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BEYOND 'THIRD-TERM' POLITICS

Constitutional amendments and Museveni's quest
for life presidency in Uganda

Juma Anthony Okuku

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LIST OF ACRONYMS

AGOA	African Growth and Opportunity Act
CRC	Constitutional Review Commission
KAP	Kalangala Action Plan
NRC	National Resistance Council
NRM	National Resistance Movement
NRM-A	National Resistance Movement Army
NRM-O	National Resistance Movement Organisation
PAFO	Parliamentary Advocacy Forum
PPOA	Political Parties and Organisation Act
UHRC	Uganda Human Rights Commission
UPDF	Uganda Peoples Defence Forces

Ours is not a mere change of guards but a fundamental change. ... The problem of Africa in general and Uganda in particular is not the people but leaders who want to over stay in power. ... For us in NRM/A shall be here for only four years, after which we shall hand over power to a free and fairly elected civilian government. – *President Yoweri Museveni at his swearing-in ceremony, 29 January 1986.*

I am not insisting on staying in power but what I am telling people is that I have now covered one phase. This is the phase of minimum recovery. Uganda has achieved minimum recovery but I don't want Uganda to be part of what has been happening in Africa, whereby 40 years after independence we are still a Third World country.' – *Interview with Museveni (White, 2003)*

1 Introduction

'Third-term' politics have taken centre stage in the debate over Uganda's transition from the 'movement system' of government to multiparty democracy. Since 1986, when Yoweri Museveni's National Resistance Movement (NRM)¹ came to power, the country has been governed under the 'movement system', in essence a quasi-one-party/military regime. This paper contends that besides other constitutional changes proposed by the NRM, the attempt to remove the provision limiting the president to two terms of office is an attempt to sanction an executive dictatorship. We interrogate the underpinnings of third-term politics and their implications for constitutionalism and democratic governance in Uganda. We argue that the proposed constitutional reforms form part of an incremental despotism introduced by Uganda's rulers, marked by a concentration of powers in the presidency, thus violating the notion of the separation of powers.

Third-term politics have not been restricted to Uganda; there have been attempts to change the constitutions of Zambia, Malawi, and Namibia to allow incumbent rulers to serve for a third term. However, Uganda's case is radically different in that an attempt is being made to lift term limits altogether. This paper analyses the proposed constitutional reforms in general, and the attempted removal of term limits in particular. Part one is the introduction. Part two is a conceptual framework. Part three locates third-term politics in Uganda's history of constitutional reforms. Part four examines constitutionalism and third-term politics in the broader African context. Part five traces the origins of the quest for a third term by Museveni and the NRM. Part six deals with the arguments advanced to eliminate term limits. Part seven, the core of the paper, critiques the various proposed constitutional reforms and their method of amendment, the omnibus bill. Part eight addresses the question of a vision for Uganda. Part nine suggests possibilities to counter the life presidency agenda, followed by the conclusion.

2 The constitution, constitutionalism, and democratic transition

The proposed constitutional reforms raise a number of conceptual and empirical issues surrounding the constitution and constitutionalism, democratic transition, and democratic governance. A clear understanding of third-term politics and the entire process of constitutional reform is required because they will stamp the character of the resulting constitutional order. Some commentators mistakenly equate paper constitutions with constitutionalism. These concepts must be defined clearly at the outset.

2.1 *Constitutions*

Constitutions are institutional frameworks which, in functioning democracies, provide the basic rules and incentive systems concerning government formation, the conditions under which governments can continue to rule, and the conditions under which they can be terminated (Stepan and Skach, 1993:2). Constitutional frameworks can be broadly divided into two categories: parliamentary and presidential.

Parliamentarianism defines a series of incentives and decision rules, minimising legislative impasse, inhibiting the executive from flouting the constitution, and discouraging political support for military coups. Presidentialism on the other hand encourages minority governments, discourages the formation of durable coalitions, maximises legislative impasse, and motivates executives to flout the constitution, contributing to democratic breakdown. The logic of presidentialism is to produce strong presidents who adopt a discourse that attacks a key part of political society (the legislature and opposition parties), and who attempt to rely on a 'state-people' style that marginalises civil society (ibid, 17-20).

Uganda's 1995 constitution is a hybrid document that combines parliamentarianism and presidentialism. The proposed constitutional amendments, however, lean towards presidentialism.

2.2 *Constitutionalism*

Constitutionalism is a process of citizen involvement in the working out of mutual hopes and needs through the use of commonly accepted decision-making rules and processes (Lutz, 2000:127). The need for social order necessitates the framing of a constitution to create at least the semblance of local sovereignty. Citizens must consent to be governed by the assemblage of institutions, rules, values, and customs that they have voluntarily put in place. Constitutionalism means government that is subject to restraint, in the interest of the ordinary members of the community – the antithesis of arbitrary or totalitarian government (Ojwang, 1990:2). It is a commitment to be governed by the constitution (Tumwine-Mukubwa, 2001:287). Once a country writes down a set of rules, even though they may amount to window dressing, over time a popular

expectation develops that there will be reasonable compliance with this framework. To practice constitutionalism means abiding by these rules.

Three elements are critical to the fulfilment of constitutionalism: separation of powers, constitutional amendment and the electoral process. The notion of separation of powers stems from the need to be realistic about the dangers of power. An important part of the increase in the separation of powers has been a general emergence of more independent supreme or constitutional courts to hold back the tide of stronger executive powers (Lutz, 2000:124).

Drawing on Montesquieu, the 18th century French philosopher, Lutz notes that the constitutional form is not the solution to the abuse of power (ibid, 133). Rather successful constitutionalism rests ultimately on a supportive political and social substructure that Montesquieu termed the 'spirit of laws'. Without this underlying political culture the formal institutions of constitutionalism are moribund. Separation of powers is an instrument that allows the population to organise a 'counter power'. If people do not organise themselves to preserve constitutional government in the ways allowed for by the separation of powers, constitutionalism will not last. Separation of powers should not be treated as a dogma, but as a dialectical tool. To obliterate the operation of separation of powers is to go against the essence of constitutionalism.

Constitutional amendment is another critical element in constitutionalism. Any society that embraces constitutionalism will, when required, amend its constitution, as opposed to using extra-constitutional means. There are a number of theoretical assumptions underlying the formal amendment process (Lutz, 1994:257).

First, every political system needs to be modified over time as a result of some combination of a) changes in the environment within which the political system operates (eg, economics, technology, foreign relations), b) changes in value systems distributed across the population, c) unwanted or unexpected institutional effects, and d) the cumulative effects of decisions made by the legislature, executive and the judiciary.

Second, in political systems in which constitutions are taken seriously as limiting governments and legitimising the decision-making process, important modifications in the operation of the political system need to be reflected in the constitution. Third, all constitutions require regular periodic modification, whether through amendment, judicial or legislative alteration, or replacement.

Conditions that necessitate constitutional amendment include:

- A regime change that leaves the values and institutions of the old constitution seriously at odds with those preferred by the new regime;
- The constitution fails to keep up with the times; and

- The old constitution may have been changed so many times that it is no longer clear what lies under the encrustations, and clarity demands a new beginning.

Our quest is to examine whether the proposed constitutional amendments in Uganda are informed by the above cardinal theoretical assumptions and conditions.

The third major element in constitutionalism is the electoral process. Elections are an expression of fair play in the constitutional game – the basis through which the popular will may be expressed. Central to this is the existence of an independent electoral commission and other institutional measures needed to ensure free and fair elections. A muddled electoral process goes against popular sovereignty, which rests at the base of constitutionalism and democratic governance (Lutz, 2000:134).

2.3 *Democratic transition*

By 'democratic transition' we refer to a decisive state of regime change that commences when a totalitarian system begins to collapse or disintegrate, leading to the emergence of a new dispensation with a new constitution, democratic structures, and the adjustment to democratic norms by the political class (Pridhan, 1991:5). The tasks of the transition involve, above all, negotiating the constitutional settlement, finalising the rules of procedure for political competition, dismantling authoritarian agencies and abolishing undemocratic laws. In comparison, 'democratic consolidation' is usually a more lengthy process. It involves the gradual removal of the uncertainties that invariably accompany transition, the consolidation of democratic institutions, the internalisation of new rules and procedures, and the dissemination of democratic values (Anderson, 1999).

