

**CONSTITUTIONAL REFORM AND GOOD GOVERNANCE IN UGANDA:
A CASE STUDY OF THE UGANDA PARLIAMENT**

BY

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**A RESEARCH REPORT SUBMITTED TO THE FACULTY OF LAW IN PARTIAL
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DECLARATION


I **Deng Kur Joseph**, a student of Kampala International University, hereby declare that this is my original work and has never been presented to any university or higher institution for any academic award. Where the works of other authors and writers were referred to, due acknowledgement was made.

Signature.....

Date.....

APPROVAL

This research was carried out under my supervision, and is hereby submitted for examination with my approval as the designated University Supervisor.

Signature.....

Date.....25/07/2017

DEDICATION

I didicate this dessertation to my mother, my beloved wife, my daughters and my son, and my entire family and friends for the financial, spiritual, moral support and encouragment without them this would be impossible.

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LIST OF ACRONYMS

ACHPR	-	African Charter on Human and Peoples Rights
AG	-	Attorney General
AU	-	African Union
CA	-	Constituent Assembly
CAO	-	Chief Administrative Officer
CRC	-	Constitutional Reform Commission
DP	-	Democratic Party
DPC	-	District Police Commander
FDS	-	Fiscal Decentralization Strategy
FY	-	Financial Year
GoU	-	Government of Uganda
GTZ	-	German Development Cooperation Agency
ICCPR	-	International Covenant on Civil and Political Rights
IFMS	-	Integrated Financial Management System
KCCA	-	Kampala Capital City Authority
LC	-	Local Council
LGDP	-	Local Government Development Programme
LGPAC	-	Local Government Public Accounts Committee
LPO	-	Local Purchase Order
MPs	-	Members of Parliament
NRA	-	National Resistance Army
NRC	-	National Resistance Council
NRM	-	National Resistance Movement
PPOA	-	Political Parties and Organizations Act
PRALP	-	Popular Resistance Against Life Presidency
UDHR	-	Universal Declaration of Human Rights
UN	-	United Nations
UPC	-	Uganda People's Congress
UPDF	-	Uganda people's Defense Forces

UPPC	-	Uganda Printing and Publishing Corporation
USA	-	United States of America

ABSTRACT

This dissertation titled “Constitutional reforms and good governance in Uganda” is presented as a result of a study that was carried out at the Parliament of Uganda. The study was based on three specific objectives, i.e.: to examine the provisions of Uganda’s constitution in line with the principles of good governance in Uganda; to examine the steps undertaken in the constitutional reform process by the Parliament of Uganda; and to investigate the challenges faced by Uganda’s Parliament in the constitutional reform processes in relation to the promotion of good governance in Uganda. The research was in form of a descriptive survey design, and used a sample of 140 respondents selected from among the Members of Uganda’s 10th Parliament as well as members of the civil society in Uganda. The study used questionnaires and interviews as the main tools of data collection, and the data was analyzed using constant comparison technique. The study found out that the 1995 Constitution has various provisions which stipulate how and when it should be reformed, that there are various mandated steps that have to be undertaken in the process of constitutional reforms, and that Uganda’s Parliament faces various challenges in the constitutional reform processes in relation to the promotion of good governance in Uganda. The study concluded that there have been positive steps in the right direction with regards to promoting constitutionalism and good governance though there are still some challenges. The study recommended that government should ensure that there is access to information and adequate civil education of its citizens about their rights, that Parliament should be adequately supported by strong oversight State institutions and staff to enable them to perform their functions efficient and effectively, that government should ensure that its institutions are more open and easily accessible to the public, that government and parliament should adopt appropriate laws, policies and mechanisms towards improving citizens’ participation in economic, social and political decision-making processes that affect their lives, that government should prepare clear job description and assignment of duties and obligations for MPs, including after service obligations and responsibilities, which should be made available to the public.

CHAPTER ONE

INTRODUCTION

1.1 Background to the study

Throughout the world, there has been growing interest in issues related to constitutionalism and good governance over the course of human civilization. It is widely acknowledged that good and democratic governance is a fundamental requirement for progress and sustainable development.¹ Parliaments have a role to play as key state institutions in ensuring that the rule of law and good governance is promoted and maintained. In order to ensure good governance, it is necessary that the constitution, a supreme legal instrument from which the ruling elite draw their power and legitimacy,² has to contain institutionalized mechanisms of power control for the protection of the interests and liberties of the citizens for which it is made.

Bearing in mind the words of Lord Acton that “power corrupts, and absolute power corrupts absolutely”,³ constitutionalism is thus necessary in expressing the idea that government authority is derived from the people and should be limited by a supreme instrument which clearly expresses what the government can and cannot do. It is the idea that the state is not free to do anything it wants, but is bound by laws limited its authority. Constitutionalism had its historical foundations in England, but has been passed on to many other nations across the world.

In Uganda, constitutionalism draws its roots from the country’s colonial history, with the first formal constitution coming into force in 1961, coming out of the Lancaster House conference, prior to independence from Britain.⁴ Since then, Uganda’s constitutional journey has undergone various stages, both in progression and regression. Just like in other countries, for example in Apartheid South Africa,⁵ the pre-civil rights USA,⁶ and Communist China among others, where

¹ Don Egeland, *“Constitutionalism is a form of government where there is limitation on the administrative powers of the government. Fehrenbacher, Constitutions and Constitutionalism in the Slaveholding South”* (University of Georgia Press 1989) p.24

² Ibid 27.

³ Fasnacht George Eugene, *A”cton’s Political Philosophy: An Analysis”* (London: Hollis 1952) p.7

⁴ Roland Oliver, *“A political history of Uganda”* (Nairobi and London, Heinemann Educational Books 1980) p.39

⁵ Abegunrin Olayiwola, *“Africa in Global Politics in the Twenty-First Century: A Pan-African Perspective Palgrave”* (MacMillan New York 2009) p.33

the constitution has been used as a tool of repression against sections of the population, Uganda has also had times when the constitution was used for negative effect, for example the 1967 'Pigeon-hole' constitution during the Obote regime.

Good governance is the governance that promotes human rights, encourages public participation in government, inclusion in law-making and policymaking, and accountability of elected and appointed public officials. It enables civil society to become actively involved in policymaking and leads to the wide representation of societal interests in decision-making.⁷ In this manner, disadvantaged groups, including women and minorities, are empowered to defend their rights. The result may be laws and policies that better respect cultural diversity, contribute to the resolution of social conflicts and tensions, and address the challenges of inequality and poverty.

In addition to elections, good governance relies on democratic principles such as transparency, accountability, inclusion and participation in order to protect human rights. Good governance consists of a set of institutions, laws and practices that are established to prevent the arbitrary exercise of power. However, these institutions and processes do not always result in actually promoting good governance.⁸ They may be plagued by corruption and lack independence from politicians, thus failing to prevent the arbitrary exercise of power. They may also lack the necessary capacity, including skills and awareness of human rights principles, to perform their duties appropriately.

1.2 Statement of the Problem

Over the years of her existence as a sovereign nation, Uganda's constitution has been presented as the body of laws that govern power relations between the people and their leaders. Over the past few decades, consensus has emerged among international organizations, governments, and

⁶ Lawson Steven Fowler.; Payne Charles M, *"Debating the Civil Rights Movement, 1945-1968"* (Rowman & Littlefield 1998) p.61

⁷ UNCHR, *"Promotion and protection of human rights: the role of good governance in the promotion of human rights: note by the United Nations High Commissioner for Human Rights"* (E/CN.4/2005/97, chap. IV, UNHCHR 2005).

⁸ UNDP, *"Governance for the Future: Democracy and Development in the Least Developed Countries"* (New York, USA 2006).

civil society on the vital role that good governance plays in economic and social development.⁹ Strengthening the four elements of good governance, that is; accountability, transparency, participation, and predictability, can increase government efficiency and impact. Constitutional reform can be a vital tool to promote good governance by changing the rules to promote more accountability, transparency, participation, and predictability.

A constitution defines and protects citizens' rights from governmental abuse. It also limits and balances government powers vis-à-vis other players and institutions, thereby safeguarding the rights and interests of the citizens.¹⁰ The constitution is the touchstone for the legality of all other laws and the basis for reviewing executive and legislative actions. However, in today's rapidly changing world, the interests, needs and aspirations of the citizens also keep changing. Therefore, the set of laws that governs them has to also consistently change from time to time in order to keep up with the modern developments. This however, presents a challenge since it requires political will from the ruling elite to ensure that the reforms in the constitution are made to enhance the enjoyment of people's rights, promote their interests and aspirations, and not to perpetrate the personal interests of the leaders.

Political leaderships in Uganda have a history of using the constitution to curtail people's rights.¹¹ For example, Milton Obote used the 1967 constitution, and the NRM government in its earlier years, used the "Movement system"¹² to abolish political freedoms by prohibiting the activities of political parties. The Public Order Management Act of 2013 is equally criticized by sections of the population as an example of constitution reforms made to insert provisions that the state can use to muzzle political dissent.¹³ It is thus necessary to exhaustively appraise the constitutional reform processes, to ensure that they are done in the interest of good governance and not perpetrating the arbitrariness of the ruling elite. This study intended to examine the

⁹ Lawson Steven Fowler; Payne Charles M, "*Debating the Civil Rights Movement, 1945-1968*" (Rowman & Littlefield 1998) p.65

¹⁰ Ibid 68

¹¹ George William Kanyeihamba, "*Constitutional and Political History of Uganda; From 1894 to Present*", (2nd Edition, McMillan 2010) p.88

¹² The "Movement System" was a de-facto one party system which emphasized individual merit

¹³ CIPESA, "*How Recently Enacted Laws Undermine Ugandan Citizens' Rights*". *Collaboration on International ICT Policy in East and Southern Africa (CIPESA)*, (ICT Policy Briefing Series. April, 2014) p.4

works of Uganda's Parliament, as a key player in ensuring that constitutional reforms are done to serve the interests of the Ugandan citizenry.

1.3 Purpose of the study

The study intended to examine the impact of constitutional reforms on governance in Uganda, to ascertain whether constitutional reforms have enhanced or weakened the principles of good governance in the country.

1.4 Objectives of the study

1.4.1 General objective

The general objective of the study was to assess the constitutional reform processes pursued by Uganda's Parliament, to ascertain whether these reforms are in line with the principles of good governance, as a way of ensuring progress and sustainable development in the country.

1.4.2 Specific objectives

The study was aimed at achieving the following specific objectives;

- i. To examine the provisions of Uganda's constitution in line with the principles of good governance in Uganda.
- ii. To examine the steps undertaken in the constitutional reform process by the Parliament of Uganda.
- iii. To investigate the challenges faced by Uganda's Parliament in the constitutional reform processes in relation to the promotion of good governance in Uganda.

1.5 Research Questions

The study attempted to find answers to the following questions;

- i. What are the provisions of Uganda's constitution in line with the principles of good governance in Uganda?
- ii. What are the steps undertaken in the constitutional reform process by the Parliament of Uganda?
- iii. What are the challenges faced by Uganda's Parliament in the constitutional reform processes in relation to the promotion of good governance in Uganda?

1.6 Scope of the Study

The scope of the study addressed three aspects in the course of the research; these involved the following;

1.6.1 Content scope

The study analyzed the various provisions within the Ugandan Constitution with regards to the promotion of good governance, the various constitutional reforms that have been undertaken in a bid to strengthen good governance as well as the challenges faced by Uganda's Parliament in the constitutional reform processes in relation to the promotion of good governance in Uganda

1.6.2 Geographical scope

The study was carried out at the Parliament of Uganda in Kampala. Members of the 10th Parliament formed the bulk of the respondents in addition to members of the civil society concerned with democracy and good governance.

1.6.3 Time scope

The study examined the activities of the Parliament of Uganda over the past 12 years from 2005 – 2016, and will be carried out in four months. The researcher made a study plan to ensure that this time is enough to gather the relevant primary and secondary data.

1.7 Significance of the Study

The findings of the study will be useful or important in different ways and to different persons or groups of people;

- The study will bring in new knowledge on the role played by Parliament of Uganda in upholding constitutionalism and promoting good governance in the country. It will provide an assessment of the progress of the Parliament in ensuring constitutional rule and good governance.

- The findings of the study will help experts in drawing accurate assessment of the recent developments in the progression of constitutional reforms with regards to the principles of good governance in Uganda.
- The findings of the study will help in bringing out the opinions of the various stakeholders concerning the state of constitutionalism, recent constitutional reforms and good governance in the country.
- The study will help the researcher to acquire practical research skills and also act as a partial fulfillment of the requirements for the award of a Bachelor of Laws degree at Kampala International University.
- It will assist students and researchers who are interested in the study of constitutionalism and good governance in Uganda.
- It will contribute to the existing body of knowledge on the topic, especially in Uganda and by extension, around the world.

1.8 Methodology

The research took a form of a descriptive survey design; this is because the issue of constitutional reforms and good governance is a major concern all over the world. Therefore this study aimed to describe the recent reforms in the Ugandan Constitution in relation to the principles of good governance in the country. The target population in this study comprised of Members of Uganda's 10th Parliament as well as members of the civil society in Uganda. A sample was drawn to represent the entire population. This sample consisted of 140 respondents selected from among the Members of Uganda's 10th Parliament as well as members of the civil society in Uganda

A total of 140 respondents used as a sample for the study. They included Members of Uganda's 10th Parliament as well as members of the civil society in Uganda. Simple random sampling and purposive sampling methods were used in choosing the study sample. In purposive sampling, the

researcher selected only those respondents who are capable of providing the relevant information, and this method was used in selection respondents from among members of the civil society. In simple random method, respondents were selected randomly, in a way that gives everyone an equal chance of being chosen. This is important in preventing bias when choosing the sample. Simple random method was used in selecting respondents from among the Members of Parliament.

The main methods of data collection were questionnaires and interviews. Structured questionnaires for qualitative research and interview guide of key informants were also employed. The data was analyzed using constant comparison technique, which looks at indicators of categories in events and behavior, compares codes to find consistencies and differences and consistencies between codes (similar meanings or pointing to a basic idea) reveals categories. The data obtained from questionnaires and interview guides was transcribed and categorized/coded into frames indicating the themes. These were then linked to the objectives of the study, and then argued out in a generalized form in the research report.

The use of questionnaire and interview guides was applied by the researcher to the various respondents. The same questions were informally given to different people and the answers from these people were useful in minimizing chances of biasness. The researcher also physically participated in literature search on constitutional reforms and good governance. With the use of guiding check lists the researcher recorded the correct impression that was provided by the first-hand information. For purposes of confidence building among the respondents, the researcher explained the reasons for carrying out the study. The researcher also offered to guarantee anonymity for respondents who wished to be protected from exposure.

1.9 Literature Review

The nation of Uganda has had a turbulent history with regards to constitutionalism and governance.¹⁴ Uganda has had four constitutions so far, from the British made 1962 Independence Constitution, to the 1966 “Pigeon-hole” Constitution, to the 1967 Constitution and

¹⁴ George William Kanyeihamba, *“Constitutional and Political History of Uganda; From 1894 to Present”*, (2nd Edition, McMillan 2010) p.56

the 1995 Constitution which is in force today.¹⁵ As was the case with other Anglophone Africa, Uganda's Independence Constitution was more or less a negotiated treaty.¹⁶ It was more a product of ad hoc bargaining in London than the reflection of popular demands and manifestations of indigenous political culture.¹⁷ But by accepting a Constitutional document worked out in London on the eve of independence, a regime in Uganda could hasten the attainment of national sovereignty and the entrenchment of its own power. Once independent, the regime could change the Constitution to suit local needs, and not surprisingly, to tighten its own control over the political system.

1.9.1 The History of Constitutionalism in Uganda

Before the British and Germans contended for control over the territory, Uganda had three different indigenous political systems: the Hima caste system, the Bunyoro royal clan system and the Buganda kingship system.¹⁸ In 1894, the British succeeded in establishing a Uganda protectorate. A British-style high court of Uganda and an appeals court for all eastern African protectorates were established in 1902. At the same time, a special commissioner was installed to perform executive, legislative and judicial powers. In 1955, a constitutional monarchy with a ministerial government based on the British model and in 1957 political parties emerged and direct elections were held.¹⁹

Uganda became an independent Commonwealth nation on October 9, 1962 under a constitution much influenced by the British.²⁰ The constitution distributed powers between the central government and the regions, though disproportionately. The Buganda kingdom was given more powers at the expense of other regions. Apart from the periodically elected Parliament, the constitution provided for a Cabinet, drawn from and responsible to Parliament, and defined the

¹⁵ Ibid 67

¹⁶ Mohammed Salih, *"African Parliaments. Between Governance and Government"* (USA, Palgrave Macmillan 2007) p.63

¹⁷ Ibid 69.

¹⁸ George William Kanyeihamba, *"Constitutional and Political History of Uganda; From 1894 to Present"*, (2nd Edition, McMillan 2010) p.96

¹⁹ Ibid 104.

²⁰ Ndulo Martin, *"Rule of Law Programs; Judicial reform, Development and Post Conflict Societies"* (ANLEP Working Paper No. 2 2009) p.54

powers of major government organs, civil service and judiciary.²¹ One year later, an amendment introduced a ceremonial President to replace the Governor General as a head of state and Kabaka Mutesa became the first elected president on 9 October 1963.

The 1962 constitution was abrogated by Prime Minister Milton Obote in 1966, who declared himself President under an Interim Constitution of 1966. The Parliament was constituted into a Constituent Assembly and given a mandate to draft a new constitution for Uganda.²² On September 8, 1967, the new constitution came into force. It extended the life of the Parliament, declared the President then in office the President of Uganda for a term of 5 years. Other major changes by this constitution were the abolishment of the kingdoms and the introduction of a more centralized system of government.²³ The election of Members of Parliament remained by direct universal suffrage across the entire country but the President was now elected indirectly by the Parliament. Although the system of government had some democratic semblance, democratic principles were hardly observed in practice, and Obote ruled basically with army support.²⁴ Shortly after the constitution of 1967, a state of emergency was declared and Uganda slowly shifted to one-party-rule under the Uganda People's Congress.

