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The Politics of Constitution Making in Uganda

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Since 1990, thirty-eight African constitutions have been rewritten, and eight involved major revisions. Uganda rewrote its constitution in 1995. Many of the constitutional changes witnessed throughout Africa have to do with individual rights and liberties, the rights of traditional authorities, the protection of customary rights, issues of land rights, and the rights of women. These issues were central to the constitution-making process in Uganda; however, the undemocratic outcomes in that country demonstrate the ways in which these processes have often been politicized to serve the interests of those in power.

Since the 1995 constitution was adopted, Uganda has slid backward precipitously in respecting civil and political liberties. The government increasingly has restricted the freedom of association, harassed and intimidated opposition members and media workers, attempted to ram through undemocratic legislation in Parliament without a quorum, and narrowed political control from what

once was a broad-based government to a much smaller circle of individuals. As Ann Mugisha, a member of the opposition, wrote in a 2004 *Journal of Democracy* article, “The real transition taking place there is from a relatively enlightened and benevolent authoritarian regime . . . to a textbook case of entrenched one-man rule.”¹ A decade after its passage, 119 amendments to the 1995 constitution had been made, some of them key changes to the earlier constitution. It was widely acknowledged that 70 percent of parliamentarians were openly bribed to give President Yoweri Museveni the two-thirds vote needed to alter the constitution to allow him a third term.²

How did such undemocratic outcomes emerge from a constitution-making process that was touted as unprecedented in its participatory character? To understand the problems with Uganda’s constitution, one needs to examine the broader context within which it was drafted, debated, and voted on. It is especially important to look at the relation-

ship between the process and the outcomes because the constituent assembly elections in 1994 marked the end of the broad-based coalition that had characterized the ruling National Resistance Movement (NRM) and the beginning of the NRM acting as a de facto single party under an increasingly authoritarian regime. President Museveni, who came to power in 1986, had envisioned that the NRM—or the Movement, as it is referred to—would encompass all political interests and parties in Uganda, suppressing sectarian tendencies in the country and garnering legitimacy for himself. By the mid-1990s, however, rather than ushering in a period of greater inclusiveness in the political process as was purported, the constitution-making process signaled the shrinking of political space, as Museveni eliminated the non-NRM multipartyists from his cabinet and other key positions. Later, in the early 2000s, the circle was to close even further, as Museveni purged some of his staunchest NRM supporters from the cabinet, military, and security agencies when they opposed his bid for a third term. Meanwhile, Museveni has strengthened his reliance on Uganda's military.

Continuities from Past Constitution-Making Efforts

Many of the problems encountered in making the 1995 constitution have their origins in earlier constitution-making efforts and events. Oliver Furley and James Katalikawe have argued that the prevalent view of drafting constitutions in Uganda has been that if one could come up with an adequate constitution, it would provide a basis for good and democratic governance.³ But political, historical, and social conditions have conspired to create undemocratic and exclusionary processes for Uganda's experience with constitution making, which in turn has contributed

to the creation of autocratic and unstable regimes, highly polarized politics, and decades of civil strife. In other words, Uganda's substantive problems with its constitutions have been related to the procedural frailties of constitution making.

Uganda's first constitution—the 1962 independence constitution—was established in the context of a newly formed alliance between Milton Obote's Protestant-led Uganda People's Congress (UPC) and the Baganda Kabaka Yekka party (KY, or King Alone). The Baganda are the largest ethnic group in Uganda, constituting 18 percent of the population, and Buganda, their area of origin, has always been regarded as the largest, wealthiest, and best educated of the country's kingdoms. The two parties had come together in an unlikely and ultimately untenable coalition to challenge the Catholic-led Democratic Party (DP). The DP's leader, Benedicto Kiwanuka, had become chief minister of Uganda in 1961. KY was focused on the fate of Buganda and the kingship, rather than the entire nation, and its members believed that the DP, though led by a Muganda, was not interested in the kingship. KY-UPC members outnumbered the DP in the new 1962 parliament, ensuring that Obote could form a government to oversee the transition to independence that same year.

The first constitution, negotiated in London among various parties and interests, provided for a Westminster form of government. Executive powers were vested in the prime minister, who, with his cabinet, was head of government. The British Queen remained head of state and appointed a governor until 1963, when the constitution was to be amended to install a president. Under this constitution, Uganda instituted a unitary system, with Buganda enjoying autonomous status—referred to as federal status in Uganda—with greater rights and privileges than other districts in Uganda. The country's

other three kingdoms, Ankole, Bunyoro, and Toro, enjoyed only quasi-autonomous status. Buganda's Lukiiko (parliament) served as an electoral college for its representatives to the Ugandan national assembly.

Buganda's special status became a source of tension after independence, especially after Buganda's *kabaka* (king), Edward Mutesa, became the president of Uganda in 1963, while the UPC head, Milton Obote, served as prime minister. The *kabaka's* dual loyalties to Buganda and Uganda led to a constitutional crisis in 1966.⁴

The matter came to a head when Uganda was to decide on the so-called Lost Counties in a 1965 referendum. The issue of the Lost Counties arose from the animosity between the Bunyoro and Baganda, who had been enemies throughout much of the nineteenth century. The British had used Buganda to conquer Bunyoro and rewarded Buganda by giving it six counties of Bunyoro territory that had particular cultural and historical significance to Bunyoro. The British preferential treatment of Buganda created tension among Ugandan citizens living outside of Buganda⁵; in the referendum, which allowed the residents of the Lost Counties to choose between remaining part of Buganda or returning to Bunyoro, the counties voted to join Bunyoro, leading to a split between the Baganda leadership and Obote. The ill-fated anti-DP alliance between Buganda's (KY) party and Milton Obote's UPC was already frayed, but after the referendum, it crumbled. KY fell apart, and many of its members joined UPC to support the Buganda faction of the UPC that had opposed Obote, who was a Langi from northern Uganda. Mutesa, Buganda's king, sought military assistance from the British, but before he and the Buganda faction of UPC could make a move, Obote arrested five ministers and charged their faction with plans to have Buganda secede from the rest of Uganda.