A range of factors has led to the democratic transitions of recent years, including the changing global environment in the post-Cold War period and the exertion of pressure on authoritarian leaders. However, the political status quo often remains the greatest obstacle to democratic transition. As Mahmud points out, those who have power rarely yield it willingly (1996:414). Conscious decisions made by political actors during the course of transition are important to understanding the outcomes. The institutions and practices of incumbent regimes do more than merely shape contingent events. They have powerful and independent direct effects on the outcomes of political transition (Solt, 2001:90).

The electoral process is one of the most important instruments in democratic transition, but only where it succeeds in making genuine electoral succession an institution. In much of Africa, there has been a tendency for incumbents to set in motion electoral manipulations that enable them to succeed themselves.

The odds are so stacked against most opposition parties in African elections that their victory at the polls is an extraordinary achievement. It requires the prerequisites of

violence-free campaigns, an absence of voter intimidation, access to media, and honest vote counting. Apart from lack of political will, most African countries still lack independent electoral commissions (Segal, 1996:374-75). As a result, most African elections are often mere ratifications of authoritarian leaders through a manipulated process. The possibilities for managed re-elections and co-opted opposition parties are powerful incentives for such incumbents (ibid, 1996:379).

2.4 *Democratic governance*

Governance is the use of political authority and exercise of control over society, and the management of state resources for social and economic development. It encompasses, 'the nature of functioning of a state's institutional and structural arrangement, decision-making process, policy formulation, implementations capacity, information flows, effectiveness of leadership and the nature of relations between rulers and the ruled' (Landell-Mills and Seragerldine, 1991:3). Governance, broadly defined, covers all aspects of the complex and myriad relations that exist between a government and a people.

Several characteristics define governance. These include accountability based on the notion of popular sovereignty and public choice, a legal framework that guarantees the rule of law and due process, popular participation in decision-making processes based on political and social pluralism, freedom of association and expression, bureaucratic accountability, uniform application of rules, and rationality of organisational structures (Robinson, 1993:3-4). The entire constitutional system and institutional structure is therefore meant to create conditions and support efforts for governance.

Democratic governance implies, over and above technical efficiency and probity, regular interaction between government and civil society, and free participation by the latter through its institutions and popular organs. In turn this presupposes that democracy prevails in general (Mafeje, 2002:16). The major instrument for the realisation of democratic governance is the constitution.

The notions of constitutionalism, democratic transition and governance remain problematic in Africa. We have to examine these concepts in the Ugandan context.

3 **Constitutionalism and third-term politics in Uganda**

The salient issues concerning third-term politics in Uganda can be put within two categories: legal and political, though they are not mutually exclusive. Uganda's term limits originated with constituent assembly, which limited the presidential term to two five-year stints. The assembly based these decisions on Uganda's political history and, indeed, on Africa's recent political history. Term limits are intended to ensure that

persons elected president are not tempted to become 'president for life', or that they must be removed from office by force of arms. Historically, such acts by incumbents have included eliminating their opponents, creating personal armies, and looting the national wealth (Sakwa, 2003). Therefore, regardless of performance of a president, the two-term limit has to be observed. The reasons for this provision remain valid today. As Oloka-Onyango argues (2003b):

Article 105 (2) – concerning limiting the tenure of the president to only two five year terms – should not be subject to amendment in any circumstances. In light of historical tendency of our presidents to extend their tenures beyond the periods initially mandated, and sometimes for life, there should be no way, short of armed usurpation for the tenure of the president to be extended.

The Uganda Constitutional Commission (the Odoki Commission) concluded that an 'overwhelming majority view from the memoranda is to limit the term of office of the president'. The commission found the general consensus to be in favour of two terms and enshrined this consensus in the draft article 108(2) of the draft constitution, which evolved into article 105(2) of the 1995 constitution. The commission observed that the danger of an indefinite election system was due to the 'personal ambitions' of leaders. In such a situation the leader could use their office to secure re-election to the neglect of the more important duties of state (Nabudere, 2003).

In reference to presidential term limits, the commission concluded that there had been concern about the orderly succession to government. Even though previous constitutions had made provision for the tenure of office and the democratic mechanisms of handing over power to a new elected government, these had never been observed. Where leaders did not appear to be prepared to hand over power after free and fair elections, they had been violently resisted.

The commission warned that while in countries like the United Kingdom, term limits are non-existent, the African context is very different. A lack of term limits might lend itself to the whims of those individuals who are unusually ambitious. Such people can use the power of their office to perpetuate their rule, to the detriment of the country (Odoki Commission, 1993). Presidential term limits in Uganda, therefore, are informed by the country's history and the struggle to institute democratic governance and cultivate a culture of constitutionalism.

In Article 105(2) the constituent assembly limited the tenure of the president, regardless of performance, to two five-year terms. Museveni was the first beneficiary of this provision. Despite the fact that he had been president for 10 years beginning in 1986, the two five-year terms only applied from 1996. In 2001, after only six years since the promulgation of the 1995 constitution, Museveni appointed a Constitutional Review Commission, (CRC), to examine the constitution and suggest possible amendments.

The CRC did not recommend the removal of presidential term limits. These proposals emanated from the cabinet and the Government white paper (2004). Such proposals would allow Museveni to contest in 2006, after his mandated period ends. The supporters of this amendment argue that the question of whether a person should be president depends on the will of the people, expressed through the electoral process, rather than constitutional eligibility.

Term limits were hardly controversial during the constituent assembly debates. So why now? There are a number of booby-traps that were laid in the constitution to deter any person or group of persons from easily amending the document. The insertion of the term limits clauses was based on the assumption that the NRM would always have a majority in parliament.

The first split in the ruling Movement, when Kizza Besigye broke ranks and contested the March 2001 elections against Museveni, reduced this majority. The second split, symbolised by the Parliamentary Advocacy Forum's² (PAFO) opposition to the lifting of term limits, has made the situation more precarious for the NRM. And finally, dismissal of several cabinet ministers opposed to removal of term limits has further dented the NRM's standing in parliament.

What caused these splits? On the surface, the Besigye split resulted from three incidents, behind all of which lie the question of access to *real* power. In the first case, Besigye, together with Maj-Gen David Tinyefunza and the late Lt-Col Serwanga Lwanga, argued within the constituent assembly that the NRM was a transitional arrangement. They called for the ban on political parties to be lifted as early as 1996, or by 2001 at the latest, so that parties could contest in the polls as independent organisations. Museveni and the bulk of assembly delegates rejected this proposal.

The second instance was Besigye's far-reaching critique of the Movement in 1999. He asserted that it was turning into a one-man (Museveni) dictatorship, that corruption was rampant, and that Uganda was degenerating into a kleptocracy. Museveni reacted strongly. Besigye was charged before a court martial with sowing discord within the Uganda Peoples Defence Forces (UPDF) and, as a serving officer, publishing his criticism in the 'wrong forum' – a charge treated as subversion. The dispute ended with Besigye being discharged from the army when he applied to retire (Onyango-Obbo, 2001). The third instance was Besigye's declaration that he would run for president in the 2001 elections. It was in the midst of that election campaign that Museveni appointed the CRC.

The second and third splits in the Movement were primarily over term limits and the implications of their removal for Uganda's political stability. Some within the NRM were evidently concerned about preserving whatever they had accumulated, which would be threatened by political instability in the fight over a third term.

In spite of the manoeuvres to remove term limits and re-elect Museveni, whose term of office expires next year, the Uganda constitution of 1995 could not be more clear: 'A person shall not be elected under this constitution to hold office as President for more than two terms as prescribed by this article.' In addition to the term limits issue, there are also moves afoot to use a referendum to change the political system from the Movement 'system' to multi-party democracy as an alternative to parliamentary resolution.

The constitution is clear on the circumstances in which a referendum can be held to change the constitution. It recognises only three such instances. First, with respect to an amendment of certain provisions of the constitution (Article 259). Second, a referendum can be held with respect to the change of political system under Article 74 – the latter being an alternative to parliamentary resolution, supported by two-thirds of district councils. Third, under Article 255 of the constitution, a referendum can be held 'on any issue' (Oloka-Onyango, 2004).

The fact is that it is easier to manipulate a poverty-stricken, disorganised, ignorant and easily intimidated peasantry in a referendum than it is to rely on the current restive parliament³. In addition, until recently the only political organisation able to reach the masses through local councils was the NRM. And even with a 'liberalised' political space, there remain several legal obstacles to political mobilisation by other parties.

