 Forum for Democratic Change (Constitutional and Electoral) Reform Proposals:

In their 2015 manifesto, the FDC political party made a host of proposals, four of which are relevant to the content of this compendium. These are criminal justice reforms to protect the rights of offenders, improve the working conditions of law enforcement, and institute a correctional approach to the dispensation of justice and adjudication of disputes.

Other proposals included public administration reforms intended to create a lean and efficient public service, whose implementation would necessitate a reduction of the current size and scope of Government. The FDC also undertook to include the Extractive Industries Transparency Initiative (EITI) as part of the constitutional framework to ensure transparency in the natural resources and extractives sector.

3.3.2 GoForward Uganda (Constitutional and Electoral) Reform Proposals:

The newly formed GoForward Party launched a raft of reform proposals in late 2015/early 2016 that revolved around the structure of political administration, public administration and human rights observance. GoForward undertook to develop human rights-based manuals and conduct civic education for law enforcement as part of its plan for the demilitarisation of policing. The party proposed a policy and legislative framework that improves the working conditions of public servants as a way of improving service delivery. In this regard, GoForward undertook to conduct a review of the remuneration and benefits packages for public servants and revise it upwards in a way that reflects the cost of living and the structure of the

economy. Finally, GoForward proposed structural reforms in the branches of Government to enhance doctrines like the rule of law and separation of powers.

3.4 Other Reforms That Have Had an Impact on Constitutional Reforms

Constitutional Amendment Bill of 2019 ('Hon. Wilfred Niwagaba's Bill')

This amendment was proposed by Wilfred Niwagaba, Member of Parliament and Shadow Attorney General. It, among others, sought to repeal the office of the Resident District Commissioner (RDC); remove army representation from the House; restrict the number of Ministers to twenty-one; create a panel of Speakers in Parliament; reinstate the two five-year term limits for the presidency; rename the Uganda Police Force as the Uganda Police Services; repeal the Office of the Prime Minister; and require that after its creation, the position of Deputy President be voted for. The Bill also sought to prohibit the appointment of Ministers from among Members of Parliament; to provide for the involvement of the Parliamentary Commission in the appointment of the Clerk to Parliament; the involvement of the Judicial Service Commission (JSC) in the appointment of members of the Electoral Commission, as well as in defining the qualifications the electoral commission chairperson and commissioners should posses .

Below are the proposals made by the Constitutional Amendment Bill of 2019:

- A requirement for the Electoral Commission to determine election complaints that arise before polling within 10 days.
- An oath of allegiance for the Leader of the Opposition to be taken at the swearing-in ceremony.
- Holding presidential, general parliamentary and Local Government council elections on the same day whenever possible.
- Enacting provisions that make the Attorney General and Deputy Attorney General ex-officio Members of Parliament.

- Allowing political parties or organisations, or voters to challenge presidential elections; restricting the presidential terms to two.
- Replacing the office of Vice President with the office of Deputy President and providing for his/her election.
- Providing for the appointment of the Attorney General and Deputy Attorney General by the President on the recommendation of the Judicial Service Commission, as well as their tenure of office.
- Increasing the tenure of office of members of the Public Service Commission from four to five years.
- Mandating the Public Service Commission to determine salaries and allowances of public officers under *Chapter Ten* of the *1995 Constitution*.
- Mandating the Public Service Commission, Education Service Commission and Health Service Commission, as the case may be, to appoint persons to hold or act in the respective office of the rank of head of department or above.
- Provide for the establishment and functions of city land boards.

Though tabled, the Bill was presented at a heavily contentious time – at the onset of the electioneering season and in the aftermath of the removal of the presidential age cap – and was therefore not passed.

3.5 Subsidiary Legislation That Has Had an Effect on the Constitutional Order

Over the past decade and a half, during the 9th and 10th sessions of the Parliament of Uganda some repressive, restrictive, constricting and limiting laws, regulations and policies were passed. These enactments have invariably had the effect of clawing back on the rights to self-expression, association, movement, political mobilization and organization. In the same measure, some have been very progressive, extending the frontiers of the Constitutional order as later discussed.

This compendium deems it important to enumerate some laws because of their positive or negative effect on constitutionalism and the rule of law.