In 1971, General Idi Amin Dada seized power. Amin ruled the country through presidential decrees and used the army as the main instrument of government. In 1979, Amin, too, was overthrown by a combination of Ugandan and Tanzanian forces.²⁵ In the following years, the Ugandan military continued to participate actively in Ugandan political processes. In 1985 Obote was again elected president, but only to be deposed a year later by Tito Okello Lutwa. Within a

²¹ Oloka-Onyango John, "Judicial Power and Constitutionalism in Uganda: A Historical Perspective", In "Uganda Studies in Living Conditions, Popular Movements and Constitutionalism" (Mahmood Mamdani and Oloka Onyango eds. Jep Books 1994) p.2

²² George William Kanyeihamba, "Constitutional and Political History of Uganda; From 1894 to Present", (2nd Edition, McMillan 2010) p.105

²³ Ibid 106.

²⁴ Ibid 109.

²⁵ Ngonzi Berner, "The State of Constitutionalism in Uganda, 2003", In Tusasirwe, B., (ed) "Constitutionalism, Governance and Human Rights in East Africa: The Contemporary Score Sheet" (Kituo Cha Katiba 2003) p.13

few months, the Museveni-led National Resistance Movement, a rebel movement that had been fighting the Obote regime for years, seized power in Kampala.²⁶

On 21 December 1988 the National Resistance Council (NRC) enacted Statute No.5 of 1988 which established the Uganda Constitutional Commission and gave it responsibility to start the process of developing a new Constitution.²⁷ The mandate of the Commission was to consult the people and make proposals for a democratic permanent constitution based on national consensus. In its final report of December 1992, the Commission stated that the majority of Ugandans preferred a Constituent Assembly directly elected by the people in order to be as fully representative as possible and provide greater legitimacy.²⁸ It proposed that an Assembly should be composed mainly of directly elected delegates plus representatives of some interest groups. The proposal was accepted by government and thus the Constituent Assembly consisted of 284 delegates elected by universal suffrage representing 214 electoral areas designated plus additional representatives of specific stakeholders.

The elections to the Constituent Assembly took place in March 1994. Apart from the decisions relating to national language, land, federalism and the political system, all provisions of the draft constitution were reached by consensus. The land question in Uganda emerged when the British took land away from the communities and gave it to a few individuals and was not resolved by the Constituent Assembly.²⁹ The debate about the political system, on the other hand, was rooted in the bad experience of Ugandans with political parties in the post-independence era. On this basis, a “no party” politics, also known as “movement politics”, was proposed.³⁰ In this system, no one is denied the right to run for any political office of his or her choice. The emphasis was

²⁶ Ibid 19.

²⁷ Mukholi, Dunstan, *A Complete Guide to Uganda's Forth Constitution; History, Politics and the Law*, (Fountain Publishers 2008) p.43

²⁸ Christopher Mbazira, *Democracy and Good Governance: An Assessment of the Findings of Uganda's Country Self-Assessment Report* (African Peer Review Mechanism 2008) p.67

²⁹ George William Kanyeihamba, *Constitutional and Political History of Uganda; From 1894 to Present*, (2nd Edition, McMillan 2010) p.109

³⁰ Kirya Gerald, *The 'No Party' or 'Movement' Democracy in Uganda* (International Commission of Jurists Review 1998) p.79

on individual merit and political parties were permitted to exist but were forbidden from electoral campaigning and sponsoring candidates.³¹

On September 27, 1995, the Constituent Assembly adopted the new constitution. The 1995 constitution, establishes a quasi-parliamentary system of government, consisting of a President, Prime Minister, Cabinet, unicameral Parliament, Supreme Court and Constitutional Court.³² The preamble states that the constitution shall be based on the “principles of unity, peace, quality, democracy, social justice and progress” and includes a long chapter on “National Objectives and Directive Principles of State Policy”. Moreover, Article one of the constitution proclaims the sovereignty of the people and according to article 2, the constitution “shall have binding force on all authorities and persons throughout Uganda”.³³ The constitution stresses the importance of the protection of human rights by stating that “fundamental rights and freedoms of the individual are inherent and not granted by the State” and guarantees specific rights and freedoms like, amongst others, the freedom from discrimination, freedom of religion, the prohibition of torture and slavery, the right to privacy, assembly and association.

1.9.2 Uganda’s Constitution and good governance

Parliaments are crucial to the achievement of good governance around the world. They are one of the key state institutions of democracy, playing an important role in terms of legislation, oversight and representation. Their representational role include ensuring that citizens and other stakeholders have a voice at the national level and are therefore involved in national governance issues. Regrettably, in some African countries parliaments are weak, ineffective and marginalized.³⁴ The role of parliament and parliamentarians in promoting good governance requires a proper understanding of the concept of good governance. Good governance is an indeterminate term used in development literature to describe how public institutions conduct public affairs and manage public resources in order to guarantee the realization of people’s

³¹ Ibid 83.

³² Van der Vyver, John, “*The Separation of Powers*” (Vol. 8. South African Journal of Public Law 2001) p.177

³³ Article 2(1) of the Constitution of the Republic of Uganda - 1995

³⁴ Gebreworld, B, “*Democracy and Democratization in Africa*” (New York: Zed Books 2008) p.56

acceptance of the fact that democracy and good governance are not a luxury, but a requirement to promote sustainable social and economic development. Democracy, which is the basis for good governance, provides space for all people in a given society to interact, intervene and participate in issues that affect their lives.⁴¹ Consequently, good governance implies participation, transparent, accountable, effective and equitable management of the public affairs where the actions of public officials are guided by rules. Good governance also implies that public resources and authority are used to benefit the entire community.⁴² In practical terms, democracy and good governance require, among others, active participation in decision making processes by the people, directly or through their duly elected representatives, parliaments and/or associations. Thus, participation not only recognizes people as citizens but makes government more representative of, and responsive and accountable to, the people it seeks to serve.

Governance entails a series of decision-making and their implementation. It is the quality of these decisions and the manner by which they are implemented that determines the effectiveness of governance.⁴³ The quality of decisions and the effectiveness of their implementation will depend on a variety of factors, ranging from the constitutional/legal and ethical, the human and material resources, the working environment, leadership, commitment and the political will, as well as the pattern of decision-making and its management.⁴⁴ The parliament as an important arm of the State has a crucial role in promoting and protecting democracy and good governance thereby establishing not only the necessary check and balances, but also developing norms and standards for institutions of democracy and governance.⁴⁵ The role and functions of parliament to promote democracy and good governance assume great significance today in view of the basic principles and assumptions associated with parliamentary democracy. A parliamentary democratic system acknowledges the fact that, parliament derives its powers directly from the

⁴¹ Oloka-Onyango J, "Constitutionalism in Africa: Creating Opportunities, Facing Challenges" (at: www.udayton.edu 2001)

⁴² Ibid 03.

⁴³ UNDP, "Governance for the Future: Democracy and Development in the Least Developed Countries" (UN, New York, USA 2006) p.27

⁴⁴ Ibid 33.

⁴⁵ Mafeje, A., "Democratic governance and new democracy in Africa: Agenda for the future", In Peter Anyang' Nyong'o et al (eds.) "New Partnership for Africa's Development: A New Path?" (Heinrich Böll Foundation 2002) p.79

consent of the people expressed through periodic elections and that parliament is to implement the will of the people, among other functions.⁴⁶

The concept of good governance is often used to compare ineffective economies or political systems with viable economies and political systems. Because the most successful governments in the contemporary world are liberal democratic states, which are mostly found in Europe and the Americas, those countries' institutions often set the standards by which to compare other states' institutions.⁴⁷ Given the fact that the term good governance can be focused on any one form of governance, aid organizations, development agencies and partners, and the authorities of developed countries often focus the meaning of good governance to a set of requirement that conform to their agenda, making the notion of good governance imply many different things in many different contexts.⁴⁸

A survey of different notions of good governance reveals that there are many different understandings of the concept. Institutions such as the International Monetary Fund (IMF), for example and due to partly its limited political mandate, stress on the conditions of market economy and sound financial management as the main attributes of good governance.⁴⁹ Other institutions like United Nations and the German Development Cooperation Agency (GTZ) have a much more inclusive approach in terms of political and social aspects. The two institutions stress their focus on key attributes such as participation, rule of law, responsiveness, transparency, accountability, efficiency and effectiveness, and equity and inclusion.

In Africa, constraints to good governance stem from its frequent external imposition by donors. It has to be understood that good governance is in the very self-interest of any person and strong leadership commitment is required to at least implement the bigger part of such goals.⁵⁰ As a

⁴⁶ Huth, P.K. & Allee, T.L., *"The Democratic Peace and Territorial Conflict in the Twentieth Century"* (Cambridge: Cambridge University Press 2002) p.44

⁴⁷ UNDP, *"Governance for the Future: Democracy and Development in the Least Developed Countries"* (UN, New York, USA 2006) p.22

⁴⁸ Ibid 26.

⁴⁹ Mohammed Salih, M. A., *"African Parliaments. Between Governance and Government"* (Palgrave Macmillan, USA 2007) p.59

⁵⁰ Ibid 63.

matter of fact, almost any actor will subscribe to the notion of Good Governance or at least pay lip service to it. The Constitutive Act of the African Union (Article 3(g)) provides an attempt to define good governance as one of the objectives of the organization: is to “promote democratic principles and institutions, popular participation and good governance.” However, the Act does not provide a concrete definition of the term, though many of the other objectives, such as the promotion of peace, democracy and prosperity, could be described as such best practices. Despite all the differences, a common understanding of the term good governance is that. It is the exercise of power and decision-making for a group of people bearing in mind the principles of accountability, effectiveness and efficiency, participatory, transparency, responsiveness, consensus-oriented, and equitable.

Uganda has a good record of complying with democracy and good political governance principles, standards and codes. There are about eighty (80) international instruments relevant to political governance, out of which Uganda has ratified 44. The Government of Uganda (GOU) has had a good ratification record since the late 1980s.⁵¹

While independence introduced some political changes, most of the institutions of government, including the judiciary, remained intact. Executive domineering over the judiciary continued. Uganda’s history has numerous examples of executive disregard and the overruling of court orders. The most cited example is the case of *Ibingira v. Uganda*.⁵² Grace Ibingira, a cabinet minister, had been arrested by Obote’s government following intelligence reports that the ministers were planning to pass a vote of no confidence in the President. The ministers were detained under deportation laws, which they successfully challenged in the Court of Appeal after losing in the High Court. The Court of Appeal held that the deportation laws were unconstitutional and ordered the High Court to consider the applicant’s application for *habeas corpus*. The administration simply re-arrested the detainees under emergency laws and validated their deportation by a retrospective piece of legislation presented in Parliament and passed the same day. In circumstances that depict judicial compromise, the detainees lost a Court of Appeal

⁵¹ Christopher Mbazira, “Democracy and Good Governance: An Assessment of the Findings of Uganda’s Country Self-Assessment Report” (African Peer Review Mechanism 2008) p.17

⁵² *Ibingira v Uganda* [1966] E.A. 306.

case challenging the validation legislation and subsequent detention. The case has been described as showing that in the new independent Uganda judicial independence was but a myth.⁵³

⁵³ Oloka-Onyango John, *"Judicial Power and Constitutionalism in Uganda: A Historical Perspective"*, In *"Uganda Studies in Living Conditions, Popular Movements and Constitutionalism"* (Mahmood Mamdani and Oloka Onyango eds. Jep Books 1994) p.482

CHAPTER TWO

UGANDA'S CONSTITUTIONAL HISTORY

2.1 Independence Constitution of 1962

Uganda gained independence in 1962 under a constitution drafted in London under the auspices of the British.⁵⁴ The constitution distributed powers between the centre and the regions though in a disproportionate manner. More powers were given to Buganda Kingdom under a quasi-federal arrangement.⁵⁵ Similar powers but on a lower scale were given to the other kingdoms of Toro, Ankole, Bunyoro and the Territory of Busoga. The remaining districts were not given quasi-federal status.⁵⁶ With regard to the election of Members of Parliament, the constitution provided for direct elections under universal suffrage except for parliamentarians from Buganda who were indirectly elected through the Lukiiko (Council) of Buganda. Members of the Lukiiko and of District councils were to be directly elected under a universal suffrage system. This constitution was a highly compromise one and as Kanyehamba pointed out: *"That the Uganda delegates did not object to these provisions is only defensible politically because what they wanted was independence. The British Government could impose any terms it wished but once they were independent, they would treat the constitution with the respect it deserved. Needless to say, Parliament was handicapped by the federal powers that were granted to the four kingdoms and the territory of Busoga."*⁵⁷

2.2 The 'Pigeon-hole' Constitution of 1966

In 1966 Milton Obote, the Prime Minister of Uganda, abrogated the 1962 Constitution. At the same time and with a show of military force, Obote ordered members of parliament (MPs) to pass the 1966 Interim Constitution (Pigeon-hole Constitution) without debate. Though understood to be merely an interim constitution, it made sweeping changes that removed all federal provisions in favor of a centralized government. Buganda, the three federal states, and the non-federal districts lost their autonomy; Buganda lost its right to elect its MPs indirectly; and the king of Buganda (the *kabaka*) lost his privileged status. At the national level, the prime

⁵⁴ Kanyehamba, George Willam, *"Constitutional and Political History of Uganda: From 1894 to the Present"* (Centenary Publishing House Ltd, Kampala 2002). p.09

⁵⁵ Ibid 32

⁵⁶ Ibid 67

⁵⁷ Ibid 69

minister became an executive President, in place of the preceding ceremonial president. These arrangements strengthened Obote's precarious hold on government while appearing to respect the rule of law. Obote became President in place of the king of Buganda, who had been elected to the position under the 1962 Constitution. The Parliament whose term of office had just expired was constituted into a Constituent Assembly to draft a new constitution for Uganda. The 1967 constitution was born out of this process.

The Pigeon-hole Constitution of 1966 was enacted as a political tool to legitimize the unlawful actions of the Obote regime when he deposed the President and declared himself president. It was not deliberated on by the members of Parliament as was the requirement by law, and therefore from its inception, it did not have legitimacy among the population. It however, took the country out of the legal limbo after the bloodless coup that ousted the president. Therefore, much as the constitutional making process was unconventional, and/or even illegal in itself, it produced a document that was badly needed to give some sort of legitimacy to the post-1966 Obote government.

2.3 The 1967 Constitution

The 1967 Constitution apart from extending the life of the Parliament, also declared the President then in office the President of Uganda for a term of 5 years.⁵⁸ It also introduced major changes to the constitutional arrangements in the country.⁵⁹ The Kingdoms were abolished.⁶⁰ Whereas under the 1962 constitution the Prime Minister had to be a Member of Parliament leading a Party with the largest number of members in the House, the President under the 1967 constitution was elected indirectly. The constitution provided that the leader of any political party whether or not that leader was a member of Parliament became the President of Uganda if his or her party obtained more than 40% of the seats in Parliament.⁶¹ The election of Members of Parliament was by direct universal suffrage across the entire country. Apart from the election of

⁵⁸ Kanyeihamba, George Willam, *Constitutional and Political History of Uganda: From 1894 to the Present* (Centenary Publishing House Ltd, Kampala 2002). p.44

⁵⁹ Ibid 47.

⁶⁰ Oloka-Onyango John, *Judicial Power and Constitutionalism in Uganda: A Historical Perspective*, In *Uganda Studies in Living Conditions, Popular Movements and Constitutionalism* (Mahmood Mamdani and Oloka Onyango eds. Jep Books 1994) p.19

⁶¹ Ibid 22.

the president this arrangement seemed to have some democratic semblance although in actual practice the democratic principles of a free and fair election were hardly observed.

