MAKERERE UNIVERSITY

SCHOOL OF LAW

RECALLING OUR HISTORY: A REFLECTION OF HISTORICAL MEMORY IN UGANDA`S CONSTITUTIONAL JURISPRUDENCE SINCE 1995

BY

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JUNE 2026

DECLARATION

I Claire Nakawuka, hereby declare that this dissertation is my original work and has not been presented to any other university or institution for the award of any degree, diploma, or any other academic qualification. All contributions borrowed from any other work in the form of literature have been duly acknowledged through quotations, footnotes, and complete references.

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Date....11th June, 2025.....

Signature: .....

APPROVAL

The dissertation, *Recalling Our history: A Reflection of Historical Memory in Uganda`s Constitutional Jurisprudence since 1995*, has been prepared and submitted for examination under my guidance and supervision.

Supervisor's Name: Dr. Busingye Kabumba **Date** 11th June 2026

Signature: .....

DEDICATION

This dissertation is dedicated to my late grandmother , Ms. Namulindwa Francis, whose steadfast belief in my potential has remained the most profound and enduring source of inspiration throughout my academic journey. I also dedicate this work to all those who have been pillars of strength in this journey: my parents, Mr. and Mrs. Randy and Fr. Ssemakula Peter Paul, whose support, encouragement, and love has enabled me to come this far in the pursuit of my academic aspirations.

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LIST OF ACRONYMS

AG	Attorney General
BBI	Building Bridges Initiative
CEHURD	Centre for Health, Human Rights Development
CJ	Chief Justice
COL (RTD)	Colonel (Retired)
CPA	Criminal Procedure Act
COVID-19	Coronavirus Disease 2019
DCJ	Deputy Chief Justice
DMA	Disaster Management Act
DP	Democratic Party
ECA	Electoral Commission Act
FRONASA	Front for National Salvation
IBEAC	Imperial British East Africa Company
IEBC	Independent Electoral and Boundaries Commission
IGG	Inspector-General of Government
JA	Justice of Appeal
JCC	Justice of the Constitutional Court
JSC	Justice of the Supreme Court
KADU	Kenya African Democratic Union
KANU	Kenya African National Union
KPU	Kenya People's Union
KY	Kabaka Yekka
LEGCO	Legislative Council
NCC	National Consultative Council
NCHI	National Constitutional History Institute
NDC	National Democratic Congress

NPP	New Patriotic Party
NRA	National Resistance Army
NRM	National Resistance Movement
PEA	Presidential Elections Act
RC	Resistance Committee/Council
UNLA	Uganda National Liberation Army
UNLF	Uganda National Liberation Front
UPC	Uganda People's Congress
UPDF	Uganda People's Defence Force
UPM	Uganda Patriotic Movement

LIST OF CASES

Uganda

Advocates For Natural Resources Government and Development and ors v Attorney General and anor Constitutional Petition No. 40 of 2013 [2013] UGCC 17

Amama Mbabazi v Yoweri Museveni and ors [2016] UGSC 3

Andrew Lutakome Kayiira & anor v Edward Rugumayo & ors Constitutional Case No.1 of 1979 [1980] UGCA 3 (21 October 1980)

Attorney General v Major General David Tinyefuza Constitutional Appeal No. 1 of 1997 [1998] UGSC 34 (28 January 1998)

Attorney General v Susan Kigula & 417 Others Constitutional Petition No.3 of 2006 [2009] UGSC 6

Centre for Health Human Rights Development (CEHURD) & Others v Attorney General Constitutional Petition no.6 of 2011 [2020] UGCC 12 (19 August 2020)

Centre for Health Human Rights Development (CEHURD) & 3 Others v Attorney General [2025] UGSC 69

COL (RTD) Besigye Kizza v Yoweri Kaguta Museveni and anor Presidential Election Petition No.1 of 2001 [2001] UGSC 15 (6 July 2001)

COL (RTD) Besigye Kizza v Yoweri Kaguta Museveni and anor Presidential Election Petition No.1 of 2006 [2006] UGSC 1

Ibingira and Others v Attorney General of Uganda [1966] 1 EA 306

Kyagulanyi T/a Bobi Wine v Kampala Metropolitan Police Commander & Anor Misc Cause No.313 OF 2017 [2019] UGHCCD 113

Lumu Robert Kizito and ors v Norbert Mao and ors [2026] UGCC 2

Major General David Tinyefuza v Attorney General Constitutional Petition No. 1 of 1996 [1997] UGCC 2

Male Mabirizi v Attorney General [2018] UGCC 4

Mifumi (U) Ltd & 12 Others v Attorney General Constitutional Appeal No.02 of 2014 [2015] UGSC 13

Mukwaba & Ors v Mukubira & Ors (1952-6) ULR 74

Mwenge v Migadde (1932-5) ULR 97

Odongkara and others v Kamanda and another [1968] 1 EA 210

Opoloto v Attorney-General [1969] 1 EA 631

Paulo Kawanga Ssemwogerere and ors v Attorney General Constitutional Petition No.5 of 2002 [2003] UGCC 4

Re G. L. Binaisa [1959] EA 997

Re Ibrahim and others [1970] 1 EA 16

Uganda Association of Women Lawyers and others v Attorney General Constitutional Petition No.2 of 2004 [2004] UGCC 1

Uganda v Commissioner of Prisons ex Parte Matovu (1966) EA 514

Uganda v Alfred James Kisubi [1975] HCB 173

Kenya

Attorney General & 2 others v Ndii & 79 others Petition 12 of 2021 [2022] KESC 8 (KLR)

Monica Wangu Wamwere and 5 ors v Attorney General Supreme Court Petitions Nos. 26 34 & 35 of 2019 [2023] KESC 3 (KLR)

R v Amkeyo (1917) KALR 1

Raila Amola Odinga & 5 Others v Independent Electoral and Boundaries commission & 3 others Presidential Election Petition 5 of 2013 [2013] KESC 6 (KLR)

*Raila Amolo Odinga & another v Independent Electoral and Boundaries Commission & 2 other*s Presidential Election petition 1 of 2017 [2017] KESC 42 (KLR)

Raila Amolo Odinga & 16 Others v William Ruto & 10 Others; Law Society of Kenya & 4 Others Presidental Election Petition E005 of 2022 [20022] KESC 56 (KLR)

South Africa

Democratic Alliance v Minister of Corperative Governace and Traditional Affairs and ors CCT 150/24 [2026] ZACC 8 (27 February 2026)

Minister of Home Affairs and Another v Fourie and Another (Doctors for Life International and Others, Amicus Curiae) ; Lesbian and Gay Equality Project and Others v Minister of Home Affairs and Others [2005] ZACC 19 (1 December 2005)

The National Coalition for Gay and Lesbian Equality & anor v The Minister of Justice & ors CCT11/98 [1998] ZACC 15

S v Makwanyane and anor 1995(3) SA 391 (CC)(6 June,1995)

Ghana

Dr Prince Obiri Korang v The Attorney General Writ No.J1/ 18/2021 [2024] DLSC17701 (24 July 2024)

Ghana Center For Democratic Development & 8 Ors v Attorney-general Writ No.JI/01/2021 [2023] GHASC 23 (May 31,2023)

John Dramani Mahama v Electoral Commission and anor Writ No.J1/05/2021 [2021] DLRYSC 7AA4

Prof. Kwadwo Appiagyei-Atua & 7 ors v Attorney General [2023] DLSC 15177

Tanzania

Gwao bin Kilimo v Kisunda bin Ifuti (1938) 1 TLR 340

United States of America

Brown v Board of Education 347 U.S.483 (1954)

Dobbs v Jackson Women's Health Organization 597 U.S. 215 (2022)

Kennedy v Bremerton School District 869 F.3d 813 820 (CA9 2017)

Planned Parenthood v Casey 505 U.S. 833 (1992)

Plessy v Ferguson 16 S. Ct. 1138 (1896)

Roe v Wade 410 U.S. 113 (1973)

Students for Fair Admissions Inc v President and Fellows of Harvard College 600 U.S.181 (2023)

Trump v United States 603 U.S.593 (2024)

Washington et al v Glucksberg et al 521 U.S 702 (1997)

LIST OF STATUTES

Uganda

Africa Order in Council (1889)

Colonial Laws Validity Act 1865

Constitution of Uganda (1962)

Constitution of Uganda (1966)

Constitution of Uganda (1967)

Constitution of Uganda (1995)