3.5.1 Human Rights Enforcement Act of 2019

This is a remarkably progressive piece of legislation that was enacted to provide for the enforcement of human rights, as enumerated under the Bill of Rights. Article 50(4) of the constitution provides for the enactment of laws for the enforcement of rights and freedoms. Given the frequently dire human rights situation in the country, this Act has the potential to raise the bar for holding public officials (especially those in law enforcement) accountable for their actions and omissions. It is noteworthy that the law provides for the criminal prosecution of violators of human rights, and requires courts to nullify trials if fundamental (due process) rights have been abused. It is worth stating that police officers implicated in violations have been brought to justice by virtue of this law. It is a laudable step in ensuring that the Bill of Rights is justiciable and not an inactive part of the constitution.

3.5.2 Non-Governmental Organisations Act of 2016

This is by far the most expansive, calculated and insidious Act of Parliament designed to torpedo the smooth sailing of NGOs, whether engaged in governance, service delivery/humanitarian assistance, activism or advocacy work. From registration, through to the working environment for these entities, the law has sections that inhibit rather than facilitate their existence.

Some of the outstanding propositions it makes in terms of governing the operations of NGOs are as follows:

A Secretariat, headed by an Executive Director (instead of a Secretary), with expanded duties and powers, to support the work of the NGO Board [Section 16]

In particular, the Secretariat is now authorised to inspect premises and request information at any time, and obstruction or failure to comply is an offence that attracts heavy penalties including both a fine and imprisonment.

The Secretariat is additionally clothed with the powers to prosecute offences under the Act. Additionally, members of the Secretariat and Board are shielded from liability in respect of acts undertaken under the Act in good faith. [*Section 41*]

The duties of the Board are considerably expanded, including, notably, carrying out background checks on organisations seeking registration. The mandate and reach of the Board are considerably expanded, particularly by the creation of structures to scrutinise NGOs at all levels of Government. Under this elaborate structure, regional offices of the Board along with District Non-Governmental Organisations Monitoring Committees (DNMCs) and Sub-County Non-Governmental Organisations Monitoring Committees (SNMCs) are created, all to be supervised by the Board.

There was the establishment of 'special obligations' for organisations, including a requirement for additional approval from the DNMC prior to conducting operations in a particular area (in addition to the general Board approval or certification); the restriction of operations to particular areas; and a requirement to be 'non-partisan'. This law should be understood alongside older but enabling laws such as the *Police Act*[46] and the *Criminal Procedure Code*[47] whose provisions on searches and search warrants can be manipulated to harass and/or disrupt the smooth operations of NGOs and the broader civil society fraternity.

3.5.3 Computer Misuse Act, 2011

One should not be hoodwinked by the rosy wording of the Act's objective, which purports to make provision for the safety and security of electronic transactions and information systems; to prevent unlawful access, abuse or misuse of information systems, including computers; and to secure the conduct of electronic transactions in a trustworthy electronic environment. *Sections 9* through *11* of the law, as a matter of fact, enable state intelligence agencies to overstep privacy rights without restriction and proffer charges on the basis of an individual's refusal to disclose "data" which has been broadly,

46 Chapter 303 of the Laws of Uganda
47 Chapter 116 of the Laws of Uganda

vaguely and disproportionately defined to mean and include electronic representations of any form.

Under the above-mentioned sections (*9–11*), any person can be compelled to hand over any "data" for purposes of assisting with investigations. Whether it is at the expense of exposing private information, the citizen must hand it over, making it prone to abuse by the state. Telecom service providers are equally compellable.

Contrary to the tenets of criminal law which require specificity, *Section 12* creates indeterminate offences that are open to overly broad and arbitrary definitions, given the unique and evolving nature of information and computing technologies.

Section 13 concerns itself with "access with intent to commit or facilitate the commission of a further offence". It is not clear how the State will lead evidence insofar as the intention of an accused person to commit or facilitate the commission of a further offence will be proved or disproved.

Section 14 worsens an already bad situation by (potentially) enacting that private information stored on a computer may not be concealed, protected or modified for whatever reason, notwithstanding that the user is the owner of such device. The section does not take into consideration the work of the broad range of artists whose work revolves around the use of information to convey a particular message. This provision is equally ripe for abuse and misuse.

Sections 18 and *20* are not accommodative of the place of whistleblowers who by their very nature engage in the disclosure of unauthorised information of the kind enumerated under *sub-sections (2) (a)* to *(d)*.

