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**DICTATORSHIP AND PRESIDENTIAL POWER
IN POST KYANKWANZI UGANDA:
OUT OF THE POT AND INTO THE FIRE**

J.Oloka - Onyango

Makerere University Kampala, UGANDA

The Human Rights and Peace Centre (HURIPEC) was established at Makerere University in 1993, and was designed among others to:-

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NOTE ON WORKING PAPER AND AUTHOR

An earlier version of this paper was presented XXXXXXXXXXXXXXXXXXXXXXXX
The author is an Associate Professor of law and the Director, Human Rights & Peace Centre (HURIPEC), Makerere University. No part of this paper may be reproduced in any form without the express permission of the author.

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I. INTRODUCTION

One of the stories my two young sons love best is that of the Emperor's new clothes. After reading the story to them, I will be invariably bombarded with numerous questions: "How come the Emperor couldn't see that he was naked?", "Why didn't the Emperor's officials tell him that he had no clothes?" and "Did it have to be a child to let the world know that the emperor was naked?" The answers I give them are never very satisfactory, but we nevertheless continue to read and enjoy the story.

Internal Movement critics have argued that the National Movement conference held at Kyankwanzi in March, 2003 represented a turn towards dictatorship and manipulation. Such views reflect the surprise these critics felt at the announcement made by President Museveni that presidential term limits should be removed from the 1995 constitution. In my considered opinion, it was essentially an extension, not a departure from a mode of dictatorship that has become firmly entrenched in Ugandan political economy for a considerable period of time. The seeds of this dictatorship were in fact sown as long ago as 1992-93, if not earlier. It is a dictatorship in which those surrounding the 'Emperor' have turned into a clever illusion actually, but one that is now clearly seen by many for what it is.

II. PRESIDENTIAL POWER IN CONTEMPORARY UGANDA

In order to understand exactly what Kyankwanzi means for democracy in Uganda, it is necessary to examine some aspects of our history. Prior to the 1994 debate on the draft Constitution by the Constituent Assembly, I wrote a paper entitled, *Taming the President*. The paper addressed the CA delegates and explored the many reasons behind the fact that the majority of Ugandan Presidents had been undisciplined and excessive in their exercise of executive power, the use

of military force to achieve political objectives, and in the overall disregard for constitutional order. I analysed this pathological disease as 'stayism'—the syndrome of seeking to remain in office and to entrench Presidents. It was my argument that one of the most fundamental issues the Constitution had to address was the question of presidential power and the placement of checks on the exercise of that power. My recommendation was as follows:

Article 108, concerning limiting the tenure of Presidents to only two five-year terms, should not be subject to amendment in any circumstance. In light of the historical tendency of our Presidents to extend their tenures beyond the periods initially mandated, and sometimes for life, there should be no way for the tenure of the President to be extended.

The Odoki Commission determined that the election and the powers of the chief executive, (the President) were issues of great concern to the people. Among other recommendations, the Commission stated that the President must be elected directly by adult suffrage to ensure his/her accountability to the whole nation. The President should act in accordance with the law and within the framework of the Constitution and should be liable for impeachment and removal by Parliament on specified grounds. In order to curb the tendency to dictatorship, the Commission recommended an effective system of checks and balances. The Odoki Commission highlighted how some of these checks and balances would operate in practise:

Though the President has power to govern effectively, the people's representatives have power to approve his or her decision in respect of a wide range of matters of major

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national importance. They include appointments to major constitutional offices, declaration of war or a state of insurgency or emergency and making of treaties. *We have recommended a limit of two terms of five years each for any President.* FN: UCC p16, emphasis added.

The Commission determined that there was a diversity of opinions regarding the proper length of the term for the elected executive, with suggestions varying between two and seven years. A substantial number proposed five years. The Odoki Commission adopted the majority proposal. Draft Article 108 (1) became Article 105(1) of the 1995 Constitution that is currently in force.

Turning to the issue of how many times an individual could be elected; the commission noted that in some countries (e.g. India, the UK and Kenya at the time the commission did its analysis) there was no limit. Summarising the disadvantages of an indefinite term in office, the commission stated as follows:

The disadvantage of indefinite re-election is the danger of personal ambition, and of using the office to secure re-election to the neglect of more important duties of state. However the danger depends to some extent upon the length of term and upon the actual power exercised by the executive head.

