

PARLIAMENT OF UGANDA

REPORT OF THE SECTORAL COMMITTEE ON LEGAL AND  
PARLIAMENTARY AFFAIRS ON THE CONSTITUTION  
(AMENDMENT) (NO.2) BILL, 2017

OFFICE OF THE CLERK TO PARLIAMENT  
PARLIAMENTARY BUILDINGS, KAMPALA

DECEMBER 2017

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**1.0. INTRODUCTION**

The Constitution (Amendment) (No.2) Bill, 2017 was read for the first time on the 3<sup>rd</sup> of October, 2017 and subsequently referred to the Committee on Legal and Parliamentary Affairs for scrutiny.

**2.0. BACKGROUND**

The Committee took note that the manner in which the motion seeking leave for the introduction of the private members' Bill on the twenty seventh of September, 2017 was controversial. This was preceded by the ejection of some members of Parliament from the Chamber by strangers. The Committee notes however that these events had no bearing in the duty bestowed on it under Rule 118.

The Committee is cognizant of Chapter 18 of the 1995 Constitution of the Republic of Uganda which provides for the amendment of the Constitution. Article 259 of this Chapter provides as follows;

*(1) Subject to the provisions of this Constitution, Parliament may amend by way of addition, variation or repeal, any provision of this Constitution in accordance with the procedure laid down in this Chapter.*

*(2) This Constitution shall not be amended except by an Act of Parliament-*

*(a) the sole purpose of which is to amend this Constitution; and*

*(b) the Act has been passed in accordance with this Chapter.*

The Chapter also specifies:

- i. amendments that require a referendum;
- ii. amendments requiring the approval by the district councils;
- iii. the quorum required for Parliament to pass Constitution amendments;

In scrutinizing this Bill, the committee is alive to Article 262 of the Constitution which empowers Parliament to amend any provisions of the Constitution other than those articles requiring the approval of the District councils or those which can be amended by referendum.

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In that regard therefore, the Committee noted that the proposals contained in the Bill are only those that can be amended and passed by Parliament as prescribed under Article 262 of the Constitution.

The Committee noted that matters of Constitutional amendment saved by the 9<sup>th</sup> Parliament are not included in this Bill. The Committee recalls that during the scrutiny of the Constitution (Amendment) Bill, 2015, it received diverse views from stakeholders that went beyond the scope of the Bill. As part of its report, a minority report was authored by some of its members and was attached as part of the majority report. The House adopted the minority report, however due to time constraints; it did not dispose of it and was therefore saved for consideration by the tenth Parliament.

### 3.0. METHODOLOGY

The committee extended invitations to identified stakeholders and other interested parties to appear before it or to submit written memoranda containing their views.

The Committee resolved to meet His Excellency the President in his capacity as a former presidential candidate, but also because a number of stakeholders the Committee interacted with cited him as a direct beneficiary of especially, the proposed amendment to Article 102 (b). The Committee notes that it extended similar invitations to other former presidential candidates of 2016 general elections, but only Prof. Venancius Baryamureeba honoured the invitation.

Whereas the Committee had planned to carry out nationwide public regional consultations and external benchmark visits on the Bill, it was not possible. The Committee was informed by the Parliamentary administration that funds for these activities were not available.

The Committee also looked at relevant case law such as the case of Amama Mbabazi Vs YK Museveni, Electoral Commission and the Attorney General, Presidential Election Petition No- 1 of 2016.

The committee further carried out desk research on similar provisions in other jurisdictions such as the Republics of Kenya, Rwanda, USA, United Kingdom and others.

#### 3.1. Memoranda

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In the process of scrutinising the Bill, the committee met and received memoranda from the following stakeholders:

- (1) Hon. Raphael Magyezi (MP) Igara West
- (2) Equal Opportunities Commission
- (3) Ministry of Justice & Constitutional Affairs
- (4) The Rt. Hon. Prime Minister of the Republic of Uganda;
- (5) Uganda Law Reform Commission;
- (6) The Electoral Commission;
- (7) The National Resistance Movement Party
- (8) The Democratic Party;
- (9) The Conservative Party;
- (10) Dr. Mwambutsya Ndebesa
- (11) Justice Forum –JEEMA
- (12) Professor Tarsis Bazana Kabwegyere
- (13) Leader of the Opposition (LOP)
- (14) Uganda Local Government Association (ULGA)
- (15) The Uganda Association of Uneducated persons (TUAUP)
- (16) Cpt. Ruhinda Maguru Daudi II
- (17) Makerere University School of Psychology
- (18) Mr. George W. Bakka
- (19) Mr. Gilbert Mutungi
- (20) Mr. Moses Mfitumukiza
- (21) Mr. Egole Lawrence Emmy
- (22) Fr. Peter Bakka
- (23) Mr. Langoya Alex
- (24) Mr. Owachgiu Richard
- (25) Maj. Gen. Rtd. General Jim Muhwezi
- (26) FRONASA Veterans
- (27) Society for Justice and National Unity (SoJNU)
- (28) Prof. Venansius Baryamureeba
- (29) Prof. E.F Ssempebwa
- (30) Mr. Peter Mulira
- (31) Hon. Amanywa Mushega

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- (1) *Whenever a Bill is read the First Time in the House, it shall be referred to the appropriate Committee appointed under the provisions of these Rules.*
- (2) *The Committee shall examine the Bill in detail and make all such inquiries in relation to it as the Committee considers expedient or necessary and report to the House within forty five days from the date the Bill is referred to the Committee.*
- (3) *Except in cases of very minor amendments, and subject to rule 121, all proposed amendments to a Bill referred to a Committee shall be presented to the Committee by the person proposing the amendment and the Committee shall scrutinize it together with the Bill.*
- (4) *The committee may propose and accept proposed amendments in the bill as it considers fit, if the amendments (including new clauses and new schedules) are relevant to the subject matter of the bill."*

The above Rule, especially sub-rule (2) directs a Committee to which a Bill is referred to examine the Bill in detail and make all such inquiries in relation to it as the Committee considers expedient or necessary and report to the House within forty five days from the date the Bill is referred to the Committee. Furthermore, sub-rule (3) directs the committee to receive proposals for amendment of the Bill and to scrutinise the same and in sub-rule (4), to only accept such amendments that are relevant to the subject matter of the bill.

*JRS*

**4.0. AMENDMENT OF THE CONSTITUTION BY WAY OF A PRIVATE MEMBER'S BILL**

The right of a Member to move a private member's bill is enshrined in Article 94 of the Constitution and rule 110 of the Rules of procedure of Parliament. Article 94 of the Constitution and rule 110 of the Rules of procedure of Parliament empower a Member of Parliament to move a private member's Bill. Article 94 of the Constitution and rule 110 of the Rules of procedure of Parliament are reproduced below-

**Article 94 of the constitution**

**"94. Rules of procedure in Parliament**

**(1) Subject to the provisions of this Constitution, Parliament may make rules to regulate its own procedure, including the procedure of its committees.**

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- (2) *Parliament may act notwithstanding a vacancy in its membership.*
- (3) *The presence or the participation of a person not entitled to be present or to participate in the proceedings of Parliament shall not, by itself, invalidate those proceedings.*
- (4) *The rules of procedure of Parliament shall include the following provisions—*
  - (a) *the Speaker shall determine the order of business in Parliament and shall give priority to Government business;*
  - (b) *a member of Parliament has the right to move a private member's bill;*
  - (c) *the member moving the private member's bill shall be afforded reasonable assistance by the department of Government whose area of operation is affected by the bill; and*
  - (d) *the office of the Attorney General shall afford the member moving the private member's bill professional assistance in the drafting of the bill.*

**Rule 110 of the rules of procedure**

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***"110. Private Members' Bills***

- (1) *Every Member has a right to move a Private Member's Bill.*
- (2) *The Member moving a Private Members' Bill shall be afforded reasonable assistance by the Department of Government whose area of operation is affected by the Bill.*
- (3) *The Department of Legal and Legislative Services of Parliament shall, where necessary, afford the Member moving the Private Members' Bill professional assistance in the drafting of the Bill.*
- (4) *The Clerk shall compile the final Bill to be attached to the motion under rule 111.*

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Article 94 read together with rule 110 guarantee a Member's right to introduce before Parliament a private Member's bill. In moving a private Member's bill, Article 94 and rule 110 empower the Member to be assisted in fulfilling his or her objectives by the AG who is supposed to provide professional assistance in the drafting of the bill, the department of Government whose area of operation is affected by the Bill and the department of legal and legislative services which provides professional assistance in the drafting the Bill.

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It should be noted that the only limitation to the exercise of a member's right to move a private Member's bill is found in Article 93 of the Constitution and section 76 of the Public Finance Management Act, 2015. Article 93 of the Constitution imposes restrictions on a private Member and prohibits him or her from bringing a motion or bill which has financial implications. Article 93 is reproduced below-

**"93. Restriction on financial matters**

**Parliament shall not, unless the bill or the motion is introduced on behalf of the Government—**

**(a) proceed upon a bill, including an amendment bill, that makes provision for any of the following—**

**(i) the imposition of taxation or the alteration of taxation otherwise than by reduction;**

**(ii) the imposition of a charge on the Consolidated Fund or other public fund of Uganda or the alteration of any such charge otherwise than by reduction;**

**(iii) the payment, issue or withdrawal from the Consolidated Fund or other public fund of Uganda of any monies not charged on that fund or any increase in the amount of that payment, issue or withdrawal; or**

**(iv) the composition or remission of any debt due to the Government of Uganda; or**

**(b) proceed upon a motion, including an amendment to a motion, the effect of which would be to make provision for any of the purposes specified in paragraph (a) of this article.**

On the other hand, section 76 of the Public Finance Management Act, requires that every bill must be accompanied by a certificate of financial implications. Section 76 is reproduced below-

**"76. Cost estimates for Bills.**

**(1) Every Bill introduced in Parliament shall be accompanied by a certificate of financial implications issued by the Minister.**

**(2) The certificate of financial implications issued under subsection (1) shall indicate the estimates of revenue and expenditure over the period of not less than two years after the coming into effect of the Bill when passed.**

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(3) In addition to the requirements under subsection (2) the certificate of financial implications shall indicate the impact of the Bill on the economy.

(4) Notwithstanding sub sections (1), (2) and (3), a certificate of financial implication shall be deemed to have been issued after 60 days from the date of request for the certificate.”

What the above illustrate is that a private Member is afforded the right to move a private Member's bill and the AG as well as the department of legal and legislative services merely provide support services as and when they are requested by the Member.

The committee observed that there was general uneasiness around the Bill, especially arising from the fact that the Bill to amend the Constitution was a private member's Bill. In answering this, Article 94 and Rule 110 generally empower a Member of Parliament to move a private members Bill on any matter. Whereas the words "private member's Bill" are not defined in the Constitution or the rules of procedure of Parliament, in Rule 2 as well as section 1 of the Acts of Parliament Act Cap 2 define the word "Bill" as follows-

**"Bill" means the draft of an Act of Parliament and includes both a Private Member's Bill and a Government Bill;**

If one considers the requirement of Article 259, especially clause (2), it is discernible that for the Constitution to be amended there must be an Act of Parliament whose sole purpose is to amend the Constitution.

Since a Bill is a draft Act of Parliament, which includes both Private Member's Bills and Government Bills and article 259 (2) (a) requires that the amendment of the Constitution must arise from an Act of Parliament whose sole purpose is to amend the Constitution, then both Private Members and Government may propose Bills to amend the Constitution. It is therefore noticeable that there is no difference between Bills for enactment or amending legislations and Bills for amending the Constitution. The Committee is fortified in this argument by section 2 of the Acts of Parliament Act which require Acts and Bills to take the same form.

By implication, since there is no difference between Bills for enactment or amending legislation and Bills for amending the Constitution, the rules that generally apply to both are the same. Indeed, to buttress this further, Chapter 18 doesn't require a peculiar procedure for introduction of a Bill whose purpose is to amend the Constitution neither does it limit the

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exercise of a private Member's right to present a Bill with the intention of amending the Constitution. Therefore from the above the committee recognises that there is no legal impediment on the exercise of a Private Member's right to raise a Bill with the intention of amending the Constitution as long as that Bill complies with the requirements of Article 93 and 259 of the Constitution, section 76 of the Public Finance Management Act and rules 110 and 111 of the rules of procedure of Parliament;

- (a) the rules of procedure applicable to Bills generally apply in equal measure to Bills whose sole purpose is to amend the Constitution.

**5.0. OBJECT OF THE BILL**

The object of the Bill is to amend the Constitution of the Republic of Uganda in accordance with articles 259 and 262 of the Constitution to provide for the time within which to hold Presidential, Parliamentary and Local government council election under Article 61; to provide for eligibility requirements for a person to be elected as President or District Chairperson under Articles 102(b) and 183(2) (b), to increase the number of days within which to file and determine a presidential election petition under 104 and for related matters.

**6.0. CASE LAW RELEVANT TO THE PROPOSALS MADE IN THE BILL**

**AMAMA MBABAZI VS YOWERI KAGUTA MUSEVENI, THE ELECTORAL COMMISSION & THE ATTORNEY GENERAL, PRESIDENTIAL ELECTION PETITION NO.1 OF 2016**

The facts of this case are as follows.



The Petitioner was a presidential candidate in the 2016 Presidential elections who was aggrieved by the decision of the Electoral Commission to declare the first respondent winner. The petitioner filed a petition before the Supreme Court under Article 104 of the Constitution and Section 59 (1) of the PEA, based on various grounds and complaints. In the petition, the Petitioner contended that the election was conducted without compliance with the provisions and the principles of the PEA, the ECA and the 1995 Constitution and that this affected the result of the election in a substantial manner. For this, he faults the Commission. The issues for determination were-

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1. *Whether there was noncompliance with the provisions of the PEA and Electoral Commission Act, in the conduct of the 2016 Presidential election.*
2. *Whether the said election was not conducted in accordance with the principles laid down in the PEA, and the Electoral Commission Act.*
3. *Whether if either issue 1 and 2 or both are answered in the affirmative, such noncompliance with the said laws and the principles affected the results of the elections in a substantial manner.*
4. *Whether the alleged illegal practices or any electoral offences in the petition under the Presidential election Act, were committed by the 1st Respondent personally, or by his agents with his knowledge and consent or approval.*
5. *Whether the Attorney General (AG) was correctly added as a respondent in this election petition.*
6. *Whether the Petitioner is entitled to any of the reliefs sought.*

On the 31<sup>st</sup> of March 2016, the Supreme Court delivered its decision, finding that the 1st Respondent was validly elected as President in accordance with Article 104 of the Constitution and Section 59 of the Presidential Election Act (PEA) and unanimously dismissed the petition. However, Court made a number of recommendations and directed the AG to follow up their implementation. The recommendations are detailed below-

**“1. Time for filing and determination of the petition:**

*In the course of hearing this petition, the issue of the inadequacy of the time provided in Article 104(2) and (3) of the Constitution for filing and determining of presidential election petitions came up. The same issue was also pointed out by this Court in the two previous presidential election petitions. The 10 day period within which to file a presidential election petition and to gather evidence and the 30 days within which the Court must analyze the evidence and make a decision as provided under Article 104 (2) and (3) of the Constitution and section 59 (2) and (3) of the PEA is inadequate. We recommend that the period be reviewed and necessary amendments be made to the law to increase it to at least 60 days to give the parties and the Court sufficient*

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time to prepare, present, hear and determine the petition, while at the same time being mindful of the time within which the new President must be sworn in.

**2. The nature of evidence:**

Whilst the use of affidavit evidence in presidential election petitions is necessary due to the limited time within which the petition must be determined, it nevertheless has serious drawbacks mainly because the veracity of affidavit evidence cannot be tested through examination by the Court or cross-examination by the other party. Affidavit evidence on its own may be unreliable as many witnesses tend to be partisan. We recommend that the Rules be amended to provide for the use of oral evidence in addition to affidavit evidence, with leave of court.

**3. The time for holding fresh elections:**

Article 104(7) provides that where a presidential election is annulled, a fresh election must be held within 20 days. We believe this is unrealistic, given the problems that have come to light in the course of hearing all the three petitions that this Court has dealt with to-date. In all these petitions, the Commission has been found wanting in some areas. Importation of election materials has sometimes been a problem. Securing funds has also often provided challenges. Therefore, to require the Commission to hold a free and fair election within 20 days after another has been nullified is being overly optimistic. A longer and more realistic time frame should be put in place.

**4. The Use of technology:**

While the introduction of technology in the election process should be encouraged, we nevertheless recommend that a law to regulate the use of technology in the conduct and management of elections should be enacted. It should be introduced well within time to train the officials and sensitize voters and other stakeholders.

**5. Unequal use of State owned media:**

Both the Constitution in Article 67 (3) and the PEA in section 24 (1), provide that all presidential candidates shall be given equal time and space on State owned media to present their programmes to the people. We found that UBC had failed in this duty.

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We recommend that the electoral law should be amended to provide for sanctions against any State organ or officer who violates this Constitutional duty.

**6. The late enactment of relevant legislation:**

We observed that the ECA and the PEA were amended as late as November, 2015. Indeed the Chairman of the Commission gave the late amendment of the law as the reason for extending the nomination date. We recommend that any election related law reform be undertaken within two years of the establishment of the new Parliament in order to avoid last minute hastily enacted legislation on elections.

**7. Donations during election period:**

Section 64 of the PEA deals with bribery. We note that Section 64 (7) forbids candidates or their agents from carrying out fundraising or giving donations during the period of campaigns. Under Section 64 (8), it is an offence to violate Section 64 (7). However, we note that under Section 64 (9) a candidate may solicit for funds to organize for elections during the campaign period. Furthermore, a President may in the ordinary course of his/her duties give donations even during the campaign period. This section in the law should be amended to prohibit the giving of donations by all candidates including a President who is also a candidate, in order to create a level playing field for all.

**8. Involvement of public officers in political campaigns:**

The law should make it explicit that public servants are prohibited from involvement in political campaigns.

**9. The role of the Attorney General in election petitions:**

The Attorney General is the principal legal advisor of Government as per Article 119 of the Constitution. Rule 5 of the PEA Rules also requires the Attorney General to be served with the petition. We found that several complaints were raised against some public officers and security personnel during the election process. However, the definition of "respondent" in Rule 3 of the PEA Rules as it currently is, does not include the Attorney General as a possible Respondent. Further, Rule 20(6) of the PEA Rules, provides that even when a Petitioner wants to withdraw a petition, the

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Attorney General can object to the withdrawal. The law should be amended to make it permissible for the Attorney General to be made Respondent where necessary.

**10. Implementation of recommendations by the Supreme Court:**

We note that most of the recommendations for reform made by this Court in the previous presidential election petitions, have remained largely unimplemented. It may well be that no authority was identified to follow up their implementation. We have nevertheless observed in this petition that the Rules require that the Attorney General be served with all the documents in the petition. We have further noted that the Attorney General may object to withdrawal of proceedings. Therefore the Attorney General is the authority that must be served with the recommendations of this Court for necessary follow up."

The Committee observes that whereas the above recommendations were made, the Bill concerned directly with Recommendations 1 and 2, being-

- (1) The Time for filing and determination of the petition:
- (2) The time for holding fresh elections:

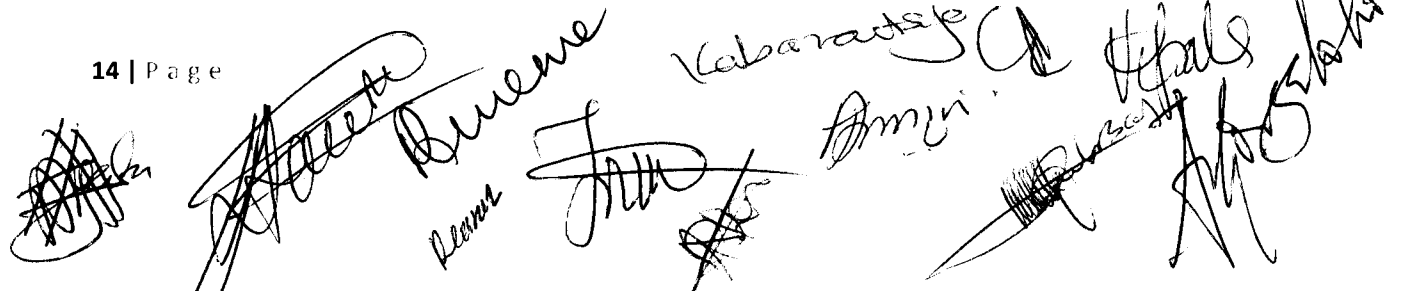
The Committee takes specific note that the implementation of the other recommendations requires the amendment of other laws, including the Evidence Act, Cap 6, the Parliamentary Elections Act, 2010, the Presidential Elections Act, 2005, the Electoral Commission Act, Cap 140, the Political Parties and Organisations Act, 2005, the Presidential Elections (Elections Petitions) Rules 2001 and 2002 and it recommends that Government urgently complies with the recommendations of the Supreme Court.



**7.0. OBSERVATIONS, RECOMMENDATIONS AND CONCLUSIONS**

This section of the report gives a critical analysis of the proposed amendments to the 1995 Constitution, the Constitutional provisions being amended, a comparative analysis of similar

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provisions in other jurisdictions, the effect of the amendment on other Constitutional provisions if any, the stake holders' views on the proposed amendment and an analysis of the proposed amendment.

## CLAUSE 1 OF THE BILL

Clause 1 of the Bill seeks to amend Article 61 of the Constitution by substituting for clause (2) the following-

*“(2) The Electoral Commission shall hold Presidential, General Parliamentary and Local Government Council elections within the first thirty days of the last one hundred and twenty days before the expiration of the term of the office of the President.”*

### CURRENT CONSTITUTIONAL PROVISION

Currently, Article 61 (2) of the Constitution reads as follows-

*“(2) The Electoral Commission shall hold presidential, general parliamentary and local government council elections within the first thirty days of the last ninety days before the expiration of the term of the office of the President.”*

### EFFECT OF THE PROPOSED AMENDMENT

The proposal has the following effects-

- (a) *It obligates the electoral commission to hold presidential, general parliamentary and local government council elections within the first 30 days of the last 120 days before the expiry of a term of the President instead of the current provision which requires similar elections to be held within the first 30 days of the last 90 days before the term ends.*
- (b) *It requires elections to be held within the first 30 days of the last 120 days, thereby moving the election calendar from February to January or earlier.*
- (c) *It expands the time within which presidential, local government and general parliamentary elections are held from the last 90 days to the last 120 days.*

### STAKEHOLDER'S VIEWS

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- TUAUP objected to the proposed amendment of Article 61 of the Constitution, though they never gave any reasons for the objection.

**FRONASA Veterans**

- Agreed with the proposed amendment.

**Hon. Kenneth Lubogo, MP, Bulamogi County, Kaliro**

- Hon. Kenneth Lubogo proposed the amendment of Article 61 (3) of the Constitution to require that Presidential elections, General Parliamentary elections as well as elections for District Chairpersons are carried out on the same day.

**ANALYSIS**

The Committee observes that the proposal to expand the time within which presidential, local government and general parliamentary elections are held from the last 90 days to the last 120 days is welcome and should be supported.

The Committee notes that expanding the number of days will ensure elections are held early enough and not at the end of the Presidential term. The holding of elections early enough will enable other legal and procedural processes to take place before the expiry of the presidential term. The Committee recognized that the determinant of when elections are held in Uganda is the end of term of the President. The term of the President is set at 5 years in Article 105 of the Constitution and cannot be extended except through amendment of the Constitution.

The Committee observed that after a presidential election, the Constitution allows certain processes to take place. These processes, which must be completed before the expiry of the presidential term, include-

- (a) counting and declaring results;
- (b) holding a re-run in case none of the candidates obtains the highest number of votes;
- (c) challenging a presidential election;
- (d) court determination of a petition challenging a presidential election; and
- (e) holding fresh presidential elections incase court nullifies a presidential election.

In determining the adequacy of the amendment to clause 1 of the Bill, the Committee considered the processes that have to be complied with after a presidential election but before

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- (b) Article 104 (3) only allows the Supreme Court 30 days within which to inquire into and determine the petition filed challenging a presidential election;
- (c) Article 104 (6) requires that once a presidential election is annulled, a fresh election is held within 20 days from the date of annulment.

The above illustrates that in determining when a presidential election is to be held, the committee must be aware of the processes that accrue after such a presidential election. The Committee noted that currently, elections are held in the last 90 days of a presidential term yet if all the processes that may accrue after such election are taken into account, the number of days needed to comply with such processes are 122 days. The Committee arrived at this number of days as follows-

- (a) Article 61 (2) requires that elections are carried out within the first 30 days of the last ninety days of a presidential election;
- (b) Article 103 (7) of the Constitution obligates the Electoral Commission to declare results from a presidential election within 48 hours (2 days) from the close of polling;
- (c) Article 103 (5) requires the Electoral Commission to organize a presidential re-run within thirty (30) days;
- (d) Article 104 (2) requires an aggrieved candidate to file a petition challenging the election of a president within 10 days of declaration of results;
- (e) Article 104 (3) only allows the Supreme Court 30 days within which to inquire into and determine the petition filed challenging a presidential election;
- (f) Article 104 (6) requires that once a presidential election is annulled, a fresh election is held within 20 days from the date of annulment.