The developments regarding the Lost Counties led to the constitutional crisis of 1966, in which Obote assumed full executive powers and suspended the 1962 constitution, in direct violation of that document. The king sought Buganda's secession, demanding that the central government remove itself from Bugandan soil and appealing to the United Nations for support. Obote's forces marched on the Buganda stronghold in Mengo and brutally suppressed the royalists, killing at least two thousand civilians. Mutesa fled to exile in Britain and Obote seized the presidency. On April 15, 1966, parliamentarians found a new draft constitution in their pigeonholes (mail compartments), and Obote, who came to Parliament surrounded by troops, forced the members of Parliament to adopt what came to be known as the pigeonhole constitution. He also ordered the national assembly to become a constituent assembly; it debated the constitution for three months before its adoption in September 1967 in a controlled process. Obote then imposed the adoption of the new constitution and declared himself president without elections.

The new constitution established a unitary and highly centralized state. It abolished the position of the prime minister, placing all executive powers in the hands of the president. Moreover, the executive powers were expanded at the expense of the judiciary and legislature. The constitution also abolished all kingdoms in Uganda, and Buganda's special status was eliminated. Buganda was divided into four districts, wiping its name from the political map, and its parliament building (the Bulange) was transformed into the headquarters of Uganda's Ministry of Defense. The *kabaka's* palace at Bamunanika outside Kampala became an army barracks. This enraged the Baganda; even though many were not enamored with the king himself, they were loyal to the idea of the kingship and the traditions it represented. The new constitution paved the

way for further consolidation of the UPC as the single ruling party, now that the Buganda monarchy and the DP were out of the way. These events set the stage for the reign of terror experienced under Idi Amin (1971–79) and Obote's second government (1980–85). This period of Uganda's history produced the abolition of parties in 1969 and, as the rule of law was abandoned, the use of security forces to suppress opposition.

After the NRM took power in 1986, its leaders felt a need to break with the previous regime of Obote and create a new basis of legitimacy for the party by drafting a new constitution. The new constitution was meant to delegitimize both the old political parties (i.e., the UPC and DP) as well as the idea of multiparty democracy. Simultaneously, the new constitution was intended to advance the goal of bringing about a no-party democracy based on popular consensus.⁶ The NRM embarked on a constitution-writing process in 1989, having formed a ministry for constitutional affairs in 1986. Opponents of the new constitution-writing exercise included those who wanted to reinstate the model of Buganda autonomy and federalism embodied in the 1962 independence constitution as well as UPC supporters who wanted simply to amend the 1967 constitution.

The process of constitution making was expensive, long, and drawn out. It was originally planned to take two years, beginning in 1989; instead, it took six years to produce a constitution. Some say the NRM extended the length of the process as a delaying tactic to give it more time in power. The entire constitution-making exercise cost \$20 million, 42 percent of which came from the government of Uganda and 58 percent from foreign donors. The European Union, the United States, the United Kingdom, Japan, Denmark, and the United Nations Development Programme were among the largest contributors to the exercise.⁷

With 287 articles and seven schedules, the 1995 Ugandan constitution is one of the longest in the world, several times longer than most European constitutions and ten times the length of the U.S. constitution.⁸ This is partly because the Ugandan constitution addresses many policy issues that generally are not included in constitutions, as they encumber legislators dealing with new situations and contingencies.

Political Context of Constitution Making

The 1989–95 constitution-making process took place against the backdrop of a number of NRM initiatives designed to ensure that its objectives were met in the exercise. The first such initiative was a ban on the activities of political parties. When the NRM first came to power in 1986, it had not taken an antiparty line; it brought the leaders of opposition parties into its leadership coalition and used them to legitimate itself as a broad-based movement representing the interests of all, and to promote itself as a movement opposed to sectarianism. In a bid to consolidate the NRM's power, however, in 1992 the Parliament adopted a resolution suspending political activity. By 1993, the constituent assembly statute prohibited parties from running candidates in the elections for the assembly established to adopt a new constitution. This kept the playing field tilted in favor of the NRM.

Critics believe that the constitution-making process was flawed from the outset because political parties could not mobilize freely. Parties could exist and issue press releases, but they could not hold workshops, conferences, or party congresses. Rallies that were organized were forcibly stopped. Political candidates were forbidden from running on a party ticket in elections, and had to run as individuals. Parties could have national of-

fices, but they were not permitted to open branch offices. The NRM justified the ban based on a purported need to unify the country through building a no-party movement that would represent all interests. The UPC had been responsible for massive atrocities during the second Obote government and was sufficiently discredited by its past record to allow the NRM to suppress all party activity without risk of serious public backlash. But the ban not only curtailed the activities of the UPC; it prevented other parties from forming and weakened existing parties, most of which were in disarray.

Second, the NRM sought to ensure that the politically and numerically important Baganda—one-fifth of the population—supported the new constitution. Museveni permitted the restoration of the Ugandan monarchies and traditional rulers—Buganda, Ankole, Toro, and Bunyoro—as cultural though not political entities, and returned properties and lands to the kabaka and Baganda royals.

Third, the NRM initiated a decentralization program through the 1993 Local Government Statute. The stated goal was to devolve planning and budgetary decisions and deliver services to the districts and their subunits. However, the law was used later to invalidate Baganda appeals for federalism because decentralization was said to have already succeeded in bringing services and accountability to the people.⁹

Finally, the NRM capitalized on the existence of continued fighting and instability in the north to remind the southerners, who enjoyed relative peace, what a return to the UPC-Obote days would bring. Most of the constituent assembly delegates from the north were opposed to the NRM and supported multiparty politics. The government had been working toward a settlement in the north but abruptly halted peace negotiations in 1994 for no apparent reason. Critics have long charged that the lack of settlement in

the north has been part of a cynical and concerted propaganda effort to remind the south of the ills that would befall the rest of the country should it fall into non-NRM hands, as well as a way to keep the north from becoming a more cohesive political bloc capable of opposing the NRM.¹⁰ It has also given the government a pretext for keeping its defense budget high.