The most egregious enactment under this law is arguably *Sections 24* and *25*, which create the crimes of cyber harassment and offensive communications, respectively. Section 24 provides the Director of Public Prosecution (DPP) with unbridled administrative and prosecutorial discretion which has, indeed, resulted in several cases of selective prosecution of Internet users based on certain views deemed objectionable by the Government or high-

ranking politicians and public officers. Needless to say, the editors of a tabloid, an academic and several online activists have already fallen prey to this unfortunate law whose manifestations clearly show what the intentions of the drafters were. Fortunately, in 2023, the Constitutional Court struck down[48] *Section 25* of *the Computer Misuse Act*, in *Andrew Karamagi and Robert Shaka v. Attorney General*, Constitutional Petition No. 5 of 2016.

3.5.4 Interception of Communications Act, 2010

This law was enacted against the backdrop of terrorist attacks that had claimed scores of Ugandan lives. Its spirit is angled towards affording state security/intelligence organisations opportunity to listen in on conversations or intercept other correspondence of an electronic nature between two or more people for reasons of national security.

However, owing to previous cases of misconduct (such as unlawful detention, malicious prosecution, coerced confessions) and selective application of this law on the part of the incumbent regime, its noble intentions have been tainted, as has been the case was with the Anti-Terrorism, Anti-Sectarianism and Anti-Money Laundering laws. This has occurred despite the inclusion of procedures such as obtaining an interception warrant from a court with competent jurisdiction.

3.5.5 Anti-Terrorism (Amendment) Act, 2015

This law was passed without sufficient consultations. Its provisions gave the IGP unbridled powers of arrest, detention, search and interrogation – all of which are open to being, and were, in fact, abused – particularly against the political opposition.

Section 9 (1) criminalises the publication and dissemination of news materials 'that promote terrorism', an expression that is obscurely defined and is predisposed to misuse by the echelons of power. Furthermore, the Act provides that journalists' material can be subjected to terrorism investigations and cannot profit from exclusion/immunity. This offends journalism and its associated ideals of confidentiality and fortification of sources.

48 Constitutional Petition No. 5 of 2016

3.5.6 Public Order Management Act of 2013, Anti-Pornography Act, 2014 (and the repealed Anti-Homosexuality Act of 2014)

These three laws constituted an attack on the Bill of Rights. They proscribed civil rights and liberties like associational rights, freedom of assembly and the equal protection clause, i.e. Article 21, which protects all Ugandans regardless of their status. The *Public Order and Management Act* (POMA) was ostensibly directed at dissidents, protestors and 'hooligans'; the *Anti-Pornography Act* (APA) at porn-dealers, and newspapers like the *Red Pepper* that are associated with pornographic content; and the "annulled" *Anti-Homosexuality Act* (AHA) at homosexuals who, in this context, were viewed as 'deviants' and 'perverts'. Prof. Joe Oloka-Onyango argues thus: "Each of these laws affects a wide range of people, regardless of political opinion or status, sexual preference or position. They affect us whether we wear shorts or trousers, burkas or saris, *busutis* or *mishanana*, *kanzus* or coats. They apply to us whether or not we have ever watched a pornographic movie, and they should concern us whether or not we believe in human rights."[49]

It should be recalled that the *Public Order Management Act* was designed in the heat of the Walk-to-Work (W2W) protests led by Opposition leader Dr. Kizza Besigye. It was clearly intended to tighten the grip of the police and security forces on dissent and protests in the wake of the W2W and the "For God and My Country" (4GC) protests that rocked the country in the aftermath of the 2011 election.

In its earlier manifestation – with provisions that barred three people from holding a meeting without police permission , the POMA reflected a Government in an extreme state of panic as the winds from the Arab Spring blew further south. Despite its professed noble intentions with regard to the maintenance of law and order, the POMA is fatally flawed for several reasons.

In the first instance, the Act reverses the basic premise on which the right to freedom of peaceful assembly is based. In other words, the POMA forces

49 Joe Oloka-Onyango at a public lecture organised by the School of Law, Makerere University in June 2015

those who oppose the Government of the day and want to translate such opposition into protest, to justify why they should not be stopped from doing so. On the contrary, the Act should be compelling the police to give sound reasons for not permitting a protest to take place.

Secondly, POMA places an inordinate degree of discretionary power in the police, and specifically in the IGP. This is obviously problematic because it makes the IGP prosecutor and judge in his own cause, violating basic principles of natural justice.

Thirdly, the law gives lower-ranking police officers cover from abiding by due process requirements. This aggravates human rights violations. Like the other comparable laws, the POMA, by design, intrinsically suppressed political and civil society activity.