The Committee noted with concern that the above processes, which are carried out independent of each other, require a minimum of 122 days to be complied with yet the Constitution requires elections to be carried out 90 days before the end of the term of the president. The Committee observed that if all the above processes are to be carried out, the time currently prescribed in the Constitution will be insufficient and an additional 32 days will be required. The Committee therefore agreed that the above timelines are unrealistic and

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need to be enhanced to ensure that election are carried out early enough so as to allow other processes to take place before the term of election of the president expires.

The Committee noted that in determining the time when presidential elections can take place, regard must be had to Articles 103 and 104 of the Constitution as well as international best practices. The Committee noted that the Bill is proposing to amend Article 104 of the Constitution; and owing to the relatedness between Article 61 and 104 of the Constitution, the time to be prescribed in clause 1 of the Bill should be commensurate with the timelines prescribed in Article 104 of the Constitution. The Committee noted with concern that whereas the Bill proposes to amend Article 104, the timelines prescribed there under didn't take into account the duration prescribed in clause 1 of the Bill. Indeed, the Committee observed that whereas the bill proposes that Presidential, General Parliamentary and Local Council elections are held 120 days before the end of a presidential term, the amendments made to Article 104 as proposed in clause 3 of the Bill will require a minimum of 182 days for all the processes accruing after a Presidential election to be complied with. Indeed, the Committee observes that thee bill, in clause 3, proposes to amend article 104 (2), (3) and (6) to increase the time within which the following processes and acts are done-

- (i) In Article 104 (2), to expand the time within which an aggrieved candidate can file a petition from **ten days to fifteen days**.
- (ii) In Article 104 (3), to expand the time within which the Supreme Court will inquire into and determine the petition from **thirty days to forty five days**.
- (iii) In Article 104 (6), to expand the time within which a fresh election is held after the annulment of a presidential election from **twenty days to sixty days**

The above proposals will add 60 days onto the current 122 days making a total of 182 days that are needed to have all the processes complied with. The Committee notes therefore that the proposed amendment in clause 1 of the Bill needs to be harmonized with the proposed amendment to Article 104 as contained in clause 3 of the Bill.

In determining the adequate time within which elections are to be held, the committee considered the views obtained from stakeholders and international best practice. The committee notes that international best practice has not yet developed on when a presidential election should be held. The Committee observed that every country chooses a time which enables it sufficiently deal with any processes arising from such an election.

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For instance, in Kenya, Article 136 (2) requires that an election of the President shall be held on the same day as a general election of Members of Parliament, being the second Tuesday in August, in every fifth year. Furthermore, Article 142 (1) of the Constitution of Kenya requires that the President shall hold office for a term beginning on the date on which the President was sworn in, and ending when the person next elected President in accordance with Article 136 (2) (a) is sworn in. This means that whereas the presidential term is 4 years, the presidential term does not end until a new president is sworn in.

In Rwanda, Article 102 requires elections for President to be held not less than thirty days and not more than sixty days before the expiration of the term of the incumbent President. In Ghana, the Constitution in Article 63 requires a Presidential election to be held not earlier than four months nor later than one month before his term of office expires.

In Nigeria, Article 132 of the Constitution requires that a presidential election is held on a date to be appointed by the Independent National Electoral Commission, which date shall not be earlier than sixty days and not later than thirty days before the expiration of the term of office of the last holder of that office.

Whereas international best practice were not conclusive on this matter, the committee agreed that there is need to expand the time within which presidential, general parliamentary and local government elections are held owing to the insufficiency of the current timelines prescribed in Article 61, 103 and 104 of the Constitution. The Committee further noted that the timelines prescribed in clause 1 of the Bill is insufficient and was not harmonised with the proposal made by the Bill in clause 3.

The Committee observed that in arriving at the time within which presidential, general Parliamentary and Local Council elections are held, there is need to take into account the timelines prescribed in Article 103, 104 and 105 of the Constitution so that sufficient time is allowed for all the processes that the Constitution allows to accrue after a presidential election is held. Taking the above into consideration and guided by the amendments proposed by the committee in articles 103 and 104 of the Constitution, the committee notes that a minimum of ~~169~~<sup>172</sup> days are needed if adequate time is to be allowed for all the processes envisaged under the Constitution are to be complied with. The 172 days are arrived as follows-

- (a) In article 61 (2), elections are held within the first 30 days of the last 172 days

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- (b) In Article 103 (7), the Electoral Commission is given 2 days within which to declare the results of the election;
- (c) In Article 103 (5), the Electoral Commission is allocated 30 days within which to presidential re-run is organized and conducted;
- (d) In Article 103 (7), requires the EC to declare the results of the presidential re-run held under article 103 (5) within 2 days;
- (e) Article 104 (2) allows an aggrieved person to petition court challenging a presidential election and the committee proposes 14 days;
- (f) Article 104 (3) allows the Supreme Court to inquire into and determine the petition and the committee proposes to allocate it 45 days to do so;
- (g) In Article 104 (6), the constitution requires a fresh election is held after the annulment of a presidential election and the committee has allocated the electoral Commission 44 days.

The proposal to have elections held within the first thirty days of the last one hundred and seventy two days will result in election for presidential, general parliamentary and local government council elections being held on the twentieth of November in the fifth year, as opposed to the eighteenth of February as is the case now.

**PROPOSAL FOR ELECTIONS TO BE HELD ON THE SAME DAY**

The Committee received a memorandum from Hon. Kenneth Lubogo, MP, Bulamogi County, Kaliro in which he proposed the amendment of Article 61 (3) of the Constitution to require that Presidential elections, General Parliamentary elections as well as elections for District Chairpersons are carried out on the same day. He further proposed to amend Article 61 (4) to require the Electoral Commission to hold Presidential elections, General Parliamentary elections, elections for district chairpersons and any other election for any other elective office on the same day.

The Committee wishes to outline the provisions of Article 61 that Hon. Lubogo wishes to amend as well as the proposed amendments. Article 61 (3) and (4) are reproduced below-

*"(3) Except where it is impractical to do so, the Electoral Commission shall hold Presidential, general Parliamentary and Local Council elections on the same day.*

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***(4) Subject to this Constitution, the Electoral Commission shall, in accordance with the law, determine the dates for holding the elections referred to in clause (2)."***

The Committee observes that the above provisions direct the Electoral Commission to hold Presidential, general Parliamentary and Local Council elections on the same day except where it is impractical to do so. Furthermore, the provision empowers the Electoral Commission to determine the dates for holding presidential, general parliamentary and local council elections. The effect of the above provision is to set a general rule that Presidential, General Parliamentary and Local Council elections are held on the same day but at the same time grant discretion to the Electoral Commission to, depending on the prevailing circumstances, hold elections for elective offices on any other day as it deems fit. Hon. Lubogo wishes to have the above provisions amended as follows-

***"(3) The Electoral Commission shall hold Presidential, general Parliamentary and District Chairpersons elections on the same day.***

***(4a) Where it is practical to do so, the Electoral Commission may together with Presidential general parliamentary and district chairperson elections, hold the elections of any other electoral positions on the same day."***

The Committee observes that the proposed amendment will have the effect of imposing a mandatory obligation on the Electoral Commission to hold Presidential, General Parliamentary and elections for District Chairpersons on the same day. The provision further gives the Electoral Commission the discretion to hold any other election for any elective office on the day on which Presidential, General Parliamentary and elections for District Chairpersons are held.

The Committee, having considered the effect of the proposed amendment as well as the justifications for the proposal agreed that the proposal is not supported for the following reasons-

***(1) It will infringe the independence of the Electoral Commission and curtail its discretion to determine the dates for various elections.***

The committee noted that Article 63 of the Constitution grants the Commission independence in the performance of its functions and prevents a person from giving it directions or exercising control over the Electoral Commission. The committee observed that the proposal, though well intentioned, may be deemed to an affront to the independence of the Electoral Commission in so far as it cannot determine, depending on the prevailing circumstances, the suitable dates to hold presidential elections, Parliamentary elections and elections under the Local Government Act. The ability to choose dates on which various elections can be held is one of the ways through which the independence of the Electoral Commission is protected. Without this provision, the independence of Electoral Commission's discretion to determine the date of elections would highly be curtailed.

*(2) The proposal to have election on the same day may limit the Electoral Commission's ability to react to circumstances as they emerge.*

The current provision empowers the Electoral Commission to react to the prevailing circumstances in determining the date for election. For instance, it allows the Commission to appoint different days for election of different office bears. This is in recognition of the fact that the Electoral Commission may not be able to control everything relating to the conduct of elections. For instance, it might not have enough staff to organize, count and tally results from all the districts of Uganda if the elections are to be held on the same day. Furthermore, it might not be able to conduct the election in the stipulated time allocated for elections or even address complaints addressed to the presiding officers before the time stipulated for declaration of elections.

*(3) The provision will be redundant*

The proposed amendment will be redundant in light of the fact that it proposes to legislate is already catered for in Article 61 (3). The committee noted that Article 61 (3) currently gives the Electoral Commission the discretion to hold Presidential, General Parliamentary as well as Local Government elections on the same day if it is practical to do so. By implication, if the Electoral Commission sees fit, it may hold Presidential, General Parliamentary as well as Local Government elections on the same day or hold any of those elections on a day it deems fit. The proposal by Hon. Lubogo therefore will be redundant since whatever it wants to direct the Electoral Commission to do can be done with the current provision.

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The Committee observes that the proposed amendment doesn't take into account the practical challenges of conducting elections. The Committee noted that for instance whereas Uganda had 15 Million registered voters, the duration for casting votes at general elections is ten hours, from 8 am to 5pm. This means that if there is a mandatory obligation on the EC to hold Presidential, general Parliamentary and district Chairpersons on the same day, there will be an increased voter load at the time of election resulting in less time for vote casting (considering that there are now additional positions to be voted for) and in the end, many people may not be able to cast their votes in the prescribed time.

The Committee, based on the above justifications, rejects the proposed amendment to Article 61 (3) and the insertion of a new sub clause in the same Article as proposed by Hon. Lubogo.

## RECOMMENDATION

The committee recommends that-

- (a) The relatedness of clause (1) and (3) be taken into account in determining the timelines proposed in those clauses.
- (b) In determining when Presidential, general parliamentary and local council elections are held, regard should be had to the timelines prescribed in Article 103 and 104 of the Constitution and adequate time is provided in order for the processes provided for in those articles to be complied with before expiry of the term of the President.
- (c) Presidential, general parliamentary and local council elections are held within the first 30 days of the last 169 days before the expiry of the term of office of the President.
- (d) The determinant of when Presidential, General Parliamentary and Local Government Council elections are held is the term of Parliament rather than the Presidential term which is prone to change.

## CLAUSE 2 OF THE BILL

Clause 2 of the Bill seeks to amend Article 102 of the Constitution by deleting paragraph (b). It reads as follows-

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**“Article 102 of the Constitution is amended by repealing paragraph (b)”**

**CURRENT PROVISION**

Currently, Article 102 reads as follows-

**“102. Qualifications of the President**

*A person is not qualified for election as President unless that person is—*

- (a) a citizen of Uganda by birth;*
- (b) not less than thirty-five years and not more than seventy-five years of age; and*
- (c) a person qualified to be a member of Parliament”*

**EFFECT OF THE PROPOSED AMENDMENT**

The proposed amendment has the following effects-

- (a) It removes age restrictions on a person intending to stand for the office of the President of the Republic of Uganda*
- (b) It removes both the lower and upper age restrictions on a person intending to stand as a candidate in a presidential election.*
- (c) It allows any person, irrespective of age, to stand as a candidate in a presidential election.*

**STAKEHOLDER'S VIEW**

**Ministry of Justice and Constitutional Affairs**

- The Minister of Justice agreed with the proposed amendment and reasoned that the amendments, on Article 102 and 104 were not new having been submitted to the Ministry of Justice and constitutional affairs by the public for consideration during the constitution amendment of 2015. The Minister noted that during the amendment of the Constitution in 2015, these proposals were not presented to Parliament for amendment due to the limited time that Parliament had at the time to consider the Constitution (amendment) Bill, 2015 being that the EC had already set the date for presidential and general parliamentary elections.*

**Uganda Law Reform Commission (ULRC)**

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- On the proposed amendment to clause 2 of the Bill, ULRC observed that there are other articles in the Constitution and other laws that provide for age limits. For instance Article 144 (1) provides the age limit for judges of the Supreme Court, court of appeal and High Court while public servants also have an age limit of 60 years prescribed in the Pension Act Cap 286.
- ULRC further called upon the committee to consider the memorandum of the Bill which bases the amendment proposed in clause 2 on discrimination as prohibited in Article 21 (3) of the Constitution. ULRC noted that discrimination as defined in Article 21 doesn't include discrimination on age.
- ULRC noted that one of the effects of the proposed amendment in clause 2 is to lower the age for seeking the presidency from 35 years to 18 years and without an upper age restriction. It observed that most of the East African Countries have a lower age restrictions for persons seeking the office of the president, including the Republic of Tanzania and Kenya while a number of African countries have upper age restrictions including Mauritania at 75 years, Gambia at 62 years, Burkina Faso at 75 years and Djibouti at 75 years.
- ULRC recommended that
  - (a) Parliament has to choose whether to have a minimum and maximum age restrictions for the presidency or not.
  - (b) the process for amending Article 102 should involve wide consultation of the people to ensure that the views of the people are collected.
  - (c) Parliament should consider the mischief that the provision of article 102 (b) was intended to cure or address and determine whether there is merit in retaining or amending the article as proposed in the bill.

**Equal Opportunities Commission (EOC)**

- EOC proposed that the issue of removal of the age restrictions should be referred to a constitution review commission in order to collect the views of the people on the matter
- EOC further observed that on the look of it, Article 102 (b) looks discriminatory since it prohibits persons below 35 years and those above 75 years from seeking the presidency but since this discrimination is allowed by the Constitution, the same cannot be held to be discriminatory in light of Article 21 of the Constitution.

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Furthermore, EOC observed that since Article 21, in the definition of the word discrimination, age is not among the matters a person can be discriminated against, then the idea that article 102 (b) is discriminatory cannot be sustained.

- EOC noted however that Article 102 (b) might be one such provision that needs mainstreaming because it appears to marginalise the aged and the youth which in turn denies such persons equal opportunities.

**National Resistance Movement (NRM)**

- NRM agreed with the proposed amendment reasoning that Article 1 of the Constitution grants the people of Uganda the right to determine who governs them and how they are governed. They reasoned that imposing age restrictions on a persons, especially those who vie for the office of the Presidency takes away the power of the people, which is enshrined in the Constitution, to choose the people they want to govern them by requiring them to only choose people from a given age bracket. According to the NRM, the current provision curtails the will of the people to choose who governs them. NRM observed that the Bill therefore seeks to enhance the democratic rights of the people of Uganda by allowing them to choose who should govern them without undue restrictions.
- NRM further argued that Ugandans have the capacity and freedom to choose the person who should lead the country as President in accordance with Article 103 of the Constitution. They reasoned that the people's freedom of choice of the President is expressed through regular free and fair elections and this right should be guaranteed and not restricted.
- NRM argued that the current Article 102 (b) is discriminatory against Ugandans who are 75 years and above, yet the same is prohibited in Article 32 of the Constitution. NRM noted that except district chairpersons and the President, the legal regime in Uganda doesn't impose restrictions on any person seeking elective office similar to Article 102 (b). NRM asked that this injustice should be removed from the constitution.
- NRM noted that the Constitution is not cast in stone that it cannot be amended. They argued that the Constitution can be amended as long as the amendment is done in accordance with the laws governing such amendments and the constitution.

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- *NRM reminded the committee that since Uganda is operating under a multiparty dispensation, a political party is free to choose a person it deems fit to compete for political office irrespective of age, gender, tribe, religion or other considerations. Removing age restrictions will enhance the multi-party politics.*
- *NRM urged the Committee to copy the examples of other countries who permit all their leadership resources to remain and compete for elections.*
- *NRM argued that the framers of the 1995 Constitution inserted Article 102 (b) arbitrary and without justification. They argued that it is not true that persons above 75 years are incapable of leading a county.*

**Professor Mwambutsya Ndebesa**

- *Professor Mwambutsya Ndebesa objected to the proposed amendment reasoning that Article 102 (b) of the Constitution was imposed in the constitution to guard against senility of the President. He argued that since Uganda is posed of weak institutions that cannot check the excesses of a seating president, removing a president on grounds on insanity, serenity or mental incapacity might not be possible.*
- *Professor also argued that removing Article 102 (b) would destabilise the basic structure of the constitution and would open a Pandora's Box. He argued, under the basic structure doctrine, certain articles of the Constitution are so fundamental that they are not capable of being amended at all because of their effect. He argued that Article 102 (b) is such fundamental article that it shouldn't be amended.*
- *The Professor also argued that the proposed amendment doesn't serve the common good since it was brought to serve the interests of one person.*
- *Professor objected to the amendment based on the justification that Article 102 (b) is discriminatory, arguing that Article 102 (b) is a limitation clause and not discriminating any person since the constitution doesn't consider age to be a basis of discrimination.*

**Rt. Hon. Prime Minister**

- *The Prime Minister agreed with the proposed amendment to Article 102 (b) since the amendment will have the effect of removing the discrimination inherent in Article 102 which prohibits citizens below 35 years and those above 75 years from offering themselves as candidates for the highest political office in Uganda. The Prime*

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Minister noted that Article 1 grants the people of Uganda the right to determine how and who governs them. He advised that Ugandans should be allowed to choose a leader of their choice without limitation and that political parties should be free to field any candidate of their choice.

### Democratic Party (DP)

- DP objected to the amendment of Article 102 (b) as proposed in the Bill on the grounds that it's part of the structure of the Constitution, which prohibits life presidency, and amending it as proposed in the Bill will adversely affect peaceful transition and constitutionalism. In its argument, it requested the committee to consider the doctrine of "basic structure of the constitution" in determining this matter.
- DP further observed that amending it might be treasonable considering the manner in which the Bill was introduced in the House.
- DP also was not convinced by the justification advanced for amendment on grounds that Article 102 (b) was not considered by Court in the case of Amama Mbabazi Vs Y.K. Museveni & another and neither is it discriminatory as alleged by the mover of the Bill. DP reasoned that being President is a specialised job requiring a special kind of person and not persons without capacity.
- DP observed that Article 102 (b) is not unique to Uganda since most other countries have some form of limitations on persons intending to offer themselves for election to the highest office.
- DP requested the committee, in reaching a decision on the amendment to article 102 (b), to be mindful of the preamble to the Constitution as well as the political history of the country which is characterised by political and constitutional instability and take a decision that will foster constitutional rule in Uganda.
- DP also gave 10 justifications why Article 102 (b) should not be amended, namely:
  - (a) it facilitates peaceful and constitutional transition;
  - (b) it keeps fresh points of view in the vicinity of public office;
  - (c) it controls graft and corruption of power
  - (d) it clears the deck of entrenched but worn out leaders;
  - (e) experience can be institutionalised;
  - (f) limits chances of state capture;

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- (g) builds institutions and prepares leaders;
- (h) insulates society from influence of adoring sycophants propping up fatigued leaders;
- (i) creates opportunities for fresh new faces;
- (j) removes fear of indefinite presidencies.

**Conservative Party (CP)**

- The CP objected to the proposed amendment of Article 102 (b) on the following grounds-
  - (a) the manner in which the Bill was introduced in the House, which was perpetuated by violence against Members of Parliament and the ejection from the House of opposition members of Parliament;
  - (b) the 1995 Constitution, especially Article 102 (b), is relatively untested and should be given time to work;
  - (c) the amendment is intended for one person and not for the common good.
  - (d) the amendment is likely to create a life presidency in Uganda and one party state;
  - (e) the proposed amendment alters the basic structure of the constitution;
  - (f) the bill was introduced contrary to the rules of procedure;
  - (g) the Bill was facilitated with funds drawn from the consolidated fund without formal Parliamentary approval.

**Justice Forum –JEEMA**

- Agreed with the views expressed by DP and CP on the matter and rejected the proposed amendment.

**Professor Tarsis Bazana Kabwegyere**

- Professor Tarsis Kabwegyere welcomed the amendment to Article 102 (b) and reasoned that the limitation imposed therein had nothing to do with a person's capacity to be president. He argued that the issue of leadership is not about the biological number of years a person has but is based on the capacity of such a person to execute the duties and functions of that office.

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- He noted that he had opposed the imposition of the upper and lower age restrictions at the time the constitution was being promulgated and his views have not changed since.
- He argued further that since life expectancy has increased from the time this Article was proposed and more Ugandans are living longer, the population of the aged persons, which is increasing every year, is still productive and must be utilised.
- Professor argued that there is no empirical evidence to prove the assertion that persons below 35 years and above 75 years are not biologically endowed for leadership.
- He cautioned members that marginalising the aged is not good since every one of us will, if God wishes, be old at one time.

**The Leader of the Opposition (LOP)**

- The LOP objected to the proposed amendment to Article 102 (b) as proposed in the Bill. The LOP objected to the manner in which the constitution is amended, usually, to cater for the wishes of one person. The LOP indicated that since 2005, the constitution has been amended to cater for the interest of the current president and not for the benefit of Ugandans.
- The LOP also took issue with the manner in which the Bill was introduced, reasoning that the entire week the Bill was introduced, Parliament was surrounded by gunships and there was heavy deployment of military personnel in and around the precincts of Parliament.
- The LOP further objected to the amendment on grounds that Members of Parliament who had a divergent view on the content of the Bill were mistreated, assaulted and evicted from the House by the Special Forces Command before the Bill was introduced.
- The LOP also pointed out that the Bill was wrongly hinged on the decision of Amama Mbabazi Vs Y.K. Museveni and another since the same decision never considered Article 102 as the same was not in dispute. LOP also averred that although some of the matters contained in the Bill had been part of the recommendations made by the Supreme Court in the case of Amama Mbabazi, the directives made by court were to the AG and not to any other person to implement.

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- the LOP also pointed to the committee that the 9<sup>th</sup> Parliament had adopted the Minority report that had been attached to the Committee report of the Constitution (amendment) Bill, 2015 and saved the report for the 10<sup>th</sup> Parliament to rejuvenate and conclude it.
- the LOP concluded that the Bill be rejected by the committee and the same be referred back to Government to form part of a wider views alongside those in the minority report to be taken to the constitution review commission for further consideration and engagement with the public.
- The LOP recommended that Government establishes a constitution review commission to collect the views of the people on their aspirations.

**Uganda Local Government Association (ULGA)**

- ULGA supported the proposed amendment on Article 102 (b) on grounds that the provision currently is discriminatory. They reasoned that Article 1 of the Constitution makes the people of Uganda sovereign and should be able to determine how they are ruled. ULGA also observed that whereas there are no age restrictions on a Member of Parliament, a Member of Parliament, in the form of the Speaker, may assume the office of the President under the constitution. They recommended that this absurdity must be removed by amending the Constitution.

**The Uganda Association of Uneducated persons (TUAUP)**

- TUAUP agreed with the proposed amendment to Article 102, reasoning that the paragraph (b) of that article was discriminatory, unfair and suffocates the notion of democracy. The also reasoned that since power belongs to the people of Uganda, the people should be allowed to choose a leader of their choice.

**Cpt. Ruhinda Maguru Daudi II**

- Mr. Ruhinda objected to the proposed amendment of Article 102 (b) reasoning that he was a lead petitioner, promoter and supporter of the referendum on articles 26 and 102 and therefore Parliament should wait for the outcome of that referendum.

