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**FROM WHENCE HAVE WE COME, AND WHERE  
EXACTLY ARE WE GOING?**

The Politics of Electoral Struggle and Constitutional  
(Non)Transition in Uganda

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#### **NOTE ON WORKING PAPER AND AUTHOR**

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## I. INTRODUCTION

Uganda's experience with both elections and constitutionalism has largely not been positive.<sup>1</sup> Since even before independence in 1962, electoral policies, institutions and processes were fraught with problems. Such problems ranged from the conflictual role of political parties to the creation of conditions adequate to ensure that the vote was actually free and fair (the proverbial 'playing field'). For example, the April 1961 elections for self-government were boycotted by the Buganda government and thus won by default by the Democratic Party (DP).<sup>2</sup> Following protracted negotiations and threats, Buganda secured the right to have indirect elections, leading to the eventual merger between the King's party (*Kabaka Yekka!*) and Milton Obote's Uganda People's Congress (UPC). But the indirect election for Buganda in February 1962—incorporated as one of the main conditions for eventual independence and enshrined in the 1962 Constitution—led to the defeat of the DP and the formation of a UPC/KY government at independence. Paradoxically, it also marked the death of the culture of constitutionalism and democratic pluralism, even as we celebrated the impending birth of Uganda as an independent nation.<sup>3</sup>

With hindsight, it is possible to consider the manner in which this arrangement set the stage for the eventual collapse of constitutional government in 1966. Although attempts were made at electoral reform (e.g. the 3-plus-1 formula proposed for the 1971 election), these were abruptly cut short by Idi Amin's coup d'état early in the year. Not only did Amin ban political party

activity, he abolished Parliament and vested all legislative power within himself as military head of state with the power to rule by presidential decree. When civilian rule was eventually restored in the late 1970s, elections once again came to the fore as an issue of considerable tension and division. Reflected in the disputes within the Uganda National Liberation Front (UNLF), the main point of contention was in the politics of 'umbrella' elections proposed by then-President Godfrey Binaisa. In other words, elections were to be held under the framework of the UNLF, rather than under the aegis of traditional political parties. This arrangement was vigorously opposed by the parties, and led to Binaisa's eventual overthrow and replacement with the Military Commission under Paulo Muwanga, deputed by Yoweri Kaguta Museveni.

Having achieved the objective of scuttling Binaisa's umbrella arrangement, Muwanga proceeded to organize the 1980 election against the backdrop of charges that it was heavily gerrymandered and riddled with irregularities and coercion. This led to the eruption of the five year civil war and the eventual overthrow (for the second time) of Milton Obote. The UNLA government under General Tito Okello was too preoccupied with self-preservation and the settlement of the war with the NRM/A to devote any attention to the issue of electoral politics. Indeed, it was only in the third paragraph of the preamble to the Nairobi Peace Agreement between the two that mention was made of the urgent need to ensure that there was a laying of,

*... the groundwork for the preparation and drafting of a popular*

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<sup>1</sup> All in all, Uganda has had seven parliaments, designated as follows:

- (i) First (multiparty; UPC/KY; DP): 1962-1966;
- (ii) Second (multiparty; UPC/DP): 1967-1971;
- (iii) Third (UNLF National Consultative Council); 1979-1980;
- (iv) Fourth (multiparty; UPC/DP): 1980-1985;
- (v) Fifth (movement; NRC): 1986-1995;
- (vi) Sixth (movement): 1996-2001, and
- (vii) Seventh (movement): 2001 to present.

<sup>2</sup> This is why Benedicto Kiwanuka—the DP leader—is generally counted as Uganda's first post-colonial leader, even though his short tenure was during the period of 'self-government' before the country attained full independence.

<sup>3</sup> For a detailed examination of the history of this period see, Mugaju 2000 at 18-21.

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*constitution which will be the supreme law of Uganda, which constitution shall be promulgated by a popularly elected Parliament/ National Assembly in due course and ensuring the speedy return to democratic government through free and fair general elections within the framework of such a constitution.<sup>4</sup>*

This intention, as with the agreement as a whole, collapsed in the wake of the NRA/M assault on the Okello regime, and its removal from power in early 1986. Since that time, attempts have been made to reconstruct both the constitutional and the electoral framework of governance in Uganda. These attempts have continued, with varying degrees of success, until the present time.

