ADVOCACY MANUAL FOR CIVIC EDUCATION CAMPAIGN ON GOVERNANCE, ACCOUNTABILITY AND DEVELPOMENT

ACKNOWLEDGEMENT

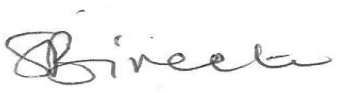
This advocacy tool has been designed in such a way that it gives basic information about the selected topics including the international standards and practices. The advocacy tool also explores some practices nationally as a way of linking the topics to practical examples and highlighting the challenges and gaps during implementation of each thematic topic. It is hoped that these challenges and gaps will then be the basis for the readers' thinking and further research on the practical solutions aimed at reaching consensus on the way forward for a better Uganda.

This advocacy too; contains guiding information on the eight selected thematic of constitutionalism; universality of human rights; pluralism and political parties; accountability; leadership; freedom of assembly and expression; electoral processes and oil governance.

These topics have been carefully selected by CCG, after an initial launch of the Hope Initiative Programme in the five universities of Makerere, Kyambogo, Uganda Christian University (UCU), Makerere University Business School (MUBS) and Uganda Martyrs University Nkozi. These topics were found to be of great interest to the university students. These same topics are also central to the governance situation in Uganda today

At CCG, we would like to thank the Democratic Governance Facility (DGF) in Uganda for the support and partnership extended to this programme, the Governance Experts Team and all the people that have contributed information; reviewed, edited this advocacy tool and provided moral support and encouragement towards the publication of this advocacy tool. Special thanks go out to Hon Simon Mulongo, Ms Sheila Magero and Mr. Andrew Karamagi; all the CCG Staff and Makerere University Convocation Staff for their contributions.

For God and My Country,



Sarah Bireete
Director of Programmes

(Project Coordinator)

Foreword Note

I wish to introduce to you the Center for Constitutional Governance (CCG) Advocacy Tool on Governance, Accountability and Development. This Advocacy Tool is a guiding tool for effective engagement of youths in constitutional governance emphasizing governance, accountability and development. It's radar that will not only guide the facilitators but also guide the youth about Constitutional Governance. In lieu of this Advocacy Tool, the objectives, aims, mission of the Role of the Youth in Governance strategy of CCG will be enhanced. The Advocacy Tool will set standards for any future advocacy. It will be a tool kit; it will be a guidance tool.

The Advocacy Manual is to help students in Tertially Institutions demand for what belongs to them and become constitutional watch dogs in an attempt to build better Democracy and Good governance. The students will be privy to key information in governance, accountability and development. They will have constitutional knowledge on their rights and obligations. This tool will also enable the University Students to get involved in key governance issues at the National Level while enjoying their academic freedom; the key notion in the definition of a university. The facilitators during the Civic education programme will act as mentors with total freedom to receive youthful ideas. The Youth will receive advocacy skills on constitutionalism, human rights, pluralism and political parties, leadership, freedom of assembly and expression, accountability, electoral processes and oil governance in Uganda.

CCG hopes that this will raise the bar of debates and engagement amongst the University students as well as the broader youth in the country; with the overall aim of grooming an ideologically grounded national leadership and a critical mass for governance engagements.

I invite you to utilize this tool and together we can promote constitutional governance in Uganda, with the youth at the center stage.

Okwiri Rabwoni
EXECUTIVE DIRECTOR

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Background

The project for creating spaces for students' engagement in governance to seeks to build the capacity and confidence of the youths in the 25 universities through knowledge sharing, information provision; functioning hope initiative youth clubs and create spaces/platforms where young people in their diversity can engage with issues of governance, accountability and development in Uganda. The spaces like public dialogues, debates and on-line platforms will further enhance knowledge sharing and critical reflection where the youth will actively analyse, challenge, and refine different political ideologies with the overall goal of putting young people at the heart of transforming political discourse, organizing and engagement in Uganda. The project will do this through the **"HOPE Initiative",** an effort through which spaces to facilitate active citizenship and transformative leadership by young people can be created.

The mission for the Hope Initiative is transforming Uganda by providing leadership for restoring hope of the future, dignity of the people and building a responsive citizenry through Uganda's Young Citizens.

The issues of the youth in Uganda are undermined by inadequate space, organization and representation in spite of the fact that there are regional youth MPs in Parliament and youth representation at Local Government Levels. The Hope Initiative Clubs (HI Clubs) will build a strong youth organization network in universities to provide space, organization and mobilization of the youth as well as building a stronger voice with ability to analyse and provide informed positions on issues of governance in Uganda.

The emergence of a strong and functioning youth network will have higher influence to wider society awareness on issues of governance especially service delivery, accountability, rights and obligations of citizens and duty, among others. The HI Club members are expected to influence change in their societies where they live after the university.

This advocacy tool, therefore, is designed in such a way that will ignite further debate and research on the selected topics of Constitutionalism (rule of law, separation of powers); Universality of Human Rights; Pluralism and the Political Parties; Accountability; Leadership (Role and Responsibilities of Leaders and Citizens, Affirmative Action); Freedom of Assembly and Expression; The Electoral Processes and Oil Governance in Uganda –amongst university students.

THEMATIC TOPICS:

Thematic Topic 1: Constitutionalism

State of Constitutionalism in Uganda: Challenges in Observance

Introduction

The Constitution of Uganda is the supreme law and must be respected by everybody. All laws and customs should conform to the Constitution.

A Constitution is a set of basic laws and principles that govern the actions of an organization or a country. It further describes the rights and duties of members or citizens and how they are governed.

The term constitutionalism connotes the idea that government can, and should, be legally limited in its powers, and that its authority depends on observance of these limitations. Any state must have some acknowledged means of constituting and specifying the limits (or lack thereof) placed upon the three arms of government: legislature (making laws), executive (implementing laws) and judiciary (adjudicating disputes under laws).

Constitutional background of Uganda

Uganda got her independence as a Commonwealth nation on October 9, 1962 under a constitution which was much influenced by the British. The constitution distributed powers between the Centre and the regions, although disproportionately giving the Buganda kingdom more powers at the expense of the other kingdoms.

In 1966 the then Prime Minister Milton Obote abrogated the 1962 constitution and declared himself President under an Interim Constitution of 1966. The Parliament was constituted into a Constituent Assembly and given a mandate to draft a new constitution for Uganda. On September 8, 1967, the new constitution came into force. It extended the life of the Parliament, declared the President then in office the President of Uganda for a term of 5 years. Other major changes by this constitution were the abolishment of the kingdoms and the introduction of a more centralized system of government. Although the system of government had some democratic semblance, democratic principles were hardly observed in practice, and Obote ruled basically with support of the Army. Shortly after the constitution of 1967, a state of emergency was declared and Uganda slowly

shifted to one-party-rule under the Uganda People's Congress. In 1971, General Idi Amin Dada seized power. Amin ruled the country through constitutional decrees and used the army as the main instrument of government. In 1979, Amin, too, was overthrown by a combination of Ugandan and Tanzanian forces.

In the following years, the Ugandan military continued to participate actively in Ugandan political processes. In 1980 Obote was again elected president, but only to be deposed later by the Okello Junta and then the Museveni-led National Resistance Movement – a rebel movement that had been fighting the regime for years.

On 21 December 1988 the National Resistance Council (NRC) enacted Statute No.5 of 1988 which established the Uganda Constitutional Commission and gave it responsibility to start the process of developing a new Constitution.

The mandate of the Commission was to consult the people and make proposals for a democratic permanent constitution based on national consensus. In its final report of December 1992, the Commission stated that the majority of Ugandans preferred a Constituent Assembly directly elected by the people in order to be as full representative as possible and provide greater legitimacy. It proposed that an Assembly should be composed mainly of directly elected delegates plus representatives of some interest groups. The proposal was accepted by government and thus the Constituent Assembly consisted of 284 delegates elected by universal suffrage representing 214 electoral areas designated plus additional representatives of specific stakeholders. Nevertheless, some people feared that the delegates to the Constituent Assembly might tailor the constitution to suit their future political ambitions.

1995 Constitution

On September 27, 1995, the Constituent Assembly adopted the new constitution. The 1995 constitution, establishes a quasi-parliamentary system of government, consisting of a President, Prime Minster, Cabinet, unicameral Parliament, Supreme Court and Constitutional Court. The preamble states that the constitution shall be based on the "**principles of unity, peace, quality, democracy, social justice and progress"** and includes a long chapter on "National Objectives and Directive Principles of State Policy".

Moreover, Article one of the constitutions proclaims the sovereignty of the people and according to article 2, the constitution "shall have binding force on all authorities and persons throughout Uganda".

The constitution stresses the importance of the protection of human rights by stating that "fundamental rights and freedoms of the individual are inherent and not granted by the State" and guarantees specific rights and freedoms like, amongst others, the freedom from discrimination, freedom of religion, the prohibition of torture and slavery, the right to privacy, assembly and association.

The current constitution contains a whole range of powers that are shared between the President, Parliament and other constitutional bodies. It streamlines the powers and functions of all the arms of the government. Amongst others, the presidential power of appointment regarding the Vice President and Ministers is subject to the approval of the Parliament and the appointment of Permanent Secretaries and heads of departments have to be made upon recommendation of the Public Service Commission.

Challenges

The NRM government is credited with the restoration of constitutional order in Uganda and this can be traced from the spirit of the Odoki Commission, the Constitutional Assembly debates and the promulgation of the 1995 Constitution of the Republic of Uganda, which is largely celebrated as one of the best Constitutions in Africa.

However, the same government faces a crisis of legitimacy and credibility on a number of issues arising from failure to fully implement the Constitution. There is failure to uphold the doctrine of separation of powers; failure to fight corruption; violations of civil/political rights; cases of unlawful detentions, unfair trials and torture. Around the country, people continue to suffer extreme poverty and social injustice, while government profligacy on military hardware and Presidential perks increases with reckless abandon.

Essence of Constitutional Government

Constitutional government is limited government based on a prescribed division of powers among public officials. The leading principle of constitutional government is known as the *rule of law*. This signifies that no political authority is superior to the law itself.

When and where the rule of law is in force, the rights of citizens are not dependent upon the will of rulers; rather, their rights are established by law and protected by independent courts. Individuals, thus, have a secure area of autonomy and have set expectations of having their rights and duties pre-established and enforced by law. Related to the principle of the rule of law is the doctrine of the *supremacy of law*. This is a fundamental concept which requires generality in law. It is a further development of the principle of equality before the law. Laws should not be made in respect of particular persons.

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

Further, structural principles exist that determine the forms of constitutional government. The principle of *separation of powers* is premised on the basis that when a single person or group has a large amount of power, it can threaten citizens.

Separation of powers is a method of checking the amount of power in any individual or group's hands, making it more difficult to abuse such power. Protection of the people against misuse of power by the state itself is, in the first instance, secured when the functions of the government are kept separate and when ultimate power of the state vests, in the final analysis, with the people, who exercise it through election of representatives in regular, free and fair elections. The principle of separation of powers is at the heart of constitutional government, which is to structure political institutions with the requisite powers and independence to make judgments that respect equal rights of free people, while at the same time promoting the public good. As a feature of constitutionalism, rules imposing limits upon government power must be entrenched, either by law or by way of constitutional conventions. In other words, individuals whose

powers are constitutionally limited must not be legally entitled to change or expunge those limits at their pleasure. Where government is entitled to change the very terms of its constitutional limitations at its discretion, it is questionable whether there would, in reality, be any constitutional safeguards for the public.

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

It is against this background that this chapter discusses the observance of fundamental constitutional principles with regard to the three state organs mandated to uphold minimum constitutional guarantees in protection of its citizenry.

Security Agencies and Respect for Rights

The role of the army as part of the executive still raises concerns. Although the NRM government has in relative terms endeavoured to discipline and professionalize the army, its role in elections and its presence in parliament still raise questions. In view of the history of the army's notoriety in usurping power, this concern is not unfounded.

The presence of the Uganda Peoples Defence Forces (UPDF) members in Parliament also contradicts their non partisan character especially since they sit and vote with the ruling party. Actions of other security agencies, which form part of the executive, illustrate excess use of power by the state.

The Uganda Human Rights Commission (UHRC), in its reports, still maintains that torture continues to be a widespread practice amongst security organizations in Uganda, being commonly used to humiliate and break down suspects during investigations (especially perceived or actual members of the Opposition). The issue of "safe houses" also remains unresolved.

Functions of Public Officers

Public officials in Uganda owe their allegiance to the president rather than to the state. Indeed, many such officers cannot be appointed to their offices without the president's

approval. This is a matter that raises concern about whether such officers owe allegiance to the state or to the president, and hence whether they can question actions of the president that are not in the national interest.

Excesses of Power: Overstepping permissible limits with the Judiciary?

The Executive has publicly attacked the work of the Judiciary on land matters and bail. The classic example is when the purported Peoples Redemption Army (PRA) suspects were granted bail and the infamous black mamba attack on the temple of justice (High Court). On 27 June, 2004, the President rejected a Constitutional court Ruling that nullified the 2000 Referendum, saying that the government would not accept the contents of the same.

President Museveni said that a closer look at the ruling revealed an absurdity and shocked the general moral of common sense: "We restored constitutionalism and the Rule of Law. That is why judges can rule like this against the government. There were times when if a judge made such a ruling, he would not live to see tomorrow. The ruling will not work. It is simply unacceptable. Judges say Article 74 has evaporated. Article 74 is not dead. The movement system is not dead. We are all here."

The courts were forced to close, resulting in cessation of their work, when the public, after hearing these statements, took to the streets and demonstrated to oppose the ruling. The president made matters worse when he insinuated that the Judiciary was not impartial. In a public address, he stated that the Democratic Party (DP), which had filed the petition on the legality of the referendum, always filed weak cases only to be helped by "their friends the judges". He thereon pledged to "sort *out"* the judges and stated that the days for "biased*"* courts in the Ugandan Judiciary were numbered. He stated that judges were hiding behind the principle of separation of powers to mete out injustice to the people.

Violation of other Human Rights

In 2004, government, through the Broadcasting Council, closed down a television station and four radio stations, apparently due to unpaid licence fees. An official of the Council stated that about thirty radio stations and three television stations faced closure over unpaid license fees.

This, by then, raised the question of deliberate hiking of licence fees by the government, thereby forcing broadcasters off the air and limiting peoples' rights to expression and information.

Later, this became a case-by-case clamp down on media freedoms and right of freedom of expression with the closure of a Soroti-based private FM radio station, *Kyoga Veritas,* for allegedly defying a ministerial directive to refrain from broadcasting news about LRA attacks in the region. It's also important to note that during the presidential elections of 2001,2006 and 2011, radio stations or presenters that hosted opposition leaders were closed/fired or suspended and this trend worsened after the 2009 Buganda riots where a large number of radio stations were closed and radio presenters arrested/prosecuted/fired for convening discussion on the riots.

Today, a number of radio talk show programmes have been suspended in the directive of the media council for discussing corruption scandals which involve highly connected politicians. This is a clear infringement of rights enshrined in the Constitution, harming constitutional development in the country. At the same time, the government still interferes with the people's right to free association by limiting the ability of political parties/ civil society groups to undertake their work.

The Uganda Police Force (UPF) whose constitutional mandate is to keep law and order has continued to abuse Chapter IV of the Constitution on the protection and promotion of fundamental and other human rights and freedoms especially civil and political rights. The Kiboko squad continues to clobber civil/political leaders under the Police's watch. The recent abuse of police powers was the 11 days Monitor Siege over the search for the now famous Gen Sejusa Letter.

Journalists are in equal measure beaten up and their gadgets destroyed by police while on duty and also, they are still arrested/persecuted for reporting what the government wants to keep under wraps. This is intended to intimidate the journalists into ceasing to report freely on key governance among other issues of national import in Uganda.

Legislation and Public Participation

Laws and bills that infringe on rights have regrettably gained positive state audience and attention. One such bill is the Public Order Management Bill, 2011, where government seeks to ban any meeting of two or more people without police permission. The same Bill also seeks to enact that whoever wants to use public address system must first obtain

police permission. The law further seeks to impose liability on the owners of the premises where such meetings will be taking place.

Other recent laws like the Non- Governmental Organization (NGO) Amendment Act, which has put in place stringent provisions for regulating the work of NGOs attest to this regression. Requirements, such as annual registration and license fees put NGOs in an awkward situation. This Act fails to recognize NGOs as partners in development with government. It sought to deny permits to NGOs whose development plans or activities might be against the interests of individuals in government.

The Legislature and Observance of Constitutional Guarantees

Following the promulgation of the Constitution in 1995, Uganda opted for a presidential and parliamentary democracy. The main emphasis of the Constitution was to ensure that the sovereignty of the people was exercised through a democratically elected representative body called the Legislature.

Most functions by the Executive branch of the government are accountable to parliament. Parliament is supposed to exercise its oversight role over the Executive arm through legislative business. The Executive, including the President, is answerable to Parliament for their actions and/or omissions. Therefore, Parliament has a significant role to play in improving the quality of governance.

Caucusing has been antithetical to the independence of Parliament as an institution. For instance, the 9th Parliament which, during its first year, was assertive and upheld the rationale for constitutional governance has drastically lost traction. An overbearing Executive has had no qualms arresting MPs for speaking about the death of their colleague, Honorable Cerinah Nebanda for instance. It did not help matters that the President went to an unprecedented extreme of swearing that Parliament would be recalled over his dead body!

It is evident from the foregoing that the Executive arm of Government is still reluctant to accept in good faith Resolutions of Parliament as an autonomous body. The Executive has made deliberate and overt moves to influence Parliament's decisions directly, for example, by suspending and expelling dissenting members, undue influence, duress or political patronage when it came to voting on contentious issues.

As highlighted earlier, the recent attempt by some MPs to recall Parliament to debate the suspicious death of their colleague Honorable Cerinah Nebanda (RIP) ended with the subsequent arrests and prosecution of several MPs. The Executive, particularly the President, was vehemently opposed to the recall process and later, in a dramatic turn, some NRM MPs claimed that they were recalling their signatures from the Petition because "they were forged". The NRM went ahead to defeat the Recall by convening a ten-day caucus retreat at the time the House was supposed to be recalled.

The Speaker ruled that after "withdrawal of signatures by some MPs", the Petition fell short of the required signatures in Article 95 (5), 1/3 of the MPs and on Rule 20 of the Rules of Procedure of the Parliament of Uganda. The signatures had fallen from 127 to 116 which is below the Constitutional threshold.

Another landmark test was the expulsion of "Rebel MPs" from NRM and the subsequent demands by the NRM Party that the expelled MPs be chased away from Parliament. On 2nd May 2013, The Speaker ruled that the MPs will retain their seats in the house because they represent their electorate and not the NRM Party in the House. NRM argues that the Speaker ignored Article 2 of the Constitution which empowers the people of Uganda to choose how they want to be governed and that in retaining the MPs, the Speaker created a group in Parliament that is legally strange. The NRM further contended that in creating special accommodation for the MPs in front of the Speaker's desk, she effectively recognized that they ceased to belong to and represent NRM in Parliament.

According to Article 78 (1), the role of a political party in the electoral process for representation at the National Assembly clearly stops at the gates of Parliament. Once MPs enter Parliament, they belong to their constituencies and not political parties. It is only the electorate mandated by Article 78 that can cause a recall of MPs using Article 84 but (7) thereof further limits the recall powers of the electorate to the Movement Political system. On the creation of the special sitting arrangement, it is important to note that the sitting arrangement in Parliament is a matter of procedure, and not a matter of law or the Constitution. This case is on-going before Court.

Law in the Making

a) Public Order Management Bill, Bill No.3 of 2011

What is the spirit of this Bill?

Following the civil unrest in the country that dates back to the 2007 Mabira riots, Government proposed a Bill for the management of public order which was first drafted in 2009. The objective of the proposed Bill is to provide for the regulation of public meetings, duties and responsibilities of police, organizers and participants in relation to public meetings/gatherings; and to prescribe measures for safeguarding the public order.

Several developed democracies have legislations on public order management, but the timing of this particular Bill is suspect considering the manner in which police mistreats unarmed civilians and the media during demonstrations. However, if a Bill of this nature must be enacted, then the following should be addressed: The proposed definition of political organization as "any organization which has among its objectives any political purpose or which pursues a political purpose" can be interpreted to include civil society organizations. This should be limited to the definition in the Political Parties and Organizations Act 2005. Also the defining of a public place as any place where people are gathered is vague. The definition of a public place should be limited to the definition in the Penal Code Act.

The clause proposing that the IGP should be given powers to regulate public meetings and assemblies is unconstitutional because it reproduces Section 32(3) of the Police Act, declared unconstitutional in *Muwanga Kivumbi v. AG* (Constitutional Petition No.9/05) in essence it seeks to re-instate a provision that has been nullified by the Courts of law, by restoring to the IGP the power to permit or disallow an assembly/rally.

It is inconsistent with Articles 29(1) and 43 (2) of the Constitution. Article 92 of the Constitution prohibits the passage of legislation to alter the decision or judgment of any court. The Bill further proposes such limitations like organizers giving notice to the police seven days prior to the meeting, etc. Noteworthy is the fact that the proposed authority of the IGP to stop public meetings or assemblies is already being assumed by Police which arbitrarily stops gatherings. This Clause must be understood as a retrospective measure by the government to cover the unconstitutional acts that have already been committed.

b)-The Oil Bills:

Petroleum wealth has the potential to help raise millions out of poverty, but it also runs the risk of plunging Uganda towards the resource curse. This has created immense expectations and anxiety amongst the population. A robust legislative framework which provides transparency and accountability in the management of the sector is a first vital step to ensuring that Uganda gets a fair deal for its resources and ordinary Ugandan citizen's benefit. As such, many stakeholders have a strong vested interest in promoting a solid legislative structure for the sector.

All the three Bills lack the guiding principles that are key in legislative formulation and implementation. These are:

Guiding Principles

Institutional arrangements: There should be checks and balances whose hierarchy for decision making and the links with other institutions are clear. These should promote inter and intra-institutional accountability;

(i) **Independence and autonomy of the institutions:** There should be legal safe guards against political interference/undue influence that would otherwise promote patronage politics or compromise the functioning of the institutions;

(ii) **Transparency in decision making:** There should be best practices like a statutory obligation to publish all license holders, bidders, disclosure of the Production Sharing Agreements (PSAs) and all decisions are made open and accessible to the public. The functioning of the Oil and Gas Sector should be inconformity with 41 of the Constitution on the Right of access to Information and the Access to Information Act.

The passing of Clause 9 in the **Petroleum (Exploration, Development and Production) Bill 2012** on functions of the Minister gives the Minister powers to carry out the following: granting and revoking licenses; initiating, developing and implementing oil and gas policy; submitting draft legislation to Parliament; issuing petroleum Regulations; negotiating and endorsing petroleum agreements; approving field development plans; promoting and sustaining transparency in the petroleum sector; approving data management systems; any other function incidental or consequential to his or her functions.

Observation:

The minister cannot be an institution in the Act. The Minister is responsible for the implementation of the whole Act.

c) - The Public Finance Bill 2012

This Bill will determine how the oil resources in the country will be managed. There is very little stakeholder involvement in the scrutiny of this Bill and if the oil resources in the country are mismanaged, then the resource curse is eminent in Uganda. The Finance Bill provided for a string of amendments to the Bank of Uganda Act, Income Tax Act and the National Audit Tax as a way of meeting new challenges such as the handling of oil revenues and the East African Customs Union. The Bill also provides for a repeal of both the Public Finance and Accountability Act 2003 and the Budget Act 2001 to pave way for a comprehensive law on the management of the public revenue.

The Finance Bill defines the budget process and its attendant procedures such as the budget framework paper, supplementary budget and the roles of both the Accountant General and the Secretary to Treasury. The Bill also delineates the role of the Central Bank in the management of the Petroleum Fund.

Checks and Balances

Parliament has a watchdog function which is normally exercised most effectively under the specialized committee system through which it scrutinizes and evaluates the performance of other organs of government, especially the Executive. In the exercise of these checks and balances, Parliament has:

- rejected some Ministerial Nominees
- Investigated major corruption scandals leading to the resignation of Ministers Syda Bumba, and Kiddu Makubuya and the stepping aside of Ministers Sam Kuteesa, Mwesigwa Rukutana for instance.

Conclusion

Recent governance events in the country have brought successes and challenges for Uganda's constitutional undertakings. Successes related mainly to progressive rulings of the Judiciary. Parliament endeavoured to fulfill its legislative function; but overarching these two arms of government, the Executive has clearly remained intent on ensuring that neither the Judiciary nor Parliament took actions to undermine its political aims. In doing this, the Executive has relied on arbitrary means. As mentioned, constitutionalism involves rules that impose limits upon Executive power which are entrenched either by law or custom.

Dialogue amongst all Ugandans must continue to ensure that the three organs of the state are strengthened and that mechanisms for enabling independent and effective functioning of each one of them are not eroded any further. There is also need for a deliberate effort to promote a robust and vigilant civil society as well as internationalization of constitutional law principles.

Thematic Topic 2: Universality of Human Rights

Human Rights are the rights a person has simply because he/she is a human being. Human rights are the same for everyone and are applicable everywhere. These rights exist as natural rights or as legal rights. International human rights law lays down obligations to act in certain ways or refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups. For example, **Article 1** of The Universal Declaration on Human Rights states that all people are born free and are equal in dignity and rights

Today, the promotion of human rights is guided by what is referred to as Bill of Rights. It includes the UDHR and two treaties - the International Covenant on the civic and Political Rights, and the International Covenant on Economic Social and Cultural Rights. This Bill of rights is contained in **Chapter Four** of our Constitution.