**Makerere University School of Psychology**

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- *the School of Psychology, specifically Prof. Peter Baguma, Prof. Anthony Mugisha, Mr. John Balingira and Prof. Ali Twaha Basamba supported the proposed amendment to Article 102 reasoning that there is no evidence that a person above 75 years of age suffers from cognitive decline and is unable to lead a nation. They further noted that there was no evidence that intellectual performance declines with age. They also reasoned that the provision was discriminatory and recommended for its amendment.*

**Mr. George W. Bakka**

- *Mr. George advised the committee that age is not a determinant factor for leadership and recommended that Uganda and Africa generally needs leadership and not representation.*

**Mr. Gilbert Mutungi**

- *Mr. Gilbert agreed with the proposed amendment to article 102 reasoning that age restrictions are superficial boundaries which hinder the harnessing of leadership resources Uganda has.*

**Mr. Moses Mfitumukiza**

- *Agreed with the proposed amendment to Article 102 but recommended the reinstatement of term limits in the Constitution. The basis for this reasoning was that Uganda has a young population.*

**Mr. Egole Lawrence Emmy**

- *Agreed with the proposed amendment to Article 102, reasoning that it will encourage political inclusion.*

**Fr. Peter Bakka**

*Article 102 is not clear on the age it refers to. Fr. Bakka observed that there were 5 types of age, Chronological age, the biological age, psychological age, functional age, and social age.*

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**Mr. Langoya Alex**

- *Mr. Langoya agreed with the proposed amendment to Article 102 reasoning that the people of Uganda are sovereign and are free to determine how they are ruled.*

**Mr. Owachgiu Richard**

- *Richard agreed with the proposed amendment but proposed that term limits are re-introduced.*

**Maj. General Jim Muhwezi (Rtd)**

- *Hon. Jim Muhwezi, on behalf of the National Executive Committee of Veterans League of the National Resistance Movement, agreed with the proposed amendment reasoning that the limitation imposed in that article doesn't make sense considering that leaders that have brought political turbulence have been much younger than seventy-five years. He further reasoned that the Constitution contradicts itself by allowing a Member of Parliament, in the form of the Speaker of Parliament, to serve as President yet such a person has no age restrictions.*
- *He also observed that since people belongs to the people in accordance with Article 1, the people should be given the right to choose their leaders.*
- *He further reasoned that Article 102 (b) is discriminatory and is therefore contrary to the Constitution which prohibits such discrimination.*

**FRONASA Veterans**

- *agreed with the proposed amendment*

**Society for Justice and National Unity (SoJNU)**

- *They objected to the proposed amendment of Article 102 on the following grounds-*
  - (a) *longevity of leadership is detrimental and costly to development*
  - (b) *poor education standards and rampant unemployment of the youth*
  - (c) *meaningful constitutional reforms can only happen in post Museveni era*
  - (d) *Museveni is out of touch with Ugandans*
  - (e) *senility*
  - (f) *fear of Uganda without Museveni by some Ugandans*
  - (g) *peaceful transfer of power*

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- they also observed that the current provision is not discriminatory and further proposed that persons above 75 should not be allowed to stand for the presidency on the following grounds-

- (a) rise of populism and fascism
- (b) do not legislate against the opposition
- (c) abuse of open ended power

**Prof. Venansius Baryamureeba**

- He objected to the proposed amendment on grounds that since independence all presidents of Uganda elected and unelected have been above 35 and below 75 therefore there is no data to support removal of presidential age limit.
- There is no evidence that the youth and elderly want article 102 (b) of the Constitution repealed to allow those below 35 and above 75 to be nominated for presidency. Prof. reasoned that he has not seen any petition from the youth and elderly demanding the amendment of the constitution.
- Prof further reasoned that amending the constitution will result in life presidency for president Museveni.
- Prof cautioned that allowing young and inexperienced leaders with no temperament and experience and older leaders who are highly prone to chronic ailments like dementia and depression to take political office.

**Prof. E.F Ssempebwa**

- Prof. Ssempebwa asked the committee to rationalise the proposed amendment and consider the mischief it intends to cure. He pointed out the matters to be considered include-
  - (a) the state of dispersal of power amongst the organs and institutions of Government
  - (b) the role local Governments play over the system of checks and balances
  - (c) the electoral system for free and fair elections and possible devices to Minimum strains and tensions,
  - (d) the system of public accountability.

**Mr. Mulira Peter**

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- *Mr. Mulira objected to the proposed amendment reasoning that Parliament lacked the mandate to amend the Constitution*
- *He also averred that there are no rules prescribed in the Constitution through which the constitution can be amended.*
- *The preparation of the Bill, being that it was not drafted by the first parliamentary counsel renders it unconstitutional because it was not done according to the requirements of the Constitution.*

**Hon. Amanywa Mushega**

- *Objected to the proposed amendment since the proposed amendment will only benefit one person alone.*

**Dr. Tanga Odoi**

- *agreed with the proposal to amend Article 102 of the Constitution*

**Kick All Age Limits Out of the Constitution (KALOC)**

- *Agreed with the proposed amendment reasoning that it will increase political inclusiveness and participation.*

**Centre for Information Research and Development**

- *Objected to the proposed amendment since it is for the benefit of a single individual.*

**Masindi District Local Government Council**

- *The District council of Masindi objected to the proposed amendment of article 102.*

**Mr. Fred Guweddeko**

- *He objected to the proposed amendment to article 102 (b) on grounds that the objective of the bill is to clear the way for H.E the President to seek re-election in 2021.*

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**Buganda Region NRM Youth Voluntary & Advocacy Mobilizers (BREVOM)**

- BREVOM agreed with the proposed amendment to Article 102 on grounds that the current provision provides rigidities and technicalities that promote discrimination and unfair competition. They also averred that the provision discriminates against those below 35 and above 75. They further averred that the amendment to article 102 is in line with the millennium development goals and the sustainable Development Goals which obligate Uganda to remove all discriminating matters.

**Guild Presidents' Forum on Governance (GPFOG)**

- GPFOG objected to the proposed amendment of Article 102 and recommended to the committee to protect and defend the Constitution as mandated by the Constitution in article 4 (a). They objected to the proposed amendment on the following grounds-
  - (a) the proposed amendment will remove the last remaining safeguard against life presidency and thereby threatening democracy in Uganda;
  - (b) elections, as a safeguard against life presidency, are not free and fair in Uganda;
  - (c) all public servants have retirement age, so removing it from the presidency makes the office of the president special
  - (d) removing age restrictions will have far reaching consequences on the economy since most youth in Uganda, about 83%, are unemployed.
- They noted that Uganda is the only country without presidential term limits among the east African countries and recommended the reinstatement of term limits as well as removing all other laws that infringe on the enjoyment of democracy such as the public order management Act, the Computer misuse Act, etc

**Gabula Sadat**

- The proposed that the lower age should be reduced to 30 Years and the upper age be increased to 85 years. In his justification, he averred that persons above 30 years are capable of leading a country while those below 85 are senile enough to rule a country. He also recommended to the committee for the

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restoration of term limits and cap the presidency to ten years only (2 five year terms)

**Kampala Business Community Informal Sector (KBCIS)**

- KBCIS agreed with the proposal for removing age restrictions from the constitution. They reasoned
  - (a) that since people belongs to the people; the people should be given the mandate to choose the person who rules them.
  - (b) article 102 (b) is unfair on persons below 35 years and those above 75 years.
  - (c) their businesses are currently stable and are satisfied with H.E Y.K Museveni's leadership.
  - (d) there is no need for age restrictions since the nation needs both the youth for innovation and the elderly for skills.

**Kampala Arcaders Traders Association (KATA)**

- KATA agreed with the proposed amendment on grounds that the current provision restricts persons below 35 and above 75 from exercising their fundamental right of contesting for presidency like the rest of Uganda. They argued further that politics is based on ideology of every age bracket and is better if it is inclusive. They further averred that the restrictions in Article 102 (b) are contrary to Article 1 of the Constitution and is therefore discriminatory against the old and youth.

**Wansanso Kibuye Co-operative Saving & Credit Society Ltd**

- Agreed with the proposed amendment, reasoning that Uganda currently has a young population majority of whom are below 35 years

**Kampala Operational Taxi Stages Association (KOTSA)**

- Agreed with the proposed amendment on the following grounds-
  - (a) Uganda has a majority youthful population which is barred from offering their candidature for the highest political office.
  - (b) the sanctity of the people is paramount as guaranteed under Article 1 of the Constitution

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**Kampala Tukolebukozi Timber Association (KATUTA)**

- *Agreed with the proposed amendment on grounds that power belongs to the people and should be allowed to exercise their free will to choose the person who leads them.*

**Nakivubo Road Old Kampala (Kiseka) Market Vendors Ltd**

- *Agreed with the proposed amendment reasoning that the nation needs both young and old in the administration of the Country. They also argued that power belongs to the people to determine how and who rules them without any limitation. They also argued that the provision is discriminatory.*

**Uganda Mechanics and Engineering Association**

- *They agreed with the proposed amendment reasoning that people should be given the power to choose their leaders.*

**Urban Community Vector Control Group (UCOVEC)**

- *UCOVEC agreed with the proposed amendment on the grounds that there was no scientific justification for imposing the age restrictions in Article 102 (b) in the first place. The restrictions imposed in article 102 isn't based on the life expectancy which stands at 64 years, meaning, there are many people who are above 75 years of age than ever before.*

**Uganda Markets & Allied Employees Union (UMEU)**

- *They agreed with the proposed amendment on grounds that power belongs to the people who should be given the right to determine who leads them.*

**St. Balikuddembe Market Stalls, Space & Lock Up Shops Owners Association Ltd**

- *Agreed with the proposed amendment on grounds that Article 1 of the Constitution gives power to the people to determine who rules them and how they are ruled. They also argued that international best practices dictates inclusion of the youth and elderly in the political administration of Uganda.*

**Hon. Tayebwa Thomas (MP Ruhinda North County, Mitooma District)**

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The Hon. Tayebwa objected to the amendments to Article 102 (b) and instead proposed an amendment to Article 105 (2) to reinstate term limits, arguing that with this, age limit ceases to be an issue and would allow Uganda to join other countries in concretizing term limits.

### ANALYSIS AND OBSERVATIONS

Article 102 prescribes the qualification for election as a president of Uganda and provides 3 conditions a person intending to stand in a presidential election must fulfill before nomination. These are that such a person is-

- (a) a citizen of Uganda by birth;
- (b) not less than thirty-five years and not more than seventy-five years of age; and
- (c) a person qualified to be a member of Parliament

The bill proposes to delete paragraph (b) which bars persons below the age of 35 years and above the age of 75 from standing as a candidate in a presidential election. The justification advanced for this amendment is to comply with the Article 1 of the Constitution which gives the people of Uganda the absolute right to determine how they should be governed and articles 21 and 32 which prohibit any form of discrimination on the basis of age and other factors.

### 1. GENERAL EVOLUTION OF QUALIFICATIONS FOR ELECTION AS PRESIDENT SINCE INDEPENDENCE

The qualification for election of a person as president has been entrenched in all constitutions of Uganda since 1966 with varying limitations.

Under the 1966 Constitution of Uganda, Article 36 of that Constitution required that the president was that person who was the leader in the national assembly of the party having numerical strength which consists of the majority of all the Members of the Assembly returned to the Assembly after a general election. By implication, the president was the leader of the party with the highest number of members of the assembly and had to be a Member of the Assembly. This means that such a person had to qualify for election as a Member of the assembly first, be a leader of the party, be elected to the assembly before qualifying for election as president. The qualification for a member of the assembly were contained in Article 53 (1) of the 1966 Constitution which is reproduced below-

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**"53 (1) No person shall be qualified to be a member of the national assembly who,-**

- (a) is a ruler of kingdom or territory of Busoga, the constitutional head of a district, a person holding office as a member of the legislative assembly of a kingdom or territory of Busoga or a member of a council of a district;**
- (b) has made a declaration of allegiance to a country other than Uganda;**
- (c) has been adjudged or declared bankrupt under any law in force in Uganda and has not been discharged;**
- (d) has been adjudged or otherwise declared to be of unsound mind under any law in force in Uganda; or**
- (e) is under sentence of death imposed on him by any court in Uganda or under a sentence of imprisonment by whatever name called exceeding six months imposed on him by such a court or substituted by a competent authority for other sentence imposed on him by such a court."**

It is clear from the above that the 1966 Constitution didn't impose any age restrictions on a person intending to offer his candidature for the office of President of Uganda. However this changed in the 1967 Constitution.

In that constitution, Article 25 of that Constitution imposed age restrictions on a person intending to offer his or her candidature in a presidential election. That provision required such a person to have attained the age of thirty five years as well as confirming to other qualifications. Article 25 is reproduced below-

**"25. Qualifications of President**

**A person shall be qualified to be the president and shall not be so qualified unless,**

- (a) he is a citizen of Uganda;**
- (b) he has attained the age of thirty five years; and**
- (c) he is qualified to be a member of the national assembly."**

By the above provision and for the first time in Uganda's history, a person offering to stand in a presidential election had to conform to age restrictions as required in Article 25 (b) of the 1967 constitution. The position in the 1967 Constitution remained applicable until the promulgation of the 1995 Constitution.

It should be remembered that the 1995 Constitution is based on the report of the Uganda Constitution Commission, popularly known as the Odoki Commission, after its chairperson Justice Ben Odoki. The commission was established by the Government of Uganda in March 1989 to collect the views of the people and out of which a new constitution for Uganda would be promulgated. The Odoki Commission visited all parts of the country collecting views of the people on what should be contained in the Constitution. Indeed, the commission reached out to the Ugandan public and got their views on a new constitutional order, conducting seminars in all 870 sub counties of Uganda and collecting a total of more than 25,000 submissions, including over 800 submissions from religious, political, and other civil society groups. At the conclusion of this process, the Odoki Commission produced a report and a proposed draft Constitution which was submitted to Parliament.

On the qualification of the President, the Odoki report had recommended that a person should only qualify for election as President if he or she is-

- (a) is a citizen of Uganda by birth;
- (b) is not less than forty years of age;
- (c) a person has completed a minimum formal education of advanced standard or its equivalent; and
- (d) is qualified to be a member of Parliament.

When the matter was considered by Parliament, the committee recommended to recast paragraph (b), deleting paragraph (c) and renumbering paragraph (d) as (c) so as the provision read as follows-

*"A person is not qualified for election as President unless he is-*

- (a) a citizen of Uganda by birth;
- (b) 40 years of age and above; and
- (c) is qualified to be a member of Parliament."

During plenary and the debate that ensued, it was unanimously agreed that paragraph (b), prescribing that a person must be 40 years and above be amended to impose a lower age of 35

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years and an upper age of 75 years. The justification for imposing 35 years as the minimum age restriction arose out of the assumption that persons below 35 years are devoid of any capacity to run a country. On the other hand, the upper age restriction of 75 arose from the presumption that a person at that age was not senile enough to run a country.

The Committee observes that the imposition of age restrictions on a candidate for the office of the President did not arise from the views of the people. Indeed, the first time age restrictions were imposed, they did so under the 1967 constitution, whose promulgation was not preceded by any consultative process and was imposed overnight by the then government of the day. When the matter of qualification was brought to the people, the people views, as collected by the Odoki Commission prescribed a lower age limit of 40 years without an upper age restriction. The upper age restriction of 75 years was imposed on the floor of Parliament and did not arise from views collected from the people of Uganda. One can only speculate that the people of Uganda wanted to retain the unfettered right to choose who leads them, in line with the spirit of Article 1 of the Constitution.

## 2. LEGAL CHALLENGES POSED BY ARTICLE 102(B) IN ITS CURRENT FORM

Currently, Article 102, especially paragraph (b) faces a number of legal challenges as illustrated below-

- (a) Article 102 (b) is contrary to the spirit of objective II of the National objectives and directives principles of state policy and Articles 1 of the Constitution of Uganda.

The 1995 Constitution of Uganda, in objective II of the National Objectives and Directives Principles of State Policy imposes obligations on the state to among others, be based on democratic principles which empower and encourage the active participation of all citizens at all levels in their own governance. Further still, the same object enjoins the state to ensure that the people of Uganda have access to leadership positions at all levels. Further still, the state is required to ensure that the composition of Government is broadly representative of the national character and social diversity of the country. Objectives II of II of the National Objectives and Directives Principles of State Policy are reproduced below-

### *"II. Democratic principles*

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

*Articles*  
*Labasanyi*  
*Dwene Amiri*  
*Reverend*  
*Repa*  
*Aken*  
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- (ii) *All the people of Uganda shall have access to leadership positions at all levels, subject to the Constitution.*
- (iii) *The State shall be guided by the principle of decentralization and devolution of governmental functions and powers to the people at appropriate levels where they can best manage and direct their own affairs.*
- (iv) *The composition of Government shall be broadly representative of the national character and social diversity of the country.*
- (v) *All political and civic associations aspiring to manage and direct public affairs shall conform to democratic principles in their internal Organisations and practice.*
- (vi) *Civic Organisations shall retain their autonomy in pursuit of their declared objectives."*

In the same vein, Article 1 of the Constitution makes the people of Uganda sovereign and grants them absolute power to determine and consent on how they will be ruled and who rules them in all spheres of life. Article 1 is reproduced below-

***"1. Sovereignty of the people***

- (1) *All power belongs to the people who shall exercise their sovereignty in accordance with this Constitution.*
- (2) *Without limiting the effect of clause (1) of this article, all authority in the State emanates from the people of Uganda; and the people shall be governed through their will and consent.*
- (3) *All power and authority of Government and its organs derive from this Constitution, which in turn derives its authority from the people who consent to be governed in accordance with this Constitution.*
- (4) *The people shall express their will and consent on who shall govern them and how they should be governed, through regular, free and fair elections of their representatives or through referenda."*

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Further still, Article 38 of the Constitution guaranteed the right of every citizen to participate in the affairs of government, individually or through his or her representatives in accordance with the law. Article 38 of the Constitution is reproduced below-

***"38. Civic rights and activities***

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(1) Every Uganda citizen has the right to participate in the affairs of government, individually or through his or her representatives in accordance with law.

(2) Every Ugandan has a right to participate in peaceful activities to influence the policies of government through civic Organisations.”

The spirit of the above cited provisions is that the people of Uganda are sovereign and are free to determine how they are ruled and who rules them. The principle of sovereignty of the people is to the effect that the authority of the government is created and sustained by the consent of its people, who are the source of all political power. The principle of sovereignty requires that the people are free to make choices on matters that affect them, including who, how and the manner in which they are ruled. Article 102 (b) of the Constitution has the effect of limiting or fettering the exercise of the people's absolute sovereignty by restricting their choice of leaders, especially for the office of President, to only persons above the age of 35 years and below 75 years of age. By unjustly limiting the choice of persons available for election as president, Article 102 (b) contravenes the spirit of objective II of the National objectives and directives principles of state policy and Articles 1 of the Constitution and exceeds limitations that are justifiable in a democratic society like Uganda.

**(b) Article 102 (b) marginalizes the aged and youth in as far as limiting their candidature for election as president of Uganda**

Article 102 (b) of the Constitution has the effect of marginalizing against the youth and elderly by limiting them from offering their candidature for President. The word "marginalization" is defined in the Equal Opportunities Commission Act of 2007 to mean the deprivation of a person or a group of persons of opportunities for living a respectable and reasonable life as provided in the Constitution. On the other hand, can literally be taken to mean the process of making a group or class of people less important or relegated to a secondary position. Furthermore, article 32 of the Constitution recognizes that a person maybe marginalized based on, among other age. This Article is reproduced below-

**“32. Affirmative action in favour of marginalized groups**

(1) Notwithstanding anything in this Constitution, the State shall take affirmative action in favour of groups marginalized on the basis of gender, age, disability or any

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*other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them.*

*(2) Parliament shall make relevant laws, including laws for the establishment of an equal opportunities commission, for the purpose of giving full effect to clause (1) of this article."*

There. Article 102 (b) of the Constitution marginalizes the youth and elderly by prohibiting them from offering their candidature in a presidential election. This amount to marginalization since the youth and elderly, who jointly constitute a sizeable percentage of our population, are taken as second class citizens who are incapable of leading a country.

Considering that this assertion is not based on any scientific evidence that the youth and elderly are incapable of leading a country and aware that such restrictions are unjustifiable in a free and democratic country like Uganda, the removal of age restrictions will remove the restriction making the youth and elderly equal citizens of Uganda. Article 102 (b) is one of those articles that creates marginalizes the youth and elderly by reserving the right to attain the highest political office in Uganda to any other persons in Uganda except the elderly and the youth.

Indeed, removing the age restrictions in Article 102 (b) is not only a command of Article 32 of the Constitution but it will also enhance and equalize the opportunities available to all other Ugandans as far as offering their candidature for the office of President are concerned with those currently enjoyed by the youth and elders. The term equal opportunities is defined in section 1 of the Equal Opportunities Commission Act as follows-

*"equal opportunities" means having the same treatment or consideration in the enjoyment of rights and freedoms, attainment of access to social services, education, employment and physical environment or the participation in social, cultural and political activities regardless of sex, age, race, colour, ethnic origin, tribe, birth, creed, religion, health status, social or economic standing, political opinion or disability;*

Since the youth and elderly do not enjoy the same opportunity as other Ugandans as far as offering their candidature for the highest office in Uganda, removing such restrictions will go a long way in creating equal opportunity for all, especially in the political sphere. Finally,

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removing the age restrictions will go in a long way in answering the command of Article 21 (1) of the Constitution. Article 21 (1) of the Constitution requires as follows-

*“(1) all persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.”*

Article 21 (1) of the Constitution requires that all persons are equal before the law and are treated equally in all spheres of political, economic, social and cultural life and in every other respect. Article 102 (b) currently doesn't treat all Ugandans equally since it elevates those persons between 35 and 75 years over all other persons in Uganda in as far as attaining the highest political office in Uganda is concerned.

**(c) Article 102 (b) is contrary to international best practices in so far as it imposes age restrictions on presidential candidates contrary to international legal instruments and evidence from other countries.**

International best practice is in favor of inclusive candidacy laws for all elective offices in a democratic country. The international best practices are contained in a number of instruments including the universal declaration of Human rights, the African Youth Charter and the African Charter on Elections, Democracy and Governance.

The universal declaration of Human rights guarantees every person's right equality before the law and entitles persons, without any discrimination, to equal protection of the law. It further guarantees other rights including the right to association, freedom of expression and conscious as well as the right to take part in government of his or her country, directly or indirectly or through representative.

The African Charter on Democracy, Elections and Governance also enjoins the State parties to eliminate all forms of discrimination, especially those based on political opinion, gender, ethnic, religious and racial grounds as well as any other form of intolerance as well as enjoining them to adopt legislative and administrative measures to guarantee the rights of women, ethnic minorities, migrants, people with disabilities, refugees and displaced persons and other marginalized and vulnerable social groups. Furthermore, the Charter enjoins state parties to promote participation of social groups with special needs, including the Youth and people with disabilities, in the governance process.

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On the other hand, the African Youth Charter enjoins member states to take steps to Guarantee the participation of youth in parliament and other decision making bodies in accordance with the prescribed laws and facilitate the creation or strengthening of platforms for youth participation in decision-making at local, national, regional, and continental levels of governance. Furthermore, the Charter prohibits the discrimination of the youth on grounds of race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status and obligate member states to take appropriate measures to ensure that youth are protected against all forms of discrimination on the basis of status, activities, expressed opinions or beliefs.

The committee also wishes to recall that the United Nations Security Council, at its 7573<sup>rd</sup> meeting unanimously adopted Resolution 2250 (2015) urging Member States to increase representation of Youth in decision-making at all levels the Council also urged Member States to consider setting up mechanisms that would enable young people to participate meaningfully in peace processes and dispute resolution.

On the part of older persons, the United Nations General Assembly passed resolution 46/91 of 16 December 1991 on the United Nations Principles for Older Persons which, among others, requires and obligate state parties to ensure that older persons remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations.

The above United Nations legal instruments bind Uganda and impose obligations to ensure that the Youth and older persons are not discriminated or marginalized against. Furthermore, the above legal instruments highlight the fact that Article 102 (b) is contrary to the above cited legal instruments because of its marginalization of the youth and elderly contrary to the above cited legal instruments.

Furthermore, Article 102 (b) is contrary to best international practices since international best practices now favor the lowering of the age of candidacy for elective offices as well as removing upper age restrictions on candidates seeking political office. A closer look at most countries reveals that there is a general trend towards removing age restrictions on candidates for political offices. The Committee noted that there has been a gradual reduction from an average of 45 years for elective offices worldwide to an average of 25 years and below.

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Indeed, in most countries, the age of candidacy for elective office is the age of consent. The reasons behind this reduction are numerous but mainly deal with the increasing number of the youth and elderly population in world. Indeed, the world youth population currently stands at 1.8 billion people<sup>1</sup>. Furthermore, there is a realization that the youth and elderly have a role to play in the political and social economic development of a country and therefore, should not be left behind.

For instance, although certain countries have retained age restrictions for the office of the President such as Article 26 of the Constitution of Mauritania which requires a candidate for in a presidential election to be between 40 and 75 years of age, Article 40 of the Constitution of Ivory Coast which requires a candidate to be between the age of 35 and 65, Article 62 of the Constitution of Gambia which requires a candidate to be between the age of 30 to 65, Article 38 of the Constitution of Burkina Faso which requires the person to be between the age of 35 to 75 and the constitution of Djibouti which requires the person to be between the age of 40 to 75, the majority of countries have no or have recently removed age restrictions or upper age restrictions from their Constitutions or other laws as illustrates below-

#### IN KENYA

Kenya had a similar provision like that of Uganda which set the age of 35 to 70 for a Presidential candidate. Whoever this was removed from the Constitution in 2004 and currently in Kenya, any person above the age of 18 years can stand for president. There are no higher age requirements for particular positions in public office.

#### IN TANZANIA

The Constitution of Tanzania requires a person to be eligible for election; he or she must be 40 years of age. There are no higher age requirements for particular positions in public office.

#### IN RWANDA,

A person is eligible to stand for the presidency if he or she is at least thirty five (35) years old on the date of submission of his or her candidacy. There are no higher age requirements for particular positions in public office.

#### IN GHANA

<sup>1</sup> see the world population data sheet available at [http://www.prb.org/pdf17/2017\\_World\\_Population.pdf](http://www.prb.org/pdf17/2017_World_Population.pdf)

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In Ghana, a person is eligible to stand for President if he or she has attained the age of forty years. There are no higher age requirements for particular positions in public office.

**IN NIGERIA**

In Nigeria, a person must be at least 40 years of age to be elected President or Vice President, 35 to be a Senator or State Governor, and 30 to be a Representative in parliament. There are no higher age requirements for particular positions in public office. However, in July 2017, Nigeria reduced the age of candidacy across all political office from 40 years to 35 years for President and from 35 to 30 years for governors. The justification given for this reduction is to enable the young people to participate in elective politics as well as a realization that the youth population of Nigeria has grown.