## **II. ELECTORAL STRUGGLE, CONSTITUTIONALISM AND POLITICAL TRANSITION IN UGANDA: A BROAD OVERVIEW**

Against the preceding background, it is possible to identify several phases of Ugandan constitutionalism and political evolution since the NRM government came to power. Before considering the more specific issues raised by the current transition process, it is necessary to make some commentary about each. In brief, the experience since 1986 can be divided into several distinct phases, commencing with a period of experimentation, followed by one of consolidation. Thereafter, Ugandans have successively experienced a period of electioneering in the run-up to the Constituent Assembly, followed by debate and eventual promulgation, culminating in the passing of the 1995 Constitution. Unfortunately, the process of implementation of the Constitution has resulted in the situation of regression with which we are currently confronted.

### **2.1 The Period of Experimentation: 1986-1989**

It is quite clear that the blueprint for social, economic and political governance crafted by the NRA/M while in the 'bush,' i.e. the Ten-Point Program (TPP) provided the main foundation on which the exercise of power was to be grounded. It is also quite clear that aspects of this program (such as the socialist-leaning proposals on management of the economy) had to be abandoned quite quickly after the realities of exercising state power confronted the new Museveni regime. The experiments in barter trade, state-control of commodities distribution and the emphasis on the parastatal control of major economic endeavours were soon abandoned to the march of the market; Museveni became what has been described as a 'market-reformed Marxist,' retaining a belief in many of the socio-political aspects of socialism, while abandoning its basic economic tenets.<sup>5</sup> Among the political aspects retained were the idea of a vanguard armed force, and a single, unified organization in full control of politics and administration, akin to the arrangements in Cuba, China and Libya.

Legal Notice No.1 of 1986 was the premier constitutional instrument of the NRA/M and it basically outlined the main features of the new structures of governance, namely the National Resistance Council (NRC) and the Army Council and the system of 'grass-roots' democracy enshrined in the early resistance councils and committees ('RCs'). Presaging a radical attempt to reformulate the system of local government, RCs were comprised of politico-administrative units which upset the traditional structures of local governance dominated by centrally appointed chiefs. RCs were elected by the local population. They comprised not only men, but also women, youth and persons with disabilities. They had powers to adjudicate simple disputes and to levy local taxes. In sum, they represented a radically

<sup>4</sup> For the full text of the agreement see <http://www.c-r.org/accord/uganda/accord11/keytext.shtml#1>

<sup>5</sup> Oloka-Onyango, 1997.

different approach to the management of political order at the local level than had hitherto been in existence. As such, they were enthusiastically embraced, even if to a lesser degree in the northern and north-eastern parts of the country where opposition to the new government peaked soon after it assumed power. With respect to elections, perhaps their most striking feature was the indirect and open voting method (*mlongolongo*) and the idea that candidates competed for office on their own individual (as opposed to group, or party) merit.

A prominent feature of this new political order was the proscription of political party activity. Although careful to avoid enshrining the ban on parties within the constitutional or legal framework, the NRA/M declared from the outset its hostility to their free operation. Citing the sectarian legacy of ethno-religious factionalism and the violence and chicanery that had accompanied multiparty elections, the government argued that it favoured a no-party and broad-based arrangement which encompassed all political tendencies stretching from monarchists to radical socialists. However, the mode of forming this coalition emphasized individual, rather than group affiliation; Paulo Ssemogerere, leader of the DP and several of his colleagues were incorporated into the 'Movement' arrangement as individuals rather than as representatives of their political grouping.<sup>6</sup> On its part, the UPC outrightly rejected this purported 'gentleman's agreement' even though it did include known party members. The NRC—the bush legislature made up of those 'historical members' who had been part of the guerilla movement—was expanded to include nominated individuals who had not been in the bush. A second expansion in 1989 led to the first NRM-organized election, based on both the no-party and open-voting systems. It also coincided with the first extension of the 'interim' period of NRM/A governance for an additional four years.