Human rights are inherent to all human beings, whatever their nationality, sex, ethnicity, religion, or other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible.

Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.

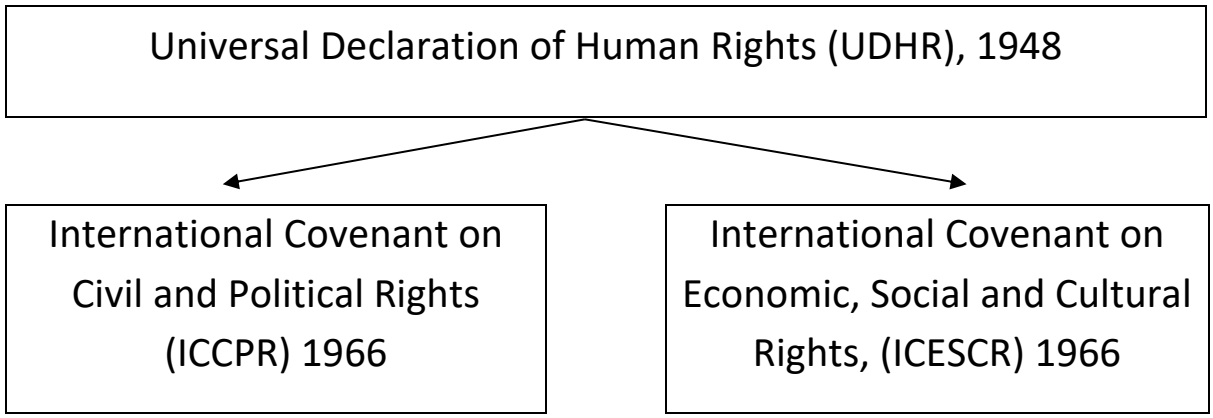
The universality of human rights is expressed both in the historical, vertical direction and in their horizontal, geographical spread. In all cultures, the idea of equal freedom, the idea of brotherhood and human dignity has been well received and supported. The legal documents on the protection of human rights are the product of long historical development, laying down a mark of distinction between the powers of the authorities

and the sphere of the individual[1]. Thus originally, human rights constituted a demarcation in political power relationships. Democratic participation and the social state concept of brotherly participation have strengthened the flow of human rights both in a historical and in a spatial direction.

The Universal Declaration of Human Rights of December 10, 1948, and subsequent declarations and pacts such as the International Pact on Civic and Political Rights, as well as the International Covenant for Civil and Political Rights of December 16, 1966 allow the state to impose restrictions only to the extent permitted in an open and democratic society, often followed by the comment that the governance structure of this society should be premised on equality and peace.

This created something that could be referred to as the discourse of human rights at international level. No reference is made to a specific system of restrictions in a specific country or organization, but instead to a type of open and democratic society as an abstract model.

Human Rights Treaties



Source: Nancy Flowers, 2000.

Who determines this model of an open and democratic society, the model of a society that is based on peace and justice for equality? Can it be left to the lawyers or the courts

[1] Professor Dr iur Dr hc Heinrich Scholler

to develop the minimum standards for human rights without which there can be no question of an open and democratic society?

Do these also involve social human rights? Is an open and democratic society conceivable without the fourth generation of human rights, the right to self-development, environment protection and education?

This fourth generation joined the other three at the end of the 20th century, for until then there was only the concept of the basic rights as a means of defence or as active rights to participate within the framework of the first and second generation of human rights. These were followed by what were known as the third generation of basic rights, the body of social rights that was directed not only against the state but also, in their third direction, against society. With the development of instruments of protection under international public law and generally the notion that individual rights must be protected by the community of states and not by the national state, the idea of universal or regional human rights entered a new stage.

It was here that the ground was broken for the idea that the individual was not only the object but also the subject of rights against the community of states in international law. War, hunger and population explosion have in the meantime become greater enemies than state dictatorships.

The inequality of resources and of the standard of living in the world also constitute a new challenge to the idea of human rights. There is much to argue that the modern ur-human right is to be found in the twin stars of the right to life and the right to self-determination.

Human rights in the social context

Article 1 of the Universal Declaration of Human Rights states that all people are born free and are equal in dignity and rights. Though the document is not binding, it serves as an aspiration for people all over the world in their continuing struggles for justice and expanded freedoms. The core of the question is not about the universality of the human rights principles, as expounded in the Universal Declaration, which few would argue against. But rather, the question is whether there exist legitimate differences in the implementation of human rights principles among different societies and cultures.

If we accept the fact that there exist legitimate limits imposed by a society as to what extent an individual can exercise his or her human rights without endangering those rights of others, then these legitimate limits of human rights may differ from one society to another. It may sound surprising or politically incorrect to say that human rights have limits, even in democratic countries. However, a person may be denied freedom of speech in a democracy if it can be shown that his or her speech might lead to the overthrow of the government. A person may not use civil rights to justify actions that might seriously harm the health, welfare, safety, or morals of others. In 1919, U. S. Supreme Court Justice O. W. Holmes, Jr., wrote: "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic."

The specific limits of human rights in a given society vary with the times. Changing social and economic conditions also cause changes in the importance that people give to certain rights. In the late 1800's, most Americans valued the property rights more than personal freedoms. But since the late 1930's, Americans have shown greater concern for personal freedoms and equality in opportunity.

Given the different social and economic conditions of different societies, it is not surprising that the specific limits of human rights in one country may be different from those of another. Thus, while people in the U. S. have the rights to possess firearms, such rights are denied in Japan and many other countries. The rights to abortion, homosexual marriage, etc., are also limited in many nations, to varying degrees.

The argument that there exist social and cultural differences in the enforcement of human rights, May indeed be used by authoritarian rulers as an excuse to shield criticism of human rights abuses. However, this should not become the reason for us to ignore or deny such differences. On the contrary, acknowledging such differences could help us in differentiating between two cases of human rights restrictions: (1) the arbitrary repression of human rights of the masses by authoritarian regimes, and (2) the limits of human rights established by centuries-old social and cultural traditions which have been taken for granted by the populace. Such a distinction is important, because the former calls for universal condemnation and often actions from the whole world, whereas

the latter might require a long, involved process for the evolution of social institutions toward better protection of human rights[2]. This veracity of this statement needs no emphasis.

The problem is finding places where (2) is actually occurring. Certainly, all of the countries currently supporting this statement at the General Assembly (China, Iran, Cuba, North Korea, a handful of African thugs) are rather obviously in category (1).

None of these countries have been under their current repressive regimes for more than 50 years, so "century-old social and cultural traditions" are pretty hard to come by. Most of the Islamic states under Shariah have only been so for a relatively short time (S.A. excluded).

Case (1) is so much more common that it should pretty much be our default assumption when dealing with non-Western countries torturing and killing their own people.

If the people were actually the ones doing the choosing, then there wouldn't be a problem. The problems occur when the choices are being made for them. The only way we have found to stop this is by democratic principles. Whether you like them or not, otherwise, you will end up ruled by thugs who run slave labor camps and mow down protestors with tanks[3]. "… People within the society should re-examine and transform their social institutions, be it the caste system, Islam, or Confucianism, so that they would be able to reform their social system and master their own destiny".

Chapter Four of the 1995 Constitution of the Republic of Uganda provides for the protection and promotion of fundamental and other human rights and freedoms. Thereunder, Article 20 (1) states that "fundamental rights and freedoms of the individual are inherent and not granted by the state" and 2) "the rights and freedoms of the individual and groups enshrined in this Chapter shall be respected, upheld and promoted by all organs and agencies of government and by all persons".

Key among these rights enshrined in Chapter Four are: equality and freedom from discrimination; protection of personal liberty; respect for human dignity and protection from unhuman treatment; right to a fair hearing; protection of freedom of conscience,

[2] Zhengin @ biosym

[3] Zhengin @ biosym

expression, movement, religion, assembly and association; civic rights and activities among others

Article 43 provides for general limitation on fundamental and other human rights and freedom as follows:

(1) In the enjoyment of the rights and freedoms prescribed in this chapter, no person shall prejudice the fundamental and other human rights and freedoms of others or the public interest

(2) Public interest under this article shall not permit
   a) Political persecution
   b) Detention without trial
   c) Any limitation on the enjoyment of the rights and freedoms prescribed by this chapter beyond what is acceptable demonstrably justifiable in a free and democratic society or what is provided in this Constitution.

Some of the outstanding human rights abuses in Uganda include:

- Illegal arrests/detentions in undisclosed locations including safe houses;
- Suppression of freedom of assembly/speech;
- Closure of radio stations and media houses/suspension of political talk shows and discussions;
- Excessive and disproportionate use of force by the police;
- Lack of gender sensitivity when conducting searches and arrests.

Thematic Topic 3: Pluralism and Political Parties

Background:

In Uganda the multi-party-political system existed long before independence. The 1962 Constitution provided for multi-party system and in a measure ostensibly designed to reduce sectarianism and violence; political parties were restricted in their activities in 1986. The political party system was re-introduced in Uganda in July 2005 after conducting a referendum to decide whether to adopt multiparty system or maintain the movement political system. The result of the referendum favoured a multiparty system. The multi-party-political system is provided for in the Constitution under **Article 69 (2)(b)**. Political Parties and Organisations Act 2005 regulates the functioning of political parties.

Pluralism is, in the general sense, the acknowledgment of diversity. The concept is used, often in different ways, in a wide range of issues. In politics, pluralism is often considered by proponents of modern democracy to be in the interests of its citizens, and so **political pluralism** is one of its most important features.

The term pluralism is also used to denote a theoretical standpoint on state and power - which to varying degrees suggest that pluralism is an adequate model of how power is distributed in societies. For information on the political theory of pluralism see Pluralism (political theory).

In democratic politics, pluralism is a guiding principle which permits the peaceful coexistence of different interests, convictions and lifestyles. In this context it has normative connotations absent from its use to denote a theoretical standpoint. Unlike totalitarianism or particularism, pluralism *acknowledges* the *diversity* of interests and considers it imperative that members of society accommodate their differences by engaging in good-faith negotiation.

One of the earliest arguments for pluralism came from James Madison in The Federalist Papers #10. Madison feared that factionalism would lead to in-fighting in the new American republic and devotes this paper to questioning how best to avoid such an occurrence. He posits that to avoid factionalism, it is best to allow many competing factions to prevent any one dominating the political system. This relies, to a degree, on a series of disturbances changing the influences of groups so as to avoid institutional dominance and ensure competition.

Pluralism and the common good

Pluralism is connected with the hope that this process of conflict and dialogue will lead to a definition and subsequent realization of the *common good* that is best for all members of society. This implies that in a pluralistic framework, the common good is not given *a priori*. Instead, the scope and content of the common good can only be found out in and after the process of negotiation (*a posteriori*).

Proponents in contemporary political philosophy of such a view include Isaiah Berlin, Stuart Hampshire and Bernard Williams. An earlier version of political pluralism was a strong current in the formation of modern social democracy, with theorists such as Harold Laski and G. D. H. Cole, as well as other leading members of the British Fabian Society.

Horace Kallen coined the term cultural pluralism to express the condition of a democratic nation which sustained, and was sustained by, many cultural traditions.

The Fourth Way

Coined by Pluralist Party leader Jonathan Bishop, the Fourth Way is meant to represent a particular approach to pluralist integrated bargaining where one finds two opposing viewpoints, the third way compromise between them, and then a fourth way which takes the best parts of the first and second ways which dismisses all the conclusions of the third way.[2]

For instance, in political systems; the first way might be for a government to make public services based on the involvement of private sector firms, the second way using public sector organisations, and the third way to use a public–private partnership. The Fourth Way would be to allow the public to choose the service provider best for them based on their principles and values and not the ideological biases of government or civic officials. Likely, this Fourth Way will eventually manage to establish its own view as the generally accepted view, and then over time become the first way as science and society develop. This can only occur as the result of the negotiation process within the pluralistic framework, which implies the "operator" as a general rule of a truly pluralistic framework, i.e. the state in a pluralistic society, must not be *biased*: Suffice it to note that it may not take sides with any one group, give undue privileges to one group and discriminate against another one.

Proponents of Pluralism, particularly based on the Fourth Way, argue that this negotiation process is the best way to achieve the common good: since everyone can participate in power and decision-making (and can claim part of the ownership of the results of exercising power) there can also be widespread participation and a greater feeling of commitment from society members, and therefore better outcomes. By contrast, an authoritarian or oligarchic society, where power is concentrated and decisions are made by few members, forestalls this possibility. Note, however, that political philosophers such as Charles Blattberg have argued that this 'win-win negotiation' can at best compromise rather than realise the common good through being able to reach a Fourth Way. Doing the latter is said to require engaging in "conversation" instead, room for which is made within what Blattberg calls a patriotic, as distinct from pluralist politics.

Conditions for Pluralism

For pluralism to function and to be successful in defining the common good, all groups have to agree to a minimal consensus regarding shared values, which tie the different groups to society, and shared rules for conflict resolution between the groups:

The most important value is that of mutual respect and tolerance, so that different groups can coexist and interact without anyone being forced to assimilate to anyone else's position in conflicts that will naturally arise out of diverging interests and positions. These conflicts can only be resolved durably by dialogue which leads to compromise and to mutual understanding.

Pluralism and Subsidiarity

However, the necessary consensus on rules and values should not unnecessarily limit different groups and individuals within society in their value decisions. According to the principle of subsidiarity, everything that need not be regulated within the general framework should be left to decide for subordinate groups and, in turn, to individuals so as to guarantee them a maximum amount of freedom.

In ultimate consequence, pluralism thus also implies the right for individuals to determine values and truths for themselves instead of being forced to follow the whole of society or, indeed, their own group.

The rational choice tradition has generated three models of competitive political party behavior: the vote-seeking party, the office-seeking party, and the policy-seeking party. Despite their usefulness in the analysis of interparty electoral competition and coalitional behavior, these models suffer from various theoretical and empirical limitations, and the conditions under which each model applies are not well specified.

It’s also important to analyze the relationships between vote-seeking, office-seeking, and policy-seeking party behavior and develops a unified theory of the organizational and institutional factors that constrain party behavior in parliamentary democracies. Vote-seeking, office-seeking, and policy-seeking parties emerge as special cases of competitive party behavior under specific organizational and institutional conditions.

Good governance requires vibrant political parties, pluralism, participants:

Vibrant political parties and pluralism are essential for good governance and effective representation of citizens in the political process. Without strong and independent parties, societies cannot ensure stability and good governance. Opposition parties play an important role in the political process just as parties in power should never confuse

themselves with the state; likewise political disagreement should not be confused with disloyalty to the state or a monopolistic claim to represent the people. It seems self-evident, but must be repeated: the role of the opposition is to oppose - to criticize, contrast, question and offer alternatives. In many countries, the idea that the party of those in power counts more than other parties still echoes in minds and practices: Too often, we have seen situations where parties, once they gain power, use the power of the state to intimidate, harass, and obstruct the work of other political parties.

There is a need for internal democracy within parties: Parties are less and less seen as machines with bosses, oligarchs and barons, and more as transparent organizations in which individual members - and their voices and votes - carry greater weight. The importance of pluralist parliaments for the democratic process is key. “All too often, parliaments are subjected to a winner-takes-all approach, in which the ruling party, from the commanding heights of the executive uses parliament merely as a formal mechanism for approving laws.” If parliaments only “rubber-stamp” laws without proper discussion, evaluation and compromise, the quality of the law-making process suffers.

Uganda’s multi-party politics journey:

Uganda embraced the return to multiparty politics in 2006 after major constitutional amendments to the 1995 Constitution. This was followed with amendments in the Political Parties and Organizations Act to allow political parties more freedoms to operate. There are however, key political and governance issues that need to be addressed for multi-party politics to take deep root in Uganda. Challenges in general, range from electoral processes that lack legitimacy and failure to carry out required electoral reforms; low capacity of the various political parties to reach out to the population; governance safeguards embedded in the legal regimes and their implementation; clear and updated voter registers acceptable by all stakeholders; early warning systems for electoral violence and how it should be avoided and/or managed; free and fair competition for state power; political and civil rights; implementing the doctrine of separation of powers, to mention but a few.

Another key challenge facing Uganda’s democracy today is the active role of the military on our politics. This started right after independence when there was military mutiny in East Africa in 1964 when Tanzania and Kenya downgraded their armies whereas Uganda co-opted the army into politics. There is need, therefore, to determine the future role of Uganda’s military in our politics by all stakeholders.

It is important to note that a society cannot make real progress unless it has enlightened, informed and engaged a critical mass of its population prepared to act to build a brighter future. The fundamental problem in our society today is the under developed but sometimes suppressed political culture evidenced in the operations of various political parties/players as well as the State and its institutions which undermine and erode the very basic democratic foundations of the state and wider society.

The proposed topics below, if researched and discussed will go a long way in answering the Uganda's key question of the day: what constitutes a functioning democracy and constitutionalism under a multi-party dispensation?

Key examples of multi-party challenges in Uganda:

i) **Election integrity in Uganda - which way forward? What's the role of political parties?**

Elections can bring about the longevity for a regime, or make it short-lived. This is because if there is freedom, democracy and service delivery, then rarely will the citizens be disgruntled.

However, excessive use of force by the incumbent during elections is a recipe for violence and instability. There has been no clear system of power change in the country. Most leaders took over power through the gun, in military coups. There have been three types of governments: Military, Movement and Multiparty system.

During the Movement system, elections were known to be non-partisan because there was no opposition party opposing the ruling party and there was no political participation and competition from opposition, as seen in the 1986 elections.

The 2001 elections were very intriguing and challenging in that they brought in political competition through Dr. Kizza Besigye, who openly declared his intention to run for presidency against Museveni, despite the fact that they were both of the Movement party. In 2005, the Constitution was amended through the Ssempebwa Commission. It abolished the Movement system and introduced a multi-party system, because people were already questioning the Movement arguing that the idea to have one political party was limiting their political participation.

The same Constitution was hurriedly amended to abolish term limitation for presidency thus giving Museveni the chance to vie during the 2006 and 2011 elections and beyond. It is uncertain whether or not he will run for the 2016 elections. In 2006 for instance, Museveni received strong competition from Dr. Besigye, who had performed fairly well. These elections however were marked with violence and voter bribery, intimidation and harassment.

The 2011 election was important as it presented an idea of the democratization process of the country. This gave a new insight to the government regarding what the people wanted: a system that would be representative of all, a government that would willing to attend to the concerns of the people, a level playing field and less engagement of the security forces in the election process.

There are several concerns and observations that have been raised following the February 2011 general elections. These include: the inflated number of voters; excess use of money resulting to commercialization of the political process; poor civic education; names missing from the voters' register; pre-ticked ballot papers and ballot stuffing; heavy deployment of the police and the army, which could have intimidated the 41% of people who did not turn out to vote; lack of a system to verify whether the results released by the Uganda Electoral Commission (UEC) were the genuine results; integrity of the Uganda Electoral Commission (UEC)- concerns that the commission was not able to hold credible elections; Commission officers at the lower level being compromised; compromised party agents; citizens not taking elections seriously- they rarely look beyond the candidate campaigning; abuse of incumbency; lack of competition within political parties since the party leaders are synonymous with the party itself; lack of coherence among opposition parties; and, the lack of a level playing ground for all participants in the elections.

However, the 41% of the population that did not turn out to vote could also have been be due to the fact that many people do not feel the impact of the government, and some have lost faith in the electoral system thus do not see the significance of elections because nothing much changes through election.

Uganda has so far held two multi-party elections both in 2006 and 2011. The outcome of both elections has been contested either in the courts of law or in the public court in form of street protests. In the 2006 Presidential Election Petition, all the Justices of the Supreme Court agreed that there were gross multi practices and irregularities during elections but disagreed with 4 against 3 on whether the irregularities affected the

outcome of the elections in a substantial manner thus upholding the elections. Before the 2011 Presidential elections, the main opposition candidate publicly declared that he has no confidence in the country's Judiciary and in the event that he loses the elections, he will not go back to Court. There was increased speculation as to whether this lack of confidence in the judiciary won't eventually lead the country back to armed conflict and vicious cycle of violence.
It was, therefore, not surprising when the Opposition resorted to the famous walk to work protests from April 2011 under A4C that has later turned into FGC. These street protests were consequently supported by many Ugandans largely because of the hopelessness that prevails in the country viz the hopelessness in the democratic processes; the unemployment issues and the rising costs of living, among others.

However, Parliamentary electoral petitions were numerous after the 2011 elections and where they have been successful, the ruling NRM has lost in the by-elections. This scenario has driven many Ugandans to question whether NRM genuinely won the March 2011 elections or they just rigged their way into power and what could be the underlying factors to this.

The Problem:
In the run up to both the 2006 and the 2011 Elections; there were a lot of unresolved issues and these include, but not limited to:

- Lack of electoral reforms – most of the current electoral laws were enacted during the Movement System and are not suitable for a multi-party dispensation;
- The biased composition of the Electoral Commission handpicked by the President;
- Lack of civic/voter education;
- Insufficient funding for the Electoral Commission which does not enable them to adequately prepare for free and fair elections;
- Lack of an acceptable and timely voter register;
- The partisan role of state institution during the election process especially security agencies (state machinery);
- Party funding during elections including the composition of enemy countries/organizations who should not fund any party/persons;
- Voter bribery and un leveled ground;
- Increased voter apathy.

ii) Constitutional challenges in Uganda in light of the recently enacted laws and the Independence of Parliament

Recently enacted laws by the Parliament of Uganda or Bills presented before the House largely contradict the fundamental rights and freedoms as enshrined in the Constitution. These laws include the Cultural Leaders Act, the Public Order Management Bill, The NGOs Amendment Act, etc.

The spirit of these laws contradicts Chapter 4 of the Constitution on the protection and promotion of fundamental and other human rights and freedoms. Case in point is the Public Order Management Bill which seeks to re – introduce section 32(3) of the Police Act, declared unconstitutional in *Muwanga Kivumbi v. AG* (Constitutional Petition No.9/05) in essence it seeks to re-instate a provision that has been nullified by the Courts of law, by restoring to the IGP the power to permit or disallow an assembly/rally. It's inconsistent with Articles 29(1) and 43 (2) of the Constitution. Article 92 of the Constitution prohibits the passage of legislation to alter the decision or judgment of any court. Also, there is systematic undermining of Parliament and in general, the cardinal democratic principle of separation of powers.

The Problem:
The above and other unconstitutional tendencies in the country have diverted our governance path and may usher in a constitutional crisis if not checked on time. For example, the Public Order Management Bill, if passed according to NRM Caucus recommendations will:

- Curtail the work of political parties especially mobilization and recruitment
- Take away all the freedoms provided for under Chapter 4 of the Constitution
- Limit the access of the general populace to only government
- Reverse the country's democratic gains

iii) Women and Multi-Party Politics - Is there a Level Ground? Who will push for the women's agenda?

In our Constitution; the National Objectives and Directives of State Policy – Political Objectives (Democratic principles) proved as follows:

(i) The State shall be based on democratic principles which empower and encourage the active participation of all citizens at all levels in their own governance;

(ii) All the people of Uganda shall have access to leadership positions at all levels, subject to the Constitution;

(iii) The State shall be guided by the principle of decentralization and devolution of governmental functions and powers to the people at appropriate levels where they can best manage and direct their own affairs;

(iv) The composition of Government shall be broadly representative of the national character and social diversity of the country;

(v) All political and civic associations aspiring to manage and direct public affairs shall conform to democratic principles in their internal organizations and practice;

(vi) Civic organizations shall retain their autonomy in pursuit of their declared objectives;

Also, Objective VI provides of gender balance and fair representation of marginalized groups and the social and economic objectives provide for the recognition of the role of women in society. Affirmative action and the rights of women are well-articulated in Articles 32 and 33 of the Constitution. These Constitutional provisions are supposed to be promoted by all the Political Parties.

The Problem

A lot of gains have been made as far women's rights are concerned in Uganda including the capacity to have the first woman speaker of Parliament in addition to having had the first women vice president in Africa.

But when it comes to party strong positions, the women are nowhere and they are even intimidated to contest of, for example party leadership positions like the Presidency. It's important to note, however, that we have had at least a woman Presidential candidate in each of the two presidential elections held under a multi-party set up, but their performance left a lot to be desired.

There **are several obstacles** that prevent women from actively participating in the electoral process like:

- Traditions, Culture and Customs that are brought about by patriarchy still limit women's participation in the electoral process.
- The lack of awareness about women's rights and how they can demand for them.
- Women lack the confidence, self-esteem and the skills to challenge and confront existing power structures and power holders or their leaders.

- Women lack the confidence, self-esteem and the skills to challenge and confront existing power structures and power holders or their leaders.
- Women lack access to information about the laws, policies, institutions and structures that can enable them participate.
- The electoral process, which often seems intimidating and complicated.
- The lack of sufficient knowledge on how the electoral process works.
- Society still largely considers politics as the business of men (Patriarchy) and so women have to work twice as hard to get votes as their male counterparts.
- Women lack support networks and positive role models that can help them to grow in leadership and have the desire to participate. They also lack of the support from their families and friends.
- The lack of an enabling environment and conducive political, legal, economic and cultural climate.
- The nature of politics makes it challenging for women to balance all their responsibilities at home.