**IN THE UNITED STATES**

In the United States, a person must be at least 35 to be President or Vice President, 30 to be a Senator, and 25 to be a Representative, as specified in the U.S. Constitution. Most states in the U.S. also have age requirements for the offices of Governor, State Senator, and State Representative. Some states have a minimum age requirement to hold any elected office (usually 21 or 18). There are no higher age requirements for particular positions in public office.

**IN THE UNITED KINGDOM**

In the UK (other than in Scotland) a person must be aged 18 or over (16 in Scotland) to stand in elections to all parliaments, assemblies, and councils at the European, UK, devolved, or local level. This age requirement also applies in elections to any individual elective public office; the main example is that of an elected mayor, whether of London or a local authority. There are no higher age requirements for particular positions in public office. Candidates are required to be aged 18 on both the day of nomination and the day of the poll. This was reduced from 21 by the Electoral Administration Act 2006.

**IN SOUTH AFRICA**

Section 47, Clause 1 of the 1996 Constitution of South Africa states that "Every citizen who is qualified to vote for the National Assembly is eligible to be a member of the Assembly", defaulting to Section 46 which "provides for a minimum voting age of 18 years" in National

Assembly elections; Sections 106 and 105 provide the same for provincial legislatures. There are no higher age requirements for particular positions in public office.

**IN CANADA**

In Canada, any person 18 years of age or older may stand for election to public office. However, to be appointed to the Senate, one must be at least 30 years of age, must possess land worth at least \$4,000 in the province for which he or she is appointed, and must own real and personal property worth at least \$4,000, above his or her debts and liabilities.

**IN FRANCE,**

~~any~~ citizen 18 years of age or older can be elected to the lower house of Parliament, and 24 years or older for senate and 18 years for president. There are no upper age restrictions.

It is discernable from the above that the trend in most of the countries is in favor of removing or reducing age restriction for elective offices and not imposing such restrictions. Indeed in Africa, there is a trend of reducing or removing restrictions on the youth to stand for elective office as illustrated above. The justifications for this are the growing number of the youth in most of these countries. Indeed, according to a report of United Nations Department of Economic and Social affairs, by 2015, there were 1.2 billion youth aged 15-24 years globally, accounting for one out of every six people worldwide.

In Africa however, the number of youth is growing rapidly. In 2015, 226 million youth aged 15-24 lived in Africa, accounting for 19 per cent of the global youth population. By 2030, it is projected that the number of youth in Africa will have increased by 42 per cent. Africa's youth population is expected to continue to grow throughout the remainder of the 21st century, more than doubling from current levels by 2055. This upward trend in the population growth worldwide, especially among the youth, makes the youth a new demographic group that must be taken into account at every level of decision making. This requires that restrictions on their involvement in decision making processes must be eased because of their new found importance.

The above clearly illustrate that Ugandan, though considering its self to be a democratic state, still has restrictions on who qualifies for candidacy in an election, which restrictions are not demonstrably justifiable in a democratic society. Therefore the proposed amendment should be supported.

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**(d) Article 102 (b) is redundant in light of Article 107 (1) (c) of the Constitution.**

It is important to remember that the justification for imposition of an upper age restriction was to protect the office of the President from a senile president under the assumption that persons above 75 years of age have higher chances of being in-senile. Basing on the above, the Constitution, in Article 107 (1) (c) provided for a possibility of removing a seating president based on mental and physical incapacity. This provision is reproduced below-

**107. Removal of the President.**

**(1) The President may be removed from office in accordance with this article on any of the following grounds-**

**(c) physical or mental incapacity, namely that he or she is incapable of performing the functions of his or her office by reason of physical or mental incapacity.**

The above provision allows for the removal of a president on grounds of physical or mental incapacity where such hinder him or her from performing the functions of his or her office. Whereas the Constitution doesn't define what amounts to mental or physical incapacity, clauses 9, 10 and 11 of Article 107 empower the medical board to examine the president to determine whether he or she is suffering from such mental incapacity.

The redundancy of Article 102 (b) of the Constitution arises from that fact that unlike Article 102 (b) which protects the office of the President from only age related insanity, Article 107 (1) (c) broadly protects the same office from persons suffering any form of physical or mental incapacity irrespective of age. The limited nature of Article 102 (b), together with the broad nature of Article 107 means that the office of the president is well protected from persons suffering any mental or physical incapacity with or without Article 102 (b) of the Constitution. Therefore, removing Article 102 (b) will not in any way undermines the office of the president considering that the same constitution provides for a mechanism for removing such persons.

**(e) Article 102 (b) of the Constitution is not in harmony with articles 80, 104 (7) and 109 (5) of the Constitution**

Article 102 on the qualification for election as president is not in harmony with articles 80 and 104 (7) on the Constitution. Article 102 requires that for a person to qualify for election

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as president, he or she must be above a citizen by birth, 35 years of age and below 75 years of age and qualify for election as a Member of Parliament.

Article 80 of the Constitution deals with qualifications of a Member of Parliament and it requires as follows-

**"80. Qualifications and disqualifications of members of Parliament**

**(1) A person is qualified to be a Member of Parliament if that person—**

- (a) is a citizen of Uganda;**
- (b) is a registered voter; and**
- (c) has completed a minimum formal education of Advanced Level standard or its equivalent.**

**(2) A person is not qualified for election as a Member of Parliament if that person—**

- (a) is of unsound mind;**
- (b) is holding or acting in an office the functions of which involve a responsibility for or in connection with the conduct of an election;**
- (c) is a traditional or cultural leader as defined in article 246(6) of this Constitution;**
- (d) has been adjudged or otherwise declared bankrupt under any law in force in Uganda and has not been discharged; or**
- (e) is under a sentence of death or a sentence of imprisonment exceeding nine months imposed by any competent court without the option of a fine.**

**(3) A person elected to Parliament when he or she is a member of a local government council or holds a public office shall resign the office before assuming the office of Member of Parliament."**

What is evident from the above provisions is that whereas Article 102 has age restrictions on a person intending to run for the presidency, Article 80 does not. Whereas this seems innocuous, it takes on special relevance in Articles 104 (7), and 109 (5) of the Constitution.

Article 104 (7) is reproduced below-

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*“(7) If after a fresh election held under clause (6) of this article there is another petition which succeeds, then the presidential election shall be postponed; and upon the expiry of the term of the incumbent President, the Speaker shall perform the functions of the office of President until a new President is elected and assumes office.”*

Article 109 (5) is reproduced below-

*“Where the President and the Vice President are both unable to perform the functions of the office of the President, the Speaker shall perform those functions until the President or the Vice President is able to perform those functions or until a new President assumes office.”*

The above provisions generally empower the Speaker of Parliament to perform the functions of the office of President in circumstances where the election of the President is postponed or where both the President and Vice President are unable to perform the functions of President. The above provisions have the effect of opening the door for the Speaker of Parliament, who may not qualify for election as president to assume the presidency and exercise the functions of the president. Indeed, such Speaker of Parliament is a President for all intents and purposes and subscribes to the oath of president.

The legal challenge posed by the restrictions imposed in Article 102 (b) as far as the taking up of the presidency by the speaker in the circumstances referred to in Articles 104 and 109 of the Constitution is that in case the Speaker is below the age of 35 or above the age of 75 and therefore doesn't qualify for election as president, he or she may be prevented from taking up the presidency, throwing the country into a constitutional crisis.

Therefore, in light of the fact that it is possible under our constitution for a person who is barred for election as President to assume that office by operation of law, then there is need for harmony between Articles 102 (b) on one part and Articles 104 (7) and 109 (5) of the Constitution by ensuring that the offices of the president and that of Members of Parliament have similar qualifications.

### 3. LEGAL CHALLENGES WITH THE PROPOSED AMENDMENT TO ARTICLE 102 (B) BY THE BILL

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Whereas the proposal to amend Article 102 (b) is welcome, the proposal as it currently stands in the bill leaves a lot to be desired and might lead to confusion. The Committee notes that the effect of this proposal is to remove any form of age restrictions on the candidature of a person standing in a presidential race. If the proposed amendment is passed as it stands in the Bill, it will create confusion as to who qualifies to stand in a presidential election owing to the fact that it allows any person irrespective of age to stand for such an office.

There are two possible scenarios the current proposal in the bill creates. The first scenario is that any person would be eligible to stand in a presidential election irrespective of their age. This scenario will create an absurdity in the sense that even persons who are not eligible to vote can stand in a presidential election. The second scenario is that only persons who have reached the age of majority as prescribed in Article 50 would be eligible to offer their candidature in a presidential election.

The ambiguity will result in confusion and difficulty in enforcing the provision. In order to remove the ambiguity from the proposed amendment, there is need for the provision to specifically provide the age of eligibility for election as president instead of leaving it open. The Committee observed that there is no single provision on the law books of Uganda which specifies the age at which a person may offer his candidature in an election. Indeed, the Committee recognizes that the age of candidature in any political office depends on the political office and is usually prescribed in the law prescribing such office. The Committee reasons that since there is no legal provision specifying the age at which a person is eligible to stand for political office generally and alive to the fact that the age of candidacy for election to a particular political office depends on the law establishing that office, the committee strongly believes that Article 102 needs to make a specific reference to a particular minimum age for which a person may stand for election as president.

Secondly, there is a conflict between paragraphs (a) and (c) of Article 102 of the Constitution. Paragraphs (a) and (b) of Article 102 require that a person qualifies for election as president if he or she is a citizen of Uganda by birth and is qualified to be a Member of Parliament. The qualification of a Member of Parliament are prescribed in Article 80 of the Constitution and it is reproduced below-

**“80. Qualifications and disqualifications of members of Parliament**

**(1) A person is qualified to be a Member of Parliament if that person—**

**(a) is a citizen of Uganda;**

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*(b) is a registered voter; and*

*(c) has completed a minimum formal education of Advanced Level standard or its equivalent.*

*(2) A person is not qualified for election as a Member of Parliament if that person—*

*(a) is of unsound mind;*

*(b) is holding or acting in an office the functions of which involve a responsibility for or in connection with the conduct of an election;*

*(c) is a traditional or cultural leader as defined in article 246(6) of this Constitution;*

*(d) has been adjudged or otherwise declared bankrupt under any law in force in Uganda and has not been discharged; or*

*(e) is under a sentence of death or a sentence of imprisonment exceeding nine months imposed by any competent court without the option of a fine.*

*(3) A person elected to Parliament when he or she is a member of a local government council or holds a public office shall resign the office before assuming the office of Member of Parliament."*

The conflict between paragraph (a) and (b) arises from the fact that for a person to qualify for election as president, he or she must be a citizen of Uganda by birth. On the other hand, for the same person to qualify to be a Member of Parliament, he or she is merely required to be a citizen of Uganda.

This means that persons who are not citizens by Birth are eligible to stand in an election for a Member of Parliament yet the same are not eligible to stand for election as a Member of Parliament. Article 102(a) and (c) assume that the qualifications for election as president are the same as those for election as a Member of Parliament yet this is not entirely true. This means that paragraph (a) of Article 102 of the Constitution requiring a person to be a citizen by birth for him or her to be eligible for election as president and paragraph (c) of the same Article, requiring the same person to merely be a citizen, conflict and may hinder the implementation of the provision.

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Considering that it is not a requirement for a person to be a citizen by birth for one to qualify for election as a Member of Parliament and yet such a person must comply with paragraphs (a) and (b) of Article 102, there is need to remove this conflict by either specifically prescribing the qualifications of election as president or by harmonizing both paragraphs. Indeed, international best practices require that for a person to qualify for election as president, he or she must be a citizen of that country by birth. The following countries illustrate this international best practice.

**IN KENYA**, A person qualifies for nomination as a presidential candidate if the person—

- (a) is a citizen by birth;
- (b) is qualified to stand for election as a member of Parliament;
- (c) is nominated by a political party, or is an independent candidate; and
- (d) is nominated by not fewer than two thousand voters from each of a majority of the counties.

(2) A person is not qualified for nomination as a presidential candidate if the person--

- (a) owes allegiance to a foreign state; or
- (b) is a public officer, or is acting in any State or other public office.

**IN TANZANIA**, a person shall not be entitled to be elected to hold the office of President of the United Republic save only if-

- (a) he is a citizen of the United Republic by birth in accordance with the citizenship law;
- (b) he has attained the age of forty years;
- (c) he is a member of, and a candidate nominated by, a political party;
- (d) he is qualified to be a Member of Parliament or a Member of the House of Representatives; and
- (e) within the period of five years before the General Elections, he has not been convicted by any court for any offence relating to evasion to pay any tax due to the Government.

**IN RWANDA**, a candidate for the office of the Presidency of the Republic shall:

- (a) be of Rwandan nationality by origin;
- (b) not hold any other nationality;
- (c) have at least one parent of the Rwandan nationality by origin;
- (d) have irreproachable morals and probity;
- (e) not have been convicted and sentenced to a term of imprisonment of six months or more;
- (f) not have been deprived of his or her civil and political rights;
- (g) be at least thirty five (35) years old on the date of submission of his or her candidacy;
- (h) be resident in Rwanda at the time of submission of his or her candidacy.

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**IN GHANA**, a person shall not be qualified for election as the President of Ghana unless-

- (a) he is a citizen of Ghana by birth;
- (b) he has attained the age of forty years; and
- (c) he is a person who is otherwise qualified to be elected a Member of Parliament, except that the disqualifications set out in paragraphs (c), (d), and (e) of clause (2) of article 94 of this Constitution shall not be removed, in respect of any such person, by a presidential pardon or by the lapse of time as provided for in clause (5) of that article.

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**IN NIGERIA**, A person shall be qualified for election to the office of President if—

- (a) he is a citizen of Nigeria by birth ;
- (b) he has attained the age of forty years ;
- (c) he is a member of a political party and is sponsored by that political party ; and
- (d) he has been educated up to at least the School Certificate level or its equivalent.

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Therefore, it is evident from the above best practices that being a citizen by birth is one of the requirements for election as president for a particular country. It also appears that being resident in a particular country is one of those requirements a person must fulfil before he or she can qualify for election as president. Considering that it is not a requirement for a person to be a citizen by birth to qualify to stand as a Member of Parliament, paragraph (a) and (b) of the Article 102 should be harmonized to remove this conflict.

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**4. DECISION OF THE COMMITTEE ON THE PROPOSED AMENDMENT TO ARTICLE 102 (B) OF THE CONSTITUTION.**

In scrutinizing the Bill, the Committee received representations for and against removal of the age restrictions prescribed in Article 102 (b). Indeed, the Committee received the following reasons for removing the age restrictions in Article 102 (b)-

- (a) Article 102 (b) threatens democracy since Article 1 of the Constitution grants the people of Uganda the right to determine who leads them and how they are ruled. Therefore restricting their choice on account of age would deny them the opportunity to fully exercise their freedom to decide who leads them.
- (b) that Article 102 (b) is discriminatory against the youth and aged and is contrary to Article 21 which guarantees equality of all people before the law;
- (c) The youth and aged also want to participate in decision making process in the country. Having a lower and upper age limit would limit the participation of the youth and the aged in the country's leadership.
- (d) That age doesn't translate into capacity since the youth and aged persons were able to serve efficiently in the office of President;
- (e) that since life expectancy has increased from the time this Article was proposed and considering that more Ugandans are living longer, the population of the youth and aged persons, which are increasing every year, are productive and must be utilised
- (f) There is no empirical evidence to prove the assertion that persons below 35 years and above 75 years are not biologically endowed for leadership.

On the other hand, the committee received the following arguments for having the age restrictions in the constitution. These include-

- (a) That the office of the President requires a certain level of education and experience and that the person to hold that office should have some level of exposure to the workings of the state.
- (b) That the lower age of 35 years is far considering that our life expectancy in Uganda is relatively low;

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- (c) That removing the age restrictions in the Constitution will only serve the current President and is not done in the interest of Ugandans;
- (d) That removing the age restrictions is likely to create instability, a one party state and life presidency;
- (e) That Article 102 (b) is part of the basic structure of the Constitution and its removal would destabilize the basic structure of the constitution.
- (f) The procedure of the adopted in introducing the Bill into the House was irregular and unlawful

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In reaching its decision, the Committee considered the stakeholder's views, the reasons advanced for and against removal of the age restrictions, the history of Article 102 of the Constitution and the general evolution of the qualifications for election as President, the legal challenges posed by Article 102 in its current form, legal challenges with the proposed amendment as contained in the Bill as well as international best practices. As indicated above, the Committee received a cross section of views both for and against the proposed amendment to Article 102 (b). The Committee at all times kept an open mind to the proposals being made by the stakeholder appearing before. The Committee noted that both the views for and against were persuasive but not binding on the Committee, never-the-less, the Committee took into account the views received in reaching a decision on the matter.

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The committee was, in reaching the decision on this matter, persuaded by the reasons advanced for removing the age restrictions as indicated above. The committee noted that they reasons advanced for removing the age restrictions were legal in nature and kept within the legal and generally constitutional regime applicable to the matter. The Committee was persuaded more by the following reasons-

- (a) the need to allow Ugandans, keeping within the spirit of Article 1 of the Constitution, to have the unfettered right and sovereignty to choose their leaders, especially the person holding the office of President.
- (b) The need for flexibility by ensuring that all the countries human resources are fully utilized and are available to take up positions of leadership;
- (c) The qualification of president were based on the movement system which preferred individual merit rather than pluralism which was ushered in in 2005;

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(d) Age, as a qualification for election is not efficacious in limiting unsuitable persons from attaining the office of President. The committee noted that it is better to put in place a proper persons test in determining persons who qualify for election as president.

(e) there was no scientific evidence adduced before the committee indicating that persons below 35 years and those above 75 years are incapable of leading a nation;

(f) there was no evidence adduced before the committee indicating that persons below 35 years and those above 75 years lack the requisite cognitive abilities to lead a nation;

(g) is no evidence that ALL persons above the age of 75 years suffer from cognitive decline and are therefore unable to lead. The committee observed that different people have different traits and capabilities at different stages of growth. The committee noted that Article 102 (b) assumed, wrongly, that all persons below the age of 35 and those above 75 lack the intellectual ability to lead a nation merely based on their age.

The Committee further believes that whereas Article 102 (b) is not discriminatory, it marginalizes against the aged and the youth. The Committee notes that Article 102 (b) marginalizes against the youth and the elderly by limiting their opportunities especially as far as offering their candidature for the highest office is concerned. The Committee observed that Article 32 of the Constitution obligates the state to take affirmative action in favour of the marginalized groups to which the youth and elderly belong. The Committee believes that removing the age restrictions in Article 102 (b) is one way of streamline the provision for purpose of redressing the imbalance therein against persons below the age of 35 and those above the age of 75.

The Committee also took into account international best practices which, as indicated above, have a move towards removing age restrictions against the youth and elderly. International instruments as well as international best practices are in support of removal or relaxing restrictions on the ages of candidacy for most political offices.

The committee further took into account the changing demographics of Uganda in reaching its decision. According to the 2014 population census, the composition of Uganda's population consists of children below 18 years who constitute 55% of the population, the Youths (persons 18 - 30 Years) who constituted 23% of the population, the elderly constituting 4.7% of the population and the 18% of the population, being persons between the age of 30 to 65 years. The committee observes that the restrictions imposed in Article 102 (b) exclude a big chunk of Uganda's population (constituting of the youth and elderly) who

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constitute about 78% of the total population of Uganda, from contesting for the highest political office in Uganda. The committee further observed that the presidency is limited to only 18% of the total population of Uganda, a situation that is unfair, contrary to the spirit of the constitution, unacceptable and demonstrably unjustifiable in a free and democratic society like Uganda.

The Committee also noted that Article 50 of the Constitution grants a right to a person of 18 years to vote in any election in Uganda. Article 50 is reproduced below-

**59. Right to vote.**

*(1) Every citizen of Uganda of eighteen years of age or above has a right to vote.*

*(2) It is the duty of every citizen of Uganda of eighteen years of age or above to register as a voter for public elections and referenda.*

*(3) The State shall take all necessary steps to ensure that all citizens qualified to vote register and exercise their right to vote.*

*(4) Parliament shall make laws to provide for the facilitation of citizens with disabilities to register and vote.*

The committee noted that whereas persons above 18 years of age are allowed to vote without limitation, the same persons below 35 years of age and above 75 years are prohibited to offer their candidature for the highest political office. The committee came to the conclusion that by removing the age restriction imposed on persons below 35 years of age and those above 75 will promote inclusive politics which will in turn guarantee a level playing field for all, promote adult-youth partnerships in public governance which is in line with the spirit of the Constitution as outlined in article 1 of the constitution.

**RECOMMENDATION**

The committee recommends that-

- (1) The age prescribed in Article 102 be reduced from 35 years to 18 years and for the upper age restriction to be removed.
- (2) Article 102 is redrafted to specifically prescribe the qualifications for a person to stand for president. These should include him or her being-

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- (a) a citizen of Uganda ;
- (b) a registered voter;
- (c) a resident in Uganda at the time of submission of his or her candidacy) and
- (c) having completed a minimum formal education of Advanced Level standard or its equivalent.

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(3) Article 102 is renumbered and a new clause is inserted prescribing matters that would bar a person from qualifying as president. These should include-

- (a) being of unsound mind;
- (b) Holding or acting in an office the functions of which involve a responsibility for or in connection with the conduct of an election;
- (c) Being a traditional or cultural leader as defined in article 246(6) of the Constitution;
- (d) has been adjudged or otherwise declared bankrupt under any law in force in Uganda and has not been discharged; or
- (e) being under a sentence of death or a sentence of imprisonment exceeding nine months imposed by any competent court without the option of a fine.

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### CLAUSE 3 OF THE BILL

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Clause 3 of the bill seeks to amend Article 104 of the Constitution by substituting for clauses (2), (3) and (6) the following-

- "(2) A petition under clause (1) of this article shall be lodged in the Supreme Court registry within fifteen days after the declaration of the election results.
- (3) The Supreme Court shall inquire into and determine the petition expeditiously and shall declare its findings and reasons not later than forty five days from the date the petition is filed.
- (6) Where an election is annulled, a fresh election shall be held within sixty days from the date of the annulment"

### CURRENT PROVISION

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Currently, the provisions clause 3 wishes to amend read as follows-

*"(2) A petition under clause (1) of this article shall be lodged in the Supreme Court registry within ten days after the declaration of the election results.*

*(3) The Supreme Court shall inquire into and determine the petition expeditiously and shall declare its findings not later than thirty days from the date the petition is filed.*

*(6) Where an election is annulled, a fresh election shall be held within twenty days from the date of the annulment"*

**EFFECT OF THE PROPOSED AMENDMENT**

The amendment has the following effects-

- (a) It will expand the time within which an aggrieved candidate can file a petition from ten to fifteen days.
- (b) It will expand the time within which the Supreme Court will inquire into and determine the petition from thirty to forty five days.
- (c) Unlike in the current provision where the court is only allowed to give its finding within 30 days and its reasons for the findings later on, as is the practice, the proposed amendment to sub clause (6) requires the Supreme Court to give its findings and reasons for the findings at the same time.
- (d) It expands the time within which a fresh election is held after the annulment of a presidential election from twenty to sixty days.

**STAKEHOLDER'S VIEWS**

**Electoral Commission (EC)**

- *The EC was in agreement with the proposed amendment to Article 104 (2) since it will improve the quality and quantity of evidence filled in court and lessens the pressure on the entire litigation process.*
- *The EC agreed with the proposed amendment to Article 104 (3) since it will give adequate time to court to determine the election petition challenging a presidential election. The commission however noted that there was need to clearly spell out the*

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time frames needed for filling the petition, replying to the petition, hearing and determining the same.

- The EC was in agreement with the proposed amendment of Article 104 (6) since the time prescribed in the amendment will enable the electoral commission to undertake fresh processes such as planning, procuring of additional materials as well as the attendant packaging and dispatch to the regions and eventually to polling stations.
- The EC proposed to amend Article 103 (5) to expand the time within which to conduct a re-run from 20 days to 60 days. This is in line with the 60 days proposed for holding fresh elections under Article 104 (6).
- The EC noted that the amendment of clauses in Article 104 (2) and (6) does automatically call for amendment of the Presidential elections Act, particularly, section 59 (2) and (3) and other attendant electoral laws. They proposed that such consequential amendments should be handled at the time the comprehensive amendments to the electoral laws is carried out.

**Ministry of Justice & Constitutional Affairs**

- The Minister of Justice agreed with the proposed amendment and reasoned that the amendments, on Article 102 and 104 were not new having been submitted to the Ministry of Justice and constitutional affairs by the public for consideration during the constitution amendment of 2015. The Minister noted that during the amendment of the Constitution in 2015, these proposals were not presented to Parliament for amendment due to the limited time that Parliament had at the time to consider the Constitution (amendment) Bill, 2015 being that the EC had already set the date for presidential and general parliamentary elections. The Ministry concluded that since the proposals were part of those it had received in 2015, it supported the Bill in its entirety a

**Uganda Law Reform Commission (ULRC)**

- ULRC agreed with the proposed amendments to Article 104 since the time frames prescribed in that Article were unrealistic and the Supreme Court had recommended having such times lines reviewed.

**Equal Opportunities Commission (EOC)**

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- The EOC agreed with the proposed amendments to Article 104 of the Constitution but cautioned that there is need for a comprehensive review of all electoral laws to ensure that all persons, especially vulnerable and marginalized are able to exercise their right to vote.

**National Resistance Movement (NRM)**

- agreed with the proposed amendment on grounds that the time prescribed in article 104 of the Constitution are inadequate and that the amendment is in compliance with the directives of the Supreme Court in the case of Amama Mbabazi.

