

GOVERNMENT WHITE PAPER

ON

- (1) **THE REPORT OF THE COMMISSION
OF INQUIRY (CONSTITUTIONAL
REVIEW)**

- (2) **GOVERNMENT PROPOSALS NOT
ADDRESSED BY THE REPORT OF THE
COMMISSION OF INQUIRY
(CONSTITUTIONAL REVIEW)**

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ACRONYMS

CRC	Constitutional Review Commission
MJOCA	Ministry of Justice and Constitutional Affairs
NC	National Conference
NEC	National Executive Committee

TOR	Terms of Reference
IGG	Inspector General of Government
MFPE	Ministry of Finance, Planning and Economic Development
BOU	Bank of Uganda
UHRC	Uganda Human Rights Commission
UGLRC	Uganda Law Reform Commission
LGGC	Local Governments Grants Commission
PSC	Public Service Commission
ESC	Education Service Commission
JSC	Judicial Service Commission
HSC	Health Service Commission
EC	Electoral Commission
PPOA	Political Parties and Organizations Act
LCCB	Local Council Courts Bill
UNEB	Uganda National Examination Board
CRPO	Commission for the Remuneration of Public Officers
LGA	Local Governments Act, Cap.234
MIA	Ministry of Internal Affairs
NCC	National Council for Children
LCC	Leadership Code of Conduct

LGFC	Local Government Finance Commission
NPA	National Planning Authority
MPS	Ministry of Public Service
JLOS	Justice, Law and Order Sector
LAP	Legal Aid Project
FIDA	Uganda Association of Women Lawyers
PPDA	Poor Persons Defence Act
ULS	Uganda law Society

1.0 CHAPTER I

1.1 INTRODUCTION TO WHITE PAPER

1.2 PURPOSE OF WHITE PAPER

The Government has studied carefully the report, findings and recommendations of the CRC as well as the proposals arising out of the consultations with the representatives of the political forces and has taken various policy decisions including the adoption, rejection or variation of these proposals, findings and recommendations which included, among others, the amendment of the Constitution and other laws.

This White Paper is therefore intended to state the details of Government decisions on the proposals, findings,

recommendations and to indicate those which were accepted or rejected by Government and to show the way forward that the Government intends to follow for the transition from the movement political system to the multi-party political system.

1.3 PRELIMINARY

The Constitutional Review Commission chaired by Professor Fredrick Ssempebwa which was established on 9th February, 2001 by Legal Notice No.1 of 2001, issued by the Minister of Justice and Constitutional Affairs submitted its report, findings and recommendations to Government on the 10th of December, 2003.

~~On 10th December 2003, the Commission submitted its report, findings and recommendations to Government on the 10th of December, 2003.~~

The report has since been printed and presented to Cabinet and copies supplied to Members of Parliament on the 24th day of March, 2004 and laid on the Table of Parliament on the same day.

1.4 BACKGROUND

The setting up of the Constitutional Review Commission (CRC) became necessary because experience had shown from operating the current Uganda Constitution since it came into force in 1995 that it had several defects and several areas of inadequacy, which needed to be addressed in the interest of proper administration of the country.

Furthermore, it became necessary to address various complaints from several quarters to the effect that the interests of certain

communities had not been adequately addressed such as "Federo" and the status and functions of traditional or cultural leaders etc.

It had become necessary further to create procedures for settling deadlocks arising between the Executive and the Legislature in the discharge of the functions assigned to them by the Constitution in order not to cause paralysis in the administration of the country.

1.5 DECISION OF NATIONAL CONFERENCE AND NATIONAL EXECUTIVE COMMITTEE TO OPEN POLITICAL SPACE

As a result of the decisions of the National Conference and the National Executive Committee of the Movement taken in March, 2003 to open the political space during the constitutional review process, it became necessary to cause a reassessment of those articles of the Constitution relating to political systems and democratic governance to accommodate the decision of opening up the political space.

1.6 CONSULTATIONS WITH POLITICAL FORCES

In view of the decisions taken by the National Conference and the National Executive Committee to open the political space it also became necessary for the Government to hold various discussions and consultations with other political forces not wanting to be part of the movement in order to ensure a smooth and orderly transition to the multiparty political system.

1.7 PROPOSALS FROM CONSULTATIONS WITH POLITICAL FORCES

Several proposals for amendment of the Constitution arose out of the consultations with the representatives of the political forces.

1.8 TERMS OF REFERENCE OF THE COMMISSION

The terms of reference of the Constitutional Commission as set out in paragraph 4 of the Legal Notice No.1 of 2001 (as subsequently amended) were as follows—

- "(a) to examine the consistency and compatibility of the constitutional provisions relating to the sovereignty of the people, political systems, democracy and good governance and make recommendations as to how best to ensure that the country is governed in accordance with the will of the people at all times;*

- (b) having regard to the need for effective and democratic governance of the country, to review the provisions relating to executive authority and its obligations on the one hand and the powers of Parliament on the other, and to make recommendations to the necessity or otherwise of conferring powers on the President to dissolve Parliament and thereby appeal to the people by way of general election or Referendum if the Executive Authority and Parliament are deadlocked and cannot agree on a matter of fundamental executive or legislative importance;*

- (c) *to review the system of decentralisation of government and consider;*
 - (i) *whether Federalism should be introduced, where required; and*
 - (ii) *to recommend measures to make the system more efficient, having regard to the extensive powers and services devolved on the local government units and the human financial resources available and the procedure for removal of elected local government leaders from office.*
- (d) *to review the separation of powers among the Executive, Parliament and the Judiciary and recommend changes to improve functional effectiveness and accountability of the three arms of Government;*
- (e) *to review the composition, powers and privileges of Parliament and recommend an affordable but efficient and strong Parliament, bearing in mind the need for the effective representation of the people;*
- (f) *to review the qualifications and disqualifications of Members of Parliament and of the President and in particular Article 80(1)(c) which requires a minimum formal education of Advanced Level Standard or its equivalent and article 102(c) which provides that the President shall be a person qualified to be a Member of Parliament and make appropriate recommendations;*

- (g) *to examine the operation of Article 88 which provides for the quorum of Parliament in the light of the experience of Parliament since the coming into force of the 1995 Constitution and make recommendations as to whether or not the quorum should be reduced;*
- (h) *to examine the electoral system with a view to recommending whether Presidential and Parliamentary elections should be held at the same time and whether local government elections should be conducted by lining up of supporters behind candidates;*
- (i) *to consider and recommend measures intended to improve the access to and efficiency of the courts and in particular, the desirability of establishing a unified judicial service by transferring administrative and support staff from the Public Service Commissions to the Judicial Service Commission;*
- (j) *to review the relationship between the Inspector General of Government and the other institutions or organs designed to make the Government and public institutions transparent and accountable and recommend improvements in their efficiency and effectiveness and coordination;*
- (k) *to review the constitutional bodies and assess their desirability and affordability and to delineate their functions and powers in order to reduce duplication and conflict;*
- (l) *to re-examine the provisions relating to the acquisition and loss of citizenship and recommend whether dual citizenship*

should be allowed, particularly with regard to Ugandans living in the Diaspora;

- (m) to review article 162(2) relating to the functional independence of the Bank of Uganda, vis-à-vis particularly the Ministry of Finance and make recommendations;*
- (n) to review aspects of land relating to the necessity for Government to acquire land for public purposes or use and the desirability and affordability of the various land management and dispute resolution mechanism;*
- (o) to review the role and funding of traditional or cultural institutions and make appropriate recommendations;*
- (p) to review the provisions relating to the rights of children and young people and propose comprehensive and effective measures to protect children and young people against violence and abuse;*
- (q) to consider and recommend whether Uganda is ready to adopt a national or second official language;*
- (r) to review the Bill of Rights and consider, in particular, whether the death penalty should be abolished or whether the age of minority should be increased from 16 to 18 for purposes of employment;*
- (s) to consider and propose a programme and modalities for efficient, effective and expeditious implementation of the Constitution;*
- (t) ~~to review the provisions relating to the rights of children and young people and propose comprehensive and effective measures to protect children and young people against violence and abuse;~~*

1.9 LAYOUT OF THE REPORT OF CONSTITUTIONAL REVIEW COMMISSION

1.9.1 General

The report contains a general introduction comprising the composition of the Commission, Terms of Reference, matters outside terms of reference, problems encountered, Government proposals and executive summary of recommendations.

1.9.2 Chapters

The chapters are headed as follows

- Chapter 1 : The Socio-Economic Background
- Chapter 2 : Constitutional Development in Uganda since 1995
- Chapter 3 : Methodology
- Chapter 4 : Political Systems and Good Governance
- Chapter 5 : Executive Authority in relation to the role of Parliament and the Judiciary
- Chapter 6 : Parliament
- Chapter 7 : The Electoral Process
- Chapter 8 : Bank of Uganda
- Chapter 9 : Local Government
- Chapter 10 : ~~Family and Children~~
- Chapter 11 : Citizenship
- Chapter 12 : Protection of Children
- Chapter 13 : Death Penalty
- Chapter 14 : Constitutional Bodies
- Chapter 15 : Service Commissions

- Chapter 16 : Land Management, Dispute Resolution and Compulsory Acquisition of Land
- Chapter 17 : Access to Justice and Efficiency of Courts
- Chapter 18 : Cultural institutions
- Chapter 19 : Language
- Chapter 20 : Implementation

1.9.3 Annexes, Bibliography and Appendices

There are two Annex, namely;

Annex I Minority Position by Prof. Fredrick E. Ssempebwa, Chairman CRC

Annex II Minority Position by Sam F. Owori, Commissioner CRC

A Bibliography and six appendices are compiled in separate volumes.

1.9.4 Placement of Recommendations in the Report

The recommendations in respect of each chapter of the report are placed at the end of that chapter.

10 GOVERNMENT PROPOSALS SUBMITTED TO THE COMMISSION

According to the Commission, by the time the Government proposals for amendment of the Constitution were submitted to the Commission on 23rd September, 2003, it had officially concluded all public hearings, and all oral presentation from the public.

It was therefore not possible for the Commission to gather the people's responses to the Government proposals. The

Commission, however, stated in its executive summary that it had taken the Government's proposals into account, with the knowledge that they emanate from an institution, which plays a central role in the implementation of the Constitution.

According to the Commission, some of the Government proposals happened to be in tandem with the conclusions and recommendations the Commission had formulated.

The Commission stated further that other proposals of Government had been adopted because they were perceived to be a contribution of further value to the constitutional framework and where any proposals were not adopted, reasons were given for the Commission's decisions.

Finally, according to the Commission, in its executive summary, these reasons appear in the body of the report and are not reflected in the recommendations.

1.11 SUMMARY OF RECOMMENDATIONS OF THE COMMISSION

A summary of the recommendations in the report appears in paragraph 0.5:4 to 0.5: 20 of the executive summary, as follows:

(a) Change from Movement Political System to Multiparty Political System

The Commission recommended that the multiparty political system be adopted by the people through a resolution of Parliament upon a petition of districts as prescribed by article 74(2) of the Constitution (para 0.5.4)

(b) Relationship between arms of Government

The Commission made the following recommendations on the functional effectiveness and accountability of the three organs of the Government namely; the Executive, the Legislature and the Judiciary.

- (i) the Executive form of Government be retained with clear separation of roles for the three organs of Government;
- (ii) the office of the Prime Minister be established under the Constitution;
- (iii) a deadlock between the President and Parliament be resolved by the people through a Referendum;
- (iv) Ministers should not at the same time serve as elected Members of Parliament;
- (v) a Minister in respect of whom a vote of censure has been passed should resign or else the President must revoke his or her appointment. He or she will not be eligible for a reappointment during the tenure of the Parliament that censured him or her and the subsequent Parliament;
- (vi) the process of approving appointments should be more transparent. (para 0.5.5)

(c) Parliament

The Commission recommended that the size of Parliament should be reduced and that constituencies of members directly elected should be based on a population quota of two hundred thousand (200,000) inhabitants per

constituency instead of the seventy thousand inhabitants currently reckoned with.

Other recommendations in relation to Parliament are as follows-

- (i) the remuneration of members of Parliament should be determined by an independent commission;
- (ii) candidates who have been proved to have involved themselves in electoral malpractices should be disqualified from standing for Parliament for a period of seven years; and
- (iii) the special representation of the army, the youths and the workers should cease. (para 0.5.6).

(d) Presidential Term, Presidential, Parliamentary and Local Government Elections

The Commission made the following recommendations in respect to the lifting of the presidential terms and also in relation to presidential and parliamentary elections—

- (i) whether to provide for indefinite eligibility for the post of the President. The recommendation is that this issue be referred to a decision of the people through a referendum;
- (ii) the position of the Vice President in succession to the office of the President. It is recommended that the Vice President be a running-mate of the President so that he or she is capable of taking over the office of President in the event of resignation, removal or death of the President;

(iii) whether Presidential and Parliamentary elections should be held on the same day. It is recommended that they be held on the same day and that local government council elections be held on a separate day. (para 0.5.7)

(e) Decentralisation and Federalism

The Commission made the following recommendations on the question of decentralisation and federalism.

- (i) the autonomy of local governments be maintained and strengthened by improving their revenue capacity and broadening the discretion to determine priorities;
- (ii) two or more districts should be free to form a regional government. The regional government should be based on an assembly. The regional government should have exclusive jurisdiction over matters specified in the Constitution.
- (iii) notwithstanding the adoption of regional governments utilisation of resources could be rationalised by regionalising institutions of service delivery. (para 0.5.9)

(f) Dual Citizenship

The Commission recommended the adoption of dual nationality subject to a law enacted by Parliament, but recommends that the law should include provisions whereby a person could lose his or her Ugandan citizenship if his or her continued holding of another country's citizenship is not in the interests of Uganda. (para 0.5.11)

(g) Death Penalty

The Commission has recommended that the death sentence should be retained and be mandatory only for the criminal offences of murder, aggravated robbery, kidnapping with intent to murder and defilement of minors below fifteen years of age. (para 0.5.13).

(h) Bonafide occupants and rent payable to registered owner by lawful and bona fide occupants.

The Commission recommends that Government should adopt a national land policy to regulate the use of land. The Commission recommends in particular that the law should recognise the right of the landlord to rent commensurate with the value of the land. In order to prevent the exploitation of the occupants the rent should be fixed by the District Land Boards through a system of zoning and be subject to final determination by a district land tribunal. (para 0.5.16)

(i) Traditional or Cultural Leaders

The Commission recommends that where applicable, Government should restore to traditional or cultural leaders all their assets or properties so that it provides a base for their sustenance and also that Government should provide an endowment to form trust funds managed for the sustenance of traditional leaders and further that the local government of the area over which a traditional or cultural leader rules should be free to confer benefits on the traditional and cultural leader or the institution. (para 0.5.18)

(j) National Language

The Commission recommended that Kiswahili should be considered for intensive teaching and popularising so that it can be the language for regional interaction. The Commission further recommended that French should be promoted as another language which Ugandans can use internationally. (0.5.19)

(k) Other Recommendations

The Commission also makes miscellaneous recommendations in relation, among others, to the following—

- (a) ~~independence of the Commission~~ (0.5)
- (b) independence of Bank of Uganda, (para 0.5.8)
- (c) performance of the Uganda Human Rights Commission and its retention (para 0.5.10)
- (d) the need to retain constitutional bodies, namely, the Inspector General of Government, the Uganda Law Reform Commission, Uganda Land Commission and the Local Government Finance Commission, the role of Service Commissions with a view to delineating their functions and powers in order to reduce duplication and conflict, Public Service Commission, Education Service Commission, Health Service Commission and the Judicial Service Commission should have their memberships reduced and should have a joint secretariat to serve them (para 0.5.14,15)

(e) improve access to the efficiency of the courts. People's complaints against the Judiciary should be handled by IGG (para 0.5.17)

(l) Implementation of the Recommendations of the Commission

Finally, in Chapter 20 of the Commission's report, the Commission makes recommendations as to how its reports and recommendations can be implemented i.e whether by way of an ordinary Act of Parliament or by amendment of the Constitution. (para 0.5.20)

1.12 LAYOUT OF THE WHITE PAPER

1.12.1 Decisions and Responses of Government

In setting out decisions and responses of the Government in the following pages of this White Paper, an attempt has been made to follow the sequence of the Chapters of the Constitutional Review Commission's report so far as practicable. Chapter I contains the introduction and background to the White Paper and Chapter 2 is the Preliminary. Chapters 3 to 19 of the White Paper deal with the recommendations of the Constitutional Review Commission's report covered in Chapters 4-20 of that report and each Chapter of the White Paper corresponds with an identical Chapter in the Commission's report.