## **2.2 Constitutional Debate and Political Consolidation: 1989-1992**

In fulfillment of the TPP promise to reformulate Uganda's constitutional framework, a governmental commission was established in early 1989 tasked with the function of gathering views on the most critical issues that had affected governance in the country since independence.<sup>7</sup> Many protests were raised about the Commission—from its mode of formation which was exclusively done by the President, to the methodology it employed in compiling its report, to the fact that political parties were proscribed in their operation, and thus unable to influence the process as organized groupings, rather than as individuals. Nevertheless, it produced a draft which formed the blue-print for the next stage of constitutional and political struggle in the country. Most prominent among its recommendations was the idea that a referendum should be held periodically in order to determine whether or not political parties should be allowed to fully operate and openly contest for political office. This recommendation set the stage for a fierce confrontation between the two main forces in the political arena, *vis-à-vis*, political parties on the one hand, and Movement adherents on the other.

## **2.3 The Constituent Assembly: Election, Debate and Promulgation**

Once again, the process by which the draft constitution was debated represented a departure from the original scenario drawn up under Legal Notice No.1 of 1986, which had foreseen a draft debated by the existing National Resistance Council (NRC) and the National Resistance Army Council (NRAC), the latter being the premier institution of the armed forces. Instead, members of the NRC—urged on by then Army commander Major General Mugisha Muntu—forced a change in the law to establish an elected Constituent Assembly

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<sup>6</sup> Ssemogerere states that the party's National Executive Committee sanctioned the alliance. See Human Rights Watch, 1999 at 36.

<sup>7</sup> Odoki, 2005.

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(CA) to debate the Odoki draft. Despite this progressive alteration to the process of constitutional debate and promulgation, the position on political association and assembly remained retrogressive. Indeed, for the first time, the administrative ban on political party activity was translated into a legal proscription via the Constituent Assembly Election Act and accompanying rules. Dumping together the use of tribal, religious or sectarian grounds with the deployment of political party slogans and symbols, the law provided for disqualification for its breach.

Although several multipartists found their way into the Assembly, there is no doubt that the lines had been drawn and that the Movement had seized to be all-embracing. In fact, the CA election could be said to have marked the final nail in the coffin of the idea of broad-basedness. This was confirmed by President Museveni's rather telling statement, 'We have defeated them!' after the election. It was a surprising statement given that the premise of the election was individual merit rather than group affiliation. What it revealed was the fact that the Movement had logistically supported those in support of its continuation, as opposed those who sought a reversion to pluralist politics.

The actual process of CA debate has been the subject of several studies, and need not engage us here. What is striking and important is the manner in which the assembly treated the twin issues of rights of association and the electoral processes to give effect to those rights. Unsurprisingly, these issues (together with the issue of *federo*) proved the most divisive of the subjects discussed. At all times, the question of maximum political advantage to the two contending sides, rather than the national interest was the overriding concern. For example, the CA forced a separation of presidential and parliamentary elections, despite the very rationale

attempt by Dick Nyai to introduce a motion that would have joined the two. However, the Movementists—sure that President Museveni would win, but afraid that the Parliament could comprise of many more multipartists than was desirable—succeeded in defeating the Nyai motion.<sup>8</sup> As a consequence, presidential elections were held before parliamentary elections, an anomaly that continues to plague the country until the present time. The chorus of supporters for a fusion of elections today clearly demonstrates that their earlier opposition was not based on any rationale thinking.

### *2.4 Implementing the 1995 Constitution*

The 1995 Constitution set the stage for Uganda's first presidential election as well as for a fully-fledged parliamentary election, representing the return to a system of governance more reflective of checks and balances than at any other point in Uganda's conflictual and turbulent history.<sup>9</sup> At the same time, the new instrument posed several challenges; it was excessively long, running to 287 articles (many with several sub-articles) and over 100 pages, placing it firmly in the category of long constitutions globally. Secondly, it established several new and revamped a number of old institutions, for example, the Inspectorate of Government, the Uganda Human Rights Commission, the Electoral Commission and the Equal Opportunities Commission, to mention only a handful. Thirdly, it was confused as to whether it wanted a presidential versus a parliamentary system and the mix sometimes did not always produce the best match. These factors made for a heady mix of tension, conflicting interpretation, overlapping and confused functions and ill-defined separation of powers especially between the legislature and the Executive.<sup>10</sup>

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<sup>8</sup> Kanyeihamba, 2002 at 255.