**Prime Minister**

The Prime Minister agreed with the proposed amendment to Article 104 since it was prescribing additional time within to carry out the processes envisaged in Article 104 of the Constitution.

**FRONASA Veterans**

- whereas they agreed with the principle to amend Article 104 of the Constitution, they proposed to expand the time as follows-
  - (a) in 104 (2) to 28 days;
  - (b) in 104 (6) to increase it to 60 days;

**Kampala Operational Taxi Stages' Association (KOTSA)**

- On Article 104 (2), recognized that the duration prescribed in the Bill is not sufficient and should be at least 45 days.

**ANALYSIS AND OBSERVATIONS**

The amendment of Article 104 of the Constitution in the manner proposed in the bill is welcome and should be supported. The Committee noted that the amendment arose from recommendations made by the Supreme Court in the case of *Amama Mbabazi Vs Yoweri Kaguta Museveni, the Electoral Commission & the Attorney General* cited above, wherein, court made a number of recommendations, some of which touched on the matters proposed for amended by this Bill. Court recommended as follows-

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***"The Time for filing and determination of the petition:***

*Court noted that in the course of hearing the petition, the issue of the inadequacy of the time provided in Article 104(2) and (3) of the Constitution for filing and determining of presidential election petitions came up. The same issue was also pointed out by this Court in the two previous presidential election petitions. The 10 day period within which to file a presidential election petition and to gather evidence and the 30 days within which the Court must analyze the evidence and make a decision as provided under Article 104 (2) and (3) of the Constitution and section 59 (2) and (3) of the PEA is inadequate. We recommend that the period be reviewed and necessary amendments be made to the law to increase it to at least 60 days to give the parties and the Court sufficient time to prepare, present, hear and determine the petition, while at the same time being mindful of the time within which the new President must be sworn in.*

***The time for holding fresh elections:***

*Court noted that Article 104(7) provides that where a presidential election is annulled, a fresh election must be held within 20 days. Court observed that this is unrealistic, given the problems that have come to light in the course of hearing all the three petitions that this Court has dealt with to-date. In all these petitions, the Commission has been found wanting in some areas. Importation of election materials has sometimes been a problem. Securing funds has also often provided challenges. Therefore, to require the Commission to hold a free and fair election within 20 days after another has been nullified is being overly optimistic. A longer and more realistic time frame should be put in place."*

The Committee observes that Supreme Court specifically recommended the expansion of the time allocated to an aggrieved party to file a petition, its determination and holding of a fresh election to at least sixty days or such longer and more realistic time frames.

The Committee however noted with concern that whereas the proposed amendment to Article 104 is hinged on the recommendations of court in the Amama Mbabazi case quoted above, the proposed amendment as contained in the Bill has some challenges, including-

- 1. the proposed timelines are unrealistic and need to be reconsidered***

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Upon scrutiny of the proposals made by the Bill, the Committee came to the realization that the timeline proposed in the Bill are unrealistic and will not achieve the desired aspirations of the amendment unless these are enhanced and realigned with other articles of the Constitution. The bill proposes as follows-

- (i) To expand the time within which an aggrieved candidate can file a petition from ~~ten~~ to **fifteen days**.
- (ii) To expand the time within which the Supreme Court will inquire into and determine the petition from **thirty to forty five days**.
- (iii) To expand the time within which a fresh election is held after the annulment of a presidential election from **twenty to sixty days**

The Committee observed that whereas the timelines proposed in the Bill appear to be enhanced, they still do not offer a petitioner, the Supreme Court and the Electoral Commission (EC) adequate time to prepare and file a petition, determine a petition and hold fresh elections respectively. The Committee bases this observation on the activities required of the petitioner, Supreme Court and the Electoral Commission in complying with the processes that accrue as variously allowed in Article 104 of the Constitution. The Committee observes as follows;

**(a) Article 104 (2), expanding the time within which an aggrieved candidate can file a petition**

The Committee observed that Article 104 (2) empowers a former presidential candidate to file a petition challenging a Presidential election. The Petitioner is given ten days from the date of declaration of results within which to file such a petition. The Committee observed that the time of 10 days is not be enough considering the processes he or she will have to carry out in order to successfully challenge a Presidential election. The Committee noted that one of the things a person challenging a presidential election will certainly do is collecting evidence to be adduced in court considering that the evidential burden lies with the person challenging a presidential election to prove the allegations contained in the petition.

The Committee took cognizance of the Supreme Court decision in the case of *Amama Mbabazi Vs Yoweri Kaguta Museveni, the Electoral Commission & the Attorney General* cited above, where court held as follows-

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*"The legal burden rests on the Petitioner to place credible evidence before Court which will satisfy the Court that the allegations made by the Petitioner are true. The burden is on the Petitioner to prove not only noncompliance with election law but also that the noncompliance affected the result of the election by a substantial manner."*

*It is only if credible evidence is brought before the Court that the burden shifts to the respondent and it becomes the respondent's responsibility to show either that there was no failure to comply with the law or that the noncompliance did not have substantial effect on the election.*

*In the matter before us, the Petitioner had the duty to adduce evidence to the effect that specific malpractices and irregularities occurred and furthermore that the irregularities so affected the result that the 1st Respondent cannot be said to have been validly elected." (emphasis mine)*

The Committee noted that the evidential burden placed on a petitioner in a presidential election is high considering that elections are not set aside on light or trivial grounds. In Presidential elections in particular, the legal regime specifically prescribes the grounds on which it is challenged and set aside. Indeed, the Committee noted that section 59 of the Presidential Elections Act, 2005 requires that a Presidential election can only be annulled on the following grounds-

- (a) non-compliance with the provisions of this Act, if the court is satisfied that the election was not conducted in accordance with the principles laid down in those provisions and that the non-compliance affected the result of the election in a substantial manner;*
- (b) that the candidate was at the time of his or her election not qualified or was disqualified for election as President;*
- (c) that an offence under this Act was committed in connection with the election by the candidate personally or with his or her knowledge and consent or approval.*

The Committee observed that the above grounds are specific and require the strict proof of any of the above grounds. The evidence required to prove such an allegation must be capable of indicating that such a matter complained of had a substantial effect on the result. The Committee took note of the decision of the Supreme Court in the case of *Besigye Vs*

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*Museveni & Another, Election petition No 1 of 2001* where, Court determining the evidential requirement needed to prove that a matter complained of affected the results in a substantial manner noted as follows-

*"What is a substantial effect? This has not been defined in the Statute or judicial decisions. But the cases of Hackney (supra) and Morgan v Simpson (supra) attempted to define what the word substantial meant. I agree with the opinion of Grove, J. The effect must be calculated to really influence the result in a significant manner. In order to assess the effect the court has to evaluate the whole process of election to determine how it affected the result, and then assess the degree of the effect. In this process of evaluation, it cannot be said that numbers are not important just as the conditions which produced those numbers, number are useful in making adjustments for the irregularities.*

*The crucial point is that there must be cogent evidence direct or circumstantial to establish not only the effect of non-compliance or irregularities but to satisfy the court that the effect on the result was substantial.*

The Committee took special note of the fact that in satisfying court that a matter complained of had substantial effect on the result, a petitioner must traverse the whole country collecting evidence to prove the allegations contained in the petition. This is necessary since in a presidential election petition, the country is looked at as one constituency and evidence must be brought to show that the matter complained of was wide spread and in so happening affected the result. The Committee further noted that the evidence required to annul a presidential election goes beyond evidence in any civil matter, considering that one has to show that the irregularities had a substantial effect on the election of the person who was declared winner. The evidential burden therefore placed on the person challenging a presidential election is broad and may not adequately be dispensed within 10 days as provided for in the Constitution. Indeed, the Committee noted that the Supreme Court, in the case of *Amama Mbabazi* quoted earlier, recommended the enhancement of the period allowed to file a petition challenging a presidential election to give the parties and the Court sufficient time to prepare, present, hear and determine the petition, while at the same time being mindful of the time within which the new President must be sworn in.

Therefore, in light of the evidential burden placed on a petitioner in a presidential election, the standard of proof required of the evidence brought by the petitioner which is higher than

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that in a civil matter as well as the fact that challenging presidential elections is a matter of great public interest, there is need to expand the time proposed for filing a petition from 10 days to such longer period of time which will enable a petitioner collect the evidence needed to successively prosecute the petition.

**(b) Article 104 (3) to expand the time within which the Supreme Court will inquire into and determine the petition**

The Committee notes that the time proposed to be allocated to the Supreme Court to inquire into the petition and determine it need to be enhanced. Currently, Article 104 (3) requires the Supreme Court to perform two major duties, being, to inquire into the petition and to determine the issues raised in the petition. Indeed, the Supreme Court, in the case *Amama Mbabazi Vs Yoweri Kaguta Museveni, the Electoral Commission & the Attorney General* cited above held as follows-

*"As already noted, Article 104 (3) of the Constitution directs this Court to inquire into and determine the petition. Two things are envisaged by the provision. First, is for the Court to make an inquiry and this involves taking evidence from the parties and witnesses. Furthermore, the Court can in exercise of its discretion call any witness whose information would enable the Court reach a just and fair decision. Second, is that after the inquiry, Court is to determine the legal issues raised by the parties using the information it received during the process of inquiry."*

The proposed amendment to clause 104 (3) is to the effect that now, court is given an additional duty on top of the two it had before, being to give reasons for its decision and to do so within 45 days from the date the petition is filled. The Committee observes that court had found that the 30 days it had been allocated in the current Article 104 (3) was insufficient and now with the proposal to have court give both finds and reasons for the findings on the same day is unreasonable and unrealistic given the work load.

Indeed, to comply with the requirements of Article 104 (3), the Supreme Court would give its findings within 30 days but give reasons for its findings within a further 90 days from the date of its findings. That has been the practice in all the presidential petitions including *Kizza Besigye vs. Yoweri Museveni and Another, Presidential election Petition No.1 of 2006*, *Kizza Besigye vs. Yoweri Museveni and Another, Presidential election Petition No.1 of 2011* and

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*Amama Mbabazi vs. Yoweri Kaguta Museveni, the Electoral Commission & the Attorney General.* This means that the time proposed in the bill within which court is to inquire, determine and give reasons for its determination in 45 days is unrealistic and needs to be enhanced to a more reasonable time.

In this assertion, the committee is alive to the processes that take place after the filing of a petition challenging presidential elections, including-

- (a) the serving of the same petition on the Electoral Commission, the Attorney General (AG) and the successful presidential candidate;
- (b) the Electoral Commission, the AG and the successful presidential candidate filling an answer to the petition;
- (c) Conferencing of parties to agree on issues;
- (d) trial of the petition, including hearing all sides of the petition, receiving evidence in form of affidavits and witnesses for cross examination;
- (e) closure of trial, evaluation of evidence by judges and findings;

Considering the above processes, the additional duty placed onto court to give reasons for its findings at the same time, the fact that the timeline prescribed are also utilised by the respondents in the matter to reply to the petition as well as the need to avail court the time to make a decision without being rushed, the Committee is of the view that this time needs to be enhanced to such longer period to enable the respondent in the case adequate time to prepare its defence as well as court to reach a determination as well as make its own inquiry without being rushed.

**(c) Article 104 (3) to expand the time within which a fresh election is held after the annulment of a presidential election**

On the proposed amendment to Article 104 (6), the Committee recognises that there is need to increase the time within which the Electoral Commission shall hold a fresh election upon the annulment of a presidential. The committee noted that the time prescribed in article 104 (6) is unrealistic considering the processes that have to be carried out by the Electoral Commission and any other person intending to stand in that election. The Committee further noted that there are processes that have to take place upon a presidential election being nullified by Court. Depending on the reasons for the annulment, the committee observes that any of or a

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combination of the following processes may be carried out by the EC or a person intending to offer his or her candidature in that election after the annulment of a presidential election-

- (a) amendment of the relevant electoral laws;
- (b) appointment of Electoral Commissioners or the reorganisation of electoral management body;
- (c) requisition of supplementary funding for the elections;
- (d) the organisation of elections including, appointment of the relevant election staff, procurement of electoral material and other services, civic education, drawing of a road map for elections, generating or cleaning of a voter register, voter registration, distribution of electoral material, training of electoral management staff and nomination of candidates;
- (e) collection of signature in support of one's candidature as required in Article 103 of the Constitution

The Committee observes that the time within which elections are held should be long enough to enable the Electoral Commission carryout all the processes as well as affording government the time within which to remedy any electoral process issues or legal deficiencies identified by court as well as implementing the recommendations of court in order to carry out an election that will stand legal scrutiny.

**2. THERE IS A DISCONNECT BETWEEN CLAUSE 1 AND 3 OF THE BILL**

The Committee notes that there is a connection between clause 1 and 3 of the bill. Clause 1 of the Bill proposes to amend Article 61 of the Constitution by expanding the time within which presidential, general parliamentary and local government elections within the first 30 days of the last 120 days. Clause 3 on the other hand proposes to expand the time within which a person may challenge a presidential election, the time within which the Supreme Court is determine a petition challenging a presidential election as well as the time within which a fresh election is held upon the annulment of a presidential election.

The Committee observes that there is a relationship between Article 61 and 104 of the Constitution in the sense that Article 61 determines where elections are to take place and article 104 determine what happens after such election. The Committee observes that article

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61 (2) currently requires that elections take place in the first 30 days of the laws 90 days (3 months) of the term of a presidential election.

Clause 1 of the Bill proposes to increase that duration so that elections are carried out within the first 30 days of the last 120 days (4 months). Once those elections are carried out, then Article 104, especially clauses (2), (3) and (6) are directive on the processes that take place after such election, in as far as the office of the president is concerned. Article 61 (2) directs that elections take place in the last 90 days of the presidential term. If that is the case, article 104 on challenging a Presidential election, directs an aggrieved person, the Supreme Court and the Electoral Commission to file a petition, determine the petition and hold fresh elections, respectively, within 90 days. Indeed, when one considers the provisions of article 104 (2), (3) and (6) one discerns that if all those processes are complied with, the time left for the presidential term to expire is 30 days. These 30 days are then used in case the subsequent presidential election is challenged, though these are not sufficient as will be shown latter.

Having found that there is a connection between Articles 61 (2) and 104 (2), (3), (6) and (7), then, a closer consideration of the proposed amendment to article 104 (2), (3) and (6) reveals that there seems to be a disconnect between these proposals in the sense that if the proposal to Articles 61 and 104 are taken as they are, there will be insufficient time to cater for processes that may arise after the holding of fresh elections. It is important to recall that the bill, in clause 1, proposes to amend article 61 (2) to increase the time within which elections are held before the expiry of a presidential term of office from 90 days to 120 days. At the same time the bill proposes, in clause 3, to amend article 104 (2), (3) and (6) to increase the time within which the following processes and acts are done-

- (iv) In Article 104 (2), to expand the time within which an aggrieved candidate can file a petition from **ten days to fifteen days**.
- (v) In Article 104 (3), to expand the time within which the Supreme Court will inquire into and determine the petition from **thirty days to forty five days**.
- (vi) In Article 104 (6), to expand the time within which a fresh election is held after the annulment of a presidential election from **twenty days to sixty days**

If the Constitution is amended as proposed and the increments effected, it will mean that a total of 120 days will be required for purposes of carrying out the processes and actions that are envisaged in article 104 (2), (3) and (6) of the Constitution. This will mean that if there is a subsequent petition filled challenge that presidential election, there is likely to be a

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constitutional crisis considering that the term of the president will have expired before other processes envisaged in Article 104 (2), (3) and (6) are carried out. I am fortified by my reasoning by the provision of Article 104 (7) which is reproduced below-

*"(7) If after a fresh election held under clause (6) of this article there is another petition which succeeds, then the presidential election shall be postponed; and upon the expiry of the term of the incumbent President, the Speaker shall perform the functions of the office of President until a new President is elected and assumes office"*

The above article envisages a situation where after the annulment of a presidential election, fresh elections are carried out which are also annulled. In such a situation, the speaker takes the presidency because at that time, the office of the president is vacant owing to the fact that the term of the President has expired. However, the situation that would arise upon the amendment of Article 104 (6) as proposed in the bill is that since the duration before which presidential term expires is exactly the number of days required for complying with the provisions of article 104 (2), (3) and (6). This means that if there is a subsequent petition challenging the fresh elections, there will be no time for petitioning, determining the petition and holding fresh elections before the term of the president expires. Therefore, there is need to reconcile the proposals made in clause 1 and 3 of the bill in order to achieve harmony.

**3. THE BILL DOES NOT ADDRESS THE AMBIGUITY IN ARTICLE 104 (6) OF THE CONSTITUTION**

The Committee notes that the proposed amendment to 104 (6) does not remove the ambiguity in that Article. Article 104 (6) requires that where an election is annulled, a fresh election shall be held within twenty days from the date of the annulment. Whereas the bill proposes to amend Article 104 (6), its proposal stops at expanding the time within which a fresh election is held. The Committee notes with concern that Article 104 (6) is ambiguous in the sense that it is not clear as to whether, when a presidential election is annulled, any person can participate in the subsequent election or its only persons who participated in the annulled election that can participate.

A closer scrutiny of Article 104 (6) reveals that it doesn't not guide as to whether any person interested in contesting in the fresh election can participate. It is not even clear whether the fresh election will have to comply with article 103 of the Constitution, being that fresh

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nominations are called for persons who are interested in offering their candidature for President, collection of supporting signatures from across the country, payment of nominations fees or whether the candidature of those who participated in the annulled presidential election is automatic.

It is important to note that the Constitution, in Article 103 (5), clarified what happens when none of the candidates participating in a presidential election obtains the number of votes required for a person to be declared president. It provides as follows-

*"Where at a presidential election no candidate obtains the percentage of votes specified in clause (4) of this article, a second election shall be held within thirty days after the declaration of the results in which election the two candidates who obtained the highest number of votes shall be the only candidates."*

The Committee noted with concern that the ambiguity of Article 104 (6) has been tested in the Republic of Kenya where the Constitution contains a provision similar to article 104 (6) which obligates a fresh election to be held within 60 days of annulment of a presidential election without specifying whether the election is open to all Kenyans or only those who participated in the annulled election. Article 140 (3) of the Constitution of the Republic of Kenya reads as follows-

**"If the Supreme Court determines the election of the President-elect to be invalid, a fresh election shall be held within sixty days after the determination."**

The above provision, just like Article 104 (6) did not clarify whether the election envisioned there under was open to any person or it is only those persons who participated in the annulled election may offer their candidature. In the case of **Dr Ekuru Aukot vs. the Independent Electoral & boundaries Commission & 3 others, High Court Constitutional petition No 471 of 2017**, court observed as follows-

*"The constitution does not define "fresh elections" nor is it defined in the Elections Act. By Dictionary, a runoff is defined as "a further competition, election, race, etc., after a tie or inconclusive result." In Kenya, the runoff is between two leading candidates in Presidential Election. From these definitions, it is clear the election contemplated under article 140 (3) is not a runoff contemplated under article 138 (5) of the constitution. It is a fresh election as the article states.*

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Court held that

"follows that the definition of "fresh election" as contemplated in Article 138 sub-article 5 should not be imposed on Article 140 (3) since different scenarios are contemplated. Having participated and supported the petition that nullified the elections, and even applying the orbita by the Supreme Court, I still find nothing to bar the petitioner from contesting in the "fresh elections."

The important of the above decision, though persuasive, is that just like Article 140 (3) of the Kenyan Constitution, Article 104 (6) of the will need to be interpreted by court to remove the ambiguity embedded therein unless an amendment is made to it for it to clearly allow any person to participate in the election and for the election to follow the procedures laid out in the constitution and any other law relating to presidential elections.

### RECOMMENDATIONS

The committee therefore recommends that Article 104 be amended as proposed in the bill albeit with the following amendments-

- (1) *The relatedness of clause (1) and (3) be taken into account in determining the timelines proposed in those clauses.*
- (2) *Increase the timelines proposed in clause 3 of the Bill as follows-*
  - (a) *In Article 104 (2), increase the time within which an aggrieved person files a petition challenging a presidential election to fourteen days*
  - (b) *in Article 104 (6), expand the time within which elections are held upon the nullification of a presidential election to forty five days from the date of nullification;*
- (3) *In article 104(3), to require the Supreme Court to declare only its findings rather than giving both the findings and reasons at the same time as the Bill proposes.*
- (4) *To require the fresh election envisaged in Article 104 (6) to be carried out in accordance with the law governing Presidential election.*
- (5) *In Article 104 (7), to require the Chief Justice to take over the presidency in circumstances where a second petition challenging the election of an incumbent president succeeds in accordance with article 104 (6) and the term of that incumbent President expires.*

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(6) To impose a requirement on a person elected president, during the subsistence of the term of Parliament, to only serve for the duration of the remaining term of parliament and not the full presidential term.

## CLAUSE 4 OF THE BILL

Clause 4 of the bill proposes to amend Article 183 of the Constitution by repealing paragraph (b). It reads as follows-

“Article 183 of the Constitution is amended in clause (2) by repealing paragraph (b)”

### CURRENT PROVISION

Article 183 (2) deals with qualifications of a reads as follows-

“(2) A person is not qualified to be elected district chairperson unless he or she is—

- (a) qualified to be elected a member of Parliament;
- (b) at least thirty years and not more than seventy-five years of age; and
- (c) a person ordinarily resident in the district.

### EFFECT OF THE PROPOSED AMENDMENT

- (a) It removes age restrictions in the qualifications for a district chairperson
- (b) It removes both the lower and upper age restrictions in the qualifications for a district chairperson.
- (c) It allows any person, irrespective of age, to stand as a candidate in an election for the office a district chairperson.

### STAKEHOLDER'S VIEWS

Uganda Law Reform Commission (ULRC)

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- *ULRC recommended that the issue of minimum and maximum age limit should be approached in the same manner we recommended in respect of qualification for president.*

**Equal Opportunities Commission (EOC)**

- *The views expressed by the EOC on this matter are the same as those expressed on the proposed amendment to article 102 (b), in clause 2 above.*

**National Resistance Movement (NRM)**

- *The views expressed by the NRM on this matter are the same as those expressed on the proposed amendment to article 102 (b), in clause 2 above.*

**Prime Minister**

- *The views expressed by the Rt. Hon. Prime Minister on this matter are the same as those expressed on the proposed amendment to article 102 (b), in clause 2 above.*

**Uganda Local Government Association (ULGA)**

- *ULGA welcomed the amendment to Article 183 of the Constitution reasoning that it's discriminating. They observed that whereas there are age restrictions on the part of the President and LC V chairpersons, there are no age restrictions for Members of Parliament.*

**The Uganda Association of Uneducated persons (TUAUP)**

- *TUAUP objected to the proposed amendment of article 183 as proposed in the bill, reasoning that the provision is intended to have only patriotic Ugandans serving at that level.*

**Mr. Moses Mfitumukiza**

- *Agreed with the proposed amendment to Article 183 of the Constitution. The basis for this reasoning was that Uganda has a young population.*

**Maj. General Jim Muhwezi (Rtd)**

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- *Hon. Jim Muhwezi, on behalf of the National Executive Committee of Veterans League of the National Resistance Movement, agreed with the proposed amendment reasoning that the prohibiting certain people from contesting at the local government level contradicts the Constitution which guarantees everyone equal opportunity.*

**FRONASA Veterans**

- *agreed with the proposed amendment*

**Prof. Venansius Baryamureeba**

- *Prof objected to the proposed amendment to Article 183 reasoning that there is evidence to support the proposed amendment to article 183.*

**Kick All Age Limits Out of the Constitution (KALOC)**

- *Agreed with the proposed amendment reasoning that it will increase political inclusiveness and participation.*

**ANALYSIS AND OBSERVATIONS**

The Committee observes that Article 176 of the Constitution establishes a Local Government System, a system through which functions, powers and responsibilities are devolved and transferred from the Government to local government units. The system is based on the principle of decentralization, a principle applying to all levels of local government and, in particular, from higher to lower local government units to ensure peoples' participation and democratic control in decision making. This system of local government is based on democratically elected councils on the basis of universal adult suffrage in accordance with the Constitution and the other relevant laws.

The Committee notes that in this system of local government, various political offices are created right from the district level to the lowest administrative unit. One such office is the office of the District Chairperson which is established in Article 183 (1) with qualification prescribed in clause (2) of the same Article. Article 183 (1) and (2) are reproduced below-

**"183. District Chairperson**

- (1) There shall be a district chairperson who shall—**  
**(a) be the political head of the district; and**

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*(b) be elected by universal adult suffrage through a secret ballot.*

*(2) A person is not qualified to be elected district chairperson unless he or she is—*

*(a) qualified to be elected a member of Parliament;*

*(b) at least thirty years and not more than seventy-five years of age; and*

*(c) a person ordinarily resident in the district.”*

The above provision creates the office of the district chairperson and bestows on the occupant of that office the power to be the political head of the district as well as a requirement that such a person is elected by adult suffrage. On the qualification for election as district chairperson, clause (2) of article 183 commands that a person only qualifies for election as a district chairperson if he or she is qualified to be elected a member of Parliament, such a person is at least thirty years and not more than seventy years of age and is ordinarily a resident in the district. It should be noted that a person qualifies for election as a Member of Parliament if he or she is a citizen of Uganda, is a registered voter and has completed a minimum formal education of Advanced Level standard or its equivalent.

