



# KALUNDI SERUMAGA - Death by Ink: How Uganda's Constitution Has Broken the Country

By Kalundi Serumaga



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Uganda does not have a constitution; it has a career-distributing patronage device disguised as one. This device serves the important function of immunising the presidency from serious challenges from what was historically a very cantankerous and militant middle class. Instead, this class has been tranquilised by all the jobs, careers and postings created by the 1995 document.

The just-concluded proceedings in Uganda's Supreme Court - in which a petition against the 2018 passing of a law that removed the constitutional requirement for a presidential candidate to be below 75 years was heard and dismissed - is the latest proof that the constitution was never going to deliver constitutionalism, nor was it designed for that purpose.

The petition was in itself an appeal against the same ruling made by the Constitutional Court the previous year. That first petition was itself borne out of the very unconstitutional manner in which the Ugandan Parliament had passed the amendment. First -and not for the first time - there were obvious material inducements offered to the parliamentarians before their decision. Second - and more critically - the supposed sanctity of Parliament was violated through an invasion by Uganda's Special Forces Command, who proceeded to violently carry out the core group of MPs opposed to

the amendment who were attempting to impede its progress through filibuster. Third, legal minds had already also weighed to counsel that, given the country's singular experiences with unrestrained presidents, an amendment of such importance should perhaps first be put to a public referendum before it is tampered with such a historically-birther rule.

This also came three years after the same court heard a petition against the Ugandan Electoral Commission's declaration of President Yoweri Museveni as the lawful winner of the 2016 election.

### **Naked bias**

The retired Supreme Court judge, George Kanyeihamba, has described the age-limit ruling as "an exhibition of naked bias, cowardly disregard for rights and an orgy of contemptuous indifference to democratic principles".

But this game has been going on for a very long time. I recall one incident over fifteen years ago, in which the government side got around the obstacle of a parliamentary rule of procedure that required a period of weeks before a motion they wished to have discussed could be debated. They simply mobilised their numbers to first vote to suspend that procedural rule, then tabled, debated and passed their motion, and then voted to reinstate the troublesome rule.

And of course, Uganda's MPs had already famously voted to remove presidential term-limits from the constitution in 2006, in time for President Museveni to stand for a previously not permissible third term in 2006. This time round, on top of removing age limits, they voted to reinstate the two-term limit that had been removed in 2005. At the same sitting, the court found this reversal to be "unconstitutional".

We are going to have to look again at "democracy", and think about the quest for representation that underlies it, instead. It is clearly possible to hold a presidential election, and not get the candidate everybody voted for, but still have the entire process dubbed "legal" and constitutionally above board. What is presented as democracy can actually fail to be actually representative of anyone.

This entire fraud - which effectively began with the 1996 presidential election - has been continually buttressed by the "constitutional" rejection of all complaints by the courts. Basically, of the three arms of governance, the Executive does as it pleases, and neither the Judiciary nor the Legislature can stop it, nor can they help shield each other from the its rampaging effects.

This situation is rooted in two things. First was the merging of the powers of the executive Prime Minister with those of the ceremonial president, and the abolition of the Prime Minister post by the self-appointed president, Milton Obote, in 1966. Thus, a highly centralised presidency was born, and lives on to this day. It was in keeping with this spirit that the members of the then Parliament were menacingly obliged to vote in favour of the 1966 document before being allowed to read it.

### **Over-centralised presidency**

As long as you have an over-centralised presidency, then you basically will still have the 1966 constitution and the 1967 one in which federation was also abolished. The 1995 constitution is, therefore, basically the 1967 document with donor-designed and funded upgrades in which some "civil society" scaffolding was arranged around the Executive.

Uganda's pre-eminent problem remains political exclusion, or the monopolisation of power for the purpose of enabling the material enrichment of a few. This is literally what colonialism was. Such exclusion necessitates political repression, which leads to the

subversion of justice and the undermining of the judicial system as a whole, which, in turn, begets human rights violations across the board.

A key adjustment, whereby a president's electoral destiny was determined separately from the rest of his party, only cements this further. (In the earlier pretence to democracy that was the 1980 elections, it was the leader of the party that won the most seats in Parliament who became president. He also had to have won a parliamentary seat.) This presidency has always been able to reach through the scaffolding, and over-ride any other aspect of the constitution at will.