Membership to the district and town Councils was by nomination by the central government. With regard to the Civil Service, the 1967 Constitution transferred all the appointing powers from the independent Public Service Commission to the President.⁶² The Public Service Commission became purely advisory. The same arrangement was extended to employees of Local Government Councils. They too were appointed by the President. This centralization of power coupled with large-scale nationalization of private enterprises, including the cooperative movement, made the presidency and therefore the state extremely powerful. The state became the prime mover and the sole source of patronage.⁶³

This ensured political loyalty to, and domination at all levels by, the ruling party, the Uganda People's Congress (UPC). Domination in the Army and the Police was ensured through purging officers from the southern part of the country, withholding promotion or giving them innocuous assignments. Other political factions such as the Democratic Party (DP) were banned and their leaders imprisoned following an attempt on Obote's life in 1969.⁶⁴ Because of these measures, it was not found necessary to formally declare Uganda a one party state.⁶⁵ The Uganda People's Congress became the sole actor in the political arena. But within the UPC itself there was no internal democracy, because of the challenge Obote had experienced at the party's Gulu general congress in 1964 necessitating his having to print new party cards to disenfranchise accredited delegates opposed to him so as to impose a secretary-general of his own choice, Obote effected changes to the party constitution.⁶⁶

⁶² Oloka-Onyango John, "Judicial Power and Constitutionalism in Uganda: A Historical Perspective", In "Uganda Studies in Living Conditions, Popular Movements and Constitutionalism" (Mahmood Mamdani and Oloka Onyango eds. Jep Books 1994) p.28

⁶³ Ibid 30

⁶⁴ Ndulo Martin, "Rule of Law Programs; Judicial reform, Development and Post Conflict Societies" (ANLEP Working Paper No. 2 2009) p.51

⁶⁵ Kanyeihamba, George Willam, "Constitutional and Political History of Uganda: From 1894 to the Present" (Centenary Publishing House Ltd, Kampala 2002). p.66

⁶⁶ Oloka-Onyango, J. "From Whence Have We Come, and Where Exactly are We Going: The Politics of Electoral Struggle and Constitutional (Non) Transition in Uganda" (Human Rights and Peace Centre, Working Paper Series No. 1 2005) p.49

Constitutional changes were made to provide that only the office of the President of the party would be elective. All the other positions on the party executive were to be filled by a person hand-picked by the party president.⁶⁷ These arrangements were however disturbed in 1971 when Obote lost his grip on the military in a dogfight with Idi Amin in which the latter emerged victorious. Idi Amin removed the semblance of constitutional governance left in the 1967 Constitution and carried out a reign of terror over the people of Uganda.⁶⁸ The fall of Idi Amin and the eventual re-emergence of Milton Obote in 1980 at the head of UPC government did not help matters. Although political party activity was allowed this time, the centralized state continued and centralization of politics was carried out further through intimidation of the opposition and bribery.⁶⁹

2.4 The National Resistance Movement and the making of the 1995 Constitution

The National Resistance Movement (NRM) emerged on the scene as a result of this over centralization of power and the application of undemocratic practices particularly under Obote's second regime. The 1980 elections which the DP was slated to win were massively rigged by the UPC.⁷⁰ The NRM took up arms in protest. Milton Obote and his allies were eventually removed from power in January 1986. The NRM on coming into power realized that while it had the military might it lacked administrative and political arrangements across the country. A number of measures were put in place and among these three deserve special mention:⁷¹

1. A broad based government encompassing all elements of the Uganda political spectrum was established. This was intended to bring in people who if left out would create problems for the fledgling administration. There was also the desire to create an atmosphere of reconciliation very crucial in a divided country;
2. The election throughout the country or local councils from the village level to the district level through participation by the people in the process. This created new power centres

⁶⁷ Oloka-Onyango, J. *"From Whence Have We Come, and Where Exactly are We Going: The Politics of Electoral Struggle and Constitutional (Non) Transition in Uganda"* (Human Rights and Peace Centre, Working Paper Series No. 1 2005) p.47

⁶⁸ Nampewo, Z. *"State of Constitutionalism in Uganda: Challenges in Observance"*, In Lawrence Mute (ed) *"Constitutionalism in East Africa: Progress, Challenges and Prospects in 2004"* (Kampala: Fountain Publishers 2007) p.23

⁶⁹ Ibid 29.

⁷⁰ Christopher Mbazira. *"Democracy and Good Governance: An Assessment of the Findings of Uganda's Country Self-Assessment Report"*, (African Peer Review Mechanism, October 2008) p.19

⁷¹ Ibid 24.

removing away power from the chiefs who were the sole source of authority in the villages and in the towns. This popular participation was seen as a revolutionary change as compared the previous arrangement where councils at all levels were appointed by the government.

3. The establishment of a constitution making process based on principles of consultation with and participation by, the population; a measure that was both populist and revolutionary.

2.4.1 The making of the 1995 Constitution

The National Resistance Movement had a programme of work contained in what is referred to as the “Ten Point Programme.” One of those points was that on taking power the NRM would establish a mechanism that would enable the people of Uganda prepare a new constitution for themselves.⁷² To the NRM, the political problems of the country were traceable to the unilateral abrogation by Obote of the 1962 Constitutional arrangements and the imposition by him of arrangements that were not acceptable to a large and influential section of the population particularly the Baganda.⁷³

Upon taking power in 1986, the NRM issued Legal Notice No 1 of 1986. This legal notice formed the constitutional basis for the NRM government. Under it, it was provided with regard to constitution making, that the constitution - was to be debated and finalized by the National Resistance Council (NRC) working together with the National Resistance Army (NRA).⁷⁴ However, this arrangement was subsequently varied through a recommendation of the Constitutional Commission. The constitution making process can be divided into a number of stages:

1. The establishment and operations of the Constitutional Commission under Justice Benjamin Odoki;
2. The preparation for and conduct of elections to the Constituent Assembly (CA); and

⁷² Nampewo, Z. “State of Constitutionalism in Uganda: Challenges in Observance”, In Lawrence Mute (ed) “Constitutionalism in East Africa: Progress, Challenges and Prospects in 2004” (Kampala: Fountain Publishers 2007) p.16

⁷³ Ibid 21.

⁷⁴ Legal Notice No. 1 of 1986 (Uganda).

3. The operations of the CA to the point of promulgation of the Constitution.

2.4.2 The Constitutional Commission

As a follow up to the provisions of Legal Notice No. 1 of 1986, the Constitutional Commission Statute was enacted by the NRC. A Constitutional Commission consisting of 22 members was established by this Statute. It was chaired by Justice Benjamin Odoki, a Judge of the Supreme Court of Uganda, the highest court in the land. It was charged with the duty of gathering information from the people as to the form of governance they would like to have, analyzing the views so gathered and preparing a draft Constitution as a basis for the final preparation of a Constitution for Uganda.⁷⁵ After touring the country, interviewing many people and receiving written memoranda, the Commission made an interim report. In this report the Commission advised the government that a majority of the people of Uganda preferred that a Constituent Assembly be elected directly by them. Indeed in the final report of the constitutional commission it was reported that: “... *the body to officially debate the draft constitution should be as fully representative of the people as possible.....we recommended a new body, the Constituent Assembly, composed mainly of directly elected delegates plus representatives of some interest groups to carry out those roles on behalf of the people.*”

This recommendation was accepted by government and Legal Notice No 1 of 1986 was accordingly amended to provide for this.⁷⁶ A statute providing for the establishment of, and elections to the Constituent Assembly as well as the powers and functions of that Assembly was also enacted. The Statute provided for the composition of the Constituent Assembly.⁷⁷ The Constituent Assembly consisted of 284 delegates representing 214 electoral areas designated, through a population quota, by the Commissioner for the Constituent Assembly.⁷⁸ The NRA, the National Organization of Trade Unions, the old parties which took part in the 1980 elections, the National Youth Council and the National Union for Disabled People were also represented. Also included among the delegates was one woman delegate from each of the 39 districts. The 214

⁷⁵ Oloka-Onyango, J. “*From Whence Have We Come, and Where Exactly are We Going: The Politics of Electoral Struggle and Constitutional (Non) Transition in Uganda*” (Human Rights and Peace Centre, Working Paper Series No. 1 2005) p.70-71

⁷⁶ Legal Notice No. 1 of 1986 (Amendment) Statute, 1989, 1(c) (Uganda).

⁷⁷ Legal Notice No. 1 of 1986 (Amendment) Statute, 1989, 1(c) (Uganda).

⁷⁸ Mukholi, D.; “*A Complete Guide to Uganda’s Forth Constitution; History, Politics and the Law*”. (Kampala: Fountain Publishers 2004) p.24

delegates representing electoral areas were chosen by universal suffrage through secret ballot. The rest were elected by electoral colleges. The purpose of extending representation to these other interest groups was to ensure that all stakeholders participated in this exercise which was very crucial to the future of the country.⁷⁹

The decision to finalize and promulgate the constitution through an elected body was considered more appropriate than the previous arrangement contained in Legal Notice No 1. Although the membership to the NRC had been expanded in 1989 to include elected members, those members were elected indirectly through colleges. This was considered not to be sufficiently representative of the people.⁸⁰ It was also felt that a Constitution coming out of the deliberations of directly elected delegates would enjoy greater legitimacy than would otherwise be the case. As defined in the Black's law dictionary, "a delegate is a person who is delegated or commissioned to act in the stead of another."

In light of this, members of the Constituent Assembly were to speak only what the people who voted them wanted. They were to consult members or their constituencies for their views about the issues under discussion and not to rely on their own emotions. It was nevertheless feared by some people that the CA delegates might tailor the constitution to suit their future political ambitions.⁸¹ Suggestions were made that CA delegates should be disqualified from standing for election to Parliament in the first elections to Parliament under the new constitution.⁸² This suggestion was not accepted, but to some degree, these fears were later justified.⁸³ For example the CA failed to resolve the land question; a sensitive issue that has existed in Uganda since 1900 when the British took land away from the communities and vested it in a few individuals. It was the hope of the majority of Ugandans that the popularly elected CA would through constitutional provision resolve conclusively the question of feudal land holding and absent landlords.⁸⁴

⁷⁹ Mukholi, D.; *"A Complete Guide to Uganda's Forth Constitution; History, Politics and the Law"*. (Kampala: Fountain Publishers 2004) p.31

⁸⁰ Ibid 34.

⁸¹ George William Kanyeihamba, *"Constitutional and Political History of Uganda; From 1894 to Present"*, (2nd Edition, McMillan 2010) p.76

⁸² Ibid 77.

⁸³ Ibid 77.

⁸⁴ Ibid 77.

The delegates shied away from making a bold decision regarding these matters for fear of losing votes at the ensuing parliamentary elections. They instead chose to leave the issues to be resolved by the first Parliament elected under the new Constitution.⁸⁵ Similarly for populist reasons delegates from areas of the country where land is held communally sought to protect this type of land holding which does not favor modernization of agriculture. As a result, land distribution was transferred to tribal land boards.⁸⁶ This was likely to negate the provisions of the Constitution which say that a Ugandan is free to reside in any part of the country. The same populist approach with an eye to future elections motivated the delegates into making it difficult for the central government to access land for purposes of industrialization. The Constitutional Commission submitted its final report to the President on 31 December 1992 - the last day of its mandate. The report or its findings were accompanied by a draft Constitution.⁸⁷

2.4.3 The Constituent Assembly

The elections to the Constituent Assembly took place in March 1994. Candidature was open to any registered voter who did not have a criminal record and was able to raise the required nominators and financial deposit. Political parties were prohibited from fielding or sponsoring candidates. The stress was on personal merit.⁸⁸ To do otherwise, it was argued, would be to invite the old political squabbles and draw away people's attention from the noble cause of constitution making. Notwithstanding these restrictions on political parties, the reality on the ground was different. Many candidates identified themselves during the campaigns either with the Movement or with given political parties.⁸⁹ At campaign meetings the electorate sought to know from candidates whether if elected they would support extension of the movement form of governance or introduction of multi-party politics.

⁸⁵ George William Kanyeihamba, *Constitutional and Political History of Uganda; From 1894 to Present*, (2nd Edition, McMillan 2010) p.81

⁸⁶ Ibid 83.

⁸⁷ Mukholi, D.; *"A Complete Guide to Uganda's Forth Constitution; History, Politics and the Law"*. (Kampala: Fountain Publishers 2004) p.35

⁸⁸ Makara, Sabiti, (2010) *"Deepening Democracy through Multipartyism: The Bumpy Road to Uganda's 2011 Elections"*, (Africa Spectrum 2010) p.75 (also available online at www.africa-spectrum.org)

⁸⁹ Christopher Mbazira. *"Democracy and Good Governance: An Assessment of the Findings of Uganda's Country Self-Assessment Report"*, (African Peer Review Mechanism, October 2008) p.63

The electorate got to know who supported what. As a result, in the central region of Buganda where multi-partism was portrayed as a return of Obote, the overwhelming majority supported movement politics.⁹⁰ In most of the north where Obote's UPC remained strong, the majority supported multi-partism.⁹¹ In the western region from where President Museveni hails, all the delegates except one supported movement ideas. In the East where UPC used to be strong in some areas, multi-partists made a substantial showing though a majority of the delegates from there supported movement politics. All in all out of the 284 delegates roughly 220 supported movement politics.⁹² Differences existed among the movement supporters on some issues such as land, federalism but these were either smoothened out through caucuses or were resolved in accordance with the decision making mechanism in the rules of procedure.⁹³ The Assembly first met on 12 May 1994 under the chairmanship of the Chief Justice as required by the Statute establishing it. The Chief Justice supervised the swearing in of delegates and the election of the Chairman and Deputy Chairman.⁹⁴

2.5 The 1995 Constitution

On September 27, 1995, the Constituent Assembly adopted the new Constitution.⁹⁵ The 1995 Constitution, established a quasi-parliamentary system of government, consisting of a President, Prime Minister, Cabinet, unicameral Parliament, Supreme Court and Constitutional Court. The preamble states that the constitution shall be based on the "principles of unity, peace, quality, democracy, social justice and progress" and includes a long chapter on "National Objectives and Directive Principles of State Policy". Moreover, Article 1 of the Constitution proclaims the sovereignty of the people⁹⁶ and according to article 2, the Constitution "shall have binding force

⁹⁰ Christopher Mbazira. *"Democracy and Good Governance: An Assessment of the Findings of Uganda's Country Self-Assessment Report"*, (African Peer Review Mechanism, October 2008) p.65

⁹¹ Ibid 66.

⁹² Mukholi, D.; *"A Complete Guide to Uganda's Forth Constitution; History, Politics and the Law"*. (Kampala: Fountain Publishers 2004) p.41

⁹³ Oloka-Onyango, J. *"From Whence Have We Come, and Where Exactly are We Going: The Politics of Electoral Struggle and Constitutional (Non) Transition in Uganda"* (Human Rights and Peace Centre, Working Paper Series No. 1 2005) p.70-73

⁹⁴ Oloka-Onyango John, *"Judicial Power and Constitutionalism in Uganda: A Historical Perspective"*, In *"Uganda Studies in Living Conditions, Popular Movements and Constitutionalism"* (Mahmood Mamdani and Oloka Onyango eds. Jep Books 1994) p.11

⁹⁵ Mukholi, D.; *"A Complete Guide to Uganda's Forth Constitution; History, Politics and the Law"*. (Kampala: Fountain Publishers 2004) p.40

⁹⁶ Article 1(1) The Constitution of the Republic of Uganda - 1995

on all authorities and persons throughout Uganda”.⁹⁷ The constitution stresses the importance of the protection of human rights by stating that “fundamental rights and freedoms of the individual are inherent and not granted by the State” and guarantees specific rights and freedoms like, amongst others, the freedom from discrimination, freedom of religion, the prohibition of torture and slavery, the right to privacy, assembly and association.⁹⁸

In contrast to the Constitution of 1967, the current Constitution contains a whole range of powers that are shared between the President, Parliament and other constitutional bodies.⁹⁹ Amongst others, the presidential power of appointment regarding the Vice President and Ministers is subject to the approval of the Parliament and the appointment of Permanent Secretaries and heads of departments have to be made upon recommendation of the Public Service Commission.¹⁰⁰ The Public Service Commission moreover has the power to appoint all other civil servants and judicial officers other than Judges of the High Court, Court of Appeal and the Supreme Court, who are appointed by the Judicial Service Commission. Also in other areas the power of the executive has been cut down significantly: the President no longer has the power to dissolve Parliament and in the area of legislation, Parliament can over-ride the presidential veto by two-thirds majority.¹⁰¹ The executive’s powers to borrow money are also limited since Parliament now first has to approve borrowing.

In 2000 and 2005, important referenda on the system of government took place.¹⁰² The first referendum favored a “no-party” system of government but was invalidated by a court ruling some years after because of procedural shortcomings, whilst the second referendum approved a multiparty system and abolished the two-term limit on the presidency.¹⁰³

⁹⁷ Article 2(1) The Constitution of the Republic of Uganda - 1995

⁹⁸ Article 2(1) The Constitution of the Republic of Uganda - 1995

⁹⁹ Van der Vyver, J. “*The Separation of Powers*” (SA Journal of Public Law Vol. 8 2001) p.169.

¹⁰⁰ Article 10(1) The Constitution of the Republic of Uganda - 1995

¹⁰¹ Article 6(2) The Constitution of the Republic of Uganda - 1995

¹⁰² Onyango, O., J. “*Liberalization Without Liberation: Understanding the Paradox of the Opening of Political Space in Uganda*”, (Rights Democratic Working Paper Series No.2 2005) p.35

¹⁰³ Oloka-Onyango, J. “*From Whence Have We Come, and Where Exactly are We Going: The Politics of Electoral Struggle and Constitutional (Non) Transition in Uganda*” (Human Rights and Peace Centre, Working Paper Series No. 1 2005) p.76

2.6 The Constitutional Principle of Separation of Power

2.6.1 The Executive

As set forth in article 98, the President of the Republic of Uganda is the Head of State, the Head of Government and Commander in Chief of the Armed Forces.¹⁰⁴ Presidential candidates must be citizens of Uganda, between thirty-five and seventy five years of age, and qualified to be a member of parliament. In order to be nominated, a presidential candidate must be supported by one hundred voters in at least two-thirds of all Ugandan districts. He is elected by universal adult suffrage for a five years term. In case one candidate is not able to obtain more than half of the votes cast in the first run, a runoff election takes place between the two presidential candidates who obtained the most votes.

The President has precedence over all other persons in Uganda and is obliged to safeguard the Constitution as well as “execute and maintain the Constitution and all laws”. Moreover, he has the power to appoint a Vice President after having obtained the approval of the legislature. To be removed, an action for “abuse of office” or certain “misconduct or misbehavior” may be enforced by one third of all the members of parliament.¹⁰⁵ After a special tribunal has investigated the case, a majority of two thirds of the members of parliament has then the power to confirm the decision on the removal of the President.¹⁰⁶ The Cabinet, determining, formulating and implementing the policy of the Government, is formed of the President, the Vice President, the Prime Minister and the Ministers.¹⁰⁷ The total number of Cabinet Ministers shall not exceed the total number of twenty-one except with the approval of Parliament.