The Committee observes that the draft constitution which the Odoki Commission submitted to Parliament didn't contain proposals for the qualification of the District chairperson. Indeed, According to the draft Constitution, Clause 207, had created the office of the District Chief Executive who was supposed to be elected from amongst the members of the council. The Committee notes that the provision establishing the office of the District Chief Executive did not prescribe the qualifications of such a person. The Committee observes that since the District Chief Executive was a Member of the Council, he or she had to qualify for election as a Member of the Council. In that regard, the Committee found that clause 204 of the draft Constitution imposed only one condition for election to the District Council and it required that such a person had to be a citizen of Uganda. What is evident from this is that the draft Constitution had not prescribed educational requirements on a person intending to offer his candidature for election as a District Chief Executive and neither did it impose any age restrictions on such a person.

The Committee observes that when the matter was being debated on the floor, Members imposed conditions on the candidature of a person for the office district chairperson,

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requiring that such a person must be qualified to be elected a member of Parliament, is at least thirty years and not more than seventy-five years of age; and is ordinarily resident in the district. The Committee notes that the reasons for imposing the above restrictions, especially on age, was the believe that the district chairperson was to have executive functions and duties and the duties of such a district chairperson will be best executed by a person above a particular age.

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**LEGAL CHALLENGES OF ARTICLE 183 OF THE CONSTITUTION**

A close scrutiny of Article 183 (2) (b) reveals the following-

**(a) Article 183 (2) (b) is contrary to the spirit of objective II of the National objectives and directives principles of state policy and Articles 1 of the Constitution of Uganda.**

The 1995 Constitution of Uganda, in objective II of the National Objectives and Directives Principles of State Policy imposes obligations on the state to among others, be based on democratic principles which empower and encourage the active participation of all citizens at all levels in their own governance. Further still, the same object enjoins the state to ensure that the people of Uganda have access to leadership positions at all levels. Further still, the state is required to ensure that the composition of Government is broadly representative of the national character and social diversity of the country. Objectives II of II of the National Objectives and Directives Principles of State Policy are reproduced below-

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***“II. Democratic principles***

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

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

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

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

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- (v) *All political and civic associations aspiring to manage and direct public affairs shall conform to democratic principles in their internal Organisations and practice.*
- (vi) *Civic Organisations shall retain their autonomy in pursuit of their declared objectives."*

In the same vein, Article 1 of the Constitution makes the people of Uganda sovereign and grants them absolute power to determine and consent on how they will be ruled and who rules them in all spheres of life. Article 1 is reproduced below-

**"1. Sovereignty of the people**

- (1) *All power belongs to the people who shall exercise their sovereignty in accordance with this Constitution.*
- (2) *Without limiting the effect of clause (1) of this article, all authority in the State emanates from the people of Uganda; and the people shall be governed through their will and consent.*
- (3) *All power and authority of Government and its organs derive from this Constitution, which in turn derives its authority from the people who consent to be governed in accordance with this Constitution.*
- (4) *The people shall express their will and consent on who shall govern them and how they should be governed, through regular, free and fair elections of their representatives or through referenda."*

Further still, Article 38 of the Constitution guaranteed the right of every citizen to participate in the affairs of government, individually or through his or her representatives in accordance with the law. Article 38 of the Constitution is reproduced below-

**"38. Civic rights and activities**

- (1) *Every Uganda citizen has the right to participate in the affairs of government, individually or through his or her representatives in accordance with law.*
- (2) *Every Ugandan has a right to participate in peaceful activities to influence the policies of government through civic Organisations."*

The spirit of the above cited provisions is that the people of Uganda are sovereign and are free to determine how they are ruled and who rules them. The principle of sovereignty of the

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people is to the effect that the authority of the government is created and sustained by the consent of its people, who are the source of all political power. The principle of sovereignty requires that the people are free to make choices on matters that affect them, including who, how and the manner in which they are ruled. Article 183 (2) (b) of the Constitution has the effect of limiting or fettering the exercise of the people's absolute sovereignty by restricting their choice of leaders, especially for the office the District chairperson, to only persons above the age of 30 years and below 75 years of age. By unjustly limiting the choice of persons available for election as district chairperson, Article 183 (2) (b) contravenes the spirit of objective II of the National objectives and directives principles of state policy and Articles 1 of the Constitution and exceeds limitations that are justifiable in a democratic society like Uganda.

**(b) Article 183 (2) (b) marginalizes the aged and youth in as far as limiting their candidature for election as District Chairpersons**

Article 183(2) (b) of the Constitution has the effect of marginalizing against the youth and elderly by limiting them from offering their candidature for election as a district chairperson. The word "marginalization" is defined in the Equal Opportunities Commission Act of 2007 to mean the deprivation of a person or a group of persons of opportunities for living a respectable and reasonable life as provided in the Constitution. On the other hand, can literally be taken to mean the process of making a group or class of people less important or relegated to a secondary position. Furthermore, article 32 of the Constitution recognizes that a person maybe marginalized based on, among others, his or her age. This Article is reproduced below-

***"32. Affirmative action in favour of marginalized groups***

***(1) Notwithstanding anything in this Constitution, the State shall take affirmative action in favour 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.***

***(2) Parliament shall make relevant laws, including laws for the establishment of an equal opportunities commission, for the purpose of giving full effect to clause (1) of this article."***

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There. Article 183 (2) (b) of the Constitution marginalizes the youth and elderly by prohibiting them from offering their candidature in an election for district chairperson. This amount to marginalization since the youth and elderly, who jointly constitute a sizeable percentage of our population, are taken as second class citizens who are incapable of leading a district.

The basis upon which this limitation was imposed on the youth and the elderly was not based on any scientific evidence that the youth and elderly are incapable of leading a District and aware that such restrictions are unjustifiable in a free and democratic country like Uganda, the removal of age restrictions will remove the un necessary restriction, making the youth and elderly equal citizens of Uganda. The Committee considers that Article 183 (2) (b) is one of those articles that creates marginalizes the youth and elderly by reserving the right to attain the office of district chairperson to any other persons in Uganda except the elderly and the youth.

Indeed, removing the age restrictions in Article 183 (2) (b) is not only a command of Article 32 of the Constitution but it will also enhance and equalize the opportunities available to all other Ugandans as far as offering their candidature for the office of district chairperson is concerned with those currently enjoyed by the youth and elders. The Committee notes that the term equal opportunities is defined in section 1 of the Equal Opportunities Commission Act as follows-

*“equal opportunities” means having the same treatment or consideration in the enjoyment of rights and freedoms, attainment of access to social services, education, employment and physical environment or the participation in social, cultural and political activities regardless of sex, age, race, colour, ethnic origin, tribe, birth, creed, religion, health status, social or economic standing, political opinion or disability;*

Since the youth and elderly do not enjoy the same opportunity as other Ugandans as far as offering their candidature for the office of district chairperson in Uganda, removing such restrictions will go a long way in creating equal opportunity for all, especially in the political sphere. Finally, removing the age restrictions will go in a long way in answering the command of Article 21 (1) of the Constitution. Article 21 (1) of the Constitution requires as follows-

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**“(1) all persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.”**

Article 21 (1) of the Constitution requires that all persons are equal before the law and are treated equally in all spheres of political, economic, social and cultural life and in every other respect. Article 183 (2) (b) currently doesn't treat all Ugandans equally since it elevates those persons between 30 and 75 years over all other persons in Uganda in as far as offering their candidature for the office of district chairperson is concerned.

**(c) Article 183 (2) (b) is contrary to international best practices in so far as it imposes age restrictions on persons offering their candidature for the office of district chairperson contrary to international legal instruments and evidence from other countries.**

International best practice is in favor of inclusive candidacy laws for all elective offices in a democratic country. The international best practices are contained in a number of instruments including the universal declaration of Human rights, the African Youth Charter and the African Charter on Elections, Democracy and Governance.

The universal declaration of Human rights guarantees every person's right equality before the law and entitles persons, without any discrimination, to equal protection of the law. It further guarantees other rights including the right to association, freedom of expression and conscious as well as the right to take part in government of his or her country, directly or indirectly or through representative.

The African Charter on Democracy, Elections and Governance also enjoins the State parties to eliminate all forms of discrimination, especially those based on political opinion, gender, ethnic, religious and racial grounds as well as any other form of intolerance as well as enjoining them to adopt legislative and administrative measures to guarantee the rights of women, ethnic minorities, migrants, people with disabilities, refugees and displaced persons and other marginalized and vulnerable social groups. Furthermore, the Charter enjoins state parties to promote participation of social groups with special needs, including the Youth and people with disabilities, in the governance process.

On the other hand, the African Youth Charter enjoins member states to take steps to guarantee the participation of youth in parliament and other decision making bodies in

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accordance with the prescribed laws and facilitate the creation or strengthening of platforms for youth participation in decision-making at local, national, regional, and continental levels of governance. Furthermore, the Charter prohibits the discrimination of the youth on grounds of race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status and obligate member states to take appropriate measures to ensure that youth are protected against all forms of discrimination on the basis of status, activities, expressed opinions or beliefs.

The committee also wishes to recall that the United Nations Security Council, at its 7573<sup>rd</sup> meeting unanimously adopted Resolution 2250 (2015) urging Member States to increase representation of Youth in decision-making at all levels the Council also urged Member States to consider setting up mechanisms that would enable young people to participate meaningfully in peace processes and dispute resolution.

On the part of older persons, the United Nations General Assembly passed resolution 46/91 on 16 December 1991 on the United Nations Principles for Older Persons which, among others, requires and obligate state parties to ensure that older persons remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations.

The above United Nations legal instruments bind Uganda and impose obligations to ensure that the Youth and older persons are not discriminated or marginalized against. Furthermore, the above legal instruments highlight the fact that Article 183 (2) (b) is contrary to the above cited legal instruments because of its marginalization of the youth and elderly contrary to the above cited legal instruments.

**(d) The requirements imposed in Article 183 (2) (b) are selective in the sense that they are not applied equally across similar offices in the local government system.**

The requirements in Article 183 (2) (b), imposing a bar against persons below 30 years and those above 75 years from contesting in an election for district chairperson only applies to the office of the district chairperson and not any similar office in the local government system. For instance, whereas there are other local government offices akin to the district chairperson such as city lord mayor, municipal mayor, city division mayor, municipal division chairperson, and other lower local offices such as that of the chairperson at the sub county

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Review Commission but this was not done at the time the Bill was referred to the Committee for scrutiny. The Committee therefore re-affirms the recommendation it made in its report of the Constitution (amendment) Bill, 2015 and request that Government fulfills its commitment to constitute a Constitution Review Commission.

**6.2 Urgent need for Government to implement the recommendations of the Supreme Court in the case of Amama Mbabazi Vs Yoweri Kaguta Museveni, The Electoral Commission & The Attorney General, Presidential Election Petition No.1 Of 2016**

The Committee notes that the Supreme Court, in the case of *Amama Mbabazi Vs Yoweri Kaguta Museveni, the Electoral Commission & the Attorney General* made a number of recommendations and directed the AG to follow up the recommendations made by Court with the other organs of State, namely Parliament and the Executive. Court also directed the Attorney General to report to it within two years from the date of the Judgment the measures that have been taken to implement these recommendations.

The committee observes that since the judgment was passed, the AG has not reported to court on the progress of the implementation of the above recommendations and neither have all the recommendations been implemented. The Committee therefore recommends that Government expedites the process for implementing the recommendations of court.

**6.2. Re-instatement of Presidential term limits**

During the various meetings the committee had with stakeholders, a number of stakeholders proposed or recommended for the re-instatement of presidential term limits. The committee observes that until 2005, the 1995 Constitution of Uganda had a provision imposing a limit on the number of times a person occupying the office of President is eligible to hold that office. This was contained in Article 105 (2) of the Constitution and it read as follows-

***"105. Tenure of office of a President***

- (1) A person elected President under this Constitution shall, subject to clause (3) of this article, hold office for a term of five years.***
- (2) A person shall not be elected under this Constitution to hold office as President for more than two terms as prescribed by this article."***

The above provision allowed a person, occupying the office of President, to serve for only two, five year terms. By implication, a person who had served two terms as president would

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not be eligible to stand in a subsequent election. The Committee further observes that the Presidential term limit that had been imposed in Article 105 (2) was removed through the 2005 amendment to the Constitution in the Constitution (Amendment) Act, No.11, 2005. By the above amendment, presidential term limits were removed from the Constitution paving the way for a person to serve for more than two term as President of Uganda.

The Committee observed that whereas many reasons were advanced for removing term limits, one of the most prominent reasons was the existence of Article 102 (b), which barred persons above the age of 75 from being eligible for election as president. The reasoning at the time was that Article 102 was a deterrent measure against an incumbent seeking unlimited term as president and was sufficient to deter such a person. The Committee therefore notes that removing the age restrictions in Article 102 will remove the last remaining measure against the indefinite seeking of the office of President.

The Committee notes that international best practices are in favor of measures that limit the duration as well as the number of times a person may be eligible for election as President. The committee observed that Presidential term limits, most often two terms, are a common feature of democratic constitutions adopted in Africa in the 1990s. Indeed, the committee noted that thirty-three of the 48 new constitutions contained such provisions, at least for some time. Indeed, the Committee observed that in Africa, majority of the countries where the executive authority is bestowed in the President have presidential terms as illustrated in the table in appendix (1).

The Committee further noted that even among countries without age restrictions as a qualification for election as president, most of such countries have got term limits on persons seeking the office of president. Indeed, the committee notes that whereas majority of countries have no upper age qualifications for election as President, such countries have term limits imposed on an incumbent limiting such a person to usually two terms of between five to seven years. This is illustrated below-

COUNTRY	EXECUTIVE AUTHORITY	TERM OF OFFICE
Cape Verde	President	Two 5-year terms, third term only after 5 years
Ethiopia	President	Two 6-year terms

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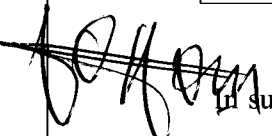
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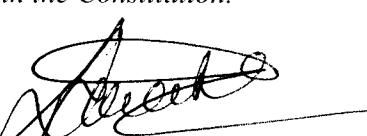

Guinea-Bissau	President	Two 5-year terms
São Tomé and Príncipe	President	Two 5-year terms
Algeria	President	Two 5-year terms
Angola	President	Two 5-year terms
Benin	President	Two 5-year terms
Botswana	President	Two 5-year terms
Burkina Faso	President	Two 5-year terms
Central African Republic	President	Two 5-year terms
Comoros	President	Two 5-year terms
Republic of the Congo	President	Three 5-year terms
Egypt	President	Two 4 year terms
Equatorial Guinea	President	Two 7 year terms
Seychelles	President	Two 5-year terms
Ghana	President	Two 4-year terms
Kenya	President	Two 5-year terms
Niger	President	Two 5-year terms
Senegal	President	Two 5-year terms


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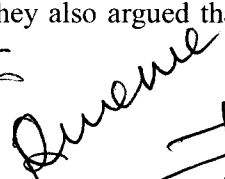
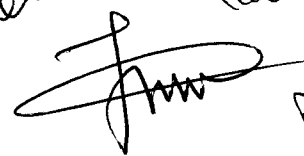
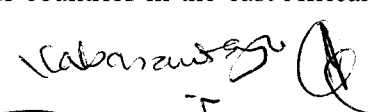


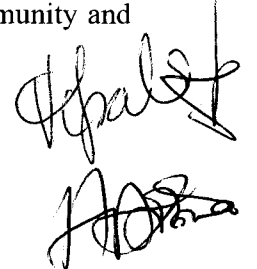

 In supporting this amendment, the Committee is persuaded that term limits prevent arbitrary and violent rule often associated with lifelong presidencies from recurring. Furthermore, term limits offer a periodic guarantee of personnel change in the office of the President, open up political space for new ideas and thus consolidate democratic by ensuring that there is alteration of political power.

*The Committee therefore recommends that presidential term limits are reinstated and entrenched in the Constitution.*

**Proposal to subject the proposal to expand the term of President from 5 to 7 years**



 The Committee in scrutinizing the Bill received memoranda and presentations from various stakeholders who proposed that the term of President be extended from the current five years to seven years. They argued that seven years is a short time for a president to implement all his/her manifesto. They also argued that other countries in the east African community and



Africa generally have extended the term of office of the President to a minimum of seven and a maximum of ten years. The Committee is agreeable to the proposed amendment but notes that it is a requirement in the constitution for such a decision expanding the term of office of the president beyond five years to be subjected to a referendum of the people.

The Committee therefore recommends that the term of office of the president be extended to seven years but the legal processes prescribed in the constitution pursuant to which such an amendment can be legally made be complied with.

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PROPOSED AMENDMENTS TO THE CONSTITUTION (AMENDMENT) NO.2  
BILL, 2017

1. AMENDMENT OF CLAUSE 1 OF THE BILL

For clause 1 of the Bill, there is substituted the following-

"(1). Amendment of Article 61 of the Constitution

Article 61 of the Constitution is amended by substituting for clause (2), the following-

(2) The Electoral Commission shall hold Presidential, General Parliamentary and Local Government council elections within the first thirty days of the last one hundred and seventy two days before the expiration of the term of Parliament."

JUSTIFICATION

- To expand the duration within which to hold presidential, general parliamentary and local government council elections from the last 120 days as proposed in the bill to 172 days.
- To require the determinant of when election are held in Uganda to be the term of the Parliament and not that of the President which is prone to change. It will also harmonise the term of office of the president with that of parliament.
- To provide adequate timelines for processes arising from a presidential election such as organising and holding a presidential election re-run, challenging a presidential election, determining a petition challenging a presidential election by court as well as organising and holding a fresh election in case a presidential election is annulled by court as empowered in Articles 103 (5) and 104 (2), (3) and (6) of the Constitution.
- To comply with the recommendation of court in the case of Amama Mbabazi Vs Yoweri Kaguta Museveni, the Electoral Commission & the Attorney General presidential election petition no.1 of 2016.

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**2. AMENDMENT OF CLAUSE 2 OF THE BILL**

For clause 2, there is substituted the following-

**"2. Replacement of article 102 of the Constitution**

For article 102 of the Constitution, there is substituted the following-

**102. Qualifications and disqualifications of the President.**

(1) A person is qualified for election as President if that person—

- (a) is a citizen of Uganda by birth;
- (b) is a registered voter;
- (c) is resident in Uganda on the nomination day; and
- (d) has completed a minimum formal education of Advanced Level standard or its equivalent.

(2) A person is not qualified for election as President if that person—

- (a) is of unsound mind;
- (b) is holding or acting in an office the functions of which involve a responsibility for or in connection with the conduct of an election;
- (c) is a traditional or cultural leader as defined in article 246(6) of this Constitution;
- (d) has been adjudged or otherwise declared insolvent under any law in force in Uganda and has not been discharged;
- (e) is under a sentence of death or a sentence of imprisonment exceeding nine months imposed by any competent court without the option of a fine;
- (f) has, within seven years immediately preceding the election, been convicted by a competent court of an offence involving dishonesty or moral turpitude; or
- (g) has, within seven years immediately preceding the election, been convicted by a competent court of an offence under any law relating to elections conducted by the Electoral Commission.

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**JUSTIFICATION**

- *To specifically prescribe the qualifications for election as president*
- *To remove age restrictions for election to the office of President*
- *To specifically prescribe the matters disqualifying a person from election as president.*
- *For clarity and better drafting.*

**3. AMENDMENT OF CLAUSE 3 OF THE BILL**

For clause 3, there is substituted the following-

**"3. Amendment of article 104 of the Constitution**

Article 104 of the Constitution is amended by-

- (a) substituting for clauses (2), (3) (6) and (7) the following-**

"(2) A petition under clause (1) of this article shall be lodged in the Supreme Court registry within fourteen days after the declaration of the election results.

(3) The Supreme Court shall inquire into and determine the petition expeditiously and shall declare its findings not later than forty five days from the date the petition is filed.

(6) Where an election is annulled, a fresh election shall, in accordance with article 103, be held within forty four days from the date of the annulment.

(7) If after a fresh election held under clause (6) of this article there is another petition which succeeds, then the presidential election shall be postponed; and upon the expiry of the term of the incumbent President, the Chief Justice shall perform the functions of the office of President until a new President is elected and assumes office.

- (b) by inserting immediately after clause (7), the following new clauses-**

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“The Electoral Commission shall organize and conduct the election postponed in clause (7) within six months of the expiry of the term of the incumbent president.”

“Notwithstanding anything in this Constitution, a person elected President following an election held in clause (7a) or article 103(3) of this Constitution shall serve for the residual term of Parliament.”

“The chief Justice shall not, while holding the office of the President under clause (7), exercise the following powers of the president —

- (a) the nomination or appointment of judges of courts of judicature;
- (b) the nomination or appointment of any other public officer whom this Constitution or any other law requires the President to appoint;
- (c) the nomination or appointment or dismissal of Public officers;
- (d) the nomination or appointment or dismissal of a high commissioner, ambassador, or diplomatic or consular representative;
- (e) the prerogative of mercy; and
- (f) the authority to confer honors in the name of the people and the Republic.”

“Whenever the Chief Justice is holding the office of President under clause (7), the Deputy Chief Justice shall perform the duties of the Chief Justice prescribed in this Constitution or any other law.”

**JUSTIFICATION**

- *to increase the timelines in article 104 (2) from “ten days” to “fourteen days” in order to afford a person challenging a presidential election enough time to collect evidence and prepare his or her petition challenging a presidential election.*
- *To require the Supreme Court to only declare its finds rather than declaring both finds and reasons within the time prescribed in the provision.*

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- to increase the timelines in article 104 (6) from "twenty days" to "forty four days" in order to afford the Electoral Commission adequate time to prepare and hold fresh presidential elections after the annulment of a presidential election
- To require the Electoral Commission to comply with the processes prescribed in Article 103 of the Constitution when holding a fresh election following the nullification of a presidential election by court. These processes include carrying out fresh nominations for presidential aspirants, collection of the relevant signatures to support each candidate's nominations as required in Article 103.
- In Article 104 (7), to require the Chief Justice to take over the presidency in circumstances where a second petition challenging the election of an incumbent president succeeds in accordance with article 104 (6) and the term of that incumbent President expires.
- To put a time line for the holding of the postponed presidential elections in article 104 (7).
- To require the Chief Justice, whose term of office is not connected to the term of office of the president and of Member of Parliament, to take over the presidency instead of the Speaker of Parliament whose term of office ends with that of the President. The Committee took note of the fact that at the expiry of the term of the President, it is possible that there will not be a substantive speaker to take over the presidency as envisage in Article 104 (7) since the term of the speaker ends with the term of the Parliament and the new Speaker is sworn in by the President.
- To prescribe the powers of the president an acting president may not exercise.
- To ensure that the duties of the Chief Justice are taken over by the deputy chief justice for continuity.

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**4. INSERTION OF NEW CLAUSE**

Immediately after clause 3, insert the following new clause-

"Amendment of article 105 of the Constitution

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Article 105 of the Constitution is amended-

(a) by redrafting clause (2) as follows-

“(2) A person shall not hold office as President for more than two terms.”

(b) by inserting immediately after clause (2) the following-

“Clause (2) of this article shall come into effect upon the next dissolution of Parliament.”

**JUSTIFICATION**

- to reinstate term limits in the Constitution
- to clearly require that for purpose of computing term limits, the time start running from the next dissolution of Parliament.

5. CLAUSE 4, agreed upon

6. INSERTION OF NEW CLAUSE

There is inserted, immediately after clause 4 of the Bill, the following new clause-

**“Amendment of article 260 of the Constitution**

Article 260 is amended in clause (2) by redrafting paragraph (f) as follows-

“(f) Chapter seven-article 105 (1) and (2);”

**JUSTIFICATION**

- to entrench Article 105 (2) of the Constitution
- to require that the amendment to Article 105 (2) is referred to a decision of the people and approved by referendum.

