



TITLE:

# Governance, Democracy and Development in Uganda Today: A Socio-Legal Examination

AUTHOR(S):

OLOKA-ONYANGO, Joe

---

CITATION:

OLOKA-ONYANGO, Joe. Governance, Democracy and Development in Uganda Today: A Socio-Legal Examination. *African Study Monographs* 1992, 13(2): 91-109

ISSUE DATE:

1992-10

URL:

<https://doi.org/10.14989/68090>

RIGHT:

## GOVERNANCE, DEMOCRACY AND DEVELOPMENT IN UGANDA TODAY: A SOCIO-LEGAL EXAMINATION

Joe OLOKA-ONYANGO

*Department of Commercial Law, Makerere University*

**ABSTRACT** Uganda has experienced almost two decades of social, political and economic turmoil and turbulence since independence in 1962. In January 1986, the National Resistance Movement/Army (NRM/A) — a guerrilla grouping that had been at war for five years — assumed powers of government, on a radical platform of “fundamental change.” Since that time, several developments have occurred in the mode of governance, public accountability, human rights observance and popular people’s participation in self government.

At the same time, the philosophy of the NRM/A continues to be permeated with militarism that has manifested itself in continuing internal conflict in parts of the country, a suspension of political party activity and increasing socioeconomic strife. This paper addresses the nature of the contradictory forces in existence in Uganda today and examines whether the post-1986 innovations are sustainable against the onslaught of the traditional forces of underdevelopment and militarism. Of particular importance is the role and position of those members of civil society (namely women, the intelligentsia, workers and NGOs) in relation to the state in Uganda today and how effectively they can operate as a bulwark against government excess.

**Key Words:** Democracy; Militarism; Constitutionalism; Development; Governance.

### INTRODUCTION

January 26, 1991 marked the fifth anniversary of the rise to power of Yoweri Kaguta Museveni’s National Resistance Movement (NRM) in Uganda. It is also important to recall that almost to the exact date twenty years ago, Idi Amin became Uganda’s third president and opened one of the darkest chapters in the political and socioeconomic evolution of the nation once described as the “Pearl of Africa.” Such a comparison is apt if only because the 1970s and 1980s represent the most turbulent and tumultuous decades in the history of Uganda and indeed of the African continent as a whole (Kakwenzire, 1990). As we enter the last decade of the second millennium, it is thus important to seriously question the direction in which Uganda is today heading: is it towards greater democracy, sustained social and economic development and overall progress, or continuing human rights abuse, poverty, disempowerment and social retrogression? To paraphrase the biblical saying: is it simply more old wine encased in new shiny bottles?

The past five years are indeed marked by a significant evolution in the rhetorical position of the government in power: a stated commitment to the protection of human rights, the creation of novel institutional mechanisms of governance and ac-

countability and a marked improvement in the security of the person — a factor that had all but disintegrated by the mid-1980s. At the same time, the sociopolitical and economic hurdles that stand in the way of complete structural transformation still remain. Indeed many are compounded by the very inertia and intransigence of the NRM itself. This has led once again to the same problems that the Movement ostensibly set out to combat. In a nutshell, Uganda today lies at the crossroads between the realization of its potential for greater democracy and development, and the reignition of a crisis the dimensions of which may not be paralleled elsewhere, save the Lebanon or Cambodia.

This paper critically examines the character of the transformation in the mode of governance introduced by the NRM government and subjects it to the test of *sustainability* in the light of the prevailing political economy and social conditions of existence. It commences with the “good news,” *viz*: a consideration of the institutional mechanisms erected to achieve what the NRM describes as “fundamental change” in the struggle to achieve higher forms of democratic governance and socioeconomic progress.<sup>(1)</sup> PART II is the “bad news” — a critique of these new forms and a re-examination of the wider context within which they are being implemented. In concluding the paper in PART III, we consider the crucial question: which way Uganda?

## PART I: NEW FORMS OF GOVERNANCE IN UGANDA, 1986–1990

Faced with a situation in which traditional instruments of governance in Uganda had either totally collapsed or been thoroughly discredited, the NRM was confronted by the dual task of revitalizing the structures of central and local government and re-legitimizing the state to the people. Part of the latter problem was simply the reinstatement of the confidence of the people in government, which partly explains the rhetorical stance adopted by the Movement in declaring a strong commitment to human rights, the condemnation of corrupt official practices and the call for greater accountability.

All of this and much more was enshrined in the NRM’s “Ten-Point Program (TPP)” domestically (National Resistance Movement, 1986) and internationally, in the prominent human rights profile assumed in *fora* such as the OAU and the United Nations (*Weekly Topic*, August 6, 1986:1).<sup>(2)</sup> In the former, the NRM explicitly stated the link between democracy and development thus: “Democracy in politics however, is not possible without a reasonable level of living for all the people of Uganda. An illiterate, sick, superstitious Ugandan does not really take part in the political life of the country even when there is formal democracy. It is normally the local elite, pandering to the various schemes of the unprincipled factions of the national elite, that manipulate the population on behalf of the latter in bribes, misinformation, taking advantage of their ignorance . . . the NRM must think of democracy in a total context of real emancipation” (National Resistance Movement, 1986: 8–9).

This commitment to radical change led, amongst other things, to the suspension of political party activity, the fight against “sectarianism” and the promulgation

for the first time, of a law governing the establishment and operation of intelligence organizations. In the economic arena, steps were taken ostensibly to mark the movement towards an "integrated, self-sustaining and independent economy." The first measure in this direction was the promulgation of the Economic Recovery Program (ERP), that incorporated the recommendations of a team of economic experts that essentially drew inspiration from IMF-backed Structural Adjustment Policies (Mamdani, 1989).

All these measures were augmented by the following: (1) The establishment of a Commission of Inquiry into past human rights violations; (2) The creation of "grassroots" peoples' bodies, known as Resistance Councils and Committees ("RCs" in local parlance); (3) The formation of the office of the Inspector General of Government (IGG); (4) The revitalization of the Public Accounts Committee and the Office of the Auditor General, and (5) The promulgation of a Code of Conduct for members of the Armed Security services.

Examined as a whole, the above measures represent the kernel of the new forms of governance introduced by the NRM. It is thus important to outline the salient features of each.