2.6.2 The Legislature

The unicameral Parliament, a body of directly elected members to represent constituencies, has the power to make laws on any matter “for the peace, order, development and good governance of Uganda”.¹⁰⁸ Members of Parliament serve for a five-year term and according to article 80 must be citizens of Uganda, registered voters and have obtained “a minimum formal education of

¹⁰⁴ Article 98(1) The Constitution of the Republic of Uganda - 1995

¹⁰⁵ Article 98(4) The Constitution of the Republic of Uganda - 1995

¹⁰⁶ Article 98(6) The Constitution of the Republic of Uganda - 1995

¹⁰⁷ Article 98(7) The Constitution of the Republic of Uganda - 1995

¹⁰⁸ Article 80(1) The Constitution of the Republic of Uganda - 1995

Advanced Level standard or its equivalent”.¹⁰⁹ Subsection 2 of article 80 then lists reasons disqualifying a person for parliamentary elections, such as being of unsound mind, holding an office with election responsibilities, having been declared bankrupt or being a “traditional or cultural leader”¹¹⁰ as defined in article 246 of the Constitution.

Article 78 moreover stipulates that Parliament shall include one woman representative per district and a certain number of representatives of “the army, youth, workers, persons with disabilities” and certain other groups as determined by Parliament.¹¹¹ The vice President and the cabinet ministers become ex officio members of parliament without the right to vote. Generally, bills are passed by a majority of those present and voting and must be presented to the President for assent. The President has the power to return bills for reconsideration or refuse assent in writing. If the Parliament adopts the bill a second time and presents it to the President, the President may return it once more. In order to overrule the President’s objection, the Parliament has to pass the respective bill once more by a two-thirds majority of all members. In case the President remains inactive on a bill for more than thirty days, presidential assent is presumed.

2.6.3 The Judiciary

Article 126 lays down that “the exercise of judicial power is derived from the people”.¹¹² The constitution stresses the notion of an independent judiciary and article 127 provides for the participation of the people in the administration of justice. The judiciary consists of the Supreme Court, Court of Appeal and the High Court. The Parliament may establish further courts by law, including so called “qadhis courts”, which shall be able to hear cases regarding marriage, divorce, inheritance of property and guardianship.¹¹³ The Supreme Court is the final court of appeal and consists of a Chief Justice and at least six other Justices. A case is decided by a quorum of any uneven number not being less than five members of the Court. Previous decisions of the Supreme Court are usually binding on the Court itself and all other courts. However, according to article 132, the Court may depart from a previous decision when it “appears right to

¹⁰⁹ Article 80(2) The Constitution of the Republic of Uganda - 1995

¹¹⁰ Article 246(1) The Constitution of the Republic of Uganda - 1995

¹¹¹ Article 78(1) The Constitution of the Republic of Uganda - 1995

¹¹² Article 126(1) The Constitution of the Republic of Uganda - 1995

¹¹³ Article 127(1) The Constitution of the Republic of Uganda - 1995

do so". When the Supreme Court hears appeals from decisions of the Court of Appeal sitting as a Constitutional Court all the members of the Supreme Court have to be present.

Regarding questions as to the interpretation of the Constitution, the Court of Appeal sits as a Constitutional Court with a bench of five of its members.¹¹⁴ The Constitutional Court, which is not expressly mentioned as a court of judicature in article 129, has the power to interpret the Constitution.¹¹⁵ Any person alleging an infringement of the Constitution as laid down in article 137 may petition the Court for a declaration to that effect. The Court may then grant an order of redress or refer the matter to the High Court to investigate and determine the latter. Questions as to the interpretation of the constitution can also be referred by other courts of law.

¹¹⁴ Christopher Mbazira. *"Democracy and Good Governance: An Assessment of the Findings of Uganda's Country Self-Assessment Report"*, (African Peer Review Mechanism, October 2008) p.59

¹¹⁵ Article 129(1) The Constitution of the Republic of Uganda - 1995

CHAPTER THREE

CONSTITUTIONALISM, CONSTITUTIONAL REFORMA AND GOVERNACE IN UGANDA

3.1 The Constitution and Constitutionalism

The word Constitution is derived from the verb to “*constitute*” which according to the Shorter Oxford Dictionary, means, among other things, to set up, ordain, appoint, frame, form, makeup or compose. The term Constitution therefore literally means the action of constituting, framing or establishing something. A national Constitution therefore is defined by the same dictionary as: “The system or body of fundamental principles according to which a nation, State or body politic is constituted and governed.” The above definition is more or less similar to the one provided by the Encyclopedia Britannica, which defines a Constitution as; “both the system by which a country is governed and the particular document or collection of documents establishing the basic rules and institutions of the political system.” The only new element introduced in the second definition is that of the form of a Constitution as a document. It is true that most modern Constitutions are now written following the example of the United States in 1787, and only a few countries like Britain and Israel have unwritten Constitutions.

In his book titled *Modern Constitutions*, Prof. Wheare introduces yet another element in the definition of a Constitution when he states that “*The Constitution then for most countries in the world is a selection of the legal rules which govern the government of that country and which have been embodied in a document.*”¹¹⁶ The new element introduced is the legal character of the Constitution, as a body of legal rules or laws. This legal aspect or status of a Constitution is an important characteristic of a modern Constitution which distinguishes it from a mere political charter. Thus Professors Wade and Philips in their well-known text book on Constitutional Law Stated that, “*normally, a Constitution is a document having a special legal sanctity which sets out the framework and principal organs of the government of a State and declares the principles governing the operation of those organs.*”¹¹⁷

¹¹⁶ Mohammed Salih, M. A., “*African Parliaments. Between Governance and Government*” (Palgrave Macmillan, USA 2007)

p.63

¹¹⁷ Gebreworld, B, “*Democracy and Democratization in Africa*” (New York: Zed Books 2008) p.85

A Constitution is not merely a set of fundamental principles upon which a State is organized; it is also the basic law of the country. In his book, Prof. Kanyeihamba emphasizes a legal aspect in the definition of a Constitution when he states that “*a Constitution of a State consists of the basic and fundamental laws which the inhabitants of a State consider to be essential for their governance and wellbeing. The Constitution lays down political and other State institutions and distributes powers among them and puts limitations on the exercise of those powers.*”¹¹⁸ From the above brief survey, we can define a Constitution as a set of basic principles and laws upon which the State is organized and which establishes the major organs of government. It defines their functions and powers and relationship amongst them, and sets out the rights and duties of the citizens.

A national Constitution has therefore both political and legal dimensions. In political terms, a Constitution is the basic decision of a people on how they want to live. It has been described as a socio-political frame-work through which the polity agree on who gets what, when and how. It is said to define “*political space*” and the relationship between the State and its citizens. It is a kind of a “*power map*” and “*charter of government*”. It has been described as a social contract or covenant between the State and its subjects on the manner of governance and exercise of State power. In legal terms, a Constitution is the fundamental and supreme law of the country.¹¹⁹ It is the basic law from which all laws derive their life. Therefore any law which conflicts with the Constitution has no legal effect.¹²⁰ A written Constitution is supreme over the legislature. Accordingly, a Constitution is regarded as having legal sanctity or being sacred. It deserves the highest respect and obedience from the leaders and the people alike. It follows therefore that a Constitution represents the deepest norms and ideals by which the people govern their political life.

As a matter of fact, a good Constitution should be a home-grown Constitution that is socially relevant and tailored to the people’s needs and interests. It’s unfortunate that like many other British colonies, the independence Constitution of Uganda, 1962 was bestowed on Uganda by an

¹¹⁸ Uganda Constitutional Commission, Guidelines on Constitutional Issues 10 (1991)

¹¹⁹ Uganda Constitutional Commission Statute, No. 5 (1988) (Uganda)

¹²⁰ Kanyeihamba George William, “*Constitutional and Political History of Uganda; From 1894 to Present*”, (2nd Edition, McMillan 2010) p.112

Act of the British Parliament. There is no way therefore that that Constitution could be considered as having derived its legitimacy from the people of Uganda. It's pertinent to note that Constitutionalism is classically an idea that government should be limited in its powers and that its authority depends on its observation of these limitations. In particular, these limitations relate to legislative, executive and judicial powers. A Constitution is the legal and moral framework setting out these powers and their limitations. This framework must represent the will of the people, and should therefore have been arrived at through consensus. Constitutionalism as an element of the rule of law largely depends on how Constitutional limitations imposed on government are interpreted and enforced. Integral to the rule of law and Constitutionalism is the doctrine of the separation of powers, the independence of Judiciary, the concept of Justice, Judicial discretion to mention but a few.¹²¹

Liberty implies the limitation of power by law and the one institution above all others essential to the preservation of the rule of law has always been and still is an honest, able, learned; and independent judiciary. The maintenance of an independent and accountable judiciary is fundamental to Constitutionalism and the protection of human rights. The worldwide emergence of Constitutions with wide-ranging and justiciable Bills of Rights has rekindled public awareness and interest in the role of courts as a forum through which to seek individual and collective justice and the sustenance of a democratic culture. The big question nevertheless is; between the Constitution and Constitutionalism, which of the two is more important? The Constitution is unquestionably supreme; but is it as important as the Constitutional ideals enshrined therein? As a matter of fact, the Constitutional ideals enshrined in the Constitution are more important than the Constitution itself, which is merely a compendium of these Constitutional principles.

3.2 Constitutionalism and Governance

Constitutionalism is the idea that government can, and should, be legally limited in its powers, and that its authority depends on observance of these limitations. Any state must have some acknowledged means of constituting and specifying the limits (or lack thereof) placed upon the

¹²¹ T. R. S. Allan, *"Constitutional Justice – A Liberal Theory of the Rule of Law"*, (Oxford: Oxford University Press 2001), 1-29.

three arms of government: legislature (making laws), executive (implementing laws) and judiciary (adjudicating disputes under laws).

3.2.1 The Essence of Constitutional Government

Constitutional government is limited government based on a prescribed division of powers among public officials. The leading principle of constitutional government is known as the rule of law. This signifies that no political authority is superior to the law itself. When and where the rule of law is in force, the rights of citizens are not dependent upon the will of rulers; rather, their rights are established by law and protected by independent courts. Individuals, thus, have a secure area of autonomy and have set expectations of having their rights and duties pre-established and enforced by law. Related to the principle of the rule of law is the doctrine of the supremacy of law. This is a fundamental concept which requires generality in law. It is a further development of the principle of equality before the law. Laws should not be made in respect of particular persons. The idea of supremacy of law requires a definition that must include the distinction between law, executive administration and prerogative decree.

Failure to maintain the formal differences between these issues would lead to a conception of law as being nothing more than authorization for power, rather than the guarantor of liberty equally to all. Principles of government are normally associated with the rule of law and include independence of the judiciary and the right of redress for injustices perpetuated by the state. Security of tenure for judges, the judges' own distinguished traditions of learning, integrity and technique as well as the law of contempt, ensure that proper judicial review processes can take place. Judicial review empowers a court to invalidate the acts of a legislative body or executive officer. Without these powers of the judiciary, the most elaborate system of rights, remedies and procedures would be of little use/ inconsequential.

Further, structural principles exist that determine the forms of constitutional government. The principle of separation of powers is premised on the basis that when a single person or group has a large amount of power, it can threaten citizens. Separation of powers is a method of checking the amount of power in any individual or group's hands, making it more difficult to abuse such power. Protection of the people against misuse of power by the state itself is, in the first instance,

secured when the functions of the government are kept separate and when ultimate power of the state vests, in the final analysis, with the people, who exercise it through election of representatives in regular, free and fair elections. The principle of separation of powers relates to the very heart of constitutional government, which is to structure political institutions with the requisite powers and independence to make judgments that respect equal rights of free people, while at the same time promoting the public good.

As a feature of constitutionalism, rules imposing limits upon government power must be entrenched, either by law or by way of constitutional conventions. In other words, individuals whose powers are constitutionally limited must not be legally entitled to change or expunge those limits at their pleasure. Where a government is entitled to change the very terms of its constitutional limitations at its discretion, it is questionable whether there would, in reality, be any constitutional safeguards for the public.

The letter of the Constitution by itself is neither enabling nor constraining. For constitutional provisions to operate meaningfully and effectively institutional and cultural apparatus to implement, enforce and safeguard the constitution must be in place. The rule of law is one key components of the constitution's implementing and safeguarding apparatus. An independent judiciary and the notion of the supremacy of law all work together to ensure that the letter and spirit of the constitution are honored in the workings of a constitutional government.

3.3 Constitutional reform processes in Uganda

According to Aristotle, a political philosopher who lived between 384-322 BC, the word "Constitution" is defined as 'the fundamental law, written or unwritten, that establishes the character of a government by defining the basic principles to which a society must conform; by describing the organization of the government and regulation, distribution, and limitation on the functions of different government departments; and by prescribing the extent and manner of the exercise of its sovereign power.'¹²²

¹²² Aristotle, *"The Politics of Aristotle 258"* (Ernest Barker eds. & Trans., Oxford University Press 1976) p.201

From antiquity down to the modern era, philosophers, political scientists and jurists have always recognized the imperatives of constitutionalism and the difficulties of attaining this.¹²³ It is perhaps trite to say that we live in a time of rapid and momentous changes in every sphere of life, none more so than in constitutional governance. For Africa, after more than four decades of mostly authoritarian, corrupt and incompetent rule, the 1990s began with a slow and painful move towards what was optimistically hoped to usher in a new era of democratic governance and constitutionalism.¹²⁴ One of the main features of this process has been constitutional reforms designed to introduce constitutions that promote constitutionalism and good governance.

Many studies have shown how most post-independence African constitutions were quickly transformed into instruments of oppression under the pretext of pursuing the coveted but elusive goals of national unity and economic development.¹²⁵ The concept of constitutionalism today can be said to encompass the idea that a government should not only be sufficiently limited in a way that protects its citizens from arbitrary rule but also that such a government should be able to operate efficiently and in a way that it can be effectively compelled to govern within its constitutional limitations. Constitutionalism in the modern sense has six core elements:

- the recognition and protection of fundamental rights and freedoms;
- the separation of powers;
- an independent judiciary;
- the review of the constitutionality of laws;
- the control of the amendment of the constitution; and
- institutions that support democracy.

Among the qualities a good constitution is that it should not be easily changed, but most importantly, should bear the aspirations of the people it is intended to govern. With a history of conflict and human rights violations right from colonial times, where extensive measures of

¹²³ Gebreworld, B. *"Democracy and Democratization in Africa"*, (New York: Zed Books 2008) p.47

¹²⁴ Kritz, N. J. *"The Rule of Law in the Post conflict Phase; Building a Stable Peace"*, In, Crocker, C., A., Hampson, O., and Aall, P. *"Turbulent Peace: The Challenges in Managing International Conflict"*, (Washington: United States Institute of Peace 2001) p.144

¹²⁵ Santiso, C. *"International Co-operation and Good governance: Moving towards a Second Generation"* (European Journal of Development Research 2001) p.131.

oppression used to suppress discontent and deny Ugandans their fundamental human rights, the 1995 Constitution of the republic of Uganda was promulgated, expressing commitment of the people of Uganda to building a better future by establishing a socio-economic and political order through a popular and durable national Constitution based on the principles of unity, peace, equality, democracy, freedom, social justice and progress.¹²⁶ Against this background, through the Constituent Assembly, the 1995 Constitution of the Republic of Uganda was adopted.

Since its promulgation, the 1995 Constitution has been amended three times, with the first amendment of 1st September 2000 being successfully challenged in the Supreme Court case of Ssemogerere and Others vs Attorney General, Constitutional Appeal No.1 of 2002, with Court observing that the amendment was inconsistent with Article 88 of the Constitution, which provides for the quorum of Parliament when voting on any question.¹²⁷ The second amendment was the Constitutional (Amendment) Act, 2005, Act No.11 of 2005, which among others, saw the removal of term limits on the tenure of the office of the President, creation of anti-corruption court, creation of the office of the Prime Minister and the Deputy Attorney General, and the holding of the referendum.¹²⁸ The third amendment to the Constitution of the republic of Uganda was the Constitutional (Amendment) (No.2) Act, 2005, No.21 of 2005, whose objectives were to 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.¹²⁹

The 1995 Constitution of the Republic of Uganda is one of the largely flexible constitutions, which is why in a period of 19 years; it has so far been amended three times, with the first being successfully challenged in Court. The Constitutional Amendment Bill 2015 will be the fourth time; an attempt is made to amend the constitution. The Constitution should be suitable, representing the needs of the time and should provide for the rights and duties of the citizens. The 1995 Constitution of the republic of Uganda under Chapter One, Article 1, establishes the

¹²⁶ Kanyeihamba George William, *"Constitutional and Political History of Uganda; From 1894 to Present"*, (2nd Edition, McMillan 2010) p.104

¹²⁷ Mukholi, D.; *"A Complete Guide to Uganda's Forth Constitution; History, Politics and the Law"*. (Kampala: Fountain Publishers 2004) p.38

¹²⁸ Ibid 41.

¹²⁹ Ibid 44.

sovereignty of the people who shall exercise their sovereignty in accordance with the constitution; and that all authority in the State emanates from the people who shall be governed through their will and consent;¹³⁰ and the people shall express that will and consent on who shall govern them and how they should be governed through regular free and fair elections of their representatives or through referendum.

The immediate post-independence constitutional amendment was in 1967 when the then Premier abrogated the constitution and replaced it with a pigeonhole constitution. The legislature was cajoled and threatened to adopt a new constitution, which exalted the executive prime minister into the presidency abolishing the rotational arrangement between cultural leaders that had been agreed to before independence.¹³¹ In 2005, ten years after its promulgation, the 1995 Constitution was amended to pave way for the return of political parties. Following the decision of the National Executive Committee of the Movement, of March, 2003 to open the political space, Government set up the Constitutional Reform Commission (CRC) with the mandate to review the entire constitution.¹³²

Unlike the pigeonhole constitution and the 1967 constitution making processes, the CRC was consultative and collected views from across the country. The CRC was mandated to examine the consistency and compatibility of the constitutional provisions relating to the sovereignty of the people, political systems, democracy and good governance and make recommendations as to how best to ensure that the country is governed in accordance with the will of the people at all times.¹³³ Its terms of reference provided for a very wide mandate to consider matters significantly relevant to the Constitution for good governance, the rule of law and affordability by the country of the implementation of the constitution.