2.0 CHAPTER 2

2.1 PRELIMINARY

2.2 Chapters 1, 2 and 3 of the Commission of Inquiry (Constitutional Review) Report (referred to in this White Paper as the "Report") deals with the following matters—

- (a) the socio-economic background against which the Constitution was being reviewed;
- (b) the constitutional development in Uganda since the Constitution was promulgated in 1995; and
- (c) the methodology adopted by the Commission according to which the Commission carried out its assignment.

As indicated in Chapter 3 of its Report, the Commission first submitted to the Minister of Justice and Constitutional Affairs an inception Report in July, 2001 followed by regular periodic reports to appraise the Minister on the progress of the Commission.

Government response

Government notes the contents of Chapters 1, 2 and 3 of the Report and is grateful for the effort involved in the submission of the inception and periodic Reports of the Commission.

3) CHAPTER3

3 POLITICAL SYSTEMS AND GOOD GOVERNANCE (OR CHAPTER4)

3.2 The Commission's term of reference (a) to which Chapter 4 of the Report relates was—

"to examine the consistency and compatibility of the constitutional provisions relating to the sovereignty of the people, political systems, democracy, and good governance and make recommendations as to how best to ensure that the country is governed in accordance with the will of the people at all times".

3.3 Recommendations (para 4.13, pg 4-36 of the Report)

- (i) The multiparty form of participation be adopted through the process provided by article 74(2) of the Constitution (by resolution of Parliament upon a petition by district councils).

Government response

Government notes this recommendation but is of the view that the change of political system from the current Movement Political System to the Multi-Organisations/Multiparty Political System can better and more cheaply be achieved by amendment of article 74 of the Constitution.

(i) Thus it is proposed to amend article 74 of the Constitution to provide that from the end of the current term of Parliament, public elections in Uganda will be held under multi-organizations /multiparty political system. This amendment will require approval at a referendum under article 259 of the Constitution. In the proposed amendment, the power of the people of Uganda to change the political system under article 74(1) (2) of the Constitution in the fourth year of future Parliaments will be preserved.

Additionally, necessary amendments will be made to articles 69 and 71 of the Constitution to recognize the multi-organisation/multiparty political system.

(ii) Individuals should be free to stand as independent candidates.

Government response

Government accepts this recommendation. Article 85(g), and (h) are adequate for that purpose. Clause (g) of article 83 should be amended to give Political Organisations/Parties the power to expel a member of their organization or party. A provision should be made in the Constitution that Parliament shall by law,

regulate the conduct of independent candidates. A provision should be made in the Political Parties and Organizations Act (PPOA) to require the parties/political organizations to be democratic in selecting candidates to stand in any election.

- (iii) All political systems shall continue to be provided for by the Constitution.

Government response

Government accepts this recommendation.

- (iv) (a) ~~The transition to a multiparty system shall be done by committee, based on the principle of transparency.~~

- (b) In order to open up political space, Parliament should review laws that were meant to implement political participation. For example, article 269 of the Constitution which has served its purpose; the Political Parties and Organizations Act, 2002 particularly with respect to sections 10(7) and 10(8); the Police Act, with respect to the power of the Police to permit political gatherings; the elections laws, with respect to provisions such as those against partisan campaigns.

Government response

Government notes the above recommendations and states that already steps are being taken to achieve this objective.

- (v) In a multiparty system, all persons holding public or military office should resign upon seeking nomination to a political office.

Government response

Government accepts this recommendation but observes that this arrangement is only applicable during a multiparty political system. If the multi-organisations/multiparty system is chosen, steps will be taken to adjust the existing laws to accord with the new political system.

- (vi) The principle that should guide the regulation of political parties is that the parties or organizations must conform to the Constitution, its national objectives and the law. They must also be accountable to the members. The penalties for failing to conform to the principles should be de-registration sought through the process of law.

Government response

Government takes note of the recommendation and observes that the matter will be addressed in the Political Parties and Organizations Act.

4.0 CHAPTER 4

4.1 EXECUTIVE AUTHORITY IN RELATION TO THE ROLE OF PARLIAMENT AND THE JUDICIARY (CRC CHAPTER 5)

4.2 Chapter 5 of the Report combined the Commission's mandate under two terms of reference. The first, is the mandate under term of reference (b), which is:

"having regard to the need for effective and democratic governance of the country, to review the provisions relating to Executive authority and its obligations on the one hand and the powers of Parliament on the other, and to make recommendations as to the necessity or otherwise of conferring powers on the President to dissolve Parliament and thereby appeal to the people by way of general elections or referendum if the executive authority and Parliament are deadlocked and cannot agree on a matter of fundamental executive or legislative importance".

The second is the mandate under term of reference (d), which is:

"to review the separation of powers among the Executive, Parliament and the Judiciary and recommend changes to improve the functional effectiveness and accountability of the three arms of Government".

4.3 Recommendations (para 5.19. pg. 58-59 of the Report

- (i) (a) Uganda should retain the executive form of Government enshrined in the Constitution with the same separation of powers and roles. The President should not exercise any legislative powers.

Government response

Government accepts this recommendation but observes that the President should exercise limited legislative powers in matters related to investment, environment, public health and historical and archeological sites. The right to exercise this power can be granted to the President through an Act of Parliament under article 79(2) of the Constitution and does not require amendment of the Constitution.

- (b) A Member of Parliament who accepts the office of Minister should vacate his or her seat in Parliament.

Government response

Government accepts this recommendation and has taken into consideration the fact that only Ministers in Parliament will be able to exercise legislative powers on behalf of the Executive and promote coherence between the Executive and Legislature. Secondly, Ministers of Administration are Ministers who are not Members of Parliament (text of the recommendation) and therefore they will not vacate their seats in Parliament.

In addition, vacation of seats by elected Members of Parliament who were subsequently appointed Ministers, would increase the cost of public administration through by-elections that would have to be held to replace them, and would create further costs after every Cabinet reshuffle.

- (c) The Prime Minister and all Ministers shall be ex-officio Members of Parliament without a right to vote.

Government response

Government does not accept this recommendation. A Prime Minister and all Ministers who are also ordinary Members of Parliament should have a right to vote.

- (ii) The number of Ministers and Ministers of State should be fixed at twenty-two for each category. Parliament should have no power to approve more than that number of Ministers.

Government response

~~Government does not accept this recommendation~~

- (iii) (a) The office of the Prime Minister should be established by the Constitution.

Government response

Government accepts this recommendation

- (b) The functions of Prime Minister should be:
- λ coordinating, monitoring the implementation of Government policies and decisions and making reports to the President, Cabinet or Parliament;
 - λ to receive, analyse and evaluate the progress of projects on all Government programmes;

- λ to lead Government business in Parliament. This implies monitoring the proceedings of Parliament;
- λ liaising with Ministers on questions and issues raised in Parliament, and;
- λ coordinating Cabinet decisions with Parliament.

Government response

Government accepts this recommendation and emphasises that the Constitution needs to provide that the Prime Minister is the leader of Government business in Parliament.

Consequential amendments

It is proposed to make consequential amendments to articles 98(2) (Order of Precedence), article 111 (The Cabinet), and the Fourth Schedule (Oaths) of the Constitution to recognize the creation in the Constitution of the office of the Prime Minister.

- (iv) The office of the Deputy Attorney General should be established to deputise for the Attorney General.

Government response

Government accepts this recommendation and proposes that the person appointed as the Minister of State who is advocated in this case is a stand-in for the Attorney General and performs such functions as may be assigned to him or her by the President by law.

- (v) In approving appointments to a constitutional office, Parliament should take into account:

- (a) ~~The integrity of the nominee.~~
- (b) That there should be gender balance and fair representation of marginalized groups.
- (c) The qualifications of the nominee for the office to which he or she is nominated.
- (d) The ability of the nominee for the office taking into account performance at previous appointments, if any;
- (e) The integrity of the nominee.
- (f) Parliament should invite the public to make comments on the suitability of a candidate for appointment to constitutional office before approving the appointment.

These should be provided for in the Rules of Parliament.

Government response:

Government accepts this recommendation and agrees that this should be provided for in the Rules of Procedure of Parliament.

- (vi) The grounds upon which a vote of censure against a Minister can be passed should be:
 - (a) corruption;
 - (b) embezzlement;
 - (c) fraud;
 - (d) causing financial loss in respect of public funds;
 - (e) abuse of office;

- (f) mismanagement;
- (g) incompetence;
- (h) conduct or behaviour likely to bring hatred, ridicule, contempt or disrepute to the office of Minister;
- (i) conviction for a criminal offence with punishment of imprisonment or fine or both;
- (j) bankruptcy.

Government response

Government takes note of the recommendation but observes that the grounds set out in article 118(1) of the Constitution are adequate and should be maintained. The grounds set out under item (a) – (d) above are criminal offences that should be handled by courts and are not matters for censure by Parliament. Item (e) above is already provided for in the Constitution. It is not necessary to state bankruptcy as a ground of censure because under article 80(2)(d) and article 116(b)(ii) of the Constitution, a person is disqualified from being a Minister or Member of Parliament if adjudged a bankrupt.

In addition, it is the view of Government that at present, the provisions of article 118(2) and (3), on procedure for censure do not adequately cater for the observance of the rules of natural justice so as to avoid putting Parliament in a position of being a judge in its own cause. Government therefore proposes that article 118 be modified to provide that where an allegation is made

against a Minister under that article, the allegation should be investigated by an independent tribunal appointed by the Speaker of Parliament. The tribunal should report its findings to Parliament for Parliament to take a decision on the matter.

- (vii) If an allegation is made that a Minister is incapable of performing the functions of the office of Minister on health grounds, the allegation should be investigated by a Medical Committee appointed by the President. The President should take appropriate action in accordance with the recommendations of the report. The copy of the Report should be availed to Parliament.

Government response

Government accepts this recommendation.

- (viii) The recall of a Member of Parliament should be initiated by a petition signed by at least one half of the registered voters of the constituency.

Government response

Government accepts the recommendation but is of the view that in a multi organisations or multi party form of democracy recall of a member of Parliament should be provided for in the Code of Conduct for Political Parties and Organizations. Accordingly, Government is of the view that article 84 of the Constitution should be amended to state that the article will only apply when the movement form of democracy is in force.

- (ix) A petition of censure should be withdrawn in a manner provided for by the Rules of Procedure of Parliament.

Government response

Government accepts this recommendation.

- (x) ~~AMUSICUGLEEDL1111D111D1111~~

Government response

Government accepts this recommendation. Government is of the view that if the procedure recommended above is adopted the Minister censured in the manner above should not be re-appointed for five years.

- (xi) In case of a deadlock when the President and Parliament cannot agree on a matter of fundamental executive or legislative importance, the matter should be referred to the people to decide in a referendum. Depending on the results, the President should resign or Parliament shall stand dissolved paving way for fresh elections.

Government response

Government does not accept this recommendation. Where there is a deadlock between the President and Parliament, the matter should be resolved by the President dissolving Parliament, in which case the office of the President should also become vacant. There should then be both presidential and parliamentary elections.

The rationale for rejecting the proposal of the Commission, which involves both a referendum and elections, is that it is not direct and it is more expensive as compared to the Government proposal, which is direct and does not involve a referendum.

Thus Government proposes to regulate the matter in a new proposed article 96A of the Constitution which reads as follows—

"96A Dissolution of Parliament by the President on ground of disagreement on matters of confidence

(1) ~~Where the President and Parliament disagree on any matter which has been declared to be an issue of confidence under clause (1) and the matter cannot be resolved between them, the President may, by proclamation, dissolve Parliament.~~

(2) Where the President and Parliament disagree on any matter which has been declared to be an issue of confidence under clause (1) and the matter cannot be resolved between them, the President may, by proclamation, dissolve Parliament.

~~Where the office of the President becomes vacant under this article the President and his or her Cabinet shall continue in existence until a new President assumes office after an election held by virtue of this article.~~

(4) Where the office of the President becomes vacant under this article the President and his or her Cabinet shall continue in existence until a new President assumes office after an election held by virtue of this article."

According to the Uganda Electoral Commission, where Parliament is dissolved and the President's term has come to an end under the above mentioned article 96A, it will take about four months to hold both a presidential and parliamentary elections in accordance with the new article.

~~And Commission shall be responsible for holding the election under article 96A of the Constitution and shall report to the President on the results of the election.~~

Under the new article 96A to avoid a vacuum, the President and his or her Cabinet will, during the period when elections are being organised, continue in office as a caretaker Government.

- (xii) (a) The Constitutional guarantees for the independence of the Judiciary be maintained.

Government response

Government notes this recommendation and observes that this is already the constitutional position.

- (b) Parliament should pass the necessary laws to make the participation of the people in the administration of justice a reality.

Government response

Government notes this recommendation and observes that as one of the steps for promoting this principle, Government has already tabled in Parliament the Local Council Courts Bill, which provides for the participation of the people in the administration of justice.

- (c) Before Parliament approves the appointments of Judges of the Superior Courts, the comments of the people should be solicited and be given through the people's representatives in Parliament or direct to the relevant committee dealing with appointments. A provision to this effect should be included in the Rules of Procedure of Parliament.

Government response

Government does not accept this recommendation. Government is of the view that the existing machinery for appointment of judges is adequate. The people are represented in Parliament and on the Judicial Service Commission.

✘ The performance of judicial officers should be subject to assessment by a special division of the Inspectorate of Government every ten years.

Government response

Government does not accept this recommendation because the Judicial Service Commission is already in a position to provide for a periodic assessment of the performance of judicial officers as and when it considers appropriate.

5.1 PARLIAMENT (CRC CHAPTER 6)

5.2 The mandate of the term of reference (e) to which Chapter 6 of the Report relates is—

"to review the composition, powers and privileges of Parliament and recommend an affordable but efficient and strong Parliament, bearing in mind the need for the effective representation of the people".

5.3 Recommendations (para 6.11, pg. 6 - 75 – 76 of the Report)

- (i) (a) There should be a total of 120 elected members of Parliament.
- (b) The population quota for purposes of demarcating constituencies for elected members of Parliament should be 200,000.
- (c) Each district must be represented by at least one Member of Parliament elected to represent a Constituency.
- (d) The special representatives of women and persons with disabilities should continue but representatives should not serve more than two terms.

Government response

Government does not accept recommendation (i) (a) – (d) above. Government is of the view that the size of Parliament should remain as it is; the constituencies should also remain as they are; the district woman representative, and representatives of the army, youth,

workers and persons with disabilities should also remain. The present position gives maximum representation to the population and it would be unfair to reduce the representation.

Furthermore, the present size of Cabinet and Parliament has without doubt been instrumental in forging national consensus and has in the past facilitated the adoption of fundamental and difficult policies.

- (ii) The minimum academic qualification for members of Parliament (and also of the President) should continue to be advanced level standard or equivalent.

Government response

Government accepts this recommendation.

- (iii) The Uganda National Examinations Board should continue to determine what qualifications are equivalent to 'A' level

Government response

Government notes this recommendation. Parliament should in the relevant laws, prescribe that the National Council for Higher Education should be the authority for determining what qualifications are equivalent to advanced level. Parliament will also determine, by law, the time within which a candidate will establish his or her claim to the qualification.

- (iv) (a) An independent institution should be established to make recommendations on the remuneration of members of Parliament and other public officers.
- (b) The institution should be known as the Commission for the Remuneration of Public Officers.

Government response

~~Government accepts this recommendation. However, the institution should be called the Status and Remuneration Board~~

- (v) The composition of the Commission should be—
 - (a) chairperson who should be a person qualified to be a Judge of the Superior Courts;
 - (b) the chairperson of each Service Commission under the Constitution;
 - (c) two members of Parliament elected by Parliament; two Ministers appointed by the President to represent the Executive;
 - (e) the Permanent Secretary to the Ministry responsible for Finance;
 - (f) two Judges of the Superior Courts nominated by the Judges;
 - (g) two representatives of Private Sector;
 - (h) the Head of the Public Service and Secretary to the Cabinet;
 - (i) The Commission should be independent and not subject to the control or direction of any person.

Government response:

Government accepts this recommendation except in (v)(a). Government is of the view that given the importance of the Board, the Chairperson should be a person of high moral character and proven integrity possessing extensive experience of service in the public service or in private sector organisations.

Government also is of the view that the remuneration of members of Salaries and Remuneration Board should be determined by the Minister responsible for finance with the approval of the Cabinet.

- (vi) A person should be disqualified from being a member of Parliament:
- (a) if she or he has within the preceding seven years served a sentence of imprisonment by whatever name called imposed by a competent court having been convicted for an offence involving moral turpitude.
 - (b) if she or he has within the preceding seven years been found by an election court to have committed an illegal practice in an election in Uganda.

