



*Gender Transformation
& Empowerment*



*Forum for Women in
Democracy*



A POOL OF UGANDAN WOMEN'S VOICES TO CONSTITUTIONAL AMENDMENTS OF 2014

Our Voices...Our Vision

2014

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1.0

INTRODUCTION AND BACKGROUND

The Constitution of the Republic of Uganda was enacted in 1995 and has been commended as comprehensive and pro-democratic. The preamble of the Constitution demonstrates that Uganda is desirous of transcending the divisions of the past and establishing a society based on democracy and respect for fundamental human rights¹. Since its promulgation in 1995, the Constitution has undergone two amendments². The first amendment was by way of a referendum, which returned the country to political pluralism, while the subsequent amendments pertained to the scrapping of presidential term limits and the introduction of leader of opposition into Parliament. In spite of these developments, the 1995 Constitution is still in need of further reform by way of an inclusive national Constitutional reform process that will address the country's democracy deficits, resolve

1 See Joseph M. Isanga: African Courts and Separation of Powers: A Comparative Study of Judicial Review in Uganda & South Africa

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political conflicts and widen the democratic space for political processes in Uganda³.

The Uganda Law Reform Commission is spearheading the process of collecting proposals for key Constitutional reforms by civil society and the general public to pave way for an inclusive national Constitutional reform process. This initiative will feed into the process to amend the Constitution. This paper, responds to a call made by the Minister of Justice and Constitutional Affairs that appeared in the New Vision newspaper of November 20, 2014 asking the general public to submit proposals for amendment of the 1995 Constitution of the republic of Uganda for consideration by government. This paper is therefore a pool of Ugandan women voices to the amendment of the 1995 Constitution of Uganda.

We the women of Uganda through women organizations including: Action for Development (ACFODE); Center for Women in Governance (CEWIGO), Forum for Women in Democracy (FOWODE), Women's Democracy Network–Uganda Chapter (WDN–U) and the Uganda

3 2 Breaking the Conflict Trap in Uganda: Proposals for Constitutional and Legal Reforms.

Women's Network (UWONET) are stating the case for amendments to the 1995 Constitution of the Republic of Uganda. These proposed amendments are intended to advance gender equality; further an inclusive democratization process; promote the rule of law and the respect of human rights. These proposals are made bearing in mind the current Constitutional provisions and justifications for the proposed Constitutional amendments including those that are directly pertinent to women and those that have a bearing to advancing good governance, gender equality, rule of law, human rights and democracy in Uganda.

2.0

INTERNATIONAL, REGIONAL AND NATIONAL LEGAL FRAMEWORKS THAT INFORMS THE PROPOSED CONSTITUTIONAL AMENDMENTS

Uganda is a party to several international Human Rights frameworks that guarantee that women's rights are human rights. The international and regional legal frameworks include: Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); United Nations (UN) Chapter 7: "An election is not in compliance with International obligations and standards unless it includes the opportunity for full and equal participation of women as well as men" and; The United Nations Security Council (UNSC) Resolution 1325.

At the regional level, the Protocol on the African Charter on Human and Peoples Rights on the Rights

of women in Africa (Maputo protocol); The African Charter on Democracy, Elections and Governance.

At the national level, a number of Constitutional provisions provide for gender equality including: Article 21; Article 32; Article 33; Article 59 to mention but a few.

Whereas the guarantees exist and are promoted and upheld to some extent, there is evidence to demonstrate that there are still gaps in attaining gender equality.

3.0

PROPOSALS FOR CONSTITUTIONAL AMENDMENTS FROM A GENDER PERSPECTIVE

3.1 Electoral Commission

Provision

Article 60 (1) of the Constitution provides for the Electoral Commission: There shall be an Electoral Commission which shall consist of a chairperson, deputy chairperson and five other members appointed by the president with the approval of parliament.

Proposals

Amend article 60(1) as follows:

1. There shall be an Electoral Commission consisting of seven members including a chairperson, deputy chairperson and five other members, a minimum of three of whom shall be women in line with Objective IV of the

- national objectives and directive principles of state policies.
2. The name of the Electoral Commission should be amended as independent Electoral Commission.
 3. The commissioners of the independent Electoral Commission shall be recruited through a process of open applications, public hearings and scrutiny conducted by the Judicial Service Commission. The successful applicants shall be vetted by parliament and upon approval be submitted to the President for appointment.
 4. Commissioners shall serve for a guaranteed one, non-renewable seven (7) years term.
 5. A commissioner may only be removed from office in exceptional circumstances for gross misconduct or incompetence. Such removal process should follow the same criteria and procedure applied in the removal of a High Court judge.