The Role of the Constitutional Commission

The Selection of Constitutional Commission Members

Many of the undemocratic characteristics of the 1995 constitution can be traced back to undemocratic aspects of the constitution-making process itself. Plans to create a new constitution under NRM leadership dated back to the establishment of a Ministry of Constitutional Affairs in 1986. The ministry did very little until 1989, when a constitutional commission was formed.¹¹ The selection of members of the constitutional commission was ad hoc and done in batches. Some members who were appointed by the minister for constitutional affairs were not approved by the president, and some were appointed by the president without approval of the minister, as the Uganda Constitutional Commission Act of 1988 required. There was no nomination process allowing anyone else to suggest names.¹²

Even though the commission's composition was regionally balanced and one DP member sat on the commission, almost to a person, the body was made up of strong supporters of the Movement system.¹³ It included both the political commissar of the NRM and his counterpart in the National Resistance Army (NRA). Not one member of the commission openly opposed the Movement system. This left the commission open to criticism that the process of selecting

members was not carried out in a sufficiently democratic fashion.¹⁴ The commission was headed by Justice Ben Odoki, under the direction of the minister of constitutional affairs, and was financed by the government, which gave the executive additional leverage in running the commission.

Activities of the Constitutional Commission

With few exceptions, rarely in Africa has one seen the level of popular engagement in education seminars, debates, media discussions, and submission of opinion memoranda that was evident in the Ugandan constitution-making process. At least 25,547 separate submissions of views were sent to the commission.¹⁵ That there was such wide consultation with the public through formalized methods may itself be seen as a major achievement. The submissions to the commission included local council memoranda (10,134); essay competitions (5,844); seminar reports from district, subcounty, and various other institutions (899); newspaper opinion articles (2,763); individual memoranda (2,553); group memoranda (839); and position papers (290).¹⁶ The level of involvement of women in the process was unprecedented in Africa and perhaps worldwide. No other sector of society sent as many memoranda to the commission as did women's groups.

Commission members also toured the country, holding seminars and gathering the views of opinion leaders and representatives of key organizations in each district. A draft constitution in the form of guidelines and guiding questions was prepared to elicit further commentary. Massive numbers of people attended the seminars and participated in debates. John Waliggo, one of the commission members, indicates that about 30,000 community leaders were engaged in seminars regarding the constitution.¹⁷ This was followed by seminars in 870 subcounties around the country, in which commissioners

introduced and explained the constitution-making process and let people air their views. These seminars were followed by the solicitation of memoranda.¹⁸

The constitutional commission claimed that the draft constitution it produced was based on people's views. Critics have been skeptical about how much of the constitution reflected popular views, however, especially because the commission's tour emphasized educating people about the constitution rather than consulting with them. Opposition leaders accused the commission of ignoring memoranda that raised contentious issues. Moreover, NRM leaders vetted memoranda written at the subcounty level before submitting them to the commission. Critics also have argued that the commission was part of NRM designs to persuade the public to support the NRM: While the guiding questions that set the framework for the debate allowed for either a multiparty, one-party, or no-party system, the advantages and disadvantages of the multiparty system were listed, while only the advantages of the other two options were presented.

Non-Governmental Civic Education

The controlled nature of the civic education associated with the constitution-making process was underscored by the difficulties that independent non-governmental organizations (NGOs) faced in carrying out civic education activities. Two bodies attempted to supplement the educational activities of the commission: the Uganda Joint Christian Council and the National Organisation for Civic Education and Election Monitoring (NOCEM). NOCEM's experiences exemplify some of the ways in which limits on freedom of association for independent organizations framed the constitution-making process.

NOCEM was made up of fourteen human rights, religious, media, and legal rights asso-

ciations, in addition to several women's organizations, including Action for Development (ACFODE), the Uganda Federation of Business and Professional Women, and the Association of Uganda Women Lawyers (FIDA). They aimed to carry out civic education and monitor the constituent assembly elections, which they did along with other national and international observers. Even though the organization was nonpartisan and included members with past and present affiliations with the NRM, UPC, DP, and Conservative Party, the organization was banned. Prior to this, the president had attacked NOCEM on January 26, 1994, accusing it of being a partisan organization. The announcement that NOCEM's accreditation as an NGO had been withdrawn gave no reason for this disqualification.¹⁹ Additionally, NOCEM faced harassment by the parliamentary representative in Mukono and was banned by both the district executive secretary in Bushenyi and the district administrator in Mpigi.

In an interview at the time with the chairperson of NOCEM and president of the Uganda Law Society—later to become a High Court judge and a judge of the International Criminal Tribunal for Rwanda—Salome Bossa pointed out that NOCEM was a new organization and faced both internal and external problems.²⁰ Internally, the organization made a few innocent mistakes with some individuals who had not been screened properly. Those who were found to be asserting partisan positions were expelled immediately.²¹ One member who was expelled, Amos Muhindo, had been working in Kasese and was identified as a former UPC Youth Winger who had an allegedly controversial political record in the early 1980s; UPC Youth Wingers were associated with inflicting random terror on communities under Obote's post-1980 government. NOCEM argued that the problem was partly a result of the NRM's inexperience in dealing with such

an independent body. It also argued that in some cases, the complaints against NOCEM had been launched by government officials who were attempting to rig elections in favor of Movement politics by delegitimizing NOCEM's nonpartisan activities. Eventually, NOCEM was allowed to operate, but the experience showed the limits of autonomous organizations within the process and the government's fear of alternative views regarding the role of political parties.

Key Issues Considered by the Constitutional Commission

The substantive issue at the heart of the constitution-making process regarded the nature of the political system in Uganda: Would it be a multiparty democracy or a no-party Movement system? In its report and in draft proposals on the political system, the commission set the framework for the debate over multipartyism in the constituent assembly. The most contentious specific issues that the commission addressed concerned, first, the form of government suitable for a democratic Uganda (i.e., multiparty versus no-party Movement system), second, the role of political parties, and third, the position of traditional rulers.

The commission originated the idea of maintaining the Movement system in the new constitution, but holding a referendum on the political system (Movement versus multipartyism) five years after promulgation of the constitution. The commission, however, did not address issues relating to the context in which the referendum would be held. Its proposals did nothing to ensure that supporters of a multiparty system could articulate their views freely. Instead, party activities that were defined in the commission's draft constitution as incompatible with the Movement system were to remain suspended during the period the system was in

place—that is, in the period leading up to the referendum. This left an unlevel playing field for those who did not want a Movement system.