Government response

Government accepts the principle in this recommendation but is of the view that a person should only be disqualified if he or she—

- (a) has, within the seven years immediately preceding the election, been convicted by a competent court of a crime involving dishonesty or moral turpitude; or**
- (b) has, within the seven years immediately preceding the election, been convicted by a competent court for contravention of any offence relating to elections conducted by the Uganda Electoral Commission.**

(vii) Article 78(1) (c) of the Constitution should be amended to remove references to the army, the youth and workers.

Government response

Government does not accept this recommendation. As regards the army, Government is of the view that for the near future and for security reasons it will be prudent to accord the institution representation in Parliament. For, after all, when necessary the representation can be abolished or modified by the Act of Parliament under article 78(2).

(viii) Article 80(3) should be deleted and replaced by a new disqualification whereby a person who holds a public office is disqualified from standing for election as a member of Parliament.

Government response

Government accepts this recommendation but observes that this is only applicable during the multi-organizations/ multiparty political system.

- (ix) A person should vacate his or her seat in Parliament if he or she accepts appointment as a Minister.

Government response

Government does not accept this recommendation. This is in line with Government response in para 4.3(i)(b) above.

- (x) The quorum of Parliament should be 50% of the members of Parliament.

Government response

Government does not accept this recommendation. Government is of the view that 50% is high and oppressive compared to the current requirement of one third of all members of Parliament (article 88 of the Constitution). Additionally, Government is of the view that the quorum of Parliament is a matter, which should be determined by the Rules of Procedure of Parliament. Accordingly, the Constitution should be amended to reflect this position.

- (xi) The recall of a member of Parliament should be initiated by a petition signed by at least half of the registered voters in a constituency. Article 84(3) of the Constitution should be amended accordingly. [See also recommendation (viii) of the Report Chapter 5]

Government response

Government does not accept this recommendation for reasons already outlined under 4.3 (viii) of this White Paper. Government accordingly, recommends that article 84 of the Constitution which provides for recall should be amended to state that recall should only apply when the multi organisations or multi party form of democracy is in operation.

~~The question has been dealt with in the Code of Conduct of Political Parties and Organisations which is provided in the Political Parties and Organisations Act~~

- (xii) ~~Parliament should be empowered to pass a law to regulate the conduct of political parties and organisations.~~

Government response

Government notes this recommendation and observes that Government is in the process of installing an electronic voting system.

Government is of the view that open voting should be adopted in all matters except for elections and that Parliament should regulate by rules of procedure the method of open voting.

- (xiii) Article 97(2) of the Constitution should be repealed.

Government response

Government accepts the above recommendation.

- (xiv) The Speaker should once every three months publish the names of members of Parliament who have failed to attend meetings of Parliament or its committees without valid cause. A provision to this effect should be embodied in the Rules of Parliament.

Government response

Government accepts this recommendation. This can be regulated by the Rules of Procedure of Parliament.

6.0 CHAPTER 6

6.1 THE ELECTORAL PROCESS (CRC CHAPTER 7)

ELECTIONS

6.2 The term of reference (h) to which Chapter 7 relates is:

"to examine the electoral system with a view to recommending whether presidential and parliamentary elections should be held

at the same time and whether local government elections should be conducted by lining up of supporters behind candidates".

6.3 Recommendations (para 7.17, pg 7-96 of the Report)

- (i) Parliament should be obliged by the Constitution to pass laws that affect the running of elections at least six months prior to the date of the election. Any law passed within the six months prior to the election shall not apply to that election.

Government response

Government does not accept this recommendation. While Government appreciates the need to pass the necessary electoral laws in time in order to avoid embarrassment to the Electoral Commission in holding elections, it is not practical to seek to compel Parliament by law to pass the laws within any particular time. It is important however for both the Executive and the Legislature to cooperate to ensure that the electoral laws are passed in reasonable time before the elections to which they relate. The recommendation if accepted can give rise to doubts as to the applicability of particular laws relating to elections.

- (ii) The chairperson and at least one member of the Electoral Commission should be a person qualified to be a Judge of the High Court.

Government response

Bearing in mind the functions of the Commission, the chairperson of the Commission need not be a person

qualified to be a Judge of the High Court. The Attorney General is mandated to provide legal assistance to the Commission. Additionally, the secretariat of the Commission has a legal department to address legal issues that emerge in the process of elections. Government therefore does not accept this recommendation.

- (iii) A member of Electoral Commission should be removed from office only after a formal inquiry into allegations of inability to perform, misbehavior, misconduct or incompetence.

Government response

Government accepts this recommendation. Members of the Commission need security of tenure to preserve their independence. Government is of the view that removal of a member of the Electoral Commission should be after investigation, by a tribunal established by the President and in a manner similar to the mode of removal of judges.

~~It is proposed that the Electoral Commission be established by an Act of Parliament.~~

Accordingly, it is intended that in relation to the Commission, article 60 of the Constitution be amended by inserting immediately after clause (5) the following—

“(5a) A member of the Commission shall vacate his or her office if he or she is under a sentence of death or a

sentence of imprisonment exceeding nine months without the option of a fine, imposed by a competent Court.

(5b) Any question for the removal of a member of the Commission shall be referred to a tribunal appointed by the President which shall submit its findings to the President; and the President may remove the member if the tribunal recommends that the member should be removed on any of the grounds specified in clause (5).

(5c) Where the question for removal of a member involves an allegation that the member of the Commission is incapable of performing the functions of his or her office arising from infirmity of body or mind, the President shall, in consultation with the Head of the Health Services of Uganda, appoint a Medical Board which shall investigate the matter and report its findings to the President with a copy to the tribunal.

~~(5d) Where a member of the Commission is suspended from office, the President may, in consultation with the Head of the Health Services of Uganda, appoint a Medical Board which shall investigate the matter and report its findings to the President with a copy to the tribunal.~~

(5e) A suspension under clause (5d) shall cease to have effect if the tribunal advises the President that the member suspended should not be removed."

(iv) The functions of the Electoral Commission should include:

λ to study and review electoral laws and any proposed electoral legislation and make appropriate recommendations to Parliament;

- λ to register and supervise the functioning of political parties; and
- λ to foster cooperation and harmony amongst political parties.

Government response

Government does not accept this recommendation. The Electoral Commission should make proposals through the relevant Minister.

Regarding the proposal to make it a duty of the Electoral Commission to register and supervise political parties, Government observes that although the procedure of verification of voters can best be done by the Electoral Commission, registration is done by the Registrar General. The Registrar General will continue to register and supervise political parties while the Electoral Commission undertakes verification of voters. Government is of the view that fostering cooperation and harmony among political parties should not be the responsibility of the Electoral Commission, but that of the court. In addition, a framework should be included in the Code of Conduct for Political Parties and Organisations and also a national consultative forum should be established for the purpose. These could be incorporated in the Political Parties and Organisations Act.

- (v) The demarcation of constituencies for directly elected representatives in Parliament should be based on a

population quota. For convenience of representation, a constituency should not cross boundaries of subcounties.

Government response

Government does not accept this recommendation. The present position gives maximum representation of the population and it would be unfair to reduce the representation, through reduction of constituencies based on increased population quotas.

- (vi) The election of district women members of Parliament should be by universal adult suffrage.

Government response

Government accepts this recommendation. No doubt in a multi-organisations/multiparty political system the parties will assist their candidates with funds for such elections.

- (vii) The election of representatives of persons with disabilities to Parliament should be conducted by regional electoral colleges.

Government response

Government does not accept this recommendation. Government is of the view that it is more practical for persons with disabilities to be elected at a National Electoral College.

- (viii) Elections of persons with disabilities should be held two days prior to presidential and parliamentary elections.

Government response

~~Government has recommended that the view that persons with disabilities should be held to have the same rights as other groups and that women representatives~~

- (ix) Both the presidential and parliamentary elections should be held on the same occasion/day.

Government response

Government accepts this recommendation. Government has accordingly approved the following order for holding elections in Uganda on different days for purposes of the roadmap—

- (a) presidential, Parliamentary and district LCV chairperson elections to be held on the same day by universal adult suffrage and secret ballot;**
- (b) elections for the district councillors be held on the same day;**
- (c) elections for the subcounty or municipality be held on the same day;**
- (d) election for administrative units at village and parish levels be held on the same day;**
- (e) elections for parliamentary special interest groups, namely, army, youth, workers and persons with disabilities in their different electoral colleges, be held on different days. The women representatives in Parliament are elected on the same day as Parliament.**

However it has been noted that the costs of holding elections by secret ballot have become prohibitive. Government has therefore directed the Minister responsible for local government to look into the possibility of amending the law to simplify elections at local council I and II to remove the requirement for secret ballot.

- (x) A person should not be qualified to be a member of Parliament or a local council if he or she has, within the immediately preceding seven years, been proved to have committed an illegal practice by a court trying an election petition.

Government response

Government accepts the principle in the recommendation but is of the view that a person should only be disqualified after conviction. Government therefore proposes the following - that a person should be qualified to be a member of Parliament or a local council if he or she—

- (a) **has, within the seven years immediately preceding the election, been convicted by a competent court of a crime involving dishonesty or moral turpitude;**
- (b) **has, within the seven years immediately preceding the election, been convicted by a competent court for contravention of any offence relating to elections conducted by the Uganda Electoral Commission.**

- (xi) The army should not be deployed to keep the peace during elections.

Government response

Government rejects this recommendation. Government however is of the view that the army may be involved, to keep the peace during elections, at the request of the Electoral Commission.

- (xii) All elections should be by secret ballot.

Government response

~~Government accepts this recommendation in principle. However, in order to accept government has decided the Minister responsible for government to kind the possibility of mandating to simply do not have to do so. It is the requirement of such as (see paragraph 3) above).~~

- (xiii) The Electoral Commission should be empowered to acquire the service of the personnel from the police and election constables in time for sensitizing the personnel about the law and practice of elections.

Government response

Government accepts this recommendation in principle but is of the view that there is need to build the capacity of the police, instead of introducing a parallel body to exercise its mandate to provide internal security, including provision of security at election times. Government is of the view that the capacity of police should be accordingly strengthened.

- (xiv) A serious study of the systems of proportional representation be made with a view of considering whether it could be adopted for Uganda.

Government response

~~Government does not accept this recommendation as well known proportional representation is by and is established in the constitution~~

- (xv) The Vice President shall be elected together with and as a running mate of the President.

Government response

Government does not accept this recommendation. This principle does not allow flexibility. For instance, where the Vice President is not performing, the President has no power to remove him or her, and yet it is the President who is accountable to the people. Additionally, it is important that the President should have as a Vice President a person with whom he or she can cooperate and not have unnecessary conflicts.

One consequence of not accepting a running mate as Vice President for the President is that where for any reason the President ceases to hold office before the full presidential term expires, the term of the new President elected to succeed him or her will not enable the next presidential election to be held on the same day as the next parliamentary elections as has been decided by Government following a recommendation of the Commission in paragraph 6.3 (ix) of this White Paper.

It has been decided therefore that subject to article 109(3) of the Constitution, a person elected President by reason of the fact that an incumbent President ceases to hold office before the expiry of his or her full term as prescribed by article 105(1) of the Constitution, should only serve the remainder of the term of the person who ceased to be President.

This will, however only happen if the remainder of the term of the President is more than one year. This is because under article 109(3) of the Constitution, where a President ceases to hold office in mid term and the remainder of the original term is one year or less, the Vice President will act as President for the remainder of the term of the President who ceased to hold office.

The new policy will require an amendment of article 105(1) of the Constitution.

(xvi) ~~For details see Report of the Panel on the composition of the~~

Government response

This recommendation corresponds with the existing mode of filling of vacancy in the office of Vice President under article 108(7) of the Constitution. Government therefore has no objection to the recommendation.

(xvii) ~~For details see Report of the Panel on the composition of the~~

Government response

Government accepts this recommendation but is of the view that, the benefits of the Vice President should be

determined by the Salaries and Remuneration Commission and not by Parliament.

- (xviii) If the President dies, resigns, or is removed from office under the Constitution, the Vice President shall assume the office of President for the remaining part of the term the President was due to serve.

Government response

Government does not accept this recommendation since the Vice President is not a running mate of the President. The current position under article 109(2) and (3) of the Constitution should be retained i.e that the Vice President will act as President if the remaining term is one year or less. Otherwise there should be a presidential election within six months.

- (xix) The issue as to the limit on the number of terms the President can serve should be put to the people to decide in a referendum.

Government response

Government accepts this recommendation in principle but is of the view that the issue as to the limit on the number of terms the President can serve should be handled by Parliament rather than through a referendum.

- (xx) If the Vice President assumes office by reason of the death, resignation or removal from office and the remaining part of the term the President was due to serve is less than four years, the term served shall not count for purposes of determining the Presidential term.

Government response

Government does not accept this recommendation since the recommendation to have the Vice President, as a running mate of the President is not acceptable.

7.0 CHAPTER 7

7.1 BANK OF UGANDA (CRC CHAPTER 8)

7.2 The Commission's term of reference (m), to which Chapter 8 of the Report relates is:

"to review article 162(2) relating to the functional independence of the Bank of Uganda vis-à-vis, particularly the Ministry of Finance and make recommendations".

7.3 Recommendations (para 8.5, pg. 8-104 of the Report)

- (i) The independence of the Bank of Uganda as provided for in the Constitution of the Republic of Uganda 1995 should be retained.

Government response

Government accepts this recommendation.

- (ii) That the Bank of Uganda Act should be amended so as to conform to the Constitution.

Government response

Government accepts this recommendation.

- (iii) There should be close coordination between the Ministry of Finance and the Bank of Uganda.

Government response

Government accepts this recommendation.

- (iv) In order to promote transparency, and accountability and to facilitate dialogue, the Bank should provide the Government and Parliament with a report every six months.

Government response

Government accepts this recommendation but is of the view that the reporting should be done annually.

- (v) The board should be composed of highly qualified people with relevant experience in areas of finance, monetary policy and development economics.

Government response

Government accepts this recommendation. Additionally, Government is of the view that the board members should be persons with high moral character and proven integrity.

8.0 CHAPTER 8

8.1 LOCAL GOVERNMENT (CRC CHAPTER 9)

8.2 The Commission's term of reference (n), to which Chapter 9 of the Report relates is:

"to review the system of decentralization of government and consider

(i) whether federalism should be introduced where required; and

(ii) to recommend a system of financing local government which is consistent with the national financial strategy and the principles of decentralization of government.

8.3 Recommendations (para 9.17, pg. 9-131 of the Report)

- (i) ~~The Commission should recommend that the~~

Government response

Government notes the recommendation and observes that implementation of this recommendation will depend on the national budget. Government is of the view that this recommendation is not a constitutional matter and can be implemented by Act of Parliament.

- (ii) (a) Local Governments should retain the power to appoint and supervise staff under the local government services including the Chief Administrative Officer;
- (b) Clause (2) of article 188 should be amended to provide for an input by the Public Service Commission in the appointment of the Chief Administrative Officer. The Clause should read:

"The Chief Administrative Officer shall be appointed by the District Service Commission in consultation with the Public Service Commission and shall be the Chief Accounting Officer for the District".

Government response

Government does not accept the recommendations of the Commission in para (ii) (a) and (b). Government is of the view that the CAO should be appointed and disciplined by the Public Service Commission.

~~The Commission should recommend that the CAO should be appointed and disciplined by the Public Service Commission. Government is of the view that the CAO should be appointed and disciplined by the Public Service Commission.~~

Government notes the recommendation but is of the view that the functions of the RDC should be as follows—

(a) To monitor the implementation of central and local government services in the district; and

(b) To act as chairperson of the district security committee.

The above constitutes the proper role of the RDC and will more clearly distinguish those functions from those of the District Chairperson.

Additionally, since the Resident District Commissioner is to all intents and purposes a politician, his or her description in article 203(1) as a senior civil servant is inappropriate. It is therefore recommended as was done in item 11.14 – 11.16 of the Government proposals to the Constitutional Review Commission that a person to be appointed Resident District Commission should be a citizen of Uganda and qualified to be a member of Parliament.

- (v) The procedure for removal of the district chairperson as provided in the Local Governments Act should be maintained.

Government response

Government does not accept this recommendation. Government is of the view that the Local Governments

Act, Cap 243 (Section 14) should be amended to simplify the procedure for the removal of the District Chairperson. In particular Government is of the view that the number of councillors to initiate proceedings to remove the District Chairperson should be increased from one third to forty percent. This is to promote stability in that office and to discourage frivolous applications for the removal of the District Chairperson involving protracted investigations which prove expensive to the State.