Aside from the contents of the Act, there is another dimension that is often lost in the discussion. The case of *Muwanga Kivumbi v. Attorney General*[50] challenged the excessive powers of the police, especially those contained in *Section 32* of *the Police Act,* which allowed the IGP to prohibit the convening of an assembly allegedly "on reasonable grounds".

Agreeing that this provision was unconstitutional, Justice Mpagi Bahegeine ruled that where individuals assemble, "if the police entertain a 'reasonable belief' that some disturbances might occur during the assembly, all that can be done is to provide security and supervision in anticipation of disturbances. It is the paramount duty of the police to maintain law and order but not to curtail people's enshrined freedoms and liberties on mere anticipatory grounds, which might turn out to be false. Lawful assemblies should not be dispersed under any circumstances."[51]

Of all the three laws under consideration, the *Anti-Pornography Act* produced the most immediate and vocal reaction from the public, particularly from women human rights activists. This response was in relation to the definition of the term 'pornography' and *Section 13,* which outlines the penalty for

50 Constitutional Petition No. 9 of 2005
51 Ibid., 36.

the offence. The passing of the Act was met by vigilante acts of undressing women by street mobs, of police officers stopping women in the street and ordering them to return home and change their clothes, and even the case of a judicial officer in Bukomansimbi summarily sentencing parties to a three-hour imprisonment for wearing miniskirts.[52] Such incidents and the imposition of a *de facto* dress code on women are problematic from a legal, human rights and, by extension, constitutional point of view.

Indeed, the language of the Act opens it up to 'unrestrained interpretation', and a pandora's box for all kinds of abuse against women.

The *Anti-Homosexuality Act* quite clearly contravened several Articles of the constitution, specifically *Articles 2(1)* and *(2)* on the supremacy of the constitution; and *Articles 21 (1)* and *(2)* on equality and freedom from discrimination, and *27* on the right to privacy as decided by the Constitutional Court[53]. Furthermore, criminalising of touching by a person of the same sex was found inconsistent with *Articles 28 (1), (3) (b), 28 (12), 42* and *44 (c)*.

Finally, by criminalising the aiding, abetting, counselling, procuring and promotion of homosexuality, the *Anti-Homosexuality Act* created offences that were overly wide. It also penalised legitimate debate and professional counsel in direct contravention of the principle of legality, the freedoms of expression, thought, assembly and association, academic freedom and the right to civic participation.

The Act went over the top in classifying houses or rooms as brothels merely on the basis of occupation by homosexuals. It basically created victimless crimes against people who are otherwise law-abiding citizens of society. But the AHA was more problematic. At a broader level, it institutionalised homophobia and thereby promoted a culture of hatred and a clear violation of the right to human dignity.

52 Miniskirt wearing women jailed in Bukomansimbi, *Uganda Radio Network,* accessed at https://ugandaradionetwork.net/story/miniskirt-wearing-women-jailed-in-bukomansimbi on April 4 2023

53 *Oloka-Onyango & 9 Others* v. *Attorney General*, Constitutional Petition 8 of 2014

3.5.7 The Anti-Money Laundering Act (AMLA), 2013 (to be watched alongside the Financial Institutions Act and Bank of Uganda Act)

The *AMLA* provides that NGOs are accountable persons. In the event that an NGO has a Board of Directors, these are treated as accountable persons in their own right under the Act. This recognition brings with it heavy obligations and responsibilities which necessitate all persons directly involved in the activities of NGOs to appreciate the content and scope of the Act. The Act is divided into eight different parts: (a) the general introduction and definitional aspects of what comprises money laundering; (b) the criminalisation of money laundering; (c) anti-money laundering prevention measures; (d) the Financial Intelligence Authority (FIA); (e) seizure and forfeiture of assets in relation to anti-money laundering; (g) offences and penalties; (h) miscellaneous provisions on powers of investigating authorities and supervisory bodies, immunities and the making of regulations.

Part III, which details money laundering prevention measures, should be of utmost interest to NGOs for two reasons: (a) as an accountable person, an NGO will have to discharge all the obligations contained in this part; (b) as a client to other accountable persons, banks, churches, fellow NGOs, auditors and accountants are required to maintain and supply records about your entity to the FIA or other Government agencies, even without your permission.