The Constituent Assembly Elections

Constituent Assembly Election Act of 1993

The constituent assembly was the most important body in the constitution-making process. The NRM's original intent was to have the national assembly serve as the constituent assembly, as had been the case in the 1967 constitutional deliberations. However, many questioned the representativeness of the existing Parliament, given its large number of historicals—NRM members who were given parliamentary seats in recognition of their role in the guerrilla war that brought Museveni into power—as well as presidential nominees, army representatives, and women elected by an electoral college that was closely associated with the NRM. None of these members was seen as having the mandate of the people.²² As a result of pressure from political parties to have delegates elected freely from all parts of the country, the idea of using the national assembly was dropped. But other crucial efforts to keep the playing field unlevel succeeded.

The constituent assembly statute of 1993 provided for the special selection of 74 of the delegates in addition to the 214 directly elected from the districts. Of the 74, ten were to be appointed by the president, ten by the NRA, two by the National Organisation of Trade Unions, two by each of the four political parties, four by a National Youth Council, and one by the National Union of Disabled Persons of Uganda. In addition, 39 women were elected by an electoral college of subcounty counselors and members of the subcounty Women's Councils within the district. The actual number of special delegates seated in the assembly was only 70, as

the UPC refused to send its two delegates in protest against the ban on party activities. The Uganda Patriotic Movement (UPM), which Museveni had formed in 1980, also did not send delegates because it argued that the NRM was already representing its views.²³ This meant that at least 66 of the assembly's delegates were institutionally beholden to the NRM for their positions. Although they were not a majority, they formed a major block of NRM supporters that could be counted on to adopt pro-NRM positions in addition to the chair and vice chair, who were to be elected from among five presidential nominees. Despite the insistence of political parties that they be consulted on these five nominations, no such consultations took place. Movementist James Wapakhabulo became the assembly's chair, and the vice-chair went to Professor Victoria Mwaka, who mobilized the support of women and the Baganda. Three of the four committees established within the assembly also were headed by Movementists.²⁴

The Constituent Assembly Election Act of 1993 was the first opportunity for the NRM government to translate its implicit ban on political party activity into a legal ban, with the effects mentioned above. Under the act, candidates could not use a political party affiliation in running for the assembly. They also could only participate in campaign rallies or meetings organized by the government; no other rallies or any forms of public demonstration in support of or against a candidate were allowed.²⁵ Political party membership recruitment, establishment of branch offices, party member conferences, and campaigning under party banners were all forbidden. Candidates simply had to run as individuals. These provisions of the act violated the 1967 constitution's guarantees of freedom of association and of assembly. They also suppressed public debate, especially on the draft constitution's more controversial aspects.

Meanwhile, NRM candidates continued to use the media to assert their views, an opportunity not as available to non-NRM candidates. Candidates participated in the assembly elections as though they were contestants in a struggle for political power rather than as participants in a constitutional debate, as evidenced by Museveni's proclamation after the assembly elections that "we have won!" Who was to win if everyone was simply running as an individual? By directly and openly supporting Movement candidates, the NRM in effect behaved as a political party while not allowing others to operate in the same fashion. As a result, the assembly elections became a turning point, out of which the Movement emerged as a de facto single ruling party.

The 1993 assembly statute adopted by the national assembly was challenged in the Constitutional Court by a petition from the UPC, which argued, first, that the ban on party activity suppressed constitutionally guaranteed rights of free assembly and association, and second, that the provisions governing campaigning adversely affected the right to free expression. In a blatantly political decision, the court dismissed the petition on the grounds that the suspension of party activity was a temporary measure and that such a measure was necessary to prevent a reversion to the chaos of the past.

The effect of the regulations governing the assembly elections was to drive parts of the electoral process underground, with campaign events held at funeral meetings, in churches, and at fund-raising events with limited impact. It also shifted the debate from a focus on the issues to a focus on personalities and their relationships to the president. Not surprisingly, Museveni won the 1996 and subsequent 2001 and 2006 presidential elections in sweeping victories over opposition candidates. In light of the restrictions on campaigning and organized political activity, the electorate could not consider viewpoints

that were effectively excluded from the public debate. As a result, the election process suffered, as the differing positions on issues that lay at the heart of Uganda's political conflicts were not represented effectively.

The Election Process and Results

All in all, the elections gave every advantage to the NRM. The fairness of the elections largely depended on the impartiality and integrity of the commissioner running the elections. Museveni appointed his friend Steven Akabway as commissioner; many regarded him as a political flunky and were critical of his appointment.²⁶

There were complaints that government ministers were holding public rallies before the date set for campaigning to begin, on the pretext that they were conducting government business. Police were called in, but no one was prosecuted for holding such events. In many cases, government ministers standing as candidates used so-called official tours to donate large sums of money and goods to local schools and hospitals before and during the election campaign. This was just one way that ministers employed the trappings of state power for their campaigns to gain undue advantage over their rivals. Almost every minister was accompanied by convoys of ministerial vehicles, which they used to transport themselves and their supporters to polling stations. One even traveled from his home less than half a mile from the polling place in an official helicopter.

In some cases, NRM candidates initiated the giving of gifts, money, alcohol, food, and promises of future gains to voters. In other instances, the electorate became extortionists.²⁷ Adoko Nekyon, a long-time member of Parliament, said that in the forty-three years since the national assembly was formed, he had never seen such extensive buying of votes as he witnessed in the con-

stituent assembly elections.²⁸ Such charges are hard to prove or disprove, but there was ample anecdotal evidence to support them.