The specific challenges that women face within Political Parties include:

- Political parties are structured in a way that makes it difficult to:
  - have open and democratic internal debate;
  - confront the rules and practices that exclude women;
  - access leadership positions;
- Political parties remain male-dominated at all levels and those that have embraced gender equality concerns have done so with reluctance.
- Political parties hardly champion women's issues or support female candidates in equal numbers as men. In most political parties' women are restricted to participate in the 'women's wing'.
- As society can often be very hostile to female candidates, political parties consider female candidates to be an electoral burden or a liability.
- Because of the shallow support given to issues of gender equality, many voters, including women are not convinced of the need to support or elect women in positions of power.

The following questions, therefore, arise:

- Have the women of Uganda achieved full emancipation and is it time to do away with the affirmative action? Or do need to advocate for affirmative action within political parties?

- How can women confront the rules and practices that exclude them within political parties?
- Is there a level playing field for women in the multi-party set up? Or leadership positions should be handed to women as tokenism?
- What are the various gender policies for each of the parties? Are they favorable?
- Do we still have a united women's agenda? Who will advocate for the broad women's agenda in the absence of cooperation amongst the various women's leagues?
- What happened to the women's movement?
- Is affirmative action still relevant?

iv) The Transition from Movement to Multi-Party politics – Has it really happened?

After taking over power in 1986, the National Resistance Movement (NRM) proclaimed an era of "fundamental change", based on the movement system – a form of one party system.

This system of governance was later entrenched in the 1995 Constitution under Articles 69 and 70. During the same period, the NRM installed "an intricate structure of resistance councils from village to district levels, which were later turned onto local councils under decentralization.

The political parties as such were not completely banned, but all political activities by the parties were prohibited. They were allowed to continue in existence, but not to hold meetings, to campaign and to take part in elections. The prominent justification for the system was a strong rejection of multiparty systems as not being appropriate for the Ugandan context, especially considering the negative experiences of the past. The constitutional provision was that the system of governance can only change through a referendum and before that, if a system is operational, all the other systems are in abeyance.

The 1995 Constitution established major political institutions. It adopted a presidential system, an electoral system according to majority vote and – temporarily – the continuation of the Movement system, which was still not clearly defined, but simply described it as "broad based, inclusive and nonpartisan" (Art. 70). This description was complemented by four structural principles, which are participatory democracy, transparency, access to political leadership positions and individual merit, as criteria for being elected.

Under the new Constitution, the first direct presidential elections took place in May 1996, followed by parliamentary elections in June 1996. Officially, no political parties were allowed to be involved in the elections in any form. While the Movement side used the organizational structure of the state, the opposition, consisting of the Uganda People's Congress (UPC), the Democratic Party (DP) and the National Liberation Party (NLP) formed an Inter-Party Committee and appointed Paul Ssemogerere, chairman of the DP, as their candidate. Museveni won the elections clearly with 74.2 percent, compared to 23.7 percent for Ssemogerere.

In the second presidential election in 2001, Museveni was re- elected as expected, with a majority of 69.3 percent of the votes. His closest challenger, Kizza Besigye, who ran on an anti-corruption platform, received 27.8 percent. Despite the fact that the Movement system was supposed to be only a transitional system, an interim period until a future political system would be created according to the will of the people, the system was extended several times and the Movement actually continued governing the country under a "no-party democracy" for 20 years. It was only recently, in 2005, that the system finally changed and Uganda formally introduced a multiparty system.
The NRM – now officially transformed into a party – was still able to maintain its superiority over other parties and stay in power because of the advantages of institutions like the Local Councils and other countrywide networks like Resident District Commissioners, ISO Officers, and an NRM dominated Electoral Commission, etc.

The Problem
The existing problem now is that the institutions created during the 20 years of movement system governance have been used in the two multi-party elections to favor the NRM party candidates hence allowing the party to dominate most of the elective posts countrywide.

Also, the principle of individual merit promoted over the 20 years of movement system rule has been, to some extent entrenched and this culture of individuality is failing party cohesion.

This, therefore, calls for a need to take stick on the following:
- Separating party interests from national interests
- Can parties outgrow their founders
- Political party discipline – how can we achieve it?

- What is the mobilization strategy for political parties – is it ideology or individualism (patronage)
- Political party funding – who should bear the burden?
- How can we safeguard the use of state institutions by any political party?

v) The role of the military in Uganda's politics – Which Way Forward?

The role of Uganda's military in politics is not a new concept. It started way back in the days of military mutiny in East Africa in 1964 where Kenya and Tanzania realized that the military can be problematic and decided to downgrade them and have their roles confined either with the communities in the case of Tanzania and in the military for Kenya's situation.

Uganda, on the other hand, thought that involving the army into politics was the solution, so that they can participate with the rest of the population.

This in the long run created a continuous cycle of military coups and ccontinuous competition for state power with civilian population. Currently, Uganda has ten MPs in Parliament representing the army and they are supported as "listening posts" to observe and monitor the conduct and decisions taken by politicians. This started in 1994 during the Constituent Assembly days.

The Problem

Under the Constitution, the Uganda Peoples Defence Forces (UPDF) is supposed to be apolitical and non-partisan. However, under a multi-party set up, where everything including the seating arrangement in Parliament is done through political groupings: where should the army MPs seat? How should they vote? Doesn't this make then partisan and unconstitutional? Also, army senior official participates in elections by campaigning for particular party candidates especially the ruling party and even the army MPs attend NRM Party Caucus meetings.

Thematic Topic 4: Accountability

Relevant Laws:

1- The 1995 Constitution of the Republic of Uganda, as amended
2- The Anti-Corruption Act, 2009
3- The Whistle Blowers Act, 2010

4- Ant Money Laundering Act, 2013
5- The Access to Information Act, 2005
6- The Leadership Code Act, 2002
7- The Audit Act, 2008
8- The Inspectorate of Government Act, 2002
9- The Budget Act, 2001
10- The Public Finance and Accountability Act, 2003

The obligation of an individual or organization to account for its activities, accept responsibility for them, and to disclose the results in a transparent manner. It also includes the responsibility for money or other entrusted property.

In ethics and governance, **accountability** is answerability, blameworthiness, liability, and the expectation of account-giving. As an aspect of governance, it has been central to discussions related to problems in the public sector, nonprofit and private (corporate) worlds. In leadership roles,[2] accountability is the acknowledgment and assumption of responsibility for actions, products, decisions, and policies including the administration, governance, and implementation within the scope of the role or employment position and encompassing the obligation to report, explain and be answerable for resulting consequences.

In governance, accountability has expanded beyond the basic definition of "being called to account for one's actions". It is frequently described as an account-giving relationship between individuals, e.g. "A is accountable to B when A is obliged to inform B about A's (past or future) actions and decisions, to justify them, and to suffer punishment in the case of eventual misconduct". Accountability cannot exist without proper accounting practices; in other words, an absence of accounting means an absence of accountability.

Political accountability

Political accountability is the accountability of the government, civil servants and politicians to the public and to legislative bodies such as a congress or a parliament. In a few cases, recall elections can be used to revoke the office of an elected official. Generally, however, voters do not have any direct way of holding elected representatives to account during the term for which they have been elected.

Additionally, some officials and legislators may be appointed rather than elected. Constitution, or statute, can empower a legislative body to hold their own members, the

government, and government bodies to account. This can be through holding an internal or independent inquiry. Inquiries are usually held in response to an allegation of misconduct or corruption. The powers, procedures and sanctions vary from country to country.

The legislature may have the power to impeach the individual, remove them, or suspend them from office for a period of time. The accused person might also decide to resign before trial. Impeachment in the United States has been used both for elected representatives and other civil offices, such as district court judges. In parliamentary systems, the government relies on the support or parliament, which gives parliament power to hold the government to account. For example, some parliaments can pass a vote of no confidence in the government.

Researchers at the Overseas Development Institute found that empowering citizens in developing countries to be able to hold their domestic government's to account was incredibly complex in practice. However, by developing explicit processes that generate change from individuals, groups or communities (Theories of Change), and by fusing political economy analysis and outcome mapping tools, the complex state-citizen dynamics can be better understood. As such, more effective ways to achieve outcomes can hence be generated.[15]

Ethical Accountability

Within an organization, the principles and practices of ethical accountability aim to improve both the internal standard of individual and group conduct as well as external factors, such as sustainable economic and ecologic strategies. Also, ethical accountability plays a progressively important role in academic fields, such as laboratory experiments and field research.

Debates around the practice of ethical accountability on the part of researchers in the social field - whether professional or others - have been thoroughly explored by Norma R.A. Romm in her work on Accountability in Social Research,[16] including her book on New Racism: Revisiting Researcher Accountabilities, reviewed by Carole Truman in the journal Sociological Research Online.[17]. Here it is suggested that researcher accountability implies that researchers are cognizant of, and take some responsibility for, the potential impact of their ways of doing research – and of writing it up – on the social fields of which the research is part.

That is, accountability is linked to considering carefully, and being open to challenge in relation to, one's choices concerning how research agendas are framed and the styles in which write-ups of research "results" are created.

Social Accountability

Social accountability includes a growing emphasis on beneficiary engagement in monitoring and assessing government performance—particularly in providing feedback on, and voicing demand for, improved service delivery—and thus contributing to greater development effectiveness.

This kind of engagement—also referred to as *social accountability*—enables beneficiaries and civil society groups to engage with policymakers and service providers to bring about greater accountability and responsiveness to beneficiary needs.

At the same time, many factors—especially the proliferation of new information and communications technologies—are changing how beneficiaries and civil society organizations (CSOs)1 engage with governments; and many governments are creating better enabling environments for voice, transparency, and accountability. However, feedback from over 1,000 stakeholders in all regions indicates that there are large knowledge and evidence gaps, especially in terms of “what works” and why, under what conditions approaches can be scaled up, and how to sustain successful approaches. Moreover, civil society groups often operate on short programmatic funding cycles, and they lack the sustained support to build technical and institutional capacity to engage with governments over the long term on selected themes.

What are Uganda’s accountability challenges?

Since the National Resistance Movement (NRM) came to power in 1986, Uganda has undertaken an ambitious set of economic and political reforms. These reforms have led to the establishment of a solid legal, administrative and institutional framework to fight corruption. In spite of initial success widely heralded by the international community, corruption remains widespread at all level of society and the country faces major implementation challenges.

Recent political developments tend to demonstrate a lack of political backing for anti-corruption efforts. Combined with understaffed and underfinanced anti-corruption bodies, the state faces considerable challenges in its ability to effectively enforce the legislative framework against corruption. Political and economic transformation since the NRM’s assumption of power in 1986 has translated into a period of economic recovery in

Uganda. The country has experienced one of the highest growth rates in Africa in recent years. These trends have led to Uganda gaining a reputation as one of the most successful reform-oriented countries in Africa. Yet the country continues to face major challenges. Poverty, inequitable wealth distribution and corruption raise questions about the impact of the government's anticorruption reforms.

Extent of Corruption

In 2006, President Yoweri Museveni announced a policy of zero-tolerance for corruption. However, at the beginning of Musevini's third term following the first multi-party (but not entirely fair) elections, most governance indicators show that corruption is perceived as widespread and endemic at all levels of society.

Global Integrity's 2006 Report on the country estimates that more than half the government's annual budget is lost to corruption each year, amounting to USD 950 million. Corruption scandals involving personalities close to those in power periodically hit the headlines. A former health minister and loyal supporter of the president, along with two deputies, had been charged with misappropriating USD 2 million from funds provided by the Global Alliance for Vaccine and Immunization (GAVI) in 2005. The case has since been dismissed for lack of evidence.

More recently, in 2007, the government circumvented official procurement guidelines to contract an unknown company, Kenlloyd Logistics, to replenish Uganda's fuel reserves. The company was being run by the son-in- law of the foreign minister, who is himself related to the president. (http://report.globalintegrity.org/Uganda/2008/notebook). Public confidence in government officials is severely affected by such scandals. A majority of citizens surveyed for the **2005 Afro Barometer** perceived corruption to be rampant. In addition, 36% of respondents to the survey believed that most or all government officials - whether at the central or at the local level - were involved in corruption. (http://www.afrobarometer.org/uganda.htm).

Other empirical data corroborates this. The **2008 Corruption Perceptions Index (CPI)** ranks Uganda at 126th place with a score of 2.6. Previous iterations of the index show that, despite slight improvements, the various sources of the CPI continue to perceive corruption as rampant and systemic in Uganda, with scores ranging from 2.1 to 2.8 between 2002 and 2007. (Please see: http://transparency.org/policy_research/surveys_indices /cpi/2008)

The World Bank's 2007 **Worldwide Governance Indicators** note that Uganda performed moderately in terms of regulatory quality (48.5) and government effectiveness (42.7), below average in terms of rule of law (37.6), and voice and accountability (33.2) and weakly in terms of control of corruption (24.6 compared to 26.2 in 2003) and political stability (13.9). (Please see: http://info.worldbank.org/governance/wgi2007/sc_chart.asp).

Further surveys conducted in the past five years confirm these findings. The **World Economic Forum's Global Competitiveness Report for 2008-09** identifies corruption as one of the major constraints for doing business in the country, after access to financing. (http://www.weforum.org/documents/GCR0809/index.ht

The **World Bank Investment Climate Assessment** undertaken in 2004, corroborates this finding with 46.3% of small firms and 56.5 % of middle size firms identifying corruption as a major or severe constraint to doing business in the country. (http://siteresources.worldbank.org/EXTAFRSUMAFTPS/Resources/note_11_screen.pdf).

Forms of corruption

1. ***Bureaucratic Corruption***

Bureaucratic and administrative forms of corruption are widespread in the Ugandan administration, with practices of bribery, nepotism, and misuse of official positions and resources. Government bureaucracy, complex regulatory procedures and red tape provide numerous opportunities for corruption and rent seeking.

The **2006 World Bank-IFC Enterprise Survey** indicates that more than half of firms expect to make informal payments to public officials to get things done. 80% of companies report paying bribes and make on average more than 30 unofficial payments per year. (http://www.enterprisesurveys.org/ExploreEconomies/.

Firms typically make facilitation payments to speed-up bureaucratic processes, especially to obtain licences, construction permits and/or customs clearance, or to connect to phone lines and electricity supplies. Large and foreign companies appear to be the most vulnerable targets for bribe solicitation, paying close to 4% of their revenue in informal payments.

Political Corruption

Political patronage and favouritism further characterize the Ugandan administration, with NRM patronage systems reaching into the private sector. In local government bodies, giving jobs and contracts to relatives or supporters appears to be common practice. A **2006 Freedom House Report** denounces widespread patronage and corruption in government, with the exception of the public, health and education service commissions that are generally credited with making open, merit-based appointments. Even here, however, there have been recent cases of interference in the appointment of senior officials in the ministries of health and of education and sports. (http://www.freedomhouse.org/template.cfm?page=22&year=2008&country=7511).

In terms of political finance, the Freedom House Report notes that regulations controlling influence over campaigns are not enforced effectively, with many instances of economic privileges given to investors. Although the government allocates USD 25,000 for campaign expenses to each presidential candidate, the ruling NRM party appears to be one of the greatest beneficiaries of the system, receiving funds from both private and public sources. During the 2004 elections, 35% of respondents to the Afro Barometer reported having been offered food or a gift in return for their vote. (http://www.freedomhouse.org/template.cfm?page=363&year=2006&country=7080).

Sectors Most Affected by Corruption

Corruption in Public Procurement

Public Procurement is one of the sectors most affected by corruption in Uganda. According to the **2007 African Peer Review Mechanism Report**, Uganda loses USD 258.6 million annually through corruption and procurement malfeasance. The Report further estimates that if the country could eliminate corruption in public procurement, it would save USD 15.2 million a year. In the assessment of the country's Auditor General, procurement accounts for 70% of public spending, of which an estimated 20% is lost via corruption. In June 2008, a senior World Bank official stated that high level corruption in procurement deals had been responsible for a loss of USD 300 million since 2005. He added that 70% of government contracts were not awarded according to established procedures, while half of the national budget is spent on procurement deals. (Please see the 2008 Global Integrity Report**:** http://report.globalintegrity.org/Uganda/2008).

The **US-Department of State Investment Climate Statements for 2009** also notes that government procurement is not transparent, particularly for military hardware. In

previous years, several high-profile government tenders for infrastructure projects were suspended due to allegations of corruption. (http://www.state.gov/e/eeb/rls/othr/ics/2009/index.htm).

The 2006 World Bank-IFC survey indicates that close to half of the firms questioned expect to give a gift to secure a government contract. Companies further report the gift value to amount to approximately more than 5% of the contract value. A baseline **Survey of National Public Procurement Integrity conducted in 2006** by the Procurement and Disposal of Assets Authority (PPDA), the Inspectorate of Government (IGG) and USAID reports that illegal payments to secure government contract at both the local and the central levels are even higher, representing approximately 7% to 9% of the contract value. The survey further estimates that direct losses due to corruption in procurement - at both the central and the local levels – amounted to between USD 64-85 million in 2004-2005. The majority of respondents identified the secretary to the Tender Board and Tender Board members as being most corrupt. (http://www.ppda.go.ug/downloads/Integrity%20survey%20FINAL%20REPORT%202007.pdf). The PPDA, IGG and USAID survey identifies the lack of effective reporting systems, poor record management by state organs, the weakness of the judiciary, the poor investigation of corruption cases, and the lack of effective systems to punish corrupt officials, as majors factors contributing to the high prevalence of corruption in public procurement.

Corruption in Tax Administration

Uganda undertook a major reform of its tax administration system with the formation of a semiautonomous revenue authority, the Uganda Revenue Authority, in 1991. Surveys indicate that corruption is on the rise in the Uganda Revenue Authority (URA), with instances of political interference, patronage and corruption at managerial level. There also seems to be an increase in the number of tax collectors *openly* demanding bribes in their dealings with tax payers. A 2005 CMI report on corruption in tax administration indicates that 43% of firms report occasionally or always paying bribes to tax officers. 84% of respondents to the 2005 Afro Barometer believe that tax officials are involved in corruption.

In 2003, five senior officers attached to the Large Taxpayer Department were involved in a major corruption scandal. A Commission of Inquiry of Corruption in the URA was appointed by the government in the same year due to serious allegations of

underestimated or misstated declarations in customs, as well as collaboration between tax payers and URA staff. The Commission released a much delayed and debated report two years later whose legality was questioned by Members of Parliament. The Report was ultimately nullified by the High Court. (http://www.u4.no/pdf/?file=/helpdesk/helpdesk/queries/ query147.pdf).

Corruption in the Police

The police are perceived as one of the most corrupt institutions in Uganda, particularly traffic police. 91% of respondents to the 2005 Afro Barometer believe that the police are involved in corruption, while 67% think that most or all police officials are involved in corruption. Few (about 17%) actually report having paid a bribe to avoid a problem with the police. According to the 2006 Global Integrity report mentioned above, political interference in police-work is commonplace, with high profile cases sometimes dropped following political pressure. Investigations of police corruption have increased under the leadership of a new police chief appointed in 2005. He has, however, faced internal criticism and has received several death threats. (http://www.business-anticorruption.

Judicial Corruption

According to Freedom House 2006 and 2008, the Executive does not respect the independence of the Judiciary and there have been instances of intimidation of the Judiciary. In 2005, heavily armed soldiers surrounded the High Court in an attempt to court-martial civilians involved in allegations of treason. Concerns about judicial independence were reinforced by security forces' intervention in a politically sensitive trial in 2007. Judges subsequently went on strike to protest against the invasion of the courts by security forces, and the East African Court of Justice found Uganda guilty of violating the rule of law and the rights of its citizens by allowing the military to repeatedly interfere with court processes.

The Uganda Law Society noted that this episode reflected a broader problem of government officials refusing to comply with judicial decisions. A **Bertelsmann Foundation Report** from **2008** reveals that the upper levels of the Judiciary demonstrate high standards of professionalism and independence. The administration of justice is undermined, however, by a lack of resources, skills and capacity at the lower levels of the Judiciary. (http://www.bertelsmann-transformationindex. de/63.0.html?&L=1)

According to the 2005 Afro Barometer, 73% of citizens think Judges and Magistrates are involved in corruption, while the vast majority of citizens believe high level officials are

significantly less likely to be held accountable for serious crimes than ordinary members of the public. The US-Investment Climate Statement 2009 confirms these perceptions, reporting that several high-profile government corruption scandals have, in recent years, resulted in few or no sanctions against the officials involved. A significant number of the companies surveyed for the 2006 Word Bank and IFC Enterprise Survey do not believe Uganda's courts to be fair, impartial and uncorrupted.

Thematic Topic 5: Leadership and the Role and Responsibilities of Leaders and Citizens

Leadership can be described as a process of social influence in which one person can enlist the aid and support of others in the accomplishment of a common task. It is a process whereby an individual influences a group of other people to achieve a common goal. It involves an interrelationship between the leaders, the group being led. Good leadership is an important aspect of democracy as it promotes participation and accountability.

Importance of Leadership

Leadership is the center of change and transformation of a society and it is important for 4 reasons.

(a) Leaders organize, manage and govern society to unlock its potent energies and capabilities. By governing and organizing people, leaders enable society to exploit the talents and the resources they have to bring about the desired change.

(b) Effective leaders work for the general welfare of society and for improvement of the living conditions for its people. The biggest business of a leader is to see how its people get better living conditions for this his/her pride not being preoccupied with personal comfort and progress.

(c) Leaders are standards setters. Effective leaders are role models of society who at all times provide inspiration and guidance on standards of behavior and quality.

(d) Leaders position society in its environment. Then enable society to unleash its influence and impact on its environment and in so doing, playing a crucial function of leading people to their destiny.

2.4 Roles and Responsibilities of Leaders

Leadership is made up of several different roles, functions and responsibilities. For one to be a good leader he/she should do the following:

1. *Inspire and communicate the shared vision*: This gives a sense of direction and purpose for the followers. It involves mobilizing resources and support for the dream and realistic actions to realize it.
2. *Involve others in decision making*: A leader certainly needs to have the decision-making skills. These skills are very important, as he/she is the one on whom the final decision rests. However, decision making should be participatory and supported by strategic planning and thinking.
3. *Enable others to act and perform*: A leader guides and provides tools to others for effective performance.
4. *Practice and promote transparency and accountability*: In the management of public resources, leaders must be transparent and accountable for their actions and decisions.
5. *Keep followers informed of trends and development*: Communication is key to this responsibility. Effective leaders ensure that tasks are well understood, owned and accomplished by followers.
6. *Develop a sense of responsibility in the followers*: Leaders help their followers to develop good character traits that will help them accomplish their undertakings in a professional, efficient and effective manner.
7. *Motivate their followers to pursue genuine courses*: A leader encourages and rewards people and makes them perform better. They use good problem solving, decision making, and planning tools to make sound and timely decisions.
8. *Conflict Resolution:* There may be times when a leader might be required to address a complaint. In such situations, the leader's conflict resolution skills are significant and should entail professionalism, fairness, and total understanding of the situation.
9. *Problem Solving*: The need for problem solving usually arises in daily work of the leaders. A problem can relate to difficulties and challenges in leadership. The leader has to think professionally, obtain complete understanding of the problem, involve others to sort out and compare probable solutions, and finally make decision.
10. *Act as role model:* A Leader must act in an exemplary and honorable manner to command the respect and trust from others. He/she should lead by example and be a role model to others.

Duties of the state

States assume obligations and duties under international law to respect, to protect and to fulfill human rights. The obligation to respect means that States must refrain from

interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfill means that States must take positive action to facilitate the enjoyment of basic human rights.

Constitution of the Republic of Uganda/ International Conventions

The International Covenant on Civil and Political Rights – 1966 in its preamble and Article 11 of Part I binds state parties to promote principles of dignity, equality, freedoms, justice and peace in the world wherein civil and political rights are derived from and enshrined as inherent and not guaranteed by the state. This Convention guarantees civil, political as well as economic and cultural rights of all persons and its entrenched in the 1995 Constitution of the Republic of Uganda as amended, under Chapter Four. Further to the above, the Directives of State Policy in the 1995 Constitution of the Republic Of Uganda as amended; **under- Democratic principles:-** The State shall be based on democratic principles which empower and encourage the active participation of all citizens at all levels in their own governance. Further to the above, **Art 29** of the Constitution emphasizes the protection of freedom of conscience, expression, movement, religion, assembly and association.

Session 2: Duties of the Citizen (youths)

The duties of a citizen are also clearly laid down Objective **XXIX of the 1995 Constitution as follows:**

At the individual level, while we are entitled our human rights, we should also respect the human rights of others. The exercise and enjoyment of rights and freedoms is inseparable from the performance of duties and obligations; and, accordingly, it shall be the duty of every citizen:

- to be patriotic and loyal to Uganda and to promote its well-being; to engage in gainful work for the good of that citizen, the family and the common good and to contribute to national development;
- to contribute to the well-being of the community where that citizen lives; to promote responsible parenthood;
- to foster national unity and live in harmony with others; to promote democracy and the rule of law; and **to acquaint himself or herself with the provisions of the Constitution and to uphold and defend the Constitution and the law.**

This is further emphasized under **Chapter 3, Art 17 of the Constitution – which elaborates on the Duties of a citizen as:**

- to respect the national anthem, flag, coat of arms and currency;
- to respect the rights and freedoms of others; to protect children and vulnerable persons against any form of abuse, harassment or ill-treatment;
- to protect and preserve public property; to defend Uganda and to render national service when necessary;
- to cooperate with lawful agencies in the maintenance of law and order; to pay taxes; to register for electoral and other lawful purposes;
- to combat corruption and misuse or wastage of public property; to create and protect a clean and healthy environment;
- to undergo military training for the defence of this Constitution and the protection of the territorial integrity of Uganda whenever called upon to do so.