4 Constitutionalism and third-term politics in Africa

For most of the independence period in Africa, constitutionalism was not considered critical for governance. Across the continent, the constitutional frameworks within which countries gained independence proved not to be durable. As Oloka-Onyango (2001:338) observes:

Whether or not a country had a constitution was irrelevant, more often than not the document was only respected in the breach. Under the single-party or military dictatorships that abounded around the continent, the word of the president was law, irrespective of whether or not the constitution empowered the action that had been ordered. Judiciaries and legislatures were cowed by systems that bore more resemblance to monarchies than they did to modern democratic states.

In such circumstances a constitution could be abrogated at the incumbent's whim. Opposition to the dictatorship was ruthlessly dealt with. Starting with Kwame Nkrumah of Ghana, preventive detention acts⁴ became central legal instruments of containing opposition to increasingly authoritarian regimes. Under some military regimes, rule by decree and martial law were the order of the day. Key elements in democratic practice, such as free and fair elections or the peaceful transfer of power, became a rarity.

Coups and counter-coups became the fashionable ways of changing governments. In many countries there was, in fact, no talk of third term. Life presidency, whether declared or not, was the norm. Constitutionalism was thrown to the winds. The president was the state. Electoral results of 90 per cent-plus⁵ for the incumbent, or simply tossing aside the inconvenience of elections in favour of a 'state of emergency' (as was the case in Uganda between 1966 and 1971) were commonplace. The persistence of the above practices symbolises the failure of the colonial state project of transformation, and its bastardised post-colonial version.

Nearly all the constitutions of post-colonial African states were based on compromise between various political interests (Bazaara, 2001:41). Therefore, it became necessary for them to be amended or abrogated by those incumbents who adopted a winner-take-all mentality. *How* this was done is at least as important as *what* was done. The manner of amendment usually broke all the norms of constitutionalism and democratic governance. The amendment of Uganda's 1962 constitution in 1966, by Milton Obote, the first post-independence prime minister, was no exception. In Uganda, the abrogation of the constitution was basically focused on executive power. As Kanyeihamba observes:

Analysing the events of that period and the provisions of the 1966 constitution, the independence constitution of 1962 was neither suspended nor abolished. What happened was that only those parts, which dealt with the executive powers and head of government, were altered in order to merge the post of the president with that of the prime minister and create an executive president (2002:104).

There was, however, some limited adherence to constitutionalism: parliament was converted into a constituent assembly and debated the proposed changes in the 1966 constitution, resulting in the 1967 constitution. The 1966 constitution was constructed in the teeth of what came to be known as the Buganda crisis. The National Assembly was convened and its members were informed that they had been constituted into a constituent assembly representing the people of Uganda, and had been brought together to draft a new constitution, copies of which the members would find in their pigeonholes⁶.

There was no debate and, not surprisingly, the motion adopting the 1966 constitution was passed by a vote of 55 to 4. With the Buganda crisis behind him and aided by the declaration of a state of emergency, Obote felt confident enough to precede the 1967 constitution with significantly more debate, as well as the creation of a constituent assembly (Oloka-Onyango, 1995:158; Bradley, 1967:26; Kasfir, 1967:52-56; Mayanja, 1967: 20-25). The government's proposals for a new constitution were subjected to substantial intellectual scrutiny and political debate, resulting in 53 amendments (Kasfir, 1967:55). Though this was clearly a case of an abrogation of the constitution, the incumbent found it imperative to play the constitutional game as a means of building

legitimacy. In 1969, that same parliament passed a law banning opposition parties, describing them as dangerous societies that would adversely affect peace and order (Oloka-Onyango, 1997:175).

Under these conditions the constitution became an instrument for the consolidation of personal power. One shortcoming in the writings on constitutionalism in Africa has been the absence of linkage and analysis of the relationship between power and law (Okoth-Ogendo, 1991:3). Law is not an end in itself. It is an expression of political interests and it serves power in all its dimensions. Accumulation of state power by the presidency was the central objective of the constitutional reforms, not democratisation.

Cold-war politics also influenced constitutionalism in Africa. From the 1960s to 1980s, when totalitarian regimes, one-party dictatorships, and military autocracies were in fashion, it was all too easy to dismiss struggles for democratic rights and governance as either imperialist plots or Communist conspiracies. The end of the Cold War released pro-democracy movements in Africa and other parts of the Third World from the stultifying exigencies of the past. Dictators could no longer blame every demand for accountability and transparency on the handiwork of 'dangerous radicals' in pay of some foreign power. Of course, the release from Cold War straitjackets did not mean that Africa became an island able to redesign its institutions of governance, or reform its state structures without let or hindrance (Tajudeen, 2001:52-3).

Since the early 1990s multi-party politics has returned to the majority of African nations. But in some of these states – such as Zambia, Malawi, Zimbabwe and Namibia – as the incumbents' terms of office came to an end they began to manoeuvre for extensions. Therefore, the question of the 'third term' is of recent vintage. In Uganda's case, there is the proposed removal of term limits through parliament and the emerging tendency towards increased dictatorship, manifested first at Kyankwazi National School of Political Education in March 2003, and reiterated in the cabinet's proposals to increase executive power made to the CRC, which is also known as the Ssempebwa Commission.⁷

This has close parallels with Zimbabwe, where a referendum was held to determine whether the country should adopt a new 'democratic' constitution. The referendum followed the appointment of a national constitutional commission to examine the 1979 (independence) constitution and to consider the need for changes. The National Constitutional Alliance, a collective of civil, labour and professional organisations, came together to oppose the adoption of the new constitution. Voters rejected this by 55 per cent to 45 per cent (Oloka-Onyango, 2003:6). The Zambian and Malawian 'third-term' projects were also defeated. Can Ugandan opposition and civil society do the same?

5 The origins of third-term politics in Uganda: from fundamental change to no change to no term limits

The NRM has traversed an interesting trajectory in the process of consolidating power. It seized power in 1986 with the pledge of ‘fundamental change’. Ten years on, Museveni ran his presidential campaign with the slogan of ‘no change’. Today the call is ‘no term limits’.

As Oloka-Onyango notes, third-term politics is informed by the practice that rather than using brute military force, two-term presidents are forced to manoeuvre for constitutional change to allow them serve extended terms in office (2001:238). The removal of term limits is, on the surface, suggestive of a life presidency. But underneath it points to the failure to transform the post-colonial state and politics. Where did third-term agitation originate in the context of the NRM regime?

On capturing power and declaring fundamental change in 1986, the NRM issued a decree – Legal Notice No 1 – suspending all political activities except those sanctioned by the regime. The NRM declared a four-year transitional period during which the economy would be reconstructed, and free and fair elections conducted to return the country to a democratic form of government. The origins of the third-term debate in Uganda may be located in the constituent assembly debates of 1994–5, or even earlier with the NRM extension of the National Resistance Council (NRC) for five years in 1989. But its immediate roots can be traced to October 2000 with the first major split in the ruling Movement. This is when Besigye, a former Movement ideologue, minister of internal affairs, and Museveni’s physician during the days of the guerrilla war, broke ranks and announced he would challenge the president in the March 2001 elections.

The transition – from fundamental change through no change to no term limits – has been punctuated by particular moments. These moments have witnessed the use of legal and extralegal instruments to ensure perpetuation of NRM rule. The initial episode in this transition was the proclamation of Legal Notice No 1, which symbolised the NRM’s objective of monopolising power. Three things made this acceptable. First, the population was disgusted with antagonism that had been generated by party differences, particularly the Uganda Peoples Congress and the Democratic Party. Second, the NRM possessed substantial armed power and popularity, which could not easily be challenged. Third, it promised a transition to a democratically elected government by 1989.

Another moment came towards the end of 1988. In conformity with the pledge to involve the people in governance and the making of the constitution, Museveni appointed a 21-member constitutional commission chaired by Justice Benjamin Odoki. The Odoki commission was to seek the views of the ordinary citizen through holding public meetings, debates, seminars and workshops throughout the country (Uganda

Constitutional Commission Act, 1988). Given that only one year remained of the self-declared 'transition' period (1986--9), the NRC had to be extended to allow for the election of the constituent assembly. There was only a lone voice of protest against the extension by an NRC member, Wasswa Ziritwawula⁸.