The Commission concluded that a majority view from the memoranda was to limit the term of office of the President. The Commission found the general consensus to be two terms, and enshrined this consensus in draft Article 108 (2) of the draft Constitution, which evolved into Article 105 (2) of the 1995 constitution. Not a single delegate to the CA

either opposed the idea of a fixed term of office, or of the limitation of the number of terms to only two .

III. THE SIX POINT PROGRAMME AT KYAKWANZI

What actually transpired at Kyankwanzi? My analysis is based on the accounts that have appeared in the media, which, not having been contested for their factual content, I assume are correct. All in all, the President made 6 proposals:

1. Opening the political space and describing the nature of a 'new' Movement therein;
2. Reviewing the relationship between the Executive and the Legislative;
3. Restructuring the Judiciary;
4. Reforming Local Government;
5. The Question of Land, and
6. Lifting the limitation on Presidential terms of office.

A. OPENING (?) THE POLITICAL SPACE

Freeing political parties

The first proposal made by President Museveni was for the 'opening of the political space.' A number of reasons were given for this proposal, principal among them being what were described as 'internal problems' in the Movement, and the anxiety of Uganda's 'development partners' about the trend of politics in the country.. Pinpointing the fact that there was 'clique formation' taking place and that there were people within the Movement who were opposed to it, the President declared that they should be 'set free' to pursue their individual political interests. In the words of the President, '*tubeggyeko*', i.e. 'lets get rid of them,' or '*Mubaleke bagende*' 'let them go'. Finally, he stated that the opening of space would nevertheless still be the subject of a referendum. Simultaneously (and

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presumably whatever the outcome of the referendum), the President stated that the Movement would retain its original character and principles.

None of these recommendations can even be remotely likened to an ‘opening of the political space’. Organised political competition is an essential prerequisite to progressive political pluralism. At best, the President’s suggested ‘opening’ represents a return to the 1980s, i.e. the mirage of multi-partyism, masking an increasingly vicious civilian dictatorship. This would amount to multi-partyism in form, and single-party governance in substance. It represents an extension of Movement control, while suffocating any political actors—old parties, or new. In short, President Museveni wants to both have his proverbial cake and to eat it.

A genuine ‘opening of the political space’ would include, at a minimum, the following elements:

- i. The legal transformation of the Movement into a political party that stands at par with all other parties, instead of maintaining the fiction that the Movement is either a ‘system’ or an ‘organisation’ different from parties. This necessitates a repeal of the present Movement Act, 1997, and the removal of all officials of local and central government (including Police, Prisons and Army officials) from all the structures of the Movement. It would also mean that the Movement ceases to be a parastatal organisation, relying on state funds for its existence and operation, and on state facilities in order to retain its monopoly. In sum, if political space is to be really opened up, the Movement cannot continue to exist in its present form. Indeed, the Movement should be effectively wound up.
- ii. A national dialogue and exchange on how the country should progress towards genuine

pluralist competition. Such a dialogue would include not only the main political actors (i.e. established and new political parties, organisations and pressure groups), but also a significant proportion of civil society actors, including women activists, youths, workers, religious groupings and human rights organisations. Politics should cease to be the monopoly of only formal, organized political groups. The minimum pre-condition of these talks must be the acceptance that political monopoly is unacceptable, whether via military force, or through political manipulation. Opening the political space without levelling the playing field is meaningless;

- (iii) The repeal of all legislation that places limits, not only on political pluralism (e.g. the Police Act, and the Political Organizations Act), but also on *social* pluralism, such as laws governing NGOs and trade unions, and,
- (iv) The dismantling of para and quasi-military agencies, such as Kalangala Action Plan, and the removal of civil powers of law enforcement and administration from military bodies, including military intelligence and the military tribunal. Government must also provide a full and complete accounting of all persons held in unlawful custody and to commit itself to the elimination of illegal centres of detention and the use of extra-judicial methods of handling political opposition.

Unfortunately, none of these recommendations will be given any attention because such changes to the Movement would create a Movement without Museveni. President Museveni, as has become abundantly clear, is not yet prepared to leave the scene. Consequently, the Movement as we know it remains in place, together with a functionally closed political

space. It is for this reason that the powers of the President must also be strengthened. This explains why the claim that political space is to be opened is ironically accompanied by proposals for highly strengthened powers of the office of the President.