<sup>9</sup> For an analysis of the post-1995 elections in Uganda, see Sabiti-Makara *et al.*

<sup>10</sup> For example with respect to the provisions on ministerial censorship. Article 118 stipulates that Parliament can censure (reprimand) a Minister, but continues that the President shall "... take appropriate action." The more appropriate formulation should have been that a censured Minister has the obligation to resign.

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Prominent within the new framework introduced by the 1995 Constitution was the role of Parliament. Apart from the fact that it was still finding its feet under the new constitutional framework and also testing the extent of the powers it now had, the 6<sup>th</sup> Parliament was tasked with the formulation of the laws on elections. This it did with partisan interest fully in mind, not to mention that it also failed on the technical front. Thus, the delay in passing the laws had a spill-over effect on the preparedness of the Electoral Commission, resulting in elections that were marred by a flawed register, among other technical omissions. The 6<sup>th</sup> Parliament also promulgated the Movement Act in 1997. This has been the most contested and quite frankly the worst-drafted of all legislations produced by an otherwise astute legislature. Its net effect was to fuse the organs of the Movement with those of the State in a manner akin to that of a single-party state, despite the constitutional proscription against such a creation.

#### **2.5 The 2000 referendum**

The CA stand-off produced the situation in which a referendum was mandated during the fourth year of the term of Parliament, i.e. before July 1999. Once again, the precision and detail of the Constitution returned to haunt the 6<sup>th</sup> parliamentarians, leading to a rushed process of drafting and presentation of the bill, basically at the last minute. Despite the absence of quorum, the Speaker declared that the numbers in the house were sufficient to pass the bill. The referendum went ahead shrouded in the original controversy that had affected the debate in the CA, but coupled with a boycott of the process by multipartists. Although the result showed a 97% 'yes' vote, the percentage of eligible voters was barely above 50%. Eventually, the referendum was overturned. Needless to say, the fact of the vote gave the Movement government some breathing space as the Opposition battled not only with the technical obstacles to the challenge, but also with the slow turning of the wheels of justice. Indeed, when the case was finally conclusively decided, it was three years after the fact, and the Movement had already committed itself (on the face of it) to a transition to a multiparty political system of governance. Against this

background, we can now turn to an examination of the process of constitutional transition that the country has undergone since the ignominious referendum was conducted.

### **III. STRUGGLE, REVERSAL AND REFORM: UNDERSTANDING THE POLITICS OF CONSTITUTIONAL (NON) TRANSITION TODAY**

Since 2001, Uganda has been embroiled in a convoluted process of constitutional reform and political reorganization, the objectives of which are often not entirely clear. Once again, the paths of electoral contest and constitutional development have crossed at several significant points. First, it was in an election contest that the rather surprising announcement was made that the 1995 Constitution would be reviewed. The announcement is described as 'surprising' because not only was the instrument barely five years of age, but to commission a full-scale review was a blatant admission by the very same government which had described the instrument as a 'great success' that there were serious flaws in it. On closer inspection however, the setting up of the Constitutional Review Commission (CRC) under retired law professor F.E. Ssempebwa was much more related to the political, rather than to the technical aspects of the instrument. Its immediate cause was the rather intense electoral contest that ensued between President Museveni and retired NRA/M colonel Kizza Besigye. One of the main electoral promises Besigye made was that he would commission a full review of the 1995 Constitution, particularly because of what he described as the flawed provisions on *federo* (Buganda's demand for special status) and the proscription of political party activity. In sum, the formation of the CRC was a clever bid to take the wind out of Besigye's sails.