Voter turnout in the constituent assembly election was very high, ranging from 66 percent in Karamoja to 97 percent in Kabale.²⁹ In the election, 84 percent of the national assembly members ran in the constituent assembly elections, and despite the NRM's many advantages, 51 percent of the parliamentary candidates who ran for the constituent assembly lost. The largest number who lost overall were in the east (60 percent of parliamentary candidates) and the north (67 percent). There were also significant losses for the NRM in the north and east—areas of opposition where citizens were frustrated by continued conflict and lack of development in their regions. Thus, the NRM remained the dominant political force in the western and central regions, while multiparty advocates held sway in the eastern and northern regions.³⁰

Because political parties could not field candidates or carry out campaigns, it is difficult to know to what extent the outcome of the elections reflected real political sentiments rather than the capacity of candidates to hand out material inducements. Ethnic allegiances were an additional factor in many of the races. But in many ways, the elections also tested the strength of existing political organizations. Finally, the elections reflected support for the NRM among the Baganda in the south, who by this point had been persuaded to endorse the Movement after the restoration of their kingship in 1993.³¹

Constituent Assembly Deliberations

Several caucuses formed in the process of deliberation on the draft constitution produced by the constitutional commission: the National Resistance Movement Caucus; the Buganda Caucus, to promote the idea of a

federal system, in which the kabaka would serve as the constitutional leader of Buganda; the National Caucus for Democracy to promote multipartyism, political pluralism, and freedom of association; and the Women's Caucus, which cut across party and NRM lines and promoted the cause of women's rights. These caucuses formed around key controversial issues being debated and thus featured prominently in the constituent assembly's deliberations.

Future of the Political System

One of the most controversial issues addressed in the assembly deliberations was the future of the political system, that is, whether the country should adopt a no-party Movement system, a multiparty system, or some other type of democratic and representative system. There were several dramatic standoffs between the Movementists and supporters of a multiparty system around this issue.

The multipartyists wanted the constitution to provide for freedom of association and the creation of an interim government composed of all political parties that would govern the country for three years until the new constitution would come into force. The Movementists felt that the country was not ready for multipartyism and that it would fracture the country irreparably. In the end, the assembly's decisions reinforced the recommendations of the constitutional commission that the Movement system should continue in power for another five years, after which a referendum should be held to determine whether or not to transition to a multiparty political system. Its advocates deemed the Movement system to be broad-based, inclusive of all people, nonsectarian, and hence, nonpartisan. Using a referendum was seen as enhancing democracy and popular participation, allowing people to have a

say in deciding on which political system should govern them.

Ultimately, the constituent assembly reaffirmed the monopoly on political power held by the NRM and banned “any activities” that might “interfere with the movement political system” (Article 269 of the 1995 constitution). The crucial debate over the future of multipartyism in the constituent assembly was resolved in July 1995 after four days of deliberations and a walkout by multiparty forces. The NRM prevailed with 199 votes in favor of continued no-party rule, 68 opposed, and 2 abstentions. Multipartyists argued against enshrining the Movement political system in the constitution because it would constrain Ugandans’ ability to alter their own political system. Multipartyists also argued that using periodic referendums to change the political system would create instability and could be easily manipulated by whoever was in power. The constituent assembly rejected these arguments and voted down the multipartyists’ proposals.

The no-party Movement system not only circumscribed the activity of opposition parties, it also gave the NRM—because it was theoretically to be a movement representing the entire citizenry—a rationale not to institutionalize itself as an internally democratic political party. This left key elements of political control highly centralized within the NRM. Power within the NRM continues to be concentrated at the top. The NRM has never held elections for any of its leaders, nor has it convened any popularly elected body to vote on policies.³² This has led to disaffection within the Movement, although signs of such dissatisfaction were already evident during the assembly deliberations.

At one point in the constituent assembly discussions, Major-General Tinyefuza, a high-ranking army delegate, ignored Movement discipline and openly criticized the extension of the Movement system through the period leading up to the referendum. He

called for a rapid return to multiparty politics, saying that “it is almost immoral to want another free extension of five years to make it twenty” years of NRM rule.³³ The NRM forced him to apologize, retract his comments, and promise to seek guidance from the army before expressing an opinion on the constitution.

Multipartyists and Movementists clashed on other points as well. Dick Nyai, a UPC assembly member, wanted presidential and parliamentary elections to be held on the same day, on the grounds of expense, logistics, and practicality. This proposal was rejected, even though it seemed reasonable to many, purely because a multipartyist had presented it. Many observers were incredulous that this move was defeated. Many multipartyists felt that if the elections were split and the presidential elections held first, a large Museveni victory would demoralize multipartyist supporters and convince some of those who were wavering to join the Movementists. Similarly, the Movementists reasoned that a successful presidential victory would guarantee them a victory in the upcoming parliamentary elections as well.

Federalism and the Status of Buganda

Another major conflict erupted over federalism and the governance of Buganda. Bugandan royalists had sought to reestablish Buganda’s pre-1966 autonomous status, under which all districts in the kingdom paid taxes to the Mengo government rather than central government. The royalists proposed that the kabaka should administer Buganda while serving primarily as a titular head. Some wanted the name Republic of Uganda changed to Sovereign State of Uganda. The constituent assembly resolved this by calling Uganda a sovereign state and a republic.

The Buganda parliament (the Lukiiko) promoted the creation of fourteen federal states in Uganda to gain greater acceptance

for a federal structure. Within the constituent assembly, however, the Baganda representatives had mixed feelings about federalism and, while many supported the recognition of Baganda culture, they were not ready to give up Uganda's republican identity. Many also feared that Buganda's federalism was the first step toward secession. They were wary of the Lukiiko's authority and of attempts to undermine their legitimacy as elected representatives of districts within Buganda.

Prior to the constituent assembly, the UPC and DP both endorsed Buganda's demands for federalism. This was a dramatic change from their earlier positions. As explained above, the UPC abolished Buganda's special status when it replaced the 1962 constitution. The NRM sought to preempt the assembly's debate on the subject by passing a Traditional Rulers Statute in 1993, which allowed for the restoration of traditional rulers as cultural leaders.³⁴ In addition, fearing an alliance among the opposition parties and the Buganda leadership in Mengo, the NRM met with the Mengo government and agreed that Buganda would form a regional government under the new constitution.