Further, Government is of the view that the Local Governments Act should be amended in section 14 to change the Chairperson of the tribunal for the removal of the District Chairperson from a Judge to a Magistrate. This will prevent the tying up of the services of Judges from already over occupied High Court.

- (vi) The executive of the village LC1 should be directly elected by the people.

Government response

Government notes this recommendation. This matter can be handled by way of amendment of the electoral laws relating to local government.

- (vii) The proposal to pay remuneration to members of the LC 1 executive should be studied by financial experts for its financial implications

Government response

Government accepts this recommendation.

It will be noted that there is already in the Local Government Act, Cap 243(Section 85(2) and regulations 15 and 16 of the Fifth Schedule to the Act) provision for subcounty councils to remit 25% of all revenues collected by them to LC I.

It is recognised however, that a suspension of graduated tax could make implementation of that provision difficult.

Accordingly, the Ministry of Local Government is causing a study to be conducted to identify alternative local revenue to graduated tax if it is abolished.

- (viii) Two mechanisms of forming a regional government are provided in the Constitution. The Constitution provides for the formation of a regional government by a resolution of the district council supported by two-thirds of all members of the council.
- (ix) The decision to form a regional government shall be made by a resolution of the district council supported by two-thirds of all members of the council.
- (x) The districts of Buganda are deemed to have agreed to form a regional government.
- (xi) Revenue capacity for regional governments should be developed by financial experts. The transfers from the central to regional or district governments should take into account the total revenue collected, the portion derived from the region or district, the costs of running the services or functions devolved to the region or district and the need for balanced growth.

- (xii) The first regional governments shall be based on assemblies whose representatives should be drawn from the district councils in equal numbers. Thereafter the assemblies should be directly elected.
- (xiii) The political head of the regional government should be elected by the assembly from amongst members of the assembly.
- (xiv) A Constitution of the region should be prepared by the assembly and be laid before Parliament.
- (xv) ~~The Council of Ministers shall~~
 - (a) The manner of electing the political head of the regional government;
 - (b) The nomination by the traditional leaders or clan heads of representative to the regional assembly;
 - (c) The procedure for and arrangements subsequent to the withdrawal of any unit from the region;
 - (d) The performance of functions by the districts or lower local unit.
- (xvi) The regional governments should perform the functions specified in the schedule of the Constitution. Such functions should not be assumed by the central government without the consent of the regional assembly through a resolution of the majority.
- (xvii) The regional governments shall have power to legislate on any matter within their jurisdiction.

- (xviii) The first schedule to the Constitution should be amended to include Kampala district I the districts which are of “Buganda”.
- (xix) A detailed study in the functional relationships between Kampala City Council and the division councils should be conducted with a view to developing a more efficient system, of government within the city.
- (xx) Planning for a city should be integrated into one unit together with a coordinated system of levying, collecting and allocating revenue.
- (xxi)
 - (a) Parliament should pass a law providing the special status of Kampala as the capital city, for other cities that may be developed and for other urban authorities.
 - (b) The law should provide for democratic representation, administration and management, funding of Kampala and other cities and urban areas taking into account the peculiarities of urban development in terms of population and the services to be delivered.
 - (c) The law should also provide for the criteria for establishing cities, municipalities and towns plus mechanisms for regulating urban developments.
- (xxii) For proper and effective planning, the boundaries of Kampala City should be fixed and the urban developments on the fringes be encouraged to develop into new authorities.

Government response to recommendations in items (viii)–(xxii) of para 9.17, (pages 9-131) of the Commission’s report is as follows—

1.1 Creation of regional governments

Government accepts the principle of the creation of Regional Governments. The general principle is that a Regional Government must be managed democratically. Districts may, if they wish, choose to form a Regional Government so as to have the functions and responsibilities assigned to Regional Governments by the Constitution.

Government is of the view that a district council shall be free to enter into co-operation and no district shall be taken to have agreed to enter into a co-operation arrangement unless—

- (i) ~~the proposal to enter into co-operation has been approved by a resolution of the district council by a majority of two-thirds of the members of the district council and~~**
- (ii) the decision of the district council has been ratified by not less than two-thirds of the sub-county councils in the district.**

Districts of Buganda shall be deemed to have agreed to form a Regional Government.

1.2 Establishment of Regional Councils

In areas where there is no traditional or cultural leader there shall be one political and

administrative Regional Council established under article 178 of the Constitution.

In areas where there is a traditional or cultural leader Government accepts that there shall either be two Regional Councils, one political and administrative established under article 178 of the Constitution and the other cultural established under article 246 of the Constitution or one political and administrative Regional Council established under article 178 of the Constitution.

1.2.1 Establishment of two Regional Councils

In areas where there is a traditional or cultural leader the establishment of two Regional Councils is the first option of Government.

(a) Creation of Cultural Regional Council

Elkhmet

~~TG Regional Council and BGC~~

Compien

~~TG Regional Council and BGC~~

Fodras

~~TG Regional Council and BGC~~

Fafaf Regional Council

~~TG Regional Council and BGC~~

Fodaf Regional Council

~~The directly elected members of the Council shall be elected by universal adult suffrage from the Districts forming the Regional Council.~~

~~0~~ ~~Composition of the Regional Council:~~

~~Members:~~

~~The Council shall consist of 12 members of the Council.~~

~~Composition:~~

The Council shall be composed of directly elected representatives by universal adult suffrage from the Districts forming the Regional Council.

~~Members of the Council:~~

~~The Council shall consist of 12 members of the Council.~~

~~12~~ ~~Members of the Regional Council:~~

~~The Council shall consist of 12 members of the Council.~~

~~Composition:~~

~~The Council shall consist of 12 members of the Council.~~

~~0~~ ~~Members of the Council:~~

~~The Council shall consist of 12 members of the Council.~~

~~The Council shall consist of 12 members of the Council.~~

~~0~~ ~~Members of the Council:~~

The leaders of the Majority Side and the Minority Side in the Council shall nominate six (6) and four (4) persons respectively from whom six (6) persons will be appointed members of the Council. The ten (10) persons nominated must be persons conversant with cultural matters. The nominations will be presented by the Head of the Council to the traditional or cultural leader who shall appoint four(4) members from the Majority Side nominations and two(2) members from the Minority Side nominations to be members of the Council.

B *Council Secretariat*

- 1. ~~Traditional Council shall be the head of the Council Secretariat~~
- 2. ~~Majority Council shall be the head of the Council Secretariat~~
- 3. ~~Executive Council shall be the head of the Council Secretariat~~

C *Traditional Council Secretariat*

- 1. ~~Traditional Council~~
- 2. ~~Traditional Council shall be the head of the Secretariat~~
- 3. ~~Executive Council shall be the head of the Secretariat~~

D *Traditional Council*

Ø *Çağınlar*
Teşkilat Kanunları

Ø *Adil ve Etkin İşbirliği Kanunu*
Teşkilat Kanunları

Ø *Resmî Kurumlar Kanunu*

A traditional or cultural leader who violates the Constitution shall be removed from office in accordance with the following procedures:

- (i) A person aggrieved that the traditional or cultural leader has violated the Constitution shall petition the responsible Minister for action to be taken for the removal of the traditional or cultural leader;**
- (ii) The responsible Minister shall submit the petition to Cabinet for consideration;**
- (iii) Cabinet may, after consideration of the petition, forward it to Parliament;**
- (iv) A Committee of Parliament established for the purpose shall inquire into the conduct of the traditional or cultural leader and recommend to Parliament that he be removed from office;**
- (v) A motion to remove the traditional or cultural leader from office shall be supported by not less than two thirds of all Members of Parliament.**

(d) Election of the traditional or cultural leader

Төрөлжөөгийн системийн үндэсний зардал

2. *Financial arrangements between the regional government and central government*

Орлогын Ерөнхийлөгчийн зардалын системийн зардал

Анхны үйлчилгээний зардалын системийн зардал

Төлбөрийн системийн зардал

3 *Types*

Төрийн зардал

Иргэдийн зардал

Төрийн зардал (Төрийн зардал)

4 *Other types*

Төрийн зардал

Төрийн зардал (Төрийн зардал)

5 *Other types*

Төрийн зардал

6 *Other types*

Төрийн зардал

Төрийн зардал (Төрийн зардал)

7 *Other types*

**Talokapalika Sahitya Akademi Medal Committee and District Councils of
Compartments of the State**

8. Talokapalika Sahitya Akademi Medal Committee

1. Talokapalika Sahitya Akademi Medal Committee

2. Talokapalika Sahitya Akademi Medal Committee

3. Talokapalika Sahitya Akademi Medal Committee

4. Talokapalika Sahitya Akademi Medal Committee

5. Talokapalika Sahitya Akademi Medal Committee

6. Talokapalika Sahitya Akademi Medal Committee

7. Talokapalika Sahitya Akademi Medal Committee

8. Talokapalika Sahitya Akademi Medal Committee

9. Talokapalika Sahitya Akademi Medal Committee

10. Talokapalika Sahitya Akademi Medal Committee

11. Talokapalika Sahitya Akademi Medal Committee

12. Functions and services surrendered voluntarily by District Councils;

13. Talokapalika Sahitya Akademi Medal Committee

14. Talokapalika Sahitya Akademi Medal Committee

15. Talokapalika Sahitya Akademi Medal Committee

Talokapalika Sahitya Akademi Medal Committee

9.3 Recommendations (para 10.14, pg. 10-152 of the Report)

- (i) Every person who is arrested and detained has a right to conditions of detention, which are consistent with human dignity including adequate accommodation, food and recreational facilities. A new clause should be added to article 23 to guarantee the right.

Government response

Government notes the importance of this recommendation but is of the view that suitable conditions can be maintained without an amendment of the Constitution.

- (ii) The provision of article 23(6)(a) by which the discretion to grant or refuse bail is vested in the court should be maintained.

Government response

Government accepts this recommendation. The discretion of court to grant or refuse bail under article 23(6) (a) should remain as it is.

- (iii) Paragraphs (b) and (c) of article 23(6) should be amended by reducing the number of days a person must have stayed on remand before being entitled to bail to sixty and one hundred eighty days respectively.

Government response

Government accepts the recommendation that 120 days under 23(6)(b) be reduced to 60 days and 360 days be reduced to 180 days under article 23(6)(c).

- (iv) Parliament should enact laws to implement affirmative action.

The laws should, among others, address the:

- (a) role and status of the parties to the marriage, during marriage, on dissolution of the marriage, upon contraction of a subsequent marriage by a spouse, and upon death;
- (b) the rights of women/wives and children to family property;
- (c) the implementation of equal opportunities for all marginalized groups;
- (d) uplifting the economic status of women;
- (e) the special needs of the disabled including the development of a sign language as part of the official language.

Government response

Government accepts the recommendation for enactment of laws for affirmative action under articles 32, 33, 35 and 36 of the Constitution. The necessary laws will be promoted by Government to advance affirmative action. In particular, Government has laid before Parliament

the Domestic Relations Bill intended to address the matter.

- (v) Every child has a right to free basic primary education, which is the responsibility of the State. Article 34(2) of the Constitution should be amended accordingly.

Government response

~~Government notes this recommendation but observes that the provision is narrow as it stands and does not adequately cater for development. Government therefore proposes that it should be possible to acquire property compulsorily for the purposes of investment and that article 26(2)(a) should be amended accordingly. Government has no objection to the prompt payment of fair and adequate compensation~~

- (vi) Every compulsory acquisition of property should be intended to achieve a public purpose and must be subject to prompt payment of fair and adequate compensation. Paragraph (a) of clause (2) of article 26 should be maintained.

Government response

Government notes this recommendation but observes that the provision is narrow as it stands and does not adequately cater for development. Government therefore proposes that it should be possible to acquire property compulsorily for the purposes of investment and that article 26(2)(a) should be amended accordingly. Government has no objection to the prompt payment of fair and adequate compensation

- (vii) (a) the presumption of innocence under article 28(3)(a) should be maintained;
- (b) the court should have a discretion to draw such inferences from an accused's silence as the court deems proper and to assess the effect of that silence

together with the evidence brought against the accused.

Government response

Government accepts this recommendation.

- (viii) (a) The Uganda Human Rights Commission is a necessary institution. It should be maintained and strengthened to take on the additional role of implementing equal opportunities.
- (b) In exercising the function of implementing equal opportunities, the Commission should have power;
- λ to hear and determine complaints arising out of discrimination on the basis of gender, age, disability or any other reason created by history, tradition or custom;
 - λ to represent complainants in courts of law in matters related to equal opportunities.
- (c) The Commission should also take over from the Inspectorate of Government the function of stimulating public awareness about the value of constitutionalism. Articles 52 (1) and 225 (1) should be amended accordingly.

~~CONFIDENTIAL~~

Government response

In paragraph (viii)(a), (b) and (c), Government accepts the recommendations to retain the Uganda Human Rights Commission and strengthening it to take an

additional role for implementing equal opportunities and consequently article 32 (2) of the Constitution should be repealed. Government also agrees that the Uganda Human Rights Commission should take on the IGG's functions of stimulating public awareness about the value of constitutionalism. Consequently Articles 52(1) and 225(1)(f) of the Constitution should be amended accordingly.

10.0 CHAPTER 10

10.1 CITIZENSHIP (CRC CHAPTER 11)

10.2 ~~The Commission on Human Rights~~

"to re-examine the provisions relating to the acquisition and loss of citizenship and recommend whether or not dual citizenship should be allowed, particularly with regard to Ugandans living in the diaspora"

10.3 Recommendations (para 11.7, pg. 11-159 of the Report).

- (i) The Constitution of Uganda should permit dual citizenship.

Government response

Government accepts this recommendation.

- (ii) Citizens of Uganda should be permitted to hold or retain the citizenship of another country taking into account among other factors the benefits to be gained by Uganda.

Government response

Government accepts the recommendation and observes that Parliament will prescribe the necessary laws. In prescribing laws relating to dual citizenship, Parliament will have to take into account the recommendations in para(iii) (a) and (b) and (iv) (a) to (d) below. The Ministry of Internal Affairs is to propose strategic offices that should not be held by persons holding the citizenship of another country in addition to their Ugandan citizenship.

- (iii) Parliament shall by law prescribe the circumstances under which:
 - (a) A citizen of Uganda who hold the citizenship of another country may cease to be a citizen of Uganda.
 - (b) ~~A person who acquires Ugandan citizenship~~

Government response

Government accepts this recommendation.

- (iv) (a) The law enacted by Parliament should require that in permitting a person to hold or retain dual citizenship, the factors to be taken into account should include:
 - (b) the benefits that may be derived by the country;
 - (c) whether reciprocal arrangements for dual citizenship by the country of the applicant's citizenship exists;
 - (d) the character of the applicant; and
 - (e) whether it is in the interests of the security or sovereignty of Uganda to permit the applicant to hold or retain dual citizenship.

Government response

Government accepts this recommendation.

- (v) Banyarwanda of Uganda are an indigenous community of Uganda in existence as of 1926 and have a right to their cultural identity plus the right to be referred to as Banyarwanda.

Government response

Government takes note of this recommendation and observes that Banyarwanda are already recognised as an indigenous tribe of Uganda under the Third Schedule, item No. 20 and also article 10 of the Constitution.

- (vi) Detailed inquiries should be made in the claims of some communities that they existed as indigenous communities

but were not listed in the schedule of indigenous communities.

Government response

Government accepts this recommendation. Inquiries made by the Ministry of Internal Affairs have disclosed that the Gimara, Reli, Aliba, Shana and Barundi qualify to be recognised as indigenous communities within the meaning of article 10(a) of the Constitution. Government therefore intends to propose an amendment to the Third Schedule to the Constitution to add them to the list in that Schedule so as to recognise their status.

11.0 CHAPTER 11

11.1 PROTECTION OF CHILDREN (CRC CHAPTER 12)

11.2 ~~The Committee on Civil Liberties~~

"to review the provisions relating to the rights of children and young people and propose comprehensive and effective measures to protect children and young people against violence and abuse and to consider whether the age of minority should be increased from 16 to 18 for purposes of employment"

11.3 Recommendations (para 12.7, pg 12-169 of the Report)

- (i) The eventual elimination of child labour should be a National Objective of State Policy.
- (ii) ~~The Committee~~
- (iii) The age of consent to sex for purposes of the law of defilement should remain at 18 years.
- (iv) The Children Act should be broadened into a comprehensive code on children's rights. The code should provide for—

- (a) structures of children's participation in civil life;
 - (b) protection of children in employment;
 - (c) mechanisms for monitoring compliance with the law.
- (v) The National Council for Children should be restructured and funded to coordinate activities related to children's rights. The functions of the Council should include:
- (a) initiating policy and programmes to facilitate children's survival, participation and development;
 - (b) coordinating the functions of local Councils and other agencies involved in the protection of children's rights;
 - (c) planning programmes for sensitization of the people on children's rights;
 - (d) developing a database on children's rights;
 - (e) monitoring compliance with the law by parents and all institutions involved in child welfare.