Before the military infringement on parliament, there was a long list of extra-constitutional shenanigans being carried out by the Executive against the other constitutional branches:

- [In November 2005, soldiers invaded the High Court premises](#) in an attempt to prevent rebel suspects being granted bail.
- [In an epic showdown during October 2011](#), the Executive flatly refused to subject the details of oil contracts to proper parliamentary scrutiny.
- Various well-connected individuals who become key suspects in serious crimes regularly have their files delayed or missing when required by court, leading to delays or abandonment of the cases.
- A local government minister and well-known bush war veteran [once invaded a district local council meeting](#), and forced it to abandon a tabled motion regarding the handing back of land under its control to the original owner (the Kingdom of Buganda).
- As a factotum of the presidency, the former Inspector General of Police, General Kale Kayihura, built up a prodigious record of violations against all constitutional provisions regarding policing. Bail terms, bond terms, detention lengths, media rights, stipulations against torture and the like were all repeatedly trampled by his operatives. This culminated in the 2011 mobilising of a mob to assemble outside a magistrate's court where a civil case against the IGP had been lodged. Court officials hid, and the case was never heard.
- Ruling party MPs hold their caucus meetings regularly at State House, the official residence of the President.

In short, whatever aspect of this constitution that has not been violated is simply whatever aspect has not yet come into conflict with the intentions of this unrestrained Executive.

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This is Uganda today. Once again.

The historical challenge has been to find the means by which Ugandans do not find themselves under the rule of yet another unrestrained Executive. This, in fact, was the aspiration behind the crafting of the new constitution between 1993 and 1995. As the *Daily Monitor* writer, Ivan Okuda, has pointed out, political documents of such magnitude do not come about in the abstract, but rather are shaped by the political history they seek to now legislate for. It is for this reason that the

preamble to the 1995 constitution sternly proclaims:

*“...Recalling our history which has been characterised by political and constitutional instability; Recognising our struggles against the forces of tyranny, oppression and exploitation;...”*

The authors naturally felt they had every right to see the moment as significant: it represented an opportunity to turn the corner on all the spectacular political failures of the past.

But it was doomed from the start. Stillborn.

To understand that, let us remember the process briefly. It began with a Commission of Inquiry headed by Justice Benjamin Odoki, which gathered views countrywide through a template known by all and accepted by the authorities. The resultant Odoki Report represented then the most up-to-date information on Ugandans' political views. Its findings were then presented to the country, and in 1993, an elected Constituent Assembly was convened to design the new constitution.

In 1995, Uganda received the design of its new constitution. The critical point here is that while this new constitution contained many things, new and old, it conspicuously lacked the two key findings of the Odoki Commission: multipartyism and federation.

The failure to base the constitution on Odoki's primary findings - and not even reflect them - was like an unwell person going to hospital with an ailment, then being treated for everything else except that ailment, and then also being discharged with new illnesses picked up from the ward.

What had started out as a well-meaning exercise was revealed as a project benefitting a confluence of elite interests: a section of the local middle class, the regime, and the Western Empire deeply entrenched in Uganda's economic affairs.

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This latest Supreme Court ruling simply confirms that the constitution does not have anything to do with the presidency, which functions fully according to its own necessities. This is not in itself new. The office of the colonial governor was basically what we call a president today: their “Excellency” title is the same, as is their official residence. In this period of extreme neoliberalism, they even answer directly to the same Western powers. Like the colony before it, the neo-colony can only be effectively governed for its owners by such over-centralised means.

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In the sense that it is not fooling anyone any more, it has reached the end of its useful life. This realisation is a final step in a long process. We began with the ritual dismissals of all four petitions brought against the twenty years of five sham elections, then the dismissals of petitions against the removal of constitutionally-provided-for term limits; and now this.

### **The Empire strikes back**

The constitution has performed three functions: it serves as a fig leaf protecting Western donor

pretensions to “democracy and good governance”, while covering up the dictatorial machine the West needs. The Empire gets guaranteed access to the resource wealth that brought them to Africa in the first place; other donors acquire a blank slate upon which they can practise their social engineering; and it diverts a significant part of the political elite from their historical role as fomenters of anti-dictatorial agitation. This last factor has been achieved through stage-managed elections, and also the creation of a very wide variety of jobs for the political elite to aspire to. Add up all the boards, commissions, inquiries and the like enumerated or made possible by the constitution “document”, and one ends up with a very long list of actual and potential vacancies that can be filled only by a certain type of educated citizen.