Right of access to information and its impact on monitoring service delivery

Freedom of access to information is a human right and forms one of the defining characteristics of a democratic society and the basis for open government. The right to access information is an important human right. Access to information in government possession is one of the ways of promoting good governance, improve and strengthen the culture of transparency and accountability in the public sector.

The importance of an effective right of access to information has a solid basis in International and comparative human rights law which makes it an obligation of governments to provide state-held information to their citizens. Everyone has a right of access to the documents of the State and this information should be used to monitor service delivery of the state by the citizens, among others.

Legal Framework

Art 41 under Chapter Four of the Constitution: Right of access to information.

Every citizen has a right of access to information in the possession of the State or any other organ or agency of the State except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person.

1. Access to Information Act, 2005

This act enables youth to access any information on any program/project of government and this Act empowers the youth to access, monitor and supervise government programmes to ensure proper service delivery. The above laws should be used by the youth to fulfill their above mentioned duties most especially their duty to combat corruption and misuse or wastage of public property; to promote democracy and the rule of law; and to acquaint himself or herself with the provisions of the Constitution and to uphold and defend the Constitution and the law, among others. The youth, therefore, after this session should be able to access or apply for any kind about government programmes/projects like budgets, release of funds, implementation phases, etc so that they are able to do monitoring of service delivery.

Functions and Duties of Leaders

Chapter Seven of the Constitution spells out the functions and duties if the Executive. Article 99 is about the **Executive authority of Uganda** which is vested in the President and is to be exercised in accordance with this Constitution and the laws of Uganda. The article further states that:

The President shall execute and maintain this Constitution and all laws made under or continued in force by this Constitution. It shall be the duty of the President to abide by, uphold and safeguard this Constitution and the laws of Uganda and to promote the welfare of the citizens and protect the territorial integrity of Uganda.

Subject to the provisions of this Constitution, the functions conferred on the President by clause (1) of this article may be exercised by the President either directly or through officers subordinate to the President. A statutory instrument or other instrument issued by the President or any person authorized by the President may be authenticated by the signature of a Minister; and the validity of any instrument so authenticated shall not be called in question on the ground that it is not made, issued or executed by the President. Article 111 further spells out the functions of the Cabinet as follows: to determine, formulate and implement the policy of the Government and to perform such other functions as may be conferred by this Constitution or any other law.

Chapter Six of the Constitution provides for the Legislature (Parliament).

Article 79 thereof spells out the Functions of Parliament:

Subject to the provisions of this Constitution, Parliament shall have power to make laws on any matter for the peace, order, development and good governance of Uganda. Except

as provided in this Constitution, no person or body other than Parliament shall have power to make provisions having the force of law in Uganda except under authority conferred by an Act of Parliament.

Parliament shall protect this Constitution and promote the democratic governance of Uganda".

Article 91 spells out how Parliament should exercise its legislative powers:
Subject to the provisions of this Constitution, the power of Parliament to make laws shall be exercised through bills passed by Parliament and assented to by the President. A Bill passed by Parliament and assented to by the President or which has otherwise become law under this article shall be an Act of Parliament and shall be published in the Gazette.

Chapter Eight of the Constitution spells out the Powers, Functions and Duties of the Judiciary in the administration of Justice:

Article 126 thereof spells out how judicial power should be exercised.

"Judicial power is derived from the people and shall be exercised by the courts established under this Constitution in the name of the people and in conformity with law and with the values, norms and aspirations of the people."

Article 127 provides for the participation of the people in the administration of justice;

Parliament shall make law providing for participation of the people in the administration of justice by the courts. Under the Sixth schedule of the Constitution, there are **Functions and Services for which Government is responsible.**

These include:

- Defence, security, maintenance of law and order;
- Banking and finance, (promissory notes, currency and exchange control, taxation policy);
- Citizenship, immigration, emigration, refugees, deportation, extradition, passports and national identity cards;
- Copyrights, patents and trademarks and all forms of intellectual property; incorporation and regulation of business organizations;
- Land, mines, mineral and water resources and the environment, National parks, as may be prescribed by Parliament;

- Public holidays, National monuments, antiquities, archives and public records, as Parliament may determine;
- Foreign relations and external trade, Regulation of trade and commerce;
- Making national plans for the provision of services and coordinating plans made by local governments, national elections, energy policy, transport and communications policy, national censuses and statistics, Public services of Uganda;

Judiciary, Education policy, National surveys and mapping, Industrial policy, Forest and game reserve policy, National research policy, Control and management of epidemics and disasters, Health policy, Agricultural policy and any matter incidental to or connected with the functions and services mentioned in this Schedule.

Session 2: Chapter Eleven: Local Government System

Principles and structures of Local Government

Article 176: Local Government System

The system of Local Government in Uganda shall be based on the district as a unit under which there shall be such lower local governments and administrative units as Parliament may by law provide. The following principles shall apply to the local government:

- The system shall be such as to ensure that functions, powers and responsibilities are devolved and transferred from the Government to local government units in a coordinated manner;
- Decentralization shall be a principle applying to all levels of local government and, in particular, from higher to lower local government units to ensure peoples' participation and democratic control in decision making;
- The system shall be such as to ensure the full realization of democratic governance at all local government levels;
- There shall be established for each local government unit a sound financial base with reliable sources of revenue; appropriate measures shall be taken to enable local government units to plan, initiate and execute policies in respect of all matters affecting the people within their jurisdictions;
- Persons in the service of local government shall be employed by the local governments; and the local governments shall oversee the performance of persons

employed by the Government to provide services in their areas and to monitor the provision of Government services or the implementation of projects in their areas.

(3) The system of local government shall be based on democratically elected councils on the basis of universal adult suffrage in accordance with Article 181(4) of this Constitution.

Article 186: District Executive Committee

There shall be an Executive Committee for each district council which shall perform the Executive functions of the Council. An executive committee shall consist of—the district chairperson; the vice chairperson; and such number of secretaries as the council may decide. The terms and conditions of service of local government staff shall conform to those prescribed by the Public Service Commission for the public service generally.

The district service commission may establish committees in respect of specialized disciplines. The vice chairperson shall be a person nominated by the district chairperson from among members of the council and approved by two-thirds of all members of the council. The secretaries shall be nominated by the chairperson from among members of the council and approved by a majority of all members of the council.

The vice chairperson shall deputise for the chairperson and shall perform such other functions as may be assigned to him or her by the chairperson. If the district chairperson dies, resigns or is removed from office, the vice chairperson shall assume the office of chairperson until the election of a new district chairperson, but the election shall be held within six months after the occurrence of the event.

A secretary shall have responsibility for such functions of the district council as the district chairperson may from time to time assign to him or her. A district council shall appoint standing and other committees necessary for the efficient performance of its functions.

Article 189: Functions of the Government and District Councils

Subject to the provisions of this Constitution, the functions and services specified in the Sixth Schedule to this Constitution shall be the responsibility of the Government. District Councils and the councils of lower local government units may, on request by them, be allowed to exercise the functions and services specified in the Sixth Schedule to this Constitution or if delegated to them by the Government or by Parliament by law. District Councils shall have responsibility for any functions and services not specified in the Sixth

Schedule to this Constitution. Subject to the provisions of this Constitution, the Government may, on request by a District Council, assume responsibility for functions and services assigned to the District Council.

Women in leadership and the concept of Affirmative Action:

Affirmative Action: As President Lyndon Johnson said in 1965, "You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say you are free to compete with all the others, and still just believe that you have been completely fair." President Johnson's speech eloquently stated the rationale behind the contemporary use of affirmative action programs to achieve equal opportunity, especially in the fields of employment and higher education.

The emphasis is on opportunity: affirmative action programs are meant to break down barriers, both visible and invisible, to level the playing field, and to make sure everyone is given an equal break. They are not meant to guarantee equal results -- but instead proceed on the common-sense notion that if equality of opportunity were a reality, African Americans, women, people with disabilities and other groups facing discrimination would be fairly represented in the nation's work force and educational institutions.

The debate over affirmative action demarcates a philosophical divide, separating those with sharply different views of the "American dilemma" -- how the nation should treat African Americans, other people of color and women. This division centers on a number of questions: to what extent discrimination and bias persist, especially in a systemic way; to what degree affirmative action programs have been effective in providing otherwise unavailable opportunities in education, employment, and business; and to what extent affirmative action programs appear to unduly benefit African Americans and other people of color at the expense of the white majority.

The continuing need for affirmative action is demonstrated by the data. For example, the National Asian and Pacific American Legal Consortium reports that although white men make up only 48% of the college-educated workforce, they hold over 90% of the top jobs in the news media, 96% of CEO positions, 86% of law firm partnerships, and 85% of tenured college faculty positions.

Affirmative action is not, as some critics charge, a uniquely modern concept fashioned by contemporary liberals in defiance of history or tradition. Although the techniques that we

now call "affirmative action" are of fairly recent design, the conceptual recognition of the need to take affirmative, or positive legal action to redress discrimination's impact, rather than simply ending discrimination, has been around since the Civil War. During Reconstruction (the period immediately after the Civil War), the Constitution was amended and other federal initiatives, such as the creation of the Freedman's Bureau, were undertaken to establish equal opportunity for the former slaves. These initiatives were at least modestly successful, bringing about African American participation in elections for the first time.

Sporadic efforts to remedy the results of hundreds of years of slavery, segregation and denial of opportunity have been made since the end of the Civil War.

A significant number of African Americans held public office, including two U.S. senators and 20 members of the House, between 1870 and 1900. But when the federal government withdrew its support for Reconstruction in the late 1800s, the gains made by African Americans were quickly stripped away and replaced by a patchwork system of legal segregation (including, in some instances, legal segregation of Latinos, Asians, and Native Americans as well).

By 1896, in Plessy v. Ferguson, the Supreme Court had upheld the cornerstone segregationist doctrine of "separate but equal" - i.e., ruling that the Constitution permitted governments to require separation of the races in schools, public transportation, and elsewhere, so long as the opportunities offered the separate races were characterized as equal.

In the modern era, the concept of affirmative action was reborn on June 25, 1941, when President Franklin Roosevelt -- seeking to avert a march on Washington organized by civil rights pioneer A. Philip Randolph -- issued Executive Order 8802 requiring defense contractors to pledge nondiscrimination in employment in government-funded projects.

Two years later, President Roosevelt extended coverage of the executive order to all federal contractors and subcontractors. In a 1947 report, the President's Committee on Fair Employment Practices found that, while African Americans comprised only three percent of the workers in defense industries in 1942, their number had increased to eight percent in 1945. But it also found "the wartime gains of Negro, Mexican-American and Jewish workers . . . began to disappear as soon as wartime controls were relaxed."

Successive presidents, under pressure from the African American community and civil rights advocates, continued the effort to increase minority employment opportunities and end job discrimination. It was not until President Kennedy issued Executive Order No. 10925, requiring not only that federal contractors pledge non-discrimination but that they "take affirmative action to ensure" equal opportunity, that the now-fractious phrase came into popular discourse. Kennedy's order also included penalties -- including suspension of a contract -- for non-compliance. This was succeeded by another executive order (Executive Order 11246) issued by President Lyndon Johnson, along with the creation of the Office of Federal Contract Compliance in the Department of Labor to enforce its non-discrimination and affirmative action requirements.

The Executive Order was amended in 1967 to include prohibitions on sex discrimination by federal contractors, along with a requirement that they engage in good faith efforts to expand job opportunities for women. Executive Order 11246 remains among the most effective and far-reaching federal programs for expanding equal opportunity.

Implementation of affirmative action started slowly, with the construction industry the site of one of the first tests. In 1965, the Office of Federal Contract Compliance created government-wide programs to redress the years of discrimination in the construction industry. The series of affirmative action programs was designed to boost minority employment by emphasizing hiring results in federally funded construction jobs.

In the 1970s, The Vietnam Era Veterans Readjustment Assistance Act of 1972 called for "the preferential employment of disabled veterans and veterans of the Vietnam era ... who are otherwise qualified." The act was amended a year later to require federal agencies and contractors to take affirmative action in employment and promotion for people with disabilities. These changes underscored the use of affirmative action as a balancing of competitive interests. Affirmative action was understood to be the creation of opportunities to compete and not an assurance of outcome or success.

Women and Leadership Positions: Social and Cultural Barriers to Success[4]

Women continue to aspire for leadership positions in all spheres of governance in both the public and private sector. Women are confronted by barriers related to culture and

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cultural expectations, the choice and/or balance between work and family, and women's own fear of success.

They continue to aspire to leadership positions in all spheres of governance both in the public and private sectors. Great strides have been made in the political realm, and women's participation in both the freedom struggles and democratic processes of many African countries have been notable. However, this participation has not always translated into equal representation in political leadership positions. Once elections are conducted, and positions are assigned, one realizes that women are no longer visible.

Some countries like South Africa have made much progress within a short space of time in their efforts toward a gender-neutral society, but for others the pace has been much slower. It should also be noted that attaining positions of power and leadership is one thing, but could it be that women pay a higher price than men? Gwendolyn Mikell (1997) captured the dilemma for women in her statement that "Contemporary African women sometimes think of themselves as walking a political/gender tightrope" (p.1), in that African women are concerned about the large number of economic and political problems facing their communities, but at the same time they are "grappling with how to affirm their own identities while transforming societal notions of gender and familial roles" (Mikell, 1997, p.1).

However, there is no doubt that there are success stories. Of interest are the efforts women have made to rise above such circumstances and fight for recognition, despite the risks involved: of being "labeled," and the risk of breaking family ties. Political activism is one notable area of success in the women's movement. Successes in educational and academic leadership are also highlighted and the strategies taken by various agencies in both government and private sectors to develop and promote women leaders are explored. While women gain certain freedoms by facing social and cultural challenges, other freedoms may be lost. These situations should be investigated.

The Concept of Leadership

Historically, leadership has carried the notion of masculinity and the belief that men make better leaders than women is still common today. Although the number of female leaders has increased, they are often named as an afterthought. According to Højgaard (2002), the societal conventions regarding gender and leadership traditionally exclude women, and top leadership is viewed as a masculine domain. The same author further argues that the cultural construction of leadership in itself instigates difference and this

is only now being transformed or contested as women gain access to leadership positions.

In African societies, it is believed that men lead and women follow (Ngcongo, 1993, in Grant, 2005). It is not uncommon in rural villages in Africa to find the man literally walking ahead of the woman. Different reasons may be advanced for this but ultimately it illustrates the deeply held notion of leadership as masculine. There was a time that it was believed that leaders were born with certain leadership traits. However, current thinking on leadership assumes that leadership can be taught and learned, hence the many leadership-training programs (de la Rey, 2005). Cheryl de la Rey (2005) lists the traits commonly associated with leadership as effective communication skills, task completion, responsibility, problem solving, originality, decision making, action taking, vision, self awareness, confidence, experience and power. While it is possible to develop these traits in any individual, regardless of gender, in male dominated societies (as is often the case in African societies) male leadership and leadership styles predominate and are regarded as the more acceptable forms of leadership.

Growe and Montgomery (2000) defined leaders as people "who provide vision and meaning for an institution and embody the ideals toward which the organization strives" (p. 1). From that perspective, leaders are alike and genderless. However there is still skepticism when women lead and in many situations, gender, more than age, experience or competence determines the role (position) one is assigned. There is research to show that such fears or doubts about women are baseless. Growe and Montgomery (2000), in studies on school administration, found that schools with female administrators are better managed (the quality of pupil learning and professional performance of teachers is higher), and on average perform better than those managed by men.

Similar findings have been reported by Aladejana (2005) in her study regarding female representation in leadership positions in education administration in South West Nigeria. The difference may be in the leadership styles of women versus those of men.

There seems to be enough evidence to suggest that women lead differently from men (Eagly and Johnson, 1990, as cited in de la Rey, 2005). For instance, women portray a more participatory approach, are more democratic, allow for power and information sharing, are more sensitive, more nurturing than men, focus on relationships and enable others to make contributions through delegation (de la Rey, 2005; Growe & Montgomery,

2000; Tedrow, 1999). Tedrow (1999) also noted characteristics such as building coalitions and advancing individual and community development are constructs that women display in their relational styles. Women are also better at conflict management, have better listening skills and show more tolerance and empathy.

While men and women do have different leadership styles, that should not mean that one is dominant over the other. It has been observed that the differences we see in leadership style are partly due to the way men view leadership as leading, while women see leadership as facilitating (Growe & Montgomery, 2000).

In contrast to the characteristics of women given above, men lead from the front and attempt to have all the answers while stressing task accomplishment, the achieving of goals, the hoarding of information and winning (Growe & Montgomery, 2000). Contemporary work environments could definitely benefit from leaders who portray more of the traits associated with women. Sadly, in a situation where accepting women as leaders is problematic, it is possible to overlook their positive leadership traits and view them as weaknesses.

In fact, stereotypes of how women lead have made it difficult for women to access or even stay in leadership positions. Tedrow (1999) argued that women who display more relational styles of leading are likely to be marginalized within their organizations and viewed as 'outsiders'. Even more disconcerting is the fact that women who seem to 'make it' as leaders often end up conforming to the strong male culture in the work place, and adopt male leadership styles. As indicated by Growe & Montgomery (2000), since female leaders see gender as a hindrance, they are compelled to lead the way men do as it is considered the norm.

In their view, utilizing men's methods of leadership is not only the easiest way for a woman to be hired for any position of leadership, but is the most successful method of attracting promotion and recognition.

Gender (in) equity in Leadership Positions: A Situation Analysis:

Despite efforts made to ensure that female representation is achieved at all levels of governance, women are still underrepresented in many government and non-government organizations particularly in positions of power and leadership (de la Rey, 2005). From statistics presented by Sadie (2005) on the Southern African Development Community (SADC) parliamentary structures, it is evident that the target of 30%

representation by women in political and decision-making structures of member states (set by Heads of State and Government in adopting the 1997 Declaration on Gender and Development, and to be achieved by 2005) was not met, except in South Africa and Mozambique.

For instance, by 2004 the proportion of women in Parliament was 15.4% in Angola, 15.9% in Botswana, 12% in Lesotho, 14.4% in Malawi, 17.14% in Mauritius, 25% in Namibia, 22.3% in Tanzania, and 16% in Zimbabwe while South Africa and Mozambique had 32.8% and 37.2% respectively. There were not always concomitant proportions of women in the cabinets of the respective countries. Sometimes the proportion in cabinets was higher as in the case of Botswana (28.7%), Lesotho (41.6%) and Malawi (20.7%), while in other countries this number went down.

There is thus a wide range in the level of achievement (in meeting set targets), but at least something has been and is being done to correct the situation. Another discrepancy in the SADC region is evident in party structures. Although women constitute the majority of voters, Sadie (2005) observed that they are severely underrepresented in party structures and on party lists to the extent that while gender equality is enshrined in the party constitutions and manifestos, it is not integrated in party structures.

In some cases where women serve as party executives, it is because they move in as ex officio members by virtue of their role as chairpersons of the women's leagues. In Kenya, the progress towards women's involvement in politics was initially very slow and noticeable changes have only been observed within the last 10 years. According to Nzomo (1997), although the post-independence government brought new possibilities for political involvement, Kenyan women were not granted the same political access as men. For this reason, equitable democratic participation at the level of gender has yet to be attained. This has since changed in the 2012 elections after a Constitutional review that ushered in more gender empowerment clauses nationally.

In politics, women have been marginalized because men monopolize the decision making structures and are in the majority. One underlying problem for women has been the difficulty in dealing with the inherent patriarchal structures that pervade the lives of people, the processes of state and the party (Nzomo, 1997). In many societies, women are still assigned a secondary place by the prevailing customs and culture.

Examples abound of efforts that have been made to include and involve women but for the most part, these are superficial changes (such as minimum quotas of 30% women are introduced by certain parties, or the constitution is changed to allow for representation by women, as in Tanzania). However, on careful examination of the situation one finds that implementation is lacking.

As indicated earlier, in many African countries there is no relationship between the number of women voters and the representation by women in party structures. To what extent women themselves actively strive to fulfill these mandates is worth investigating. It has been said of women in Kenya that not only are societal customs and attitudes to blame for their small part in politics, but their education and training tend to make women accept their secondary status as the natural order of things (Duverger, 1975 as cited in Nzomo, 1997).

It would seem there are other barriers (explicit and implicit) that make it difficult to attain equity even after policy and legal interventions.
In education and academic circles, the picture is more distressing especially if one looks at higher education. One would expect that things would change faster in this environment. After all, as Carleene Dei (2006) observed, universities are traditionally viewed as centers of free thought, change and human development (Foreword).

But literature on leadership in higher education generally reveals that women are less likely than men to participate in upper levels of administration. Leadership in higher education is still a man's world and universities are male dominated institutions (Gumbi, 2006). In South Africa, the government and its leadership have been committed to gender equality and the empowerment of women, but institutions of higher education have not been quick to emulate the government's example.

Survey data on South Africa, reported by Gumbi (2006), showed that in 2003, the average number of women in senior management was approximately 24% across 17 institutions of higher learning. At that point in time there were only 3 female Vice Chancellors, while 82% of professors were male and only 18% were female.

A 2005 study carried out in 8 higher education institutions as part of a USAID funded United Negro College Fund Tertiary Education Linkages Project (TELP), found that gender representation of staff was almost equitable (46% women versus 54% male), but that the

majority of the women (69%) were employed in lower level administrative, technical or service positions, against 57% of the men falling into this category (UNCFSP-TELP, 2006).

Representation of women at Council level (the highest governance structure at higher education institutions) across the 8 institutions was 20% women and 80% men, and only 15% of senior management were women. Representation of women at middle management was slightly better at 27% (UNCFSP-TELP, 2006). Men also dominated positions at professorial and senior lecturer positions.

This gender imbalance is repeated in other countries in the world. According to Universities UK (2004) as cited in Gumbi (2006), out of 40,000 professors in higher education in the UK in 2003, 13% were female and 87% male, while 73% of senior lecturers and researchers (total of 24,630) were male and 27% female. In Australia, women in executive leadership in 2000 were 34.6% compared to 65.4% men (Gumbi, 2006). The USA, admittedly an advanced economy and emulated in many other ways, has not achieved gender equity in higher education. Gumbi (2006) reported that women held 18.7% of full professorships, and only 19.3% of presidents (Vice Chancellors) of colleges and universities.

It is therefore quite evident that men dominate the governance and management levels of higher education institutions. Consequently, men have the decision-making power and authority regarding strategic direction, and allocation of resources. More disconcerting is the likelihood that women's interests in the institutions may not be adequately taken care of, and that women have few or no role models and mentors, something that may have far reaching consequences in terms of developing future female leaders. It is certainly important to acknowledge Cole's (2006) observation that "women professors in higher education do not just appear out of nowhere. They have to be nurtured and developed throughout society" (p. 23).

Barriers to Women in Leadership

Various factors are at work in limiting women's potential to aspire to positions of leadership. Sadie (2005) advanced the argument that at the bottom of the constraints that women face is the patriarchal system where decision making powers are in the hands of males.

In the African context, traditional beliefs and cultural attitudes regarding the role and status of women in society are still prevalent and many women are part of this system

finding it difficult to dislocate from this culture and tradition lest they be ostracized. Despite women's education and entry into the job market, the woman's role is typically one of homemaker. The man, on the other hand, is bread winner, head of household and has a right to public life (Sadie, 2005). Confining women's identity to the domestic sphere is one of the barriers to women's entry into politics and politics by its nature catapults one into public life. Generally, cultural attitudes are hostile to women's involvement in politics.

Some women were able to transcend cultural barriers and rise to positions of leadership (whether in politics or elsewhere), but more often than not, it meant having to juggle cultural expectations with their leadership roles. Perhaps one of the most notable examples in literature is Grace Onyango (extensively covered elsewhere in this journal) who in 1969, was the first female elected Member of Parliament in Kenya, but had previously held several leadership positions including that of mayor of the third largest City in Kenya.

Grace Onyango was well versed with the Luo traditions, respected and even adhered to them, while at the same time playing into the political/official role of mayor, then parliamentarian. It must be realized that the Luo, like many ethnic groups in Kenya, is traditionally patriarchal. When Onyango came to power in the 1960s, Africa, according to Tripp (2001), had the lowest rate of female legislative participation in the world (p. 142), and politics was a male affair.

Ascending to leadership/power positions was not easy for Onyango. She often faced opposition with people (men in particular) arguing that these positions were only suitable for men. Musandu's (2008) chronicle of Onyango's political career shows a woman who was bold, knew what she wanted, and had specific skills that appealed to men and women. Onyango seems to have been cautious not to offend her people by opposing respected (male) elders, and Musandu (2008:14) reckons that at one point Grace Onyango was "at an ethnic and national political crossroads and her survival as a politician depended on the successful balancing of the two important interests".