The Shape of a new Movement

Given the above changes, it is not true that the Movement will remain the same. According to Article 70(1) of the 1995 Constitution, the Movement is to be: (i) broad-based, (ii) inclusive, and (iii) non-partisan. Furthermore, it is supposed to conform to a number of principles (including participatory democracy; democracy, accountability and transparency; accessibility to all positions of leadership by all citizens, and individual merit as a basis for election to political office (see Article 70.(1)). We all know the degree to which these principles have operated in practice, particularly the last two—the remnants of which were abandoned in the 2001 elections.

President Museveni and Movement officialdom has always maintained that political parties were never banned; they were simply limited in their mode of operation (see, Article 269 of the Constitution, and the Political Organisations Act, 2001). In practice however, political parties were excluded from the Movement, although the Constitution and the Movement Act compelled everybody to belong to it. This is how we came to have ‘Movement’ candidates, and why the President campaigned so vigorously against candidates in Rukungiri, Mbarara and Kampala City elections, to mention only a few instances. To now say *‘tubeggyeko’*, is obviously not in reference to the political parties, since they were always factually out of the Movement.

Basically, it is about removing internal opposition from within the Movement. It is the historical equivalent of Milton Obote’s purge of the UPC in 1964. That purge was directed at people like John Kakonge, Dan Wadada Nabudere, Kintu Musoke, Kirunda Kivejinja

and Jaberu Bidandi Ssali. The President’s purported ‘opening political space’ will essentially achieve two things. First, it will rid the Movement of internal critics such as Bidandi Ssali and it will effectively maintain the shackles on opposition organised political party activity, albeit in a different form. This ‘new’ Movement will be a single party par excellence. This is especially because old parties must register and the President intends to hold the referendum, as prescribed in Article 271.3 of the Constitution, which maintains the lid on parties until 2004 at the earliest. The intent to close political space becomes even more clear from President Museveni’s other Kyankwanzi proposals, which we now turn to and review.

B. CENSORING THE LEGISLATURE

The 1967 Constitution was a dictator’s dream, especially with regard to legislative power. From the President’s Kyankwanzi suggestions regarding Parliament, it is clear that he is nostalgic for the ‘good old days.’ One of the most significant innovations of the 1995 Constitution was in restructuring legislative power in order, among other things, to provide for the vetting of Presidential appointees, creating more effective checks and balances, and improving the independence of the legislature from executive control.

At Kyankwanzi, the President spoke about the following:

- (i) Removing the power of Parliament to censor ministers (Article 118);
- (ii) Reducing Parliament’s vetting power (Article 113);
- (iii) The President’s power to assent to a bill from Parliament (Article 91);
- (iv) Reducing the qualification levels required for parliamentary contestants (Article 80), and
- (v) What should happen in the event of a stalemate between Parliament and the President (the dissolution power in Article 91).

President dealing with his own Ministers

The President proposed that Parliament should cease to have powers to censure his Ministers. This is presumably because there is a problem with this power. The President is correct that the Constitution creates a problem with the censure of power. The President thinks the provision goes too far, In fact, it does not go far enough. The real problem is that Article 118.2 states inconclusively, that once a vote of censure has been passed against a Minister, the President shall, unless the Minister resigns his or her office, “take appropriate action in the matter”.

According to this provision the President is well within his rights to promote a censured minister. Even though the President has had no problem re-appointing censured Ministers, the political price for doing this is quite high. This is precisely why the President wants to remove the censure power from Parliament altogether. But under the 1995 Constitution, there is absolutely no bar to the President censuring (reprimanding, suspending or firing) his own Ministers at any time. What is clear from this proposal is that the President does not like having his ministers censured.

It is also surprising that the President should not be pleased with this provision, because it appears in legislation that is more recent than the 1995 Constitution, and to which the President himself gave his assent. Section 14 of the Movement Act, 1997 covers the issue of censure of the National Political Commissar (NPC), an office that has cabinet ranking. Sub-section 2 of this provision stipulates that:

“Once a vote of censure has been passed against the NPC, the chairperson shall, unless the NPC resigns his or her office, take appropriate action in the matter which may include any of the following:–
(a) Reprimand, (b) suspension, (c) dismissal.