#### **3.1 A Critical Look at the Ssempebwa Commission**

What were the main features of the new Commission? First, there was absolutely no consultation on its composition, and even more so than the Odoki Commis-

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sion it was stacked full of Movement diehards. Secondly, its mandate covered review of virtually the whole instrument, raising questions not only about motive but also about the original process. Finally, given the lack of political will of the NRM government to be held constitutionally accountable as demonstrated in the referendum debacle, it was questionable whether constitutional reform would be of any lasting utility, not to mention issues such as cost and resources spent on an exercise of questionable utility. While it is quite obvious that certain provisions in the constitution required review, it is highly doubtful whether a wholesale review was warranted. Indeed, and as if to demonstrate the lack of political will behind the process, the CRC struggled with securing resources from the government in a regular and sustainable fashion.

It is quite clear that the CRC was viewed opportunistically by the Movement government, as with respect to major issues, the government simply side-stepped or pre-empted the Commission in its operations. Indeed, a Movement committee (chaired by National Political Commissar Crispus Kiyonga) was put in place to consider the issue of whether or not a reversion should be made to a multiparty system. And yet, this was an issue that was one of the main terms of reference for the Ssempebwa Commission. Reporting at the end of 2002, the Kiyonga Committee unanimously (with the sole exception of Local Government Minister Bidandi Ssali) recommended the retention of the Movement system for the foreseeable future. Ignoring this recommendation (indeed the whole report), the President made a strong case for the return of multiparty politics. His reasons—given at a meeting of the Movement faithful at Kyankwanzi early in 2003—were basically twofold. First, that it was necessary to get rid of the internal dissenters within the Movement. Secondly, that Uganda's 'development partners' (a euphemism for donors) had been pressing for change. No mention

was made of the fact that the Movement had seized to be broad-based or that it had evolved into a party in all but name. But most stunning, was the President's declaration that consideration should be given to the lifting of presidential term limits.

What eventually came to be known as the 'Third Term' declaration was a surprise to most of the participants at Kyankwanzi and indeed to many in the general public. Consequently, it led to a split in the Movement with several formerly close confidants breaking ranks with President Museveni and declaring that they could not support such an enterprise. However, it is quite clear that the declaration was the logical outcome of the gradual process of closure and exclusion that had been taking place within the movement specifically and in Ugandan politics in general since several years back. Indeed, in an earlier article I argued that President Museveni's virulent reaction to Besigye's candidacy in the 2001 election was basically because Besigye had 'spoiled' Museveni's electoral plans for 2006!

After having basically ignored the operations of the CRC, it suddenly became the focus of considerable attention.<sup>11</sup> In large part this was caused by the realization that the Commission would be a critical actor in the transition debate, but more so with respect to the 3<sup>rd</sup> term agenda. Thus, in the middle of 2003, the *Monitor* newspaper released a document it claimed was the draft report of the CRC. In it, the recommendation was against the lifting of term limits. While the furore raged, Prof. Ssempebwa appeared before the Parliamentary Committee on Legal and Parliamentary Affairs and basically admitted that the draft in question had been a genuine Commission document. Quite clearly, there was a problem. To address this, the Government—well after the closure of the time for receipt of public submissions—presented its proposals on constitutional reform to the Commission. Although

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<sup>11</sup> Indeed, the only group that had taken the Commission seriously was the Mengo government which not only submitted its views on the type of *federo* it wanted, but also organized a massive demonstration to show how much support it could muster for this cause.

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many reasons have been given for this strange step, especially given that the Commission was supposed to submit its report to Cabinet, the most compelling are that Cabinet wanted to make sure that the proposal for the lifting of term limits (which had not been part of any of the earlier submissions) would become part of the CRC report.<sup>12</sup>

### **3.2 The 2003 CRC Report**

In many respects, the Ssempebwa report was a serious letdown from the expectations that it would help advance the cause of positive constitutionalism in Uganda. And this is not only on account of its failure to take a firm stand on the issue of presidential term limits. Indeed, it is of little surprise that—in blatant disregard of the constitutional provisions on the matter—the Commission recommended that the matter be submitted to referendum. The CRC chair, reflecting the little that was left of his integrity and the Commission had initially decided wrote a minority report objecting to this proposal.<sup>13</sup> Aside from that, the CRC made several proposals on a range of matters. On the change of system it recommended a resolution by Parliament upon a petition of the district councils as the cheapest method of changing the Constitution. It also recommended a complete liberation of the political space. On the censorship of Cabinet Ministers the CRC proposed that the grounds of censure be expanded to with an additional four, namely corruption, embexxlement, fraud and causing financial loss. Other recommendations covered the composition and operations of Parliament, local government and the issue of ‘federero,’