It has been argued that women themselves are often re on women speaking in public or going to public places. Women are reluctant to run for public positions and this is partly attributed to cultural prohibitions campaigning requires that one travel extensively, spend nights away from home, go into bars, and for women it means meeting men. All of these things are not easily accepted for women in many African societies (Tripp, 2001).

Women who vie for public office have to consider the risk of being labeled 'loose' or 'unfit' as mothers and wives, and being socially stigmatized. Such considerations make many women shy away from politics, and positions that put them in the public eye.

Another factor which has played a role in influencing women's political support is the media (Sadie, 2005). For instance, in Botswana and Mozambique, the media often fails to give coverage to the campaigns of female candidates or to interview them. Men have also been known to treat women with hostility during political campaigns.

Aili Mari Tripp (2003) reports that in the 1996 presidential elections in Uganda, there were many incidents of intimidation and harassment of women by men (even husbands), who had differing political opinions. Politically active women in that country were threatened with withdrawal of family support, some were thrown out of their homes, and others killed.

The socialization of the girl child in many societies is also to blame for perceived inabilities on the part of women. To quote Melody Emmett (2001:67), "The life passages of women are not sacramentalised, celebrated or even acknowledged". This is illustrative of the position ascribed to women, right from the birth of the girl child, in comparison to the boy child and the subsequent position of men in society. In many African cultures, the rituals and rites of passage pertaining to the boy child nurture them for leadership positions, whether at local or national levels of governance, in business, politics or public administration.

Religion tends to cement these cultural norms. As observed by Emmet (2001), all mainstream religions have stereotypical roles for men and women where women are perceived as less equal than men, often being kept separate in the way roles are assigned. In her discussion of women's experience of religion, Emmet (2001) analyzed the rituals performed for and by men in various religions (including Hinduism, Islam and Christianity), finding that men are generally valued and empowered by religion in many ways.

Women do not enjoy such privilege, being disempowered by religious structures and practices. In other public arenas, women's access to leadership positions has been hindered by discrimination and stereotyping. Women are more or less persecuted for

seeking an executive position. This is largely due to society's attitude toward appropriate male and female roles.

In their discussion on barriers women face in leadership positions, Growe and Montgomery (2000) say that compared to men, women receive little or no encouragement to seek leadership positions. There are also few social networks (formal and informal) for women such as membership in clubs, resulting in a lack of recognition that leads to advancement.

Administrative/leadership positions require hard work, long hours and are stressful. For women, this burden is added on to their child-care, home, and family responsibilities, a phenomenon referred to as the 'double shift' in Sader, et al. (2005). These observations are also true of women in higher education. In addition to issues of family responsibility that make it difficult for women to advance, cultural beliefs about the roles of men and women inhibit women's advancement to top leadership as much as it does in politics (Pandor, 2006). Pandor (2006) also pointed out the all too common statement (often not taken seriously) that women at senior level positions are not always supportive of other women and tend to want to maintain the status quo. Of course, institutional culture and micro politics do act as barriers for women implicitly or explicitly influencing the research environment that ultimately breeds professors and executive leaders.

For many women, the time demands of such positions conflict with the demands of the family, and this in itself is a barrier. There are also other structural barriers beyond culture and religion. Data from the Danish sample of the Comparative Leadership Study found that certain access conditions and conditions of gender positioning seem to predetermine access to top leadership positions, in business, political and public administration.

Højgaard (2002) found that the social background of male and female leaders (an access condition) played a particular role in political leadership. The sample of politicians showed that both parents of female leaders had better education and more highly placed jobs than the parents of male politicians.

The main conclusion was that in order for women to get top jobs in politics they have to come from a more privileged social background than men. In addition, there were differences in career paths between male and female leaders, with men being recruited from a wider spectrum of jobs than women. Men also achieve top leadership jobs faster than women.

With regard to conditions of gender positioning, Hojgaard (2002) looked at marital status, presence of children and distribution of work at home. The male leaders were more likely to be married, while a higher proportion of women leaders were divorced or independently living together. Furthermore, a higher proportion of women had no children. The partners of female leaders were also more likely to be working full time, while among the partners of male leaders (especially business leaders) there was a high proportion of part time work and full time housewives. Two thirds of male leaders did little or no housework, indicating that most male leaders (unlike female leaders) are relieved of the burdens associated with family life and can devote all their energy to their jobs.

These findings are very illustrative of the social cost of leadership for women, and the gender positioning conditions illustrated in the Danish study could be applied to African women. As such, it is little wonder that many women are hesitant to take up positions of leadership because of the stress involved. For women who do seek leadership positions, some factors that contribute to this stress include balancing work and family, domestic violence and discrimination (Cole, 2006, Gardiner & Tiggermann, 1999).

In the African context, the work and family dichotomy is filled with many contradictions for women that provoke stress. African women have certain expected roles to play. They are expected to bear and nurture children, as well as manage the home. At the same time, today's African woman is expected to earn a living and contribute to the running of society (BBC News, 2005). In short, Gwendolyn Mikell (1997) referred to contemporary African women as walking a political/gender tightrope, but it is also a leadership and gender tightrope. Tsitsi Dangarembga from Zimbabwe, in her interview with BBC News (BBC News, 2005) said that one of the reasons there are few women in positions of power is a lack of unity among women themselves. The explanation she gave was that since women were vying for scarce resources, they tend to see other women as a threat and are jealous of one another.

She further went on to say that women have the potential to bring about change, but they lack organization due to lack of time, given their multiple roles as bread winners, wives and mothers. African women also fear to raise their voices and speak out for fear of victimization (supposedly by fellow women but also by men, given the cultural expectations of what a woman should or should not do). In this interview, Dangarembga also pointed out that women fear to excel because it makes them seem threatening.

Women who want to get married have to present themselves as good marriage material by being meek and submissive.

Another reason for the difficulty African women have in attaining national and international recognition is their daily struggle for survival. It is difficult in the African environment with its extreme deprivation to emphasize women's issues when there are so many pressing national issues (BBC News, 2005). Tripp (2001) also found that despite the political progress made by women in the 1990's, their efforts did not pay off in terms of women being appointed to public office. Women lack the necessary financial support or resources (often mobilized individually and publicly) and this is another tactical measure applied to discourage women from politics. In addition, they are said to lack political experience, confidence, education and connections to run for office (Tripp, 2001: BBC News, 2005). The lack of time due to women's reproductive roles is also mentioned as a limitation to women's participation in leadership (Shayo, 2005).

These barriers are not unique to African women. Similar issues have been raised regarding educated Chinese women. Qin (2000), in examining the development of female college students in China, found that several factors combine to restrict their desire to become successful career women. These include traditional prejudice, social pressures, women's sensitivity to people's misconception of successful women, and the tendency of men to choose 'family-oriented' wives. These women even fear being more capable than men and as a result shy away from demanding jobs.

Women are torn between work and family as, on the one hand they do not want to be housewives but at the same time they are challenged to be super women. They wish for and fear the opportunities and challenges of the external world. Professional women in managerial positions face many challenges and those in institutions of higher learning are no exception. Moutlana (2001) noted that the socialization of women at the work place occurs within a system of power and inequality and that such systems tend to reproduce various forms of inequality.

In South Africa, traditional universities have had corporate cultures whose norms and values were those of the dominant white male society (Moutlana, 2001). When women join such institutions as leaders, they soon realize that they are expected to conform or assimilate to the established culture. After all, how can one be admitted to an exclusive club, and then contradict the club's core values?

Moutlana argues that women (Black women particularly) in management are more visible, experience more hardship and feel isolated. Women have to work extra hard as they do not seem to be given the latitude to make mistakes. In many institutions women's attainment of leadership positions has been facilitated by the implementation of employment equity policies and affirmative action. However, because of this there is the perception that one was 'let in,' and even the most capable women are viewed with suspicion. Leadership for women is not an easy task, and, as observed by Moutlana (2001), moving up and staying at the top is not necessarily filled with joy. Other literature on women's leadership in higher education reveals that women are less likely than men to participate in upper levels of administration (Tedrow, 1999). This author advances the theory that there is some kind of 'success-avoidance' by women that influences their leadership ability or interest in leadership positions. Advocacy in the higher education arena has tended to rely upon and respond to government legislation on equity rather than being something that women in the sector actively struggle for.

Clearly, many women do make sacrifices in the effort to succeed, whether professionally or personally. For example, women still expect and are expected to take responsibility for bringing up their children, but less parental responsibility is expected of men. As observed by Polly (1988), "If women don't care enough for their children, they know their children risk neglect. If men don't care enough, they know their wives will" (Washington Monthly, May 5, 1988).

This observation is true for many working African women today. The issue of children, or family for that matter, is one that disturbs many women as they make the decision to take up a leadership position. Therefore, it is not surprising that some women are perceived as avoiding success in order to care for their families.

Strategies Used To Ensure Equitable Representation In Leadership Positions:

Despite women's efforts (collectively and individually) to fight for recognition and inclusion in all structures of governance, including leadership, it has been very difficult to achieve equity without direct intervention from the government, even where, as in the case of South Africa, the constitution and other regulations make provision for women to be given equal rights to job opportunities and positions of power. For instance there has been a breakthrough in politics for female parliamentarians due to party regulations and electoral laws which have been changed to ensure that women are elected. Changing the rules provides an opportunity for women to participate in

politics, since, “women’s increased participation in decision-making seldom happens by some evolutionary miracle” (Lowe Morna, 2004, as cited in Sadie, 2005).

Worldwide, there are three policies that are applied to ensure women’s representation in various structures, and Norris (2000) outlined these as rhetorical strategies, affirmative action programs, and positive discrimination strategies. Rhetorical strategies are an informal means of getting women to participate in decision-making structures articulated through political and other public speeches. Rhetorical strategies are often viewed as merely symbolic gestures made in order to appear politically correct and thus gain political mileage. However, rhetorical strategies may also represent the first step toward more substantive reforms if they encourage more women to be selected as parliamentary candidates (Norris, 2000).

Unfortunately, rhetorical statements are made that may not always result in implementation and there are usually no mechanisms to ensure or enforce compliance. In the words of the chairperson to the Kenya women parliamentarians Association, “unless the 30 percent target is legalized, women will always remain short-changed” (*Daily Nation*, July 6, 2007). Rhetorical statements have to be followed up with concrete measures and women themselves should take up this challenge. Affirmative action has been used in many countries to correct gender imbalances. According to Norris (2000), affirmative action programs are meritocratic policies that aim to achieve fairness in recruitment by removing practical barriers that disadvantage women.

Affirmative action programs provide training (on public speaking for example), advisory group goals, financial assistance, and monitoring of outcomes. Gender quotas may fall into this category if they are advisory in nature. Positive discrimination strategies on the other hand set mandatory quotas for the selection of candidates from certain social or political groups (Norris, 2000).

Quotas can be set at different levels (to indicate proportion of representation) or at different stages of the selection process. Quotas can also be binding and implemented by law or other internal party rules. Obviously when quotas are legally specified as part of the constitution, they are more likely to be implemented, and guarantee women (or other minority groups) inclusion in leadership. Some people view this process as unfair as some people are automatically included or excluded from recruitment processes exclusively on the basis of their gender or race. It has been argued that such strategies violate the

principles of fairness and competence and contribute to a culture of laxity in women (Sadie, 2005).

The SADC countries are committed to fair gender politics and policies and set a minimum target of 30% representation by women in decision making structures of member states, with the SADC parliamentary Forum Constitution having been amended to ensure 50% representation of women (Sadie, 2005). The quota system has been applied in the SADC region, although in many cases the application has been voluntary. Yolanda Sadie (2005) indicates that there has been pressure to have constitutionally mandated quotas for women in politics in order to safe guard the commitment to gender equality.

However, it is only in Tanzania that legislative quotas at the national level exist. Sadie (2005) defends the quota system by saying that the uneven playing field on which men and women compete is such that it requires measures to ensure that women are included. The system of presidential appointments has been a key strategy used to ensure female representation in political governance. In Swaziland, women have gained access to parliament mainly through appointment by the King, and in many other African countries (including Botswana and Zimbabwe) it is often direct intervention by the presidents that redeems the situation for women in the parliaments (Sadie, 2005).

South Africa is a special case where the President appointed a woman as deputy president, appointed a substantial number of female cabinet members, and increased the number of female provincial premiers from one to four. It has been suggested that the only means to overcome existing man-made barriers to women's political participation is to develop a strong women's movement that could offer support in overcoming systemic gender discrimination (Nzomo, 1997). It is evident that even with gender equity policies in place, women need to monitor implementation themselves.

As observed by Nzomo (1997), an over reliance on policy makers and/or state bureaucrats will only bring limited, sometimes superficial, reforms. Also, voluntary quotas are at the mercy of the government of the day for enforcement and may be abandoned at any time. In any case, women should not lose sight of the fact that the policy makers, state bureaucrats and political parties that implement present reforms are still male dominated.

To what extent are present reforms genuinely implemented for women? Could there be another reason for these reforms? Until women take full charge and responsibility for

issues that concern them changes will remain superficial and slow. There is need for continued lobbying by women for women's issues.

Women's Activism

Activism by its definition "implies acting upon, acting against, acting for causes and issues of social concern and not only personal concern" (Nair, 2004, p. 30). Activism is about social change and is a movement, or a struggle for a particular cause. As indicated by Nair (2004, p. 30), there is a desire to change systems that do not work, and a desire to create systems that do. To what extent have women's movements challenged barriers to women's access to leadership positions? Women's activism, the world over, has been successful in creating the legal framework and constitutional changes that have enabled women to attain positions of power/leadership.

There is no doubt that women have come a long way in challenging the status quo. African women in particular have made great achievements, especially in political activism given their cultural and social backgrounds. The growth in women's organizations in Africa since the 1990's, and their ability to organize locally and nationally to voice their concerns has been phenomenal (Tripp, 2003).

The 1985 and 1995 UN Women's conferences in Nairobi and Beijing respectively, were key milestones for the women's movement internationally. When women's organizations started in Africa they centered on religious, cultural or welfare concerns. Popular activities were handicrafts, savings clubs, farming, and income generating activities. These organizations were tied to the single party states at the time, as women did not want to be at odds with government authorities and there was little or no advocacy to change the laws and policies that discriminated against women (Tripp, 2003). Maendeleo Ya Wanawake, a large women's organization in Kenya, was one such organization concentrating on domestic activities that confined women to their prescribed role of mothers and home makers.

After the UN resolution in 1975 to end the discrimination against women on grounds of their sex, many countries set up organizations (such as special ministries, commissions, committees or councils) for women. However, these organizations were dependent on the government of the day for support, or were organized by the ruling party. Leaders and nominees for elections had to be approved by the ruling party, and

no serious attention was given to women's issues. Finally, in the 1990s, there was increased activism for women's rights.

According to Tripp (2003), many autonomous and heterogeneous organizations emerged after the 1985 UN women's conference, while the 1995 Beijing conference incited new energy in advocating women's issues to governments.

There were professional associations for women, and women's rights groups tackling specific issues, such as reproductive rights, violence on women, rape, and the development of organizations to address women's fiscal needs, such as credit and finance. Women began to claim leadership of organizations that had predominantly male membership, such as the first woman to head the mineworkers union in Namibia in 2001, and the first woman to head the National Chamber of Commerce and Industry in Uganda in 2002.

There are also examples of African women who had the courage to delve into politics when few women did and were instrumental in championing political reforms as well as forming new political parties in their countries. Notable are Wangari Maathai and Charity Ngilu who headed parties in Kenya during the 1990s. Wangari Maathai, the 2004 Nobel Peace Prize laureate (the first African woman to be awarded this prize since its inception in 1901), has transcended many barriers, (social, cultural, and family) to be where she is. Maathai's political activities, such as the Green Belt Movement, were often suppressed by the government as she was viewed as a threat to the state (Tripp, 2001, 2003). Charity Ngilu, on the other hand, dared to run for the presidency of Kenya in 1997, despite the fact that she came from a very conservative ethnic group in terms of cultural expectations of women. However, Ngilu had the support of several women's organizations (Tripp, 2001). Other countries, including Zambia, Zimbabwe, Lesotho, Angola and the Central African Republic, had women in the leadership positions as well (Tripp, 2001 and 2003).

Women's organizations were also instrumental in opposing corrupt and repressive regimes through public demonstrations (Tripp (2001). In the early 1990s, women in Kenya were involved in violent protests against imprisoned human rights activists, while in Mali, women and children openly demonstrated against the oppressive regime of President Moussa Traoré and suffered for it. On the whole, women have challenged laws and constitutions that do not advance gender equality and they have moved into

a variety of leadership positions in governmental and non-governmental organizations. Women have even fought for leadership positions in religious institutions (Tripp, 2003).

The autonomous organizations of today are financially independent of any political party and have made significant contributions to developing the constitutions, as in South Africa, Uganda and Zambia (Tripp, 2001). Despite their low numbers in some parliaments, female representatives have been able to present women's issues, such as maternity leave (Tanzania), or the domestic violence Act (1997), and the Sex Discrimination Act (2002) in Mauritius (Sadie, 2005). Sadie (2005) also found that there have been gender justice reforms in countries in the SADC region but these have been most effective where there are a significant number of women in parliament.

The increase in political activism and subsequently in the number of women in positions of political power, changed the institutional cultures of political bodies, such as parliament, to better accommodate women. Sadie (2005) found that parliaments of SADC countries that had inadequate female representation were hostile to women and debates tended to be sexist. However, where you have a female Speaker in parliament, as in Lesotho, or many women in parliament, like South Africa, the situation is more controlled. In such cases, there is little or no sexist language and the style of debate has changed. Many women parliamentarians feel strongly about women's rights, and have been able to table issues in parliament that would have otherwise gone unrecognized (Sadie, 2005).

Not surprisingly, there have been exceptions, instances where women in politics have not gone out of their way to politically support women and women's issues. Notable among these women is Margaret Thatcher who was elected prime minister of the United Kingdom in 1979, and who for two decades was the only woman to lead a major Western Democracy (Kunin, 2008). Toynbee Polly (1988), in an article in the Washington Monthly (5 January, 1988), stated that Margaret Thatcher did not appoint a woman to her cabinet, and gave few government jobs to women.

When the current president of Liberia, Ellen Johnson-Sirleaf, was campaigning for office, people had mixed feelings about her. This was due to her prior association with former President Charles Taylor and the years of failed leadership. According to Paye-Layleh (*Africa News*, 15 September 2005) Taylor, Johnson-Sirleaf and others are known to have encouraged war and destruction. Sirleaf was once considered an enemy of the

state and charged with treason (The Globalist, July 2005). Whether President Ellen Johnson-Sirleaf will handle power similarly to Margaret Thatcher, or advance women's position in society during her term remains to be seen. According to Polly (1988), "successful Mrs. Thatchers who make it on men's terms change little for most women," (Washington Monthly, 1 May 1988). Johnson-Sirleaf came to power at a time when there was an international move towards promoting female participation at all levels of governance. As the first woman president of an African nation, it may be hoped that she will bring more women into leadership positions within her government.

The slow progress in attaining equity in institutions of higher learning has been mentioned. Activism in these institutions has been lacking but progress has been made due to legislation on employment equity or because it is politically correct. There have also been individual women willing to vie for executive positions despite the strong male culture in institutions of higher learning. Of note is the recent appointment of a female Vice Chancellor at Kenyatta University in Kenya, the first in a public university. In South Africa, there have been several female Vice Chancellors at various institutions, and all have taken positions within these dominantly male cultures. Such women deserve recognition for making the move that would pave the way for other women in academia.

What next in Women's Activism?

The struggle for gender equity has not been an easy one. The foregoing sections have highlighted areas where gains have been made with regard to equity in leadership positions, particularly in politics. As indicated above, there have been facilitating mechanisms to ensure that women are given a chance at attaining leadership positions such as gender quotas and affirmative action policies. Even with this enabling climate there are still shortcomings in the women's movement. In her critique of the South African women's movement, Moola (2004) argued that women's organizations have traditionally operated as political resistance movements because of their understanding that the reforms desired are dependent on the restructuring of the State. As such, more than 10 years down the line, women have come to expect government (with its patriarchal system and paternalistic attitude) to address women's issues, but the mobilization of women themselves around pertinent issues is limited.

In the future, it may be expected that a higher proportion of women would get to parliament through elections and not through appointments, as is the case in many African countries. To achieve this, political leaders should look beyond the merely numerical representation of women. Gender specific interventions are important in achieving equity, but need to be coupled with other long-term interventions. For instance, Shayo (2005) recommends reviewing the design of electoral systems within political party structures to ensure that they are gender sensitive (p. 12).
In higher education for instance, representation can be a very superficial measure of equity. An emphasis on numbers masks the real problem that needs to be challenged, which is changing the male-centric institutional cultures of micro-politics (Sader, Odendaal & Searle, 2005; Pandor, 2006). Women need to learn how to negotiate with the micro-politics of higher education, and challenge the power dynamics (Pandor, 2006).

It should be recognized that negotiations might not always work where the playing field is uneven. However, as advised by Hannah Rosenthal in Santovec (2006), women need to be creative and look at the larger context to get what they need. This may require the building of coalitions with other stakeholders.
A different approach is needed to mobilize more women to become involved and take charge of their own issues. This requires forming coalitions because individualism will not work. For example, women in higher education could borrow from political activism. Women's political movements have succeeded partly because of many women's organizations and Non-government organizations coming together in coalitions (Tripp, 2001). It is evident that political struggles cannot be won by a few lone individuals and that women are more likely to make a difference in organizational cultures if there are enough women in senior positions. This makes it possible to create an institutional capacity for women to empower other women (Sader, et al. 2005). Leadership is expressed by Sader, et al (2005) as "a cooperative and collaborative endeavor, bringing together the energy and passions of a range of people" (p. 65) to deal with issues that they themselves see as important.

For instance, this paper has shown that reforming the culture of parliaments requires a significant number of female parliamentarians. There is also a need to change the mindset of women themselves. This requires further work in developing strategies to empower women so that they have the capabilities and confidence to attain leadership positions without waiting for those positions to be given to them. It is important to develop self worth and dignity among African women. On the other hand, the socialization of the girl child and perceptions of gender roles are issues to be addressed in a more systemic

manner. Such a cultural shift does not happen overnight, but until men and women share domestic and childcare responsibilities more equitably women will continue to shy away from accepting leadership positions. This inequity counteracts the efforts of women's activism.

One explanation given for the under representation of women in educational administration is that women themselves are the cause. It has been said that women are sometimes reluctant to run for public office, are not assertive, do not want power, or are unwilling to play the game (Growe & Montgomery, 2000). Women also tend to see other women as threats, leaving successful women unsupported in confronting discrimination (sexism, racism), and the 'old boys' network' (de la Rey, 2005, Sader, et al. 2005). For women to develop the confidence to take up leadership there is need for support from other women. Having role models and mentors is a useful support structure for women. Mentors can have a critical effect on the career paths of women who aspire to advance in higher education administration. It helps women to deal with the barriers and obstacles at the work place.

Mentoring also helps to develop self-esteem, aggressive managerial personalities, and overall nurtures future leaders (Growe & Montgomery, 2000) but then women must avail themselves for mentorship. Networking is also important, and can take the place of the "old boys club." According to Growe & Montgomery (2000), networking, role models, and mentors allow women to get advice, moral support and contacts for information. Irene Moutlana (2001) also contends that women in leadership positions should not be shy to project feminine traits such as being caring, empathetic, trusting, sharing, and empowering. Women should acknowledge these traits as strengths and not weaknesses. It is possible that a persistent display of such values can make them "core values" that will be embraced in future organizations as the normal culture. Women have to learn to be comfortable in leadership, and "just run with it" (Sader, et al, 2005).

Conclusion:

There has been a concerted effort to ensure female representation at all levels of governance as such representation is now recognized as a fundamental human right in many countries, and adheres to the principle of fair democratic representation. So far the main strategies used to address the gender imbalances in the various structures of the private and public sectors are affirmative action, the quota system (where a certain number of positions are allocated to women), and through presidential appointments (in the case of parliament and cabinet). It is assumed that once the situation of gender

equality has normalized, the attainment of such positions will be through a competitive process. However, it appears that it will take time to get to that stage due to the various challenges that confront women in public spaces.
As indicated by Nair (2004), it is the search and constant yearning for something that has not yet materialized that keeps one on the path of activism. For women and the leadership agenda, the ultimate position would be one where affirmative action, positive discrimination or presidential appointments are no longer necessary. Similarly, Women themselves have to create an alternative culture that will challenge the embedded traditions that dictate what women should or should not do or be, especially in the African setting. This will make people uncomfortable, but as Hannah Rosenthal in her speech at the Wisconsin Women in Higher Education Leadership Conference in 2005, as quoted by Santovec (2006) said: We have to be a little more comfortable with making others a little more uncomfortable, so we can look back in 30 years and say 'We did make a difference' (p. 2).

Thematic Topic 6: Freedom of Assembly and Expression

In a national referendum held on July 28, 2005, Ugandans voted overwhelmingly in favour of the return to multi-party politics. Although the outcome of the referendum represented a major advance for democracy, it was only the first step in the difficult transition to multi-party democracy. It was clear from the onset that the realization of a multi-party democracy would the upholding of democratic principles and ensuring democratic accountability. For this to happen, the following are essential: an enabling legal framework which protects human rights, a strong, responsive and vibrant network of independent actor able to monitor and hold the state accountable, an efficient information system able to consistently generate data and necessary information to facilitate external review and engagement with state institutions on their human rights practices and lastly a culture of democracy and respect for human rights among state and non-state actor.