There have now been elite individuals bouncing around from one appointment to another as minister, judge, ambassador, director of some authority, or chair of some commission for the last two decades or more. These functions are an act of sedation, whereby the only thing they see worth agitating for anymore is how high up the command chain there is an awareness of their CV.

This started life as the colonial-era strategy that derailed the original independence movement, which was done because the movement was rooted not just among ordinary people, but also organised around economic demands expressed through various unions, trader associations, and peasant societies. Such demands went to the very core of the *raison d'être* of the colonial project: money.

The strategy had the following key features: suppressing the radicals, isolating the masses, and undermining native institutions. In this way, a noisy and energetic type of middle-class politician was placed centre stage in the unfolding process of decolonisation. These types of politicians became the “owners” of post-independence politics, which they went on to ruin through continuing the culture of any one faction in power always seeking to exclude all others.

Governor Andrew Cohen, appointed in 1952, was given the task of addressing the crisis caused by the violent anti-colonial “disturbances” that erupted under the rule of his predecessor, Governor John Hall. Cohen laid out his strategy out very clearly. He advised his bosses that not all African nationalism should be seen as a bad thing. He pointed out that much as there was a lot of agitating and strong language, not every strand of nationalism was fundamentally opposed to Western rule and Western lifestyles. Some, he said, were simply in disagreement over the pace of change, but shared values and goals “that were not fundamentally different from our (the British) own”.

He therefore advocated identifying the key voices in this tendency, and working with them to deliver a more manageable (“responsible”) independence movement.

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Such elites were to remain pre-eminent in this way in the two decades after independence. Up until the emergence of the peasants (Joseph Kony and Alice Lakwena before him in the late 1980s), virtually every coup, attempted coup, exile movement and armed rebellion was planned, resourced, led and organised by individuals from this elite class. And even then, Lakwena and Kony only came to leadership as a result of the slow-motion collapse of the initial anti-Museveni armed rebellion in

northern Uganda led by former Obote-era Prime Minister Eric Otema Allimadi, who had thrown in the towel and accepted a government amnesty.

### **Salary-based political process**

[Prof Amii Otunnu describes our political culture](#) as one of “using fear if not violence to access State resources for upward socio-economic mobility and in some cases for the sheer physical survival of social groups.”

Consider just one law: The Local Government Act, which is an outgrowth of the constitution. A quick analysis tells us that as is the practice, each new district usually produces three members of parliament: two directly elected from constituencies created therein, and one as the district woman MP. In addition, the district must convene an elected council, as well as a technical administrative structure headed by a Chief Administrative Officer. By these means, at least eighty new jobs will be immediately created, all to be supported by the public purse. As result of this, Uganda’s districts have increased in number from 33 in the 1990s to 127 today.

[And as a result of that, Uganda’s Parliament now has 426 members, who in total consume 11.4 billion Uganda shillings \(\\$3,041,349\) monthly as pay and allowances for MPs.](#) Their mandatory extra perks cost extra.

In general terms, the same demographic group that provided logistical support to armed rebellion now uses the same skill-set to feud over parliamentary seats, local government seats, and tenders.

The establishment of the 1995 constitution can, therefore, also be understood as an act of mass demobilisation of these historically troublesome elites from their historical activity through their mass co-option into a salary-based political process. Through its members in the main going along with the hollowing out of the meaning of the Constituent Assembly process by dodging Odoki’s findings, the Assembly became essentially an exercise in which the middle class wrote the job descriptions for their future jobs, and laid the foundations for their now two decades of well-paid public careers.

Cohen’s strategy has thus had a very far-reaching impact on Uganda politics. Basically, what we saw under him was the creation of space in which only a non-threatening, modernising form of “acceptable” politics was enabled to thrive. The 1995 constitution now essentially performs the same function.

With a middle class finally rendered docile, it is natural that the current dictatorship should go on to have the longest run of any dictatorship in the country’s history.

Maybe it is a good thing, in terms of what is called “peace-building”. But what is “peace” if there is no justice?

The 1995 constitution was a document that – despite the aspirations cited in its preamble – did not really *see* our history. It simply did not take cognisance of Uganda’s governance failings, and attendant dramas of the past, to create real representation.

Back to square one. Uganda is going to have to try again.

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