Deportation Ordinance 1945

Deportation (Validation) Act 1966

Decree No. 5 of 1971

Decree No. 7 of 1971

Decree No. 26 of 1971

Decree No. 9 of 1971

Decree No. 13 of 1971

Divorce Act Cap. 144

Emergency Powers (Detention) Regulations 1966

Electoral Commission Act Cap. 140

Land Acquisition Act Cap 226

Land Reform Decree 1975

Legal Notice No. 1 of 1971

Legal Notice No. 1 of 1979

Legal Notice No. 1 of 1986

National Resistance Army Statute of 1992

Political Parties and Organization Act. Cap. 178

Presidential Election Act Cap. 179

Robbery Suspects Decree No. 7 of 1972

Traditional Rulers (Restitution of Assets and Properties) Statute 1993

Uganda Independence Act 1962 (Cap 57)

Uganda Order in Council 1902

Uganda Order in Council 1920

UNLF Constitution (Uganda National Liberation Front Constitution)

Constitutional Court (Petitions and References) Rules (S.I. 91/2005)

Kenya

Constitution of Kenya (2010)

South Africa

Constitution of the Republic of South Africa (1996)

Disaster Management Act No. 57 of 2002

Ghana

Constitution of Ghana (1992)

United States of America

United States Constitution (1787)

CHAPTER ONE

INTRODUCTION

1.1 Introduction

1.2 Historical background of the study

1.3 Problem statement

1.4 Research objectives

1.5 Research Questions

1.6 Methodology

1.7 Significance of the Study

1.8 Scope of the study

1.9 Literature review

1.10 Chapter Synopsis

> *'We must always recall our history. Lest we forget…. Indeed, lest we forget our people, the brave, who shed blood in battle, who were killed, starved or jailed during the period when we were under colonial rule. Those who struggled for our independence and endeavored to bring us together as a nation state. Those who were killed in the lost counties. Those who were killed at Nakulabye and those that fell during the Battle of Mengo. Those who lost their lives and those who spent long days in prison during the state of emergency. Those who were deported from their homes to distant places because they dared to speak out. Those who lost their lands, properties and livelihoods unjustly to the powerful and greed government officials. Those who were killed during the murderous regime of Idi Amin and the years that followed his rule… Those who lost their lives so that we may have peace and stability during the civil war that ended in 1986…'*
>
> - Justice Kenneth Kakuru in *Male Mabirizi v Attorney general*

1.1 Introduction

The promulgation of Uganda's Constitution on 8 October 1995[1] was not merely a juridical milestone, but a deliberate and conscious act of collective remembrance. Emerging from decades of military coups, institutional collapse, and systematic human rights violations,[2] the Constitution was framed as both a rebuke of the past and a covenant with the future. Its Preamble expressly recalls

[1] Preamble of the Constitution of the Republic of Uganda (1995).

[2] FG Mutebi 'Collapse, war and reconstruction in Uganda: An analytical narrative on state-making' (2008) 28 *Crisis States Working Papers Series No.2,* 1.

the political and constitutional instability that had afflicted the nation and invokes the sacrifices of those who resisted tyranny and oppression, thereby inscribing historical memory into the very foundation of the constitutional order.[3] This conscious act of remembrance was not incidental; the framers, guided by the Uganda Constitutional Commission, designed the Constitution to ensure that the failures of earlier constitutional experiments ,under the 1962, 1966, and 1967 instruments, would not be repeated.[4] Since 1995, Uganda's courts, most notably the Constitutional Court and the Supreme Court, have been engaged in the complex and often contested task of giving legal effect to that constitutional memory.[5] This encompasses engagement with the collective experience of past injustices, conflict and constitutional rupture when interpreting constitutional provisions, adjudicating disputes, and shaping the boundaries of state power. The question of whether courts recall, deploy, and at times contest that historical memory, and whether such invocations serve as genuine jurisprudential tools or mere rhetorical legitimation, lies at the heart of this research.

1.2 Historical background of the study

Uganda did not exist as a unified constitutional or sovereign entity prior to 1894, although its constituent societies had long been established well before its formation as a state. In that year, the British Government declared Uganda a Protectorate, thereby establishing it as an administrative unit under colonial rule. However, the consolidation of British authority across the entire territory and the final demarcation of its present boundaries took place gradually over time. Before this process of consolidation, the region consisted of a diverse collection of more than fifty chiefly and non-chiefly societies, which were later amalgamated constitute the new Protectorate. [6]The designation of Uganda as a British Protectorate was a watershed moment that set the pace and tone for the territory's political, social and economic trajectory, whose ripples are still evident ,very many years later.[7]

Uganda's first post-colonial constitutional instrument was the 1962 Constitution that was promulgated following negotiations between Britain as the departing colonial power and the

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[3] Preamble (n 1 above).

[4] BJ Odoki'The Path to Constitutionalism in Uganda' in A. Byaruhanga (ed),*Constitutional Developments in Uganda* (2005) *Fountain Publishers* 12.

[5]See *Attorney General v Major General David Tinyefunza*, Constitutional Appeal No. 1 of 1997 [1997] UGCC 3; *Rtd Col. Dr. Besigye Kizza v Museveni Yoweri Kaguta & Electoral Commission*, Presidential Election Petition No. 1 of 2001 [2001] UGSC 3.

[6] GW Kanyeihamba 'Constitutional and Political History of Uganda: From 1894 to Present' (2010) *LawAfrica Publishing (K)Limited* 2.

[7] KC Katiba 'Compendium of Constitutional Reform Proposals under the 1995 Constitution of Uganda (2023) *Eastern Africa Centre for Constitutional Development* 4 availableat*:* *Https://Www.Kituochakatiba.Org/Sites/Default/Files/2024-04/A-Compendium-Of-Constitutional-Reform-Proposals-Under-The-1995 Constitution-Of-Uganda.Pdf.*

nationalist politicians of the day.[8] Despite the current belief, promoted by NRM politicians as part of the justification for a new Constitution, the 1962 Constitution was indeed predated by a Constituent Assembly of sorts, and was not entirely the product of a closed, non-participatory debate. Following extensive recommendations for reform by a 1959 Con-situational Committee drawn from the members of the Legislative Council (LEGCO), the then Secretary of State for the Colonies made a number of proposals. The first was that direct elections should be held throughout the protectorate in early 1960. The second resulted in the establishment of a Relationships Commission to make a careful study of the form of government which would be appropriate for a self-governing Uganda. This led to the establishment of the Munster Commission to make proposals on the form of government that should be adopted in independent Uganda. According to Ovonji the proposals of the Commission were a mass of contradictions, since they counseled that:

> Uganda be made a single, democratic state with a strong, central government and that the Buganda Kingdom be granted federal status with more powers than it had hitherto, and that the other Kingdoms be semi-federal states. At a time when the protectorate was moving towards independence, the protectorate ad- ministration was raising issues directed towards creating disunity.[9]

The 1962 Constitution that resulted from the London Constitutional Conferences continued in the same contradictory spirit as that of the Munster Commission recommendations. Its major problem was that it was based on compromise, manifestly opportunistic alliances and the demands of the aristocracy in Buganda, the largest and economically most dominant of the regions in Uganda. As a consequence, it left many issues unresolved. Those issues that were addressed were settled badly.[10] Buganda was granted a superior status, while the remaining kingdom areas enjoyed a semi-federal status within the whole. The lines between the rights of the states and the power and authority of the central government were ill-defined, culminating in a variety of conflicts and struggles between the two entities over such matters as the Land Question and the distribution of finances. Simultaneously, the powers of the main government supposedly ceremonial President (Sir Edward Mutesa) and the executive Prime Minister (Apollo Milton Obote) were vague and fraught with potential conflict. This is precisely what happened in 1966. Following the growing rift between the two, coupled with the rupture of the alliance between their respective political parties, Kabaka Yekka

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[8] BA Micheal 'Sixty years after Independence, Uganda's transition to genuine democracy has stalled' (October 9, 2022) https://democracyinafrica.org/sixty-years-after-independence-ugandas-transition-to-genuine-democracy-has-stalled/ (accessed 8 June 2026).

[9] I Ovonji 'Constitutional government and human rights in Uganda' (1991) 39(2) *Lesotho Law Review* 217.

[10] J Oloka- Onyango 'Constitutional Transition in Museveni's Uganda: New Horizons or Another False Start?' (1995) *Journal of African Law, School of Oriental and African Studies* 158.