### 1. The Commission of Inquiry into Human Rights Abuses

In light of the record of previous governments in the human rights arena, coupled with the prominent profile assumed by the NRM on the issue, a Commission of Inquiry was set up to "inquire into all aspects of the violation of human rights, breaches of the rule of law and excessive abuses of power, committed against persons in Uganda by the (past) regimes in government . . . and possible ways of preventing the recurrence of aforesaid matters" (*Legal Notice*, No.5 of 1986).

The phrase on prevention ("recurrence") was inserted to demonstrate that the NRM itself was not to escape the scrutiny of the Commissioners. In substance however, the Commission's major emphasis has been the past. Initially met by skepticism, especially given that many known human rights violators were roaming free (and a few had even been rewarded with governmental position), the Commission eventually gained public confidence and began the collection of testimony from victims, alleged perpetrators and witnesses of past abuses. By 1987, the Commission was in full gear, albeit confronted by a host of logistical problems (Oder, 1990).

The Commission is however, primarily an investigative body, lacking in powers of sanction. It must therefore submit its findings to the Director of Public Prosecutions (DPP), through the Criminal Investigation Department (CID) of the Police. The latter, as with most of the other sections of the Police Force in Uganda today, is not only severely crippled logistically, but was itself one of the many culprits of the *Ancien Regime* (Oloka-Onyango, 1990). Investigations have thus been tortuously slow and the results thereof remain unknown.

On its part, the DPP's office is allegedly rife with corruption, to the extent that few if any identified perpetrators have been made to account for the charges leveled against them.

The investigation has itself dragged on for an inordinately lengthy period of

time. This is partly on account of logistical reasons, but the slow wheels of the bureaucracy have also played a part in the delay. In the words of the Chairman of the Commission himself: "Disappointingly few prosecutions of the cases passed on to them (i.e. the CID) have been so far commenced, let alone completed. This is not because of lack of evidence or because culprits are few but because of serious logistical and manpower problems in the CID which the government is endeavoring to ameliorate" (Oder, 1990:11).

However, the speed of reportage of the Commission relates more to the failure in its enabling statute to specify a concluding date for the inquiry. Instead, it simply stated that the Commission shall "execute the said inquiry with due diligence and speed and make their report to me (i.e. The Minister of Justice), with recommendations without undue delay and within the shortest possible time" (*Legal Notice*, No.5 of 1986). By failing to make provision for even periodic reports, the Commission has unwittingly affirmed the cynical view that it was indeed established for cosmetic reasons.

## II. Resistance Councils and Committees

Modeled partly on the Tanzanian concept of Ujamaa villages and other forms of participatory organizations worldwide (Hyden, 1980), the Resistance Councils and Committees (RCs) emerged as the primary units for the politicization of the rural populace during the NRM guerrilla war. Following the capture of state power, they were institutionalized throughout the country, with their powers laid out by statute (*RC Statute*, No. 9 of 1987 and No. 1 of 1988, respectively). The main intention is that they operate as civilian watchdogs over the maintenance of security, the observation of law and order, the recruitment of personnel for the security forces and to link government to the broad masses of the population.

Conceptually, there is much to commend in the idea of extending participation beyond the traditional Westminster-style mode of government that characterized earlier Ugandan regimes. However, in the implementation of the idea and in their actual operation, the RCs leave much to be desired (Ddungu, 1989). Salyaga summarizes the most serious problem of the RCs thus: "But most important of all these 'grass-root institutions' have been forced on the masses from above. They are a state creature as were Amin's security/village councils in the southern parts of the country and UNLF's Mayumba Kumi. They are not a product of the people's independent creativity — and why should you blame them if they refuse to participate in these RCs? The people know the true nature of these structures and that is why it is the opportunists who have flocked into them; and through them the people are being suppressed; so how do you expect these same RCs to mobilize the people?" (Salyaga, 1987:2).

This criticism is borne out by two factors. First is the hierarchical structure of the formation of RCs and the absence of any real link between the higher councils (RC V) and the lower ranks (RC I & II). The National Resistance Council (NRC), which has been designated the supreme body of government is primarily responsible for the legislative function (*Legal Notice*, No. 1 of 1986: the NRM Constitution, hereinafter referred to as LN 1/86). Representatives to this body are not elected by

the "grassroots," but rather by representatives of the higher levels of the RC (Ddungu & Wabwire, 1990).

The second problem is the extensive powers of control and sanction vested in state functionaries by the laws governing the organizations, ranging from the District Administrator (DA), who is the principal political officer in each district, to the Minister of Local Government. The latter has the power to suspend an RC on a number of grounds, the most prominent of which is if the RC "is engaged in acts disrupting public security, law and order" (*RC Statute*, 1987: S.10.2). Although the Minister must "at the earliest opportunity after suspending a Resistance Council, give a written report to the National Resistance Council" the suspended RC is granted no rights of appeal against the order — the final decision in the matter vesting in the NRC. This represents the usurpation of basic principles of participatory democracy which are designed to give the people themselves the right and the power to determine the fashion and direction of their organization. State supervision of RCs is nevertheless dictated by factors that have little to do with such ideals (Oloka-Onyango, 1989).

Participatory democracy in the RCs is further undermined by the powers which they are permitted to exercise by law. Although a policy making organ, the RC cannot deliberate on critical matters relating to the economy, for example. In the light of IMF-dictated Structural Adjustment Programs (SAPs) that have been implemented in Uganda with devastating effects since the early 1980s, this is a serious omission (Banugire, 1989). That omission can in part be retraced to a misreading of the 1987 *Report of the Commission of Inquiry into the Local Government System* (Mamdani (ed.), 1987), which made the following recommendation, *inter alia*: "As a deliberative and legislative authority, the RC should have the right to pass bye-laws/resolutions/decisions that apply to its own jurisdiction which do not contravene any laws passed by the higher legislative organs. *Of particular importance here should be the laws/resolutions/decisions passed in the interest of the socio-economic development of the area*" (Mamdani (ed.), 1987: Paragraph 51, pp.22–23, emphasis supplied).