Amidst a number of political challenges, Uganda has held two presidential and parliamentary elections under a multiparty political system. The elections of February 2011 attested, in certain aspects and to a certain degree, to the progress and the lack of progress made in fostering an enabling political environment for multi-party politics to thrive. The elections of 2011 revealed that there are still significant challenges to the democratic development process in Uganda One of these challenges is a restrictive and less accommodative the legislative framework which has fallen short of creating a

conducive environment for citizen participation. Among these legislations are laws that restrict or threaten the freedom of association, assembly and expression.

They include the NGO Registration (Amendment) Act (2006), some sections of the Penal Code Act (Cap 120), some sections of the Police Act, the Public Order Management Bill 2009, the Press and Journalists Act (Cap105), the Press and Journalists (Amendment) Bill (2010), the Uganda Communications Regulatory Authority Bill, 2012 and the Regulation of Interception of Communication Act, 2010 and the Proposed Public Order Management Bill, 2011.

Right to freedom of association

At the minimum, it is not disputed that freedom of association includes the right to freely form and join any association. Associations in this respect refer to *inter alia* trade unions, political parties, non-governmental organisations and/ or civil society organizations. The right to freedom of association encompasses many issues relating to the establishment and functioning of organizations, such as the right of associations to raise funds freely, to affiliate with other national and international organizations, and to operate freely without unreasonable governmental interference and or restrictions.

The ACPHR has observed that competent authorities should not enact legislations which [unreasonably] limit the exercise of [the freedom of association] and should not override constitutional provisions or undermine fundamental rights guaranteed by the constitution or international human rights standards. The 1995 Ugandan Constitution also provides that any restriction should be that which is acceptable and demonstrably justifiable in a democratic society.

Professor Stephen Neff, an international human rights scholar who has specialized in this field, noted that 'the distinctive conceptual feature of freedom of association is its hybrid character, as both an individual and a collective right. It is typically formulated in international human rights instruments as an individual right, i.e. the right of individuals to associate with one another. But individuals can associate with one another in importantly different ways. They might associate only casually or on a once off basis. But association might also consist of something more permanent, with an institutional character. If the association is of [this type] then it may be concluded-if only by implication-that the institution (or association) itself has a right to function freely and effectively as a collective. In other words, the principle of freedom of association [...] may

be argued to imply the right of an individual to join an association and on the part of associations, after their formation, to operate free from unreasonable or excessive government controls.

Overview of International Human Rights and Standards on Freedom of Association:

Freedom of Association is enshrined by several international instruments, including the Universal Declaration of Human Rights (UDHR)3, the International Covenant of Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples Rights (ACHPR)4.

Article 20 of the UDHR (Universal Declaration of Human Rights):

1. Everyone has a right to freedom of peaceful assembly and association.
2. No one may be compelled to join an association.

According to Article 22 of the ICCPR (International Charter for Civil and Political Rights):

"Everyone shall have the right to freedom of association with others…No restrictions shall be placed on the exercise of this right rather than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of rights and freedoms.

On the right to peaceful assembly, Article 21 of the ICCPR provides that, "The right to peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right rather than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of rights and freedoms of others."

Article 10 of the African Charter guarantees the right to free association:

1. Every individual shall have the right to free association provided he abides by the law.
2. Subject to the obligation of solidarity provided for in Article 29 no one may be compelled to join an association.

On the right to peaceful assembly, the African Charter stipulates that, "every individual shall have the right to assemble freely with others. The exercise of this right shall be

subject only to necessary restrictions provided for by the law in particular those enacted in interest of national security, the safety, health, ethics and rights and freedoms of others."

National legal framework regulating the freedom of association (such as NGO laws) should be a summation of laws which ensure the full and meaningful implementation of the freedom of association. States parties are required to ensure that the rights contained in article 22 of the Covenant are given effect in the domestic law of the State, in a manner consistent with the guidance provided by the Committee in its General comment No. 31 on the nature of the general legal obligation imposed on States parties to the Covenant. It is recalled that States parties should provide the Committee, in accordance with reports submitted pursuant to article 40, with the relevant domestic legal rules, administrative practices and judicial decisions, as well as relevant policy level and other sectorial practices relating to the rights protected by article 19, taking into account the issues discussed in the present general comment. They should also include information on remedies available if those rights are violated. In light of the above international obligations regarding the right to freedom of association, the following is an analysis of laws and/or specific provisions of laws and bills impacting on the said rights:

A. THE NON- GOVERNMENTAL ORGANISATIONS REGISTRATION (AMENDMENT) ACT, 2006

The concept of civil society is understood to consist of public (that is, non-private) activity that occurs in the realm between the state and the family. It entails collective action in which individuals pursue shared goals beyond the boundaries of the household. It is important to recognize that although civil society is theoretically autonomous from the state (that is, state institutions), the capacity of civil society to exist and operate very much depends on the nature of its connection/relation to the state.

In the context of governance and democracy, civil society tends to function through various interest groups including non-governmental organizations, faith-based organizations, professional associations (such as Law Societies) and some community-based organizations. NGOs are a form of civil society organizations; they are voluntary or not-for-profit organizations that are found in the realm outside of the public and private commercial sectors.

The World Bank broadly defines NGOs as value-based organizations which depend, in whole or part, on charitable donations or voluntary service and are independent from the government. The Non-governmental Organizations Registration Act of Uganda defines NGOs as organizations established to provide voluntary services, including religious, educational, literary, scientific, social or charitable services to the community or any part of it.11 The NGO policy of Uganda (adopted in 2010) defines an NGO as a legally constituted private voluntary grouping of individuals or associations involved in community work which augments government's work, but clearly not-for-profit or commercial purposes.

Overview of legislative framework governing NGOs in Uganda:

The Constitution of Uganda recognizes the right to freedom of association "which shall include the freedom to form and join associations ….including...political and other civic organizations." Any limitation of the enjoyment of the freedom of association shall not be permitted beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in the Constitution.

The National Objectives and Directive Principles of State Policy envisage the existence and autonomy of the civil society and CSOs14. It states that CSOs shall retain their autonomy in pursuit of their declared objectives. Additionally, the constitution envisages the involvement, empowerment and participation of the citizenry (including civil society) in affairs of society.

NGOs are governed by the Non-governmental Organizations Registration Act of 198915, the Non-governmental Organizations Registration (Amendment) Act, 2006 and the Non-Governmental Organizations Regulations, 2009. The latter (i.e., the NGO Regulations of 2009) were provided for in the Act of 2006. These laws together provide for the registration and regulation of NGOs in Uganda. The NGO Registration (Amendment) Act, 2006 was enacted for the purpose of amending the Non-governmental Organisations Registration Act, Cap 113. The long title to the Act stipulates that the objective of the Act *is to "provide for the registration of non-governmental organizations, to provide for the monitoring of non-governmental organizations, to establish a board for these purposes and for connected matters."*

In order to promote and foster a more healthy relationship, the government formulated a Policy in 2010 (the National NGO Policy) that elaborates a clear vision, objectives and key guiding principles upon which the partnership relations are to be developed and

managed. The broad aim of the NGO Policy is to strengthen the partnership between government and the NGO sector, and build capacities and effectiveness in the areas of service delivery, advocacy and empowerment.

With the above objectives in mind and in light of Uganda's international obligations relating to freedom of association, the following is an analysis of the NGO Registration (Amendment) Act, 2006.

1. Composition of the NGO Board

The NGO Registration Act, Chapter 113 of the Laws of Uganda establishes the NGO Board for the purposes, *inter alia*, of registering NGOs. The Board (under the oversight of the Ministry of Internal Affairs) comprises 15 members, 12 of whom are government representatives with 3 representatives from security organizations (the Internal Security Organization (ISO), the External Security Organization (ESO) and a representative of the Ministry of Internal Affairs).

There are 3 members of the public on the board. Furthermore, the Act gives the Minister of Internal Affairs far-reaching control over the board by stipulating that the Minister may give to the Board written directions of a general or specific nature relating to its functions. The Board "*shall* be bound to comply with these directions.

Issue: The board does not have any representation from the NGO sector, particularly from the NGO Forum. Uganda is obliged under the ICCPR (Article 2) to respect and ensure the right of association to all individuals within its territory. Having representation from the NGO sector is one way this can be achieved; representatives from the NGO sector would serve to enhance transparency. It would provide an opportunity for engaging the opinions of the NGO sector in the running of the Board affairs which helps in creating an enabling environment for the attainment of the objectives of the Board.

Implications on the freedom of association: The functions (including registration of NGOs) and wide discretionary powers granted to Board directly impact on the freedom of association. The implication of having no representation from the NGO sector is that NGOs and other CSOs have very limited say in how they are regulated. This *status quo* can be interpreted as being indicative of a desire by the government to have unfettered control over the functions of the Board, which negatively impacts on the (perception

Criminal Sanctions

Section 4 e (5),(6) of the 2006 Act provides that any organization which contravenes any provisions of the Act, operates contrary to the conditions or directions specified in its permit or carries out any activity without a valid permit or certificate of incorporation commits an offence. A Director or officer of the organization whose act or omission gave rise to the offence also commits an offence punishable upon conviction to a fine or imprisonment of up to one year.

Issue: NGOs are liable for all acts of their members and employees done in the course of their employment. This requirement is made notwithstanding the fact that by the legal ramifications of registering an organization is to give it a separate identity from its members and employees. The legal principle that criminal law is personal (for which a party can't be vicariously liable) notwithstanding, general principles of criminal law frown upon wide sweeping offences like the offences referred to under S.5(a) to wit; " any organization which contravenes any provisions of the Act".

S.4 of the 2006 Act imposes penal sanctions on a purely "civil" law. The Act does not stipulate which body has the authority to impose these criminal sanctions. It is not clear as to whether it is the Board or Directorate of Public Prosecution. Imposing of criminal sanctions should solely be within the purview of DPP or other specified body with an investigative/prosecutorial mandate.

Implications on the freedom of association: While recognizing the role of the State in providing the public with against misconduct and abuse, the form by which this protection is provided (via criminal sanctions) runs the risk of discouraging individuals from forming and/or joining NGOs and to some extent, will negatively affect the independence of the NGOs. These provisions may serve to scare off individuals desirous of registering and running NGOs for fear that if they breach any provisions of the Act, they might be imprisoned. Furthermore, NGOs might be forced into self-censorship for fear of "breaking the law" and this will negatively impact on their ability to perform their watchdog role. Restriction on the right to association by way of criminal sanctions contravenes international standards because they are manifestly disproportionate.

Observations:
Violations of the NGO regulations such as conducting activities without a permit or breaching of staffing regulations or failure to submit annual returns can be addressed by administrative measures or sanctions. It is therefore recommended that:

a) The penal sanctions in S.5 should be deleted and replaced with civil sanctions, such as penalties, suspension of activities for an appropriate period , cancellation of registration (in the most extreme cases of misconduct) etc.
b) The company law principles of a corporate entity being separate from its owners and employees should be incorporated in the Act to provide NGOs and their employees. Company law already has set principles on remedies in the event that directors of a company hide behind the corporate veil to limit their liability- It is the principle of lifting the corporate veil.

c) In the alternative and without prejudice to the above recommendation, lessons can be learnt from the NGO law of South Africa, the Nonprofit Organization Act, 1997 which provides that, "If a failure to comply with a condition, restriction or prohibition contained in a regulation is an offence, that regulation must provide that, to the extent practicable, before being subjected to criminal liability, the affected person must be given notice of the offence and an opportunity to comply with the regulation." This is indicative of a country providing an enabling environment for the realization of the freedom of association.

Case Law on Freedom of Association

In Uganda, since the promulgation of the Constitution of the Republic of Uganda in 1995, the concerns over freedom of Association has related to activities of political parties which were put in abeyance given the provisions of the constitution particularly articles 69 to 74 and the then 269 and 271. These provisions had created monopolization of political space including the case of Dr. *Rwanyarare & Another Vs. Attorney General*, Constitutional Petition No. 11/1997.
The petition was thrown out on grounds that they sought to challenge the constitutionality of provisions of the constitution itself (69, 70, 71, 73, 74, 269 and 271).

Right to freedom of assembly

The right to assemble peacefully rests at the core of functioning democratic systems and is closely related to other cornerstones of democracy and pluralism, such as freedom of expression and freedom of association. It is enshrined in a number of international human rights instruments. The right to assemble, demonstrate, picket, rally, March and protest is an important aspect of all democratic societies. As such, the freedom of peaceful assembly is associated with the right to challenge the dominant views within society, to present alternative ideas and opinions, to promote the interests and views of minority

groups and marginalized sections of society, and to provide an opportunity for individuals to express their views and opinions in public, regardless of their power, wealth or status.

Freedom of Peaceful Assembly is an individual right that is always expressed in a collective manner. Such collective manifestations of individual views can be perceived as particularly threatening to the authorities in some contexts. And, because assemblies take place in public spaces and are used by diverse organizations, groups and individuals, they are very visible indicators of the level of tolerance and respect that is given to different political, social and cultural practices and beliefs. A government's approach to assemblies can provide a clear indication of the respect that the state has for basic human of rights. Indeed, exercising freedom of assembly often involves the exercise of other rights, including the freedoms of expression, religion and movement.

At the same time, the prevention of assemblies might also go hand in hand with violations of the right to life, the right to be free from torture and the right to a fair trial. When restrictions on the freedom of peaceful assembly take place, such actions usually have high visibility. They have an impact on a large number of people at the same time, and they are often widely reported in the media. They might provoke an immediate and public response, which might lead to a spiraling cycle of protest, repression and violence. The very visibility of freedom of peaceful assembly creates opportunities for monitoring the level of a state's respect for this right and for documenting any infringements on the right to freedom of peaceful assembly and associated rights.

As a critical means for 'forming, expressing and implementing political opinions', freedom of assembly holds special significance for the work of human rights defenders as it provides the channel through which they can express dissent and protest against human rights violations. Given that the defence of human rights has been internationally recognized as a legitimate concern of all people and that warrants the participation of all sections of society, freedom of assembly enables defenders to publicly and collectively carry out their activities. Therefore, together with the right to freedom of opinion, expression and information, and the right to freedom of association, the right to freedom of assembly is central to the work of human rights defenders.

Definition of the freedom of assembly:

The right to freedom of assembly can generally be understood as the right of organizers to prepare and conduct an assembly, as well as their right and the right of others to

participate in it. Under the ICCPR, the right to assemble peacefully is protected for citizens as well as foreign nationals or stateless persons within the territory of a given State.

While the term 'assembly' is generally understood in its collective sense (i.e. it requires more than one person to form an assembly), in terms of its application as a right, it is to be considered an *individual* right, namely, that every individual person is entitled to the protection and fulfillment of this right. Additionally Article 5 of the Declaration on Human Rights Defenders expressly states that the right applies to individuals *in association with others*, which implies that this right is also protected for associations of individuals, such as non-governmental organizations. The right to freedom of assembly is a fundamental freedom critical for maintaining and strengthening democratic participation. This primarily means that it should be exercised without arbitrary interference from the State. Additionally, the right to assembly can only be exercised effectively with the 'protection' of the State. For example, State protection could take various forms such as by giving police protection to demonstrators, re-routing traffic to allow the use of public space for the assembly or demonstration, and other such activities.

However, the broad language of the limitation clause applicable to the right to assembly makes it susceptible to abuse by States or even to the possibility of prohibiting assemblies that are perceived to pose any kind of threat to the power of the State. Therefore, in order to fully exercise the right to freedom of assembly, a balance between the negative and positive obligations of the State must be maintained. This means that a State should refrain from interference with freedom of assembly (a negative obligation), as well as take positive steps towards ensuring protection of freedom of assembly (a positive obligation).

Definition of 'assembly'

The ICCPR does not provide a definition of what constitutes an assembly, and interpretation of this term is therefore left to the case-law of the HRC and to the customary interpretation of this term under national legal systems. The term 'assembly' can broadly be interpreted to refer to 'intentional. The ICCPR does not provide a definition of what constitutes an assembly, and interpretation of this term is therefore left to the case-law and to the customary interpretation of this term under national legal systems.

The term 'assembly' can broadly be interpreted to refer to 'intentional temporary gatherings of several persons for a specific purpose'. Domestic legal systems have differed in their interpretation of the nature and purpose of the assembly. For example, different

legal systems have had varying views on whether this right applies solely to assemblies for political purposes (such as political rallies or assemblies organised by political parties) or if it also extends to assemblies for explicitly non-political purposes (such as weddings or festival processions).

Due to the broad language employed in Article 21, the definition of an assembly is clarified through the views and decisions of the Court, and can be said to include peaceful protests and demonstrations in public areas, public and private meetings, processions and marches, with a variety of different purposes. It can be inferred, therefore, that the 'peaceful nature of an assembly' refers primarily to the manner in which an assembly is held, and does not aim to regulate the content of the opinions expressed at the assembly. In order to fall within the scope of Article 21, assemblies must be held without violence. Assemblies that are not peaceful, or that lose their peaceful character through the use of force, are not covered by Article 21, and such assemblies may thus be legitimately dispersed.

International Human Rights and standards on the Freedom of Assembly:
Freedom of Association is guaranteed by several international instruments, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples Rights (ACHPR). The Declaration on human rights defenders, adopted by consensus by the UN General Assembly in 1998, consolidates existing international legal standards relevant to the protection of human rights defenders.

While the Declaration on human rights defenders is not legally binding, its weight lies in the fact that it brings together the existing rights relevant to the protection of human rights defenders and their work under *legally binding* international human rights instruments. Additionally, the Declaration on human rights defenders was adopted by consensus, which reflects a firm international commitment to uphold the rights of human rights defenders. Article 5(a) of the Declaration on human rights defenders states that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully.

Limitations on the right to Freedom of Assembly:
As mentioned in the previous section, only peaceful assemblies are guaranteed protection under Article 21 of the ICCPR, and assemblies that are not peaceful or that lose

their peaceful character can be dispersed. In addition, the right to freedom of assembly can be limited for the reasons listed in Article 21, namely 'national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others'. Any restrictions placed on this right must also be in conformity with the law and necessary in a democratic society.
In addition to the above, States parties to the ICCPR must prohibit by law 'propaganda for war and incitement to hatred', which therefore also provide legitimate grounds to prohibit an assembly.

(i) Legal basis

Article 21 of the ICCPR states that no restrictions may be placed on freedom of assembly other than 'those imposed in *conformity* with the law'. The restriction on freedom of association states that any permissible restriction on this right must be *prescribed by* law, meaning that administrative regulations limiting this right are not permissible. The restriction on freedom of assembly, on the other hand, has a much broader application because of the way in which it is worded ('*in conformity with the law*'). The language of this clause implies that, while restrictions on the right to freedom of assembly may not necessarily have to be provided for in the law, they must be in 'conformity with the law', thus giving States a much wider scope for restricting this right. This can also be taken to imply that a State can restrict this right through general statutory authorization and not only by law. In practice, this means that the right could be restricted by an executive order or decree, and not solely laws passed in Parliament.

In some cases, such administrative decrees can be used to curtail the exercise of this right. For example, the Special Rapporteur on human rights defenders has received individual communications alleging abuse of the right to freedom of assembly stemming from a 2001 presidential decree in Belarus entitled 'On certain measures to improve procedures for holding meetings, rallies, street processions, demonstrations and other mass actions and pickets'. Allegedly, under the decree, 'the body organising an event could be held entirely responsible should public order be deemed to have been violated and could be fined or deregistered as a result'.

(ii) Necessity in a democratic society

The second clause of limitation to Article 21 of the ICCPR states that any restrictions on freedom of assembly must be 'necessary in a democratic society' in order to achieve its purpose. This provision has been interpreted to contain two conditions – it implies that any State interference with the right to assembly must be *proportional*, and that no

limitation can be imposed on freedom of assembly that is not in conformity with *minimum democratic principles*. Proportional means that the nature and force of the interference of the State with the right to assembly must be strictly *necessary* to achieve one of the listed purposes. This means that any other alternative that restricts the right to a lesser degree must be exhausted prior to the State using any means that limits the exercise of this right.

Additionally, justifying restrictions on the basis of whether they are necessary in a democratic society implies that a State must also afford participants in an assembly protection from third parties.

Permissible purposes for interference

State interference with the right to assembly can only be justified if there is a threat to: national security, public safety, public order (*order public*), public health and morals, or for the protection of the rights and freedoms of others. Most often, assemblies are dispersed, prohibited or denied authorization to take place on the basis of claims that the assembly in question in some way poses a threat to national security or public order. The unclear formulation of what constitutes a threat to national security and public order makes these two criteria particularly susceptible to manipulation by authorities who wish to shut down or prevent an assembly. It is therefore necessary for human rights defenders

In the case of ***national security***, unless demonstrators present a serious political threat (namely threatening the political structure of the nation) or a military threat to the country in question, the right to peaceful assembly cannot be restricted on the basis of threatening national security. The dispersal of an assembly, prohibition of such assemblies by criminal law, and the criminal prosecution of any participants in such a demonstration can only be viewed as justifiable restrictions if they pose such a threat.
Counter-terrorism legislation, for example, is often used to restrict or prevent assemblies that allegedly threaten national security.

However, domestic legal definitions of what constitutes terrorism are often so broad that it encompasses legitimate activities that do not pose a threat to national security. The Special Rapporteur on human rights defenders has also noted that administrative measures are often imposed to restrict or prohibit freedom of assembly, *without taking* into account 'genuine concerns relating to security, public safety or order'.

The requirement for prior notice to the authorities of the time, place and purpose of a demonstration itself is in principle intended to avoid the disruption of public order during the demonstration. It is therefore only in *exceptional* cases that the *preventive* prohibition of an assembly can be viewed as justified in the interest of public order. Preventive prohibition must be viewed as an exceptional practice as otherwise it could pave the way for unrestricted prohibition of any assembly that threatens the decisions, actions or policies of the State or any of its agencies, or debates controversial issues.

Such unrestricted use of preventive prohibition would be incompatible with the tenets of a democratic society, of which public debate is a critical feature. Demonstrations or assemblies that endanger the ***public safety*** of participants or passers-by and property cannot be considered to fall within the definition of a 'peaceful' assembly, and therefore can be restricted on these grounds.

When police cannot effectively protect demonstrators or other persons who may be affected by the demonstration from physical harm, then the right can be restricted as it poses a risk to public safety. However, the State has to make every reasonable effort to protect the safety of the public before it reaches the conclusion that it can no longer guarantee its protection. However, the European Court, for example, has held the view that participants in a demonstration must be able to hold demonstrations without fearing that they will be physically attacked by counter-demonstrators as this would be likely to deter other organizations or groups from freely expressing their ideas on sensitive issues, and therefore not be conducive to freedom of assembly.

In light of the above international obligations regarding the right to freedom of assembly, the following is an analysis of laws and/or specific provisions of laws and bills impacting on the right;

THE PENAL CODE ACT, Chapter 120 of the Laws of Uganda: PROVISIONS ON UNLAWFUL SOCIETY AND UNLAWFUL ASSEMBLY

In Uganda, limitations on the right to freedom of assembly and association have been enforced through the Penal Code Act. The Act provides for unlawful society and unlawful assemblies.

Section 56 defines an unlawful society (combination of 2 or more persons) on basis of the purposes stipulated on S.56 (2) and one declared by a statutory order of the Minister to

be a society dangerous to peace and order in Uganda. When a society is declared unlawful by an order of the Minister and another society is formed after such declaration having any of the same office bearers as the unlawful society, that society shall equally be unlawful.

Are Uganda's penal provision on unlawful society and unlawful assembly consistent with international human rights law?

It is clear from Articles 21, 22 of the ICCPR and Article 29 and 43 that the freedoms of association and assembly are not absolute but can be lawfully restricted. Restrictions of the freedoms must be prescribed by law and must be necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of rights and freedoms of others." Where restrictions must be imposed on the right to peaceful assembly, this must be done in accordance with international human rights standards stipulated in "The UN Basic principles on the use of force and firearms by law enforcement officials". On policing/management of unlawful assemblies, the principles provide thus;

"As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.

In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in Principle 9.

Principle 9 stipulates that law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these

objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

Governments are required to ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law60. This means that governments cannot grant immunity, from prosecution, for law enforcement officers who cause injury or death whilst policing unlawful assemblies.

Constitutional provisions relevant to Preventive arrest and detention

Article 23 of the 1995 Constitution of Uganda sets out the cases under which a person may be deprived of his or her personal liberty. Article 23(1) (h) provides that no person shall be deprived of personal liberty except as "may be authorized by law, in any other circumstances similar to any of the cases specified in paragraphs (a) to (g) of this clause". The cases specified in paragraphs (a) to (g) are:- a) in execution of a sentence or order of a court; b) in execution of the order of a court made to secure the fulfillment of any obligation imposed on that person by law; c) for the purpose of bringing that person before a court in execution of the order of a court or upon reasonable suspicion that that person has committed or is about to commit a criminal offence under the laws of Uganda; d) for the purpose of preventing the spread of an infectious or contagious disease; e) in the case of a person who is, or is reasonably suspected to be, of unsound mind or addicted to drugs or alcohol, for the purpose of the care or treatment of that person or the protection of the community.

Is Section 24 of the Police Act consistent with international human rights standards?

Is Section 24 of the Police Act consistent with international human rights standards on the freedom of assembly?