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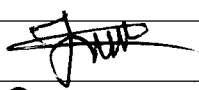
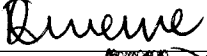

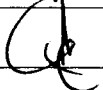
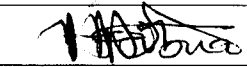
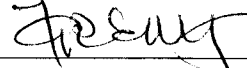


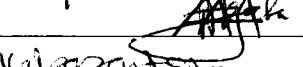
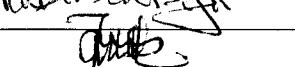
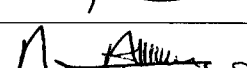
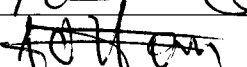

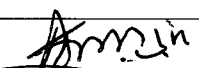

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**SIGNATURE OF MEMEBERS OF THE COMMITTEE**

SN	NAME	CONSTITUENCY	SIGNATURE
1.	Oboth Jacob Marksons (Chair)	West Budama South	
2.	Hon. Rwakoojo R Gureme	Gomba West	
3.	Hon. Gafabsa R Muhumuza	Bwamba County	
4.	Hon. IsalaEragu Veronica	Kaberaimaido County	
5.	Hon. Kafuuzi Jackson K	Kyaka South	
6.	Hon. Kajara Aston	Mwenge south	
7.	Hon. AmodingMonicah	DWR Kumi	
8.	Hon.Obua Denis Hamson	Ajuri County	
9.	Hon. AchiaRemigio	Pian County	
10	Hon. Bitangaro Sam Kwezira	Bufumbira South	
11	Hon. Ongalo Kenneth Obote	Kalaki County	
12	Hon. Agaba Abbas Mugisha	Kitagwenda County	
13	Hon. Azairwe Dorothy	DWR Kamwenge	
14	Hon. MugoyaKyawaGaster	Bukooli North	
15	Hon. Akamba Paul	Busiki County	
16	Hon. Otto Edward Makmot	Agago County	
17	Hon. Adeke Anna Ebaju	NFY MP	
18	Hon. Nsereko Muhammed	Kampala Central Division	
19	Hon. Wilfred Niwagaba	Ndorwa East	
20	Hon. Abdu Katuntu	Bugweri County	
21	Hon. Ssemujju Ibrahim	Kira Municipality	
22	Hon. MedardSsegonaLubega	Busiro East	
23	Hon. Mathias Mpuuga	Masaka Municipality	
24	Hon. Taban Amin	Kibanda North	
25	Hon. Akello Rose Lilly	DWR, Kabong	
26	Hon. Akampulira Prosy	DWR Rubanda	

27	Hon. Suubi Brenda Asinde	DWR Iganga	<del>Signature</del>
28	Hon. Kamusiime Carolyn	DWR Rukiga	<del>Signature</del>
29	Hon. Kasule Robert Sebunya	Nansana Municipality	<del>Signature</del>

Robert Sebunya

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Appendix 1: Term Limits, Minimum and Maximum Age Limit and Type of Governance in Selected Countries

Country	Term Limits	Min. Age Limit	Max Age Limit	Type of Governance
Algeria	Two 5-year terms	40 years	Non	Republic
Angola	Two 5-year terms	35 years	Non	Republic
Botswana	Two 5-year terms	30 years	Non	Parliamentary Republic
Central African Republic	One five year term, re-eligible for one five year term.	35 years	75 years.	Republic
China	Two 5-year terms	45 years	Non	Socialist Republic
Ethiopia	Two 6-year terms	Non	Non	Federal Democratic Republic
France	One five year term, open for re election.	40 years	75 years	Republic
France	Two consecutive 5-year terms	18 years	Non	Republic

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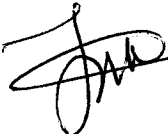


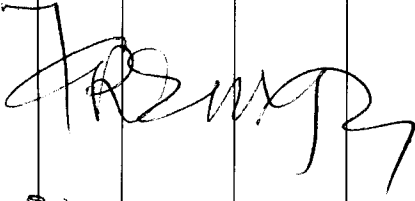












Italy	Unlimited seven-year terms	50 years	Non	Republic
Yemen (President)	Two Five year terms.	45 years	65 years	Democratic Republic
Iran	Two consecutive and one non consecutive 4 year terms.	21 years	Non	Islamic Republic
Morocco	No set terms (Hereditary succession)	Non	Non	Constitutional Monarch
Mozambique	Two 5-year terms	35 years	Non	Republic
Madagascar	One five year term, re-elected once	40 years	75 years	Islamic Republic
Namibia	Two 5-year terms	35 years	Non	Republic
Nigeria	Two 5-year terms	40 years	Non	Federal Republic
Senegal	Two 5-year terms	35 years	Introduced 75 year age limit in referendum on 23/3/2015. <sup>1</sup>	Republic
Seychelles	Three 5-year terms	Non	Non	Republic
Sierra Leone	Two 5-year terms	40 years	Non	Republic
South Africa	Two 5-year terms	18 years	Non	Republic
Tanzania	Two 5-year terms	40 years	Non	Republic

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<sup>1</sup> Reuters, March 20, 2016/Aljazeera, 23 March 2016.

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Togo	Unlimited 5-year terms	35 years	Non	Republic
Tunisia	Two 5-year terms	35 years	Non	Republican.
Ecuador	Two 4-year terms	32 years	Non	Republic (decentralised approach)
El Salvador	One 5-year term	30 years	Non	Republic
Guatemala	One 4-year term	40 years	Non	Republic
Guyana	Two 5-year terms	18 years	Non	Republic
Haiti	Two non-consecutive 5-year terms	35 years	Non	Republic
Rwanda	Two five-year terms	35 years	Non	Republic
Ghana	One four-year term. (Maximum of 2four year terms.)	40 years	Non	Unitary Republic
Lesotho	No term limits (Hereditary Succession)	21 years	Non	Sovereign Kingdom Democratic
Swaziland	No term limits (Hereditary Succession)	King accedes to throne at 18 years	Non	Unitary, sovereign, democratic Kingdom
India	Unlimited 5 year terms	35 years	Non	Parliamentary democracy
Australia	No term limits	18 years	Non	Federal/Constitutional monarchy

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Research

Brazil	Two four year term limits	35 years	Non	Federal Republic
USA	Two 4-year terms	35 years	Non	Federal Republic
Turkey	Two 5-year terms	40 years	Non	Democratic Republic

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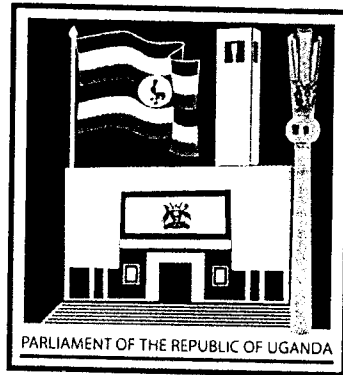
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# PARLIAMENT OF UGANDA



## THE COMMITTEE ON LEGAL AND PARLIAMENTARY AFFAIRS

### MINORITY REPORT ON CONSTITUTIONAL (AMENDMENT) NO 2, 2017 BY COMMITTEE OF LEGAL AND PARLIAMENTARY AFFAIRS

(Presented in accordance with Rule 202 of the Rules of Procedure of  
Parliament).

DECEMBER

2017

## 1.0 INTRODUCTION

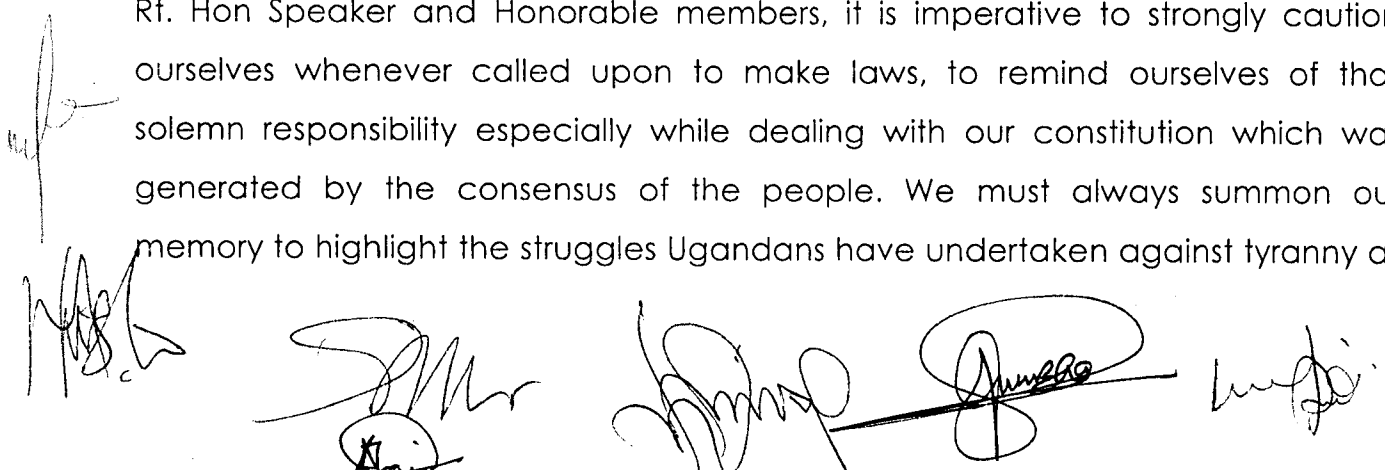
The Constitution (Amendment) Bill, No 2 of 2017, a Private Member's Bill was read for the first time on 3<sup>rd</sup> October 2017 following the acrimony that engulfed the presentation of the motion seeking leave of the House to present a Private Member's Bill. On the 27<sup>th</sup> day of September 2017, Parliament was invaded by a group of strangers that came to be identified as soldiers from the Special Forces Command which guards the President. The acrimony saw a number of Members of Parliament assaulted by the said aggressors and the presentation of the Motion to a one-sided House.

On the same day at around 4PM, the Hon. Magyezi was granted leave by the House to present the Bill and accordingly, it was presented for the First Reading on 3<sup>rd</sup> October 2017. It was published 28<sup>th</sup> September 2017 under an instruction issued on behalf of the Clerk to Parliament. On the 28<sup>th</sup> September 2017, a Certificate of Financial Implications was issued under the hand of the Hon. Minister responsible for Finance.

The Bill was thus referred to the Committee on Legal and Parliamentary Affairs for scrutiny with the specific mandate and instruction of the Speaker to consult the people of Uganda on the matter.

The Bill proposes among others and most importantly, to amend by deleting Article 102(b) of the Constitution of the Republic of Uganda. The clause restricts persons below Thirty Five years and those above Seventy Five Years from contesting or nomination for the post of President.

Rt. Hon Speaker and Honorable members, it is imperative to strongly caution ourselves whenever called upon to make laws, to remind ourselves of that solemn responsibility especially while dealing with our constitution which was generated by the consensus of the people. We must always summon our memory to highlight the struggles Ugandans have undertaken against tyranny as



always reminded by the preamble to the Constitution. The aspirations of our people as expressed in the same Constitution must not be lost sight of.

Article 79 of the Constitution requires Parliament as follows;

"(1) subject to the provisions of this Constitution, Parliament shall have powers to make laws on any matter for the peace, order, development and good governance.

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

(3) Parliament shall protect this Constitution and promote the democratic governance of Uganda"

The duty of this Parliament is to make, only those laws that promote peace, order, development and good governance. The first summon to conscience must have a reflection on those and no where beyond.

## 2.0 METHODOLOGY:

At the beginning of our work, the committee agreed on a number of stakeholders identified and they were called to make presentations and memoranda. The committee also agreed to conduct country-wide consultations on a Regional basis although some Members preferred to consult at District level through sub-committees which were identified for that work. (see the appendix)

At the end of the Kampala consultations, we were informed that the leadership of Parliament reversed this decision on the premises that there were no resources to undertake the said important exercise! We believe very strongly that this was a

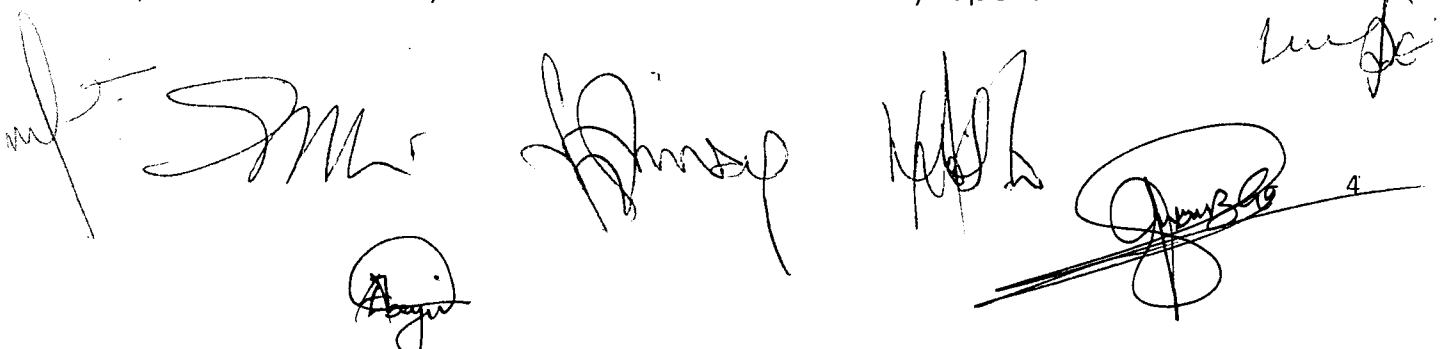
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deliberate omission that has serious ramifications on the democratic credentials, a duty that the speaker directed us to perform.

Before commencing the retreat of the committee to scrutinize views collected from selected citizens, a number of new members including Hon Robert Sebunya, Nansana Municipality, Asinde Brenda Suubi, Iganga District, Taban Amin, MP Kibanda North, Kamusime Caroline, Rukiga District, Akello Rose Lilly, Kaabongo District were assigned to the committee to start from that advanced stage.

The Speaker had sent members on recess but more particularly the six members of the committee to participate and represent Parliament in the East African Inter-parliamentary games which have a schedule on our Parliamentary calendar. Unfortunately the Leadership of the committee opted to have them excluded from the retreat by scheduling the same when those members were away on official duty. We believe this was done in bad faith.

During the proceedings of the Committee on Friday 8<sup>th</sup> December 2017, the Honorable Medard Lubega Sseggon, MP Busiro County East and Shadow Minister for Justice and Constitutional Affairs together with Honorable Abdul Katuntu, MP for Bugweri County requested for an opportunity to make some proposals for amendment on Saturday 9<sup>th</sup> December 2017. It was at 7PM. The Chair person Hon. Jacob Oboth directed that the Vice chairperson would chair the meeting as he had an introduction party of his nice to attend on 9<sup>th</sup> December 2017. This chance did not materialize as the following day the Members had left the Hotel and the Honourables Medard Lubega, Abdu Katuntu and M Amoding were stroke off. A draft of the majority report was provided on request as directed by the Chairman thus this minority report.



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### 3.0 JUSTIFICATIONS FOR POINT OF DEPARTURE/DISENTS FROM THE MAIN REPORT

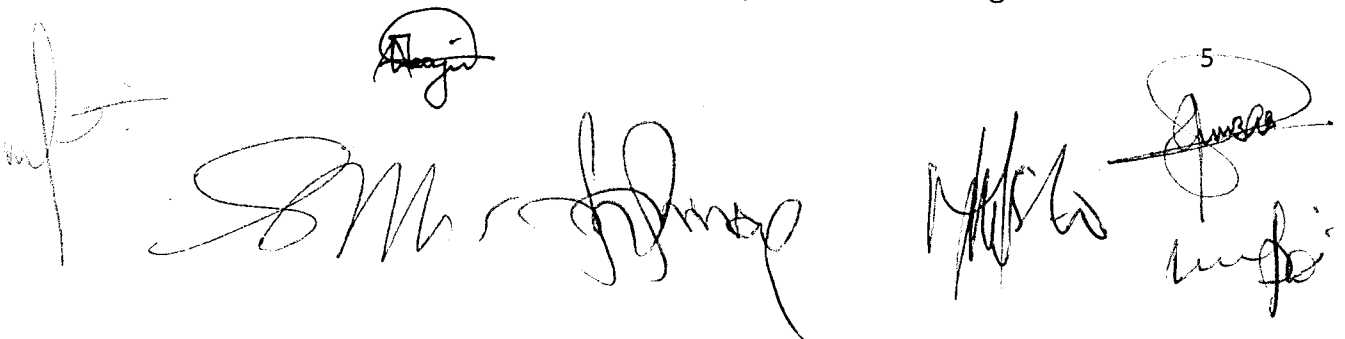
#### 3.1 Whether the proposed amendments are of legal or political nature?

Article 8A of the Constitution requires Uganda to be governed on the principles of National Interest and Common good enshrined in the National Objectives and Directive principles of state policy. The Constitution does not envisage amendments in the constitution to entrench one man's rule. Such endeavors date as far back as 2005 when Article 105(2) of the Constitution was amended to allow President Museveni to contest for presidency after his two terms were exhausted.

Some proponents of the Age limit removal premise their argument of the fact that Uganda still needs President Museveni. This is evident in the several memoranda presented to the Committee. This applies to some opponents of the Bill some of whom view the Article 102(b) as a way of finally allowing a peaceful transition from one person to another. The minority observe that the amendment is only brought for the convenience of the President just like the removal of term limits.

The argument that the issue of age limit removal is a political question to be resolved by the parliament ought to consider that the power emanates from the people who should be consulted and that this is the only way of putting in effect the spirit of Article 1 of the Constitution.

Guided by the above considerations, the minority members are of the opinion that repealing Article 102(b) at the moment is very dangerous as it is being done for only one possible beneficiary, the current President. Constitutional amendments are never made for but for posterity peace, order and governance. This is the practice among the civilized



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Nations guided by their Leaders. Article 102(b) has not yet been tested and we find ourselves in no stalemate with-it.

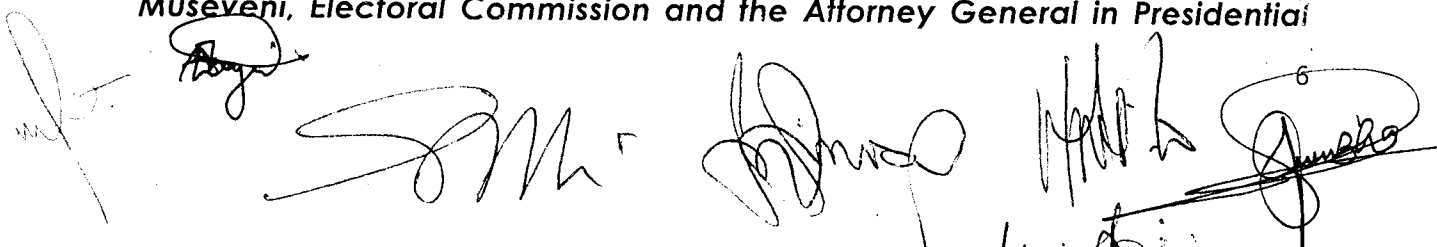
Some proponents of the Bill have argued that the continuity of Article 102(b) of the Constitution will threaten peace and tranquility both within Uganda, East Africa and Africa as a continent and that it shall impact on development and slow down the achievements registered since 1986.

The minority rejects that opinion as political blackmail whose effect is the destruction of institutions and the institutionalized individuals. There are examples. In Africa where there have been peaceful change of great leaders to another without injuring institutions, systems and tranquility. All that country needs are safety valves, shared vision and spirit of constitutionalism that drive their resolve to their constitutionalism that drive their resolve to their constitution. Examples of such progressive countries include Zambia, Ghana, Tanzania, Kenya, Ivory Coast, Senegal, Nigeria and Kenya to mention but a few.

The proposed amendment especially on lifting age limit is a political action whose consequences are far reaching and injurious to the democratic growth of Uganda. It is an idea that all Ugandans should to the extent possible express themselves on if we are to alter their consensus as expressed in the current constitution.

#### **2.2.1 Whether the Bill was competently placed before the committee?**

In clause 2 of the Memorandum, the mover of the Bill premised it on the Supreme Court decision in the case of **Amama Mbabazi V Yoweri Kaguta Museveni, Electoral Commission and the Attorney General in Presidential**

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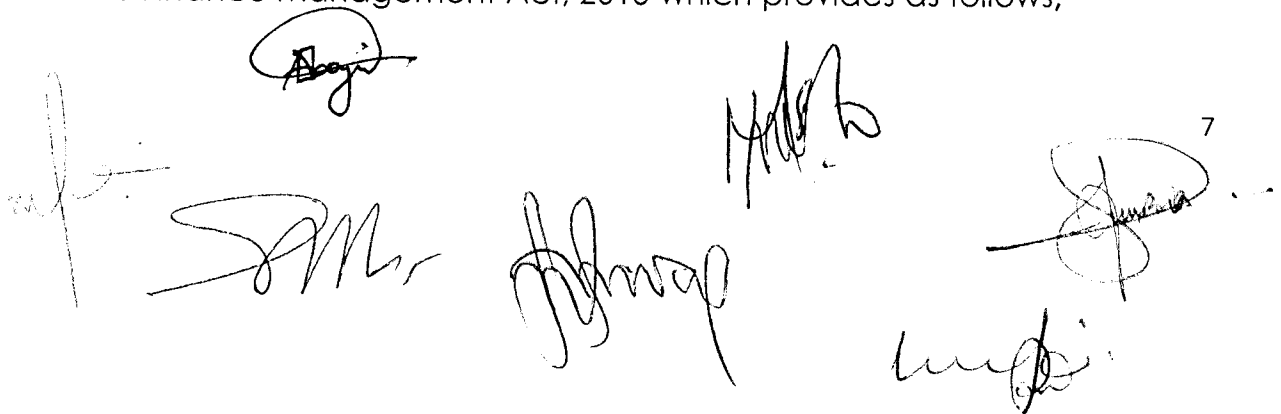
**Election Petition No. 01 of 2016.** The Ruling gave instructions to the Attorney General, a Respondent in the case to take up actions as directed by the Court. The ruling was not in *Rem* (against the whole world); it was in *personam* (directed to specific person). It states inter alia;

- a) **'The Attorney General must follow up the recommendations made by this Court with the other organs of State, namely Parliament and the Executive.**
- b) **The Attorney General shall report to the Court within two years from the date of this Judgment the measures that have been taken to implement these recommendations.**
- c) **The Court may thereafter make further orders and recommendations as it sees fit'.**

The mover is not the Attorney General whom the court directed to take action. The Attorney General according to the date of Judgment which is 26th August 2016 is still with in time to comply with the directives of court. And after taking action, he was supposed to file a report to court.

The presentation of the Bill by the said Private Member cannot be in compliance of terms and directives of the Supreme Court rather it's the actions of an overzealous member of the House who should not hide under the clock of that judgement. Indeed the age limit was never an issue before Court. The critical issues before Court as contained in that judgement have deliberately been left out of this Bill.

Further, the Certificate of Financial Implication by the Minister of Finance upon which the Bill was premised is offensive to Section 76 of Uganda Public Finance Management Act, 2015 which provides as follows;



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**"76. Cost estimates for Bills.**

(1) Every Bill introduced in Parliament shall be accompanied by a certificate of financial implications issued by the Minister.

(2) The certificate of financial implications issued under subsection (1) shall indicate the estimates of revenue and expenditure over the period of not less than two years after the coming into effect of the Bill when passed.

(3) In addition to the requirements under subsection (2) the certificate of financial implications shall indicate the impact of the Bill on the economy.

(4) Notwithstanding sub sections (1), (2) and (3), a certificate of financial implication shall be deemed to have been issued after 60 days from the date of request for the certificate."

This provision is fortified by Rule 117 of the Rules of Procedure which provides in similar terms as follows;

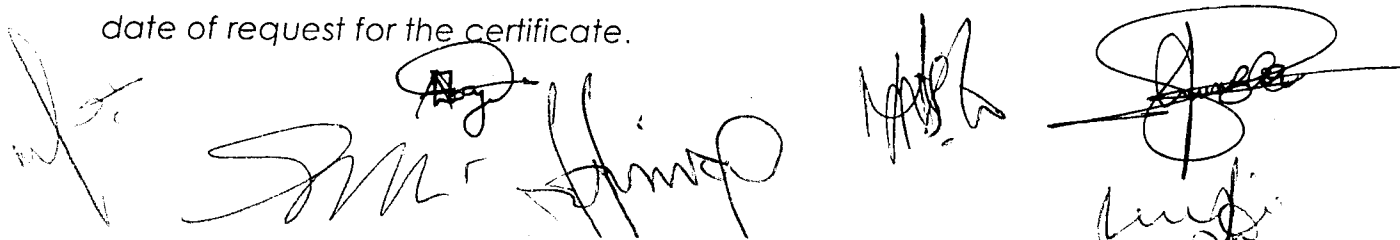
**Certificate of financial implications**

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Critical analysis of the Certificate of Financial Implications as appended indicates that:

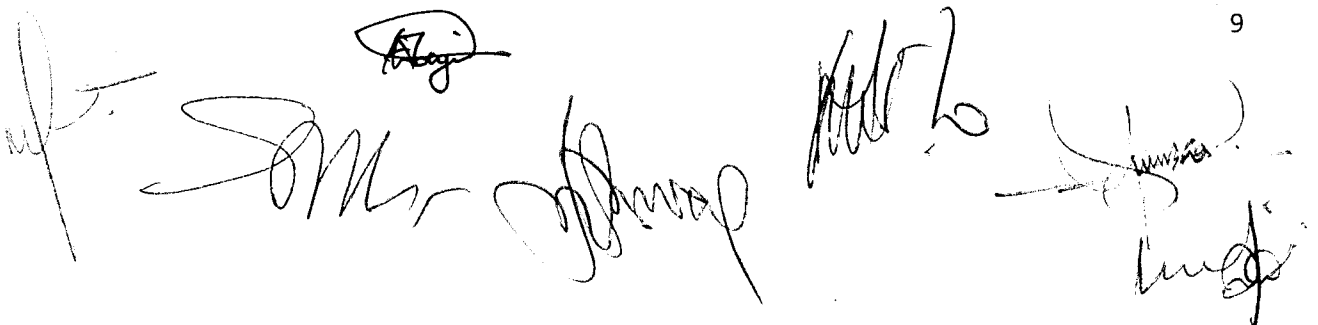
a) The purported certificate is in respect of constitutional amendments 2017, different from Constitutional (Amendment) (No-2) Bill of 2017. Accordingly, Constitutional (Amendment) (No-2) Bill, 2017 has no supporting certificate of financial implication.

b) In microscopic event that the reference was being made to Constitutional (Amendment) (No-2) Bill of 2017, falsely indicates that the Bill has no possibility of inflicting any additional cost on MTEF, yet as minority we have observed that Parliament has already spent over 13 billion shillings that had not been budgeted previously for facilitating members to carry out consultations.