The extension was acceptable to the general populace in the context three issues: the importance of constitution making, an emerging sense of economic recovery, and the confrontation of rebellions in the north and east of the country.

The NRM's desire for perpetual rule is also expressed by the resolutions of a secret, sectarian meeting held in 1992,⁹ allegedly chaired by Museveni, which resolved to give members of one clan social and economic opportunities (education, jobs, business, military) and to politically rule Uganda for at least 50 years. In practice today, a kleptocratic elite closely tied to the Hima faction of the ruling coalition has gained strength, particularly in business, bureaucracy and the military. As a consequence, it has become increasingly difficult for the incumbents to relinquish state power, which is the basis of their dominance. This has affected the internal politics of NRM negatively, as disillusioned sections of the Movement have broken away and formed the opposition Forum for Democratic Change.

Election of constituent assembly delegates took place in March 1994 and debates continued into 1995. Organised social and political movements were denied formal participation. The Constituent Elections Act of 1993, under which these elections were conducted, provided an opportunity for the NRM government to translate its administrative ban on political activity into a legal ban. The electoral rules provided that candidates would stand and be voted for 'personal (individual) merit' and any candidate who used or attempted to use any political party, tribal or religious affiliations or other sectarian grounds for purposes of the election, would be disqualified. This did not apply to NRM and its candidates.

During the constituent assembly debates two issues with immediate bearing on the current third-term debate arose: the political system and presidential term limits. The provision for political system was intended to achieve a number of objectives: elevate the Movement, which in essence is a political party, to a 'system' under the Movement Act of 1997. The Act simply reinforced the monopoly of political space that the NRM had been intent on since capturing power in 1986. Second, the suppression of pluralism and the legal expression of conformity are evidenced by the provisions of 1995 constitution (Article 269), which provides that:

On the commencement of this Constitution and until Parliament makes laws regulating the activities of political organisations in accordance with article 73 of this Constitution political activities may continue except - (a) opening and operating branch offices, (b) holding delegates conferences, (c) holding public rallies, (sponsoring or offering a plat-

form to or in any way campaigning for or against a candidate for any public elections,
(e) carrying on any activities that may interfere with the movement political system for the time being in force.

This article effectively banned pluralist political associations as it prohibited organised political dissent to the Movement. This was given a legal expression in enactment of the Political Parties and Organisations Act (PPOA) (2002). All parties have to register under this law.¹⁰ If there was ever any intention to pass a more liberal PPOA, it vanished with the March 2001 elections in which Museveni faced stiff competition from Besigye, who subsequently had to flee into exile.

In the context of the ban on political parties, the Besigye candidacy came to be seen as an alternative to Museveni by disillusioned sections of the Movement and multi-party adherents. This is partly due to the fact that Besigye came from within the military, which occupies a special position in the NRM's calculations and hold on power. That is why in that election, the military returned to centre stage in a way it had not been since 1986. The military remained there with the chieftaincy of military intelligence, effectively replacing the police and even taking over the cells at the central police station in Kampala.

The return of the military to centre stage may be explained by NRM's ideological outlook. As Onyango-Obbo (*The Monitor*, 2001) observes:

Besigye's candidacy presented the first serious challenge over philosophy and principle. The Movement had no experience in democratically handling people with opposite fundamental beliefs. It has no culture of tolerating dissidents within its ranks as such persons were considered 'subversives'. Besigye had to be dealt with the only way Museveni and the fighting men of the Movement knew how, as in the bush days – 'neutralised.'

The persistent linkage of Besigye and others to the shadowy People's Redemption Army (whether it exists or not) is intended to shift the contest from political engagement to military confrontation. After losing the 2001 elections Besigye petitioned the Constitutional Court. This differentiated him from Museveni, who came out as a believer in the gun and went to the bush when his party, the Uganda Patriotic Movement, came third in a rigged election in 1980. This exposes Museveni as one who prefers military contest to resolve political differences. Besigye, on the other hand, presented himself as a believer in the law and constitution when he went to court after the elections were stolen. He later transformed his election campaign team into a political pressure group, Reform Agenda, which has since joined PAFO and the National Democratic Forum to constitute the opposition Forum for Democratic Change.

The PPOA ties up all loose ends: parties can have headquarters, but they must be in the capital city, Kampala. They had to register within six months of enacting the law,

but cannot have any branch or activity outside the city (Onyango-Obbo, 2002). A critical part of this is the Anti-Terrorist Act (2002). The genesis of the Act can be located in the aftermath of the 11 September 2001 terrorist attacks in the United States. This opportunist legislation was intended to demonstrate Museveni's loyalty to Washington, which has made the 'war on terror' its principal policy. The Anti-Terrorism Act can be used against political opponents of NRM. Politicians who refuse to register their parties can fall foul of the Act and, even if they don't, they can be sent into oblivion under the clause that forbids the media from covering all 'undesirable' political activities as defined by the state¹¹.

Another episode came in the form of a constitutional provision for the use of a referendum to change the political system. This is given legal expression in the Referendum Act (2000).¹² A referendum is preferred because it is easy to manipulate by the incumbent.

When you add on the unconstitutional militias and intelligence services such as Kallangala Action Plan, Popular Intelligence Network, and Violent Crime Crack Unit, you get a stifling atmosphere intended to perpetuate NRM rule and a Museveni life presidency. The constitution, in Article 218(2), provides that: 'No intelligence service shall be established by the government except by or under an Act of Parliament.' Government has, on the contrary, encouraged the formation of such illegal organisations in complete disregard of the constitution.

With these provisions, the legal and extralegal basis for perpetual NRM rule has been laid. The NRM was so confident with its legal manoeuvres and exploits that Museveni led his 1996 presidential campaign with the slogan 'No Change'. In the five years that followed that election, the government lost several legal and constitutional contestations, for which it paid a heavy price. These episodes also symbolised the relative independence of the judiciary and the ingenuity of the opposition.

It's within this context that the president appointed the CRC in 2001 to review the provisions of the 1995 constitution and suggest possible amendments. Its appointment, in the heat of the 2001 election campaign, raised questions about its real purpose. One explanation could be that it was a response to Besigye's challenge, which threatened Museveni's monopoly of power and exploded the myth of his invincibility.

In light of the above manoeuvres, the proclamations at the Kyankwazi NRM National Conference in March 2003 and the cabinet's proposals to CRC were essentially an extension of the NRM's incremental despotism, which may be traced to the late 1980s with the unilateral extension of the 'transition' period in 1989. Through a plethora of legal manoeuvres and instruments, the basis for the removal of term limits, cynically referred to as 'Sad Term' or popularly known as *Ekisanja*¹³, had been established.

6 Arguments for no term limits

There are clear indications that Museveni wants another term. As the leader of the Forum for Democratic Change, Ruzindana Augustine, noted: 'Whereas it's true that in his last manifesto, it is mentioned several times that he was seeking a last term, since then whenever asked the question as to whether he wants to seek another term, the standard answer he has been giving is that he will abide by the constitution. Now we know that the constitution he wants to abide with is one without term limits' (*The Monitor*, 14 May 2003).

In support of this bid proponents of the third term have advanced a number of arguments for amendment of the constitution. The first, and perhaps the most sophisticated, is that 'term limits are basically undemocratic in character and do not strengthen the democratic process upon which we want to build Uganda. This is because they are against the right of the majority to choose their presidents' (Kiwanuka, 2003)¹⁴. This assertion is a partial understanding of the notion of term limits. Terms limits are deterrence against indefinite rule by an individual, not against the right of the majority to choose their presidents. The people's right to choose is limited to two-five year term opportunities, after which they may choose another president, thus expanding their choice. This argument also ignores Uganda's historical experience in governance and the fear of its repetition, the premises on which term limits were enacted in the 1995 constitution. The manoeuvres to remove term limits confirm these fears.

The second argument is that Museveni has been an exemplary leader for Uganda, and indeed, for Africa. The argument goes like this: 'Mr Museveni has been such a good, selfless leader, still young and capable of doing some good, he should be allowed to contest for another term as a bonus – a token of appreciation by a grateful nation' (Tusasirwe, 2003). Granted, very few people would reject outright the enormous contribution that Museveni has made to retrieve Uganda from the rat-hole into which it had sunk. But the notion of constitutionalism and democratic governance demands that both the governors and the governed abide by the constitution. There is no provision in the 1995 constitution for leadership responsibility to be conferred onto a person as a token of appreciation.