¹³⁰ Article 1(1)(2) The Constitution of the Republic of Uganda - 1995

¹³¹ Oloka-Onyango, J. "Judicial Power and Constitutionalism in Uganda: A Historical Perspective", In Mahmood Mamourani & Joe Oloka Onyango (eds.), "Studies in Living Conditions, Popular Movements and Constitutionalism" (Nairobi: Mcmillan Publishers 2005) p.500

¹³² Oloka-Onyango, J. "From Whence Have We Come, and Where Exactly are We Going: The Politics of Electoral Struggle and Constitutional (Non) Transition in Uganda" (Human Rights and Peace Centre, Working Paper Series No. 1 2005) p.72

¹³³ Barkan, D. J. "Uganda: Assessing Risks to Stability". (A report of the CSIS Africa Program, June 2011) p.29

The CRC was a first attempt at reviewing the 1995 constitution. However, from the very onset the opposition largely interpreted the CRC as a political ploy by government aimed at responding to a political sentiment during an election cycle. Critics of the CRC have argued that the process lacked the competence to execute its mandate, as it was largely constituted by NRM sympathizers.¹³⁴ These critics further observe that in respect to key political issues, the CRC proposals were ignored and a parallel process initiated which came up with possible reforms. For instance on the matter of which political system to adopt, the NRM set up a Committee (chaired by Crispus Kiyonga) to consider whether to revert to a multiparty system of governance or not. This was in spite of the fact that the issue of opening up the political system was a key term of reference for the CRC.

The Committee submitted its report at the end of 2002 in which they recommended the retention of the Movement Political system. The committee's report was however opposed by President Museveni who argued for the restoration of the multiparty political system. The main reason underpinning his proposal was to be delivered at the NRM retreat in Kyankwanzi in 2003 in which the proposal to lift Presidential term limits was also introduced, to enable President Museveni to stand for a third term.¹³⁵ President Museveni argued that in order to satisfy the demand of the donor community and to rid the Movement of internal dissenters, it was necessary to open political space and restore a multiparty political system.

The Government subsequently developed a government White Paper, which was submitted to the CRC, the very body it had set up to explore recommendations for amendment. The government white paper included the proposal to lift the presidential term limits. The CRC final report submitted in 2003 was largely seen as a failure to address serious constitutional issues that would help consolidate democracy, rule of law and constitutionalism in Uganda.¹³⁶ The process nonetheless, set in motion a process of constitutional reforms, which changed the constitutional

¹³⁴ Oloka-Onyango, J. *"From Whence Have We Come, and Where Exactly are We Going: The Politics of Electoral Struggle and Constitutional (Non) Transition in Uganda"* (Human Rights and Peace Centre, Working Paper Series No. 1 2005) p.79

¹³⁵ Okuku, J. *"Beyond 'Third Term' Politics: Constitutional Reform and Democratic governance in Uganda"* (East African Journal of Peace & Human Rights Vol. 11, Issue 2 2005) p.182.

¹³⁶ Oloka-Onyango, J. *"From Whence Have We Come, and Where Exactly are We Going: The Politics of Electoral Struggle and Constitutional (Non) Transition in Uganda"* (Human Rights and Peace Centre, Working Paper Series No. 1 2005) p.82

landscape in Uganda,¹³⁷ which most observers interpreted to constitute a democratic reversal of the democratic gains. Critical among the constitutional reforms was the lifting of presidential terms limits. To some observers, in several respects, the CRC was a missed opportunity for meaningful reform of the constitutional order. As Kanyeihamba noted, the amendments were manipulative, transitory and in some instances motivated by personal reasons.¹³⁸

It could be argued that the post 1995 constitutional reforms were in their nature no different from the immediate post-independence abrogation of the constitution. They were manipulative and aimed at perpetuating the rule of the regime of the day. While the post-independence change exalted the premier to the presidency and concentrated powers in the executive, the post 1995 removed terms limits for the sole benefit of the sitting president.¹³⁹ All of these reforms have not enjoyed the support of the majority and failed to rally consensus across the political aisle. They did not entrench constitutionalism but personal rule of the regime. These reforms may in theory be argued as lawful but are not legitimate as they betrayed the popular view of the population, but adherence to the rule of law entails far more than a mechanical application of static legal technicalities.¹⁴⁰ It involves an evolutionary search for those institutions and processes that will facilitate authentic stability through justice. The observation by Kritz is a post conflict response which maintains that a constitution is a living document not frozen in time and history does certainly hold true in all democratic societies.¹⁴¹

In all democratic societies, there is always a constant attempt at improving the constitutional framework to address institutional failures, reconstruct political structures and ensure better

¹³⁷ Onyango, O., J. "Liberalization Without Liberation: Understanding the Paradox of the Opening of Political Space in Uganda", (Rights Democratic Working Paper Series No.2 2005) p.34

¹³⁸ Kanyeihamba George William, "Constitutional and Political History of Uganda; From 1894 to Present", (2nd Edition, McMillan 2010) p.195

¹³⁹ Okuku, J. "Beyond 'Third Term' Politics: Constitutional Reform and Democratic governance in Uganda" (East African Journal of Peace & Human Rights Vol. 11, Issue 2 2005) p.188

¹⁴⁰ Kritz, N. J. "The Rule of Law in the Post conflict Phase; Building a Stable Peace", In, Crocker, C., A., Hampson, O., and Aall, P., "Turbulent Peace: The Challenges in Managing International Conflict", (Washington: United States Institute of Peace 2001) p.129

¹⁴¹ Ibid 131

governance for the present and the future.¹⁴² Constitutional reforms are viewed as a necessary function of a democratic process. The need for national peace and stability dictate that constitutional moderations are incremental, gradual and continuous as opposed to cataclysmic; the process should be consultative and inclusive to ensure that the citizens own up the outcomes. Thus a constitutional reform process should involve a process of national dialogue which allows competing perspectives to be debated and incorporated in the constitution which is critical for national stability, respect for human rights and deepening of democracy.

3.4 Challenges faced by Uganda's Parliament in the Constitutional reform processes in relation to the promotion of good governance

One of the key factors determining parliamentary performance in every country is the representative quality and effectiveness of its political parties. Political parties perform vital functions in any representative democracy, providing the principal vehicles for the representation of citizens' interests, framing political choices at elections.¹⁴³ In almost every parliament around the world, there is a gap between the powers that a parliament has to hold the executive to account and the willingness or ability of politicians to use them. Thus, parliaments do not operate in a vacuum. Their functioning and effectiveness is shaped very much by the context and particularly the political context of which they are part.

In Africa, the legacy and the continuing dominance of one party in a multiparty system, continue to shape the functioning and performance of African parliaments. In most countries, the functions of parliament are normally laid down in the constitution or in parliamentary laws of each country. Parliaments have a fundamental duty to maintain public confidence and trust in the integrity of parliament and reassure the public that Parliament places the public interest ahead of Parliamentarians' private interests.¹⁴⁴ As one of the major state institutions, the functions of parliament are embedded in the general system of checks and balances. In general terms any

¹⁴² Makara, Sabiti, (2010) *"Deepening Democracy through Multipartyism: The Bumpy Road to Uganda's 2011 Elections"*, (Africa Spectrum 2010) p.81-94 (also available online at www.africa-spectrum.org)

¹⁴³ Okuku, J. *"Beyond 'Third Term' Politics: Constitutional Reform and Democratic governance in Uganda"* (East African Journal of Peace & Human Rights Vol. 11, Issue 2 2005) p.187

¹⁴⁴ Van der Vyver, J. *"The Separation of Powers"* (SA Journal of Public Law Vol. 8 2001) p.177.

parliament has to perform three key functions. These are: legislation, representation and oversight.

As we have seen, the core elements of constitutionalism have been incorporated in one form or another in modern African constitutions. However, the experiences under these new or revised constitutions in the last decade have exposed numerous structural and institutional weaknesses and gaps. For a start, the assumption that the constitutional entrenchment of fundamental rights, especially the legalization of multi-party politics will provide a solid foundation on which constitutional democracy, a culture of tolerance, transparency and accountability as well as political stability will develop and discourage dictatorship and military adventurism has not turned out to be true.¹⁴⁵ The main, and in most instances, the only basis on which many African countries can claim to be democracies, the regular holding of parliamentary and presidential elections is also potentially one of the major sources of democratic paralysis on the continent.

Most elections provide little more than a theatrical setting for the self-representation and self-reproduction of power. Ruling parties have skillfully tailored electoral laws to favor them and permit them to exclude their opponents from electoral competition.¹⁴⁶ The real danger is that this destroys in a serious way faith in peaceful change through the ballot box and raises the ugly spectre of change by the use of force. In the famous and oft-quoted words of the late President John F. Kennedy, "those who make peaceful change through the ballot box impossible make violent change inevitable." The so-called Jasmine revolution or Arab spring is a reminder of this truism. Opposition political parties, long considered to be an essential structural feature of modern liberal democracy are barely tolerated on the continent.

The new leaders who replaced some of the old dictators in the past decades have done little to show that the new constitutional dispensation and constitutional democracy can change the *status quo*. In fact, the old monolithic one party dictators appear to have simply made way for multiparty "democratic" dictators, who have maintained the inherited repressive, exploitative and

¹⁴⁵ Oloka-Onyango, J. *"Dictatorship and Presidential Powers in Post Kyankwanzi Uganda: Out of the Pot into the Fire"*, (Human Rights and Peace Centre Working Paper Series No. 3. 2006) p.24

¹⁴⁶ Ibid 26-27.

inefficient structures installed by their predecessors.¹⁴⁷ Many of the new democrats have turned out to be as unreliable, corrupt, violent, power-drunk, manipulative and inefficient as the regime they replaced. One of the major problems that was not addressed by the post 1990 constitutional reforms is the issue of African absolutism caused by the concentration and centralization of power in one man, the president, and in one institution, the presidency, and the abuses of powers that go with this.¹⁴⁸ Many of the new constitutions merely paid lip service to separation of powers. Under most constitutions, especially in Francophone Africa, an overbearing and “imperial” president reigns and dominates the legislature as well as controls the judiciary.

Capable legislatures are crucial in creating an enabling environment for socioeconomic development and good governance in emerging African democracies. The legislature is the principal forum for communicating peoples’ needs and the efficacy of the institution to check executive power through oversight, ensure transparency and accountability in economic management, and formulate coherent laws that uphold human rights.¹⁴⁹ These functions make the parliament a valuable instrument for promoting good governance, democracy and the rule of law. Fulfilling this mandate through the parliamentary processes, however, requires an enabling environment and the legislature to possess some essential organizational and resource capacities. However, despite these clearly laid out functions of Parliament in promoting constitutionalism and good governance, there are underlying challenges that stand in the way.

In most countries, extensive decree powers are used to marginalize the role of parliament in its law making function. This marginalization may also come about by a fragmented parliament that is subject to political manipulation by the Executive. A marginalized parliament will first and foremost damage the oversight function of parliament vis-à-vis the Executive. If the government engages in “bad governance”, this will be certainly a serious setback, with potential conflict

¹⁴⁷ Nampewo, Z. “*State of Constitutionalism in Uganda: Challenges in Observance*”, In Lawrence Mute (ed) “*Constitutionalism in East Africa: Progress, Challenges and Prospects in 2004*” (Kampala: Fountain Publishers 2007) p.46

¹⁴⁸ Gebreworld, B. “*Democracy and Democratization in Africa*”, (New York: Zed Books 2008) p.47

¹⁴⁹ Christopher Mbazira. “*Democracy and Good Governance: An Assessment of the Findings of Uganda’s Country Self-Assessment Report*”, (African Peer Review Mechanism, October 2008) p.69

between parliament and the presidency.¹⁵⁰ In the worst of cases, this can lead to institutional deadlock which might paralyze effective legislation and governance, by all means an impediment to good governance.

Parliament is also known as the Legislature, which underlines the fact that its main function is making laws. Law making function of parliament frequently requires expertise and capacity no one can expect from all parliamentarians on all fields of expertise.¹⁵¹ Since Parliament does not always consist of professional lawyers, who can be expected to understand existing laws and suggest what new laws are needed, obviously not all Parliamentarians are actually making laws. This function in most cases is reserved for professionals, most of who are from the executive and/or the judiciary, with policy decided on by the Executive. The role of Parliament in this case is therefore a very limited one of discussing legislation and approving it.

Parliamentarians are the key agents of representation in a democratic system of government. They represent the people. Often, however, parliamentarians do not care about their electorate once elected. As a consequence, laws might not consider the interest of the electorate, might not be explained to the public or parliamentarians fail to fulfill their control function vis-à-vis a possibly ill-performing executive.¹⁵²

In Uganda, after gaining independence in 1962, the country has gone full political circle that started from a parliamentary democracy (with a system of political parties and fully representative government) to years of dictatorship and military rules (with a no-party political system) and back to a parliamentary democracy as it is today. All these phases were largely the result of bad governance and the lack of commitment to democratic practices and constitutional rule by the leaders.¹⁵³ After the electoral victory of the National Resistance Army (NRA) in

¹⁵⁰ Makara, Sabiti, (2010) *"Deepening Democracy through Multipartyism: The Bumpy Road to Uganda's 2011 Elections"*, (Africa Spectrum 2010) p.95 (also available online at www.africa-spectrum.org)

¹⁵¹ UNDP, *"Governance for the Future: Democracy and Development in the Least Developed Countries"*, (New York, USA: Hansington Press 2006) p.56

¹⁵² Bret, E. A. *"State Failure and Success in Uganda and Zimbabwe: The Logic of Political Decay and Reconstruction in Africa"*, (Crisis State Research Centre (LSE), Working Paper No 78, Series 2010) p.41

¹⁵³ Makara, Sabiti, (2010) *"Deepening Democracy through Multipartyism: The Bumpy Road to Uganda's 2011 Elections"*, (Africa Spectrum 2010) p.97 (also available online at www.africa-spectrum.org)

1986, Uganda has been governed in a “no-party democracy” system of government, the so called “Movement system.” Under this system every Ugandan became at birth a member of the National Resistance Movement (NRM).¹⁵⁴ Part of the justification for this system has been to promote national unity and reconstruction after years of civil conflict, as political parties had tended to fragment along ethnic lines. However, under the movement system, Uganda was often held up as a prime example of how a reforming government combined with international support can help developing countries.

In essence, the Movement system brought relative political stability and economic growth to the country. Uganda is now a presidential republic, in which the President of Uganda is both head of state and head of government and there is a multi-party system. Executive power is exercised by the government. Legislative power is vested in both the government and the National Assembly. The system is based on a democratic parliamentary system with universal suffrage for all citizens over 18 years of age. In a measure ostensibly designed to reduce sectarian violence, political parties were restricted in their activities from 1986.¹⁵⁵ The non-party “Movement” system was instituted, while political parties continued to exist, they were however unable to campaign in elections or field candidates directly (individual electoral candidates could belong to political parties). In July 2005, a constitutional referendum cancelled this 19-year ban on multi-party politics and the first presidential elections under the 2005 Constitution were held in February 2006.

Uganda has perhaps the most advanced decentralization system in Africa, which is expected to promote and enhance people’s participation in decision-making. However, policy and legal frameworks are not enough to get citizens to meaningfully participate in decision-making.¹⁵⁶ In this respect, despite the Constitutional provisions for participatory development, the participation of the citizens especially the grassroots people in the rural areas in setting their priorities on how

¹⁵⁴ Nelson Kasfir, “No-Party Democracy in Uganda”, (Journal of Democracy Vol. 9 (2), 1998) p.49-63 available at: http://www.journals/journal_of_democracy/v009/9.2kasfir.html.

¹⁵⁵ Okuku, J. “Beyond ‘Third Term’ Politics: Constitutional Reform and Democratic governance in Uganda” (East African Journal of Peace & Human Rights Vol. 11, Issue 2 2005) p.194

¹⁵⁶ Nampewo, Z. “State of Constitutionalism in Uganda: Challenges in Observance”, In Lawrence Mute (ed) “Constitutionalism in East Africa: Progress, Challenges and Prospects in 2004” (Kampala: Fountain Publishers 2007) p.49

they want to be governed and in general influencing development policy decisions is still very limited. These limitations are related to:

- Lack of effective mobilization and civic education;
- Limited access to information;
- The continued existence of some bad laws that curtail the right of people to freely enjoy their political and civil rights such as the freedom of association.

In addition, one of the other fundamental reasons for limited participation is the high illiteracy rate in the country. For instance about 40 percent of the adult population cannot read and write with the majority of these living in rural areas.

Members of Parliament are provided with Constituency and Mileage allowance. One of the challenges associated with this is the “uncontrolled” use of those funds. Thus, MPs are neither accountable to the executive nor to the people for the use of those funds.¹⁵⁷ Worse still, some people are of the opinion that the old political order, which was using the ballot box merely to ensure that politicians got elected into power, is still very much at work. This is because “after elections communication between the electorate and their elected representative is completely broke down.” There is therefore a need to devise a viable and functionally democratic system that would allow MPs to account for the Constituency and Mileage allowance. Empowering District Assemblies and other local governing institutions offers a better opportunity to the ordinary person to become involved in the usage of those funds.