The CRC report devoted several pages to the electoral process in general, but either because at the time it made the report it was not clear whether or not the transition to a pluralist system would be made, or because it

did not consider it carefully enough, the proposals failed to address the substantive question: *what would an electoral process in a multiparty arrangement look like?* Consequently, there is no examination of the mode of composing the Electoral Commission and the role of political parties and others such as civil society in this process; apart from recommending a study of the proportional representation system, there is very little attempt to deal with the type of multiparty system that would be most suitable for Uganda. The impression that comes across is that the CRC was still viewing this critical aspect of the transition through a Movement lens.

### **3.3 The Phenomenon of Judicial intervention**

If there is anything that can be sited as a positive offshoot of the 1995 Constitution, it is the reconceptualization and strengthening of judicial power, coupled with the removal of technical barriers to its effective functioning. Among the changes introduced were the reinforcement of the Constitutional Court to be constituted from the Court of Appeal; the removal of the doctrine of *locus standi* effectively permitting a judicial action to be brought by anybody, and minimizing reliance on technical rather than substantive arguments for the decision of a case. While the first decisions of the Constitutional Court were exceptionally disappointing, under the whip of the Supreme Court and the goading of some of its more progressive members, the Court began to rise to the expectations embodied in the instrument. Indeed, several decisions on freedom of expression, women’s rights and aspects of the rights to association and assembly have pushed the arena of freedom further open.

With respect to the electoral arena, the courts in Uganda have been kept particularly busy especially over allegations of electoral fraud and irregularities. Because many

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<sup>12</sup> The Cabinet memo contained several other issues that were alarming, such as the proposal to give the President to dissolve Parliament in case of a deadlock; extending presidential powers to acquire land for investment or to protect the environment, and several proposals on curbing the powers of the Judiciary.

<sup>13</sup> A second minority report was written by Commissioner Sam Owori, who objected to both the proposal on term limits as well as to the Commission recommendation that another tier of governance should be created at the regional level. This proposal was basically a sop to the demand for *federero*.

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elections of strong Movement people have been overturned, the Courts have drawn the wrath of the President and other Movement ideologues such as NPC Kiyonga. Describing the courts as ‘corrupt,’ ‘elistist’ and full of people opposed to the Movement, several threats have been issued, especially with respect to the formation of a commission of inquiry to probe the body. The culmination was reached when the Constitutional Court declared null and void the first Constitutional Amendment Act that had been passed in the wake of the parliamentary debacle over the referendum. President Museveni led the assault with the declaration that the Judiciary was against the people and that the judgment had in effect overthrown the Movement government. In a move that was unprecedented in the history of state/judiciary relations, hooligans were mobilized to stage a street protest against the decision of the court. While the government denied any responsibility for the action, the luke-warm condemnation of the protest spoke volumes of what it felt about the action.

### **IV. UNDERSTANDING THE GOVERNMENT WHITE PAPER ON CONSTITUTIONAL REFORM**

The Government White Paper (GWP) on constitutional reform was both a response to the CRC as well as a reflection of the direction in which the government sought to take the matter of constitutional amendment. In the following pages, I highlight only those aspects of the document that I consider of most significance to the debate about the connection between constitutionalism and electoral politics.

#### **4.1 *The Question of Political Systems***

The GWP essentially accepted the CRC proposal on opening the political space.<sup>14</sup> However, instead of a resolution by Parliament and the District Councils as proposed by the CRC, the GWP supported the hold-

ing of a referendum on an amendment to Article 74 of the Constitution. The amendment would provide for the holding of the next elections under a multi-party system (MPS) and reserve the right to change back to the Movement system.<sup>15</sup> The GWP largely rejected the CRC proposals on a strict deadline on the passing of laws relating to elections, proposals regarding the composition and operation of the Electoral Commission (EC) and the use of the secret ballot at lower council elections. It also supported the use of the Army if requested by the EC, and rejected outright the CRC proposal for a study on the suitability of the proportional representation (PR) system for Uganda.<sup>16</sup>