In addition, a section of Ugandan society may not have found him to be such a good, selfless leader. For instance, the people of northern Uganda have mainly known war and 'protected' villages, which are in reality detention camps. The war in the north has become a cynical pretext for systematic destruction of a people, indeed an entire society. The failure of the NRM government to reconcile the nation and bring about national integration in a peaceful manner is a sad commentary on Museveni's statesmanship. And at a broader level, the 'de-Ugandanisation' of the economy through an unimaginative privatisation process and reckless invitations to foreign investors¹⁵ calls for a review of the current leadership.

The third argument may be summarised as 'There is no Alternative' – or TINA. According to TINA, with the exception of Museveni, no one in the Movement (now NRM-O) or the opposition is capable of keeping the country together. How to explain this phenomenon? Perhaps the cause is the draconian measures taken against alternative political organisations and individuals. The NRM does not practice democracy internally. Any voice critical of the chairman, Museveni, is quickly thrown out of the party. At the same time, the opposition has been stifled legally with no space to renew its leadership for nearly two decades. This makes it difficult for alternative leaders to emerge within the NRM or the opposition.

The fourth argument is that neither the legislature nor the judiciary are subject to term limits. This is a superfluous argument. The presidency is ultimately a special office. Chapter 7 of the 1995 constitution gives the president enormous powers and immunity, such that one can easily be tempted to manoeuvre and become a life president. To add indefinite occupancy of State House to these enormous powers would be a bit too generous, politically, on the part of Ugandans. The legislature need not have term limits. The turnover of MPs is so high that it can be self-regulated. On the basis of performance, the voters either return MPs to their seats or throw them out. According to Ssempebwa, chairman of CRC, the turnover of MPs is very high, about 70 per cent in every election. Their powers of incumbency are minimal (*The Monitor*, 23 March 2003).

The judiciary in its own right and as part of the bureaucracy needs continuity. Administration of justice calls for meritocracy, a certain level of insulation from societal forces, and a long-term perspective. The perfection of the delivery of justice cannot be acquired in five years. Countries that have managed development agendas effectively have long-term bureaucracies. In Japan, for instance, it is said that politicians rule and bureaucrats reign. Politicians come and go, but bureaucracies shall always be there. To subject the judiciary and the bureaucracy to term limits is likely to result in miscarriage of justice and distortion of development agendas.

The fifth argument is that a third term is necessary for the continuity of development projects such as Universal Primary Education and foreign direct investment à la the African Growth and Opportunity Act (AGOA). This brings to the fore the problem of personalisation of public affairs by the presidency and failure to build institutions that transcend the individual. The above are national public programmes; their continuation should not be pegged on an individual through life presidency.

Note that apart from Kiwanuka's claim, none of these arguments make reference to constitutionalism or democratic governance, notions that are at the centre of the current proposals for constitutional reforms.

Two contextual issues help explain the reluctance of Museveni to step down. First is

the issue of corruption. The Ugandan 'economic miracle' has been built on corruption, as evidenced by a series of scandals involving the ruling coalition. Apart from the fear of possible prosecution of those involved in these predatory activities, term limits stand in the way of this primitive accumulation. Second, Museveni's ambition to play the regional power broker has been accompanied by the state's slide towards predatory activities, particularly in the Democratic Republic of Congo. Given the unfinished business in the region, the possibility of prosecution for looting the Congo's natural resources and a kleptocratic coalition in dire need of political protection, it is clear that Museveni would be loathe to evacuate State House.

In addition to the term limits proposal, there are several others with far-reaching implications for constitutionalism, democratic governance and the development of the country. These relate to: 1) changing from the Movement 'political system' to a multi-party political system, 2) the relationship between arms of government, 3) presidential, parliamentary and local government elections, 4) decentralisation and federation, 5) dual citizenship, 6) electoral process, and 7) the judiciary.

These proposals were first proclaimed in Kyankwazi. The cabinet produced them as a government white paper in September 2004. These proposals could erode whatever socio-economic and political achievements have been registered over the past 20 years. Below we discuss their implications for constitutionalism and democratic governance.

7 The constitutional reform proposals

One of the NRM's major achievements was the institution of the 1995 constitution, which is acclaimed by both critics and proponents for its radical departure from all previous constitutions. In the context of Uganda's traumatic experience since obtaining independence in 1962, the enactment of the 1995 constitution was a great achievement. Yet within a period of seven years it has been found necessary to review and amend several of its provisions. Why so soon? Which provisions need to be amended and how? What are the implications of these amendments?

7.1 The opening up of political space and redefinition of the Movement

The proposal to open up political space in Uganda after a period of 18 years addresses a critical feature of the long-running debate on democratic governance. Independent organisation and association is central to the democratisation process. The proposal restores the right of association that was suspended in 1986. The proposal also redefines the Movement in the context of pluralism. Democratic governance is not possible without pluralism and that pluralism means the freedom for political party activity (Mamdani, 1995:91). In a country where political activity has been banned for nearly

two decades, there is need for measures that make the opening of political space feasible. What is intriguing, however, are the reasons given for opening up the political space.

The first reason was that of accommodating the anxiety of Uganda's 'development partners'. Therefore, the opening up was aimed at pleasing the donors, not to serve the democratic interests of Ugandans. Second was to solve internal problems in the Movement. To solve those problems, it was necessary to get rid of those who maintained that it was unacceptable to keep some people in the political system by conscription, against their will. Therefore, the opening up of the political space should not be viewed as an act of charity. It is aimed at getting rid of dissent and diversity of opinion within the ruling party, particularly those who differ with Museveni. Third, the Movement would not be converted into a party, but it would remain an organisation, (NRM-O), retaining its original character and principles. This status quo would enable NRM-O to continue being financed by the taxpayers' money as the other parties fend for themselves.

Fourth, the opening up of political space would still be subjected to a referendum. The insistence on a referendum is intriguing when article 74(2) of the constitution provides that:

The political system may also be changed by the elected representatives of the people in parliament and district councils by resolution of parliament supported by not less than two-thirds of all members of parliament upon a petition to it supported by not less than two-thirds majority of the total membership of each of at least half of all districts.

The amendment by parliament, which is a readily available and cheaper option in comparison to a referendum, would in addition enhance the spirit of constitutionalism. However, the recent bribery scandal, in which more than 200 MPs (out of 310) were paid the equivalent of \$3 000 each to support the removal of term limits (*The Monitor*, 13 November 2004) renders the current parliament a poor choice for objective legislation on the matter. Given the intended overhaul of the constitution, the best alternative to the current parliament would be a reconstituted constituent assembly.

Freeing political parties is only one element of democracy. It is not necessarily the most important one and it is not sufficient, on its own, to level the political playing field. In addition, none of the recommendations recognise the fundamental fact that organised political competition is an essential prerequisite for progressive pluralism. Oloka-Onyango suggests a number of measures that would ensure a democratic opening of political space. These would include: 1) the legal transformation of the NRM-O into a political party that stands on par with all other parties by repealing the Movement Act, 1997, 2) a national dialogue¹⁶ composed of new and old political parties, civil organisations and pressure groups, 3) amending all legislation that limits political pluralism

(e.g., the Police Act and PPOA) and social pluralism (the NGO Act), and 4) dismantling all unconstitutional paramilitary and quasi-military agencies (Oloka-Onyango, 2003).

In the absence of the above measures and the creation of a tolerant political atmosphere, political space remains a myth. Ssempebwa's expression of his fears about the transition during an interview is instructive:

I am concerned about the transition, especially the lack of tolerance for dissenting views. It is wrong to stop people expressing their views on the grounds that they are not registered organisations....When I went home, I saw the police beating up the opposition people in Masaka under the guise of protecting them. (*The Monitor*, 23 March 2003)

It is, therefore, not enough to simply declare that the political space is open when in the same breath the opening is accompanied by proposals for highly strengthened powers of the president and a hostile political atmosphere. The political space should be opened up without stifling preconditions.

7.2 *The review of the relationship between the executive and the legislature*

One of the most contentious issues in democratic governance is distribution of power. The 1995 constitution resolved this through innovative restructuring of the legislative power to provide for vetting the presidential appointees, more effective checks and balances (separation of powers) and improvement of the independence of the legislature from executive control (Oloka-Onyango, 2003a). Despite this progressive innovation, Museveni, at Kyankwazi and later through cabinet, found it necessary to review the related articles and change the relationship between the executive and the legislature.