The AMLA has human rights implications. Issues are likely to arise in relation to the rights to privacy and access to information. This is both at the level of the NGO's board or structures in their relationship with the FIA, as well as when the FIA shares information with other Government agencies. Further, in light of the politically related work a number of NGOs engaged in civil liberties undertake, serious challenges with regard to the freedoms of association and expression are likely to arise. In partial mitigation, NGOs should be encouraged to exercise credible self-regulation and peer review mechanisms such as the QuAM (i.e. Quality Assurance Mechanism) to enable them to improve on their internal management and governance processes, as

advised by Robert Kirunda.[54] This will minimise the risks associated with exposure from laws like the AMLA, and will help the NGO fraternity build resilience.

While the above laws do not constitute constitutional reforms, in respect to the *1995 Constitution*, they impact constitutionalism and the development of the rule of law in the country and are worth paying attention to. They also symbolise the aspects of the repressive legislative agenda over the past two decades.

54 Robert Kirunda, "Understanding the Anti-Money Laundering Act, 2013: Implications on the Work of Civil Society and Non-Governmental Organisations" (August 27, 2014). SSRN: https://ssrn.com/abstract=2931658 or http://dx.doi.org/10.2139/ssrn.2931658 (accessed 10 October 2021)

Chapter Four: Conclusions and the Way Forward

Throughout the length and breadth of this exposition, there has been an endeavour to distil the essence of Uganda's journey of constitutional development. Amidst the governance crisis that Uganda has endured for decades throughout its post-independence lifetime, it is a remarkable feat that the nascent community of civic organisations in Uganda has been able to make some significant wins in the areas of law reform, jurisprudence and the definition of civil liberties in spite of the existing challenges.

The above-mentioned achievements have been propelled by a series of campaigns like the National Campaign for Free and Fair Elections, collective advocacy and lobbying drives, and public interest litigation. Suffice to say that all three delivery vehicles are hinged on the constitutional rights entrenched in the country's Bill of Rights. These rights include the protection of freedom of conscience, expression, movement, religion, assembly and association (Article 29 of the constitution); the right of citizens to participate in the affairs of Government – individually or through representatives, and to participate in peaceful activities to influence the policies of Government through civic organisations.

Public interest litigation, which is provided for by Article 50, has been a valuable vehicle for the country's constitutional reforms. The State and corporate actors have been held accountable for the infringement of fundamental rights or freedoms, and redress has been granted for wrongdoing or mistreatment. This avenue of juridical development has also been responsible for enabling courts to provide clarity regarding the freedom of the press[55], the right to health[56], the digital revolution, relative to freedom of expression[57], the place and role of the military in a constitutional democracy[58] and critical doctrines such as the separation of powers and the rule of law[59].

55 Article 29 of the 1995 Constitution
56 Article 39 of the 1995 Constitution
57 Constitutional Petition No. 5 of 2016
58 Article 208 of the 1995 Constitution
59 The Bill of Rights entrenched in the 1995 Constitution

Other reforms have been midwifed by Government-led processes such as referenda[60], legislative enactment[61] and the creation of watchdog institutions[62] to give life to the directives of Parliament and the Judiciary. The story of Uganda's quest for constitutionalism is incomplete without paying tribute to the sacrifices of hundreds, if not thousands, of citizens who have participated in peaceful protests, engaged in activism, and have been harassed, persecuted, maimed, tortured, exiled and even killed, in their struggle for an open, free and democratic society. It is a chilling affirmation of the Jeffersonian quote: "The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants." It is indeed through such efforts that laws like the *Prevention and Prohibition of Torture Act of 2012* and the *Human Rights (Enforcement) Act of 2019* were conceived and added to the corpus of Uganda's laws.

However, numerous areas for constitutional reform and development still exist, pertaining to Uganda's turbulent past, historical injustices and fault lines among them, the transition from the long rule of President Museveni, and the land tenure system.

As stated in the introductory section of this scholarly work, three benefits will accrue from it:

i) Readers and users will have an objective one-stop reference point from which to understand and even predict and plan the trajectory of constitutional reform proposals in Uganda since 1995 and beyond;

ii) Stimulate civil society engagement on constitutional reform processes as the country contends with the prospect of transition and the settlement of long-standing historical questions; and

iii) Support the academic community with a stock of knowledge that can be used to further ongoing research into the subject of constitutional reforms in Uganda.