What the above did was to introduce a degree of ambiguity to the transition process especially regarding the suggestion to hold a referendum. This implied a fairly drawn out transition process in a context where little time is available. The retention of the movement system—both through the transition period and as an alternative political system—reflected only a lukewarm commitment to the transition to a fully-fledged multi-party political system, and is also a recipe for heightened political tensions. Moreover, there are still several constitutional provisions and laws that require either outright repeal or review. These provisions cover those on the Movement, those governing the registration of political parties and others on the media and NGOs, to mention a few. Significantly more attention needed to be paid to the functioning of the EC in a competitive and pluralist environment, and to the role of a neutral and professional Army, insulated from the tensions of partisan participation in the electoral process.

#### **4.2 *Proposals to Increase Executive Power***

The GWP made the suggestion that the President be given some legislative powers over environment, investment, Public Health, historical and archeological sites.<sup>17</sup> None of the CRC recommendations—on reducing the

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<sup>14</sup> See Section 3.1; p.4.

<sup>15</sup> *ibid.*, pp.3-4.

<sup>16</sup> Section 3.5 at pp.9-11.

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size of Cabinet; making ministers *ex-officio* and increasing the grounds of censorship of a minister—were accepted by the GWP. The GWP made significant proposals to improve the process of ministerial censorship.<sup>18</sup> At the same time, the GWP largely rejected the CRC proposal on referring political deadlocks to a referendum, and retorted with a new constitutional provision (Article 96A).<sup>19</sup> The GWP accepted *in principle* the CRC proposal that the issue of lifting presidential term limits be referred to a referendum, but proposed that the same be handled by Parliament.<sup>20</sup>

The GWP was silent on any checks or balances to the proposal to increase the President's legislative powers. And yet, members of Cabinet have significant legislative powers. Moreover, the justification given by the GWP for increasing the powers of the President was unsubstantiated. Furthermore, the very useful GWP suggestions regarding the censorship process were diluted by the proposal to reduce the grounds on which such power could be exercised. Unfortunately, the new proposal on deadlocks largely ignored existing dispute resolution mechanisms including the Judiciary, it proposed to give the President inordinate powers over the process and placed considerable stress on the Electoral Commission. Finally, significant issues of process arise regarding the transition and particularly the term limits issue. These include the form and content of the constitutional amendment bill, the mode of voting to be employed and the possibility of undue influence over MPs.

### **4.3 Reviewing the Status and Power of Parliament**

The recommendation made by the CRC regarding the size and operations of Parliament was largely rejected by the GWP.<sup>21</sup> In response to the CRC recommendation that the Army be excluded from representation in Parliament, the GWP argued for their retention for “security reasons.”<sup>22</sup> The GWP accepted in principle the CRC proposal that a special body be established to oversee public service remuneration.<sup>23</sup> The GWP rejected the CRC proposal that quorum for meetings be set at 50%, and proposed a retention of the status quo (one-third), but suggested that the provision on quorum be moved from the Constitution and inserted into the Parliamentary rules of procedure.<sup>24</sup> The CRC proposed adoption of a convenient and/or confidential voting system, plus implementation of an electronic voting system, which proposal was accepted by the GWP. However, the GWP also suggested that ‘open voting’ be adopted on all matters with the exception of elections, demonstrating the Cabinet view of how the 3<sup>rd</sup> term amendment should be handled.<sup>25</sup>

The GWP refusal to accept any of the CRC proposals on the rationalization of Cabinet and Parliament means that both will remain bloated. The major implication of this is that the Executive will continue to have an inordinate influence over the legislative process. The proposal also undermines the independence of the lat-

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<sup>17</sup> See Section 3.2.

<sup>18</sup> Section 3.2, at pp.5-6.

<sup>19</sup> pp.6-7.

<sup>20</sup> Section 3.5, p.11.

<sup>21</sup> p.8.

<sup>22</sup> p.8.

<sup>23</sup> See Section 3.4, at p.8.

<sup>24</sup> p.9.