Government response

Government accepts all the above recommendations.

12.0 CHAPTER 12

12.1 DEATH PENALTY (CRC CHAPTER 13)

12.2 The Commission's term of reference (r), to which Chapter 13 relates, is:

"to review the Bill of Rights and consider in particular, whether the death penalty should be abolished or whether the age of minority should be increased from 16 to 18 for purposes of employment"

12.3 Recommendations (para 13.7, pg 13-176 of the Report)

- (i) The death penalty should be retained and should remain mandatory only for the crimes of murder, aggravated robbery, kidnapping with intent to murder and defilement of minors below fifteen years of age.

Government response

Government accepts this recommendation and notes that treason is not included in the list of crimes to which a mandatory death penalty applies.

- (ii) Executing the sentence of death by hanging with a rope until the convict dies is painful. The sentence should be implemented by a method that ensures instant death.

Government response

Government accepts this recommendation and notes that article 22 of the Constitution that relates to protection of right to life will not require any amendment.

13.0 CHAPTER 13

13.1 CONSTITUTIONAL BODIES (CRC CHAPTER 14)

13.2 The Commission's terms of reference (j) and (k), to which Chapter 14 relates is:

"(j) to review relationship between the Inspector General of Government and the other institutions or organs designed to make the Government and public institutions transparent and accountable and to recommend improvements in their efficiency effectiveness and coordination"

"(k) to review the constitutional bodies and assess their desirability and affordability and to delineate their functions and powers in order to reduce duplication and conflict"

13.3 Recommendations (para 14.11 pg 14-193-194) of the Report

- (i) The Inspectorate of Government should be retained. The functions of the Inspectorate of Government should be:
 - (a) to eliminate and foster the elimination of corruption;
 - (b) to promote fair, efficient and good governance in public offices;
 - (c) to investigate any act, omission, advice, decision or recommendation taken or made in the exercise of administrative functions by a public officer or authority; and
 - (d) to enforce the Leadership Code of Conduct.

Government response

Government accepts the above recommendations subject to the following—

(1) That the IGG’s functions should be redefined to give the IGG exclusive mandate for investigations and prosecution of corruption, abuse of office and enforcement of the Leadership Code;

(2) That the Constitution should be amended to create the Leadership Code Tribunal to receive and examine the findings and recommendations of the IGG and if it confirms the finding and recommendations of the IGG in respect of the enforcement of the Leadership Code to give directions on the findings and recommendations of the IGG which shall be binding on the respective disciplinary authorities notwithstanding any provision of the Constitution;

(3) That the Constitution should be amended to require Parliament by law, to establish a special court charged with the handling of corruption cases;

(4) Article 230(2) of the Constitution which gives power to the IGG to make orders and give directions should be amended to clarify the provision and to remove ambiguity concerning apparent unlimited scope of the powers of the IGG;

(5) ~~The IGG should be empowered to investigate and prosecute cases of corruption, abuse of office and enforcement of the Leadership Code. The IGG should be empowered to investigate and prosecute cases of corruption, abuse of office and enforcement of the Leadership Code. The IGG should be empowered to investigate and prosecute cases of corruption, abuse of office and enforcement of the Leadership Code.~~

6 ~~The IGG should be empowered to investigate and prosecute cases of corruption, abuse of office and enforcement of the Leadership Code.~~

- (ii) The function of stimulating awareness about the values of constitutionalism in general, should be performed by the Uganda Human Rights Commission. Para (f) of article 225(1) of the Constitution should be amended accordingly.

Government response

Government accepts this recommendation.

- (iii) Article 230(1) of the Constitution which empowers the Inspectorate of Government to prosecute or cause prosecution in respect of cases of corruption should be retained.

Government response

Government accepts this recommendation.

- (iv) Article 230 (i) of the Constitution should be amended by the addition of a new clause which will provide that the powers of the IGG to prosecute cases of corruption and abuse of office should be exercised notwithstanding the powers of any other body or authority to prosecute criminal cases.

Government response

Government accepts this recommendation. The IGG should prosecute to the end and not handover to the DPP.

- (v) ~~So that the IGG can prosecute to the end and not handover to the DPP, the IGG should prosecute to the end and not handover to the DPP.~~

Government response

Government accepts this recommendation.

- (vi) Parliament should discuss the report of IGG within sixty days of its being laid before it.

Government response

Government notes the recommendation but in order not to put undue pressure on Parliament it is of the view that it is preferable to say that Parliament discusses the IGG's report expeditiously.

- (vii) Article 163 of the Constitution should be amended by adding thereto:

- (a) a new clause to provide that the Auditor General may retire on attaining the age of sixty-five years and must retire upon achieving the age of seventy years;
- (b) a new clause to provide that the provisions of the Constitution relating to the removal of a Judge of the High Court should with the necessary modifications apply to the removal of the Auditor General from office.

Government response

Government accepts the above recommendations aimed at preserving the independence and integrity of the Auditor General, and agrees with the age of retirement for the Auditor General is 65 years for voluntary retirement and 70 years for compulsory retirement as recommended. Government is also of the view that the Auditor General should be given autonomy to employ and discipline his or her own staff and should be expressly empowered to hire private firms of auditors to

assist the Auditor General in the performance of his or her constitutional functions.

Government is of the view that the powers of the Auditor General for the appointment of staff should be exercised in consultation with the Public Service Commission. Further, Government is of the view that the remuneration of the staff of the Auditor General should be determined by the Salaries and Remuneration Board being established under the Constitution.

(viii) The Uganda Law Reform Commission should be retained as an independent commission. The Constitution should spell out its functions to include:

- (a) to review and make recommendations on any of the laws of Uganda and their conformity to the Constitution and International Treaties to which Uganda is a party;
- (b) to monitor the implementation of the Constitution and to make recommendations on measures necessary to implement any aspect of the Constitution;
- (c) to report its findings and recommendations to the Minister responsible for Justice and/or Constitutional Affairs who must publish any such report and lay it before Parliament;
- (d) to carry out such other functions as Parliament may by law prescribe.

Government response

Government accepts the recommendations in para (a) to (d).

- (ix) The Uganda Law Reform Commission should consist of a full-time chairperson plus four members serving on a part-time basis.

Government response

Government is of the view that the members of the Commission should be a chairperson and three other members to serve full time instead of part time having regard to the importance of the functions of the Uganda Law Reform Commission to the development of the law.

- (x) Parliament should consider the report of the Uganda Law Reform Commission within sixty days of its being laid before it.

Government response

Government accepts this recommendation but is of the view that in order not to over pressurize Parliament and to be realistic about the time of Parliament, the requirement should be that Parliament should discuss the report expeditiously instead of within 60 days after the reports are laid before it.

- (xi) The Uganda Land Commission should be retained but should consist of a chairperson serving on a full-time basis plus three other members serving on a part-time basis.

Government response

Government accepts the recommendation.

- (xii) The Local Government Finance Commission should be retained but should consist of a chairperson plus four other members. The four members should serve on a part-time basis.

Government response

Government notes the recommendation but is of the view that the composition of the Commission should be a chairperson, a deputy chairperson who shall be full time members and such other members as Parliament may by law prescribe.

- (xiii) Article 125 of the Constitution should be amended by adding thereto:
- (a) A new clause to state that in prescribing the composition of the National Planning Authority, Parliament should provide that the members have qualifications and experience in the relevant fields which include development economics, public finance, and physical and human resources development.
 - (b) A new clause should be introduced to provide that in performing its functions the authority should be free from control by any person or authority, but should make periodic reports to be submitted to the President with a copy laid before Parliament. Parliament should discuss the report within six months of its being laid before it.

Government response

Government rejects the above recommendations because the National Planning Authority is a new institution, which has not been evaluated. Article 125 should remain in force as it is.

14.0 CHAPTER 14

14.1 SERVICE COMMISSIONS (CRC CHAPTER 15)

14.2 ~~The Commission on Constitutional Bodies~~

"to review the constitutional bodies and assess their desirability and affordability and to delineate their functions and powers in order to reduce duplication and conflict"

14.3 Recommendations (para 15.11, pg 15-214 of the Report)

- (i) The country should continue to have Constitutional Service Commissions for the impartial selection of public servants.

Government response

Government agrees that all the service commissions, namely: the Public Service Commission, the Education Service Commission, the Health Service Commission and the Judicial Service Commission should be retained.

- (ii) The four Constitutional Service Commissions should not be merged but their structures and working should be modified:
 - (a) The composition of the four Service Commissions should each be standardized and trimmed to a full-time chairperson and four other part time members, one of whom shall be designated deputy chairperson.
 - (b) There should established a joint secretariat for the Public Service Commission, the Health Service Commission and the Judicial Service Commission, headed by an accounting officer of Permanent Secretary rank, supported by senior officers in the restructured secretariat;
 - (c) Because of its heavy workload, the Education Service Commission should continue to have a separate secretariat of its own.

Government response

Government notes this recommendation and is of the view that the membership of all the service commissions should comprise a chairperson, a deputy chairperson and such other members that Parliament may prescribe by law and each service commission should retain its independent secretariat.

- (iii) As a cost saving measure, two or more neighbouring districts should establish a joint district service commission with membership drawn equally from the cooperating districts and the chairmanship rotating between them every four years. This is recommended in the context of the recommendations in chapter 9 for regional government or regionalisation of institutions and services.

Government response

Government does not accept this recommendation. Government is of the view that there is no need for Regional Service Commissions. District Councils should retain their own District Service Commissions.

- (iv) The Service Commissions should develop into an inter-connected system of cooperating bodies supporting each other. To this end:

(a) ~~The Central Service Commission should be empowered to monitor and appraise the work of the district service commissions and to advise the Government on the use of funds for the district service commissions.~~

(b) The District Service Commissions should establish the "committees in respect of the specialised disciplines" provided for in article 200(3) of the Constitution and use them to establish links with the specialized Central Service Commissions.

(c) The Health Service Commission and Education Service Commission should have powers similar to those of the Public Service Commission "to hear and determine grievances "from persons in the health service and

education service appointed by the District Service Commissions.

Government response

Government accepts the above recommendations. So far as the establishment of Committees in respect of specialized disciplines are concerned, these have already been provided for under section 56 of the Local Governments Act, Cap. 243.

- (v) The service commissions should retain their present functions and powers save for the following modification in the functions and powers of the Judicial Service Commission.
 - (a) The Judicial Service Commission should not be required to prepare and implement programmes for the education of and for the dissemination of information to judicial officers and the public about law and the administration of justice. This function should be re-located to the judiciary.
 - (b) The Judicial Service Commission should not receive and process people's recommendations and complaints concerning the judiciary. This function should be vested in the Inspector General of Government.

Government response

Government does not accept the recommendations in paragraph (v) which seek to remove the functions of the

Judicial Service Commission under article 147(1)(c) and (d) of the Constitution and to transfer them to the Judiciary and the Inspector General of Government respectively. Government is of the view that the Judicial Service Commission is the best body to handle the matters involved. The Constitution should therefore be left as it is.

(vi) Deliberate efforts should be made to enhance the image, status, independence, and impartiality of the District Service Commissions. To this end:

(a) The appointment of a new District Service Commissions should not coincide with the coming into office of new District Councils and district executive committees;

(b) The beginning and end of terms of office of individual members of the District Service Commissions should be staggered in such a way that there is continuity within the membership of the District Service Commissions;

(c) In addition to being persons of integrity, and good moral standing, members of the District Service Commissions should have long and proven experience in a field relevant to the functions of the District Service Commissions and/or its specialized committees. District councils' consultations with Public Service Commission in selection of members of the District Service Commissions should not be taken as a matter of formality. Public Service Commission should insist on the selection of persons of calibre to the District Service Commissions;

- (d) The removal of members of the District Service Commissions from office should always have the prior approval of the Public Service Commission and the Public Service Commission should satisfy itself that only grounds for removal allowed by the Constitution are used;
- (e) All the Central Service Commissions should participate in building the capacities of District Service Commissions particularly in selection procedures and techniques, and in matters of removal from office and/or retrial;
- (f) Districts should consider the option of forming joint or regional District Service Commissions for mutual interchange of experience, increased mobility in the local service and better utilization of capacity.

Government response

~~Government response to the Commission's report~~

- (vii) In order to maximize the benefits or key outputs of the Commissions—
 - (a) There should be instituted a system of mid-term reviews of the programmes and activities of the Service Commissions. The reviewing panels should be drawn from the Ministry of Public Service, the relevant service commissions and independent consultants knowledgeable in the functions of the commission;
 - (b) All Service Commissions should participate actively in line Ministry projects for the reform,

professionalisation and transformation of the public service.

Government response

Government rejects the above recommendations. To ensure smooth and flexible operation of Service Commissions, Government is of the view that the Central Service Commissions should be empowered to delegate some of their functions to other service commissions where appropriate, to District Service Commissions, to committees of the commissions in question or to any public officer or other authority subject to conditions specified by the delegating authority.

Government does not however agree with the recommendation in (b) above that the service commissions should participate actively in line Ministry projects. This conflicts with the role of service commissions as appointing authorities.

(viii) ~~The following official dispatches are the original copies of the Commission's Report on the~~

Government response

Government accepts the need to establish a professional body to regulate the education sector.

15.0 CHAPTER 15

15.1 LAND MANAGEMENT, DISPUTE RESOLUTION AND COMPULSORY ACQUISITION OF LAND (CRC CHAPTER 16)

**15.2 The Commission's term of reference (n),
to which Chapter 16 relates is:**

"to review aspects of land relating to the necessity for Government to acquire land for public purposes or use and the desirability of the various land management and dispute resolution mechanisms"

15.3 Recommendations (para 16.14, pg 16-231 of the Report)

- (i) The Government should adopt a national land policy to regulate the use of land.

Government response

Government accepts this recommendation.

- (ii) The law should recognize the right of the registered landowner to ground rent commensurate with the value of the land occupied by a lawful or bona fide occupant. In the case of disagreement over rent, the same should be determined by the District Land Board.

Government response

Government does not accept this recommendation and is of the view that the law should be retained as it is in section 31(3) of the Land Act Cap.227 as amended by section 14 of Act No.1 of 2004 that is, that the tenant by occupancy should pay to the registered owner such annual nominal ground rent as shall be determined by the Land Board with the approval of the Minister.

- (iii) Traditional and clan institutions having a bearing on land should be adopted in and/or closely consulted by the institutions of land management and adjudication.

Government response

Government does not accept this recommendation. Government is of the view that the status quo should be maintained and that land should as provided by the Constitution continue to be managed by District Land Boards.

- (iv) The present provisions for compulsory acquisition of land in article 26 of the Constitution are adequate.

Government response

Government is of the view that to promote development it should be possible to acquire land compulsorily for investment purposes. Therefore article 26(2)(a) should be amended to include investment among the purposes for which property can be compulsorily acquired under that article by Government.

- (v) Districts should consider the option of forming joint or regional Land Boards and Tribunals for better utilisation of resources.

Government response

Government does not accept this recommendation. This is to avoid reviving historical conflicts and rivalries in respect of land if consideration of land matters is centralized in one regional centre.

16.0 CHAPTER 16

**16.1 ACCESS TO JUSTICE AND EFFICIENCY OF COURTS
(CRC CHAPTER 17)**

**16.2 The Commission's term of reference (i) to which chapter 17
relates is:**

"to consider and recommend measures intended to improve the access to and efficiency of the courts and in particular the desirability of establishing a unified judicial service by transferring administrative and support staff from the Public Service Commission to the Judicial Service Commission"

16.3 Recommendations (para 17.11, pg 17-243 of the report).

- (i) The Judiciary should plan towards placing at least one magistrate for each subcounty and eventually a Resident Judge for every district.

Government response

Government accepts this recommendation but observes that this is not a constitutional matter.

- (ii) The Government should seriously consider a public defender or legal aid scheme for purposes of giving free legal advice to indigent persons.