We refer to the statute as a misreading of the recommendations made by the Commission because of the emphatic manner in which the Commission report stated that the first action of RCs should be to operate as "watchdogs," and further that RCs are "to resist any tendency on the part of state officials towards abuse of authority or the denial of the rights of the people" (Mamdani (ed.), 1987: Paragraph 49, p.22). The reality is that in the economic arena, RCs were relegated to the bureaucratic role of the distribution of scarce essential commodities. Once these became available, RCs have been even further marginalised.

This situation has arisen largely because, according to the government, IMF policies are only comprehensible by those with the technical expertise. This argument ignores the fact that it is the rural populace that is most critically affected by the SAP measures and that they have little difficulty in articulating their social grievances, even if not in the same technical jargon as that employed by the technocrats and politicians.

To conclude, the institutionalization and bureaucratization of RCs has stunted their evolution as genuine and autonomous organs of participatory democracy and

grassroots development, a problem that plagues the progress of any social movement.<sup>(3)</sup>

### III. The Office of the Inspector General of Government

The IGG's office was established in a bid to create an institutional mechanism akin to that of the ombudsman, to check human rights abuse and monitor corrupt practices by present and future governments (Ruzindana, 1990). Thus aside from "protecting and promoting the protection of human rights and the rule of law," the IGG is also mandated to "inquire into the methods by which law enforcing agents and the state security agencies execute their functions, and the extent to which the practices and procedures employed in the execution of such functions uphold, encourage or interfere with the rule of law in Uganda" (*IGG Statute*, Section 7). From the outset it is important to appreciate two things. First is the loose division of duties between the IGG and his deputy — the latter largely holding the human rights portfolio, while the former has concentrated on the question of corrupt practices by public officials. For a long period after inception, the human rights division of the office remained dormant, such that as late as April 1990, the government-owned newspaper, the *New Vision* complained that, "The office of the IGG can perhaps be criticized over its mandate to protect human rights. In any society, human rights will be infringed from time to time, and Uganda is no exception. The Press, RCs and members of the public have exposed various abuses that have occurred but in general the IGG has not intervened (*New Vision*, April 4, 1990:4).

Both the IGG and his deputy are generally considered to be persons of high moral integrity and diligence. However, a clear division has emerged between the two over style, method and the substance of the execution of the duties of the office. Thus, for example, the IGG joined the Attorney General in dispelling "allegations in the local and international media, that there was torture or starvation in these (i.e. military) barracks" while only admitting to "a little overcrowding" (*New Vision*, August 24, 1990:1). Clearly this is a grossly distorted presentation of the facts, and indeed in an extensive article on the human rights scenario in contemporary Uganda written a little over a month later, the Deputy IGG painted a starkly different picture of continuing massacres (especially in war-torn areas), murders, torture and disappearance. Of the latter he wrote, "Disappearance continues as a form of Government policy to date. . . . What concerns me most is not so much the illegality of his (one Erukana Ochaya, 70 years of age) custody, an issue in itself, but the denial of relatives to see their beloved one for a period in excess of five weeks to provide food and beddings which may not be of a standard readily available in the barracks" (*Weekly Topic*, October 26, 1990:1, 8-9). Needless to say, this article drew a swift and sharp response from the government as did an earlier newspaper article by the same officer, alleging financial malpractices in the NRM Secretariat (*New Vision*, May 16, 1990:1). The second point of note, which meshes with the first, is that the IGG is a presidential appointee and his actions are thus circumscribed by considerations of national security and state secrecy. Clearly the Damocles sword held by the President over the IGG has prevented serious investigations and the sanctioning of allegations of cor-

rupt practices and human rights abuse by senior officers, many of which have been the subject-matter of press coverage, time and again.

The IGG's office has brought to the fore the contradictions intrinsic to the NRM, and has the potential to really test the rhetorical commitment of the state to the notion of human rights. In the first instance, the powers conferred by statute do not necessarily correspond to the *real politic* of political alliances, nepotistic appointments and embezzlement, let alone the more serious issue of human rights abuses. With the political will, the office can emerge as the NRM's albatross, pointing out human rights abuses and sanctioning the corruption of high-ranking officers. While the cynical observer only a year ago could have argued that the intent of the office was salutary (i.e. pretending to address human rights concerns while at the same time doing nothing about them), this is clearly not the case to day, particularly with reference to the Deputy IGG. Given the wider context that we shall subsequently explore, it remains to be seen whether this particular individual can survive the contradictions we have already referred to.

#### IV. The Armed Forces Code of Conduct and the Security Organizations Statute

Both the inclusion of a Code of Conduct (COC) for the Armed Forces as a schedule to LN 1/86, and the enactment of a law governing the operation of security organizations represent the first time in the history of the country that some form of legislative control has been enforced on military and paramilitary forces in Uganda (cf. Omara-Otunnu, 1987; Khiddu-Makubuya, 1989). While the establishment of two officially-acknowledged security Organizations (the Internal Security Organization:ISO, and the External Security Organization:ESO), represent a complete *volte face* from an earlier pledge that the NRM government would *never* establish intelligence bodies (*Weekly Topic*, February 3, 1989:3), the mere fact of the enactment of a law governing their operation, must be viewed as progress.

The *Security Organizations Statute* (No. 10 of 1987) clothes the operation of both intelligence bodies in legitimacy and elaborates (if somewhat scantily) the nature of their functions (Section 2). No employee or officer of either organization is permitted to "take action" against any person following intelligence gathering, unless sanctioned by the President or his nominees (Section 3.1). The Directors-General of the organizations are empowered to direct the police to arrest and detain any person, provided that this does not exceed a period of 48 hours (Section 3.2). Significantly, and in comparison to legislation of a similar genre (concerning powers of arrest) in earlier years, no officer/employee of either security organization has powers of arrest (Section 3.2).

The COC which was incorporated as a schedule to LN 1/86 elaborates a comprehensive list of rules and regulations, covering *inter alia*, dealings with the public, relationship among soldiers, offenses and punishments for breach of the Code, and a separate code for operational, i.e. battle and work activities. Many observers have pointed to the COC as the bulwark of NRA discipline, citing the numerous instances of sanction, including the death penalty, against offenders (Amnesty International, 1989:14-16).