Some of the grounds for which preventive arrests and detention is permissible under section 24 of the Police Act are consistent with the permissible grounds under Article 23 of the 1995 Constitution, for example, preventive arrest and detention of an individual to prevent him or her from suffering physical injury. In any case, the application of preventive arrest as exhibited by the arrest and detention of political opponents to prevent them from holding political rallies is not only a violation of the right to personal liberty, it is also an un-acceptable infringement on the freedom of assembly.

Muwanga-Kivumbi vs. Attorney General, Constitutional Petition N.o.9/2005. Justice C.K. Byamugisha stated in her judgment regarding section 32 (2) of the Police Act, which she declared unconstitutional that: *"In the matter before us there is no doubt that the power given to the Inspector General of Police is prohibitive rather than regulatory. It is open-ended since it has no duration. This means that the rights available to those who wish to assemble and therefore protest would be violated.*

The justification for freedom of assembly in countries which are considered free and democratically governed in my view is to enable citizens gather and express their views without government restrictions. The Government has a duty of maintaining proper channels and structures to ensure that legitimate protest whether political or otherwise can find a Voice. Maintaining the freedom to assemble and express dissent remains a powerful indicator of the democratic and political health of the country.

I therefore find that the powers given to the Inspector General of Police to prohibit the convening of an assembly or procession an unjustified limitation on the enjoyment of a fundamental right. Such limitation is not demonstrably justifiable in a free and democratic country like ours. The sub-section is null and void. The petitioner is entitled to a declaration to that effect."

Definition of the Freedom of Speech and Expression (including Freedom of the Press)

The right to freedom of expression is not defined in international instruments or the Constitution of Uganda. However, the Supreme Court of Uganda has defined it as extending to holding, receiving and imparting all forms of opinions, ideas and information. Freedom of speech is premised on the realization of the individual human personality, the 'marketplace of ideas' and the related human intrinsic propensity to inquire, debate and develop knowledge. It is the bedrock of democratic government and pluralism. Freedom of expression is closely associated with other human rights like freedoms of thought, opinion, belief, association and assembly.

International human rights and standards on the freedom of speech and expression

Freedom of speech and expression is enshrined in several international instruments, including the Universal Declaration Human Rights, the International Covenant on Civil and Political Rights and African Charter on Human and Peoples Rights.

In 2011, The UN Human Rights Committee reinforced article 19, ICCPR by introducing General Comment 34 which addresses several key aspects of Article 19, including:

- The significance of freedom of expression and information as a “meta-right” upon which other rights rely.
- Government obligations to protect freedom of expression and to make information available.
- The right of journalists and others to disseminate information, as well as the rights of individuals to receive information.
- Recognition of the changing nature of modern media and developing technologies.
- The importance of media independence.

The General Comment has authoritative legal credibility that will carry strong weight before courts and tribunals, and will substantially influence the development of legal norms globally. In countries such as Uganda, that is a party to the ICCPR, the latter plays an important role in setting minimum standards. The general comment affirms that media freedom is entitled to high standards of protection, and that the protections afforded to traditional media extend in full to new media. It calls on states to “take all necessary steps to foster the independence of these new media and to ensure access of individuals” to it.

One of the most dramatic advances is the comment’s assertion that “prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the covenant," although restrictions on such speech may be justified in the specific circumstances envisaged in article 20(2) of the covenant, which prohibits “incitement to discrimination, hostility or violence”. “While “hostility” is a vague term, the committee could not disregard this explicit treaty language.
Another important advance is the clear affirmation that Article 19 “embraces a right of access to information held by public bodies.”

According to General Comment No.34, States must make every effort to ensure prompt, easy, effective and practical access to state-controlled information in the public domain. They should proactively put in the public domain information about government functions as well as other information of public interest. They must provide for appeals from failures to respond to requests as well as from explicit refusals. The comment, incorporating a recommendation from the Justice Initiative, also makes clear that states may not, consistent with the covenant, “suppress or withhold from the public information of legitimate public interest that does not harm national security.”

This marks a significant advance. In other words, states should not classify such information, they should release it upon request, and they should publish it proactively. Moreover, states may not "prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information." It is implicit that this duty extends even to information that has been formally classified.

A group of experts in international law, national security, and human rights issued the Johannesburg Principles on National Security, Freedom of Expression and Access to Information on October 1, 1995. Over time, these Principles have come to be widely recognized as an authoritative interpretation of the relationship between these rights and interests, reflecting the growing body of international legal opinion and emerging customary international law on the subject.

The principles set out guidelines on restrictions on free speech, including the principle that governments must use the least restrictive means possible in prohibiting speech that is contrary to legitimate national security interests.70 According to the principles, national security interests do not include "protecting a government from embarrassment or exposure of wrongdoing."

The Johannesburg Principles set out standards for the protection of freedom of expression in the context of national security laws. They were adopted on October 1, 1995, by a group of experts in international law, national security, and human rights convened by ARTICLE 19, the International Centre against Censorship, in collaboration with the Centre for Applied Legal Studies of the University of the Witwatersrand, in Johannesburg. They have been endorsed by the UN Special Rapporteur on Freedom of Opinion and Expression and referred to by the Commission in their annual resolutions on freedom of expression every year since 1996.

OVERVIEW OF INTERNATIONAL HUMAN RIGHTS AND STANDARDS RELATING TO FREEDOM OF SPEECH AND EXPRESSION (INCLUDING FREEDOM OF THE PRESS)

Article 19 of the UDHR provides thus:
Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.
According to Article 19 of the ICCPR provides as follows;

- Everyone shall have the right to hold opinions without interference;
- Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any media of his choice.

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these may be as provided by the law and are necessary;
a) For the respect and reputation of others;
b) For the protection of national security or of public order or of public health or morals.

Article 9 of the African Charter guarantees;

- The right to express and disseminate one's opinions within the law. The Declaration of Principles of Freedom of Expression in Africa adopted by the African Commission on Human and Peoples Rights in 2002 recommended that African States guarantee that;
- Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy.
- Everyone shall have an equal opportunity to exercise the right to freedom of expression and to access information without discrimination.

In interpreting the above constitutional guarantee, Justice Mulenga of Supreme Court of Uganda held in ***Charles Onyango Obbo & Anor v Attorney General*** that, "it is evident that the right to freedom of expression extends to holding, receiving and imparting all forms of opinions, ideas and information. It is not confined to categories, such as correct opinions, sound ideas or truthful information.

Subject to the limitation under Article 43, a person's expression or statement is not precluded from the constitutional protection simply because it is thought by another or others to be false, erroneous, controversial or unpleasant. Everyone is free to express his or her views. Indeed, the protection is most relevant and required when a person's views are opposed or objected to by society or any part thereof, as "false" or "wrong." Limitations on the freedom of expression must stand the test of requirements set out in Article 43 and must bear in mind the fact that freedom of expression lies at the very foundation of a democratic society.

Overview of legislative framework impacting on the Freedom of expression (including freedom of press) in Uganda

The Penal Code Act, Cap 120; provisions on publication of false news, publication of information prejudicial to security76, sedition77, publication of obscene or pornographic materials, promoting sectarianism78, hate speech etc. The Act also gives the Attorney General absolute discretion to prohibit importations of publications in the public interest.

In practice, since the promulgation of the 1995 Constitution, several members of the media (journalists, reporters and presenters) have been arrested and charged under of the penal provisions listed above. In **Uganda v Haruna Kanaabi,** Haruna Kanaabi as the editor of the "Shariat" was prosecuted together with his reporter for sedition with respect to the story that Rwanda was Uganda's 40th district. In **Uganda v Charles Onyango Obbo & Another,** the journalists were charged with the offence of Publication of false news.

The Press and Journalists Act, Cap 105 created the Media Council and mandated it to regulate mass media. **Access to Information Act**, 2005 grants every citizen the right of access to information and records in the possession of the state or any public body, except where the release of the information is likely to prejudice the security or sovereignty of the state or interfere with the right to the privacy of any other person.
The Electronic Media Act, Cap 104 which created the Broadcasting Council, whose functions include coordinating, exercising control over and supervising broadcasting activities. **The Anti-Terrorism Act**, 2002 which makes it a criminal offence, punishable by death, to publish and disseminate news or materials that "promote terrorism". **The Press and Journalists (amendment) Bill, 2010 The Communications Regulatory Authority Bill**, 2012 (will consolidate and harmonize the Uganda Communications Act, Cap 106 and the Electronic Media Act, Cap 104. **The Regulation of the Interception of Communications Act, 2010**

In light of the above international and national obligations regarding the freedom of expression, the following is an analysis some of the laws and/or specific provisions of laws and bills impacting on the Regulation of Interception of Communications Act, 2010, the RIC was enacted to "*provide for the lawful interception and monitoring of certain communications in the course of their transmissions through a telecommunication, postal or any other related service of system in Uganda …and to provide for any other related*

matters." In effect, the Act is authorizes the interference with the privacy of correspondence and communication which right is critical to the freedom of expression, particularly the freedom to seek, receive and impart information and ideas of all kinds through any media. The Act mandates the Minister of security to establish a Monitoring Centre and gives him the 'final responsibility over the administration and functioning' of this Centre. Under the Act, an 'interception warrant' may be issued by a judge upon receipt of an oral application from selected government institutions if there are 'reasonable grounds' for them to believe that: a) felony has been or will probably be committed; b) the gathering of information concerning an actual threat to national security or any national economic interest is necessary; c) the gathering of information concerning a potential threat to Public safety, national security, or any national interest is necessary; or d) there is a threat to the national interest involving the state's international relations or obligations. Journalists in particular are concerned that the confidentiality of their communication with major sources will no longer be guaranteed.

Grounds for interception of communication

S. 5(1) allows for interception if the Minister in charge of security has reasonable ground to believe that:

a) a felony has been or is being or will probably be committed; b) the gathering of information concerning an actual threat to national security or to any other national economic interest is necessary; c) the gathering of information concerning a potential threat to public safety, national security or any national economic interest is necessary or; d) there is a threat to the national interest involving the State's international relations or obligations.

Issue: While recognizing that the right to privacy and freedom of expression are not absolute but can be curtailed, the above law allows for infringement upon grounds that are vague and ambiguous. For example, the Act allows for interception on the basis of an actual or potential threat to national security or national economic interest.

Implications on the freedom of the freedom of expression: Vague terms like the basis of a potential threat to national security or national economic interest can be used to curtail the freedom of expression. **Observations:**

a) There should be statutory regulations by the Minister to provide guidelines on the grounds for interception.

Thematic Topic 7: Electoral Processes

An **election** is a formal decision-making process by which a population chooses an individual to hold public office. Elections have been the usual mechanism by which modern representative democracy has operated since the 17th century. Elections may fill offices in the legislature, sometimes in the executive and judiciary, and for regional and local government. This process is also used in many other private and business organizations, from clubs to voluntary associations and corporations.

The universal use of elections as a tool for selecting representatives in modern democracies is in contrast with the practice in the democratic archetype, ancient Athens. As the Elections were considered an oligarchic institution and most political offices were filled using sortition, also known as allotment, by which officeholders were chosen by lot.

Electoral reform describes the process of introducing fair electoral systems where they are not in place, or improving the fairness or effectiveness of existing systems. Psephology is the study of results and other statistics relating to elections (especially with a view to predicting future results).

To *elect* means "to choose or make a decision" and so sometimes other forms of ballot such as referendums are referred to as elections, especially in the United States.

Characteristics

1) - Suffrage

The question of who may vote is a central issue in elections. The electorate does not generally include the entire population; for example, many countries prohibit those judged mentally incompetent from voting, and all jurisdictions require a minimum age for voting.

Historically, other groups of people have also been excluded from voting. For instance, the democracy of ancient Athens did not allow women, foreigners, or slaves to vote, and the original United States Constitution left the topic of suffrage to the states; usually only white male property owners were able to vote. Much of the history of elections involves the effort to promote suffrage for excluded groups. The women's suffrage movement gave women in many countries the right to vote, and securing the right to vote freely was a major goal of the American civil rights movement.

Extending voting rights to excluded groups (such as convicted felons, members of certain minorities, and the economically disadvantaged) continues to be a goal of voting rights advocates. Suffrage is typically only for citizens of the country, though further limits may

be imposed. However, in the European Union, one can vote in municipal elections if one lives in the municipality and is an EU citizen; the nationality of the country of residence is not required.

2) – Nomination

A representative democracy requires a procedure to govern nomination for political office. In many cases, nomination for office is mediated through pre selection processes in organized political parties.[8] Non-partisan systems tend to differ from partisan systems as concerns nominations. In a direct democracy, one type of non-partisan democracy, any eligible person can be nominated. In some non-partisan representative systems no nominations (or campaigning, electioneering, etc.) take place at all, with voters free to choose any person at the time of voting—with some possible exceptions such as through a minimum age requirement—in the jurisdiction.

In such cases, it is not required (or even possible) that the members of the electorate be familiar with all of the eligible persons, though such systems may involve indirect elections at larger geographic levels to ensure that some first-hand familiarity among potential electees can exist at these levels (i.e., among the elected delegates). As far as partisan systems, in some countries, only members of a particular political party can be nominated. Or, an eligible person can be nominated through a petition; thus allowing him or her to be listed on a something.

3) - Electoral systems

Electoral systems are the detailed constitutional arrangements and voting systems that convert the vote into political decision. The first step is to tally the votes, for which various vote counting systems and ballot types are used. Voting systems then determine the result on the basis of the tally. Most systems can be categorized as either proportional or majoritarian. Among the former are party-list proportional representation and additional member system. Among the latter are First Past the Post (FPP) (relative majority) and absolute majority.

Many countries have growing electoral reform movements, which advocate systems such as approval voting, single transferable vote, instant runoff voting or a Condorcet method; these methods are also gaining popularity for lesser elections in some countries where more important elections still use more traditional counting methods.

While openness and accountability are usually considered cornerstones of a democratic system, the act of casting a vote and the content of a voter's ballot are usually an important exception. The secret ballot is a relatively modern development, but it is now considered crucial in most free and fair elections, as it limits the effectiveness of intimidation.

4) - Scheduling

The nature of democracy is that elected officials are accountable to the people, and they must return to the voters at prescribed intervals to seek their mandate to continue in office. For that reason most democratic constitutions provide that elections are held at fixed regular intervals.

In the United States, elections are held between every three and six years in most states, with exceptions such as the U.S. House of Representatives, which stands for election every two years.

There is a variety of schedules, for example presidents: the President of Ireland is elected every seven years, the President of Russia and the President of Finland every six years, the President of France every five years, President of United States every four years.

Pre-determined or fixed election dates have the advantage of fairness and predictability. However, they tend to greatly lengthen campaigns, and make dissolving the legislature (parliamentary system) more problematic if the date should happen to fall at time when dissolution is inconvenient (e.g. when war breaks out).

Other states (e.g., the United Kingdom) only set maximum time in office, and the executive decides exactly when within that limit it will actually go to the polls. In practice, this means the government remains in power for close to its full term, and choose an election date it calculates to be in its best interests (unless something special happens, such as a motion of no-confidence). This calculation depends on a number of variables, such as its performance in opinion polls and the size of its majority.

Elections are usually held on one day. There are also advance polls and absentee voting, which have a more flexible schedule. In Europe, a substantial proportion of votes are cast in advance voting.

5) - Election campaigns

When elections are called, politicians and their supporters attempt to influence policy by competing directly for the votes of constituents in what are called campaigns. Supporters for a campaign can be either formally organized or loosely affiliated, and frequently utilize campaign advertising. It is common for political scientists to attempt to predict elections via Political Forecasting methods.

Difficulties with elections

Electoral fraud

In many countries with weak rule of law, the most common reason why elections do not meet international standards of being "free and fair" is interference from the incumbent government.

Dictators may use the powers of the executive (police, martial law, censorship, physical implementation of the election mechanism, etc.) to remain in power despite popular opinion in favor of removal. Members of a particular faction in a legislature may use the power of the majority or supermajority (passing criminal laws, defining the electoral mechanisms including eligibility and district boundaries) to prevent the balance of power in the body from shifting to a rival faction due to an election.

Non-governmental entities can also interfere with elections, through physical force, verbal intimidation, or fraud, which can result in improper casting or counting of votes. Monitoring for and minimizing electoral fraud is also an ongoing task in countries with strong traditions of free and fair elections.

Problems that prevent an election from being "free and fair" take various forms:

1. **Lack of open political debate or an informed electorate**

The electorate may be poorly informed about issues or candidates due to lack of freedom of the press, lack of objectivity in the press due to state or corporate control, or lack of access to news and political media. Freedom of speech may be curtailed by the state, favoring certain viewpoints or state propaganda.

2. **Unfair rules**

This can include Gerrymandering, exclusion of opposition candidates from eligibility for office, and manipulating thresholds for electoral success are some of the ways the structure of an election can be changed to favor a specific faction or candidate.

3. Interference with campaigns

Those in power may arrest or assassinate candidates, suppress or even criminalize campaigning, close campaign headquarters, harass or beat campaign workers, or intimidate voters with violence.

4. Tampering with the election mechanism

This can include confusing or misleading voters about how to vote, violation of the secret ballot, ballot stuffing, tampering with voting machines, destruction of legitimately cast ballots, voter suppression, voter registration fraud, failure to validate voter residency, fraudulent tabulation of results, and use of physical force or verbal intimation at polling places.

Equally this list is only some of the ways in which it can occur, other examples may include persuading candidates into not standing against them. Some examples include: blackmailing, bribery, intimidation or physical violence.

Electoral processes and democracy: a moving field

Elections are a core part of the common understanding and practice of democracy. Yet experience - not least in countries emerging from violent conflict - increasingly suggests that electoral events conceived and held in isolation from their broader political context can become as much part of the prevailing political "problem" as their democratic "solution". This article reviews critical issues and challenges in the relationship between elections, popular validation and democratic consolidation.

In transition: the peace building element

Elections are considered as a defining and unavoidable element of any peace building process. They are clear, identifiable and newsworthy events. They are thus highly likely to be overemphasized by the international community, which has often regarded them as the benchmark point for its exit strategy from a peace building effort - getting out before international politics moves on to the next great cause and before domestic political and financial pressures grow to declare victory and go home. Local participants in negotiations - whether democrats or not - are fully aware of this.

Politics, negotiation and trust

Even when there is no rush to hold an election or a referendum, there never seems to be enough time for the organization and implementation of the electoral process. This is no

accident. It follows inevitably from the dynamics of negotiation, in which the value of political concessions is likely to be higher the later they are made, and the technical and logistic side of electoral planning is unlikely to be an important factor in the minds of those reaching political agreements.
Neither is any peace building or democracy-building process as a whole likely to succeed without a commitment to dialogue, local ownership and broad stakeholder inclusion and participation.

Even when an inclusive process of dialogue and negotiation takes place, there is almost inevitably a deep lack of trust in electoral processes held in the context of peace building - which means that the inevitable errors and rough edges that are accepted as just that in established democracies often lead to suspicion and to damage to the credibility of electoral processes in transitions.

This can be just as true outside the direct peace building context. In the words of a former chief electoral officer of Guyana: "We have to deliver our elections to a higher standard than in Europe: people do not forgive small mistakes as inevitable, but automatically regard them as evidence of cheating or skullduggery".

Nonetheless, the challenge is to hold good enough elections rather than to set a one-off standard which cannot be sustainably repeated. There can be a "good enough" election in a politically flawed peace building process (as Iraq, for example in the local elections of January 2009, has shown): it is difficult to have a politically sound peace building process without a "good enough" election sooner or later.

In particular, the ability of armed groups excluded from a peace negotiation to disrupt the process tends to incline agreements towards the design of inclusive institutions which will involve all or most of these groups - although sometimes questions of transitional justice may temper who is allowed to participate.

The frameworks which then emerge tend to require the continuing construction and maintenance of coalitions after elections have taken place. However, the new politicians may find they need to acquire different and new skills to do this, especially if they have previously embraced the very different disciplines required in armed or insurgent groups - as has been borne out by the experience of Nepal.

Both peace building and democracy-building are intrinsically political: any outcome inevitably advantages some stakeholders and disadvantages others, while actions that promote peace are not necessarily actions that assist democratization - and vice-versa. A

"good enough" election is about the political environment and conditions, not just about the technical competence and independence of the electoral administration.

Interventions which depend on importing external technical "experts" with ready-made "solutions" (often copies of the system used in the country of origin of the "expert") are particularly unlikely to be appropriate and may well be harmful. Electoral issues that are often thought of as technical but which always have political sensitivity include electoral-system design, franchise qualifications and evidence-requirements for registration, boundary-delimitation, absentee and external voting, and counting, tabulation and declaration of results.

Disputes, conflict and violence

Moreover, "good enough" electoral processes do not end when results are declared. The little things that go wrong often violate the individual rights of voters. When bigger things go wrong - or when little things go wrong and the result is close - there are wider political impacts: the results change, or are uncertain.

Serious thinking about mechanisms for effective electoral justice is now taking place, with the independent judicial electoral courts developed in Latin America providing particularly interesting models.

Where electoral competition is itself the cause of violence, early-warning systems (looking at the context of the electoral process in each community and pinpointing likely trouble-spots) are important new tools; India and Colombia are among the leaders here. But this approach may be insufficient where the electoral process is not in itself the cause of violence but rather the catalyst for existing conflicts within a divided community - when different sources of advance intelligence become even more important.

It is especially easy for the electoral process to be a flashpoint when the community sees the police or the military themselves as a source of insecurity. Even where the popular view of the security forces is more positive, their world rarely intersects with that of the electoral community, and there is still a lot to do to familiarise police and military personnel with the behaviour that a democratic electoral process requires.

The growth of electoral independence

In designing and establishing electoral administration, a structure that enables its fearless independence is essential. Such independence means that the electoral administration does not bend to government, political or other partisan interests; though it is worth emphasizing that the threat can come not just from overt political restriction or pressure,

but from financial mechanisms which prevent the administration from accessing money and other resources when needed.
As democratic institutions have been established across the global south, many countries have followed India in establishing an independent electoral authority. While not all have matched the unchallenged respect with which the Election Commission of India is held or the success of other independent electoral commissions (such as that of South Africa), the model is now used by over half the world's countries and territories.

Even in much of the francophone world, where a substantial body of jurisprudential opinion finds the concept of an independent electoral body untenable, a move towards independent electoral administration is visible.

Towards sustainable capacity
The key objective - building fearlessly independent electoral administration that becomes over time administratively and financially sustainable throughout the entire electoral cycle - has consequences for electoral assistance. This should be viewed as a long-term process. It should not primarily aim to support highly visible events and international observation exercises immediately surrounding polling day, but engage to support capacity-building over a series of electoral cycles.
However, electoral administration is only one of the claims on the limited financial and human resources that may be available within a country in transition. Organizational and staff development, and the building of institutional memory within electoral institutions, are essential. Generally accepted "best practice" has been developed since the mid-1980s in various knowledge resources (for example, handbooks and networks such as the ACE Electoral Knowledge Network and the world-standard electoral capacity-building curriculum, BRIDGE.

The use of new equipment and technology can sometimes be valuable, in particular for managing vast amounts of data such as the electoral register or the processing of the results, but the temptation to throw money at technology needs to be resisted (especially when this is done late in the day).

On the political side, the issue is whether voters, political parties and candidates will perceive the technology as a contribution to electoral integrity or as an unverifiable "black box" which increases the suspicion of fraud.

On the technical side, the needs for maintenance and for trained operating personnel, and the issue of potential obsolescence, should be considered. Commercial vendors of equipment and technology (for example of identity and registration systems) have their

own interests; these are not the same as those required to build sustainable electoral administration.

The test of robustness

Sustainability takes time to build. Respect for electoral authorities develops only over a period of years, and their political robustness may only fully be proved in difficult circumstances. If election results are uncontroversial, then electoral-management weaknesses and failures will be less critical.

Indonesia's independent electoral authority was less well organized in 2009 for the third legislative elections of the reform era than for the previous two, and substantial problems were visible with electoral registration in particular: but the overall results of the elections were clear and accepted.

If they had been as close as the result of Mexico's presidential elections in July 2006, with less than one-half of a percentage point separating the two leading candidates, the credibility of the elections could have been in the balance. But in Mexico, while there were cries of fraud in the counting process, few such were made against the electoral register. The electoral management body was heavily challenged and emerged bruised, but its underlying strength was still intact.

Kenya's elections in December 2007 offer a very clear example that political robustness is not the same as technical competence. The electoral authority had the technical knowledge and capacity for everything to work well - but it did not have the political robustness to cope with the political pressures of a disputed election (which may or may not even have been close). There have been few sadder recent electoral moments than the chair of Kenya's electoral authority finally admitting that he had no idea who had really won.

Design, timing, sequencing

A challenge for peace-builders and democracy-builders alike is to facilitate choices in the design, timing and sequencing, implementation and assessment of electoral processes to a constituent assembly, legislative bodies and/or local government bodies - all of which are fundamentally political questions.

The first universal elections in South Africa in 1994 took place after the process of transition had been under way for several years. By contrast, the early elections held in Bosnia & Herzegovina in 1996 under the Dayton agreement led to the freezing into place of zero-sum identity politics in which the participants in the conflict played the major roles. It may thus not always be advisable to hold early elections for bodies that are not

transitional in nature. But if holding early elections is undesirable, who holds power until elections do take place? When does democracy delayed become democracy denied? Is it easier to encourage the beginnings of reconciliation by focusing initially on creating local-level institutions to engage in practical service delivery on the ground? This approach poses the question of who can legitimately hold national power, and be responsible for the design and resourcing of the local institutions, in the interim: in Kosovo, the United Nations mission did so, and elections were held at local level first.