60 The referendum held on July 28, 2005 restored multiparty politics in Uganda
61 Chapter Six of the 1995 Constitution
62 Article 223 of the 1995 Constitution

As the country continues on its journey for the establishment of a thriving democracy, that adheres to the grundnorm and institutional processes as opposed to the whims of personalities, progress and naturally disruptions and reversals are envisioned. As Oloka-Onyango has postulated, "there are still several constitutional provisions and laws that require either outright repeal or review. These provisions cover the Movement, those governing the registration of political parties and others on the media and NGOs, to mention a few. Significantly more attention needed to be paid to the functioning of the Electoral Commission in a competitive and pluralist environment, and to the role of a neutral and professional Army, insulated from the tensions of partisan participation in the electoral process."[63]

It is therefore incumbent upon civil society to continue to strive for this grand vision. This study is also important, not only for posterity, but for purposes of providing theorists and practitioners with information which will guide their decisions and conclusions, and or/to predict the future, as earlier mentioned.

This study should be disseminated widely so that it can benefit various stakeholders, including key institutions such as the Legislature and the Law Reform Commission.

Below are some recommendations on how to ensure that the compendium is beneficial in terms of policy, legislation and practice:

1. Timeliness

The legislative calendar, election cycle and administrative agenda of any country is a moving target that those who wish to influence policy and legislation should pay attention to. Key stakeholders engaged in constitutional reforms should closely monitor these processes so that the submission of constitutional reform proposals is in line with the broader national conversation at a given time. For example, introducing reforms close to elections (say, within a year of elections), right after elections, or at the

63 Joe Oloka-Onyango, "Constitucide: The Birth and Death of Democratic Constitutionalism in Uganda, Emerging Electoral and Constitutional Trends in East Africa", August 8, 2013, East African Law Society

start of a new financial year is not ideal. Reforms should be presented when uptake for proposals is at its highest, i.e. in the run-up to the preparation of the budget framework and in the middle of a given election cycle to allow ample time for all concerned parties to engage and discuss them effectively. The Supreme Court counselled that election-related reforms should be undertaken within two years of the establishment of the new Parliament.

2. Concerted advocacy efforts

Efforts to cause significant changes to the constitution cannot be marshalled through singular efforts. They should be joint approaches through networks and coalitions. The community of CSOs in Uganda – including those whose programme areas are not necessarily focused on governance – should work more closely so that the voice of the not-for-profit sector is audible, amplified and clear. Religious institutions, cultural organisations, the media, social movements, professional and vocational associations – beyond the usual ensemble of NGOs – should all participate. Previous efforts ran into early headwinds because they were presented by a handful of players –regardless of the diligence with which reform proposals had been prepared.

3. Alliances with progressive actors

Civil society actors should take advantage of their non-partisan identity and engage with political actors across the political party spectrum to garner the votes needed to carry these propositions. The same should be done with policymakers and decision-makers at the Local Government and Central Government levels. This will ensure buy-in from them. A deliberate campaign must be mounted to forge such alliances with especially progressive actors so that the reform proposals have a foot in the door even before they are introduced formally.

4. Citizen-led initiatives for constitutional reform

The reforms proposed by various actors are ultimately made in the name of the citizens. They are representations of the vast voices and collective aspirations of the people. It follows that efforts to ensure that the proposals bear fruit should also be led by them. Civil society is a mere facilitator or catalyst of

the process, but not the ultimate owner or exclusive leader. The leadership of constitutional reform proposals must be shared between different groups and formations as co-equals, with no real or perceived superior among them. That way, the proposals for constitutional reform cannot be exclusively identified with non-governmental entities and relevant ministries, but with the organic units of society like community groups, small savings and credit organisations, vocational associations and faith-based organisations.

5. Sustained engagement, during and after election cycles

Proposals for constitutional reform have a major impact on the constitutional order and political economy. This means that these changes or amendments affect various interests. It is therefore important that all the above efforts are conducted between and during elections – using different tactics and strategies tailored to each period. The campaign must be sustained over a prolonged period (say five years), as opposed to one-off engagements. This way, stakeholders would attach more importance to the process.

To sum up this collation, it is important that alongside these reform proposals – both existing and proposed – the country bears in mind the importance of building a value system and behavioural norms. A value system and behavioural norms would ensure that legislation is grounded in actions and attitudes that enable progressive constitutionalism. After all, constitutions (and the constitutional orders in which they exist) are as strong and durable as the culture in which they are found. Having said that, the various proposed reforms intended to improve Uganda's constitution must be the work of all the players and stakeholders (Government entities and civil society) enumerated in the foregoing previous chapters. Government ought to adhere to the raft of reforms that have been presented, and non-state actors (like the civil society sub-sector) should sustain their advocacy and campaign efforts to ensure a better coordinated reforms agenda.