In the end, Mengo gambled and lost its bid for federalism. It agreed to support NRM positions on antidemocratic aspects of the constitution in exchange for federalism. But the NRM reneged on its end of this perceived bargain. The majority of the assembly delegates took the view that federalism would undermine the unity of the country. They agreed to recognize Buganda as a distinct entity, but instead of federalism, they opted for decentralization and devolution of power from the center to the district level, a policy that was already in place before the assembly convened. The constituent assembly rejected the NRM's agreement on federalism and other promises made to Mengo before the assembly's deliberations. Opportunism by Mengo and the multiparty caucus

ended up hurting both as they tried to use one another.³⁵

The issue of federalism continued to dog Ugandan politics in the years after the constitution's enactment. Continuing pressure for a federal system from Buganda resulted in a government proposal for regional parliaments in a federal system for Buganda, Busoga, Toro, and Bunyoro. With waning political backing nationwide, Museveni was eager to shore up his support among the kingdoms, especially Buganda, before the 2006 presidential elections. Having been granted symbolic cultural recognition in the 1995 constitution, the kingdoms continued to press for greater political power and a more public role. In 2005, a constitutional amendment was passed to create regional tiers throughout the country as a layer of administration above the existing district system funded by the central government. Regional leaders would be unable to tax the population, yet they were to be accountable to them. The regional bodies were to be in charge of secondary education, referral hospitals, cultural matters, interdistrict roads, water and sanitation, and agriculture monitoring. A few days before the 2006 presidential elections, the Buganda leadership in Mengo rejected the regional tier arrangement, opting instead for their own version of autonomy, referred to commonly as *federo*.

Outcomes of the Constitution-Making Process

Overall, the constituent assembly's deliberations lasted twenty-nine months from the time the assembly opened in February 16, 1993, to its conclusion on August 25, 1995, when the 284-member assembly adopted the new constitution in toto. The constitution was enacted on September 22 and promulgated on October 8, 1995, by the president. The NRM tried to use the constitution-making process to give its Movement system

greater legitimacy and entrench its control. This may have worked in the short run, but it soon began to cost the NRM politically as it became apparent that the Movement was not interested in furthering the democratization process. All democratization measures have been controlled by the regime, which has been limiting political space and centralizing power since the mid-1990s, both within the Movement itself and within the country. The resulting system has kept one person in power for over twenty years with limited possibilities for the development of a truly competitive electoral system and loyal opposition.

The early broad-based NRM government that had sought to incorporate a wide spectrum of political, ethnic, religious, and other interests through political appointments and processes of consensus building was replaced by the time the constitution was adopted by a smaller clique of loyalists, whose activities are cloaked in secrecy. The internal division that emerged within the Movement after the adoption of the 1995 constitution was one of the most striking developments. Some of the sharpest criticisms of the lack of democracy have come from within the Movement itself, including some of Museveni's closest confidantes and political appointees: Colonel Kizza Besigye, Miria Matembe, Jaberu Bidandi Ssali, Eriya Kategaya, Mugisha Muntu, and Augustine Ruzindana.

A series of legislative acts since the constitution was adopted entrenched Movement dominance, transforming what was to be a no-party system into one-party hegemony. Some of these bills were passed without the required quorum or were speedily pushed through under pressure from the executive. The new constitution gave the Parliament the power to create the organs of the Movement political system and required that the system be democratic, accountable, and transparent, and give all citizens access to positions of leadership. In 1997, however, the Parliament

passed a highly controversial Movement Act, requiring all adult Ugandans to belong to the Movement system, even those who opposed it. Multipartyists and many prodemocracy advocates opposed the bill on the grounds that it was unconstitutional. They feared it would destroy freedom of association by making membership in the Movement mandatory. It was seen as enhancing the authority of the executive and reducing the already limited powers of the legislature. It was also seen as a ploy to turn the five-tiered local governance system into branches of the Movement.³⁶ An earlier version of the bill, promoted by the NRM leadership, was even more undemocratic. It declared the president of Uganda to be the chair of the Movement, making the election of the NRM leader unnecessary. It also made all members of Parliament *ex officio* members of the NRM national conference, whether they chose to join or not. Although a majority of the Parliament were Movement supporters, they rejected this version of the bill in favor of a modified one. When the first national Movement conference was finally held in July 1998, unsurprisingly, Museveni ran unopposed and was elected chair of the Movement; similarly, the vice chair and the national political commissar were elected unopposed.

At the eleventh hour, the NRM brought the referendum bill to the Parliament in 1999 with little time for debate. The passage of the act paved the way for a constitutionally mandated referendum that was held in 2000. The referendum was meant to determine whether Uganda would have a Movement, multiparty, or some other kind of political system. The bill was steamrolled through Parliament, and Museveni signed it even though the required ninety-member quorum was not reached, as only fifty members of Parliament voted on the bill. The referendum was held on July 1, 2000; the Movement system won with 94.3 percent of the vote. However, turnout for the referendum was exception-

ally low by Ugandan standards: Only about 50 percent of registered voters turned out. In some areas, the turnout was as low as 11 percent. This contrasted sharply with the 1996 presidential elections, in which 73 percent of registered voters participated.³⁷ The major opposition parties, the Uganda People's Congress (UPC) and the Democratic Party (DP), boycotted the referendum, refusing to lend legitimacy to the process.

Yet another controversial piece of legislation—the Political Parties and Organisations Bill—was introduced and withdrawn numerous times in Parliament as a result of sharp disagreements over its content. After many years of debate, the act was finally passed on June 7, 2002. The resulting act did not allow parties to operate at the local level, prohibited them from holding more than one national conference a year, banned public meetings of parties except for national meetings, and provided for the imprisonment of party leaders should the act be violated. Legislation such as this could be directly traced back to the constitution-making process's failure to achieve a genuine popular consensus regarding Uganda's political system.