Government response

Government notes the recommendation but wishes to point out that already there are adequate schemes for assisting poor persons to access justice including the following—

- (a) Pro bono (free legal service) for poor persons which advocates are required to offer by the Advocates Act, Cap 267 and enforced by the Law Council;*
- (b) Free legal aid services offered by FIDA to women;*
- (c) Assistance given to poor persons to defend themselves under the Poor Persons Defense Act (Cap 20);*
- (d) Legal Aid Project operated by the Uganda Law Society;*
- (e) The mandatory assistance given to a person charged with an offence which carries a death sentence or a sentence of imprisonment for life for legal representation at the expense of the State under article 28(1)(e) of the Constitution; and*
- (f) Government efforts towards the provision of legal aid to indigent persons including the initiative under the*

Justice, Law and Order Sector Programme of the Ministry of Justice and Constitutional Affairs to coordinate civil society organisations providing legal aid service.

- (iii) The Judiciary should intensify efforts to educate the people about the court procedures.

Government response

Government accepts this recommendation.

- (iv) Judicial proceedings should be made more sensitive to the needs of the people with disabilities.

Government response

Government accepts the recommendation.

- (v) Government should operationalise Islamic or Sharia Courts.

Government response

Government accepts the recommendation. Government accepts the need to operationalise article 129(1)(d) of the Constitution to establish Qhadis' Courts and intends to take action in that direction.

- (vi) Article 130 (b), 134(b) and 138 (1)(b), should be amended to provide that Parliament may by resolution prescribe the number of Judges of the Supreme Court, the Court of Appeal and the High Court.

Government response

Government accepts this recommendation.

- (vii) (a) The function of preparing and implementing programmes for the education of and for the dissemination of information to judicial officers and the public should be exercised by the Judiciary.
- (b) The function of receiving and processing people's recommendations and complaints concerning the Judiciary, should be exercised by a specialized department of the inspectorate of government. Paragraphs (c), and (d), of article 147(1) should therefore be repealed.

Government response

~~Committee on the Constitution and the Judiciary Commission of Enquiry into the
Council of the Government of the Judiciary~~

- (viii) The power to appoint, supervise, and discipline court clerks, and interpreters in the service of the judiciary should vest in the Judicial Service Commission.

Government response

Government accepts this recommendation.

- (ix) Article 144 of the Constitution should be amended to provide for a compulsory retirement age of 70 years and voluntary retirement age of 60 years for Judges of the High Court, and for Justices of the court of Appeal and of the Supreme Court.

Government response

Government does not accept this recommendation and is of the view that the status quo should be maintained to enable room to be made for younger persons to accede to the High Court bench.

- (x) Judges' allowances should remain as part of the administrative expenses of the Judiciary that must be charged on the Consolidated Fund.

Government response

Governments accepts this recommendation. The word "allowances" is not to be deleted from the following articles; 55(1) Uganda Human Rights Commission, 66(3) Electoral Commission; 128(5), Judiciary and 238(6) Uganda Land Commission.

17.0 CHAPTER 17

17.1 CULTURAL INSTITUTIONS (CRC CHAPTER 18)

17.2 The Commission's term of reference (o) to which Chapter 18 relates is:

"to review the role and funding of traditional or cultural institutions and make appropriate recommendations"

17.3 Recommendations (Paragraph 18.10 on page 18-251 of the Report).

- (i) The central Government should make a contribution to the maintenance of traditional or cultural institutions by way of an endowment. The conditions for accessing the endowment shall be determined by Parliament.

Government response

Government accepts this recommendation and observes that the endowment will be catered for in the law on cultural institutions.

- (ii) Government should where applicable return to traditional institutions all their properties so that these can build a base for the sustenance of these institutions.

Government response

~~Confidential~~
~~Confidential~~

- (iii) Article 246(2) should be amended to confer power on Parliament to make a law providing for:
 - (a) The privileges and benefits of traditional leaders including protocol and exemption from direct person tax.
 - (b) Resolution of issues as to the existence or recognition of a traditional leader.
 - (c) Setting out conditions for the accessing of a government endowment by a cultural or traditional institution.

Government response

Government is of the view that the privileges and benefits referred to above are not a constitutional matter and can be catered for by Acts of Parliament. Parliament can by law operationalise article 246. Government is of the view that Parliament can make laws to operationalise articles 246(2) and 246(3) (c) and (d) and there is no need to amend the Constitution for the purpose.

- (iv) Local governments of the area over which a traditional leader reigns should continue to be free to confer benefit to the traditional or cultural leader as provided for in article 246 (3) (c) of the Constitution.

Government response

Government accepts the recommendation.

18.0 CHAPTER 18

18.1 LANGUAGE (CRC CHAPTER 19)

18.2 The commission's term of reference (q) to which chapter 19 relates is:

" to consider and recommend whether Uganda is ready to adopt a national language or second official language"

18.3 Recommendations (para 19.8, pg 19-257 of the Report)

(i) ~~Uganda should take every effort to promote and intensify the teaching of English as a widely used international language.~~

Government response

~~Government has accepted this recommendation and is of the view that teaching of English should also be promoted.~~

(ii) The constitutional provisions should continue to enjoin the state to preserve and enrich all Uganda languages.

Government response

Government accepts this recommendation.

(iii) Uganda should take every effort to promote and intensify the teaching of English as a widely used international language.

Government response

Government accepts this recommendation.

(iv) The State should take steps to intensify the teaching of sign language.

Government response

Government accepts this recommendation.

(v) The State should develop a national language policy.

Government response

Government accepts this recommendation and is of the view that teaching of Braille should also be promoted.

19.0 CHAPTER 19

19.1 IMPLEMENTATION (CRC CHAPTER 20)

19.2 The Commission's term of reference(s) to which Chapter 20 relates is:

"to consider and propose a programme and modalities for efficient, effective and expeditious implementation of the Constitution"

19.3 Recommendations (para 20.6, pg 20-261 of the Report).

It is recommended that a programme and modalities for efficient, effective, and expeditious implementation of the Constitution be drawn up after the recommendation in this report have been discussed and the necessary amendments to the Constitution made.

Government response

~~Government response to the Commission's report on the implementation of the Constitution. The Commission's report on the implementation of the Constitution is a landmark document in the history of the country. It contains a wealth of information and recommendations that will be of great value to the Government and the people of the country. The Commission's report is a comprehensive and thorough analysis of the current state of the country and the challenges it faces. It provides a clear and concise overview of the country's political, economic, and social situation. The Commission's report is a valuable resource for the Government and the people of the country. It is a must-read for anyone interested in the country's future.~~

Some of the amendments to the Constitution require to be approved at a referendum under article 259 of the Constitution, others will require ratification by district councils under article 260 of the Constitution and others only require approval under article 261 of the Constitution by not less than two-thirds majority in Parliament at Second and Third Readings of the necessary Bill.

With regard to all Bills amending the Constitution, article 262 of the Constitution requires that the Speaker of Parliament should certify that the provisions of Chapter Eighteen of the Constitution have been complied with.

In addition, in the case of Bills requiring approval at a referendum under article 259 or ratification by district councils under article 260 of the Constitution, the Electoral Commission is required, by article 262 to certify that the Bills were approved at a referendum under article 259, or as the case may be, that they were ratified by district councils in accordance with article 260.

Furthermore, article 262(3) provides that where the necessary certificates in the case of a Bill to which article 259 or 260 applies are forwarded with the Bills to the President for assent as described above, the President shall not refuse to assent to the Bill.

PART II

GOVERNMENT PROPOSALS NOT ADDRESSED BY THE REPORT OF THE COMMISSION OF INQUIRY (CONSTITUTIONAL REVIEW)

This Part II of the White Paper concerns Government Proposals not addressed by the Commission. These Proposals are decisions of Government which will be implemented as and when appropriate.

In setting out the said proposals/decisions of Government in the following pages, the Chapters are a continuation of the previous Part I. The sequence of the said Chapters follow the Chapters of the Constitution as indicated.

20.0 CHAPTER 20

**20.1 NATIONAL OBJECTIVES AND DIRECTIVE
PRINCIPLES OF STATE POLICY**

20.2 Objective XX – Medical services

**20.3 The Proposed amendment is to delete "medical" in both
places and insert "health"**

20.4 Rationale

It is important to cover the whole field of health, and health service is wider than medical service.

21.0 CHAPTER 21

21.1 THE CONSTITUTION (CONSTITUTION: CHAPTERS ONE AND SEVENTEEN)

21.2 Article 1 – Sovereignty of the People

Article 255 – Right of Citizens to demand referenda

21.3 Article 1 is proposed to be amended to provide that where a referendum is held under any article of the Constitution, the

result of the referendum is binding on all organs and agencies of the state and on all persons and organisations.

21.4 *Rationale*

The purpose of the amendments is to return power to the people.

New Article 255

A new article 255 is being inserted in Chapter 33 of this White Paper in support of this principle.

21.5 Article 4 – Promotion of public awareness of the Constitution.

21.6 The proposed amendment is to delete the whole article and substitute the following:

"4. The State shall promote public awareness of the Constitution".

21.7 *Rationale*

The methods prescribed by the existing article 4 i.e., translating and teaching in institutions for promoting awareness of the Constitution are limited. It is necessary to render it possible for the State to promote awareness in any other appropriate manner. The details of what is to be done will be spelt out in a law enacted by Parliament.

22.0 CHAPTER 22

22.1 CITIZENSHIP (CONSTITUTION: CHAPTER THREE)

22.2 Article 16—National Citizenship and Immigration Board

22.3 The proposed amendment is to delete clauses (3) and (4) of article 16 and substitute the following

Clause "(3) The functions of the Board shall be prescribed by Parliament by law".

22.4 *Rationale*

To eliminate unnecessary details in the Constitution. An Act of Parliament can easily prescribe the functions of the Board.

22.5 Article 17 - Duties of a Citizen

22.6 The proposed amendment is as follows:

- (i) At the end of clause (1) (i) delete the word "and";**
- (ii) At the end of clause (1) (j) insert "and"; and**
- (iii) After clause (1) (j) insert the following new paragraph—**

"(k) to perform such national duties and obligations as Parliament may by law prescribe".

22.7 *Rationale*

The amendment is intended to enable Parliament to prescribe other national duties to be performed by citizens.

23.0 CHAPTER 23

23.1 PROTECTION AND PROMOTION OF FUNDAMENTAL AND OTHER HUMAN RIGHTS AND FREEDOMS (CONSTITUTION: CHAPTER FOUR)

23.2 Article 28(10) – Prerogative of Mercy

23.3 The proposed amendment of clause (10) of article 28 of the Constitution is to insert immediately after the word "pardoned" the words "under article 121".

23.4 *Rationale*

To achieve clarity in drafting by linking article 28(10) with article 121 under which the President grants pardon.

23.5 Article 31 – Rights of the Family

23.6 The proposed amendment is to

(a) delete clause (1) of article 31 and insert the following—

"(1) A man and a woman are only entitled to marry if they are each of the age of eighteen years and above and shall at that age have the right to found a family and are entitled to equal rights in marriage, during marriage and at its dissolution".

23.7 *Rationale*

The rationale is to make it clear that a man and a woman are only entitled to marry if they have attained the age of eighteen and above and not below that age.

(b) Insert immediately after clause (2) of article 31 the following new clause—

"(2a) Marriage is only lawful if entered into between a man and a woman".

23.8 *Rationale*

This is to make clear that the laws of Uganda do not accept a marriage between persons of the same sex.

23.9 Article 32 - Affirmative action in favour of marginalised groups

23.10 The proposed amendment is to insert

~~in article 32—~~

"(3) Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women and other marginalised groups to which clause (1) applies or which undermine their status, are prohibited by this Constitution".

23.11 *Rationale*

This clause which at present appears as clause (6) of article 33 properly belongs to the subject matter dealt with by article 32 namely "Affirmative action in favour of marginalised groups to which it is being transferred".

23.12 Article 33—Rights of Women

23.13 The proposed amendment is to delete clause (6) of article 33.

23.14 *Rationale*

With the transfer of clause (6) to article 32 it has become necessary to delete clause (6) of article 33.

23.15 Article 50 —Enforcement of rights and freedoms by courts.

23.16 The proposed amendment is that clause (3) of article 50 be repealed and replaced with the following new clause—

"(3) Any person or authority aggrieved by any decision of the court may appeal to the appropriate court; and no judgment or order appealed from shall be carried out before the period within which an appeal may be brought has expired.

23.17 Rationale

This is intended to respect the right of appeal which may reverse the judgment or order appealed from.

24.0 CHAPTER 24

**24.1 REPRESENTATION OF THE PEOPLE
(CONSTITUTION: CHAPTER FIVE)**

24.2 Article 60 - Electoral Commission

24.3 The proposed amendment is to delete clause (1) and substitute the following new clause—

"(1) There shall be a Commission called the Uganda Electoral Commission which shall consist of a Chairperson, a Deputy Chairperson and five other members appointed by the President with the approval of Parliament".

24.4 Consequential amendments:

wherever the phrase “Electoral Commission” appears, it shall be substituted by “the Uganda Electoral Commission”.

24.5 *Rationale*

To make clear to the audience outside Uganda that the Electoral Commission is Uganda Electoral Commission.

24.6 Article 69 - Political systems

24.7 The proposed amendment is as follows:

(a) The existing cross-heading of “Political Systems” should be deleted and replaced with “Democratic Governance” and the marginal note of “Political systems” should be deleted and replaced with “Forms of Democracy”.

(b) Clause (1) should refer to article 74 under which political systems are authorised to be changed under the Constitution. It is therefore suggested that the whole article 69 be replaced with the following—

"69. Forms of democracy

69. (1) The people of Uganda shall have the right to choose and adopt a form of democracy of their choice in accordance with article 74 of this Constitution.

(2) The forms of democracy referred to in clause (1) shall include—

(a) the movement form of democracy;

(b) ~~individual form of democracy;~~

(c) ~~party form of democracy.~~

24.8 *Rationale*

Democratic Governance is considered more embracing than 'political systems' associated with Agri' Foms of democracy 'is more embracing than 'political systems'. The amendment is intended to clarify the definition of article 70 to article 74. It is intended to replace the definition of the movement form of democracy with a definition of the movement form of democracy to be used as a form of movement form of democracy and to make clear that the only method prescribed by the Constitution for changing forms of democracy are those prescribed in article 74 of the Constitution—

- by referenda under article 74(1); or
- by parliamentary resolution supported by resolutions of District Councils under article 74(2).

24.9 Article 70 - Movement form of democracy.

24.10 The proposed amendment is to

Add after clause (2) of article 70 the following new clause (3)—

“(3) Notwithstanding anything in this article, individuals or groups subscribing to the movement form of democracy shall be free to associate as such in accordance with paragraph (e) of clause (1) of article 29”.

24.11 *Rationale*

The proposed amendment is intended to recognise the decision of the National Conference and the National Executive Committee to open up the political space and to recognise the right of individuals or groups subscribing to the movement form of democracy to associate as individual or groups within the movement political organisation and thereby enjoy the opened political space as movement adherents.

24.12 Article 71—Multi political organisations/multiparty form of democracy.

24.13 The proposed amendments are as follows

(a) The marginal note of "Multi-party political system" should be deleted and be replaced with "Democratic principles".

(b) A new clause (1) should be inserted in article 71 to read as follows—

"(1) The multi organisations or multi-party form of democracy shall be composed of political parties and political organisations.

(c) The original article 71 should be renumbered article 71(2) and should refer to both political parties and political organisations and it would thus read as follows—

"(2) A political party or political organisation in the multi organisations or multi-party form of democracy shall conform to the following principles—

(a) every political party or political organisation shall have a national character;

(b) membership of a political party or political organisation shall not be based exclusively on sex, ethnicity, religion, or other sectional division;

(c) the internal organisation of a political party or political organisation shall conform to the

democratic principles enshrined in this Constitution;

- (d) members of the national organs of a political party or political organisation shall be regularly elected from citizens of Uganda in conformity with paragraphs (a) and (b) and with due consideration for gender and for persons with disabilities;**
- (e) political parties or political organisations shall be required by law to declare their sources of funding and account for the use of their funds and assets;**
- (f) no person shall be compelled to join a particular party or political organisation by virtue of belonging to an organisation or interest group".**

24.14 *Rationale*

The purpose of the amendment is to further recognise the opening up of the political space and to enable political parties and political organisations to operate side by side and be subject to the same system of discipline and adherence to the principles of democracy.

24.15 Article 72 - Right to form political organisations

24.16 The proposed amendments are as follows:

“(2) An organisation shall not operate as a political party or political organisation unless it conforms to the principles laid down in this Constitution.

(2a) An organisation shall not operate as a political party or political organisation unless it is registered.

24.17 *Rationale*

The rationale is to separate the duty of political parties and organisations to register from the duty to comply with the democratic principles laid down in the Constitution.