¹⁵⁷ Oloka-Onyango, J. *“From Whence Have We Come, and Where Exactly are We Going: The Politics of Electoral Struggle and Constitutional (Non) Transition in Uganda”*, (Human Rights and Peace Centre, Working Paper Series No. 1 2005) p. 77

CHAPTER FOUR

CONSTITUTIONAL REFORMS AND GOOD GOVERNANCE

4.1 The provisions of Uganda's constitution in line with the principles of good governance in Uganda

According to the respondents, the Constitution provides for governance under the democratic principles in the National Objective and Directive of State Policy. Governance is the process of managing public affairs, including the provision of services. Governance relates to decisions that define expectations, grant power, and verifies performance. Therefore good governance describes how public institutions conduct public affairs and manage public resources in a transparent and accountable manner. It centers around the responsibility of governments and governing bodies to meet the needs of the masses as opposed to select groups in society. Good governance ensures participation by all citizens regardless of their gender and other differences. Transparency is the basis of good governance and the first step in fighting corruption. It provides a universal rationale for the provision of good records management system, archives, and regulatory and finance management systems. Corruption undermines basic social values, threatens the rule of law and undermines trust of political institutions. The constitution stipulates how good governance describes the way public institutions conduct public affairs in Chapter Thirteen of the Constitution which is on the Inspectorate of Government. Some of the provisions in the Constitution on good governance include the following:

Guarantee of rights and freedoms

According to the 1995 Constitution, the rights and freedoms of the citizens of Uganda must be guaranteed. The protection and promotion of fundamental and other human rights and freedoms is enshrined in Chapter 4, Articles 20-47 of the 1995 Constitution of the republic of Uganda. Article 20 states that;

*"Fundamental rights and freedoms are inherent and not granted by the State."*¹⁵⁸

Article 21(1) of the 1995 Constitution of the Republic of Uganda states that;

¹⁵⁸ Article 20 of the Constitution of the Republic of Uganda, 1995

*"all persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law."*¹⁵⁹

Protection of the right to freedom of conscience, expression, movement, religion assembly and association are all enshrined in article 29 of the 1995 Constitution, which states that every person shall have the right to:

freedom of speech and expression, which shall include freedom of the press and other media;¹⁶⁰ freedom of thought, conscience and belief which shall include academic freedom in institutions of learning;¹⁶¹ freedom to practice any religion and manifest such practice which shall include the right to belong to and participate in the practices of any religious body or organization in a manner consistent with this Constitution;¹⁶² freedom to assemble and to demonstrate together with others peacefully and unarmed and to petition;¹⁶³ and freedom of association which shall include the freedom to form and join associations or unions, including trade unions and political and other civic organizations.¹⁶⁴

Protection of human rights

According to the respondents, the Universal Declaration of Human Rights (UDHR) states that everyone has the right to life, liberty and security of person. Its preamble explicitly recognizes the centrality of fundamental rights to the Rule of Law, stating that "it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law". The Declaration further provides that no one shall be subjected to arbitrary arrest, detention or exile and that everyone has a right to be presumed innocent until proven guilty. This declaration was adopted by Chapter Four of the 1995 Constitution of the Republic of Uganda which stipulates the protection of fundamental

¹⁵⁹ Article 21(1) of the Constitution of the Republic of Uganda, 1995

¹⁶⁰ Article 29(a) of the Constitution of the Republic of Uganda, 1995

¹⁶¹ Article 29(b) of the Constitution of the Republic of Uganda, 1995

¹⁶² Article 29(c) of the Constitution of the Republic of Uganda, 1995

¹⁶³ Article 29(d) of the Constitution of the Republic of Uganda, 1995

¹⁶⁴ Article 29(e) of the Constitution of the Republic of Uganda, 1995

rights and freedoms including the rights of the accused under the law as well as freedom of opinion and expression. Article 23 of the 1995 Constitution provides for the protection of personal liberty¹⁶⁵ while Article 24 of the same provides for the respect for human dignity and protection from inhuman treatment.¹⁶⁶ Other national legislations that impact on the protection of human rights include the Police Act; the Magistrates Court Act; the UPDF Act and the Anti-torture Act. However, respondents noted that despite the law, Uganda still faces challenges in their enforcement, which inevitably affects the enjoyment of the rights created therein. The respondents pointed to the following human rights concerns:

- **Arbitrary Arrests and Detentions**

On the issue of arbitrary arrest and detention, the highest number of registered complaints pertains to the arbitrary arrest of suspects conducted by plain-clothed officials, without proper identification or arrest warrants. Those arrested were often held for long periods during which they were denied contact with their lawyers or families, tortured or otherwise ill-treated and denied access to medical care. What is of great concern is that arbitrary arrests in Uganda are increasingly becoming the norm. One respondent pointed a story in the *Daily Monitor* newspaper about the incident of Sunday 12th March 2017, where at Kampala Capital City Authority, a one Mr. Mubarak Kalenge was kidnapped and days later found with serious injuries.¹⁶⁷ According to the respondents, reported methods of torture include: severe beatings; confinement in very small, cramped spaces; deprivation of light, food and water; and denial of medical treatment. In one case, a male detainee was reported to have been threatened with rape.

Article 23 of the Constitution provides that “no person shall be deprived of personal liberty” except for certain cases such as the execution of a sentence or under a court order; preventing the spread of an infectious or contagious disease; the case of a person of unsound mind; for purposes of preventing unlawful entry into the country, among others. A person arrested under Ugandan law has the following rights: the right to be kept

¹⁶⁵ Article 23 of the Constitution of the Republic of Uganda, 1995

¹⁶⁶ Article 24 of the Constitution of the Republic of Uganda, 1995

¹⁶⁷ Andrew Bagala, “How KCCA lawyer survived kidnap,” *Daily Monitor*, March 15, 2017: pp. 4 and 5.

in a place authorized by law; the right to be informed in a language they understand the reasons for the arrest, restriction or detention and of their right to a lawyer of their choice; the right to be brought to court as soon as possible but not later than 48 hours; and the right to protection from torture and other cruel, inhuman or degrading treatment or punishment.

Article 9 of the UDHR stipulates that no one shall be subjected to arbitrary arrest, detention or exile.¹⁶⁸ The unlawful arrests contravene this law. Also, article 28 of the 1995 Constitution stipulates that in the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.¹⁶⁹ The lengthy hearing processes at the Uganda Human Rights Commission tribunal occasion a delay in accessing justice which contravenes this provision; and article 8 of the UDHR stipulates that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.¹⁷⁰

- **Freedom of Association**

In February 2017, it was reported in the media¹⁷¹ that the Parliamentary Local Government Public Accounts Committee (LGPAC) had generated a report following investigations over a period of six months into allegations of rampant corruption in 116 districts in the country. At a press conference held the day before, the Committee delivered its report in which among other recommendations it directed the chief administrative officers (CAOs) to disband the association they had formed, citing a violation of the Uganda Public Service Standing Orders. However, its recommendation to disband the CAO association is unconstitutional. Article 29(1) (e) of the 1995 Constitution provides for the people's right and freedom to organize themselves into associations.¹⁷² This freedom is also enshrined in several international human rights

¹⁶⁸ Article 9 of the Universal Declaration of Human Rights

¹⁶⁹ Article 28 of the Constitution of the Republic of Uganda, 1995

¹⁷⁰ Article 8 of the Universal Declaration of Human Rights

¹⁷¹ Moses Mulondo, "MPs ask district officials to return swindled shs. 7.2b" *New Vision*, February 2, 2017: p.4.

¹⁷² Article 29(1)(e) of the Constitution of the Republic of Uganda, 1995

instruments, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples Rights (ACHPR).

Whereas the respondents note with care that Section 5 of the Public Service Standing Orders prohibits certain categories of public officers involved in the administration of the State from forming or joining a labor union or engaging in trade union activities or using trade union practices or tactics in any matter concerning their employment,¹⁷³ this prohibition does not extend to joining associations as the law makes a clear distinction between Trade Unions and Associations. Associations such as those of CAOs if not formed for Trade Union purposes, are not governed by the Labor Unions Act and therefore fall outside the provisions of the Standing Orders prohibiting public officers involved in the administration of the state from joining Trade Unions.¹⁷⁴

- **Freedom of Assembly**

On 22nd February 2017, the Kampala Lord Mayor Mr. Erias Lukwago was arrested along with Rubaga North MP, Moses Kasibante, Kawempe South MP Mubarak Munyagwa and Makindye West MP Allan Ssewanyana, together with several Kampala Capital City Authority (KCCA) councilors and whisked away to an unknown location. They were arrested at the Nakivubo Park Yard market in Kampala where they had gone to address city vendors, who were protesting against an order to have them evicted. The police stated that the arrests were effected under Section 24(1) of the Police Act which provides for preventive arrest.¹⁷⁵ However, the Constitution of the Republic of Uganda guarantees the freedom to assemble and to demonstrate together with others peacefully and unarmed and to petition.

¹⁷³ Section 5 of the Uganda Public Service Standing Orders, 2010

¹⁷⁴ *Ibid*

¹⁷⁵ Section 24(1) of the Police Act

Furthermore, Uganda has ratified the UDHR which provides for this freedom under articles 2 and 20.¹⁷⁶ The Public Order Management Act 2013 also provides for the regulation of public meetings which the Act defines as a “gathering, assembly, procession or demonstration in a public place or premises held for the purposes of discussing, acting upon, petitioning or expressing views on a matter of public interest”. This law requires organizers of public assemblies to notify the police for security purposes. However, permission from the State is not a prerequisite. But then this Act grants the police wide-ranging powers to stop or prevent a public meeting from taking place. This is unconstitutional and was so decided by the Constitutional Court.¹⁷⁷

Article 29(1)(d) of the 1995 Constitution provides for the protection and observance of the freedom of assembly stating that “every person shall have the right to freedom to assemble and to demonstrate together with others peacefully and unarmed and to petition.”¹⁷⁸ The above arrest of the Kampala Lord Mayor and others was unconstitutional, since section 8 of the Public Order Management Act contravenes Article 29(1)(d) of the Constitution.

Access to information

Article 41 of the Constitution provides for the citizen’s right of access to information.¹⁷⁹ Every citizen has a right of access to information in the possession of the State or any other organ or agency of the State except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to privacy of any other person. Under the Constitution, Parliament is required to make laws prescribing the classes of information and the procedure for obtaining access to that information. Article 17(i) of the Constitution provides that it is the duty of every Ugandan to combat corruption and the misuse or wastage of public property.¹⁸⁰ However, the efforts of the citizens to perform this oversight role is undermined by lack of access to public information and the lack of political will to make public information

¹⁷⁶ Articles 2,20 of the Universal Declaration of Human Rights

¹⁷⁷ *Muwanga Kivumbi v. The AG* - Constitutional Petition No. 9 of 2005.

¹⁷⁸ Article 29(1)(d) of the Constitution of the Republic of Uganda, 1995

¹⁷⁹ Article 41 of the Constitution of the Republic of Uganda, 1995

¹⁸⁰ Article 17(i) of the Constitution of the Republic of Uganda, 1995

available to the masses. The Access to Information Act of 2004 has not been fully operationalized.

According to the respondents, information is a powerful tool both in the hands of those wishing to ensure or obscure transparency. It is crucial in the mobilization of people along issues of common interest and provides them with a range of recourse depending on the nature and clarity of information availability. It is imperative that the Access to Information laws facilitate and not regulate or obstruct the actual access to information. This remains a great challenge in the fight against corruption since most cases will inevitably require evidence and information, according to the respondents.

There is systemic lack of information on the Local Government budget process by citizens and other stakeholders who perceive the work of the budget process to be in the confines of a few individuals at the district level. Although the lower councils prepare budgets, these do not seem to feed into the district budgets from the people's point of view. There is no deliberate effort by Government to put legally required systems and mechanisms to include grass root participation and monitoring. The respondents claimed that citizens are never allowed to participate in the Local Government budgetary and policy formulation process.

The cost of availing information in diverse languages is high given the multiplicity of languages in Uganda. However, this should not be seen as a deterrent to bona fide efforts to provide information which can be achieved through using the major regional dialects, such that the grass root population is appropriately informed. Although the Government is boasts of modern communication mediums such as radio and Internet services through which information on Government strategies can be conveyed, the larger challenge remains on how many people have access to such facilities in particular the Internet. This calls for appropriate communication technologies that will reach the widest number of people as possible in order to facilitate the timely flow of and access to information in the most basic form.

According to the respondents, there is a marked lack of information on Government programs that hampers citizens' capacity to monitor the effective use of national resources to sustain

community investments, and to react against corruption acts in society and promote good governance in their country. The information that comes out of Government sectors is one sided and not easily corroborated due to lack of openness regarding the sources of information. Access to information should mean more than mere regulation of how and what information will be made accessible otherwise the right to access is still illusory, especially in the ever sensitive area of defense expenditure.

Allocation of national resources

Good governance stipulates that Government ensure an equitable allocation of national resources across the country. To ensure transparency and the equitable allocation of resources across the country, Uganda initiated the decentralization system of governance and incorporated it in the 1995 Constitution and the subsequent Local Government Act of 1997. As a result, Cabinet, in June 2002, approved the Fiscal Decentralization Strategy (FDS) and the mainstreaming of the Local Government Development Programme (LGDP) approach into the FDS for the transfer of development funds to the Local Governments. Among the major aspects of the strategy are integrated planning with the center, coordinated consultations and Bottom-Up planning for the Local Government Development Transfer Budget.

To support the improvement of Public Sector budgeting and accounting in order to achieve timelier, transparent, and accurate financial and accounting information for both local and Central Government, Government in 2004/05 introduced the Integrated Financial Management System (IFMS) for ministries and local governments as well as the Bank of Uganda, and the Uganda Revenue Authority. Through the Decentralization Policy, and other PAF initiatives, national resources would flow rapidly to all local governments there by ensuring transparency and equity. In order to guide decisions about public expenditure, in the medium term and long term, Government has identified criteria for prioritization. These criteria are being applied effective the budget process for FY 2004/5 and thereafter.

There are various challenges in terms of ensuring that activities supported by public resources result in desired outputs and outcomes for the equal benefit of all citizens. Budget execution remains a problem, where administrative expenditures outstrip productive sectors like agriculture

and other social service sectors. Although the national priorities are clearly identified, the budgetary priorities show a different trend, with defense and public administration top of the budgetary allocations. Budget execution and reporting is weak given that several reallocations are made after the budget has been approved. The allocative efficiency in the key areas of health, education and water and sanitation is generally poor and yet these areas are highlighted as key in the budget speeches. Even though the control and accountability framework is in place, at times double standards exist because of the patronage over some officers by politicians from “above”.

The people are the ultimate evaluators of policy outcomes in well governed societies. The role of the people in monitoring and supervision needs to be reinforced both at the central and local levels simultaneously. The policy of decentralization was meant to enhance the people’s participation and democratic control in decision making, ensure full realization of good governance at the local level and ensure improved service delivery to the people. However, and to a large extent people’s participation is still poor and due to high levels of corruption in local governments, the quality of such services remains very low. Local government officials and councilors have engaged themselves in corrupt acts such as; interfering with the tendering process thereby violating procurement regulations, manipulating the recruitment process and interfering with the work of the District Service Commissions, as well as diversion and misuse of public property. This, according to the respondents, greatly compromises good governance.

Respect for civil and political rights

According to the respondents, freedom of association and assembly are key elements in developing a good governance culture and fora for people to meet and exchange views and ideas. The promotion of civil and political rights is crucial for individual and group rights in any democracy process. The freedoms noted here are an empowering process for the citizenry in understanding their rights and obligations. The Constitution provides that ‘Government will respect its obligations concerning civil and political rights, including women and children’s rights, the freedom of expression, association and assembly and take action to prevent human rights violations such as torture and arbitrary arrests’.¹⁸¹ Any process that intimidates and infringes on citizens enjoyment of these freedoms breaches the fundamental international and

¹⁸¹ Article 29 (1) (a) (d) and (e) of the Constitution of the Republic of Uganda, 1995

domestic human rights of individuals. The right to form and join associations and influence policy through civic organizations is provided for in the Constitution.¹⁸² These rights are echoed in standard human rights documents such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights.

Human rights observance by Government is crucial in the promotion of good governance by facilitating consensual and strategic linkages and activities relating to participation in public life in collectivities based on common interests, aims, and aspirations. On June 6th 2002 the President of Uganda assented to the Political Parties and Organizations Act (PPOA) 2002, which regulates political party activities and contains restrictive provisions. The PPOA was enacted with some shortcomings and fundamentally restricts the freedom of association. The activities of political parties and individual political leaders have been severely curtailed by the PPOA. Political parties have continued to challenge provisions of the PPOA that restrict their freedom to associate. In November 2004 the Constitutional Court nullified section 10(4) of the said Act, ruling that the restriction is totally unjustifiable in a free and democratic society.¹⁸³ It was further held that section 13(b) of the PPOA which bars Ugandans who have lived outside the country for a period of three years continuously from leading/holding a position in a political party, contravenes the right to freedom of association.

Many political and human rights activists deemed sections 18 and 19 of the PPOA inequitable as they banned political activity, mobilization and organizations. Political organizations were prohibited from carrying out certain activities like holding rallies at the village level, effectively curtailing freedom of assembly and association. These sections have since been repealed following a petition to the Constitutional Court. However, political parties continue to be stifled by the Public Order Management Act 2013. According to the respondents, the actions of Government agents and security personnel hamper the ability of the opposition organizations to meet and organize, yet key NRM/government leaders and mobilisers operate freely, even with the facilitation of the very security agencies.¹⁸⁴ This is being done under the guise of law

¹⁸² Article 29 (1) (d) and Article 38 of the Constitution of the Republic of Uganda, 1995

¹⁸³ The New Vision, Friday, 3rd September, 2004 "Government wins appeal on referendum"

¹⁸⁴ The Monitor, Friday 1st October 2004 'Museveni will not level field for the opposition'

enforcement and regulation of activities under e.g. the Police Statute and the Public Order Management Act 2013, but in effect it amounts to the state machinery impeding freedom of association and assembly.