(KY) and the Uganda People's Congress (UPC), Obote overthrew the 1962 Constitution and declared the kingdoms abolished. Troops of the Uganda Army surrounded the King's palace and Muteesa was hounded into exile, an event that still reverberates in the country's public affairs.[11]The ensuing tensions in the political arena prompted the 'Pigeonhole' Constitution of 1966.[12]

Uganda's 1966 Constitution was constructed in the teeth of what became known as the Buganda Crisis. The National Assembly was convened and its members were informed that they had been constituted into a Constituent Assembly, representing the people of Uganda and brought together to draft a new Constitution. Obote outlined the main features that differentiated the proposed document (which members found in their pigeon-holes) from the Independence Constitution, and read out the motion for adoption. The opposition members of Parliament walked out of the Assembly along with four members of the Government side, and the speaker immediately called a vote on the motion. There was no debate and, not surprisingly, the motion adopting the 1966 Constitution was passed by a vote of 55 to 4. The new Constitution created an executive presidency, vesting the office with fairly extensive powers of government. The old federated structures remained in place, but basically as an interim measure designed to pave the way for the introduction of a new Constitution [13]. The 1966 Constitution met its end following Prime Minister Milton Obote's decision to suspend it. Obote arbitrarily promulgated a new constitution, which was Uganda's third, enacted in 1967[14].

Different from its predecessor, this constitution was debated over three months.[15] It gave effect to two major reforms: it outlawed all traditional rulers and local parliaments and increased the powers

[11] G Tumushabe & J Kiija ' Uganda's Political Transition Scenarios to 2026 and Beyond: The Flying Crane, Storm in a Teacup, or Warrior Mad King?' (2021) *Great Lakes Institute for Strategic Studies, Policy Paper Series* 1 9.

[12] The 1966 Constitution was dubbed the 'Pigeonhole' Constitution because it was not debated, but was instead inserted into the pigeonholes of Members of Parliament (MPs). Some of the regressive reforms that came with it were the fusion of the position of Head of State and Prime Minister,which concentrated executive power in one person; the same person whose party also had the highest number of MPs in the National Assembly, thus, emasculating parliamentary scrutiny. The same constitution also whittled down Buganda's privileged status by outlawing the Kingdom's High Court and rolled back Buganda's latitude of directly electing its representatives to the national Parliament. Busoga's status which, under the first constitution, was a federal state, was revised to a district.

[13] see Article 145 of the 1966 Uganda Constitution.

[14] The Republican Constitution of 1967 was a unitary one. In theory the Constitution was partly flexible and partly rigid. There were provisions that could be altered by the ordinary process of parliamentary legislation and there were those which were entrenched, particularly, those containing the more fundamental laws of the state. These could only be altered by the National Assembly if the Bill proposing such alteration was supported, on the Second and Third Reading by two-thirds majority of the elected members of the National Assembly and certified by the Speaker that it had been passed in accordance with the provisions of the Constitution and then assented to by the President.

[15] M Walubiri 'The Republican Constitution was meant to sort out Buganda' (13 October 2012) *The New Vision* https://www.newvision.co.ug/news/1306750/republican-constitution-meant-sort-buganda (accessed 1 June 2026).

of the Executive. It was under the 1967 Constitution that Obote's party, the Uganda People's Congress (UPC), was declared sole political party, effectively making Uganda a single-party state in 1969. Since 1967, the Constitution has undergone several amendments, the most fundamental of which have been the various Legal Notices promulgated after the violent transitions from one regime to the next, and essentially intended to validate the extra-constitutional usurpation of power by the new regime. Needless to say, despite lip-service respect for the 1967 Constitution, neither the practice nor the law that was promulgated under it actually paid any homage to accepted notions of constitutionalism or democratic rule. The Constitution was at best an expeditious instrument for the consolidation of personal power and at worst was simply ignored. [16]

Idi Amin set the stage with Legal Notice No. 1 of 1971 which suspended Articles 1, 3 and 63 of the 1967 Constitution, thereby installing Amin as supreme ruler of Uganda with the power to rule by decree.[17] Amin and his government in Uganda from January 1971 to April 1979 ranks amongst the worst recorded governments in the history of the world. They are arguably equated with those of Hitler of Germany and Nero of the Roman Empire. Amin ruled Uganda for nine terrible years. When he was eventually forced to flee the country at the behest of Tanzania People's Forces in collaboration with Uganda guerrilla fighters, the world sighed with relief in the belief that the likes of Amin would never rise again in what they saw as the new Uganda. Nearly every Ugandan welcomed the passing away of the Amin regime and hoped for a better future where peace and tranquility prevailed and where citizens would no longer witness inexplicable killings or arbitrary arrests and detentions of thousands of innocent people, all seemingly sanctioned by government officials.[18]

Following the overthrow of Idi Amin in 1979, Legal Notice No. 1 of 1979 reinstated the 1967 Constitution as the supreme law of the land. It conferred executive authority upon the new President, Yusuf Lule, while vesting legislative powers in the National Consultative Council (NCC).However, the NCC chose to dispense with the 1967 Constitution. President Lule was deposed by the NCC and replaced with Godfrey Binaisa. Under the latter's presidency, Legal Notice No. 5 provided that where a conflict arises between it and the 1967 Constitution, the provisions of the Legal Notice would prevail. For 68 days after the overthrow of Idi Amin, Uganda was governed under what is generally referred to as the Moshi Consensus which had been arrived at by Ugandan

[16] Katiba (n 7 above) 5.
[17] FM Ssekandi 'Protection of Fundamental Human Rights in the Ugandan Constitution' (2008)26(1) *Columbia Human Rights Law Review* 4-5.
[18] Kanyeihamba (n 6 above) 132.

exiles involved in the anti-Amin liberation struggle meeting in the Northern Tanzanian town of Moshi. The successive shortlived Governments of Yusuf Kironde Lule, Godfrey Lukongwa Binaisa and the Military Commission under Paul Muwanga lasted until December 1980 when elections were held. Legal Notice No. 1 of 1979 created the Military Commission and conferred the executive mandate on one of the leading protagonists, Yoweri Museveni. The 1980 elections, in which the UPC was declared winner, ushered in the second presidency of Apollo Milton Obote but were heavily contested. A noteworthy consideration ,however ,is that the embattled 1967 Constitution got a new lease of life following Milton Obote's return to power in 1980, but was suspended again in 1985 by the Bazilio Olara-Okello junta. In January 1986, the National Resistance Army (NRA) overthrew the short-lived Government of Gen. Tito Okello Lutwa. The NRA acknowledged the 1967 Constitution, but partially suspended it. Under Legal Notice No. 1 of 1986, Yoweri Museveni was given the executive mandate as President, thereby reaffirming Legal Notice No. 1 of 1979. [19]

The rise to power of the NRM in the mid- 1 980s witnessed a marked shift in rhetoric, culminating in the process of transition currently under way in Uganda.Upon assuming power in 1986, the NRM proclaimed an era of fundamental change based on its ten-Point Programme.[20]It ushered in novel institutions of governance, both at the local level, such as resistance committees and councils (RCs) and at the higher levels, with the establishment of an Ombudsman in the form of the Inspector-General of Government (IGG), the creation of a Human Rights Commission, and, in 1988, the Constitutional Commission. Much however remained the same, while some things even became worse. Political party activity was severely constrained, a civil war festered in the north of the country, and a massive backlog of lodgers accumulated in military detention camps.The Uganda Constitutional Commission was then established to consider the question of the promulgation of a new Constitution for Uganda.[21] This was led by Benjamin Odoki. The process of developing the new constitution generated immense optimism at the beginning. Indeed, as Oloka-Onyango notes the beginning was smooth-sailing:

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[19] M Kalb 'Ugandan Rebel Leader Proclaims New Regime' (27 January 1986) *Los Angelos Times* https://www.latimes.com/archives/la-xpm-1986-01-30-mn-2114-story.html (accessed 1 June 2026).

[20] The Ten-Point Programme of the National Resistance Movement (NRM Publications, Kampala,1986).

[21]However,the Uganda Constitutional Commission faced criticism for having its Chairman and members appointed by the President without a democratic consultation process. However, the Chairman, Justice Benjamin Odoki, clarified that the Commission's role was technical-collecting public views, analyzing them, and drafting proposals-while the final Constitution would ultimately be written by the people themselves; see B J Odoki 'Writing a democratic constitution' (1993)1(2) *East African Journal of Peace & Human Rights* 242-243.