The efficacy of these measures is invariably a separate matter for consideration.



which we leave for detailed appraisal in the following section of the paper. It is important to note however, that so far there have been no regulations governing the officials of the two intelligence bodies (Section 11). This means therefore that there is neither a code of conduct for their officers and employees, nor are there disciplinary procedures in place to sanction them. Moreover, despite the law, officers of both organizations are known to conduct arrests and to operate detention centers that are off-limits to independent non-governmental organizations (NGOs). Finally, Military Intelligence — perhaps the most powerful and notorious of the intelligence agencies today — is not covered by the statute or by any other instrument.

Regarding the Armed Forces, the COC has been followed more in the breach, particularly in areas where the NRA faces armed insurgencies, but even in areas that are supposedly tranquil. Thus for example, extra-judicial executions, disappearances and allegations of torture by NRA personnel are daily fare in the local media. In one recent case, an imprisoned brigadier in the NRA had been so badly tortured that the Chairman of the Tribunal that was to hear the charges brought against him declined to begin proceedings until the detainee had received proper medical treatment (*Weekly Topic*, January 25, 1991:1).

Against the preceding background sketch, we can now turn to an examination of the wider context within which the changes in the mode of governance have been introduced and to a critical consideration of their *sustainability* and relationship to democracy and development in the 1990s.

## PART II: BEHIND THE VEIL OF "FUNDAMENTAL CHANGE"

Few sincere observers of the Ugandan situation would argue that the measures outlined in the preceding section of the paper do not represent a significant evolution in the mode and the structures of governance hitherto existing. However, moving in tandem with these measures have been legal and political developments that not only undermine the operation of these measures, but positively usurp them. This leads to the conclusion that the NRM's clarion call for "fundamental change" still eludes the majority of the Ugandan populace.

The situation in Uganda can be most aptly captured in Lenin's famous dictum: "One step forwards; two steps back." In the following pages we endeavor to demonstrate the strictures in the political economy of Uganda that serve to diminish the impact of the otherwise positive measures introduced over the five years of the NRM's control of the reigns of power. We examine this contention primarily through the lenses of the NRM's constitutional framework, and the role of the Army in this scenario.

### I. The NRM's Constitutional Regime

Following the footsteps of its predecessors who assumed power through extra-constitutional methods, the NRM suspended Chapters IV (save Article 24) and V and Articles 3 and 63 of the 1967 Constitution. This meant in effect, that the provi-

sions governing the election of the Executive (minus that on the president); the constitution of Parliament; the manner of alteration of the Constitution and the power to make laws, was altered. Instead, the National Resistance Council (NRC) was established with "supreme authority of the government" and in addition, "All legislative powers referred to in the Constitution are hereby vested in the National Resistance Council. These powers shall be exercised by the Council through the promulgation of Decrees evidenced in writing under the hand of the President and the Public Seal (LN 1/86). LN 1/86, the NRM's first legal proclamation, effected these changes and thenceforth became the principal constitutional document to be read together with the unsuspending provisions of the 1967 constitution.

LN 1/86 introduced several changes to the constitutional framework hitherto in existence. First was the fusion between executive and legislative powers, represented by the fact that the chairman and vice-chairman of the NRM respectively became chairman and vice-chairman of the NRC, with exclusive powers to "preside at all meetings" of the body (Paragraphs 2.1 and 3). Second was the appointment of the President by the NRC, side-stepping the provisions for election outlined in Article 24 of the 1967 Constitution, which had in fact been preserved by LN 1/86 (Paragraph 6). Thirdly, and perhaps of greatest importance for our purposes was the establishment of an Army Council and the stipulation that: "The National Resistance Council shall seek the views of the National Resistance Army Council on all matters the National Resistance Council considers important" (Paragraph 10). A twin provision stipulated that the NRAC may forward its views on any matter it considers important to the NRC and the NRC "... shall take such views into account when making a decision on such a matter" (Paragraph 10.3).

It must be pointed out however that LN 1/86 did not suspend Article 1 of the 1967 Constitution that declared the 1967 Constitution to be "the supreme law of Uganda" and also holds that the Constitution shall prevail over any law that is inconsistent with it (Article 1.2).

The above provisions notwithstanding, an examination of the constitutional framework introduced by the NRM will demonstrate two things; first, that despite declarations that the NRM is an "interim" administration, quite to the contrary, its intentions are in fact more permanent. Secondly, several of the provisions of the new constitutional regime violate fundamental precepts of democratic government.

Since LN 1/86, the NRM has introduced several new constitutional provisions with far-reaching implications. In the light of a flood of claims by various injured persons who sought redress from the government for the wanton acts of army officers and other security officials, particularly in the course of counter-insurgency operations, the regime promulgated *Legal Notice*, No.6 of 1986 (LN 6/86). This law purported to outlaw all actions brought against the government in relation to acts committed by previous governments between November 1, 1978 and January 26, 1986, and simultaneously nullified any action, suit or proceedings against the present government in the courts instituted before August 23, 1986.

Challenged for its constitutionality in the case of *Edward F. Ssempebwa v. The Attorney General* (Constitutional Case No.1 of 1987), the Court found no difficulty in declaring the law void on a number of technicalities <sup>(4)</sup> (Judgment of Justice

Oder, pp. 32–41), but in addition stated: "... as the new Constitution (i.e. LN 1/86) sets out the legislative process, by whom and how such powers are to be exercised, even the NRC as the sovereign power who made the Proclamation LN 1/86 is bound to work within the new Constitution. [The NRC] ... cannot therefore validly legislate outside that framework" (Judgment of Justice Oder, pp. 30–31). In other words, the NRC was not above the law and had to operate within its provisions. Because LN 6/86 did not conform with those provisions, it was therefore null and void. In direct response to the Court's declaration, the NRC passed *Legal Notice*, No.1 of 1986 (Amendment) Decree (No.1 of 1987), that duplicated almost word for word the provisions of LN 6/86, but this time conformed to the legal technicalities that had been lacking with the earlier law. In this way, the NRM was able to subvert the substance of the ruling in Ssempebwa's case and enact the undemocratic measures outlined in LN 6/86.