Representation, accountability, and the system

Election laws may be changed with alarming frequency as the weaknesses of a given electoral framework are discovered - or as parties seek to gain advantage of it.
But the opposite can also be true: once laws and structures have been put in place, it can be difficult to remedy mistakes because the incumbent politicians and officials have vested interests. The provisions for amending electoral rules are another area which looks technical but is highly political in its effect.

Electoral system design is a key political choice, both in assembling the electoral framework and more generally in the institution-building process. Discussions about electoral systems and the design of legislatures talk a great deal about representation and accountability, but both words have multiple meanings. The basis chosen for representation and accountability is an important factor in the incentives for accommodative or "winner take all" behaviour by those who hold or gain power.

Do elected legislators respond primarily to the whole electorate, all voters, party supporters, party members, party activists, party leaders, or whoever is going to give them their next job? Term-limits are one factor: in addition, some constellations of electoral systems and institutional frameworks are intrinsically more likely than others to promote turnover of elected members.

This relationship is not simple: well over 90% of incumbents are re-elected to the United States's House of Representatives using a first-past-the-post electoral system; but the same system as used in Papua New Guinea (PNG) until recently produced a turnover rate closer to 50%. The incentives for the PNG members to take benefits from their position while they were in a position to do so were self-evident - as were the consequences for the coherence of the PNG parliament.

Electoral frameworks do not only create incentives for candidates: they create incentives for political parties, who measure using different criteria. When a voter is invited to

express preferences between candidates, she or he may well prioritise according to how close their positions are to those of voters.

A political party, however, gains strength by attracting new voters, who are likely to be supporters of parties which are relatively close: it has an interest in the failure of adjacent parties in the political spectrum. This is demonstrated in the recent history of Fiji: the unsatisfactory nature of the 1997 institutional framework in approaching this question has played a substantial role in the events that have led to the full military takeover. Electoral-framework debates are also conditioned by a conventional ideal which aims to establish a stable political party system based on programmatic differences between parties. However, this framework is often an unattainable ideal in the age of mass political communication.

Today's new challenge - even more difficult than reaching the ideal - is how to entrench service-delivery and accountability in a volatile political party system, in which voter choice may well be based on leadership and/or identity rather than on programmatic difference. The real danger should perhaps not be seen as leadership or identity themselves, but as the entrenchment of zero-sum politics.

Electoral processes: the big picture

Many lessons have been learnt since the 1970s-1980s about approaches to electoral processes which are more likely to constitute comparative good practice; this article notes only some of the most important. But the more experience, expertise and analysis - from the global south as well as the north - that exists on electoral processes in democratization, the more complex and context-driven they turn out to be.

Democracies are more likely to be stable than authoritarian states: democratizing societies may not be. Peacekeeping activities may provide space for peace, but do not necessarily assist democratization processes in the longer term.

Electoral processes are an essential element of democratic change, consolidation and stability: but in the early stages of transition in particular, they can be flashpoints with the potential to encourage the re-emergence of conflict, and if badly designed, can entrench forces that do not promote democratization.

Every element of a process of change - in the sphere of democracy-building, electoral processes, constitutions, political parties, legislatures, decentralization/devolution, and independent judiciaries, among others - is likely to be linked to every other. The democratic nature of the institutional framework as a whole cannot be separated from its ability to deliver development and services; nor from the space allowed for democracy

as a whole (by, for example, security-sector issues). Both democracy-builders and peace builders will always need to engage with electoral processes in depth - the devil is certainly in their detail. But it is critical that they never lose sight of the inextricable links, potentially both positive and negative, between electoral processes and the wider process of democratic change.

What Constitutes a Free and Fair Election?

A 'FREE' electoral process is one where fundamental human rights and freedoms are respected, including:

- freedom of speech and expression by electors, parties, candidates and the media;
- freedom of association; that is, freedom to form organizations such as political parties and NGOs;
- freedom of assembly, to hold political rallies and to campaign;
- freedom of access to and by electors to transmit and receive political and electoral information messages;
- freedom to register as an elector, a party or a candidate;
- freedom from violence, intimidation or coercion;
- freedom of access to the polls by electors, party agents and accredited observers;
- freedom to exercise the franchise in secret, and
- freedom to question, challenge and register complaints or objections without negative repercussions.

A 'FAIR' electoral process is one where the 'playing field' is *reasonably* level and accessible to all electors, parties and candidates, and includes:

- an independent, non-partisan electoral organization to administer the process;
- guaranteed rights and protection through the constitution and electoral legislation and regulations;
- equitable representation of electors provided through the legislation;
- clearly defined universal suffrage and secrecy of the vote;
- equitable and balanced reporting by the media;
- equitable access to financial and material resources for party and candidate campaigning;
- equitable opportunities for the electorate to receive political and voter information;

- accessible polling places;
- equitable treatment of electors, candidates and parties by elections officials, the government, the police, the military and the judiciary;
- an open and transparent ballot counting process, and
- election process not disrupted by violence, intimidations or coercion.

Articles 60-68 of the Constitution provide for the elections and the electoral commission.

Questions:

1- Is it proper for a President to have all the powers to appoint members of the electoral commission in a multi party set up?
2- Can this type of electoral commission be independent from the regime or they are mere party cadres?
3- Why can't we have commissioners nominated by the key political parties and approved by Parliament in Uganda or why can't we advertise these jobs of commissioners and have them interviewed by Public service commission and confirmed by Parliament?
4- What do we need to do in Uganda to promote the integrity of election processes and have free and fair elections?

Examples of Recommendations:

1. **A code of conduct for political parties**
   EC should delve into putting in place a code of conduct for political parties and the use of online or telephonic transmission of election results to minimize the risks of compromise of results and speed up the process of tallying and relay of results at the national tally centre

2. **Joint work**
   The EC and the civil society organizations should work together and harmonize the messages that they would like to take out to the populace in preparation for the elections.

3. **Parallel Vote Tallying (PVT)**

The establishments of the parallel vote tallying center to counter that of the electoral commission as a vital exercise that ensures checks and balances on the preliminary and final election results released by the electoral body

Thematic Topic 8: Oil Governance in Uganda

Governance and Policy Issues in Uganda's Oil and Gas Sub-Sector

1. Introduction

Enabling Legislation:

1- National Oil and Gas Policy for Uganda (2008) – The goal of this policy is to use the country's oil and gas resources to contribute to early achievement of poverty eradication and create lasting value to society

2- Oil and Gas Revenue Management Policy (2012) – This policy required that an appropriate framework be put in place to aid the sustainable management of oil and gas revenues. The policy provides details on how the anticipated revenues shall be managed and integrated into the existing government systems with a view of mitigating the overall impact of these revenues on the economy.

3- The Petroleum (Exploration, Development and Production) Act - The objects and principles of the **Petroleum (Exploration, Development and Production) Act** are : to give effect to article 244 of the Constitution; to regulate petroleum exploration, development and production; to establish the Petroleum Authority of Uganda; to provide for the National Oil Company; to regulate the licensing and participation of commercial entities in petroleum activities; to provide for an open, transparent and competitive process of licensing; to create a conducive environment for the promotion and exploration of Uganda's petroleum potential; to provide for efficient and safe petroleum activities; to provide for the cessation of petroleum activities and decommissioning of infrastructure; to provide for the payment arising from petroleum activities; to provide for the conditions for the restoration of derelict lands; to repeal the Petroleum (Exploration and Production) Act, Cap 150; and for related matters.

4- The Petroleum (Refining, Gas Processing, Conversion, Transportation and Storage) Act - The objects and principles of the **Petroleum (Refining, Gas Processing, Conversion, Transportation and Storage) Act** are;- to give effect to article 244 of the Constitution; to regulate, petroleum refining, gas processing and conversion,

transportation and storage of petroleum, to promote policy formulation, coordination and management of petroleum refining, gas processing and conversion, transportation and storage; to provide for third party access to infrastructure; to provide for an open, transparent and competitive process of licensing by the Minister responsible for petroleum; to provide for health and safety environment; to provide for cessation of petroleum activities and decommissioning of petroleum facilities and infrastructure and to provide for related matters.

5- Public Finance Bill

If managed properly and in an environmentally responsible way, oil and gas production has the potential of boosting the economy of the country. It can also be a curse if its governance framework is flawed and its management is not transparent and open. As such, the governments of resource-rich countries face the daunting but surmountable challenge of devising institutional and legal frameworks that ensure maximum benefit for its citizens. The experience from oil and mineral producing African countries such as Nigeria, Chad, Cameron and Angola show that benefits arising from the discovery of oil and minerals is intuitively linked to the quality of governance in the country which also defines the quality of governance of the oil and minerals sector. Whether a country avoids the oil curse is largely dependent on how the sector is managed from the time of discovery, exploration and extraction. It is therefore important that at the very initial stages of the sector, the institutional and legal frameworks to manage the sector are strong enough to cater for all the critical issues in the sector such as environmental, economic, political governance and security concerns.

Uganda has concluded major Production Sharing Agreements with Tallow Oil PLC paving a way for firm-down of its interest to Total and CNOOC. The conclusion of these agreements took place against the backdrop of a major disagreement between parliament, the President and the general public. The purpose of this policy briefing paper is to outline outstanding policy and governance issues which, if unresolved sets Uganda on a course to oil curse.

Issue 1: The quality of the legislation process and the legislation governing oil exploration and exploitation

The current Oil Bills before Parliament, Two of which have already been passed, vest all the decision making powers in the legislature with a peripheral role of Parliament.

The Oil and Gas Policy which was passed in 2008 was intended to comprehensively

address the emerging legal and other challenges in the industry. The policy recognizes the challenges associated with natural-resource wealth, including the need to mitigate the potential for negative economic and fiscal impacts that often stem from a sudden influx of revenue in the extractive industry sector.

- Although a policy was passed in 2008 requiring among other things, the inclusion of provisions for the development and production of natural gas; bring on board international best practices in areas like improved oil recovery together with health, safety and environment standards; provide a harmonious relationship with the proposed law on management of petroleum revenues; provide for national participation as an effort to enhance value creation by oil and gas activities; and provide for a more competitive licensing process, the enacted oil bills do not address these concerns fully.

- ***Disregard of parliamentary resolutions*** – While the policy recognizes inter alia the inadequacies of the legal framework and require the enactment of new laws to address these challenges, the government is carrying is licensing companies and signing agreements in the absence of the required adequate laws. Activities and transactions in the sector are moving ahead of the legal framework. A parliamentary moratorium for halting of any further licensing and signing of agreements until the new laws are enacted has been ignored by the executive. The government entered into PSA agreements disregarding the parliamentary moratorium and before the enactment of the required legislations.

- ***The Finance Bill*****:** This Bill has raised fresh doubts about the government's commitment to budget discipline. The Bill presents loopholes for government to spend without parliamentary scrutiny. The Bill creates a contingencies Fund and also gives the Finance Minister powers to create special funds, whose purpose is overlapping and ambiguous. The contingencies Fund is supposed to finance supplementary budgets whose purpose will only be known after spending the funds. This contingencies Fund will be replenished with an amount equivalent to 3 and ½ % of the approved annual budget.

The rationale of this Bill is to circumvent parliamentary scrutiny so that the government can spend as it chooses. This Bill also seeks to revise the ceiling for supplementary budgets from 3% to 10%. Also this Bill has ring-fenced 25 districts and allocated them a share of 7% of revenue arising from petroleum production. The same "OIL DISTRICTS" have been designated special planning areas in the country's new Vision 2040 which was launched on 28th April 2013; meaning that they are likely to be top beneficiaries of the government's plan to spend oil revenue on infrastructure development. This Bill does not

explain how the OIL DISTRICTS" were determined beyond their location within the petroleum exploration and production areas of Uganda! The 7% allocation of royalties contract already existing laws like: *The Mining Act of 2003 and the Electricity Act of 1999 and the Uganda Wildlife Act of 2000, which have provisions on royalties from natural resources, with different sharing arrangements*.

- For instance, the Mining Act allocates 17% and 3% of royalties from minerals respectively to the local governments and owners or lawful occupiers of land subject to mineral rights. The Wildlife Act has set 20% of the Park Entry Fees for the local government in which the park is located, while the Electricity ACT leaves sharing to be agreed upon by the licensee and the District Local Government, in consultation with the regulatory authority.

Issue 2: Institutional Arrangements for Oil Governance and Management

The National Oil and Gas Policy 2008 recognize the need to improve on the current institutional framework for oil governance and management. This is considered desirable for the purpose of creating an institutional architecture able to handle continuing exploitation effort together with development and production of oil and gas. The adoption of Regulatory Best Practices (RBP) as the cornerstone for Uganda's institutional framework underscore the commitment to ensure that there is clear separation between agencies exercising regulatory mandates and those engaged in business. This commitment is intended to address the situation where, currently, the Ministry of Energy and Minerals is responsible for the development and regulation of the sector as well handling licensing, law enforcement and compliance.

- ***The peripheral of the legislature*** - the current institutional and management set up and obtaining practice in the sector concentrate the management and governance of the sector in the executive and presidency. The key decisions in the sector are taken by or at the pleasure of the president. The recent signing of the PSAs is a case in point where the oversight role of parliament and other agencies were ignored for a presidential directive. The resolutions of parliament in respect of the sector are largely disregarded and the directive of the president has become law in the management and governance of the sector.

- ***The absence of a clearly defined institutional framework*** – although weak and ill prepared, the Ministry of Energy and its technocrats are the existing institutions for the governance of the sector. But there is an almost personalization of the sector by the presidency so that the decisions are taken at State House rather than the Ministry of

Energy. This has relegated the institutions to bystanders in the governance and management of the sector.

- ***Intimidation of citizens participating in the sector*** – in an attempt to ensure their participation and transparency in the sector, ordinary citizens and civil society engaged in activism including litigation in courts of law. These CSOs and ordinary citizens continually faced intimidation from government agencies. The case in point is the reference by CSO actors as economic saboteurs by the president. This has a chilling effect on the active participation of the citizens in the governance and management of the sector.
- ***Undermining of institutional roles*** – parliamentary oversight of government expenditure and transaction is a constitutional mandate and important in any democracy. And yet, the executive in Uganda, in respect of the oil and gas sector is undermining this role. By continuing to enter into new agreements in spite of parliamentary resolutions halting the same, Government is undermining the mandate of the new institutions being created which will have to operate in an environment already constrained by exiting agreements.
- ***Concentration of power in the executive***- the required laws have been tabled before the legislature and although a detailed analysis of its contents are yet to be made, there is a glaring attempt to turn the executive and the presidency into THE institution for decision making in the sector and institutionalizing the decision making process in the presidency through the minister. There is also no clear stipulation of parliamentary oversight role in the new proposed bills. The sound management of the oil and gas sector will require a strong institutional framework that is anchored on the transparency and that ensure accountability and oversight by the other arms of governments. The centrality of the legislature in providing oversight cannot be overstated, as it is the means by which the people's representatives ensure their interests are taken care of. The institutional framework should allow for the free participation of all stakeholders including the ordinary citizens and CSOs.

Issue 3: Governance and Political Transition

The exploration of oil and gas is a stern test to the democratic credential of the NRM government. Before the NRM makes a full transition to political pluralism it has to deal with the 'oil transition' in a state of fragile political transition. Many observers are asking whether the exploration of oil and gas will negatively impact on the political transitions that Uganda is going through.

Having been in power for the last 25 years, President Museveni's presidency has clearly shifted into a regime survival mode. A combination of regime longevity, regime survival

and an oil sector where the legal and institutional framework are still evolving create fragile conditions for democracy and good governance. Like Thomas Freedom said, the price of oil and the pace of freedom always move in different directions.
The key political and governance agenda will no doubt be taken in view of the developments in the oil and gas sector. These will include;

- ***The autonomy and independence of parliament*** – the central oversight role of parliament in ensuring accountability will be under stern test. This is especially so if the events in the oil sector so far are anything to go by. The indicators are that the executive is hell bent of having exclusive control and management of the sector with limited or no parliamentary oversight. The proposed bills and the conduct of the presidency in ordering the sighing of the PSAs in disregard of parliamentary resolutions are a few initial manifestations of their motive.
- ***Constitutional reforms*** – the personalization of the oil sector by the president is especially worrying and begs the question of whether the executive will permit a reform process in the constitution that will restore term limits, ensure free and fair election and entrench a democratic culture. Whether major constitutional reforms such as the restoration of presidential term limits in the constitution and the reform of electoral laws can be achieved in the current context.

Issue 4: Human Security in the Age of the Resource Curse
Unlike its East African neighbors, Uganda's experience of civil wars, coups and instability has been a centrally defining feature of politics and government policy. It shares this with later day entrants into the expanded East African Community (EAC) Rwanda and Burundi. As a defining feature, the military or politico-military edifice of the state is the main decision-making body within the country that projects its influence through civilian institutions.

Briefly, the National Resistance Army/Movement which has led Uganda since it was victorious in the Ugandan civil war between 1981-1986, has evolved its influence through Uganda's civilian institutions especially after the democratic experiment took form with the passing of the 1995 constitutions and successive (controversial elections) in 2001, 2006 and 2011. Leadership of the NRM however has been consistent since its days as a guerilla movement through its monopolization of executive power in government within the Presidency and its institutions. The NRM now a political party has had the same leader for over 40 years, Yoweri Museveni, whose status as head of state and commander in chief provides the central edifice of the influence of the movement within Ugandan politics.

Two important issues stand out with regard to Uganda's discovery of significant amounts of oil and its relationship with political security for long-term exploitation of natural resources.

- ***The security approach analysis***- firstly, that any understanding of the security approach for oil must be grounded in the analysis of the influence stated above and secondly that major contribution of the NRM is itself the provision of security as a predictable public good. Finally but not least, sustainable "human security" is essentially a function of good public policy. To this extent it's to public policy arrangements that the veracity of Uganda's security arrangements for the oil sector can be examined.
- ***The involvement of the military in the sector*** - Thus far, the involvement of the military and politics has been complete. While the Executive remains the dominant actor in the oil sector, the military provides the primary service as security partner in the oil fields securing land and guarding it. There have been allegations too that specific senior military people have acquired land in or adjacent to the exploring areas. If true, there is a dangerous conflict of interest emerging if only because of the importance of land to the oil project and its contested politics.
- ***Cross boarder security concerns*** - Additionally, security policy-making extends to securing the border regions where threats from rebels in parts of Eastern DRC including the Lord's Resistance Army. This has taken the form of government-to-government cooperation as well as joint military operations with other armies. As expected foreign policy is a preserve of the Executive but within Uganda's body politic remains a badly addressed subject by other actors. The potential for friction with neighboring governments or rebels is simultaneously a national security issue but also a matter of oil security relevant to the exploitation of oil as a national resource.

Given the foreground to security policy making and its central role in Uganda, it's clear that while there have been advantages to the monopoly of the Movement over the years- there must be a democratizing of security policy making in order to address the Executive bias and to re-orient its approach from one that puts primacy on militarism to an alternative that prioritizes public policy as the first line of defense.

- Elements of this should include greater sharing of the policy space for security with civilian actors including Parliamentary oversight over security options. For example the securing of land and deployment of the army and other security agencies should operate with greater consultation with political leaders. To eliminate suspicion as well that security policy led by the executive is not a cover for illegal acquisition of land or even oil service contracts by individuals and companies connected with the establishment, the authorities must embrace greater transparency and accountability through public institutions.

- While foreign policy is a preserve of the executive, because its important to framing the geo-political stability necessary for oil exploitation, it too should be opened up for greater participation of non-military institutions including oversight. At the core, national laws and oil and gas policy must address itself to an accessible foreign policy that is anchored in non-aggression except in self-defense and the aggressive promotion of cooperation under the East African Community whose joint foreign policy making initiatives provide an opportunity to make immediate progress.

- Immediately, political actors must reassess land policies and re-debate particularly the criteria for the sharing of oil or mineral resources. While celebrating 50 years this year, Uganda's territory has long been a mishmash of land arrangements with the majority of land being custodial property of communal groups. That right to communally owned land carries with it an obligation to the communities themselves. Government policy must attend to these rights with care ensuring that these lands are not forcefully co-opted or that the views and perspectives of tribal groups recast as minorities in these areas are given voice and respected.

Issue 5: Reconciling the development of oil resources with the preservation of strategic environmental assets

Activities in the sector will have a profound and long lasting impact on the environment. Environmental Impact Assessments is a legal requirement for any investment plans/programmes in Uganda. The EIA so far carried out on oil have fundamental flaws yet pollution is one of the major effects of oil exploration and production.

Whereas the already existing legislation on the environment have capacities to control pollution during oil exploration, it is reported that local people are already affected by the strong bad smell from the mud pits that are dug during oil exploration and moreover the mud pits have been deposed properly.

The current EIA reports have no mitigation measures and monitoring for the identified impacts; they lacks a comprehensive environmental management plans to deal with biodiversity, air quality, water, fisheries, wastes, oil spills and pollution, affected communities, tourism; there is no Strategic Environmental Impact Assessment and yet a number of oil drilling sites; limited public participation; and most documents such as EIA reports are written in English an official language and yet some Ugandans especially in rural areas cannot read it.

There is need to:

- Put in place the health and Safety Measures. Health and safety measures are crucial in oil exploration and production because the activities are dangerous to people.
- The Oil and Gas Policy makes provisions for protection against activities that affect health but with limited specialized institutions/capacity to handle petroleum management issues. Shortage of skilled of personnel in the field of petroleum geo-sciences, petroleum negotiation skills.
- Limited local participation in the petroleum and gas industry activities
- Lack of national procedures for disposal of waste during exploration

Issue 6: Who is in charge of strategic planning and decision making?

Considering the magnitude of the anticipated oil revenues and the other benefits that accrue out of the oil exploration/production business, there is need to have a planning/decision making framework in place in order to benefit fully from the oil/gas industry. The institutions that are charged with National Planning e.g. the National Planning Authority and the line Ministries, but there seems to be no clear structure where national spending decisions in regard to oil resources are being made. Previous experience shows that Parliament has limited capacity to practically influence the national spending options. However,

- There is need to have a systematic process to facilitate the development/strategic planning for the oil revenues
- Capacity building efforts to address oil/gas industry issues should be expanded to cover the judiciary, environment bodies and other key professions like lawyers/engineers/ etc
- There should be a stakeholder forum for discussions on the accruing oil/gas opportunities and how best they can benefit out of these opportunities
- The need to determine whether to drill or refine oil based on the accruing benefits

Issue 7: Oil fiscal regime, revenue management and transparency

Uganda's National Oil and Gas Policy (2008) commit the government to ensure collection of the right revenues and use them to create lasting value for the entire nation. This is to be achieved by putting in place the necessary institutional framework for collection and management of oil and gas revenues, and participating in the processes of the Extractive Industries and Transparency Initiative (EITI). However,

- Despite the policy commitment, the government has refused to adopt and implement the EITI.
- The current proposed legislation does not provide for EITI, thus a mismatch between policy and legislation

- Important information regarding contracts, PSAs, payments and revenues remains a privilege of a small political clique, leaving citizens with no ability to hold the government and oil companies accountable
- Lack of disclosure on the contracts between government and Oil companies (that would be solved with EITI implementation) is limiting citizens' participation in understanding and advising government on critical issues like the capital gains disputes the country continues to face against oil companies

Issue 8: Land rights and access to ecosystem goods and services

Uganda's oil and gas deposits are onshore, and therefore realities of land ownership and utilization must be given adequate attention.

The Constitution of Uganda states that Minerals, Mineral Ores and Petroleum shall be explored taking into consideration the interests of individual land owners, local governments and the government. However, since 2006 when the oil exploitation process started, the following issues need to be addressed

- Property rights including land ownership and utilization in the Albertine region is are being threatened and impacts of associated human rights like livelihood and sustainable development
- Land valuation and compensation are largely lacking and this could spark off discontentment and conflicts among various actors
- Land grabbing cases continue to raise, sparking off conflicts between the indigenous Banyoro and immigrants
- Land policy has for over 12 years failed to complete the process of completing the land policy that would address these issues.

Issue 9: Local governments and local institutions have been relegated to the peripheral in the ongoing discourse on oil

The discovery of oil has largely been in conservation areas but has raised local community concerns in these areas about their involvement in the decision-making process and revenue sharing. It has also escalated resource-based conflicts especially in land. Local district governments, landowners and traditional kingdoms in these areas are going to be impacted by the operations of the industry players in their areas. There are environmental concerns in these areas. The involvement of these communities and groups in the decision-making process will avert community hostilities to the industry and ensure ownership and appreciation of the benefits of the industry.

- *Land ownership and grabbing concerns* - the escalation of land conflicts and cases of grabbing in the areas where oil has been discovered has escalated.

- *Cultural institutions and their claim over customary land* –cultural institutions are important players and lay claims over customary property including land.
- *Land compensation crisis* – there is a conflict of interest by the company that is handling the compensation payments in Kibaale where the refinery is proposed to be built. The same company conducted the survey and proposed that an independent company should handle compensation of claimants but the Ministry of Energy awarded the same company a contract to handle the compensation instead (Strategic Friends International)!

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