24.18 Article 72 - Right to form political organisations

24.19 Further amendment is proposed as follows:

"(4) Any person is free to stand for an election as a candidate, independent of a political organisation or political party.

(5) Parliament shall by law regulate the manner of participation in and financing of elections by individuals seeking political office as independent candidates."

24.20 *Rationale*

To recognise the right of individuals to participate in politics as independents and to make provision for Parliament by law to regulate their finances as is done in the case of political parties and political organisations under the existing article 72(3).

25.0 CHAPTER 25

25.1 THE LEGISLATURE (CONSTITUTION: CHAPTER SIX)

Proposed article 82A—

Leader of the opposition

It is proposed to insert immediately after article 82 the following new article—

"Leader of the opposition

82A (1) Under the multi organisations or multiparty political form of democracy there shall be, in Parliament, a leader of the opposition.

(2) Parliament shall, by law or by rules of procedure of Parliament or both, prescribe the following in respect of the Leader of the Opposition—

- (a) how he or she is chosen and how he or she ceases to hold that office;**

- (b) his or her status;
- (c) his or her role and functions; and
- (d) the benefits and privileges attached to his or her office"

Rationale

~~The proposed amendment is to delete article 87 of the Constitution of the Republic of Kenya and to insert the following article—~~

25.2 Article 87 - Clerk to Parliament and other staff

25.3 The proposed amendment is that article 87 be deleted and replaced by the following article—

"87. Clerk to Parliament and other staff—

(1) There shall be a public officer designated Clerk to Parliament appointed by the President in consultation with the Public Service Commission.

(2) There shall also be such other member of staff as may be necessary for the efficient discharge of the functions of Parliament.

(3) The other staff referred to in clause (2) shall be appointed, disciplined and removed by the Parliamentary Commission".

25.4 *Rationale*

The intention is to clarify the appointment of the Clerk and the other staff of Parliament. The other staff are to be appointed by the Parliamentary Commission and the remuneration of all the staff including the Clerk will be determined by the Salaries and Remuneration Board being established under the Constitution.

26.0 CHAPTER 26

26.1 THE EXECUTIVE (CONSTITUTION: CHAPTER SEVEN)

26.2 Article 103 - Election of President

26.3 The proposed amendment is as follows—

Immediately after clause (6) of article 103 insert the following new clause—

“(6a) Where in a presidential election only one candidate stands nominated after close of nominations the

Electoral Commission shall declare that candidate elected unopposed”.

26.4 *Rationale*

It is only right when time has been given for persons aspiring to stand for election as President that if at the close of nominations there is only one candidate, that person should be declared the winning candidate.

It is already the law for candidates for persons aspiring to stand for election as President that if at the close of nominations there is only one candidate, that person should be declared the winning candidate.

This is already the law for candidates for parliamentary elections. The new proposal is to confirm a provision in section 17 of the Presidential Elections Act, (Act No. 17 of 2000).

26.5 Consequential amendments regarding the office of Prime Minister

Article 98 is proposed to be amended by the substitution for clause (2) (Order of precedence) the following new clause—

“98(2) The President shall take precedence over all persons in Uganda, and in descending order, the Vice President, the Speaker of Parliament, the Chief Justice, the Deputy Speaker of Parliament, the Prime Minister, the Deputy Chief Justice and Leader of the Opposition, shall take precedence over all other persons in Uganda”.

26.6 Consequential amendments of fourth schedule in relation to the Prime Minister.

**The following Oath to be inserted immediately before the
OATH OF MINISTER**

OATH OF PRIME MINISTER

"..... Being appointed a Prime Minister of Uganda swear in the name of the Almighty God/solemnly affirm that I will at all times well and truly serve the Republic of Uganda in the office of a Prime Minister, and I will support and uphold the Constitution of the Republic of Uganda as by law established; and that I will to the best of my judgment at all times when required, freely give my counsel and advice to the President of Uganda and his/her successors in office as by law established for the good management of the public affairs of the Republic of Uganda; and that I will not directly or indirectly reveal any matter as shall come to my knowledge in the discharge of my duties and committed to my secrecy. [So help me God].

26.7 *Rationale*

It is found important to formalise the office of the Prime Minister which has been found necessary for orderly conduct of the affairs of Government both in Parliament and outside.

26.8 *Article - The Cabinet*

26.9 The proposed amendment is to delete clause (1) of article 111 and substitute the following new clause—

(1) There shall be a Cabinet which shall consist of the President, the Vice President, the Prime Minister and such

number of Ministers as may appear to the President to be reasonably necessary for the efficient running of the State.

26.10 Approval by Parliament of appointment of Prime Minister and Ministers

26.11 The proposed amendment is that a new article be inserted immediately after article 114 as follows—

"Grounds for refusal of Parliament to approve nomination by President.

114A. The only grounds upon which Parliament may refuse to approve the nomination of a Prime Minister or Minister by the President under articles 113 and 114 are—

- (a) lack of qualifications for appointment to the office of the Prime Minister or Minister as prescribed by articles 108A, 113 and 114;**
- (b) that the person is not of high moral character and proven integrity or does not possess considerable experience and demonstrated competence in the conduct of public affairs".**

26.12 *Rationale*

To emphasise that unless a nominee is not qualified in terms of the Constitution and in particular unless he has been convicted of a serious offence, or does not meet the requirements of the proposed article 114A (c) the President should be trusted to judge who is best qualified to be appointed a Prime Minister or a Minister.

27.0 CHAPTER 27

27.1 THE JUDICIARY (CONSTITUTION: CHAPTER EIGHT)

27.2 Article 128 - Independence of the Judiciary

27.3 ~~The proposed amendment to Article 128 of the Constitution is to amend the provisions of Article 128 to the effect that judicial officers shall not be paid tax for their services.~~

27.4 *Rationale*

Judicial officers should like any other citizens pay tax to the state.

27.5 Article 130—Supreme Court of Uganda

27.6 The proposed amendment is to amend article 130 by substituting for paragraph (b) the following new paragraphs—

"(b) Such number of Justices of Supreme Court as Parliament may by resolution prescribe".

27.7 *Rationale*

~~Topic for the 10th Annual Supreme Court of Uganda Symposium on the Development of the Constitutional System in the
Africa~~

27.8 Article 134 –Court of Appeal of Uganda

27.9 The proposed amendment is to amend article 134 by substituting for paragraph (b) of clause (10) the following new paragraph—

"(b) such number of Justices of Appeal as Parliament may by resolution prescribe".

27.10 *Rationale*

~~In response to the 10th Annual Supreme Court of Uganda Symposium on the Development of the Constitutional System in the
Africa~~

27.11 Article 137: The Constitutional Court

27.12 The proposed amendment is that article 137 of the Constitution should be amended by adding after clause (3) the following new clauses:

~~(3) The Court shall have jurisdiction to hear and determine any appeal from a decision of the Appellate Court in any matter which is referred to it by the Appellate Court.~~

(3b) Notwithstanding that the Constitutional Court has no authority to review the decisions of the Appellate Court in any matter which is referred to it by the Appellate Court, the Appellate Court shall have jurisdiction to hear and determine any appeal from a decision of the Appellate Court in any matter which is referred to it by the Appellate Court.

27.13 *Rationale*

One of the goals Government sought to achieve in **Constitutional Appeal No. 3 of 2004 Attorney General vs. Dr. Ssemogerere & Zachary Olum**, was to get the Supreme Court to come up with two important decisions, namely, on the legal

effect of an Act of Parliament which is repealed, spent or expired or has had its full effect at the date of the delivery of judgment, and also the doctrine of prospective overruling respectively as follows:

(a) expired/repealed statute

The Supreme Court should have held that the Referendum (Political Systems) Act, 2000 which is an expired or spent Statute cannot be challenged in the Constitutional Court because it is no longer law.

The legal basis for this is the provisions of the Laws (Revised Edition) Act and Section 13(3) of the Interpretation Act, Cap.3. In view of this clear legal position, the Supreme Court should not have held that the Referendum (Political Systems) Act, 2000, [an Act of Parliament that expired in June 2000 and thereafter no longer in existence] can be successfully challenged in the Constitutional Court and declared null and void in September 2004.

(b) doctrine of prospective overruling

The doctrine of prospective overruling stipulates that when a Statute is held to be unconstitutional and therefore null and void, Courts should not give retrospective effect to the unconstitutionality, so as to set aside or nullify rights or obligations, actions or anything done under the authority of that Statute prior to the date of the delivery of judgment which declared the Statute to be unconstitutional.

The Supreme Court declined to make any decision with regard to the applicability to Uganda, of the doctrine of prospective overruling.

The Supreme Court's decision in judgment that 'to declare the Referendum null and void would have far reaching consequences'. This decision was based on reasons of public policy and not legal doctrine. It would have been more appropriate for the Court to apply the doctrine of popular sovereignty as the legal basis for finding the nullity of the Referendum (Political System) Act 2000 would not affect the validity of any law that was enacted under the authority of that Act, namely, among others, the conduct of the Referendum of 29 June 2000 whose results confirmed the people of Uganda had opted for a new political system. Indeed, the doctrine of popular sovereignty has been adopted and applied in the USA and many commonwealth jurisdictions including the UK, India and Malaysia as the legal means of giving whatever a sovereign State which has elected to be a constitutional monarchy.

The proposed amendment in clause 3(b) above will have the effect of meeting society's expectations that whatever is done under the authority of an Act of Parliament shall be regarded as legally valid at all times notwithstanding that the Statute may in future be declared null and void by the Court.

27.14 Article 138 – High Court of Uganda

27.15 The proposed amendments is to amend article 138 by substituting for paragraph (b) of clause (1) the following new paragraph—

"(b) such number of Judges of the High Court as Parliament may by resolution prescribe"

27.16 *Rationale*

To promote uniformity with the provisions relating to the Supreme Court and Court of Appeal.

27.17 Article 143 –Qualifications for appointment of judicial officers

27.18 The proposed amendments are to amend article 143 in clause (1)—

(a) by substituting for paragraph (c) the following new paragraph—

~~§ 143(c) A Judge of the High Court shall be qualified if he or she has been a Judge of a Court having unlimited jurisdiction on civil and criminal matters or a Court having jurisdiction on appeals from any such Court or has practiced as an advocate for a period not less than seven years before a Court having unlimited jurisdiction in civil and criminal matter”.~~

(b) by substituting for paragraph (e) the following new paragraph—

“(e) a Judge of the High Court, if he or she is or has been a Judge of a Court having unlimited jurisdiction on civil and criminal matters or a Court having jurisdiction on appeals from any such Court or has practiced as an advocate for a period not less than seven years before a Court having unlimited jurisdiction in civil and criminal matter”.

27.19 *Rationale*

The amendments are intended to reduce the years of experience of persons to be appointed to the Supreme Court and the High Court from fifteen years to ten years and from ten years to seven years respectively.

The object of the reduction is to make more advocates available for appointment to the bench.

27.20 Article 146 – Judicial Service Commission

27.21 The proposed replacement of article 146 are as follows:

“146. Judicial Service Commission

(1) There shall be a Judicial Service Commission.

~~“(1) There shall be a Judicial Service Commission consisting of the following members—~~

~~Chairperson of the Judicial Service Commission shall be appointed by the President.~~

~~by the President.~~

~~The President shall appoint the Chairperson of the Judicial Service Commission.~~

~~Chairperson of the Judicial Service Commission.~~

~~Chairperson of the Judicial Service Commission.~~

(3) The Attorney General shall be an ex-officio member of the Commission and, in his or her absence, the Deputy Attorney General.

(4) The Chairperson and the Deputy Chairperson as well as the member of the public referred to in paragraph (d) of clause (1), shall serve on a full time basis.

(5) A person is not qualified to be appointed a member of the Judicial Service Commission unless the person is of high moral character and proven integrity.

(6) The Chairperson and the Deputy Chairperson shall not engage in private legal practice while holding any such office.

(7) Subject to the provisions of this article, a member the Judicial Service Commission shall vacate his or her office—

(a) at the expiration of four years from the date of his or her appointment, but is eligible for reappointment for one more term;

~~Chairperson of the Judicial Service Commission.~~

~~Chairperson of the Judicial Service Commission.~~

~~State Judicial Service Commission and the Judicial Service Commission~~

~~Commission for the Judiciary and the Judicial Service Commission~~

~~Article 147 of the Constitution –~~

~~Appointment of the Judiciary~~

~~Appointment~~

~~Appointment~~

~~(1) Any officer of the Commission for the Judiciary shall, if he or she is not a member of the Commission, be appointed by the President.~~

~~(2) Where an officer of the Commission for the Judiciary is appointed by the President, he or she shall be appointed by the President on the recommendation of the Commission.~~

~~(3) Where an officer of the Commission for the Judiciary is appointed by the President, he or she shall be appointed by the President on the recommendation of the Commission.~~

~~(4) Any officer of the Commission for the Judiciary shall, if he or she is not a member of the Commission, be appointed by the President.~~

27.22 Article 147 - Functions of Judicial Service Commission

27.23 The proposed amendment is that paragraphs (b) and (c) of clause (1) of article 147 of the Constitution be repealed.

27.24 *Rationale*

The proposed amendment empowers the Judicial Service Commission to review the conduct of Judges and the Judicial Officers and to prepare and implement programmes for the education, dissemination of information and public relations administration of the Judiciary. The proposed amendment also empowers the Judicial Service Commission to appoint and staff the Judiciary. The Executive, Ministry of Justice and the Judiciary.

27.25 Article 148 – Appointment of court clerks and interpreters by the Judicial Service Commission

27.26 The proposed amendment is to insert immediately after article 148 the following new article—

"Appointment of court clerks and interpreters

148A. The Judicial Service Commission shall be responsible for the appointment and discipline of court clerks and interpreters whose terms and conditions of service shall subject to article 247A and 247B be determined by the Commission".

27.27 *Rationale*

The rationale is to make sure that the Judicial Service Commission is able to control clerks and interpreters used by the Courts but who have hitherto been appointed by the Public Service Commission which is remote from the day to day operation of the Courts.

28.0 **CHAPTER 28**

28.1 **FINANCE AND GENERAL AND MISCELLANEOUS
(CONSTITUTION: CHAPTERS NINE AND SEVENTEEN)**

28.2 **Article 155—Financial year estimates**

28.3 **Proposed amendment to article 257 (Interpretation) is in relation to article 155**

Article 155 (1) requires the President to submit estimates of revenues and expenditure to Parliament fifteen days before the commencement of the financial year. It is proposed to amend the definition of "financial year" in clause (1) of article 257 to read as follows-

"financial year" means the period of twelve months ending on such date in any year as Parliament may by resolution prescribe".

28.4 *Rationale*

The intention is to leave Parliament free by resolution to change the financial year from year to year as it deems fit so far as references to the financial year in the Constitution are concerned.

28.5 Article 155(3)—self accounting departments, commissions and organisations

28.6 The proposed amendment is to substitute for clause (3) of article 155 the following new clause

"(3) The estimates prepared under clause (2) of this article may be revised by the President with any recommendations that the Government may have on them".

28.7 *Rationale*

The idea is to enable the President, when estimates of revenues and expenditure of self accounting departments, commissions and organisations are submitted to him or her to revise them before submitting them to Parliament. At present the President is not allowed to revise them.

29.0 CHAPTER 29

29.1 THE PUBLIC SERVICE (CONSTITUTION : CHAPTER TEN)

29.2 Article 166 – Functions of Public Service Commission

29.3 The proposed amendment is to repeal paragraph (c) of clause (1) of article 166.

29.4 *Rationale*

Article 166(1)(c) empowers the Public Service Commission to review the terms and conditions of service, standing orders, training and qualifications of public officers and matters connected with personnel management and development of public service and to make recommendations on them to Government.

It is considered that these particular functions belong to the Executive, namely, Ministry of Justice and not to a service commission responsible for appointment and advising appointments.

So far as remuneration of public officers covered by the Public Service Commission is concerned, it will be determined by the Salaries and Remuneration Board being established under the Constitution

29.5 Article 168 – Functions of Education Service Commission

29.6 The proposed amendment is to repeal paragraph (c) of clause (1) of article 168

29.7 *Rationale*

The functions in that paragraph belong to the Executive, namely, the Ministry of Public Service in consultation with Ministry of Education.

The remuneration of the public officers covered by the Education Service Commission will be determined by the Salaries and Remuneration Board being established under the Constitution.

29.8 Article 170 –Functions of Health Service Commission

29.9 The proposed amendment is to repeal paragraph (c) of clause (1) of article 170.

29.10 *Rationale*

The functions in that paragraph belong to the Executive, namely, Ministry of Public Service in consultation with Ministry of Health.