Chapter Five: Annexes

A. Matrix of Reforms

No.	Effort	Purpose/Key Issues	When?	Lead Agency	What Happened?
1	**Local Government Bill of 1997**	**Rollout of decentralisation, Local Governments, their functions and powers**	**1997**	**Attorney General**	**Was enacted into law, subsequently amended, and is still in force**
2	**The Movement Bill of 1997**	**Establishment of a set of local structures countrywide for the Movement system**	**1997**	**Attorney General**	**Was enacted into law, but nullified by the return to multiparty politics**
3	**The Land Amendment Bill of 1998**	**A law to provide for the customary, freehold, mailo, and leasehold tenures in Uganda**	**1998**	**Attorney General**	**Was enacted into law, subsequently amended, and is still in force**
4	**The Political Organisations Bill of 1998**	**A replica of the Political Organisations Bill whose effect was to stymie the operations of political parties**	**1998**	**Attorney General**	**Withdrawn by the Attorney General shortly before being tabled for enactment**

No.	Effort	Purpose/Key Issues	When?	Lead Agency	What Happened?
5	**Referendum and Other Provisions Bill of 1999**	**To provide for the conduct of the Referendum that was due in the year 2000**	**1999**	**Attorney General**	**Was enacted, but short-lived, following its annulment by the Constitutional Court – although the Supreme Court overturned the decision**
6	**The Kiyonga Committee Report of 2002**	**To establish whether to retain the Movement system, or revert to multiparty politics**	**2002**	**National Political Commissar, as he then was, Dr. Crispus Kiyonga**	**Largely ignored by the President, in favour of some recommendations made by the Constitutional Review Commission report of 2003**
7	**Government White Paper of 2003/4**	**Endorsed the lifting of term limits, recommended curtailment of the Judiciary's powers; and rejected the Constitutional Review Commission (CRC) report**	**2003/4**	**Issued by Government**	**Rejected the bulk of recommendations made by the Constitutional Review Commission; endorsed the lifting of presidential term limits**

No.	Effort	Purpose/Key Issues	When?	Lead Agency	What Happened?
8	**The Constitutional (Amendment) Act, 2005**	**Return to multiparty politics; provide for Kampala Capital City, creation of regional Governments as the highest political authority in the regions, and to provide for new districts of Uganda among others**	**2005**	**Attorney General**	**Was enacted, and made the first major reforms to the 1995 Constitution**
9	**The Parliamentary Elections Act, 2005 Act No.17 of 2005**	**Provide for the conduct of parliamentary elections**	**2005**	**Attorney General**	**Was enacted into law, subsequently amended, and still in force**
10	**National Alliance for Free and Fair Elections (NAFFE), 2011-2013**	**Push for comprehensive political reforms**	**2011-2013**	**Forum for Democratic Change (FDC)**	**Declared an illegal society by Government**
11	**CCEDU Electoral Reform Agenda (CERA), 2011-2017**	**Comprehensive electoral reforms**	**2011-2017**	**Citizens Coalition for Electoral Democracy in Uganda/ Foundation for Human Rights Initiative (CCEDU/ FHRI)**	**A Handbook was prepared by CCEDU, part of the text was used to inform the amendment of the electoral laws in 2015**

No.	Effort	Purpose/Key Issues	When?	Lead Agency	What Happened?
12	**Free and Fair Elections Campaign, 2013-2014**	**Comprehensive electoral reforms**	**2013-2014**	**Uganda Governance Monitoring Platform/ Uganda National NGO Forum/ Citizens Coalition for Electoral Democracy in Uganda/ Political Parties (UGMP/ UNNGOF/ CCEDU/ Political Parties)**	**A Citizens Compact was published and shared with different key actors, including Parliament. Parliament acknowledged it but cited lack of ample time to debate and enact the reforms**
13	**The Democratic Front, 2014-2016**	**Push for a comprehensive constitutional and political reforms**	**2014-2016**	**Great Lakes Institute for Strategic Studies/Uhuru Institute/ Uganda National NGO Forum (GLISS/ UHURU/ UNNGOF)**	**Held several discussions alongside The Democratic Alliance (TDA). The death of TDA had a corresponding effect on it**
14	**Citizens Action for Return of Presidential Term Limits, 2012**	**Return of the two five-year Presidential Term Limit**	**2012**	**Uganda Governance Monitoring Platform/ Ugandan National NGO Forum (UGMP/ UNNGOF)**	**Hon. Gerald Karuhanga presented a motion seeking leave to prepare a Private Members' Bill. Leave was not granted**