> The process of collection, dissemination and debate over constitutional issues and the dynamics that produced a Constituent Assembly give some confidence that traditional perceptions of power and its control in Uganda had undergone a measure of transformation.[22]

Discussions revolved around salient questions pertaining to the centrality of the citizen, the protection and observation of human rights, the management of electoral processes (which had been a thorn in the flesh of the country's body politic) and respect for the judicial branch of Government that had for a long time been either ignored or altogether suppressed. Four years of discussion, deliberation and consultation produced three large volumes from the Constitutional Commission, the most important of which is the draft Constitution. The draft runs to some 314 articles, and over 140 pages, placing it among the longest constitutional instruments in the world.[23]

Following the preparation of the draft constitution by the Uganda Constitutional Commission, which was established in 1988, the draft became the central document for the next phase of constitution-making. The Commission's draft reflected inputs from extensive public consultations, including seminars and memoranda from various groups, though critics noted the consultations often focused more on educating the public than genuinely integrating their views. The draft constitution was then subjected to deliberation by the Constituent Assembly, which was elected in 1994 specifically for the purpose of debating, amending, and ultimately adopting the new constitution. The Constituent Assembly had a mandate to consider the draft and produce a constitution that would unify the country, promote peace, democracy, and social justice. In a process marked by political constraints, including a ban on party activities during the period, the Assembly completed its work and officially adopted the constitution on September 22, 1995. The Constitution was then promulgated on October 8, 1995, becoming the supreme law of Uganda.[24]

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[22] Oloka - Onyango (n 10 above)171-172.

[23] The three volumes of the final report comprise the Analysis and Recommendations of the various memoranda and seminars conducted, the Index of Sources of People's Views, and the draft Constitution.

[24] However, most of the creatures of the new constitution were hamstrung by procedural, political, finding and partisan challenges. The Electoral Commission, for example, lacked a complete voter register, among other limitations, which adversely affected its ability to effectively deliver the elections of 1996. Also worth noting is the enactment of contradictory provisions within the constitution itself, regressive subsidiary legislation and the tabling of proposals that were manifestly at odds with the letter and spirit of the newly-created constitution. Cardinal among these was Article 269 of the constitution, whose provisions were so contentious that it led to a walkout from Parliament by the Democratic Party (DP) President, Dr Paul Kawanga Ssemwogerere. The said Article precluded political parties from holding public rallies; opening or operating branch offices; convening delegates' conferences; sponsoring or offering support for candidates in any election during the continuance of the Movement system; and any activities that had the effect of interfering with the Movement political system.

Its adoption marked not only the formal establishment of a new constitutional order but also a conscious response to Uganda's history of political and constitutional instability. It reflected an intentional effort to confront the legacies of institutional breakdown, governance crises, and contested authority, and to reconstruct the state on a more coherent and enduring foundation. In doing so, the Constitution was grounded in a normative commitment to unity, peace, equality, social justice, and national progress, values which were intended to draw lessons from the past while guiding the future direction of constitutional governance. [25] It therefore stands as both a record of historical experience and a deliberate attempt to transform that experience into a stable constitutional framework capable of sustaining democratic governance and constitutional order. Against this background, this study examines the extent to which historical memory has been reflected in the constitutional jurisprudence of Uganda since1995.

1.3 Problem statement

Uganda's 1995 Constitution emerged from decades of profound political trauma - authoritarian rule, mass atrocities, and cycles of constitutional abrogation. Its drafters made a deliberate and unprecedented choice, to embed historical memory directly into the constitutional text, most notably through the preamble's recollection of national suffering, and constitutional provisions safeguarding against the recurrence of past injustices. In doing so, the Constitution positioned history not merely as context, but as a normative foundation for governance and law. Yet, decades since its promulgation, a critical question persists: to what extent has Uganda's constitutional jurisprudence meaningfully engaged with and embedded historical memory in judicial reasoning, constitutional interpretation, and the protection of fundamental rights? Courts in post-conflict and transitional societies bear a responsibility not only to resolve legal controversies but to serve as institutional custodians of collective memory, ensuring that constitutional text remains anchored to the lived experiences that gave it birth. Where this responsibility goes unmet, constitutional provisions risk becoming hollow formalism, severed from their historical and moral moorings. This study therefore seeks to investigate the nature, depth, and consistency of historical memory as a tool of constitutional interpretation in Uganda's jurisprudence since 1995.

[25] Preamble (n 2 above).

1.4 Research objectives

The research objectives were formulated to provide direction and focus for the study. They provide a framework for examining how historical experiences, events, and narratives have influenced constitutional interpretation, judicial reasoning, and the broader development of constitutional law in Uganda. The study is guided by an overall objective and a set of specific objectives, as outlined below.

1.4.1 Overall objective

To analyze the reflection of historical memory in the constitutional jurisprudence of Uganda since 1995.

1.4.2 Specific objectives

a) To examine Uganda`s history by analyzing its political, constitutional, and social developments over time.

b) To examine the extent to which historical memory has been reflected in Uganda`s Constitutional jurisprudence since 1995.

c) To conduct a comparative analysis of how historical memory has been embedded in the constitutional jurisprudence of other countries.

d) To propose recommendations on how the incorporation of historical memory can be strengthened and more effectively integrated into constitutional adjudication.

1.5 Research Questions

a) How has Uganda's history evolved through its political, constitutional, and social developments over time?

b) To what extent has historical memory been reflected in Uganda's constitutional jurisprudence since the 1995 Constitution?

c) To what extent has historical memory been reflected in the constitutional jurisprudence of other countries?

d) What recommendations can be advanced to enhance the systematic incorporation of historical memory into constitutional adjudication in Uganda?

1.6 Methodology

This study adopted a qualitative research methodology to deeply investigate how historical memory is reflected in Uganda's constitutional jurisprudence since 1995. Data was collected through comprehensive document analysis, including Court judgments and other relevant legal texts. The study relied on fifteen cases decided by the Constitutional Court and the Supreme Court of Uganda in examining the extent to which historical memory has been reflected in Uganda's constitutional jurisprudence since 1995.The cases were chosen on the basis that each presents a constitutional question that is directly or indirectly rooted in Uganda's history of political instability, authoritarian rule, human rights violations, and institutional collapse, the very history that the 1995 Constitution was expressly designed to address. Cases were further selected to ensure thematic diversity, spanning the areas of electoral dispute resolution, fundamental rights and freedoms, gender equality, land and property rights, freedom of expression, civil-military relations, constitutional amendment, and socioeconomic rights, so that the assessment of the judiciary's engagement with historical memory is comprehensive rather than confined to any single domain of constitutional adjudication.

Additionally, the cases were selected because each offers a sufficiently detailed record of judicial reasoning to permit meaningful analysis of whether and how the court engaged with the historical context underlying the constitutional provisions in dispute. Some cases were chosen because they demonstrate the courts at their interpretive best, anchoring constitutional meaning in the transformative historical consciousness that animated the 1995 Constitution. Others were selected precisely because they represent missed opportunities, instances where the availability of a historically grounded interpretive approach was evident yet the court either ignored, misapplied, or instrumentalised history in a manner that undermined rather than honoured the Constitution's founding promise. Together, these fifteen cases provide a representative cross-section of Uganda's post-1995 constitutional jurisprudence, sufficient to support the broader conclusions of this study.

This study drew its comparative analysis from four carefully selected jurisdictions, namely Kenya, South Africa, Ghana, and the United States of America. The selection of these four countries was not incidental but was guided by a deliberate and principled rationale directly connected to the central research question of this study. Kenya was selected because, like Uganda, it is an East

African post-colonial state whose constitutional development has been deeply shaped by a turbulent political history, including periods of authoritarian rule, electoral violence, and institutional collapse, and whose 2010 Constitution, much like Uganda's 1995 Constitution, was expressly designed as a transformative response to that history. The proximity of Kenya's constitutional experience to Uganda's makes it an especially instructive comparator for examining how a neighboring jurisdiction with a broadly similar historical and constitutional context has engaged with the challenge of embedding historical memory in judicial reasoning.

South Africa was selected because its Constitutional Court represents a significant example of a court that has successfully institutionalized historical memory as a substantive and operative interpretive norm, using the legacy of apartheid and colonial dispossession not merely as background narrative but as the very foundation of its constitutional jurisprudence. South Africa's experience offers this study its most compelling normative benchmark, demonstrating what it looks like when a court genuinely honours the transformative promise of a constitution born from historical suffering. Ghana was selected as a third African comparator because its constitutional history, mirrors in important respects the cyclical constitutional instability that Uganda's 1995 Constitution sought to overcome. Ghana's jurisprudence therefore provides a valuable illustration of how an African court navigating a broadly comparable history of constitutional experimentation has approached the question of historical memory in adjudication, including both its successes and its shortcomings. The United States of America was selected as a non-African jurisdiction because its Supreme Court has developed one of the most methodologically sophisticated and institutionally entrenched approaches to the use of history in constitutional interpretation in the world, offering this study a rigorous theoretical and doctrinal framework against which the Ugandan and African experiences can be critically assessed. Together, these four jurisdictions provide a geographically, historically, and jurisprudentially diverse comparative framework that is sufficiently broad to illuminate the full range of ways in which courts can engage with constitutional history, and sufficiently focused to generate lessons that are directly relevant to Uganda's constitutional experience since 1995.