There has been evidence of police harassment of leaders like in the instance of Amama Mbabazi being stopped from holding consultative meetings ahead of the 2016 Presidential elections. The PPOA, which attempts to define a pressure group, does not clearly outline the mode of operation of pressure groups but this ambiguity in the law has not been resolved in favor of the pressure groups, which should have been the case considering the import of the Constitutional right at stake. Pressure groups have in the course of their operation held rallies, seminars and workshops. However they are required to notify the District Police Commander (DPC) or some other authority of the area where the rally is to be held. In several instances, pressure groups namely the Popular Resistance against Life Presidency, The Foundation for African Development, the then Parliamentary Advocacy Forum have been publicly assaulted and humiliated in meetings that they organized by state organs notably the Police.

Key Government leaders such as Cabinet Ministers, Members of Parliament, Resident District Commissioners and LC 5 Chairpersons have been implicated in stirring up violence against peaceable pressure group rallies and meetings. On 8th January 2004 the Police blocked members of the Popular Resistance Against Life Presidency (PRALP) as they arrived at Wobulenzi in preparation for their first rally there. They had communicated to the Luwero Police informing them of their plans to hold rallies in Luwero, Wobulenzi and Bombo. On learning this Luwero Acting District Police Chief Christopher Barugahare said he had consulted the Resident District Commissioner and Regional Police in Kampala who had instructed him to block the rally.¹⁸⁵

Participation in politics

The constitution advances and protects the right to free and fair competition for power by any Ugandan. Constitutionally, the State is based on democratic principles that encourage the active participation of all citizens at all levels of governance. This is in addition to all people having

¹⁸⁵ Sunday Vision 11 January 2004 'Luwero anti third term rally blocked'

access to leadership positions at all levels.¹⁸⁶ Additionally, to promote these principles, the Constitution guarantees a number of rights necessary to ensure effective participation. All Ugandans are guaranteed the right to participate in the affairs of government, individually or through their elected representatives. This is in addition to participating in peaceful activities that influence the policies of government.¹⁸⁷ The rights of freedom of expression, conscience, assembly and association, which include the freedom to form and join political or other civic organizations, are also protected.¹⁸⁸ Also guaranteed is the right to form political parties and any other political organization.¹⁸⁹ The right to vote is guaranteed to all citizens of eighteen years and above. Registration as a voter is actually crafted as a duty although the State is required to take all necessary steps to ensure that all qualified citizens actually register and exercise their right to vote.¹⁹⁰

Fair competition for political power

There are also a number of institutions and laws designed to protect the rights associated with free and fair competition for power. These institutions include the Uganda Human Rights Commission, the Electoral Commission, the Parliament of Uganda; Courts of Judicature and the Police Force.¹⁹¹ The laws include the Political Parties and Organizations Act 2005 (PPOA), the Presidential Elections Act 2005, the Parliamentary Elections Act 2005, the Electoral Commission Act 1997,¹⁹² and the Local Government Act 1997¹⁹³ as well as the Electronic Media Act, 2005 and the Access to Information Act, 2005. In relation to the implementation of the PPOA, the biggest challenge is the central role given to the Electoral Commission to oversee the activities of political organizations. According to the respondents, the Commission continuously operates with insufficient funding which affects its performance, and the biggest deficiency of the Commission is its questionable independence and impartiality.

¹⁸⁶ Objective II(i) and (ii) of the Directive Objectives and Principles of State Policy.

¹⁸⁷ Article 38 of the Constitution of the Republic of Uganda, 1995

¹⁸⁸ Article 29 of the Constitution of the Republic of Uganda, 1995

¹⁸⁹ Article 72 of the Constitution of the Republic of Uganda, 1995

¹⁹⁰ Article 59 of the Constitution of the Republic of Uganda, 1995

¹⁹¹ Article 46 of the Constitution of the Republic of Uganda, 1995

¹⁹² Cap 140 of Laws of Uganda 2000

¹⁹³ Cap 243 of Laws of Uganda 2000

aspirations.³⁵ Governance describes the process of decision-making and the process by which decisions are implemented (or not implemented).

In the 21st Century, African citizen has many needs and aspirations as never before.³⁶ These range from the basic needs of preserving and sustaining life, reducing poverty, ensure peace, security and stability, to the aspirations of improving the quality of life; from basic freedoms and human rights and the rights to participate in the decision-making processes that affect one's living and livelihood to a sense of well-being and self-esteem.³⁷ Responding to these needs and aspirations would obviously involve all the domains and levels of governance: executive legislature, judiciary, village, district and city councils as well as the other agencies in the civil society and private sectors. It will also be bound to be collective efforts, requiring the participation of the people, institutions and agencies of governance, civil society and the private sector.

People, with their ever changing needs and wants, fears and aspirations are thus at the centre of the development and governance democratization processes. For development to be meaningful and sustainable, it must be initiated and undertaken by the people themselves.³⁸ Only when the people effectively participate in the development processes can development truly be of their choice. But the people must be sufficiently empowered, provided with the relevant information and knowledge, education and training so that they can effectively and meaningfully participate in the development processes.³⁹ In fact, people now demand empowerment and participation in the development and good governance processes.

Since the early 1990s, there has been a growing interest in issues related to good governance around the world.⁴⁰ This phenomenal growth of interest reflects, in part, the increasing

³⁵ Ibid 63.

³⁶ Santiso, C., "International Co-operation and Good governance: Moving towards a Second Generation" (European Journal of Development Research 2001) p.154.

³⁷ Ibid 156-157.

³⁸ Gebreworld, B, "Democracy and Democratization in Africa" (New York: Zed Books 2008) p.81

³⁹ Ibid 84.

⁴⁰ Ibid 87.

One of the key prerequisites for ensuring the legitimacy of an electoral process is 'the capacity of the administrative unit mandated to administer the elections, and the unit's autonomy from political forces.'¹⁹⁴ The post-election violence in the 2007 Kenya elections demonstrates that a compromised and partial electoral commission is a recipe for disaster. In the 2001 Parliamentary and Presidential elections, the Commission was found to have failed to manage these elections, which were marred by violence and intimidation mainly by state agencies for the benefit of the sitting government. Indeed, when Besigye petitioned the Supreme Court to challenge the results, the Court held, amongst others, that the ability of the Electoral Commission to manage the elections in an impartial manner was in doubt,¹⁹⁵ with widespread incidents of multiple voting by single voters, the harassment of voters and the existence of pre-ticked ballot papers.¹⁹⁶

In one of the many incidents of admonishment, the Court held that:

*I must state that I cannot excuse the Electoral Commission for the creation of 1179 polling stations on 11th March 2001 when there was no corresponding voters roll. How did the Electoral Commission expect people to vote from these new polling stations when there was no corresponding voters roll in those polling stations. This meant that the Electoral Commission expected people to go and vote without voter's cards, with no voters roll at polling stations.*¹⁹⁷

In the run-up to the 2006 Presidential and Parliamentary elections, the Attorney General (AG) was of the opinion that the imprisoned opposition presidential contestant, Kizza Besigye, should not be nominated by the Commission. The AG argued that this is because he was charged with treason and, if subsequently found guilty, his nomination would cause legal complications: 'Irrespective of the fact that Besigye was not yet proven guilty, his nomination would pose legal complications to the Commission, if after nomination, he is convicted of treason.'¹⁹⁸ It was also reported that the Commission was under pressure from State House officials and the President not to nominate Besigye. It is alleged that the President even met the Chairperson of the

¹⁹⁴ Sabiti *et al*, 2008 in Kiiza *et al*, op.cit, at 90

¹⁹⁵ *Besigye v Museveni & Anor*, Election Petition No. 1 of 2001.

¹⁹⁶ Tumwine-Mukubwa, 2003.

¹⁹⁷ Judgement of Karakora JSC, at 127, as quoted by Mukubwa, 2003 op.cit., at 58.

¹⁹⁸ Sabiti *et al*, 2008 in Kiiza *et al*, op.cit, at 104

Commission and asked him not to nominate Besigye.¹⁹⁹ In spite of these pressures, the Commission went ahead and nominated Besigye. It should nevertheless be noted though that this was against the background of the President reneging and publicly disowning the AG on the issue.²⁰⁰

4.2 The steps undertaken in the constitutional reform process by the Parliament of Uganda

The Constitution may be amended by adding a new provision and/or removing or making changes on an existing provision. The changes in the provision may be as a result of new needs of a society and/or conflict in legal interpretations of different Articles.²⁰¹ However, the amendment cannot be done by one person. The people should be consulted and involved through a referendum, District Councils and Parliament. The Constitution provides for the procedure through which it can be amended. It can only be amended by an Act of Parliament. These include:

- Approval by the people through a referendum on contentious issues. The idea of a referendum is to involve the people if there is need for amendment, examples of provisions that may require a referendum include; Change of political system, Institution of traditional or cultural leaders and independence of the Judiciary.²⁰²
- Approval by the District Councils, for example; power of parliament over imposition and collection of taxes, functions of the central government and district councils, and financial autonomy of urban councils from district councils.²⁰³
- Amendment initiated by members of parliament

Although the Constitution is supreme, it can be amended. The parliament can only pass the amendments of the Constitution with the support of 2/3 of the members of parliament at the second and third reading. Since it came into force, the Constitution has been amended three times by:

¹⁹⁹ Sabiti *et al*, 2008 in Kiiza *et al*, op.cit, at 106

²⁰⁰ *Ibid*.

²⁰¹ Article 259 of the Constitution of the Republic of Uganda, 1995

²⁰² Article 260(1) of the Constitution of the Republic of Uganda, 1995

²⁰³ Article 261(1)(b) of the Constitution of the Republic of Uganda, 1995

1. The **Constitutional Amendment Act No. 13** of 2000 and which was declared unconstitutional and therefore null and void by the Supreme Court.

2. The **Constitutional Amendment Act No. 11** of 2005, the objectives of which were:

- to distinguish Kampala as a capital of Uganda and to provide for its administration;
- provide for Swahili as a second official national language;
- provide for the Leader of Opposition;
- to remove the Presidential term limits;
- to create the offices of Prime Minister and Deputy Attorney General;
- to provide for the creation of special courts to handle corruption cases;
- to establish the Leadership Code Tribunal; and
- to provide for the control of minerals;

3. The **Constitutional Amendment Act No. 21** of 2005, the objectives of which were:

- provide for Kampala as the capital city of Uganda;
- provide for the new districts of Uganda;
- to provide that subject to the existence of regional governments the system of local government in Uganda shall be based on districts;
- provide for the creation of regional governments as the highest political authority in the region with political, legislative, executive administrative and cultural functions and to provide for the composition and functions of regional governments;
- provide for grants for districts not forming regional governments;
- replace the Fifth Schedule to provide for details relating to regional governments; and
- to amend Article 189 to recognize the functions and services of regional governments.

The Constitutional Amendment process takes the following steps when legislation is being proposed by a Ministry or Government Department in Uganda.

Drafting a Constitutional amendment bill

- The Ministry concerned approaches Cabinet through a Cabinet Memorandum with a proposal for Cabinet to approve the principles for the drafting of the Constitutional amendment bill. Cabinet approval in principle is required before drafting of the subject legislation.²⁰⁴
- An amendment bill can also be drafted by the First Parliamentary Counsel if the Attorney General or Solicitor General authorizes the drafting of the Constitutional amendment bill without reference to Cabinet.²⁰⁵ However, this authority should be granted only in special circumstances. The request for the authority is made through the responsible line Minister.
- Cabinet then considers the proposals as contained in the Cabinet Memorandum of the Ministry concerned and approves the principles on the basis of which a Constitutional amendment bill is to be drafted.
- When Cabinet approves the principles for the drafting of a Constitutional amendment bill, it authorizes the responsible line Minister to issue drafting instructions to the First Parliamentary Counsel/Attorney General to draft the necessary amendment.
- The concerned Ministry then requests the First Parliamentary Counsel through the Attorney General to draft the amendment on the basis of the approved principles as contained in a Cabinet Minute.
- Where the instructions are not clear, the First Parliamentary Counsel asks the Ministry concerned for further instructions and where necessary request that Ministry to identify an officer in the Ministry to liaise with the office of First Parliamentary Counsel in the drafting of the Amendment bill.
- In drafting a Constitutional amendment bill, the office of the First Parliamentary Counsel interacts with the Ministry concerned to arrive at an agreed draft. The Ministry concerned may again consult stakeholders as to the contents of the Constitutional amendment bill.
- The Ministry concerned will have to submit the Constitutional amendment bill to Cabinet for approval together with a Cabinet Memorandum and any comments of the

²⁰⁴ Paragraph 2 of Section (Q-b) of the Uganda Public Service Standing Orders, 2010

²⁰⁵ Paragraph 2(b) of Section (Q-b) of the Uganda Public Service Standing Orders, 2010

stakeholders. Without exception, no Constitutional amendment bill can be published unless it has been submitted to Cabinet for approval.²⁰⁶

- In the course of drafting the Constitutional amendment bill, the draftsman is required to bear in mind the need to keep informed the Law Officers namely, the Attorney General and the Solicitor General.²⁰⁷

Submission of Constitutional amendment bill to Cabinet

When the Constitutional amendment bill is being submitted to Cabinet for approval, the Cabinet memorandum of the Ministry will have to be accompanied by:

A certificate of compliance, issued by the Office of the First Parliamentary Counsel to the effect that the bill has been drafted by the Office of the First Parliamentary Counsel in accordance with the principles approved in the Cabinet decision issued for the drafting of the bill or that the bill has been drafted on the basis of a waiver of prior Cabinet approval in principle by the Attorney General or the Solicitor General.²⁰⁸

A certificate of financial implications, issued by the Ministry of Finance in accordance with the Budget Act, 2001²⁰⁹ and the Rules of Procedure of Parliament,²¹⁰ stating in respect of the bill in question the financial implications if any, on revenue and expenditure over the period of not less than two years after its coming into force. The certificate of financial implications has to be signed by the Minister responsible for finance.²¹¹ Cabinet may approve or reject the bill or may approve the bill subject to revision.

The Office of the First Parliamentary Counsel then incorporates any revisions approved by Cabinet in the bill and seeks the signature of the Minister concerned to an explanatory memorandum attached to the bill. All Constitutional amendment bills have to be accompanied by

²⁰⁶ Paragraph 7 of Section (Q-b) of the Uganda Public Service Standing Orders, 2010

²⁰⁷ Paragraph 6 of Section (Q-b) of the Uganda Public Service Standing Orders, 2010

²⁰⁸ Paragraph 2(b) of Section (Q-b) of the Uganda Public Service Standing Orders, 2010

²⁰⁹ Section 10 of the Budget Act, 2001

²¹⁰ Rule 107 of the Rules of Procedure of Parliament, 2012

²¹¹ Rule 107(2) of the Rules of Procedure of Parliament, 2012

an explanatory memorandum setting out the policy and principles of the bill,²¹² the defects in the existing law if any, the remedies proposed to deal with those defects and the necessity for introduction of the bill. The explanatory memorandum has to be signed by the Minister or by a member introducing the bill.²¹³

The First Parliamentary Counsel then authorizes the Government Printer, the Uganda Printing and Publishing Corporation (UPPC) to print and publish the bill in the Uganda Gazette. The Ministry concerned must issue a Local Purchase Order (LPO) to be issued in favor of the Government Printer (UPPC) to cover the costs of printing and publishing the bill. This is based on an estimate of costs issued by the Government Printer.

The Rules of Procedure of Parliament provides that all Bills shall be published in the Gazette.²¹⁴ After publication in the Gazette, the Ministry concerned has to supply about 450 copies of the Bill to the Clerk to Parliament for use by parliamentarians. The Ministry concerned also has to supply to Parliament the certificate of financial implications to be tabled in Parliament for the First Reading of the bill.

Introduction of the Bill in Parliament

The Constitutional amendment bill then goes through the processes of Parliament necessary for passing the bill. Rule 114 of the Rules provides that every bill shall be read three times prior to its being passed:

First Reading: which is a formality, marks the formal introduction of the bill in Parliament and the bill is then committed to the relevant Sessional Committee of Parliament for consideration. At this stage, the committee normally invites the relevant Minister to introduce the bill and may invite other stakeholders to state their views on the provisions of the bill and the committee may even sometimes hold hearings for the purpose.

²¹² Rule 106(2) of the Rules of Procedure of Parliament, 2012

²¹³ Rule 106(3) of the Rules of Procedure of Parliament, 2012

²¹⁴ Rule 106(1) of the Rules of Procedure of Parliament, 2012

Submission of Report by the Sessional Committee: The committee must submit a report on the bill to the plenary of Parliament and at the same time, Parliament considers the bill at Second Reading which is a debate on the principles and policies of the bill and not on its details. The Second Reading of the Bill shall not be taken earlier than the fourteenth day after publication of the Bill in the Gazette, unless the sub-rule is formally suspended for the purpose.²¹⁵

Committee of the Whole House Stage: This is the stage of the bill at which Parliament deals with the provisions of the bill, clause by clause and all proposed amendments to the bill.²¹⁶ At Committee Stage, the Speaker sits in the well of the House as chairperson of the Committee of the Whole House considering amendments to the Bill.²¹⁷ The Committee of the whole House then considers proposed amendments by the Committee to which the bill was referred and may consider proposed amendments, on notice,²¹⁸ where the amendments were presented but rejected by the relevant Committee or where, for reasonable cause, the amendments were not presented before the relevant Committee.