No.	Effort	Purpose/Key Issues	When?	Lead Agency	What Happened?
15	**The KcK Compendium on reforms, 2014**	**Advocacy and lobbying tool for constitutional reforms**	**2014**	**Kituo cha Katiba: Eastern Africa Centre for Constitutional Development**	**Produced a Compendium of Reforms**
16	**The Uganda National Dialogue Process, 2014-todate**	**Comprehensive legal, political, and constitutional reforms**	**2014 todate**	**Inter-Religious Council Uganda/The Elders Forum/ Great Lakes Institute for Strategic Studies (IRCU/TEF/ GLISS)**	**Conducted countrywide consultations, developed research papers. The process stalled to-date in spite of Government's commitment to support it**
17	**The Constitution (Amendment) Bill of 2015**	**To prescribe a procedure for the removal of members of the Electoral Commission, similar to the procedure for the removal of judicial officers, among others**	**2015**	**Attorney General**	**Presented a private members bill in Parliament, referred to committee, but has stalled to-date**
18	**GoForward Uganda (Constitutional and Electoral) Reform Proposals 2015**	**Public Administration reforms, Human Rights and Civic Education for Armed Forces, and the demilitarization of law enforcement**	**2015**	**GoForward political party**	**Elections botched by widespread malpractice**

No.	Effort	Purpose/Key Issues	When?	Lead Agency	What Happened?
19	**The Registration of Persons Act, 2015, Act 4 of 2015**	**Consolidate the law on registration of persons; to provide for registration of individuals; to establish a national identification register; to establish a national registration and identification authority; to provide for the issue of national identification cards and aliens identification cards**	**2015**	**Attorney General**	**Was enacted into law, and is still in force**
20	**Forum for Democratic Change (Constitutional and Electoral) Reform Proposals, 2015**	**Electoral Reforms, Criminal Justice Reforms, lean Government, Extractive Industries Transparency Initiative**	**2015**	**Forum for Democratic Change political party**	**Elections botched by widespread malpractice**
21	**Strengthening Citizen Engagement in Elections (SCENE), 2015-2023**	**Elections-related and constitutional reforms**	**2015-2023**	**Uganda National NGO Forum**	**A number of citizen-centred activities, including advocacy for reforms, formation of lobby groups, and civic education**

No.	Effort	Purpose/Key Issues	When?	Lead Agency	What Happened?
22	**Credible Elections Now! (CREN) 2017-2018**	**Push for electoral reforms of a constitutional nature**	**2017-2018**	**Uganda National NGO Forum/ ActionAid International Uganda**	**Developed a Memorandum that was submitted to Parliament to inform the amendment of electoral laws in 2019**
23	**The Local Governments Act (Amendment) Bill, 2017**	**Streamline the decentralisation model and give greater effect to devolution of legislative, executive and financial appropriations powers**	**2017**	**Attorney General**	**Amended the existing Local Governments Act to give effect to decentralisation, devolution of functions, powers and services**

No.	Effort	Purpose/Key Issues	When?	Lead Agency	What Happened?
24	**Supreme Court Ruling in *Amama Mbabazi* v. *Museveni and Others*, Presidential Election Petition 1 of 2016**	**10 reform issues directives and orders to the attorney general for action**	**2016**	**Justices of the Supreme Court of Uganda**	**After a public interest litigation suit, with support from KcK, about 60 per cent of the court ruling was implemented by Government** **NB:** **The following Bills were tabled in this respect: Presidential Elections (Amendment) Bill No.17, 2019; the Parliamentary Elections (Amendment) Bill No.18, 2019; the Electoral Commission (Amendment) Bill No. 19, 2019; the Political Parties and Organisation (Amendment) Bill No. 20, 2019; and the Local Governments (Amendment) Bill No.21, 2019**

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USAID/Uganda Civil Society Strengthening Activity

Plot 7 Estate Link Road, Bukoto
P.O. Box 3277, Kampala - Uganda
Tel: +256 - 414 - 533295 / +256 - 312 - 113321
Fax: +256 - 414 - 541028
Email: kituo@kituochakatiba.org
Website: www.kituochakatiba.org