At the beginning of 1989, the last year of the NRM's first "interim" period of governance, the NRC passed *Legal Notice*, No.1 of 1986 (Amendment) Statute (No. 1 of 1989, hereinafter SN 1/89). Aside from greatly expanding the NRC to include representation beyond the original framework and making provision for the election of women, youth and workers representatives, SN 1/89 also made the following two stipulations of significant import. First, the NRC and the Army Council "... shall participate in the discussion, adoption and promulgation of the Constitution ..." (Paragraph 14B), and secondly, that the two organs shall "assemble together and *jointly*" elect or remove the President from office and approve a declaration of a state of emergency or insurgency "in relation to the whole of Uganda or any part thereof" (Paragraph 14C(a) and (b)). This provision warrants critical scrutiny.

### 1. The Army and the Constitution

The passing of SN 1/89 can be said to represent the high water-mark in post-1986 legal and political developments in Uganda. By directly incorporating the Army into the governance of the country, the NRM has for the first time in the history of Uganda given to the Army *constitutional* powers of legislation — a feat unparalleled even by the military dictatorship under Idi Amin. Unsurprisingly, this action has generated significant and often acrimonious debate between those who support the measure and those opposed to it. From the NRM perspective, it is impossible to exclude the Army from the process of decision making, because after all, they "liberated" the country from fascism.

Viewed in historical perspective, SN 1/89 marked the consolidation of the militaristic tendency within the NRM that culminated at the end of 1989 with the undemocratic and unconstitutional extension of the NRM's "interim" period of governance by an additional five years. This tendency (which the NRM prefers to describe as the consolidation of our "security"), is demonstrable first by the large size of the Armed Forces in Uganda today, and secondly, by the appropriations for defense spending in the budget, illustrated by the figures in Table 1.

The figure of 28% representing defense expenditure in the previous year may not signify anything spectacular and indeed may be *at par* with expenditures even in the so-called Western democracies. However, there are two things of note here that

Table 1. Defense expenditure in comparison to health and education.

	1983/84	1987/88	1989/90
Health	5.0 <sup>a</sup>	2.3 <sup>b</sup>	3.0 <sup>b</sup>
Education	13.0	17.3	13.0
Defense	17.3	23.5	28.0

Source: UNICEF, 1990: 7.

require deeper discussion. First is the phenomenal increase in expenditure on defense *per se* as a proportion of or in comparison to the most important social services. The second is the wide (and growing) gap (15.0% in 1989 vs. 4.3% in 1983) between the two categories of service (i.e. education and defense) over the years. Only defense expenditure has registered a consistent rate of growth.

If we recall that the 1983/84 figure represents the heyday of fascism in Uganda under the Obote II regime, then the 1989/90 figure is alarming. Most importantly, we must remember that Uganda has not, in all this time, been involved in an external war.<sup>(5)</sup> The only explanation for this is the re-orientation of the armed forces towards internal security, a problem that had its roots in the previous regime but continues with ever-growing prominence to date.<sup>(6)</sup> The higher defense expenditure represents, in my view, a negative perception of the question of security i.e. the more heavily armed you are, the more secure you will be. This argument prevailed in the decision that led to the incorporation of the NRA in the constitutional regime *via* SN 1/89.<sup>(7)</sup>

One other instrument of importance to this argument is the *Constitution (Amendment) Statute*, which changed Article 21 of the 1967 Constitution that provides for the suspension of civil liberties in times of war and public emergencies. The new provision allowed for the declaration by the President of a "state of insurgency" in Uganda or any part thereof. Such declaration remains in force for six months unless approved and extended for a further similar period. Most importantly, section 21A.5 stipulates that nothing done under the authority of the declaration shall be held inconsistent with or in contravention to Article 15 of the Constitution, to the extent that such action has been duly authorized by the declaration. Article 15 secures equal protection of the law, the presumption of innocence and fair trial, among other due process protections. In a nutshell it provides for the suspension of the operation of established principles of democratic governance, the fact of its non-implementation to date notwithstanding.

## 2. The Wider Context

Constitutional provisions alone cannot provide an adequate picture of the character of the NRM or its relationship to the prospects for democracy and development in Uganda. These have to be married to the wider context of laws and policy initiatives implemented by the regime since 1986 and particularly in 1989. Here we focus on only a handful.

The first significant legal development relates to the amendment to the *Penal Code*. Section 39A prohibits the publication of any information on military operations, strategies, the location of troops, military supplies and equipment, or the movements of the Armed Forces or of the "enemy" that is likely to endanger the

safety of military installations and operations, assist enemy operations or disrupt public order and security. The term enemy is defined as a person or group of persons waging war or engaged in war-like activities against the state.

An amendment to section 42 of the *Penal Code* prohibited the publication or utterance of statements designed to degrade, revile or expose to hatred or contempt, create alienation or despondency, raise discontent or disaffection or in any other way, promote feelings of ill will or hostility among or against any group or body of persons on account of religion, tribe or ethnic or regional origin. The maximum term on conviction for an offense under this section was set at five years. Both these provisions are aimed at limiting the scope of press freedom in Uganda today and are a direct outcome of the bold and often provocative accounts in the Press of the mishaps of the counter-insurgency effort, which has in many respects remained unreported.

In the same year, the NRC enacted the *Magistrates' Courts (Criminal Procedure) (Special Provisions) Statute* (No. 7 of 1989), extending the jurisdiction of magistrates to try certain "specified" criminal offenses in parts of the country declared "areas of insurgency." The President is empowered to designate any grade of Magistrate lower than grade one, or any other person, to serve in such area, with powers to impose the maximum penalty. Section 6, the crux of the law, expanded the definition of "police officer" in the MCA to include a member of the NRA. Finally, Section 7 modified the provisions of the MCA governing search and seizure and permitted "police officers" (even without search warrants) to seize any implement, article or thing in respect of which a specified offense has been or is about to be committed. Section 8 stipulates that any person who has been charged with the commission of such an offense shall be automatically denied bail.