Justification

Objective VI of the National Objectives and Directive Principles of State Policy provides for Gender balance and fair representation of marginalized groups states that: The State shall ensure gender balance and fair representation of marginalized groups on all Constitutional and other bodies.

The judicial service commission is proposed as the body suited to conduct the process of recruiting commissioners of the Electoral Commission in order to build confidence in the citizens and to guard the process from any interference.

A similar process should be adopted for all other Constitutional bodies.

3.2 Civic education

Provision

Article 61 (g): The Electoral Commission shall formulate and implement civic educational programs relating to elections.

Proposal

Insert clause (i) to article 61 to read as follows:

All Electoral Commission materials formulated for civic educational programs should address gender stereotypes and discrimination against women.

Justification

According to findings from studies conducted on elections in Uganda⁴ it has been established that majority of citizens particularly in rural areas think that directly elected seats are preserved for men since women can be elected on affirmative action seats. The voter education on the issue of directly elected seats should therefore be clear so that women intending to stand for directly elected seats do not have to explain the legal position on this issue to citizens during election campaigns.

For instance on page 3 paragraph (a) of the Voter Education Handbook produced by the Electoral Commission it states inter-alia that “A Member of Parliament is elected for each constituency. WDG proposes that a sentence should be added to the statement to read as follows: A woman and a man can contest and be elected for the position of directly elected MP or local councilor.

4 WDG in its rapid assessment report of 2013 and election observation reports by the DEM Group on the 2011 elections.

3.3 The Electoral System

Provision

Article 103 (4): States that a candidate for president shall not be declared elected as President unless the number of votes cast in favor of that candidate at the presidential election is more than 50 percent of valid votes cast in the election. For Members of parliament the practice has been that the candidate with the highest number of valid votes cast, is declared the winner of the election.

Proposals

Insert a new clause (6) to Article 68 to read as follows:

Uganda shall adopt a proportional system of representation with a closed list for all public elections.

Justification

Uganda has adopted an electoral system of First Past the Post (FPTP) where the candidate with the majority valid votes wins the election.

The FPTP system used in Uganda leads to voter apathy and denies fair representation to those who vote. Unlike the proportional systems where parties

are all represented on the basis of their strength gained through votes the FPTP does not consider votes that were garnered by candidates who did not receive the majority. It leads to wastage of votes and has gradually affected voter turnout in Ugandan elections with a clear reduction in numbers of voters from 1996–2011. The advantage that FPTP has which should be that elected leaders serve the constituency they campaigned in has not served its purpose as more MPs vote according to the whims of the party they belong to.

The electoral system in the party primaries is FPTP. As a result the candidate with the majority vote wins the election regardless of the processes he/she used to get the votes. This has discouraged some quality women from contesting as they do not want to be associated with a process that drains resources without any guarantee of fairness in terms of the organization of party primaries and the conditions that can guarantee a free and fair election. These anomalies have affected the quality of leaders that the country has as the most qualified and passionate about serving the citizens do not get the opportunity to serve.

In a proportional representation (PR) electoral system political parties put up a list of candidates according to the number of seats in the electoral area. Independent candidates can also run but on a listed separately on the ballot paper as if they belong to a political party of their own. In the proportional electoral system voters indicate their preference for a particular party and the parties receive seats in proportion to their share of the vote. On the ballot voters indicate their preference for a particular party and not the candidate. The PR system ensures that every vote cast is not wasted, enhances fairness and gender equality in an election.

3.4 Affirmative Action

Provision

Article 32 of the Constitution provides that: Notwithstanding anything in this Constitution, the state shall take affirmative action in favor of groups marginalized on the basis of gender, age, disability or any other reason created by history,

tradition or custom for the purpose of redressing imbalances which exist against them.

Proposal

1. Amend article 71 by inserting a new clause (g) which reads:

Every political party shall adhere to Article 32 and Article 33 of the Constitution in all its laws and regulations, guidelines, structures and operations in order to abide by Constitutional provisions on affirmative action and gender equality.

Alternative 1

2. Amend Article 32 of the Constitution by providing for gender parity for women and men in elective politics. Make the constituency for men and women a district so that each district is represented in Parliament by one woman and one man in line with the African Charter on Democracy, Elections and Political Governance⁵.

Alternative 2

3. Retain affirmative action for women by increasing funding to women MPs and women

councilors to make it proportionate to their area of representation and re-demarcate constituencies according to the population size in line with Article 63 (3).

4. Any introduction of term limits should be for all elective positions in Uganda. Introduction of term limits for women MPs only is contrary to Article 21(2) of the Constitution of Uganda.