This is a much clearer stipulation of what the President *must* do in the event the NPC is censured. In my view,

if Article 118.2 were to be amended in order to provide that a censured minister *must* resign, this would both save the President embarrassment of having to ‘take appropriate action.’ It would also strengthen the culture of accountability. Nevertheless, such an amendment would have to be accompanied by a reformed method of carrying out the censure, so that it does not become a ‘kangaroo court’.

Reducing Parliamentary Vetting Powers

The President suggested trimming the legislative powers of vetting his Cabinet nominees (Article 113), such that the only ground for rejection of a nominee would be his or her criminal record. Issues like integrity and previous records of public or private administration, competence, public behaviour or mental health are important considerations for the holding of the office. Gender, ethnic and religious balances are also factors which the President himself has made such an essential ingredient of public (especially Cabinet) appointments. To suggest that they be removed, is disingenuous to say the least.

Presidential powers of Assent to Parliamentary Bills

The President would prefer to have the last say on the passing of legislation. He describes Article 91, which gives the last word to Parliament as ‘outrageous.’ Yet, this is standard procedure around the world (except in dictatorships) which recognises Parliament (not the Executive) as the true voice of the people, even when you have a directly elected leader. A historical equivalent to the amendment proposed by President Museveni would be Idi Amin’s suspension of the powers of Parliament to make law, which he subsequently vested in himself. An amendment to Article 91 would give the President veto powers over Parliament resulting in rule by decree.

Stand-offs between the Executive and the Legislature

The President suggested that, in the event that there is an unresolved conflict between the Executive and the Legislature, either the President should have the power to dissolve Parliament or both the President and Parliament should resign and seek a fresh mandate. The President expressed a preference for the former.

There were reasons why the UCC and the CA thought it fit to give Parliament a fixed term (Article 77(3)), and also re-designed the powers to prorogue (or adjourn) the Parliamentary session. While under previous Constitutions this power vested solely in the President, under Article 95(3), the power is divided between the President and Speaker. The 1995 Constitution does not contain provisions for the premature dissolution of Parliament. If the Executive had such a power it could be used to threaten, intimidate and coerce the Legislature. Apparently the President misses those days when he could call closed sessions of the Legislature and bully them into submission.

C. NEUTRALISING THE JUDICIARY

As if reducing the powers of the Legislature is not enough, the President also wants to tame and harness the Judiciary. Every government in the world has tensions with the Judiciary to some degree or another, principally because politicians do not cherish being told what they did wrong and facing an institution of government with the power to force them to correct their mistakes. The Museveni government has been no exception. Indeed at every chance, the President will make a statement about how corrupt the Ugandan Bench is. However, the substance of that tension relates to the judicial power to check Executive excess. Consequently, the President would like to see an increase in his powers over the choice of who becomes a judge and their tenure of office in order, essentially, to ensure that “anti-Movement judges” (as he describes them) can be weeded out of the Judiciary. Ironically, he suggests an extension of his own tenure whilst he

proposes a weakening of the tenure of an institution that is perhaps the only check (aside from legislative powers) on the Executive.

D. THE ELIMINATION OF PRESIDENTIAL TERM LIMITS

The President’s final recommendation was made with respect to term limits. In this regard, NPC Crispus Kiyonga and Defence Minister Amama Mbabazi made a clarification and quoted President Museveni as stating:

I have been hearing people talking of a ‘third term’ for the incumbent president. This is not the correct way of putting this issue. The correct way of putting it is probably, to talk of removing the limit of two consecutive five year presidential terms so that the question of who leads the country depends on the popular vote, as is the case in some countries in the world.

Aside from the ‘correct way’ of presenting the issue, there is a lot at stake here. Numerous Movement sycophants have argued that this suggestion by the President did not mean that he was talking about himself. We were thus advised not to jump to hasty conclusions since the President has not made his intentions about 2006 clear. After all, many so-called democracies do not have term limits on the tenure of their chief executives. Indeed, the final Kyankwanzi decision basically adopted the President’s position on the matter. It did not recommend amendment of the Constitution to allow the incumbent to stand for a third term (as was done in Namibia, and unsuccessfully tried in Zambia, Malawi, and Zanzibar). But what it actually proposes is much worse.