It may be easy to argue (and the government has argued as much) that these provisions are innocuous in light of the overall stability in the country and indeed they have never been invoked. That argument can be forthrightly dismissed by referring back to the words of Justice Russell in a case that turned on the effect of the *Military Police (Powers of Arrest) Decree* (No.13 of 1971), passed by the then-military government. In *Efulayimu Bukonya v. The Attorney General* (High Court Criminal Session No. 730 of 1971), the Judge stated that, "There appears to be a widespread but mistaken belief . . . that the police, soldiers and private persons lawfully entitled to arrest without warrant, persons whom they reasonably suspect of having committed or being about to commit designated offenses, may shoot in cold blood should they fail to acquiesce in their arrest." The parallels between the two legislations, even if twenty years apart in promulgation, are too chilly to simply dismiss as innocuous. Several incidents in 1990 alone testify to the brutal methods of search, seizure and arrest employed by the armed forces in insurgency areas (Amnesty International, 1990 b). Moreover, there is a marked lack of sanction or censure of the responsible persons, despite the occasional reports of firing squads following "kangaroo court" trials of members of the NRA.<sup>(8)</sup>

This paradox of double standard was captured by a reader in a recent letter to the *New Vision* comparing the action taken against the Inspector General of the Police and his deputy on account of a shooting incident at the Makerere University campus and the notorious "Mukura Massacre" where over 60 innocent and

defenseless people were suffocated to death in a train cabin by officers and men of the NRA. We quote from the letter *in extenso*: " Even more seriously, 69 youths were suffocated to death in train wagons by some NRA soldiers in Kumi in 1989. More recently some civilians were reportedly burnt to death in a hut in Serere, while others were clubbed to death near Soroti, allegedly by some NRA soldiers. These naked atrocities have practically been swept under the carpet by the authorities. But the Army Chief of Staff did not lose his job because of what his soldiers, who were miles away from him at the time, did. Are these not double standards?" (*New Vision*, January 3, 1991:5). It is also useful to remember that none of the soldiers involved in the Mukura incident were arrested, as were those at Makerere. This then is the concrete reality of Uganda today.

### PART III: INTO THE FUTURE, WHICH WAY UGANDA?

The above account illustrates the different and often contradictory directions in which the NRM has moved over the five years of its existence. It is also an indication of the trend that matters are likely to take in the future. The possibility of a further extension or, rather, consolidation of the NRM in power is not remote despite the establishment of a Constitutional Commission in 1988 to promulgate a new constitution and pave the way for the return to normalcy (*Constitutional Commission Statute*, No.5 of 1988). However, the NRM insists that it has no intention of holding on to power nor of manipulating the trend of things to come. Indeed, in response to the charge that the NRM already had its constitution, Museveni retorted: "The National Resistance Movement has had no time to think or write its own draft constitution. . . . Those who are [running] around alleging the presence of an already drafted NRM constitution are spreading absolute rubbish" (*New Vision*, November 20, 1989:1). Do the facts bear him out? From the preceding account alone, it is fairly evident that the NRM has its constitution and that it is in fact already in operation. In addition, the NRC is not a temporary body.<sup>(9)</sup> Attempts to point out this anomaly and other problems with the political and constitutional decisions of the NRM are contemptuously dismissed. On two separate occasions, the Minister of Justice/Attorney General has cautioned "new members" of the NRC against questioning the legality of the organs established under the expanded NRC (*New Vision*, April 25, 1989:1), or more explicitly, "It is not in order for new members of the expanded house to question what has already been established by law."

Thus between the effective implementation of the work of the IGG the various commissions and the laws governing the intelligence organs, lies the draconian and militaristic constitutional provisions and amendments; the changes to the *Penal Code* and the MCA and the conferment of wide-ranging powers of arrest. All these pose a major threat to the positive measures introduced.

There is however another reality — the story of popular society in Uganda today, *viz*: the press, the women's movement, the intelligentsia, workers and the youth. It is my considered view that it is the nature and the content of popular society in Uganda today that will eventually determine the direction of develop-

ment and democracy in Uganda in the 1990's. For this reason, I conclude this study by glancing at the current position governing this sector of society, before I make conclusive prognostications on what is to come.

## 1. Popular Society vs. the State

### 1. Alternative Developmental and Democratic Directions

Discourse in the late 1980s into the 1990s has increasingly centered on the role, nature and enhancement of the non-state actors in society — the so-called “civil society” (Shaw, 1990; Ramaswamy, 1991). That discourse coincides with the emergence of non-governmental organizations, the demand for non-state centered development, the emphasis on basic human needs and the protection of under-privileged sectors of society, all of which is taking place against the backdrop of the collapse of the state as we know it. In the words of Clarence Dias: “It behooves all of us, imbued in the spirit of human rights and fortunate enough to be able to exercise that most precious right — the right to be human — to press right now, not only for universal declaration and universal reaffirmation, but also for universal realization of *all* the human rights of *all* persons of whatever age, gender, race or creed on this fragile spaceship earth” (Dias, 1990:45, emphasis original).

In the Ugandan context the need for the reformulation of developmental imperatives and democratic rights of participation has never before been more acute, especially in light of the twin problems of austerity measures in the economic arena and the co-optation by the state of people's grassroots initiatives in the political. To illustrate how the struggle for democracy and development is in fact being spearheaded by such non-state actors, we briefly consider the status of the working class, women and the intelligentsia in the Uganda of the 1990s.

### 2. Workers, Women and the Intelligentsia

Although numerically small, the working class in Uganda has exerted considerable influence on the nature and content of governmental policies affecting industry and labor, even in the face of the debilitating programs of structural adjustment. Throughout the Obote II period, the National Organization of Trade Unions (NOTU) resisted co-optation by the state and as a result suffered intimidation, harassment and even murder. Thus, when the NRM assumed power, it found a movement that had been shaken but not decimated.

The NRM enhanced this position by at least refraining from interfering in the operation of the movement. According to Baryahawego, “The most important contribution of the NRM-led government since January 1986 to the trade unions is that their freedom of association has been effectively restored” (Baryahawego, 1990:340–341).

At the same time the NRM, following in the footsteps of earlier regimes, attempted to co-opt workers by allotting specific seats within the NRC for workers (alongside those for women and youth). This was a positive measure. However, the NRM has sought to determine the manner in which those seats were to be filled. This NOTU rejected, arguing that this state concession (coming as it did from above), would be circumscribed if NOTU did not have the power to determine the

manner in which to fill those seats. To date, an uneasy tension exists and the seats remain unfilled and strikes continue to plague industry, much to the displeasure of the government, which has not hesitated to employ strong-arm tactics against the movement. Despite all this, NOTU remains among the most consistent and vocal critics of the NRM's economic and other policies.