Justification

Political parties are the primary mechanism through which women access elected office in a multiparty system of governance. The structures, policies, practices and values of political parties are patriarchal and therefore have a profound effect on the level of women's participation that undermines their ability to reach or maintain leadership roles in political life.

Women only comprised 4 percent of those who contested for directly elected seats in the 2011 elections (Electoral Commission, 2010). This dismal percentage indicates that there is need for parties to invest time and resources to create gender parity in terms of the numbers of women who contest for positions of leadership on the party ticket particularly for the directly elected positions.

Nomination of male and female candidates by major political parties in 2011.

Of the six political parties currently represented in Parliament, the figures from the EC for 238 seats for directly elected MPs who were nominated to contest in the 2011 election are as follows:

Party	Female	Male
Conservative Party	1	6
Democratic Party	6	80
Forum for Democratic Change	4	184
Justice Forum	0	12
National Resistance Movement	9	228
Uganda People's Congress	3	99

Uganda Federal Alliance presented one female candidate to the EC for the directly elected MP seat in comparison to 52 males while Peoples Progressive Party did not present any female candidate for the same seat and presented 26 males. The figures at local council level with regard to nomination for the position of Chairperson

and directly elected councilors were even worse for women. Only DP and NRM presented female candidates for the position of district chairperson (1 and 3 respectively); with regard to the directly elected seat for district councilors DP presented 3 female candidates and 148 males; FDC presented 8 female candidates and 665 males, NRM presented 26 female candidates in comparison to 1,306 males and UPC presented 2 female candidates in comparison to 219 males. The other parties like PPP and UFA did not present any female candidates.

Justification

Article 33 (1) of the Constitution provides that men and women shall be accorded equal dignity with men. In addition, the African Charter on Democracy, Governance and Elections provides for gender parity. If gender parity is adopted as the form of representation for men and women in politics it will reduce the size of Parliament from the current 375 to 224 and reduce the cost of administrative costs of running government.

The policy of affirmative action has contributed significantly to the reduction of the historical imbalance between men and women in elective

politics⁵. The effectiveness of the affirmative action in politics is also evidenced by the increased articulation of Women's Issues in Parliament entrenchment of Gender Equality in the Constitution and the effective Participation of Women MPs in Parliamentary Committees among others. However, some of the challenges faced include; multiple gender roles; limited access to resources, a larger electoral area for women, and a weak institutional framework for monitoring the implementation of affirmative action strategies among others⁶.

Constituency size: The Affirmative Action (AA) seat for women in parliament is at the district level making it three to four times larger than the general constituency seat which is based at the county. A similar pattern is repeated at the Local Government level with district women councilors representing an average of two sub-counties

5 Female representation in 1989 – 1996 was 38 (14%) as compared to 229 (86%) male representation which was a percentage difference of 72. In 2011– 2016 after a period of 22 years of implementing affirmative action, female representation has increased to 131 (35%) compared to male representation of 244 (65%). This has almost halved the percentage difference between men and women representation in Parliament from 72 to 30.

6 Supra at note 5.

unlike their counterparts who represent one. The Electoral Commission is Constitutionally mandated to demarcate constituencies⁷ and in doing so, to ensure that each county has at least one Member of Parliament⁸. The Constitution also provides for equality of the vote in its stipulation that, as far as possible, the number of inhabitants in each constituency should be as equal as possible to the population quota⁹. Figures from the Electoral Commission show that the average number of voters per constituency is 58,630, numbers for individual constituencies range from 7,318 voters (in Moroto, North East) to 228,440 in Kampala, a ratio of 30:1. Equality of the vote is disregarded to an even greater extent in the districts from which women's reserved seats are elected. In districts, the average number of voters is 124,590 but the numbers of registered voters range from 21,039 in Amudat (again, in Moroto) to 1.18 million in Kampala, a ratio of 56:1.

7 Article 61 (c) of the Constitution of the Republic of Uganda

8 Article 63 (2) of the Constitution of the Republic of Uganda

9 Article 63(3) of the Constitution of the Republic of Uganda—The population quota is the number obtained by dividing the number of inhabitants of Uganda by the number of constituencies into which Uganda is to be divided.

For a more gender balanced representation in Uganda, redrawing constituencies is one option that needs to be discussed and addressed. In 2003, the Constitutional Review Commission alternatively recommended the merging of scarcely populated counties, which would require a Constitutional amendment. The recommendation should be implemented. The current legal framework does not sufficiently reflect the fact that in practice administrative districts also function as electoral constituencies since 112 women MPs are elected on that basis. In that respect, the same considerations should apply.