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To remove term limits altogether is to effectively restore a 'life Presidency'. Given not only the traditional problems manifest in the exercise of executive power, but also the problems that have been endemic to electoral processes in this country, quite clearly this is a recipe for 'eternal No change!' In historical precedent this recommendation can only be compared to the recommendation made (and, of course accepted) to make Idi Amin President for life. Even the tactic is the same: deny that it is you (the incumbent) desirous of the change, and 'selflessly' shift the issue to another body to decide. In Amin's case it was the Defence Council; for President Museveni, it has been the NEC, followed by the National Conference, and (if necessary) the people via a referendum.

The way in which the issue was inserted into the agenda makes the idea that the elimination of term limits should not take Museveni into account plainly ridiculous. If that was the case, then there was no cause for the issue to be tabled, discussed and resolved upon at the Movement National Conference. Moreover, this debate on term-limits does not sit well with the President's call to the opposition and others to stop talking about politics, leadership and succession, and to concentrate on matters of "much greater importance" such as development. Given such an admonition against his opponents, it is inconsistent that issues of development were not first on the agenda for discussion. Finally, if the President does not want this issue to be tied to the incumbent, he should come out and unequivocally state that he will step down in 2006. Only such an unequivocal statement on the issue will close all further speculation on the matter. Only when the President does this will the issue be removed from connection to the incumbent.

However, a critical review of this issue reveals that President Museveni is incapable of serving his two-term limit and peacefully stepping down as required by the 1995 Constitution. He is now afflicted by an advanced case of *stayism*. This is why his statements

on the issue are full of contradictions and Orwellian 'double speech.' When asked by a foreign journalist whether or not he would serve two terms, the President's response was uncharacteristically evasive: "I will obey the Constitution". Of course, he did not state whether he would obey the current Constitution, or a Constitution that has been amended in order to remove any term limits. Answering *Financial Times* journalist David White on the same issue, the President said the question was "irrelevant, as long as there is agreement on the way forward, what does it matter who is in charge? Africa hasn't been lacking a turnover of leaders, but what has been lacking has been vision." On the *Capital Gang* talk-show, the President stated: "of course, I will not serve 30 years." Does this mean he will *not* serve for 25 years? It is hard to believe such a statement coming from the same man who initially made a commitment to serving *only* four years in office.

IV. CONCLUSION

The proposals by President Museveni present an essential paradox. If the suggested removal of any term limits should not be tied to the incumbent, it is inexplicable that he would want to hand over power to a dictator. This is because, it is quite clear that the proposals for the amendment of the Constitution made by the President entrench dictatorship. In particular, to remove any limits from presidential tenure is to remove the one enduring check on executive power. Provision for a peaceful succession makes heads of state more conscious of their legacy and posterity, ensuring that dialogue, compromise and accommodation are the hallmarks of that tenure. After seventeen years, this President does not seem to want to let go. We should prepare to spare no effort to resist him.

Twenty-three years ago Africa heralded the arrival of what was then described as a bright, dynamic and revolutionary leader in a country formerly called Rhodesia. Robert Gabriel Mugabe became the first

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indigenous leader of the country renamed Zimbabwe. Mugabe mesmerised the continent and the world with his numerous degrees, polished diction and calls for reconciliation. The world turned a blind eye to his 1983 massacre of innocent civilians in Matabeleland. It kept quiet when he turned Zimbabwe into a one party state. It only came alive when, in an act of desperate self-preservation, he began to expropriate the white farmers of their land. In Uganda, Museveni is a Mugabe in the making. Uganda is not as rich or as strategic as Zimbabwe (unless the Lake Albert oil is discovered to be exploitable) and we do not have a class of white farmers. However the world would do well to note that the same traits that Mugabe has demonstrated in later life are all present in Yoweri Kaguta Museveni.

As for those who have been parading the blind lie that President Museveni has either not yet made up his mind, or that the removal of term limits is not designed to benefit the incumbent, this is a caution. To take the people for granted is simply unacceptable. If we have any sense of nationalism and vision for this country, we should not live the illusion of a robed Movement emperor. Let us be like the child who saw the 'naked truth' and told it as he saw it. The emperor is either not being told this fact or has simply refused to listen. For the sake of our children: resist the bid for a third term.