The remuneration of the public officers covered by the Health Service Commission will be determined by the Salaries and Remuneration Board being established under the Constitution.

29.11 Establishment of the office of the Head of Public Service.

29.12 The proposed amendment is to insert immediately after article 173 the following new article—

"173A Head of Public Service

(1) There shall be a Head of the Public Service and two Deputy Heads of the Public Service all of whom shall be appointed by the President acting on the advice of the Public Service Commission.

(2) The functions of the Head of the Public Service shall be as follows—

(a) tendering advice to the President on matters relating to the Public Service; and

- (b) supervision of the work of Permanent Secretaries;
- (c) coordination of the activities of Permanent Secretaries;
- (d) ensuring the implementation of Cabinet decisions and other Government decisions;
- (e) to serve as a link between service commissions;
- (f) to serve as a link between the Executive and the Public Service;
- (g) any other duties assigned to him or her from time to time by the President.

(3) The Head of Public Service shall also to be the Secretary to the Cabinet.

(4) The two Deputy Heads of the Public Service shall be of the rank of Deputy Secretary to the Cabinet.

(5) ~~One Deputy Head of Public Service shall assist generally the Head of Public Service and the other Deputy Head of Public Service shall be responsible for general administrative matters.~~

29.13 *Rationale*

Although the post of Head of the Public Service exists at present it is felt that, like the post of Permanent Secretary, it should be formally recognised in the Constitution. Similarly, it is also felt to be necessary to provide in the Constitution for two Deputy Heads of the Public Service one to assist generally the Head of

the Public Service and the other to be responsible for the local government public service.

The deputy heads of the public service will each also have the status of Deputy Secretary to the Cabinet.

29.14 Amendment of article 174

29.15 The proposed amendment is that clause (2) of article 174 should be replaced with the following new clause—

"(2) A Permanent Secretary shall be appointed by the President acting on the advice of the Public Service Commission."

29.16 *Rationale*

It is felt that the mode of appointment of a Permanent Secretary should be uniform with that of the appointment the Head of Public Service and the Deputy Heads of the Public service.

30.0 CHAPTER 30

30.1 LOCAL GOVERNMENT (CONSTITUTION: CHAPTER ELEVEN)

30.2 Article 188(2) –Chief Administrative Officer as Chief Accounting Officer

30.3 The proposed amendment is to repeal clause (2) and replace it with the following new clause

"(2) The Secretary to the Treasury may appoint the Chief Administrative Officer or any other Senior Officer to be Accounting Officer in the district public service.

30.4 *Rationale*

The CAO should not be designated to be accounting officer for the district because such provision would create rigidity. The provision should be flexible. Accounting Officers in the central government are formally appointed by the Secretary to the Treasury. The Secretary to the Treasury should therefore be given discretion in the Constitution to appoint an accounting officer for the district public service.

31.0 CHAPTER 31

31.1 DEFENCE AND NATIONAL SECURITY (CONSTITUTION: CHAPTER TWELVE)

31.2 Article 214—Parliament to regulate Uganda Police Force

31.3 The proposed amendment is that article 214 be replaced with the following article 214—

"Parliament to regulate Uganda Police Force

214. Parliament shall make laws—

- (a) providing for the organisation and administration of the Uganda Police Force;**
- (b) providing for recruitment, appointment, promotion, discipline and removal of members of the Uganda Police Force;**
- (c) providing for the terms and conditions of service of members of the Uganda Police Force;**
- (d) ensuring that members of the Uganda Police Force are recruited from every district of Uganda; and**
- (e) regulating generally the Uganda Police Force".**

31.4 *Rationale*

~~Topic: 024, 025, 026, 027, 028, 029, 030, 031, 032, 033, 034, 035, 036, 037, 038, 039, 040, 041, 042, 043, 044, 045, 046, 047, 048, 049, 050, 051, 052, 053, 054, 055, 056, 057, 058, 059, 060, 061, 062, 063, 064, 065, 066, 067, 068, 069, 070, 071, 072, 073, 074, 075, 076, 077, 078, 079, 080, 081, 082, 083, 084, 085, 086, 087, 088, 089, 090, 091, 092, 093, 094, 095, 096, 097, 098, 099, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000~~

31.5 Article 216—Commissioner and Deputy Commissioner of Prisons

31.6 The proposed amendment is that the following article be substituted for article 216—

"Commissioner General and Deputy Commissioner General of Prisons

216. (1) There shall be a Commissioner General of Prisons and a Deputy Commissioner General of Prisons

appointed by the President with the approval of Parliament".

31.7 *Rationale*

The amendment is intended to improve the status of Head and Deputy Head of the Prisons Service and to provide promotion prospects for officers in the Prisons Service.

31.8 Article 217 - Parliament to regulate Uganda Prisons Service

31.9 The proposed amendment is that the following article be substituted for article 217—

Parliament to regulate Uganda Prisons Service

"217. Parliament shall make laws—

- (a) providing for the organisation, administration and functions of the Uganda Prisons Service;**
- (b) providing for recruitment, appointment, promotion, discipline and removal of members of the Uganda Prisons Service;**
- (c) providing for the terms and conditions of service of members of the Uganda Prisons Service;**
- (d) ensuring that members of the Uganda Prisons Service are recruited from every district of Uganda; and**
- (e) regulating generally the Uganda Prisons Service.**

31.10 *Rationale*

The replacement of article 217 is to make clear that although the Uganda Prisons Service under the Constitution are public officers by definition under article 257 of the Constitution, they do not have to be appointed by the Public Service Commission and Parliament can regulate their appointment and discipline like it does for the UPDF. That remuneration will however be determined by the Salaries and Remuneration Board being established under the Constitution.

31.11 Article 223 – Special courts relating to terrorism

31.12 The proposed amendment is that the following article be inserted immediately after article 222—

"Special Courts relating to terrorism

223. Parliament may, by law establish special courts for the trial of the offence of terrorism and related offences and may prescribe the composition and the jurisdiction of such courts and make such other provision as may be necessary to enable such courts to operate effectively".

31.13 *Rationale*

The reason for the new provision is to make sure that special courts are established to combat effectively terrorism and related offences which now threaten law and order and create a climate of insecurity throughout the world.

32.0 CHAPTER 32

**32.1 LAND AND ENVIRONMENT (CONSTITUTION:
CHAPTER FIFTEEN)**

32.2 Article 244 – Minerals

**32.3 The proposed amendment is that article 244 be repealed and
the following new article substituted—**

244. (1) ~~Subject to this article, Parliament shall make laws regulating—~~

(2) Subject to this article, Parliament shall make laws regulating—

(a) the exploitation of minerals;

**(b) the sharing of royalties arising from mineral
exploitation;**

- (c) the conditions for payment of indemnities arising out of exploitation of minerals; and**
- (d) the conditions regarding the restoration of derelict lands.**

(3) Minerals and mineral ores shall be exploited taking into account the interests of the individual land owners, local governments and the Government.

(4) In this article—

"mineral" means any substance, whether in solid, liquid or gaseous form occurring naturally in or on the earth, formed by or subject to a geological process, but does not include petroleum;

"petroleum" means,

- (a) any naturally occurring hydrocarbons, whether in gaseous, liquid or solid state;**
- (b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or**
- (c) any naturally occurring mixture of one or more hydrocarbons (whether in a gaseous, liquid or solid state) and any other substances, and includes any petroleum as defined by paragraph (a), (b) or (c) that has been returned to a natural reservoir, but does not include coal, shale, or any substance that may be extracted from coal or shale.**

(5) For the purpose of this article, "mineral" does not include clay, murram, sand or any stone commonly used for building or similar purposes.

(6) Parliament may regulate the exploitation of any substance excluded from the definition of mineral under this article when exploited for commercial purposes."

Rationale

The object of the proposed new article 244 is to rationalise the provisions of the article to make clear in conformity with modern concepts that minerals are vested in the State and to provide for the regulation of their exploitation by law made by Parliament.

33.0 CHAPTER 33

33.1 GENERAL AND MISCELLANEOUS (CONSTITUTION: CHAPTER SEVENTEEN)

33.2 Salaries and Remunerations Board

It is proposed that an independent Salaries and Remuneration Board should be established under the Constitution to be

responsible for determining the remuneration of all public officers and other persons whose salaries are paid out of the Consolidated Fund. See also para 5.3, (iv)-(v) pg. 46-47.

33.3 The proposed amendment is that Chapter Seventeen of the Constitution should be amended by inserting immediately after article 247 the following new articles—

"Salaries and Remunerations Board

247A (1) There shall be a body to be known as the Salaries and Remuneration Board.

(2) The Salaries and Remuneration Board shall comprise the following—

(a) a Chairperson appointed by the President with the approval of Parliament;

(b) the Chairpersons of the Public Service Commission, Judicial Service Commission, Education Service Commission and the Health Service Commission;

(c) two members of the Parliamentary Commission, other than the Speaker and the Deputy Speaker, nominated by the Parliamentary Commission;

(d) a Judicial officer nominated by the Chief Justice;

(e) the Chairperson of the National Planning Authority;

- (f) two representatives of the private sector;**
- (g) the Permanent Secretary of the ministry responsible for finance and Secretary to the Treasury; and**
- (h) the Permanent Secretary of the ministry responsible for the public service.**

(3) The Chairperson shall be a person of high moral character and proven integrity possessing extensive experience of service in the public service or in private sector organisations.

(4) The Permanent Secretary of the ministry responsible for the public service shall be the Secretary to the Board.

(5) The members of the Salaries and Remuneration Board shall be paid such remuneration as shall be determined by the Minister responsible for finance with the approval of Cabinet.

(6) Membership of the Board shall be part time.

(7) The Board shall prescribe its own procedure.

(8) The person appointed under paragraph (a) of clause (2) may be removed from office by the President only on any of the following grounds—

- (a) inability to perform the functions of his or her office arising out of infirmity of body or mind;**

(b) misbehaviour or misconduct, or

(c) incompetence.

(9) Chairperson of the Board shall vacate his or her office if he or she is under a sentence of death or a sentence of imprisonment exceeding nine months without the option of a fine, imposed by a competent Court.

(10) Any question for the removal of the Chairperson of the Board shall be referred to a tribunal appointed by the President and Tribunal shall submit its findings to the President.

(11) The President may remove the Chairperson if the tribunal recommends that he or she should be removed on any of the grounds specified in clause (8).

(12) Where the question for removal of the Chairperson involves an allegation that he or she is incapable of performing the functions of his or her office arising from infirmity of body or mind, the President shall, in consultation with the head of the Health Services of Uganda, appoint a Medical Board which shall investigate the matter and report its findings to the President with a copy to the tribunal.

(13) Where a tribunal is appointed by the President under clause (10) in respect of the Chairperson, the President may suspend the Chairperson from performing the functions of his or her office.

(14) A suspension under clause (13) shall cease to have effect if the tribunal advises the President that the Chairperson suspended should not be removed.”

Functions of the Salaries and Remuneration Board.

247B (1) The Salaries and Remuneration Board shall be responsible for determining the salaries of all public officers and all other persons whose salaries are paid from the Consolidated Fund.

(2) In this section "salary" includes allowance, gratuity and facilities."

33.4 *Rationale*

The creation is to establish a central independent body that will be responsible determining all salaries issuing out of the Consolidated Fund so as to remove discrepancies in those salaries and to promote the correct relativity between those salaries.

33.5 *Article 250A – Corporate governance*

The proposed amendment is to insert immediately after article 250 the following new article—

"Corporate Governance

~~THE PRESIDENT SHALL BE RESPONSIBLE FOR~~

33.6 *Rationale*

The object of the new article is to promote consultation and cooperation among the three organs of state, namely, the President, Parliament and the Judiciary to achieve smooth administration while at the same time preserving the essential constitutional separation of powers.

33.7 Article 255 – Referenda generally

33.8 The proposed amendment is to repeal article 255 and to substitute for it the following new article—

"255. Referenda generally

(1) Parliament shall by law make provision for the right of citizens to demand the holding by the Uganda Electoral Commission of a referendum, whether national or in any particular part of Uganda, on any issue.

(2) Parliament shall also make laws to provide for the holding of a referendum by the Uganda Electoral Commission upon a reference by the Government of any contentious matter to a referendum".

33.9 *Rationale*

The object of this article is to recognise the right of citizens of Uganda to request the holding of a referendum on any issue and also to cater for the right of the Executive to refer contentious matters to a referendum

34.0 CHAPTER 34

34.1 TRANSITIONAL PROVISIONS (CONSTITUTION: CHAPTER NINETEEN

34.2 Article 286—International agreements, treaties and conventions.

34.3 The proposed amendment is that article 286 should be repealed.

34.4 *Rationale*

It is considered unnecessary since international treaties bind countries and not governments.

34.5 Miscellaneous repeals of spent provisions

34.6 The proposed amendment is that most of the existing articles in Chapter Nineteen be repealed on the basis that they are spent and no longer needed. Therefore the following articles should be repealed.

- (a) article 263—Transitional Government;**
- (b) article 264—Particular functions of Transitional Government;**
- (c) article 265—Existing Courts of Judicature;**
- (d) article 266—Existing offices of Judges;**
- (e) article 267—Interim membership of Court of Appeal;**
- (f) article 268—Existing offices;**
- (g) article 260 – Regulation of political organisations;**
- (h) article 270—Existing political parties or organisations;**
- (i) article 271—First elections;**
- (j) article 272—Appointment to certain offices;**

- (k) article 274—Modification of existing law by first President;**
- (l) article 276—Provisions regarding urban authorities;**
- (m) article 277—Existing Commissions and committees of inquiry;**
- (n) article 278—Oaths deemed to have been taken;**
- (o) article 285—Revocation of statutory leases to urban authorities;**
- (p) article 286—International agreements, treaties and conventions;**
- (q) article 287—Repeal of 1967 Constitution and Legal Notice No.1 1986.**

34.7 *Rationale*

The reason for the repeal of the listed articles in Chapter Nineteen is that they were all only transitional provisions related to the coming into force of the 1995 Uganda Constitution. They are all spent and no further action is required to be taken under them. They can therefore safely be repealed without causing any harm.

35.0 CHAPTER 35

35.1 FIRST SCHEDULE

35.2 Proposed amendment

Item 6—To delete Kibale and substitute "Kibaale".

35.3 Proposed amendment

In item 17 relating to "Toro" delete the word "Toro" and substitute "Tooro"; and after the above mentioned item insert the following—

"17A Kyenjonjo"

"17B Kamwenge"

It has been decided to reflect in the First Schedule, all the 56 districts of Uganda so far created

36.0 CHAPTER 36

36.1 SECOND SCHEDULE

36.2 The proposed amendment is that wherever the word Zaire occurs there shall be substituted the "Democratic Republic of Congo".

37.3 *Rationale*

To recognise the change that has taken place in the name of the country.

37.0 CHAPTER 37

37.1 FUNCTIONS AND RESPONSIBILITIES OF REGIONAL GOVERNMENTS

37.2 The proposed amendment is that the existing Fifth Schedule be repealed and replaced with a new Schedule stating the functions and responsibilities of regional governments when formed.

37.3 *Rationale*

The rationale of the amendment is to enable the Fifth Schedule to contain functions and responsibilities to be given to regional governments under the new scheme.

38.0 **CHAPTER 38**

38.1 **SIXTH SCHEDULE**

38.2 FUNCTIONS AND SERVICES FOR WHICH GOVERNMENT IS RESPONSIBLE

38.3 The proposed amendment is that for item 24 of the Sixth Schedule, there shall be substituted the following—

"24. Forest and game reserve policy and management".

39.4 *Rationale*

To make sure that in the interest of proper management of forests and game reserves the Central Government must have a hand in it.

39.0 CHAPTER 39

39.1 CONSTITUTIONAL BODIES

39.2 Composition and Terms of Service

There are 14 Constitutional Commission/Bodies, with varying membership of between 4 and 10 members and periods of service of between 2 and 7 years. Some terms of service are renewable only twice while others are renewable for indefinite periods.

39.3 The proposed amendment is that the relevant articles should be amended to effect harmonization.

39.4 Suspension of members from office.

39.5 Although the Constitution provides for the removal from office of members, the Constitution does not provide for suspension from office by the President when a member is a subject of investigations/inquiry instituted with a view to determining whether or not he or she should be removed/dismissed from office.

39.6 The proposed amendment is that the relevant articles should be amended to grant the President powers to suspend a member of a constitutional body from office, analogous to the interdiction of a public officer, pending completion of investigations/inquiry by a special tribunal with a view to

determine whether or not he or she should be removed/dismissed from office.