Five suggestions were made to this effect: 1) removing the powers of parliament to censure ministers (Article 118), 2) reducing parliament's vetting powers (Article 113), 3) changing the president's power to assent or refuse to assent to a bill from parliament (Article 91), 4) reducing the qualification levels required for parliamentary contestants (Article 80), and 5) redefining what should happen in the event of a stalemate between parliament and the president (the dissolution of power in Article 91). These are elaborated in chapter 4 of the white paper (2004). The proposal for the provision for dissolution of parliament by the president has since been dropped.

These proposals were synchronised with those of the cabinet and it was proposed that the president should have power to override the parliament on legislative decisions. These proposals, if adopted and the constitution amended accordingly, have several implications for constitutionalism and democratic governance.

Under Chapter 17 of the 1995 constitution, the president has all the power needed to

execute presidential duties democratically. What then explains the push for amendment of the constitution to create an imperial life presidency, where the president would certainly rule by decree?

First, Museveni's disagreement with the legislators has less to do with their capability to legislate and more to do with the occasional independent streak of some parliamentarians to censure his erratic ministers. Second, the autocratic powers are necessary for expanding the space for patronage. NRM rule is anchored in patronage. With the parliament out of the way, the president would be able to appoint incompetent, corrupt and censured ministers on the basis of patronage, and his ministers would be above the law.

The proposed changes to the legislature imply that Museveni yearns for the return of the closed sessions of NRC days, NRM caucuses and High Command meetings where MPs or military officers would be coerced into taking positions against their will and the will of the people. Amendment of Article 91, which gives parliament the last word in passing legislation, would give the president veto power and hence rule by decree.

7.3 *The restructuring of the judiciary*

Worldwide the relationship between the judiciary and the executive is a contested one. Most governments wish to see a judiciary that is not overzealous in its scrutiny of the excesses and abuse of state power by the executive. The exercise of judicial power to tame the powers that be operates through courts and the presiding judges.

The cabinet proposal, reiterated in the white paper, calls for the reduction of the required professional experience of Supreme Court judges from 15 to 10 years, and in case of the High Court judges, from 10 to seven years. The proposal indicates that the executive would like to neutralise the judiciary and create one that will do its bidding.

Museveni's problem with the judiciary has less to do with general carriage of justice and more to do with specific rulings against the state since 1995. The proposal to amend the constitution, therefore, is to enable the president to get rid of those judges who have exercised relative judicial independence. The objective is to have the legislative and judicial arms of government subordinated to the presidency.

The attack on the judiciary is informed by the fact that the Ugandan courts, as they did in the case of the Referendum Act (1999), and later with the PPOA (2002), have often ruled bad laws to be unconstitutional. A number of constitutional cases have been decided against the state (Tusasirwe, 2003)¹⁷. The proposal, therefore, aims to neutralise the courts so that they do not continue making 'satanic' rulings. The proposal is a preparation for the legal battles to come. This is because the period after the removal of term limits is likely to witness sensitive constitutional litigation.

The ruling on the Constitutional Amendment Act, under which the 2000 referendum was held, drew venomous reaction from State House¹⁸. This reflects how little Uganda's ruling elite has imbued the 'spirit of law' – constitutionalism and democratic governance. Given the enormous power of the presidency as provided in Chapter 17 of the 1995 constitution, the proposal should have been how to deepen the notion of separation of powers, not how to dilute it.

7.4 *The restoration of a federal system of government for Buganda*

Federal governance for Buganda has been a key demand for decades. Following independence negotiations in London, Buganda's semi-federal status was provided for in the 1962 constitution. Thus, Buganda enjoyed a nominal federal status at independence, until it was crushed by force in a bloody political confrontation with the central government in 1966. Since then there has been an unrelenting quest for some federal status for Buganda, alone, as opposed to the whole of Uganda. The quest by the Buganda elite for federalism for Buganda is called *Federo*.¹⁹ This remained latent from 1960s until it was revived in the 1980s. While Museveni was leading a rebellion in the bush, his organisation the NRM/A, won Buganda support by promising to restore their monarchy and give the region autonomous status.

Towards the end of 1988, the Odoki Commission was appointed and began its national survey. The majority of views from Buganda (more than 90 per cent) and the rest of Uganda (more than 60 per cent) submitted to the commission recommended that a federal system of government be put in place.

In the heat of preparations for the constituent assembly there were growing 'voices and sentiments to boycott the exercise rather than participate in it'.²⁰ The NRM made a political calculation and hastily restored the Buganda monarchy with a spotlight on the impending constituent assembly elections. Ronald Mutebi became the *Kabaka* (king) of Buganda, but apparently only with cultural powers. The *Lukiiko* (Buganda parliament) was also restored. When the constituent assembly elections took place the majority of its delegates were NRM adherents in alliance with the Buganda contingent, struggling for its monarchical interests. *Federo* thus became a central determinant of the fate of multi-party politics²¹. But at the end of the debates, Buganda had not got the *Federo* they had expected, hence emergence of the phrase, *bwoya byaswa*,²² in the political speak. They had to settle for the co-operation of districts of Buganda in the decentralisation tradition.

The quest for *Federo* did not go away. Therefore, during the CRC process, the Buganda Constitutional Commission drafted a voluminous memorandum to be presented to the CRC. The *Katikiro* (prime minister) of Buganda, Mulwanyammuli Ssemwogerere, ended his preface to the memorandum on an optimistic note, stating that: 'We are confident that the Uganda Constitutional Review Commission, and, this time, our leaders

and parliament, will listen to the people of Buganda and will implement their will and wishes, which are very clearly articulated in this Report' (Buganda Proposals, 2001).

In March 2003 the cabinet met and endorsed a proposal to support a form of federal status for the populous southern region of Buganda. This has been included in the white paper (2004) (chapter 8). This proposal is bound to raise some controversy. First, the *Federo* offer is unlikely to be more than a project designed to get enough political support in Buganda to garner the margin necessary for the constitutional amendment. Second, in reality, a *Federo* Buganda, and the spiral it is likely to create for greater devolution of powers from the centre, is in conflict with the imperial presidency sought by the Movement and Museveni.

7.5 *The Buganda question*

Why must there always be a 'Buganda question'? Though it has origins in the colonial period, the Buganda question has remained on Uganda's political agenda in the post-colonial period because of the failure to deal with it decisively in the 1960s. As Kanyeihamba observes, 'In 1966, neither the suspension, nor the eventual abolition of the 1962 constitution, immediately affected the existence of monarchism in Uganda' (2002:108). This is because despite the forcible dismantlement of the oligarchic superstructure of Buganda, the central government did not have any plan for solving the land question on which monarchism is based. The most it did in Buganda was to abolish official *mailo*²³ land, which by then amounted to no more than 4 per cent of the land and the transfer of all public land, *mailo kenda*²⁴ to the national government (Mafeje, 1973:22). The Obote regime was, therefore, confined to administrative manoeuvres and was extremely fearful of rebellion in Buganda in the event of the government tackling seriously the sensitive land question. It is in this context that the NRM has to deal with the demands for a 'mighty Buganda'. Those agitating for *Federo* should broaden it to encompass the whole country. Buganda has since 14 February 2005 clinched a deal with the NRM for a regional government with state subsidies. *Federo* for Buganda alone shall not be sustainable and it is likely to result in extended political instability in the country.

7.6 *Other proposals*

Several other proposals are elaborated in the government white paper (2004) and deserve similar scrutiny. Suffice it to note that these proposals are also informed by the executive's quest for stronger powers that dilute the autonomy of other institutions. The CRC recommends strengthening the Uganda Human Rights Commission (UHRC). According to the CRC, UHRC is necessary for the protection of people's rights. The Inspector-General of Government is ill-suited to playing the roles of anti-corruption agency, ombudsman, and enforcer of human rights all at the same time. The CRC instead recommended that the UHRC should be strengthened to assume the additional

roles of implementing equal opportunities. The reform of local government in the manner suggested by the proposals would be tantamount to the reversal of the decentralisation and devolution of powers, which have been touted as some of the major innovations in public administration by the NRM.