Report of Committee after Committee Stage: This is where the Committee of the Whole House reports to the plenary on the bill which has been committed and amendments are considered.²¹⁹

Re-committal: This is a stage which comes at the end of the Committee Stage where it is felt that there are still certain amendments which have to be considered or reconsidered.²²⁰

Third Reading and passing of the Bill: At this stage the bill is not debated and it is passed as a formality upon a motion “that the bill be now read Third Time and do pass”²²¹

²¹⁵ Rule 119(5) of the Rules of Procedure of Parliament, 2012

²¹⁶ Part XXI Rule 127 of the Rules of Procedure of Parliament, 2012

²¹⁷ Rule 112(1) of the Rules of Procedure of Parliament, 2012

²¹⁸ Rule 123(4) of the Rules of Procedure of Parliament, 2012

²¹⁹ Rule 125 of the Rules of Procedure of Parliament, 2012

²²⁰ Part XX of the Rules of Procedure of Parliament, 2012

²²¹ Rule 126 of the Rules of Procedure of Parliament, 2012

Publication of Acts

Sections 8 - 13 of the Acts of Parliament Act, Cap.2 regulate the preparation of presentation copies, assent by the President, presentation of a bill for assent²²² under Article 90(1), numbering of Acts, original copies of Acts assented to by the President or becoming law without the assent of the President and publication of Acts in the Gazette.

4.3 The challenges faced by Uganda's Parliament in the constitutional reform processes in relation to the promotion of good governance in Uganda

Abuse of power

The recent Constitutional reforms have been challenged by instances of potential abuse by those in positions of power. The Public Order Management Act of 2013 is such reforms. The Act was intended to facilitate the management of the activities of political parties in the country. However, there have been instances where the law Act has been used totally delegitimize the political parties, for example, many political rallies have been stopped or dispersed by the police on the guise that the organizers have not sought permission from the police, contrary to the law. Although the provisions of section 18 and 19 of the Public Order Management Act were repealed,²²³ the police continues to apply the same laws, albeit with different interpretation. This poses a challenge to the freedom to participate in political activity, as well as freedom to seek political office, which are crucial for promoting good governance.

Also, the Financial Management Act 2015 was amended to remove regulatory restrictions of Parliament over the expenditures of the government. Section 17(3) of the Principal Act was amended as follows a) by substituting sub-section 2 the following 2') the vote does not expend money that was appropriated to the vote for the financial year shall by the end of the 31st July of the following financial year repay the money to the consolidated fund except where the secretary to the treasury authorized the vote to retain the money) by substituting subsection 3 the following; 3) the authority given by the secretary to the treasury under subsection 2 shall be

²²² Sections 8 - 13 of the Acts of Parliament Act, Cap.2

²²³ *Muwanga Kivumbi v. The AG* - Constitutional Petition No. 9 of 2005

valid up to 31st October of the financial year.²²⁴ These amendments open up the gap that was closed in section 17(2) which gives parliament powers to appropriate all funds to be used in any financial year and therefore giving such powers to the secretary to the treasury undermines the power of Parliament and may encourage misuse of public funds.

Also, section 25(6) of the Principal Act was amended a) by substituting 'through a supplementary appropriation bill appearing at the end of subsection with 'within four months after the money is spent) by repealing subsection 2 and c) by inserting immediately after subsection 4 the following 4a) where the funds in the contingency funds are not sufficient to finance the supplementary budget, the supplementary budget shall be financed by a re allocation of funds of the annual budget.²²⁵ The principle law subjected supplementary requests to be laid before parliament for approval and yet the amendment sought to allow government to spend money and seek approval later. This is bad practice and perpetuates abuse of office. The principle law subjected supplementary budget to the contingency fund. These amendments were aimed at making supplementary budget requests to circumvent the requirements of the contingency fund, makes the contingency fund redundant.

Personalization of reform processes

The constitutional reform processes have faced the challenge of personalization, especially for the case of the incumbent government. A case in point here is the Constitutional Amendment Act No. 11 of 2005, which among other issues, provided for the removal of term limits on the tenure of the president. Given the fact that only the sitting president was restricted by the Constitution against contesting for a third term, it can be asserted, and rightly so, that the Constitution was reformed to facilitate the person of President Museveni to contest for President beyond the mandated two terms. Such actions pose a great challenge to the legitimacy of the Constitutional reform process, because the reforms are supposed to be done for the good of all the people,²²⁶ and not just one person since all people are equal before the law.²²⁷

²²⁴ Section 17(3) of the Public Financial Management Amendment Act 2015

²²⁵ Section 25(6) of the Public Financial Management Amendment Act 2015

²²⁶ Chapter Eighteen of the Constitution of the Republic of Uganda, 1995

²²⁷ Article 21(1) of the Constitution of the Republic of Uganda, 1995

Political interference/influence peddling

The Constitutional reform processes are challenged by the massive overreach by some government officials. The process of Constitutional Amendment Act No. 11 of 2005 again comes into mind, particularly the popularization of the provision to remove Presidential term limits. The NRM Members of Parliament were “facilitated” with 5 million shillings each, allegedly to enable them “consult” their constituents about the lifting of presidential term limits. This was a total disregard of the law, which frustrates the efforts towards good governance.

Poor implementation

Some Constitutional provisions are passed but not adequately implemented as required by law, which frustrates the effort for good governance. For example, Ugandan law provides for the right to personal liberty. The Constitution provides that ‘no person shall be deprived of personal liberty’ except for certain cases such as the execution of a sentence or a court order; preventing the spread of an infectious or contagious disease; the case of a person of unsound mind; for purposes of preventing unlawful entry into the country, among others.²²⁸ The Constitution goes further to provide that: a person arrested under Ugandan law has the following rights: right to be kept in a place authorized by law,²²⁹ right to be informed in a language they understand the reasons for the arrest, restriction or detention and of their right to a lawyer of their choice,²³⁰ right to be brought to court as soon as possible but not later than 48 hours,²³¹ right to have their next of kin informed, at their request and as soon as practicable, of the restriction or detention,²³² right to access the next-of-kin, lawyer and personal doctor,²³³ right to access medical treatment including, at the request and at the cost of that person, access to private medical treatment,²³⁴ right to bail,²³⁵ and the right to protection from torture and other cruel, inhuman or degrading treatment or punishment.²³⁶ However, these provisions are not always implemented. For

²²⁸ Article 23 of the Constitution of the Republic of Uganda, 1995

²²⁹ Article 23(2) of the Constitution of the Republic of Uganda, 1995

²³⁰ Article 23(3) of the Constitution of the Republic of Uganda, 1995

²³¹ Article 23(4) of the Constitution of the Republic of Uganda, 1995

²³² Article 23(5)(a) of the Constitution of the Republic of Uganda, 1995

²³³ Article 23(5)(b) of the Constitution of the Republic of Uganda, 1995

²³⁴ Article 23(5)(c) of the Constitution of the Republic of Uganda, 1995

²³⁵ Article 23(6) of the Constitution of the Republic of Uganda, 1995

²³⁶ Article 24 of the Constitution of the Republic of Uganda, 1995

example, recent press reports of police torture of suspects,²³⁷ and many suspects are detained for more than the constitutionally stipulated 48 hours without trial.

²³⁷ Siraje Lubwama, "Kaweesi suspects reveal torture, death at Nalufenya", *Daily Monitor*, May 26th 2017

CHAPTER FIVE

SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.0 Introduction

This chapter is a presentation of the summary of the findings from the study, the conclusions reached based on the study findings and the recommendations suggested by the researcher.

5.1 Summary of findings

Despite the past experiences of lawlessness and abuse of the law by previous governments, the current government has endeavored to ensure and uphold Constitutional rule in the country. The findings of the study show that there are various legal instruments/provisions in the Constitution that provide for good governance in the country, for example the Leadership Code Act, the Public Financial Management Act, the Inspectorate of Government (Amendment) Act, the Anti-Corruption Act among others. These instruments provide a legal framework for ensuring transparent, accountable and democratic leadership, which is crucial for good governance in the country.

The Inspectorate of Government Act 2002 for example, provides that the role of the Inspector of Government is; to promote and foster strict adherence to the rule of law and principles of natural justice in administration,²³⁸ to eliminate and foster the elimination of corruption, abuse of authority and of public office;²³⁹ to promote fair, efficient and good governance in public offices;²⁴⁰ to enforce the Leadership Code of Conduct;²⁴¹ to investigate any act, omission, advice, decision or recommendation by a public officer or any other authority to which this section applies, taken, made, given or done in exercise for administrative functions;²⁴² to stimulate public awareness about the values of constitutionalism in general and the activities of its office, in particular, through any media and other means it considers appropriate;²⁴³ to inquire into the methods by which law enforcing agents and the state security agencies execute their functions,

²³⁸ Article 8(a) of the Inspectorate of Government Act, 2002

²³⁹ Article 8(b) of the Inspectorate of Government Act, 2002

²⁴⁰ Article 8(c) of the Inspectorate of Government Act, 2002

²⁴¹ Article 8(d) of the Inspectorate of Government Act, 2002

²⁴² Article 8(e) of the Inspectorate of Government Act, 2002

²⁴³ Article 8(f) of the Inspectorate of Government Act, 2002

and the extent to which the practices and procedures employed in the execution of such functions uphold, encourage or interfere with the rules of law in Uganda;²⁴⁴ to investigate the conduct of any public officer which may be connected with or conducive to:²⁴⁵ the abuse of his or her office or authority;²⁴⁶ the neglect of his or her official duties;²⁴⁷ economic malpractices by the officer;²⁴⁸

Also, the findings show that the Constitution provides for procedures through which it can be amended, as stipulated in Chapter eighteen. The Constitution may be amended by adding a new provision and/or removing or making changes on an existing provision, as a result of new needs of a society and/or conflict in legal interpretations of different Articles.²⁴⁹ Since its enactment, the Constitution of Uganda has been amended three times through; the Constitutional Amendment Act No. 13 of 2000, the Constitutional Amendment Act No. 11 of 2005, and the Constitutional Amendment Act No. 21 of 2005. Also, that the process of Constitutional reform goes through various steps: drafting the Constitutional amendment bill, Submission of Constitutional amendment bill to Cabinet, with a certificate of compliance, and a certificate of financial implications, Introduction of the bill in Parliament via the First Reading, Submission of Report by the Sessional Committee, Committee of the Whole House Stage, Report of Committee after Committee Stage, Re-committal, as well as the Third Reading and passing of the Bill, and Publication of Act after ascension by the President.

The findings also show that there are various challenges faced in the course of ensuring that Constitutional reforms aid the effort towards good governance in the country, which include among others; Abuse of power, instances where the law Act has been used totally delegitimize the political parties, for example, many political rallies have been stopped or dispersed by the police on the guise that the organizers have not sought permission from the police, contrary to the law. Although the provisions of section 18 and 19 of the Public Order Management Act were repealed, the police continues to apply the same laws, albeit with different interpretation. This

²⁴⁴ Article 8(g) of the Inspectorate of Government Act, 2002

²⁴⁵ Article 8(h) of the Inspectorate of Government Act, 2002

²⁴⁶ Article 8(h)(i) of the Inspectorate of Government Act, 2002

²⁴⁷ Article 8(h)(ii) of the Inspectorate of Government Act, 2002

²⁴⁸ Article 8(h)(iii) of the Inspectorate of Government Act, 2002

²⁴⁹ Article 259 of the Constitution of the Republic of Uganda, 1995

poses a challenge to the freedom to participate in political activity, as well as freedom to seek political office, which are crucial for promoting good governance. Also, the Financial Management Act 2015 was amended to remove regulatory restrictions of Parliament over the expenditures of the government.²⁵⁰ For example, section 25(6) was amended by repealing subsection 2 and c) by inserting immediately after subsection 4 the following 4a) where the funds in the contingency funds are not sufficient to finance the supplementary budget, the supplementary budget shall be financed by a re allocation of funds of the annual budget.²⁵¹ The principle law subjected supplementary requests to be laid before parliament for approval and yet the amendment sought to allow government to spend money and seek approval later. This is bad practice and perpetuates abuse of office. Other challenges include; personalization of the reform process, where amendments are made to benefit one person, as well as poor and/or selective implementation.

5.2 Conclusions

Although Uganda continues to face challenges in its Constitutional processes with regards to promotion of good governance, there have been positive strides made in the right direction. The principle of Constitutionalism and Rule of Law in Uganda binds all citizens irrespective of status, race, political or any other differences. However, good governance is not merely the result of a formal observation of a set of rules but is the set of convinced acceptance of the values that inspire democratic procedures without which the deepest meaning of democracy is lost and its stability compromised.²⁵² Over the recent years, the conviction and commitment to the common good is increasingly getting submerged by selfish drives that are pushing some individuals and groups into behaving as if they are above the law. The result is the rampant social disorder that is not only among the electorate but even inside the legislative house. The excesses to Constitutional leadership that have been witnessed in the recent past, such as electoral malpractices, corruption, interference in judicial processes among others, need to be addressed as a means of further fostering Constitutionalism for good governance.

²⁵⁰ The Public Financial Management (Amendment) Act, 2015

²⁵¹ Section 25(6) of the Public Financial Management Amendment Act 2015

²⁵² Pontifical council for Justice and Peace, Compendium of the Social Doctrine of the Church, #407

5.3 Recommendations

With reference to the findings of the study the following recommendations are suggested to the stakeholders;

Access to information and lack of adequate civic education is still a fundamental prerequisite to encourage public participation in decision making processes, including good governance. Parliamentarians' role while ensuring that there is freedom of information, laws and regulations, they should also ensure that parliament itself, as an institution, has internal and complementary policies, procedures and practices that support openness and transparency towards the citizen.

Given the complex nature of parliament's activities and the dynamic environment in which it operates, parliament should be adequately supported by strong oversight State institutions and staff to enable them to perform their functions efficient and effectively. This support could include, but not limited to, the provision of dedicated staff in addition to those assigned to different parliamentary committees to which most MPs belong. Committees should be assigned dedicated rooms where they can meet as often and as long as necessary, including through increased capacity and facilities for public hearings.

In this respect the government should adopt appropriate policies and create/enhance national institutions to promote civic education for all citizens to have basic understanding of their constitution and government organization and functions. This will ensure that citizens' participation in decision-making processes could go beyond casting ballots at elections and referendums to being more able to participate effectively in the work of various institutions of governance, both at national and local levels. Only through appropriate civic education people can meaningfully participate in the national and local decision-making processes.

To promote democracy and good governance, government should be more open and easily accessible to the public. In this respect, government and parliament should adopt appropriate laws, policies and mechanisms towards improving citizens' participation in economic, social and political decision-making processes that affect their lives, including governance and to ensure

that inputs received through public participation activities are properly channeled for the executive's consideration.

For good governance to flourish in Uganda, government should prepare clear job description and assignment of duties and obligations for MPs, including after service obligations and responsibilities, which should be made available to the public.

Government in collaboration with development partners should ensure and enhance personal capacity/skills development of parliamentarians, staffers and structures so that the required administrative and institution capacity of the parliament is build, through for example, the use of ICT, outreach, networking and partnership arrangements. In this respect, the primary function of the MPs should be to find out what people want and what their pressing issues are, so that in the performance of their key roles of legislation, representation and oversight they could deal with those critical issues seriously.

5.4 Areas for further research

The results from the study point out a number of opportunities for further research into the issue of Constitutional reforms and good governance in Uganda. Future research should be carried out to examine the influence of civic education and public awareness on the promotion of transparent and accountable governance in Uganda.

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APPENDICES

APPENDIX I

Questionnaires for selected respondents

Dear Respondent

My name is Deng Kur Joseph, a student of Bachelor of Laws at Kampala International University. I am conducting a study on “Constitutional reforms and good governance.” It is carried as a partial fulfillment of the requirements for the award of a Bachelor of Laws of Kampala International University. Your contribution, opinions and experience will be highly appreciated.

Thanks for your cooperation.

1. Gender

- ☐ Male
- ☐ Female

2. Age in years

- ☐ 20 – 24
- ☐ 25 – 29
- ☐ 30 – 34
- ☐ 35 – 39
- ☐ 40 - above

3. The highest academic level

- ☐ Master’s Degree
- ☐ Post graduate diploma
- ☐ Bachelor’s degree
- ☐ Diploma
- ☐ Certificate
- ☐ Others-----

4. Designation

- ☐ Member of Parliament
- ☐ Civil society member
- ☐ Member of the public

5. Do you understand what is meant by Constitutionalism?

- ☐ Yes
- ☐ No

6. Is there Constitutional rule in this country?

- ☐ Yes
- ☐ No

7. Does your country's constitution have provisions for good governance?

- ☐ Yes
- ☐ No

8. If yes, what are these provisions?

- ☐
- ☐
- ☐
- ☐

9. Are the above provisions sufficient enough to ensure good governance?

- ☐ Yes
- ☐ No

10. Have there been any reforms made to your country's Constitution?

- ☐ Yes
- ☐ No

11. Were these reforms necessary for good governance in your country?

() Yes

() No

12. What are the steps undertaken in the process of Constitutional reform in your country?

()

()

()

()

13. Does Parliament have any role to play in ensuring constitutional reforms ensure good governance in your country?

() Yes

() No

14. If yes, what is that role?

()

()

()

15. Are there any challenges faced by your country's Parliament in ensuring that Constitutional reforms are in line with the principles of good governance?

() Yes

() No

16. If yes, what are those?

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APPENDIX II

Interview Guide

1. Do you understand what is meant by Constitutionalism?
2. Is there Constitutional rule in this country?
3. Does your country's constitution have provisions for good governance?
4. If yes, what are these provisions?
5. Are the above provisions sufficient enough to ensure good governance?
6. Have there been any reforms made to your country's Constitution?
7. Were these reforms necessary for good governance in your country?
8. What are the steps undertaken in the process of Constitutional reform in your country?
9. Does Parliament have any role to play in ensuring constitutional reforms ensure good governance in your country?
10. If yes, what is that role?
11. Are there any challenges faced by your country's Parliament in ensuring that Constitutional reforms are in line with the principles of good governance?
12. If yes, what are those?