By contrast, the gender question has raised significantly different issues in relation to the direction of development and democracy in Uganda in the 1990s. A distinct cleavage in opinion has emerged between those who believe, as does Rosalind Boyd, that the NRM has effectively turned the picture around, and other more skeptical voices such as Sylvia Tamale, who argues that women in Uganda today, "... still suffer from the same oppression, marginalization and subordination that they suffered thirty years ago and the NRM program has done little or nothing fundamental to redress the situation" (Boyd, 1989; Tamale, 1991:3).

The fact that the NRM addressed the gender issue at all was dictated both by the commitment it made to the liberation of the oppressed sectors of society, and the fact that women played a prominent role in the guerrilla struggle as fighters, liaison and intelligence officers. However the fashion in which the NRM has sought to address the question leaves much to be desired. First, the women representatives in the NRC are predominantly male-elected and only occasionally do they speak out against the rampant chauvinism, in the house or outside.

Secondly, the legislative record of the NRC is vivid testimony to the real opinion that dominates in the NRM. The legal regime in Uganda, commencing with the Constitution and proceeding down the scale, is a vivid display of the structures of patriarchy and male domination that subsist in Uganda today. Finally women's issues, even when raised by the proponents of greater emancipation, are either laughed out of the house or their contributions downplayed or ignored. Moreover, government has arrogated to itself the initiative in determining the issues of importance in the gender question and thereby undermined the contribution of independent and radical proponents of change in this arena.

Thus, by making provision for the representation of women in the highest legislative body, the NRM gave the appearance of greater commitment to the gender question. At the same time however, the NRM has attempted to circumscribe and dictate the manner in which it progresses. Whether or not women as a group will be able to move beyond this strait-jacket depends, first, on how they conceptualize the problem and secondly, the strategy they adopt to achieve its elimination. Both necessarily need to be linked to the wider process of struggle by other sections of popular society.

Of these, the press and the intelligentsia have made the biggest contribution to defining a different imperative for democracy and development in Uganda today. The intelligentsia has done this through challenging the Economic policies of the government; linking the struggle in education to the struggle of other sectors of popular society and calling for more governmental accountability and democratic methods of operation. The press in Uganda has proved a vigorous and undaunting prosecutor of free expression and the right to debate issues that affect the future of the country, under pain of retaliation by incarceration or censorship. Although it has thus far enjoyed a period of relative tolerance from the state, this has not been



without some harassment and the arrest of a number of journalists, particularly over the affair involving the questioning of former President Kenneth Kaunda of Zambia (Amnesty International, 1990a).

This then is the scene of civil freedoms in Uganda today, poised between the benign tolerance of a state in crisis and the potential for severe conflict, particularly as the political and economic crisis intensifies. Insofar as questions of development and democracy are concerned, it is the extent to which the state will tolerate the operation of these sectors of civil society that will dictate whether or not Uganda proceed beyond the crossroads.

## CONCLUSION

The case of Uganda over the past five years clearly illustrates a dynamic situation in which there have been significant developments in the direction of greater democratic freedoms, and enhanced socioeconomic development. At the same time, these developments are often undercut by a contradictory thrust — towards further militarization, more dictatorial methods of governance and the increasing dispossession of the lower classes.

Today, therefore, Uganda literally stands at the crossroads, and the direction in which it will proceed, can be the subject of intense debate. What is certain, is that absent the increasing opening of the structures of governance to more popular participation by the general mass of the population, a democratic resolution to the issue of internal strife, and the possibility of more definitive modes of accountability, Uganda will continue to wallow in the crisis situation it has experienced for the past two decades.

## NOTES

- (1) The "fundamental change" slogan was first coined by Yoweri Museveni at his inaugural address on January 29, 1986: "No one should think that what is happening today is a mere change of the guards: it is a fundamental change in the politics of our country. In Africa we have seen so many changes that change as such is nothing short of mere turmoil. We have had one group getting rid of another only for it to turn out to be worse than the group it displaced. Please do not count us in that group of people; the NRM is a clear-headed movement with objectives and a good membership" (see Museveni, 1989:1).
- (2) See also Museveni (1989:57).
- (3) Carol Smart (1986) illustrates this point in her examination of the travails of the feminist movement in Great Britain over the years.
- (4) The technicalities that formed the basic grounds for the dismissal of the suit were four, viz: (a) LN 6/86 purported to *Proclaim* when it should have *Promulgated*; (b) The NRC could only make *Decrees* not *Legal Notices* or *clanations*; (c) LN 6/86 was not signed by Museveni *qua* President, but rather as Chairman of the NRM, and (d) It was not made under the Public Seal (Judgment of Justice Oder, pp.32-41).
- (5) The single instance has been in the case of the incursion into Rwanda by men and

- officers of the NRA of Rwandese origin. Although the Uganda government has strenuously denied any involvement in the attack, few observers believe that an invasion of the scale undertaken by such high-ranking army officials was done without any knowledge on the Ugandan side.
- (6) Ex-President Milton Obote was the first to give recognition to and explicitly condone this new role for the army. Soon after his fraudulent re-election to the Presidency in 1980, he said: "I don't think Uganda is threatened by her neighbors; I can't see any neighbor wanting to invade Uganda. So the issue is not the external problem, it is *internal security*. And that is not a police job; it is an army job" (emphasis supplied. Reported on BBC World Service, December 13, 1980, quoted by Omara-Otunnu, 1987:157).
  - (7) In the Presidential address to commemorate the fifth anniversary of the NRM's ascendancy to power, the President made the following remark about the question of security: "Security is too important to be left to soldiers. That is why the National Resistance Movement introduced the concept of home defence; that is why we are trying to demystify the gun so that the people begin to see the gun as an instrument of security and not terror, so that the people can directly be involved in the provision of their own security. The days of terrorizing the people are gone" (Address to the nation by H.E. Y.K. Museveni, January 26, 1991). This contrasts starkly with a speech he gave on the passing of the RC statutes (see, Oloka-Onyango, 1989:470). Whether or not this represents a genuine philosophical re-orientation or simply more rhetoric, remains to be seen.
  - (8) See, for example, the most recent Amnesty International report on Uganda (1990b).
  - (9) There is no provision (as was the case with the National Consultative Council of the interim administration of the Uganda National Liberation Front (UNLF), following Idi Amin's ouster in 1979, for the replacement of the NRC following the termination of the interim period (cf. Paragraph 3, *Legal Notice*, No.1 of 1979).