1.6.1 Research design

This study employed a cross-sectional research design to capture and analyze data on the reflection of historical memory in Uganda's constitutional jurisprudence. This design was adopted because it

allows the researcher to systematically assess the prevalence and characteristics of historical themes within landmark court rulings without manipulating variables. Furthermore, the design is well-suited for descriptive and exploratory studies such as this study, enabling the identification of patterns and relationships that can inform recommendations and future research on constitutional reforms.

1.6.2 Methods of data collection

Documentary analysis was the primary method of data collection, involving a systematic review of a broad range of legal and academic sources. Relevant legal instruments, including the Constitution, were examined to provide a comprehensive understanding of the ways in which historical memory has been reflected in Uganda's constitutional jurisprudence since 1995. Key decisions of the Constitutional Court and the Supreme Court were critically analyzed to assess how historical experiences and contexts have influenced judicial interpretation and constitutional development in the post-1995 era .In addition, the study reviewed relevant books, journal articles, and other scholarly publications that offer academic perspectives on Uganda's constitutional history, the role of historical memory in legal and political processes, and the evolution of constitutional reform. These sources provided the theoretical and contextual foundations necessary to complement and enrich the analysis of primary legal materials.

1.6.3 Data Control

To ensure the integrity and quality of the data, information was collected exclusively from reputable and authoritative sources, including official government publications, academic journals, judicial decisions, and reports produced by established civil society organizations. Reliance on these sources enhanced the reliability and validity of the data, thereby strengthening the credibility of the study's findings and conclusions. Furthermore, rigorous data quality control measures were employed, including the cross-referencing of information across multiple sources to further safeguard against any inaccuracies.

1.7 Significance of the Study

This study makes an important contribution to the understanding of constitutional jurisprudence in Uganda by interrogating the relationship between historical memory and constitutional interpretation since the promulgation of the 1995 Constitution. While constitutional adjudication is often examined through doctrinal and institutional lenses, relatively little scholarly attention has been

devoted to the role of historical memory as a factor informing judicial reasoning and constitutional meaning. By addressing this gap, the study contributes to a more nuanced understanding of the intellectual and historical foundations of Uganda's constitutional jurisprudence. The study is also significant in advancing scholarly discourse on the interaction between law, history, and collective memory. It demonstrates that constitutional interpretation does not occur in a historical vacuum but is often shaped by judicial engagement with past political experiences, constitutional crises, governance failures, and societal aspirations. In this regard, the research contributes to broader debates on constitutionalism by highlighting how historical memory functions as a source of constitutional legitimacy, interpretive guidance, and normative justification within judicial decision-making.

From a jurisprudential perspective, the study provides critical insights into the manner in which Ugandan courts have invoked historical narratives to give meaning to constitutional provisions and principles. It examines how references to Uganda's constitutional and political past have been employed in the adjudication of constitutional disputes, thereby illuminating the role of history in the evolution of constitutional doctrine. The findings may therefore enrich contemporary discussions on constitutional interpretation, judicial methodology, and the development of indigenous constitutional jurisprudence. Academically, the study contributes substantively to constitutional law literature in Uganda, offering a vital foundation for future research and policy reform aimed at strengthening constitutionalism and democratic resilience.

1.8 Scope of the study

The study was confined to exploring Uganda's history and examining the extent to which historical memory has been reflected in the constitutional jurisprudence of Uganda since 1995. It further undertook a comparative analysis of the extent to which historical memory has been embedded within the constitutional jurisprudence of other jurisdictions and also provided targeted recommendations on how the incorporation of historical memory can be strengthened and more effectively integrated into constitutional adjudication.

1.9 Literature review

The relationship between historical memory and constitutional jurisprudence in Uganda cannot be understood in isolation from the broader arc of the country's post-colonial political experience.

Since independence, Uganda has traversed a turbulent and at times catastrophic political landscape, one defined by the systematic erosion of constitutional order, the entrenchment of militarism, the normalization of executive impunity, and the repeated subversion of democratic governance through both brute force and legal manipulation. The 1995 Constitution emerged from this deeply scarred historical context not as a mere technical legal instrument, but as a deliberate and conscious act of national reckoning a structured attempt by a people to confront the failures of the past and to institutionalize safeguards against their recurrence. It embodied a founding promise: that Uganda's long history of constitutional instability, authoritarian rule, and political violence would serve as both a warning and a guide for the kind of democratic order the nation sought to build. Yet, decades since its promulgation, critical questions persist as to whether Uganda's constitutional development has remained faithful to this founding historical consciousness, or whether the very instruments designed to memorialize and transcend the past have gradually been captured, amended, and reinterpreted in ways that reproduce the authoritarian patterns the Constitution was expressly designed to dismantle. It is within this tension between constitutional promise and political reality, between the memory of injustice and the normalization of its repetition that the existing body of literature situates itself.

1.9.1 Constitutional and Political History of Uganda

Karugire (1980) presents pre-colonial Uganda as a landscape of distinct peoples with their own governance structures, social hierarchies, and political economies. He insists that the people of the territory subsequently named Uganda pre-dated the legal and colonial formulations that gave the country its definite boundaries, and that any honest engagement with Uganda's constitutional history must begin with this recognition.[26] Karugire's contribution lies in establishing that the material upon which colonialism worked was not raw or amorphous, but a sophisticated mosaic of centralised kingdoms , Buganda and Bunyoro foremost among them , alongside decentralised clan-based societies in the north and east. His account provides the indispensable backdrop against which the disruptions of colonial administration and the structural inheritances of the post-independence constitutional order can be properly understood.

Karugire's account is primarily a work of political history, and its preoccupation with political events and social structures leaves an important gap in its treatment of constitutional matters. While he

[26]SR Karugire 'A Political History of Uganda' (1980) *Heinemann Educational Books* 1.

maps the governance structures of pre-colonial kingdoms with considerable rigour, he does not examine how those structures, their conceptions of legitimate authority, accountability, and succession, might have informed the constitutional consciousness of Uganda's later framers. He does not, for instance, explore whether the 1995 Constitution's provisions on decentralisation, cultural institutions, or the prohibition on unconstitutional seizure of power carry any traceable intellectual debt to pre-colonial governance traditions. This gap is addressed by this study through examining Uganda's full historical arc covering both political and constitutional dimensions.

HF Morris and JS Read (1966) portray Uganda's legal and constitutional development as an incremental process in which the gradual admission of African representatives into colonial governance structures reflected not democratic principle but administrative pragmatism. Their comprehensive study charts the expansion of the Legislative Council from its inception in 1920 through to the eve of independence, documenting how African representation was resisted, delayed, and ultimately conceded only under sustained pressure.[27] Morris and Read's analytical framework is primarily constitutional and legal, situating Uganda's evolving governance structures within the broader framework of British colonial constitutional practice. Their work is particularly valuable for its treatment of the mechanics of the Legislative Council, the constitutional conference process, and the structural compromises embedded in the 1962 Independence Constitution.[28]However, their work does not address whether the constitutional jurisprudence that emerged after 1995 meaningfully engaged with the historical lessons of colonial-era constitutional design. This study fills this gap by examining the extent to which Uganda's post-1995 constitutional jurisprudence has incorporated and reflected historical memory.

Ibingira (1973) portrays the politics of Uganda's independence era from the vantage point of a central participant who was simultaneously a cabinet minister, Secretary General of the Uganda People's Congress, and, ultimately, a target of the very government he had helped to form. He offers a candid account of the structural failures of the Independence Constitution, including the observation that the first independent government was entrusted to an untried cabinet which had no experience at all or even responsibility in managing the affairs of the people, and that the greatest mistake committed by both Ugandan politicians and the protecting power was to vest such vast and

[27] HF Morris and JS Read 'Uganda: The Development of its Laws and Constitution' (1966) *Stevens and Sons, London* 158–162.
[28] Morris (n 27 above) 204.

awesome powers in a party whose leaders had never been tested in the exercise of executive responsibility.[29] His account of the Gold Allegation debate in the National Assembly provides a vivid primary-source narrative of how parliamentary proceedings were instrumentalised for conspiratorial purposes.[30] Ibingira's memoir is an indispensable, if partial, account of the politics that precipitated the 1966 constitutional crisis.

As a central participant in the events he describes, Ibingira provides unparalleled primary-source insight into the 1966 constitutional crisis, but critiques argue that his account is inevitably shaped by personal political allegiances and grievances. His analysis does not engage with the question of whether the structural failures he identifies in the Independence Constitution were ultimately addressed or merely reproduced in a different form by the 1995 Constitution. Writing in 1973, he couldnot address how the memory of the 1966 crisis was subsequently institutionalised in constitutional design. This study addresses this gap by examining how the abrogation of the Constitution in 1966, the suspension of habeas corpus, and the storming of the Kabaka's palace became constitutive elements of the historical memory that the 1995 framers were determined to prevent from recurring. The study also examines whether courts have honoured that memory when interpreting provisions specifically designed to prevent executive subversion of constitutional order.