7.7 *The military*

The Uganda Defence Review was a parallel review process for the army. The Defence Reform Programme was launched in June 2002 to show government's political commitment to modernising and professionalising the UPDF. This is necessary to improve the country's defence capabilities. In general, the military occupies a special place in the power calculations of the NRM regime. As far as constitutionalism and democratic governance are concerned, one would want to understand how the notion of harmonious civil-military relations and that of civilian supremacy were integrated in this review. Given the history of Uganda, the issues concerning the military should be of some interest to the general populace.

Two issues stand out regarding the military and constitutionalism in Uganda. First, the UPDF Bill (2004), which is based on the Defence Review, must clearly lay down the legal procedures regarding the recruitment, training, promotion and management of the army. The concern should not only be the composition of the high command. What is needed is reform, not modernisation. Promotions and appointments in the UPDF need to be more transparent and to be brought under the scrutiny of the respective parliamentary committee. There should be a rationalisation of deployments so that retired officers are not promoted to lieutenant general and continue to wield power even though they don't have formal commands. The police must be given expanded powers to deal with crime, especially crime involving other security organs. The partisan attacks on the police and the usurpation of their powers by the military during the 2001 presidential and parliamentary elections must not be repeated.

The second issue of concern is the proliferation of unconstitutional militias and paramilitary forces in the country. At the moment there are several unconstitutional paramilitary forces including the Kalangala Action Plan (KAP), the Popular Intelligence Network - *Nyekundiire*, Arrow Boys, Amuka Group, and the Labacca group in Gulu. We will make brief comments about the two most notorious groupings: the Kalangala Action Plan and Popular Intelligence Network - *Nyekundiire*.

Museveni launched KAP in October 2000 without a legislative mandate. Headed by a senior presidential political advisor, Major Ronald Kakooza Mutala,²⁵ the KAP's major purpose seems to have been to forcefully influence the 2001 elections. It aimed at supporting Museveni's candidacy and Movement parliamentary candidates by deliberate use of violence and intimidation.

Nyekundiire, whose English variant is Popular Intelligence Network, was very prominent in the 2001 elections. It brought together different categories of people including serving soldiers, retired soldiers, local political leaders and other security organisations to support Museveni's candidacy. In collaboration with other militias and security forces, it unleashed unprecedented electoral violence against the population, particularly in western Uganda.

Politics in Uganda needs to be demilitarised. Democratic transition is impossible in the context of unconstitutional military formations and violent electoral disruptions.

7.8 *The proposed method of constitutional amendment*

The Constitutional Amendment Bill (2005) intended to amend the constitution is an omnibus bill. Omnibus legislation involves the combination of diverse subjects – issues and programmes that are not necessarily related. The intention is to move the proposals in the white paper through parliament by drawing attention away from controversial proposals, particularly that of term limits. This raises some procedural controversy and there are several flaws that arise.

The first flaw is the attempt to have parliament undertake a comprehensive review of the constitution, when as a matter of both law and procedure it only has powers to amend the instrument. Consequently, the omnibus bill is unconstitutional, not only because it attempts to bunch together a host of different topics with no logical relation or cohesion, but also because it proposes an overhaul of virtually the entire constitution (Oloka-Onyango, 2005).

Second, the bill combines several clauses, yet if some clauses in the bill have the effect and purpose of making constitutional amendments then they cannot be treated as ordinary bills. The decision of the Supreme Court in Constitutional Appeal No 1 of 2002 (Paul Ssemogerere and two others v the Attorney-General) which was delivered on 29 January 2004, makes it clear that in any act of parliament that has the purpose and effect of amending the constitution directly or indirectly, the procedure of amending the constitution must be strictly followed (Kategaya, 2004).

Third, Rule 92(1) provides that, 'Matters with no proper relation with each other shall not be provided for in the same bill.' At the same time the constitution groups all its provisions under three distinct articles – 259, 260, and 261 – according to how they may be amended. Under the current dispensation, some proposals in the Constitution Amendment Bill should be amended by parliamentary vote, and/or district council resolution, and/or referendum (Coalition on Constitutional Reform, 2005). Therefore, the Bill contravenes Rule 92(1) of the Rules of Procedure of Parliament.

Fourth are attempts to change rules of procedure in parliament, such that a simple ma-

jority vote would decide the constitutional amendments at the bill's committee stage, the argument being that the two-thirds vote is only required at the second and third readings of the bill. The constitution spells out in chapter 18, article 258, that it will only be amended 'in accordance with the procedure laid down in this Chapter'. The proposed change is not consistent with the two-thirds requirements for voting laid down in the constitution (Ogenga-Latigo, 2005).

The third-term proponents are manoeuvring to unconstitutionally use the omnibus bill and 'simple majority' vote at the committee stage to create avenues for passing the provision for the removal of term limits in article 105(2) of the constitution. But the manoeuvres have not been restricted to legal aspects. Museveni's supporters argue that he holds the monopoly on development vision for Uganda.

8 The question of the vision for Uganda

The question of the vision for Uganda has emerged in the current debate on political succession. The argument is that the mainstream opposition and the '*Malwa* Group'²⁶ opposed to the removal of presidential term limits have not articulated any coherent alternative policies in the event that Ugandans give them the mandate to govern.

Vision, however, is not a thing like a mango that you simply pick from a basket of goods. It involves deep thought processes and organisational ingenuity, in conjunction with practice and innovation. These practices can only be viable in an enabling environment. Over the past two decades groups and individuals outside the orbit of the NRM have been subjected to a stifling environment. The plethora of legal restrictions on political organisations is one example of the constraints on the development of alternative development vision. The social and political space necessary to develop coherent alternative policies is still lacking. The legal obstacles and manoeuvres outlined above constrain the development of an alternative vision.

Second, monopoly obstructs creativity. The NRM has utterly failed to cultivate the understanding that no one group of leaders, let alone one leader, has the monopoly of wisdom and intelligence to originate, sustain, and implement – indefinitely – all the solutions to the problems of Uganda. Indeed, those who pride themselves as visionaries may be forced to re-think their claims if they critically reflect on what is happening to Ugandans. Their so-called vision may turn out to be a delusion. They will find insurgency, which is a reminder of the failure to reconcile a nation; war in neighbouring countries; State House scholarships for ethnically select youths as their counterparts are turned into *Arrow-Boys* and *Amuka* groups²⁷; abuse of human rights as evidenced by *State of Pain* report by Human Rights Watch (2004);²⁸ corruption; nepotism; and all the hallmarks of an authoritarian regime.

Third, Museveni claims that he is the embodiment of the vision for the transformation of Uganda into an industrial state. Asked when he intended to leave the presidency, Museveni had this to say: 'The more you talk about my staying in power the more I may change my mind about leaving because it makes me wonder as to why you are interested in my leaving yet you are not showing a vision for the future.' (Museveni, 2003).

A critical look at this 'vision' for industrial transformation exposes a number gaps. Principally, Museveni's 'vision' for Uganda's development is largely based on the neo-liberal prescriptions of the International Monetary Fund and World Bank. Being visionary calls for some originality. The best example of Museveni's originality could be the barter trade slogan! With the total embrace of neo-liberal ideology as expressed in Structural Adjustment Policies, this originality ended. The so-called structural adjustment goes against substantive industrialisation processes in two respects. First, there is an implicit movement away from industry and towards agriculture through the implementation of policies to liberalise tariffs, reduce the role of the state, 'get prices right' and encourage exports. Second, there is an explicit move towards the rehabilitation of Ugandan industry within existing structures, in tacit acceptance of the particular way of thinking that has given industry its current form and fragility.

A visionary industrialisation process would be built on the notion that the primary sources of development are learning and knowledge accumulation. This is not reflected in much of what passes for industrialisation in Uganda. Nor are there efforts to re-evaluate past industrial experience. The principle reason for the failure of import-substitution industrialisation was that, as conceptualised and practiced, it created an environment that discouraged learning. The export-oriented industrialisation strategy that excites Museveni at the moment fails to appreciate that learning depends on internal conditions and on the basic characteristics of the society. This failure means that outward orientation as such needs substantial qualification and redirection.

Vision cannot be a monopoly of an individual surrounded by sycophants. What Uganda needs is a collective vision. A vision to regenerate the nation-state, inspire patriotism and create conditions for innovation and competitiveness within the context of constitutionalism.