Many of the above controversial acts were challenged in the Constitutional Court. In March 2003, in *Ssemogerere and Others v. Attorney-General Constitutional Petition No. 5*, the court struck down sections of the Political Parties and Organisations Act that suppressed activities of opposition political parties. In *Ssemogerere and Others v. Attorney-General Constitutional Appeal No. 1* of 2000, the court supported the contention that the Referendum Act in 1999 was unconstitutional; a third ruling in *Ssemogerere and Olum v. Attorney-General Constitutional Petition No. 3* of 2000 found that the Referendum Act of 2000 was unconstitutional and that the referendum itself, which sanctioned the continuation of the Movement system, was invalid. The supreme court, however, overturned this latter ruling.³⁸

In an about-face in 2005, multipartyism suddenly became acceptable in a quid pro quo arrangement that allowed Museveni to stay in power. In December 2004, the government presented Parliament with 119 constitutional amendments, including amendments that would lift limits on the president's service of two terms (Article 105.2), lift the restriction on political parties (Article 269), change the political system to a multiparty system (Articles 69–74), and impose sanctions on cultural leaders (kings and chiefs) who violated the constitution. At the same time, Museveni openly bribed 213 of the 305 (70 percent) members of Parliament with 5 million shillings (\$3,000) each in exchange for supporting his attempt to remove term limits on the presidency. Ten others signed up to receive the funds. The government needs two-thirds of Parliament to approve amendments to the constitution, such as an amendment to remove term limits on the presidency.³⁹ The constitutional commission had incorporated the provision of two five-year term limits on the presidency because of the fear of unrestrained power that has had such detrimental effects on postcolonial politics in Africa.⁴⁰ In recent years, civil societies and legislatures have fought bitterly over attempts to lift executive term limits and succeeded in keeping them in Nigeria, Zambia, and Malawi, but failed in Togo, Burkina Faso, Gabon, Guinea, Chad, Tunisia, and Uganda. Term limits were removed in Uganda in June 2005, paving the way for Museveni to run for president in 2006.

In the 2006 elections, Museveni won by a 22 percent margin over his opponent, Kizza Besigye; however, the opposition contested the 59 percent of the votes that he claimed. Even Uganda's supreme court found evidence of irregularities, intimidation, and violence, but a 4–3 majority of judges narrowly rejected Besigye's request for a recount on

grounds that it was unlikely to overturn the final outcome.

The opposition has come under increasing repression since 2000. It has not been uncommon for treason and sedition charges to be brought against people who voice opposition to the government through the media or in other fora. Often such charges have been used as a pretext to detain people without bail indefinitely, only later to have the charges dropped. Political prisoners have numbered in the thousands, extralegal killings of opposition party members have been reported, and torture has been carried out and widely acknowledged, even by the Parliament and government-appointed commissions. Pre-election harassment and intimidation of the opposition were widespread in the 2001 and 2006 elections.⁴¹

The more recent move toward multipartyism thus needs to be understood in light of Museveni's bid for a third term. Popular discontent with the Movement system made it untenable as a political system, but the way in which multipartyism was introduced—and in particular, its link to Museveni's quest for a third term—raises questions about the Movement's interest in fundamental change. Moreover, the harassment, intimidation, and violence directed at opposition parties in the 2006 election raises serious doubts about the government's commitment to democratization and multipartyism. On November 16, 2005, Kizza Besigye—the key opposition leader of the Forum for Democratic Change (FDC)—was arrested on charges of treason and rape. The day he was to be brought to the High Court to be released on bail, a Black Mamba armed security squad had been deployed at the court to rearrest him in an extralegal action. This prompted protests from the High Court judges, Chief Justice Odoki (who had been the head of the constitutional commission), the inspector general of government, leaders of the Uganda Law Society, the government's human rights commission,

and many others, who condemned the siege of the courts as undermining the rule of law. Over three hundred lawyers went on strike to protest the military's interference in the judiciary's independence.

Lessons of Uganda's Constitution-Making Experiences

The 1995 constitution needs to be understood in light of the broader context within which it was written, including the NRM's bargaining with the Bugandan leadership and the recognition given the kingdoms before the adoption of the constitution; the restrictions on party and associational activities; control over appointments to the constitutional commission and constituent assembly; bribing of voters during the constituent assembly elections; and, more generally, the role of patronage and corruption in the political process.

At no time was Uganda's constitution-making exercise a neutral and open process, free of manipulation; the entire exercise was part of a broader political agenda of those in power who sought to use the new constitution to remain in power at all costs. From the outset, this limited what could be accomplished through the process of adopting a new constitution. Though the level of popular engagement in the process was unprecedented, that engagement had little impact on the substance of the constitution and may have lent unwarranted legitimacy to the more undemocratic aspects of the process and the resulting constitution, giving the Movement more time to entrench itself.

It is important to look at which constituencies were appeased in the process and to what end. Was there a quid pro quo negotiated through the constitution-making process that led to undemocratic outcomes? Women, for example, were very pleased with the extensive constitutional recognition of women's rights and gave the Movement

considerable electoral support in subsequent elections. Women also were very active in the entire process of the constituent assembly, carrying out civic education programs and submitting memoranda to the constitutional commission. Yet when it came to legislation that would have concretely advanced women's rights, such as key amendments to the 1998 Land Act, Museveni refused support. Similarly, the promised equal opportunities commission, which, according to the constitution, was to oversee the enforcement of women's rights, never materialized. A decade later, the very same supporters of the positive constitutional measures regarding women have joined forces under the rubric of the advocacy and lobbying coalition Uganda Women's Network (UWONET) to protest the proposed lifting of presidential term limits. In a very brave initiative, given the levels of repression in the country, eighteen high-profile women activists went to Parliament in December 2004 to express their opposition to the constitutional amendment pertaining to presidential terms, referred to in Uganda as *kisanja* (dry banana leaves).⁴² *Kisanja* is also the Kiganda word for giving someone a second chance.

All the controversial issues in which the majority voted down the minority opposition in the constituent assembly have come back to haunt Uganda's political leaders in subsequent years and have been fought out politically in the legislature. But the executive has more direct control over the process in the legislature than it did in the assembly, and the possibilities for real change are even more limited.

Uganda's experience also shows that donor support for constitution-making processes needs to be considered carefully. Many citizens interpreted international donor support for the process in Uganda as support for Museveni and his agenda. Donors believed they were supporting a neutral process in which the outcome was contingent on open

and free deliberations. They underestimated the extent to which the entire exercise was subject to political manipulation and the ways in which an unlevel playing field would influence the outcomes. Museveni used continued donor support for his government to justify the continuation of NRM dominance. This became even more evident after September 11, 2001, when Museveni could more easily get away with characterizing political opposition, especially the widespread opposition to him in the northern part of Uganda, as linked to terrorist activity.