Adoko (1970) portrays the political crisis of 1965–66 as a carefully orchestrated conspiracy against the Obote government, driven by an unholy alliance of traditionalist forces, disgruntled UPC members, and Buganda's political establishment. He provides a detailed forensic account of the conspiracies , political, military, and diplomatic events, that preceded the suspension of the Independence Constitution.[31] Adoko's narrative of the Cabinet meeting of 4 February 1966, at which the conspirators reversed the UPC Parliamentary Group's earlier decision to reject the Gold Allegation motion, is particularly illuminating for understanding how constitutional conventions were subverted from within the executive itself.[32] His account documents the chaos and uncertainty that gripped Kampala in the days following the passing of the motion, and captures the sense in which Ugandans momentarily felt leaderless.[33] Adoko's account of the 1965 to 66 conspiracy is

[29]GSK Ibingira 'The Forging of an African Nation: The Political and Constitutional Evolution of Uganda from Colonial Rule to Independence, 1894–1962' (1973) *Viking Press;New York* 256.
[30] Ibingira (n 29 above) 297–301.
[31]A Adoko 'Uganda Crisis' (1970) *African Publishers Kampala* 119–121.
[32] Adoko (n 31 above) 133.
[33]Adoko (n 31 above)141–144.

detailed but nakedly partisan, as he was a political ally and close relative of Obote[34], and his narrative can reasonably be critiqued as one constructed to vindicate Obote's actions, including the abrogation of the Constitution and the imposition of a new constitutional order by executive fiat. He does not engage critically with whether Obote's own conduct in that crisis was itself a form of constitutional subversion that ought to have informed later constitutional design, nor does he examine how this episode entered the collective constitutional memory later drawn upon by the framers of the 1995 Constitution.

Kasozi (1994) portrays Uganda's post-independence history as a tragedy rooted in the structural incapacity of successive governments to subordinate military power to civilian constitutional authority. He traces how the politicisation of the armed forces under Obote created the conditions for the January 1971 coup, and how the Amin regime proceeded to weaponise the state apparatus against the very population it claimed to govern.[35] His analysis of the Obote II period is equally unsparing, tracing how the anti-guerrilla campaigns in the Luwero Triangle eliminated large portions of the civilian population, generating a refugee crisis on a scale that exceeded even that of the Amin years.[36] However, his work predates the promulgation of the 1995 Constitution and therefore cannot assess whether the constitutional architecture that emerged from Uganda's violent history has been adequate to prevent its recurrence. He does not examine whether the judiciary, itself a victim of institutional collapse during the periods he analyses, has internalised the historical lessons of those periods in its post-1995 jurisprudence. This study fills this gap by examining whether courts have interpreted constitutional provisions relating to human rights, military accountability, and executive power with the specific historical experience of state-sponsored violence that Kasozi documents .

Pinchwa (1978) portrays the relationship between the armed forces and political power in Uganda as the defining axis of the post-independence period. He analyses the phenomenon he characterises as 'Amin-philia' , the extraordinary international media fascination with the Amin regime , situating it within a broader argument about how Uganda's governance failures attracted a kind of morbid global attention that simultaneously obscured and illuminated the structural conditions that

[34] Daily Monitor 'Adoko Nekyon : Man who Announced DP`s victory that caused chaos' (Saturday 05 2018) ps://www.monitor.co.ug/uganda/news/national/adoko-nekyon-man-who-announced-dp-s-1980-victory-that-caused-chaos-1754558.google_vignette (accessed 1 June 2026).

[35]ABK Kasozi 'The Social Origins of Violence in Uganda, 1964–1985' (1994) *Fountain Publishers, Kampala* 72–74.

[36] Kasozi (n 35 above)169–172.

produced a figure like Amin.[37] Pinchwa's analysis of the coup of January 1971 attributes Obote's downfall to his mismanagement of army promotions and his failure to maintain the loyalty of senior officers, decisions that removed the foundation on which his government rested.[38] His work provides important military-historical context for understanding the institutional dimensions of Uganda's constitutional crises. Pinchwa's military-historical analysis is perceptive but confined to the mechanics of coups and military promotions. He does not analyse the constitutional dimensions of civil-military relations or examine how the experience of military rule was subsequently addressed in the constitutional design of 1995. This study addresses this gap by examining the extent to which constitutional jurisprudence has engaged with the memory of military impunity when adjudicating cases touching on executive security power and the constitutional boundaries of military conduct.

Museveni (1997) portrays the NRM's armed struggle not merely as a military campaign but as a principled political and constitutional project rooted in a diagnosis of Uganda's fundamental governance failures. He argues that the Movement would only succeed if it followed the correct line in military, political, and organisational strategies, an approach that distinguished the NRA from the undisciplined and politically illiterate armies of its predecessors.[39] Museveni's account of the 1980 elections portrays them as a turning point at which the Military Commission's manipulation of the electoral process foreclosed the possibility of peaceful democratic transition and made armed resistance morally and politically inevitable.[40] His narrative of the Moshi Conference and the formation of the UNLF provides important context for understanding the political alignments that shaped the post-Amin transition.[41] While Museveni's account is inevitably self-serving in its political judgements, it remains an essential primary source for the NRM period.

However, as both author and subject, his narrative is structured to legitimise the NRM's seizure of power while presenting that seizure as constitutionally and morally justified. His work does not engage with the tension, which became acute after 1995, between the NRM's founding rhetoric of constitutional restoration and its subsequent conduct in amending the very constitutional safeguards it had championed. Most significantly, his narrative cannot address the post-1995 constitutional amendments, including the removal of term limits in 2005 and age limits in 2017, which directly

[37] G Pinchwa 'Arms and Men in Uganda' (1978) *East African Literature Bureau* 5.
[38] Pinchwa (n 37 above)24–27.
[39] YK Museveni 'Sowing the Mustard Seed: The Struggle for Freedom and Democracy in Uganda' (1997) *Macmillan, London* 57.
[40] Museveni (n 39 above)122–125.
[41] Museveni (n 39 above)57–60.

undermined the constitutional project his government had initiated. The study situates Museveni's account within the broader political and constitutional history, and also critically examines whether constitutional jurisprudence has maintained fidelity to the 1995 founding vision in the face of executive pressure to dismantle its structural safeguards.

Kanyeihamba (2010) potrays Uganda as a country emerging from decades of turmoil and destruction. Political and constitutional instability has been the principal characteristic of Uganda's post-colonial history. He characterizes the years between 1971 and 1996 as an entrenched era of militarism, during which political power was frequently consolidated through coercion rather than constitutional legitimacy.[42]Constitutions were drafted and celebrated only to be subverted or discarded, and governments rose and fell with unsettling regularity, reflecting a state trapped in cyclical political turbulence rather than progressing toward durable democratic governance.[43] However, writing from the dual vantage point of a former Attorney General and Supreme Court Justice, his proximity to the NRM government during the early period of its rule and his participation in the very institutions whose conduct is under scrutiny limits the critical distance his scholarship brings to the jurisprudence of that era. Some critics have noted that his analysis of the early NRM period is sometimes less objective as a result of this institutional closeness. Most significantly, his scholarship does not trace how the Supreme Court and Constitutional Court shifted their interpretive approach in later electoral petitions and human rights cases, moving from purposive engagement with historical memory toward a more deferential and formalistic posture that effectively shielded executive conduct from meaningful constitutional scrutiny, a gap that is addressed by chapter three.

Odoki (2001) notes that Uganda had had three constitutions since independence, none of which satisfactorily answered the needs and aspirations of the people. To address this, the NRM government initiated a constitution-making process in 1988, giving Ugandans the opportunity to freely determine their system of governance.[44] Aili (2010) further offers a foundational account of the participatory processes underpinning the 1995 Constitution, underscoring that its formulation was deeply informed by a desire to depart from Uganda's history of political instability and

[42] Kanyeihamba (n 6 above) 105.
[43] Kanyeihamba (n 6 above) 66-102.
[44] BJ Odoki 'The Challenges of Constitution-making and Implementation in Uganda' in *Constitutionalism in Africa: Creating Opportunities, Facing Challenges. Constitutionalism in Africa: Creating Opportunities, Facing Challenges* (2001) *Kampala Fountain Publishers* 266.

repression under chaotic regimes.[45] Odoki's account, written shortly after the Constitution's promulgation and authored by the chairman of the Constitutional Commission itself, provides an authoritative but necessarily celebratory account of the constitution-making process. It does not address the cumulative effect of judicial decisions on the integrity of the founding vision. In particular, it does not assess whether the participatory historical consciousness that animated the 1988 to 1995 process has been sustained in subsequent judicial interpretation, or whether the courts have progressively retreated from the purposive approach that historical consciousness demands. This study fills this temporal gap by examining the jurisprudential record from 1995.