9 Engaging third-term politics

The NRM leadership is determined to tinker with the constitution and secure a life presidency for Museveni. By playing the constitutional game, supporters of this effort seek to legitimise a clear case of usurpation of power. A number of measures have to be taken to stem the imposition of indefinite rule by the NRM and Museveni.

First we need to understand the basis of NRM hegemony over Uganda's political processes for the past 19 years. The most critical factor has been its political monopoly. Until recently, the only political organisation legally allowed to reach and mobilise the masses was the NRM. The engagement with the third-term advocates should be over the controlled and monopolised social and political space.

Second, the best agents of change are organised social and political movements. To mobilise various social forces, political parties, which have been in limbo for the past two decades, need to reorganise and elect new leaderships. With the restrictive parts of the PPOA recently annulled by the Constitutional Court, parties should get registered to enable them reach the grassroots.

Third, the reality of domination by the NRM calls for alliance politics. All pro-democracy forces should constitute an alliance and revive the political parties' dialogue with government. This should aim for consensus on the roadmap for the transition.

Fourth, the *Federo* leadership should try to broaden its views and move away from the politics of making opportunistic 'deals' with government. The guarantor of *Federo* cannot be the occupant of State House, whoever it may be. Sustainable *Federo* can best be assured by an alliance with broader social and political movements, which need democratic freedoms and rights for their existence, including the right to *Federo*.

Fifth, the church occupies a strategic position in the advance of democracy. It has a dense network of structures with access to the grassroots. The advocacy of the bishops through the Uganda Joint Christian Council against the removal of term limits is commendable, as it helps to advance a collective voice on issues of democracy and human rights. Together with other civil society organisations, like the trade unions and professional associations, the battle for constitutionalism shall be won.

Sixth, parliament has been tasked to amend the constitution and lift term limits. MPs can contribute to constitutionalism by rejecting removal of term limits, focusing on transitional issues in the review, and rejecting the omnibus method of amending the constitution.

Seventh, donors occupy an important position in Uganda's politics and are a driving factor in the economy. The opposition has to develop creative strategies to lobby donors to pressure the government to open up social and political space. Donor interests would be best served in a stable Uganda.

The above measures are bound to bring down the wrath of the state. However, the history of human liberty shows that all progress has been born of earnest struggle. Power concedes nothing without demand. It never did and it never will (Ngugi, 1983:3). Third-term politics goes against constitutionalism and democratic governance. It can and it must be defeated.

10 Conclusion

The objective of third-term politics is centred on amending the constitution and instituting a life presidency for Museveni. This conclusion is drawn from a critical examination of the origins and the manoeuvres to amend the constitution. Alongside the other proposed constitutional changes proposed by the ruling party, the removal of term limits constitutes a bid to change the constitution to sanction an executive dictatorship. The removal of term limits to allow for indefinite rule by the president implies a rejection of constitutionalism and democratic governance. The nature of proposed amendments relating to the presidency, parliament and the judiciary prove this point. In addition, the Amendment Bill intends to have the legislative and the judicial arms of government subordinated to the presidency.

The quest for life presidency has prompted proponents of a third-term to amend the constitution through omnibus legislation combining diverse subjects that are not logically related to each other, making this unconstitutional. These manoeuvres have led various social and political forces to embark on the struggle to stem the imposition of indefinite rule by the NRM and Museveni.

In an environment where there is no functional democracy, and where proposed constitutional amendments would dilute the principle of separation of powers while strengthening the presidency, we cannot speak of constitutionalism and democratic governance.

Endnotes

1. Often simply called 'the Movement'. For the NRM's evolution into the NRM-O, see section 7.1.
2. The Parliamentary Advocacy Forum is an organisation of MPs formed to advance the spirit of constitutionalism in Uganda's parliament. See *The Monitor*, 60 MPs join the fight against third term, 23 May 2003.
3. The current parliament, after all, is not difficult to manipulate, as recently indicated by MPs' acceptance of 'facilitation' money to remove constitutional term limits when the amendment bill is tabled.
4. The Ugandan version was the Public Order and Safety Act of 1967. It has been repealed by the NRM. But this repeal has not stopped the state from throwing its perceived opponents into jails and so-called safe houses, which are not particularly safe as their major business is torture of the occupants. The recent report by Human Rights Watch, *State of Pain: Torture in Uganda*, is revealing.
5. The recent election in Rwanda, in which incumbent Paul Kagame was elected with 95 per cent of the vote, is illustrative of the fact that the days of 90 per cent-plus electoral results are not yet over in Africa.
6. Obote is said to have informed parliamentarians could find copies of the new Constitution in their pigeonholes. They were to adopt the Constitution without debating it!
7. Prof. Ssempebwa chaired the CRC.
8. Ziritwawula's protest was part of the agreement by the Democratic Party leadership to walk out of parliament in case NRM proposed to extend the interim parliament, the NRC. He found himself alone as he walked out.
9. Minutes of a 'Meeting at Rwakitura, (Museveni's country home), with H.E. the President of Uganda and Selected Representatives from Various Districts on 15 March 1992,' mimeo. The representation was mainly from the Basiita Clan of the Bahiima Sub-ethnic group of Banyakore in Western Uganda.
10. Aspects of the PPOA that restrict political party activity were annulled by the Constitutional Court in November 2004.
11. The Anti-Terrorist Act (2002) contains wide-ranging provisions that can be used against opponents of the NRM regime.
12. In January 2004, the Constitutional Court annulled the Referendum Act (2000). A few months later a government appeal was upheld. The Act remains valid.
13. Kisanja in Luganda means dry banana leaves. It has acquired political significance as a symbol of the third-term bid for Museveni after his constitutional term ends in 2006.
14. Kiwanuka was reportedly the author of a cabinet study on lifting presidential term limits and continues to campaign for unlimited terms for the presidency.
15. The privatisation process and foreign direct investment has 'opened up' the economy so much that it is illogical to refer to the economy as Ugandan.
16. The attempt at a national dialogue, represented by the G7 and the Kiyonga Committee, though limited, collapsed.
17. These include: Paul K. Ssemogerere and Zachary Olum v Attorney General, Constitutional Petition No.3 of 1999; Besigye v Museveni and Electoral Commission, Election Petition No.1 of

- 2001; Paul K. Ssemogerere and Zachary Olum v Attorney General, Constitutional Petition No.3 of 2000; and James Rwanyarare and 8 others v Attorney General of Uganda, Constitutional Petition No. 7 of 2002.
18. Fox Odoi, the principal private secretary to the president, said there was no crisis in the wake of the 29 January 2004 Supreme Court ruling. He asserted that law did not create the Movement and law would not kill it.
 19. *Federo* is a colloquial term for federalism in Buganda.
 20. Furley and Katalikawe, quoted in Buganda's Position on the Draft Constitution: Views of the Buganda Lukiiko.
 21. Besiweri Mulundo, a delegate from Buganda, blew the whistle on pluralists, describing them as a 'snake in the pot' when they tried to make an alliance with federalists.
 22. *Bwoya byaswa*, in Luganda means white ants' wings, but here it refers to the character of *Federo* given to Buganda – federalism without substantial autonomy and power. The type of federalism demanded by Buganda – bordering on independence from the rest of Uganda, is what has made the government sceptical of their intentions.
 23. Mailo land refers to the land allocated to the Kabaka and his chiefs by the colonial governors. It was measured in terms of square miles, hence the coinage by the Baganda, mailo.
 24. Mailo Kenda, in Luganda refers to the 9000 sq miles that were formerly Colonial crown land, which the Federo agitators are demanding from government.
 25. The military and militias such as the KAP were prominent in the 2001 electoral violence. The Report of the Select Committee on Election Violence (2003), discusses the causes of electoral violence in general, and the role of armed forces and other security organs in particular.
 26. Malwa is a potent local drink made from millet popular with the lower classes of Ugandan society, mainly from north and east. In the current political speak, those former Movement supporters opposed to the removal of term limits are likened to the groups of drinkers of this drink.
 27. Arrow Boys refers to the militia in Teso (Eastern Uganda), recruited to fight the Lord's Resistance Army incursion in the region. Amuka Group are the militia in Lango region (northern Uganda), recruited for the same purpose. In Langi amuka means rhinoceros, which connotes invincible strength.
 28. This damning report deals with the widespread practice of torture in the so-called safe houses by Uganda's military intelligence, particularly after 2001 elections.

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