At the national level, confusion over the woman as opposed to women's representative and whether they represent women or everybody in the district has never been resolved. The mandate of the woman district MP versus the county based MPs also persists (Elizabeth Kharono, 2003). A similar position is replicated at the local council level. This fact has disempowered the women representatives who are given similar funds like their counterparts who represent one county or sub-county in the case of local councilors to traverse their electoral area. As a result the women representatives are

seen to be less accessible and less effective than their counterparts who represent one electoral area because among others the law has not defined whom the women represent.

In terms of hiring staff to support their work, their expenditures are more because their staffs have to know what is happening in the entire district to enable the women MPs to speak from an informed perspective about each county in the district. No additional funding is provided for this to happen thereby affecting their output and seemingly making the women representatives seem incompetent without taking into consideration the larger constituencies they have to represent with no additional funding or staff to enable them perform their roles.

The biases and prejudices against women in leadership still exist thus the need for retention of affirmative action cognizant of the proposed areas for review.

3.5 Financing political parties

Provision

Article 72(3) states that: Parliament shall by law regulate the financing and functioning of political organizations.

Proposals

Amend Article 72(3) by inserting the words “and political parties” at the end of the provision as follows: Parliament shall by law regulate the financing and functioning of political organizations and political parties.

Insert clause (4) to article 72 to read as follows: Political parties shall allocate 40 percent of their budgets to the women’s leagues of their respective parties.

Justification

Before candidates are eligible to nomination by the Electoral Commission, they must be nominated by their parties or fulfill the conditions for one to be nominated as an independent candidate. Most parties in essence want candidates who will win an election, however, political parties have not invested resources to identify candidates; train and create necessary

exposure for candidates for name recognition and public awareness about their candidature. As a result candidates have to find ways to nurture themselves; seek training if at all and look for resources to contest. For women who are more disadvantaged in terms of financial resources, the challenge is even greater thereby discouraging many from contesting even in party primaries.

While the Political Parties and Organization Act, 2005 (PPOA) provides for the public funding of political parties, making all registered political parties eligible for funding, the government did not allocate any public to political parties, exacerbating the disparity between parties' resources. Women in particular are more affected by the lack of resources to enable them contest as candidates in the elections.

3.6 Property rights

Provision

Article 31 (1) Men and women of the age of 18 years and above have the right to marry and to found a family and are entitled to equal rights in marriage, during marriage and at its dissolution.

Proposals

Insert clause (2) to Article 31 to read as follows:(a) man and a woman shall have equal rights to inherit property in line with Article 21 (1) of the Constitution.

Insert clause (3) to Article 31 to read as follows: A man and woman in a marriage shall be entitled to equal ownership usage and disposal of property acquired during marriage.

Justification

The proposal is in line with Article 33(5) which reads as follows: Without prejudice to article 32 of the Constitution women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom.

3.7 Emoluments for political leaders and civil servants

Amend Article 158 by inserting a new Article 158 A to read as follows; Parliament shall make provision for the establishment of a national emoluments body to determine the rates, salary and allowances of officers of Ministries, Departments, Agencies, Members of Parliament and local councilors.

District Executive Committee

Article 186 (2) an executive committee of council shall consist of—(c) Such number of secretaries as the council may decide.

Proposal

Amend Article 186 (2) (c) to read as follows: Such number of secretaries as the council may decide bearing in mind gender balance in its composition.

Justification

Discrimination against women councilors is prevalent in some local councils in Uganda with some district executive councils comprised of only men. Amending Article 186 (2) (c) will therefore bind local councils to ensure that they exercise

gender balance in selecting their district executive committee.

Qualification for district local councilors

Article 180(3) provides that: A person shall not be a member of a local government council unless that person is a citizen of Uganda

Proposals

Amend Article 180 (3) by inserting clause (4) to read as follows: A person contesting for the position of district local councilor and local council III chairperson shall have a minimum academic qualification of at least Ordinary Level.

Justification

Uganda has been implementing the Universal Primary Education Policy since 1997 and the Universal Secondary Education policy since 2007. One of the ways to measure the outcomes of this policy is by amending Article 180 by providing for a minimum level of academic qualification for aspiring candidates to test the policy outcomes.

The mandate of local councilors at district and sub-county level requires that they possess a minimum level of education. Council documents

are in English and most local councils particularly at district level conduct debates in English. WDG has worked in 50 district local councils of Uganda and findings from its work show that local councilors who cannot read documents presented to council which are in English or speak the language of council (English) largely remain silent thereby denying their constituencies the right to representation.

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