*In light of the above, it should be noted that the Certificate falls short of required detail for it does not articulate how much revenue will be generated or how much will be expended in a period of not less than 2 years. It is only then that determination may be made whether the anticipated revenues and expenditures would be within the Medium Term Expenditure Framework. This contravenes Uganda Public Finance Management Act rendering the Certificate null and void.*

#### **Issues surrounding the publications of the Bill**

Whereas the motion was passed on 27<sup>th</sup> September, 2017 and the purported certificate of financial implication issued on 28<sup>th</sup> September, 2017, the Bill was prepared and forwarded to Parliament on the same day. Parliament proceeded to submit the Bill to UPPC for publication without Local Purchase Order as per the letter from the Clerk to

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Parliament dated 29<sup>th</sup> September, 2017, a day after the Bill had been gazetted.

### 2.3 Whether article 102(b) of the Constitution is discriminatory?

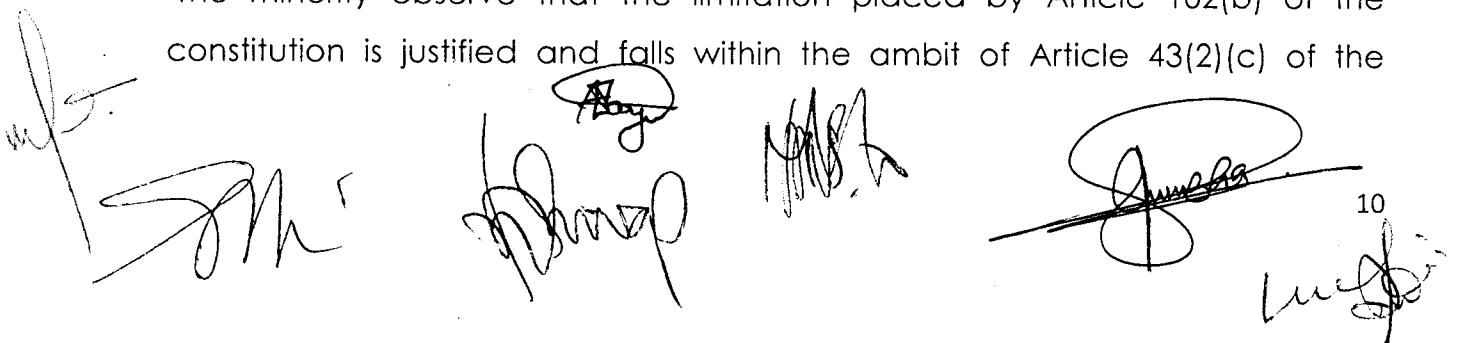
The minority reject the assertion by our majority brethren to the effect that Article 102(b) is discriminatory against people on account of old age within the meaning of Articles 21 and 32 of the Constitution. We agree with numerous stakeholders who distinguished discrimination from limitation or restriction.

Equal opportunities Commission argued that age is not an element enshrined in Article 21 of the Constitution that describes what amounts to discrimination. This was echoed by Uganda Law Reform Commission, Prof. Edward Fredrick Sempebwa, Prof. Mwambusya Ndebesa and Mr. Peter Muliira. We agree with them on that being the correct interpretation of the Article.

Article 21(3) of the Constitution provides thus, ***“For the purposes of this Article, “discriminate” means to give different treatment to different persons attributable only or mainly to their respective descriptions by sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability”.***

The tenets of discrimination under Article 21 are exhausted therein and any addition thereto amounts to an amendment of the Constitution which is not acceptable in the manner at hand.

The minority observe that the limitation placed by Article 102(b) of the constitution is justified and falls within the ambit of Article 43(2)(c) of the



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constitution. Article 43(2) provides situations where a limitation may be placed in public interest and in particular Article 43(2) (c) provides thus;

***"Any limitation of the enjoyment of the rights and freedoms prescribed by this chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society or what is provided in this Constitution".***

It is the view of the minority that the limitation in Article 102(b) is reasonable and justified for a free and democratic society.

The reference to Article 32 as having any propinquity to the Bill is absurd and misconceived. Article 32(1) provides thus,

***"Notwithstanding anything in this constitution, the state shall take affirmative action in favour 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 imbalance which exist against them"***

Rt. Hon Speaker and colleagues, we were never referred to any custom, tradition or history that marginalized any group of persons on account of age. We were unable to come across any imbalances arising out of or connected to age as a factor for it to amount to discrimination in the terms of Article 21 so as to require redress under Article 32. We never came across any person complaining about discrimination on account of age so as to come within the ambit of Article 32(1) of the Constitution. No Ugandan had ever offered to contest for presidency being below the age of 35 or above 75 ever since the limitation clause was enacted in 1995.

Furthermore, the Equal Opportunities Commission argued that Article 32 of the Constitution is only meant to provide a mechanism to take affirmative action's in favor of the marginalized groups for purposes of redressing

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imbalances which exist against them. This Article does not describe age as discriminatory but rather as a ground through which imbalances can be redressed.

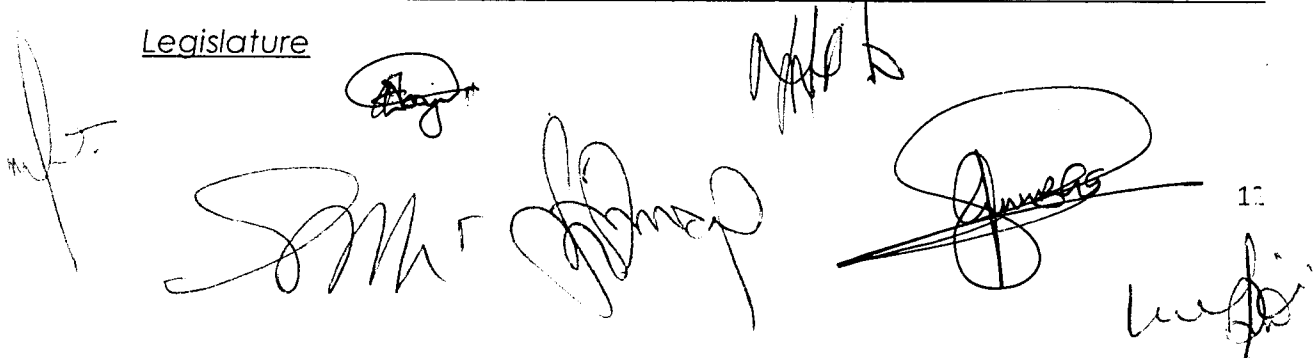
The Uganda Law Reform Commission opposed the amendment of Article 102(b) as it hinges on other provisions that have age limits like Article 144(1) and other provisions relating to public servants. This was re-echoed by Prof. E.F Ssempebwa. The minority therefore is of the opinion that Article 102 (b) does not discriminate on account of age, but only a qualification like any other, e.g. Article 102 (a) requires that for one to be President, he/she must be a citizen of Uganda by birth. Equally, Article 102 (c) requires that for one to become president, he/she must qualify to be a Member of Parliament as provided under Article 80 (1) of the Constitution.

**2.3.1 Claim that the Bill is in accordance to the directives in the Amama Mbabazi versus Yoweri Kaguta Museveni Case:**

The proponents of the Bill relied claim to rely on the decision of the Supreme Court.

In the ruling of **Amama Mbabazi V Yoweri Kaguta Museveni, Electoral Commission and the Attorney General in Presidential Election Petition No. 01 of 2016** court ruled that;

*'Before we take leave of this matter, we would like to point out a number of areas of concern. We must note that in the past two Presidential Petitions, this Court made some important observations and recommendations with regard to the need for reform in the area of elections generally and Presidential elections in particular. Many of these calls have remained unanswered by the Executive and the Legislature*



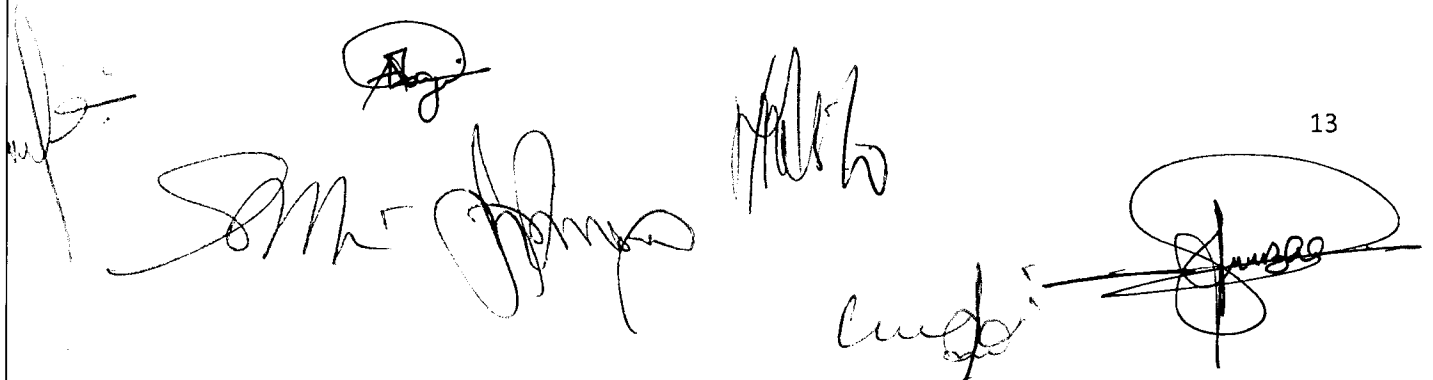
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**The late enactment of relevant legislation:** We observed that the ECA and the PEA were amended as late as November, 2015. Indeed the Chairman of the Commission gave the late amendment of the law as the reason for extending the nomination date. We recommend that any election related law reform be undertaken within two years of the establishment of the new Parliament in order to avoid last minute hastily enacted legislation on elections.

**Implementation of recommendations by the Supreme Court:** We note that most of the recommendations for reform made by this Court in the previous presidential election petitions, have remained largely unimplemented. It may well be that no authority was identified to follow up their implementation. We have nevertheless observed in this petition that the Rules require that the Attorney General be served with all the documents in the petition. We have further noted that the Attorney General may object to withdrawal of proceedings. Therefore the Attorney General is the authority that must be served with the recommendations of this Court for necessary follow up.

We accordingly order as follows:

- a) "The Attorney General must follow up the recommendations made by this Court with the other organs of State, namely Parliament and the Executive.
- b) The Attorney General shall report to the Court within two years from the date of this Judgment the measures that have been taken to implement these recommendations.
- c) The Court may thereafter make further orders and recommendations as it sees fit'.

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The decision of court is specifically directing the Attorney General to take up the recommendations and cause the necessary amendments to Parliament. He is also directed to report back to court with two years from the date of the judgment. The judgement is dated 26<sup>th</sup> August 2016 which means he has time to take all the necessary steps up to 26<sup>th</sup> August 2018 including the day of 25<sup>th</sup> August 2018. In case of any challenges found the court left a lei way for the Attorney General to come back and new orders be issued.


The promoters of the Bill argue that they presented it to comply with the directive to the Attorney General by the Supreme Court.

Whereas it is true that the Attorney General has not taken any step in compliance with the directives of court, it is not true that the he is time barred.

We observe that the Bill does not address the concerns in the Judgment. The issue of Age limit for example, has never been in all presidential election petitions whether no-1 of 2016 or the previous ones.

We reject the false justification that the Bill was brought to comply with orders and recommendations in the case of **Amama Mbabazi V Yoweri Kaguta Museveni, Electoral Commission and the Attorney General in Presidential Election Petition No. 01 of 2016.**

As Parliament we must insist that Government should introduce comprehensive constitutional amendments following a well-known constitutional review commission as undertaken by the Attorney General before this House. Allowing this Bill will be to sanction the abuse of our institutions and dragging the Judiciary in political rhetoric.



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### 2.3 Whether the amendment bill is a Recipe for political and Constitutional instability:

Dr. Mwambutsya Ndebesa opined that the proposed amendment of article 102(b) is likely to cause constitutional and political instability. That the removal of age limits promotes the strongman phenomenon that slows the growth and development of state institutions in our political order. He cautioned of a danger to have a senile president in office which could lead to disintegration of the country.

The Democratic Party opposed the amendment and argued that article 102(b) facilitates peaceful and Constitutional transition.

Professor Baryamureba Venensius opposed the removal of the age restriction and argued that there was no evidence to show that anyone has ever contested for the office of President when they were below 35 or above 75 years of age. He further noted that Uganda's History is characterized by struggles against the forces of tyranny, oppression and exploitation caused by ambitious leaders who want to over stay in power by exploiting institutions and the people.

We observe that incumbent Presidents with executive powers and control over National resources have from the time of independence used state machinery to manipulate the people and systems to claim artificial popularity. There is no record of any former president who was not popular up to the time of their respective overthrow.

Professor Ssempebwa Fredrick on his part argued that a constitution reflects the consensus that emerged from the Odoki Commission's proceedings and the Constituent Assembly. This consensus was not based on isolated principles,



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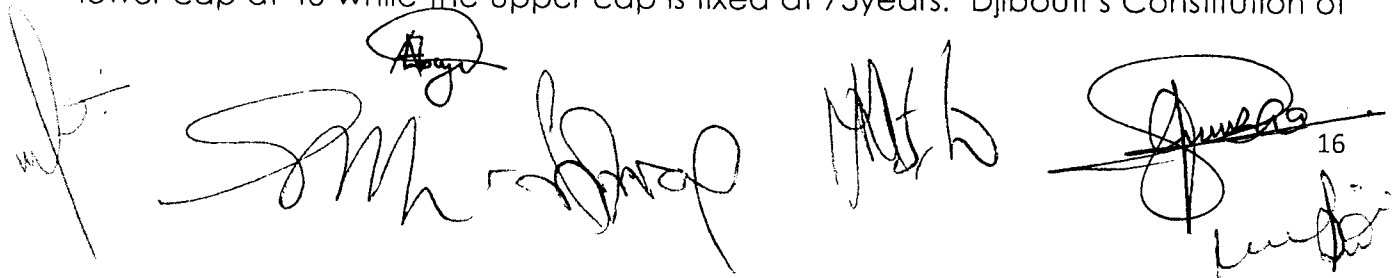


but on integrated structures of governance towards unity, peace, equality, democracy, freedom and social economic progress of the individual and the nation. That the constitution is the foundation upon which the body politic is nourished, natured and grows. That failure to have orderly succession of government, smooth handover, fear of the unknown is recipe for turmoil and instability.

It is the view of the minority that amending Article 102(b) of the Constitution is likely to throw the country into chaos and instability as it promotes self-seeking by incumbents.

African states are fond of having constitutions for regimes and presidents other than the population. All countries that have amended their constitutions in reference to both age and term limits have done so to favor the incumbents. E.g. Kenya in 2004 amended the presidential age limit both the upper age at 70 and lower at 35 for purposes of letting Hon. Mwai Kibaki to be able to contest in 2007. Cameroon amended its constitution in 2008 to allow Mr. Paul Biya to extend his 25 year rule over Cameroonians past 2011. Gambia on 25<sup>th</sup> July 2017 removed age limit by amending section 62 of the 1997 Constitution purposely to benefit Mr. Ousarmon Darbue the leader of the united Democratic Party to become the vice president. Rwanda, in 2016 the amendments made to the constitution were to enable Mr. Paul Kagame to contest again.

We observe that there are countries like Burkina Faso with lower cap at 35 and upper cap at 75 years according to the 2010 Constitution. Ivory Coast 's Constitution of 2000 as amended on 11<sup>th</sup> October 2016 with two term limits and lower cap at 40 while the upper cap is fixed at 75years. Djibouti's Constitution of



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2010 puts the age limit between 40 and 65 years. We consider these countries to be part of progressive democracy.

In Uganda, the only foreseeable beneficiary of the intended amendment is the only person who has been President and is disqualified from standing in the next election.

It is our view therefore that the proposal to amend Article 102 (b) of the Constitution only seeks to promote life presidency as well as negate modern practices of constitutionalism

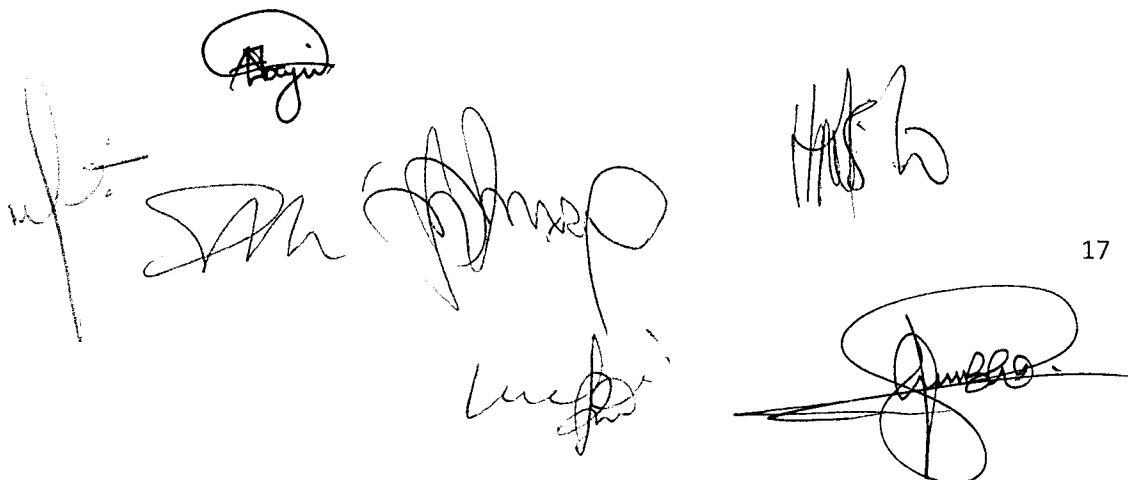
**Recommendations**

This particular Bill is based on wrong assumptions and is not justified in democratic governance. It offends the Rules of Procedure and Public Finance Management Act in respect of Certificate of Financial implications and we invite members to recall our history of this country and reject this bill in its entirety.

**Conclusion**

We reject the Bill as presented for the reasons aforesaid and others hereunder. We believe the bill was not brought in good faith and is intended to undermine the democratic path of the country.

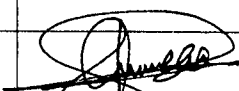
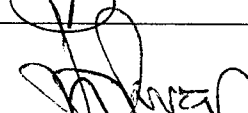
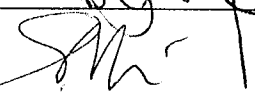
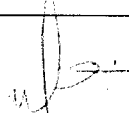
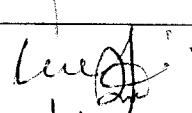
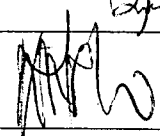
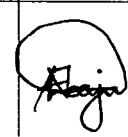
As the Speaker guided, Government should establish the Constitution Review Commission and spearhead the development of a comprehensive Constitutional amendments desired by the entire country.



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**COMMITTEE ON LEGAL AND PARLIAMENTARY AFFAIRS**

**APPROVING THE MINORITY REPORT ON THE CONSTITUTION (AMENDMENT) No 2 BILL,  
2017**

NO	NAME	CONSTITUENCY	PARTY	SIGNATURE
1.	Medard Lubega Ssegona	Busiro East	D.P	
2.	Wilfred Niwagaba	Ndorwa East	Indep	
3.	Abdul Katuntu	Bugweri County	FDC	
4.	Mathias Mpuuga	Masaka Municipality	DP	
5.	Monica Amoding	Kumi District	NRM	
6.	Mohammad Nsereko	Kampala Central	Indep	
7.	Semujju Ibrahim Nganda	Kira Municipality	FDC	
8.	Ann Adeke Ebaju	National Youth(Female)	Indep	



**CERTIFICATE  
OF  
FINANCIAL IMPLICATIONS**

(Made under Section 76 of The Public Finance Management Act 2015)

**THIS IS TO CERTIFY** that the Bill entitled, **THE CONSTITUTION (AMENDMENT) BILL, 2017**, has been examined as required under Section 76 of the Public Finance Management Act, 2015 (as Amended). I wish to report as follows:

**(a) Background:**

In accordance with Articles 259 and 262 of the Constitution of the Republic of Uganda, on the 27<sup>th</sup> September, 2017, Parliament granted leave to Hon. Raphael Magyezi (MP), to introduce the Constitution Amendment Bill, 2017.

The amendment of the Constitution of the Republic of Uganda is also premised on the Supreme Court decision in *Amama Mbabazi Vs Yoweri Kaguta Museveni*, Electoral Commission and Attorney General in Presidential Election Petition No. 01 of 2016.

**(b) Objective of the Bill:**

The objective of the Bill is to amend the Constitution of the Republic of Uganda;

- i) To provide for the time within which to hold presidential, parliamentary and local government council elections under article 61;
- ii) To provide for eligibility requirements for a person to be elected as President or District Chairperson under articles 102(b) and 183(2)(b);
- iii) To increase the number of days within which to file and determine a presidential election petition under 104(2) and (3); and
- iv) To increase the number of days within which the Electoral Commission is required to hold a fresh election where a presidential election is annulled under article 104(6).

**(c) Expected outputs and the Impact of the Bill on the economy:**

The proposed amendments to the Constitution will strengthen the Constitution provision of Article 1 which gives the people of Uganda the absolute right to determine how they should be governed and articles 21 and 32 which prohibit any form of discrimination on the basis of age and other factors.

As a result, discrimination will be eliminated and this will strengthen the provisions of Equality and Freedom in the Constitution and provide a non-discriminatory environment for all Ugandans in terms of leadership aspirations.

In addition, the amendment is expected to provide for the key recommendations of the Supreme Court ruling in Presidential Election hence strengthening the Electoral process and fairness.

**(d) Planned Expenditure by major components over the MTEF period:**

The planned expenditure will be accommodated within the Medium Term Expenditure Framework for the Ministries, Departments and Agencies concerned.

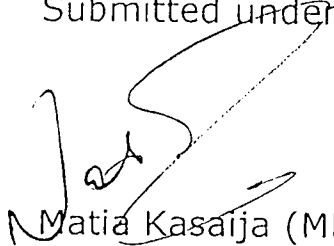
**(e) Funding and budgetary implications:**

There are no additional financial obligations beyond what is in the Medium Term Expenditure Framework and thus the Bill is budget neutral.

**(f) Expected benefits/ savings and/or revenue to Government:**

- i) Enhance democracy of Ugandans;
- ii) Strengthen the provisions of Equality and Freedom in the Constitution of the Republic of Uganda; and
- iii) Strengthen the electoral process in Uganda.

Submitted under my hand this **28<sup>th</sup> day of September, 2017.**

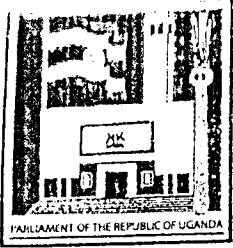


Matia Kasaija (MP)

**MINISTER OF FINANCE, PLANNING AND ECONOMIC DEVELOPMENT**

Received by: .....

Date: .....



PARLIAMENT OF UGANDA  
OFFICE OF THE CLERK TO PARLIAMENT

Parliament House, P.O. Box 7178, Kampala Uganda.  
Telephone: 0414-377000/377150/377152 Facsimile: 0414-346826 E-mail: clerk@parliament.go.ug  
Plot Nos. 16 - 18 Parliament Avenue

In any correspondence on  
this subject please quote No. ....

AM 157/440/01

28<sup>th</sup> September 2017

The Managing Director  
Uganda Printing and Publishing Company  
Entebbe - Uganda

Dear Sir,

*Hairinwanani  
Received 28/9/017*

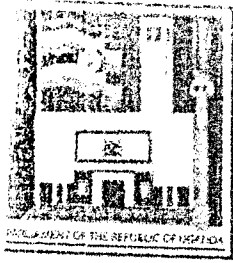
RE: INSTRUCTION TO GAZETTE AND PRINT THE CONSTITUTION  
(AMENDMENT) (NO. 2) BILL, 2017

Kindly publish and print the above Bill in the Uganda Gazette as a matter of urgency.

Yours faithfully,

Pius P. Biribonwoha  
For: Clerk to Parliament

"B"



# PARLIAMENT OF UGANDA OFFICE OF THE CLERK TO PARLIAMENT

Parliament House, P.O. Box 7178, Kampala Uganda.  
Telephone: 0414-377000/377150/377152 Facsimile: 0414-346826 E-mail: clerk@parliament.go.ug  
Plot Nos. 16 - 18 Parliament Avenue

In any correspondence on  
this subject please quote No. ....

**AJ 388/455/01**

29 September 2017

General Manager

Uganda Printing & Publishing Corporation (UPPC)

Entebbe

### DELAYED ISSUANCE OF LOCAL PURCHASE ORDER (LPO)

This is to inform you that we are processing the Local Purchase Order (LPO) for the Printing of 'The Constitutional Amendment Bill, 2017'. However, our system processes are such that we are unable to produce the LPO immediately but we do undertake to produce it by Friday, 06 October 2017.

Therefore in view of the above, we kindly request you to proceed with the printing of the Bill.

We remain grateful for your indulgence.

Yours faithfully,

Jane L. Kibirige (Mrs)

**CLERK TO PARLIAMENT**