<sup>25</sup> See, Section 3.4, p.9.

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ter, while at the same time, the continued use of Parliament as an arena for protracted political battles is clearly anticipated, while a sop is offered to the same body through the creation of a Salaries Commission. The GWP suggestions regarding quorum and voting imply a desire to reduce the effectiveness of the institution as a check against executive excess.

### **4.4 Reducing Judicial Oversight**

The GWP suggested that the power of judicial review by the Constitutional Court over an expired act of Parliament be curtailed.<sup>26</sup> Instead, the GWP proposed that a Court should not—upon finding any statute to be unconstitutional—give retrospective effect to that unconstitutionality.<sup>27</sup> These GWP proposals—not addressed in the CRC report—reflect continuing government chagrin at the Judiciary over its powers to review governmental action. Significant implications flow from a reduction in judicial powers of oversight and in the protection of fundamental human rights, not to mention the independence of the judiciary. Constitutionalizing such a doctrine would have effects that cannot be anticipated at the present time, especially if government is insensitive to the human rights implications of legislation that it may pass.

### **4.5 Unresolved and Contentious Issues**

The GWP proposed that referenda be given binding force and that the government have the power of referral of any sensitive matter to broad plebiscite.<sup>28</sup> The GWP rejected the CRC proposal on the improvement of detention conditions, arguing that this could be done without a constitutional amendment. It also proposed that special tribunals be established for the trial of terrorism suspects.<sup>29</sup> The proposals on referenda relate to the extensive public debate on whether the issue of

lifting presidential term limits could be referred to a referendum and reflect the desire of government to circumvent the institutions of oversight—including Parliament and the Judiciary—whenever a ‘contentious issue’ arises. Such a reference can be made either before or after a decision has been made by Parliament or the Courts, raising numerous issues of process and of the function of these bodies. The proposal would effectively undermine their oversight function. Furthermore, there are no limitations—regarding human rights—of the issues that can be referred to the general populace in this fashion. The proposal on detention is designed to insulate government from culpability over prison conditions, while the special courts are a serious threat to judicial independence and to the protection of rights within the Criminal Justice System.

## **V. BEYOND THE WHITE PAPER: PROSPECTS FOR THE FUTURE**

It is quite clear that the both the form and the substance of constitutional reform in which Uganda has been engaged for the last several years will have tremendous significance for the future of electoral politics in the country. Unfortunately, one gets the impression, to borrow from Kenyan academic Ali Mazrui that even after this protracted process, Uganda is ‘plunging into pluralism’ rather than taking a well thought-out and comprehensively conceptualized transition into a functioning multiparty system. The fact of the Movement monopoly, *de facto* and *de jure*, means that there will be little compromise by way of ensuring that the playing field is actually leveled out. Moreover, the electoral infrastructure—despite the bold steps at reform undertaken by the Kiggundu Commission—is in dire need to reform.

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<sup>26</sup> See, Part IV, p.16.

<sup>27</sup> *ibid.*, pp.16-17.

<sup>28</sup> pp.14-15.

<sup>29</sup> See Section 3.6, pp.14 and Part IV, p.17.

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The current situation is compounded by the existence of a weak and disorganized opposition and a civil society disconnected from popular forces, especially marginalized groups. They have thus far failed to articulate a compelling and dynamic agenda for responded to the process of constitutional reform that will insulate it from the short-term and opportunistic objectives by which it has been informed until the present time. The situation is made worse by the ambiguous role of the Army and of paramilitary structures such as Kakooza Mutale's Kalangala Action Plan (KAP) which will play a crucial role in the forthcoming elections. Also critical is the manner in which the issue of the regional tier (*Federo*) is dealt with and the extent to which its settlement will galvanized Buganda behind the 3<sup>rd</sup> term project. Finally, it is quite obvious that the on-going conflict and the prospects of peace will have a considerable impact on the process of electoral change. Standing above all this is the scepter of President Museveni who will be key to the process of constitutional change and electoral reform. Given that his stake in the matter is critical in the sense that the 3<sup>rd</sup> term is essential about his continued grip on power, the manner in which the political space will be affected is critically linked to how his fortunes in this latest political contest evolve.

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