The cluster of scholars writing specifically on the 1995 Constitution, namely Jjuuko (2011), Walubiri (2011), Wengi (2011), and Mukubwa (2000), collectively establish a foundational premise that is of direct and central importance to this study. Each of these contributors demonstrates, within their respective thematic areas, that the specific constitutional choices made by the framers of the 1995 Constitution were not arbitrary or merely technical but were deliberate responses to identifiable historical failures. Jjuuko (2011) portrays the citizenship provisions of the 1995 Constitution as a direct response to Uganda's history of citizenship-based political exclusion, arguing that citizenship has consistently served as a test of democracy in Uganda, a site where the absence of democratic norms has been most starkly revealed.[46] His analysis does not assess the jurisprudential record on citizenship cases since 1995, nor does it situate citizenship jurisprudence within the wider pattern of how courts have engaged with historical memory across the full range of constitutional provisions. The study addresses this gap by providing an integrated account of historical memory in constitutional jurisprudence across multiple thematic areas, including human rights, electoral integrity, and structural constitutional safeguards.

Walubiri (2011) portrays the land tenure provisions of Chapter Fifteen as an attempt to resolve structural land-holding inequalities that multiple prior constitutions and legislative interventions had failed to address including the Land Reform Decree of 1975 and the Traditional Rulers (Restitution of Assets and Properties) Statute of 1993, which had, if anything, compounded the existing

[45] AM Tripp 'The politics of constitution making in Uganda' in *Framing the state in times of transition'* (2010) *Case studies in constitution making* 161-165.

[46] FW Jjuuko 'Citizenship — A Test of Democracy in Uganda' in Founding the Constitution of Uganda: Essays and Materials (2011*) LawAfrica Publishing (K) Ltd* 63.

contradictions.[47] Walubiri's thematic focus on land tenure, while important, does not extend to examining how courts have interpreted Chapter Fifteen's provisions with the historical memory of those prior failures in mind. He does not assess whether judicial interpretation of land rights provisions has been informed by an awareness of the exploitative and destabilising land policies of the colonial and immediate post-independence eras, or whether courts have approached these provisions with the purposive historical sensitivity their constitutional origins demand. This study addresses this gap within the broader analysis of how historical memory has been reflected or not in post-1995 constitutional jurisprudence across a range of substantive areas.

Wengi (2011) portrays the taxation and fiscal provisions of Chapter Nine as a corrective to the constitutional vacuum that had previously allowed executive revenue collection without parliamentary authorisation.[48] However, his work does not examine whether the courts have, in their post-1995 jurisprudence, interpreted Chapter Nine with that corrective historical purpose in mind. Also,he does not assess whether judges adjudicating fiscal and taxation disputes have treated the constitutional vacuum of the pre-1995 era as an interpretive guide.

Mukubwa (2000) portrays Chapter Four's Bill of Rights as among the finest and best-structured human rights instruments adopted by any state, and situates it within the broader development of human rights protection in East Africa.[49] While he situates Uganda's human rights framework within the broader East African context and commends its quality as a constitutional instrument, he does not examine the extent to which courts have given the Bill of Rights the purposive, historically grounded interpretation that its origins demand. Most significantly, he does not assess how courts have engaged with historical memory in adjudicating human rights cases, a gap that is directly addressed by this study.

1.9.2 The post 1995 Constitutional jurisprudence as a reflection of historical memory

Kabumba (2025) traces the history of Uganda's judiciary from the colonial period through to the promulgation of the 1995 Constitution and its contemporary operation examining persistent challenges, and future prospects of judicial protection of human rights in Uganda.[8] Among the

[47]PM Walubiri 'Land and Property Rights' in Founding the Constitution of Uganda: Essays and Materials (2011) *LawAfrica Publishing (U) Ltd* 128–129.
[48]RO Wengi 'Taxation, Spending Powers and Currency Regulation' in Founding the Constitution of Uganda: Essays and Materials (2011) *LawAfrica Publishing (U) Ltd* 145–146.
[49]GPT Mukubwa 'The Promotion and Protection of Human Rights in East Africa' (2000) 6(2) *East African Journal of Peace and Human Rights* 134–138.

present challenges he identifies is the judiciary's undue regard to technicalities, which he argues has operated as a significant obstacle to the effective enforcement of constitutional rights[50]. He contends that in human rights cases in particular, courts ought to adopt a more flexible standard of proof[51], one that is sensitive to the inherent power imbalances between the individual and the State and to the practical difficulties that rights claimants face in assembling direct evidence of violations by powerful state actors.His scholarship is directly relevant to this chapter's central inquiry into the extent to which historical memory has been reflected in Uganda's constitutional jurisprudence since 1995. The 1995 Constitution was born from a history in which the State was itself the principal violator of the rights it was subsequently entrusted to protect, and the judiciary was among the institutions that failed to provide an effective check on that violation. A court that is genuinely attentive to that history would approach human rights claims with the flexibility and purposive sensitivity that Kabumba advocates, rather than retreating into technical formalism that effectively insulates state conduct from constitutional scrutiny. However, his scholarship does not provide a comparative framework, as he identifies Uganda's judicial failures without benchmarking them against jurisdictions where courts have successfully embedded historical memory as an operative interpretive norm. This study fills this gap by providing a comparative dimension that his account lacks, examining how other jurisdictions have confronted and responded to historical challenges through historically grounded purposive interpretation.

Oloka (2017) has specifically addressed the political question doctrine in the Ugandan context, examining how courts have deployed it to avoid adjudicating claims involving the freedoms of expression, association, and assembly.[52] His analysis identifies the doctrine's application as a significant obstacle to the realisation of constitutional rights, arguing that courts have used it to insulate executive and legislative inaction from judicial scrutiny in circumstances where the Constitution clearly mandates intervention. Onyango's critique provides direct scholarly support for the argument advanced in this chapter regarding the Constitutional Court's dismissal of the CEHURD petition, where reliance on the political question doctrine effectively shielded the government's systemic failure to provide maternal health services from constitutional accountability. His argument that a purposive approach to constitutional interpretation would require courts to

[50] B Kabumba 'The Judiciary and Human Rights in Uganda: History, Challenges, and Prospects(2025)*Chapter Four Uganda Public Interest Paper No. 2* 28.
[51] Kabumba (n 50 above) 35.
[52] J Oloka-Onyango, 'Political Question Doctrine in Uganda: An Analysis of the Technicalities on the Realization of the Freedoms of Expression, Association and Assembly in Uganda' (2017) *Chapter Four Uganda* 41.

engage with whether executive action or inaction is consistent with constitutional standards, rather than treating policy questions as categorically non-justiciable, aligns closely with the analysis of the Supreme Court's corrective judgment in the CEHURD appeal, which this study endorses as a more historically and constitutionally grounded approach.

Tusasirwe (2019) critiques the age-limit cases by focusing on the constitutional implications of the removal of Articles 102(b) and 105(2) of the 1995 Constitution. He argues that by repealing these provisions, Parliament dismantled the basic structure of the Constitution, betraying the very historical lessons it was designed to memorialize.[53] This argument is of central importance to the analysis of the case of Mabirizi case , where both the Constitutional Court and the Supreme Court invoked Uganda's painful history of tyranny, oppression and exploitation with evident solemnity, yet upheld amendments that removed the precise constitutional safeguards the framers had installed as insurance against the recurrence of that very history. Tusasirwe identifies those safeguards, Articles 102(b) on age limits and the erstwhile Article 105(2) on term limits, as what he powerfully describes as the magic bullets designed to achieve genuine democratic turnover when all else failed, the final insurance against endless tyranny or a life presidency.[54] His argument that their removal, backed by a submissive Parliament and a complicit judiciary, exemplifies the fragility of Uganda's constitutional order in the face of executive ambition, directly supports this chapter's conclusion that the majority in the age-limit cases failed to honour history as a constitutional compass. The courts acknowledged the foundational historical narrative of the Preamble but declined to give it operative weight precisely at the moment when doing so would have required them to restrain executive power, which is the very purpose for which that historical narrative was constitutionally inscribed. However, his analysis is focused on the age-limit and term-limit amendments and does not provide an integrated account of how the same failure to honour historical memory has manifested across other areas of constitutional jurisprudence.