## REFERENCES

- Amnesty International 1989. *Uganda: The Human Rights Record*. Amnesty International Publications.
- 1990a. *Ugandan Journalists on Trial, AI Index: AFR 59/09/90*. Amnesty International Publications.
- 1990b. *Death in the Countryside: Killings of Civilians by the Army in 1990, AI Index: AFR 59/15/90*. Amnesty International Publications.
- Banugire, F. 1989. Employment, incomes, basic needs and structural adjustment policy in Uganda, 1980–87. In (B. Onimode, ed.) *The IMF, The World Bank and the African Debt: The Political and Social Impact* Vol.2, pp.95–110, Zed Books, London.
- Baryahawego, J. J. B. 1990. *Law and the Working Class in Uganda (1962–1987)*. Unpublished Ph.D Thesis. Warwick University.
- Boyd, R. 1989. Empowerment of women in contemporary Uganda: Real or symbolic? *Labor, Capital and Society*, 22(1):19–40.
- Dias, C. 1990. Realizing the human rights of the disadvantaged. *Review of the International Commission of Jurists*, 45:37–45.
- Ddungu, E. 1989. *Popular Forms and the Question of Democracy: The Case of Resistance Committees and Councils*. Center for Basic Research Working Paper No.4, Kampala.
- Ddungu, E. & A. Wabwire 1990. *Electoral Mechanisms and the Democratic Process: A*

- Study of 1989 RC/NRC Elections in Uganda*. Center for Basic Research Working Paper No.9, Kampala.
- Hyden, G. 1980. *Beyond Ujamaa in Tanzania: Underdevelopment and an Uncaptured Peasantry*. Heinemann Educational Books, London.
- Kakwenzire, J. 1990. Problems of Implementing Human Rights in Uganda. Paper presented at the Commission of Inquiry into Violation of Human Rights, February 16/17, 1990, Kampala, Uganda.
- Khiddu-Makubuya, E. 1989. Paramilitarism and human rights. In (K. Rupesinghe, ed.) *Conflict Resolution in Uganda*, pp.141-157, James Currey/Ohio University Press, London.
- Mamdani, M. (ed.) 1987. *Report of the Commission of Inquiry into the Local Government System*. Government Printer, Kampala.
- 1989. *Uganda: Contradictions of the IMF Program and Perspective*. Center for Basic Research Working Paper No.5, Kampala.
- Museveni, Y.K. 1989. *The Path of Liberation*. Government Printer, Entebbe.
- National Resistance Movement 1986. *Ten-Point Program of the National Resistance Movement*. NRM Publications, Kampala.
- Oder, A. 1990. Uganda's Commission of Inquiry into Violation of Human Rights: What Has Been Done So Far and What Remains to Be Done. Paper presented at the Commission of Inquiry into Violation of Human Rights, February 16/17, 1990, Kampala, Uganda.
- Oloka-Onyango, J. 1989. Law, grassroots democracy and the national resistance movement in Uganda. *International Journal of the Sociology of Law*, 17(4): 465-480.
- 1990. Police powers, human rights and the state in Kenya and Uganda: A comparative analysis. *Third World Legal Studies*, 1990:1-36.
- Omara-Otunnu, A. 1987. *Politics and the Military in Uganda, 1896-1985*. McMillan, London.
- Ramaswamy, V. 1991. A new human rights consciousness. *ifda(International Foundation for Development Alternatives) Dossier*, 80: 3-16.
- Ruzindana, A. 1990. The Role of the Office of the Inspector General of Government in Uganda. Paper presented at the Regional Conference of the Ombudsman in Africa, April, 1990, Kampala, Uganda.
- Salyaga, S. 1987. RC's: A path for democracy? *Forward*, 9(2):2.
- Shaw, T.M. 1990. Popular participation in non-governmental structures in Africa: Implications for democratic development. *Africa Today*, 3rd quarter: 5-22.
- Smart, C. 1986. Feminism and law: Some problems of analysis and strategy. *International Journal of the Sociology of Law*, 14:109-123.
- Tamale, S.R. 1991. The Marginalization of Women in Uganda: A Socio-Legal Analysis. Paper presented at the 9th Mawazo Workshop on Social Change and Participation in the Developing World, February, 1991, Kampala, Uganda.
- UNICEF 1990. *Uganda Country Information*. UNICEF, Kampala.

#### Newspapers

- New Vision* 1989. April 25, 1989.
- 1989. November 20, 1989.
- 1990. April 4, 1990.
- 1990. May 16, 1990.
- 1990. August 24, 1990.
- 1991. January 3, 1991.

*Weekly Topic* 1986. August 6, 1986.

———— 1989. February 3, 1989.

———— 1990. October 26, 1990.

———— 1991. January 25, 1991.

### **Law Books**

Constitution (Amendment) Statute No. 6 of 1988.

Constitutional Commission Statute No. 5 of 1988.

Inspector General of Government (IGG) Statute No. 2 of 1988.

*Legal Notice* No. 1 of 1979.

———— No. 1 of 1986.

———— No. 1 of 1986 (Amendment) Decree No.1 of 1987.

———— No. 1 of 1986 (Amendment) Statute No.1 of 1989.

———— No. 5 of 1986.

———— No. 6 of 1986.

Magistrate's Courts (Criminal Procedure) (Special Provisions) Statute No. 7 of 1989.

Military Police (Powers of Arrest) Decree No. 13 of 1971.

Penal Code (Chapter 106 of the 1964 Edition of the Laws of the Republic of Uganda).

Resistance Councils and Committees (RC) Statute No. 9 of 1987.

———— No. 1 of 1988.

Security Organizations Statute No. 10 of 1987.

### **Court Judgments**

*Edward F. Ssempebwa v. The Attorney General* . Constitutional Case No.1 of 1987: Judgment of Justice Arthur Oder.

*Efulayimu Bukenya v. The Attorney General*. Criminal Session Case No.370 of 1971: Judgment of Justice Russel.

———— Received *November 7, 1991*

Author's Name and Address: Joe OLOKA-ONYANGO, *Department of Commercial Law, Makerere University, P. O. Box 7062, Kampala, Uganda.*