The situation in Uganda today is fraught with contradictions. Uganda has a constitution that provides for the protection of political and civil rights. Yet there has been increased repression of the opposition and greater limits on civil and political liberties since the constitution was adopted. The 1995 constitution expands the powers of Parliament and potentially allows it to check executive excesses. Parliament is to approve presidential appointments of the vice president, cabinet ministers, judges of the High Court, justices of the Court of Appeal and Supreme Court, and heads of key commissions. Yet the executive has been able to push undemocratic legislation through Parliament without a quorum, despite constitutional limitations on executive powers. During the debate over term limits, Museveni threatened to weaken Parliament further by eliminating its powers of censure and dissolving it altogether if it disagreed with him. Although the constitutional review committee rejected Museveni's efforts to abolish the two-term limit on the presidency, he openly bribed members of Parliament to vote for lifting the limit and won the 2006 presidential elections. This means that by 2011, when his term ends, he will have been president for twenty-five years. To fully understand what happened in the 1995 constitution-making exercise in Uganda, it is necessary to account for the political dimensions of constitution

making and consider the broader political agendas at work within the country.

Notes

1. A. Mugisha, "Museveni's Machinations," *Journal of Democracy*, vol. 15, no. 2 (2004), p. 140.
2. "A new element was introduced into our parliamentary methods of work, whereby the legislators of a particular persuasion, namely the NRM, were given large sums of money outside their normal remuneration in order to 'facilitate' their voting for some proposals, particularly the removal of presidential term limits." See "Constitution Has Become a Temporary Document!" editorial, *New Vision*, August 23, 2005; "When the Loan Shark Comes Knocking, Even MPs Have a Price," *The East African*, August 15, 2005.
3. See O. Furley and J. Katalikawe, "Constitutional Reform in Uganda: The New Approach," *African Affairs*, vol. 96, no. 383 (April 1997), pp. 243–61.
4. P. Mutibwa, *Uganda since Independence: A Story of Unfulfilled Hopes* (Trenton: Africa World Press, 1992), p. 58.
5. See generally M. Doornbos and F. Mwesigye, "The New Politics of Kingmaking," in *From Chaos to Order: The Politics of Constitution-Making in Uganda*, ed. H.B. Hansen and M. Twaddle (Kampala and Oxford: Fountain Publishers and James Currey, 1995); D. Mukholi, *A Complete Guide to Uganda's Fourth Constitution: History, Politics, and the Law* (Kampala: Fountain Publishers, 1995); Mutibwa, *Uganda Since Independence*.
6. Uganda Constitutional Commission, *The Report of the Uganda Constitutional Commission* (Kampala: Uganda Constitutional Commission, 1993); J.J. Barya, *The Making of Uganda's 1995 Constitution: Achieving Consensus by Law* (Kampala: Centre for Basic Research, 2000), p. 46.
7. Mukholi, *A Complete Guide*, pp. 42, 99.
8. Furley and Katalikawe, "Constitutional Reform in Uganda," p. 257.
9. Barya, J.J., *The Making of Uganda's 1995 Constitution*, Working Paper no. 57 (Kampala: Centre for Basic Research, 2000), p. 42.
10. Barya, *The Making of Uganda's 1995 Constitution*, pp. 14–15.
11. J. Katorobo, "Electoral Choices in the Constituent Assembly Elections," in *From Chaos to Order*, p. 117.
12. Furley and Katalikawe, "Constitutional Reform in Uganda," pp. 247–51.
13. J. Oloka-Onyango, "New Wine or New Bottles? Movement Politics and One-Partyism in Uganda," in *No-Party Democracy in Uganda: Myths and Realities*, ed. J. Mugaju and J. Oloka-Onyango (Kampala: Fountain Publishers, 2000), p. 45.
14. Barya, *The Making of Uganda's 1995 Constitution*, p. 17.
15. Republic of Uganda, *Constituent Assembly Proceedings*.
16. Mukholi, *A Complete Guide*, 30.
17. J.M. Waliggo, "Constitution-Making and the Politics of Democratisation in Uganda," in *From Chaos to Order*, pp. 18–40.
18. Waliggo, "Constitution-Making," pp. 26–27.
19. Ofwono Opondo, "Akabway Rejects NOCEM," *New Vision*, February 13, 1994.
20. Salome Bossa, interview by the author, July 4, 1995.
21. John Nzinjah, "NOCEM Man Sacked," *New Vision*, February 24, 1994.
22. Mukholi, *A Complete Guide*, p. 35.
23. *Ibid.*, p. 37.
24. The business committee was responsible for organizing and managing the schedule of the assembly. It was headed by the chair, James Wapakhabulo, together with his deputy Victoria Mwaka, both Movementists. The legal and drafting committee was charged with overseeing the content and wording of the constitution. The rules and orders committee was to advise the chairman on the order of business. The privileges, discipline, and welfare committee was charged with handling matters pertaining to the welfare of the delegates and general discipline.
25. Barya, *The Making of Uganda's 1995 Constitution*, p. 22.
26. Furley and Katalikawe, "Constitutional Reform in Uganda," p. 252.
27. J. Geist, "Political Significance of the Constituent Assembly elections," in *From Chaos to Order*, p. 97.
28. "Museveni Rigging Worse than Obote, says Nekyon," *The Monitor*, March 21, 2001.

29. Katorobo, "Electoral Choices," p. 131; and Geist, "Political Significance," p. 99.
30. Katorobo, "Electoral Choices," p. 121.
31. N. Kasfir, "Ugandan Politics and the Constituent Assembly Elections," in *From Chaos to Order*, pp. 171–76.
32. *Ibid.*, p. 61.
33. Robert Kabushenga, "Tinyefuze Owes Ugandans an Explanation," *New Vision*, November 7, 1999.
34. Mukholi, *A Complete Guide*, p. 33.
35. Barya, *The Making of Uganda's 1995 Constitution*, p. 42.
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38. Erica Bussey, "Constitutional Dialogue in Uganda," *Journal of African Law*, vol. 49, no. 1 (2005), pp. 2–23.
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40. Odoki Commission Report 1993, available at www.federo.com/pages/odoki_report_1993.htm (accessed July 18, 2009).
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