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[53]B Tusasirwe 'The Basic Structure Doctrine and Constitutional Restraint: Take-away from the Age Limit Decision'(2019) 46(1) *East African Law Review* 11; B Tusasirwe 'Constitution amendment is void as it violates basic structure doctrine' (24 October 2017) *Daily Monitor* (accessed 2 March 2026) https://www.monitor.co.ug/uganda/oped/commentary/constitution-amendment-is-void-as-it-violates-basic-structure-doctrine-172328 (accessed 2 March 2026) where he argues that according to the framers of the constitution, if the weaknesses or limitations of liberal democracy prevented genuine choice, at least at some point the incumbent would have to go, the unfair advantages notwithstanding. The magic bullets designed to achieve this were two: Article 102 (b) on age limits and the erstwhile Article 105 (2). When all else failed, these would be the final insurance against endless tyranny or a life presidency.

[54] Tusasirwe (n 53 above) 34-41.

Sekindi(2017) applies a judicial lens to Uganda's presidential election disputes to examine how courts have consistently failed to annul elections despite overwhelming evidence of malpractice, relying instead on the argument that irregularities did not substantially affect results. [55] His analysis identifies a recurring and troubling pattern in the court's approach: the acknowledgment of serious and widespread electoral violations coupled with a refusal to draw the logical conclusion that such violations undermined the legitimacy of the electoral outcome. He argues that the threshold of substantial effect has been construed so narrowly as to render the constitutional guarantee of free and fair elections practically unenforceable, and that this pattern undermines both the spirit and the letter of the 1995 Constitution, which was intended to prevent the very electoral manipulation it now silently condones. [56]

Sekindi further argues that presidential elections in Uganda have consistently failed to display the procedural fairness and substantive uncertainty that makes democratic elections normatively acceptable, and that the law should permit annulment where a candidate gains advantages through widespread violations of electoral law regardless of whether those violations were personally committed or approved by the candidate. [57] Sekindi's scholarship is directly relevant to this chapter's central inquiry into the extent to which historical memory has been reflected in Uganda's constitutional jurisprudence. His identification of the court's pattern of acknowledging electoral violations while declining to act on them maps precisely onto what this chapter characterizes as a failure to apply historical context as a substantive interpretive tool. The 1995 Constitution's commitment to free and fair elections was a deliberate and historically grounded response to Uganda's documented experience of electoral abuse and unconstitutional transfers of power, experiences that the Preamble expressly commemorates. His analysis, while incisive in its treatment of presidential electoral disputes, is confined to that specific constitutional terrain and does not extend to other areas in which the courts' engagement with historical memory has equally been tested. This chapter addresses this gap by examining the courts' fidelity to historical memory across a

[55] F Sekindi 'Presidential Election Disputes In Uganda; A Critical Analysis of the Supreme Court Decisions' (2017)154 *Journal of African Elections* 164 .

[56] As above.

[57]It should be noted that Uganda's first attempt at transferring power through elections occurred in 1962, ushering in self-rule after nearly 60 years of colonialism as part of the British Empire. This was followed by highly disputed elections in 1980. The 1994 Constitution introduced a one-party 'Movement System' that restricted political activities, with a planned referendum after five years. Museveni's NRM took power in 1986, held elections under the Movement System in 1996 and 2000, with Museveni elected president `both times. In 2001, a commission recommended returning to multi-party politics, and a 2005 referendum ended the one-party system with overwhelming support. Constitutional amendments then repealed the Movement System and presidential term limits, but despite restoring multi-party democracy, opposition parties have faced ongoing repression and violence since.

diverse range of constitutional jurisprudence, ensuring that the study's assessment of whether Uganda's courts have honoured the founding historical consciousness of the 1995 Constitution is comprehensive rather than confined to any single area of adjudication.

Ojambo(2022) approaches the same terrain from a broader constitutional perspective, examining the 1995 Constitution as a potential instrument of political consolidation rather than genuine democratic transformation.[58] Writing in an edited volume on democracy and governance in Africa, he argues that where elections are organised by a regime determined to consolidate power, the formal constitutional framework for electoral dispute resolution becomes susceptible to manipulation, and that the judiciary's reluctance to annul elections despite findings of widespread irregularity has entrenched a pattern in which the Constitution functions as a tool of legitimation rather than a genuine constraint on executive power. His observation that the NRM government has deployed material patronage and administrative manipulation to secure electoral outcomes that do not reflect the genuine will of the people provides scholarly grounding for this chapter's broader argument that the courts' formalistic approach to the election petitions failed to engage with the structural realities of Uganda's political environment.[59] This is directly relevant to this chapter's central inquiry because it explains why the failure to reflect historical memory in constitutional jurisprudence carries consequences far beyond individual decisions. When courts interpret the 1995 Constitution without reference to the historical imperatives that produced it, they do not merely make interpretive errors; they facilitate the very pattern of executive dominance that the Constitution's historical memory was specifically designed to prevent from recurring, reducing it from a living repudiation of Uganda's troubled past to precisely the instrument of legitimation Ojambo identifies. However, his analysis does not engage with the question of what interpretive tools, specifically the treatment of historical memory as a substantive and operative constitutional norm, might have equipped courts to resist the institutional pressures he identifies, a gap that chapter three addresses.

1.9.3 Comparative Analysis with other jurisdictions

Branch (2011) provides an authoritative account of Kenya's post-independence political trajectory, tracing the arc from the fragile constitutional compromises of 1963 through successive authoritarian

[58] R Ojambo 'The 1995 Constitution as a Tool for Dictatorship in Uganda: An African Dilemma of Constitutionalism' in *Democracy and Africa: Contemporary Issues in Africa's Democratization and Governance* (2022)*Advances in African Economic, Social and Political Development* 9–10.
[59] Ojambo (n 58 above)9.

consolidations and the eventual democratic opening that produced the 2010 Constitution.[60] Branch's narrative is attentive to the structural forces, including ethnic mobilisation, executive overreach, electoral manipulation, and the suppression of dissent that shaped Kenya's constitutional development. For the present research, Branch offers a comparative illustration of how a country's political history accumulates into a constitutional memory that courts may either honour or ignore. However, Branch's work, while invaluable as political history, over-focuses on Kenya's political history at the expense of its constitutional history. He is primarily concerned with political actors, institutions, and processes rather than with constitutional doctrine or judicial reasoning as such. This study addresses this gap by examining how Kenyan courts, have engaged with the country's history as a substantive guide to constitutional interpretation.

Ndegwa (2006) provides an insider perspective on the tensions and compromises that attended Kenya's transition to independence.[61] His concept of 'transient unity', the strategic suppression of genuine ideological differences among independence leaders for the tactical purpose of ejecting colonial rule, is analytically useful for understanding why Kenya's founding constitutional moment was structurally unstable. For a study of historical memory in constitutional jurisprudence, Ndegwa's insight into the foundational ambivalence of the Kenyan constitutional project resonates with similar dynamics in Uganda, where the 1995 Constitution also emerged from a context of political coalition and contested historical narratives. The limitation of Ndegwa's account is that it is largely autobiographical and descriptive rather than analytical in a constitutional sense. Like Branch, Ndegwa over-focuses on political history, and does not address how courts subsequently engaged with this foundational ambivalence in their adjudication. This study addresses this limitation by examining whether Kenyan courts have confronted the foundational ambivalence Ndegwa identifies.

Odinga (1967) documents from a dissenting perspective the political struggles of early independence Kenya, including the constitutional manoeuvring that allowed KANU to accept a constitutional framework it did not believe in, with the intention of transforming it once in power.[62] Odinga's account is relevant to the present study insofar as it illustrates how constitutional texts can be adopted strategically rather than as genuine normative commitments, a dynamic that has

[60] D Branch 'Kenya Between Hope and Despair, 1963–2011' (2011) *Yale University Press* 1–2.

[61] D Ndegwa ' Walking in Kenyatta Struggles: My Story'(2006) *Kenya Leadership Institute* 250.

[62] O Odinga ' Not Yet Uhuru :The autobiography of Oginga Odinga' (1967) *Heinemann* 229.

implications for how courts should read and apply such texts. The insight that constitutional moments often involve incomplete normative settlement lends support to the argument, relevant also to Uganda, that courts must look beyond constitutional text to the historical struggles and aspirations that shaped it. Nevertheless, Odinga's work is primarily a political memoir rather than a constitutional analysis. Its value for a jurisprudential study lies in the historical context it provides rather than in any direct engagement with judicial methodology.However,this study fills this gap by examining the extent to which Kenyan courts have engaged with such history.

Gertzel, Goldschmidt, and Rothchild (1969) offer a systematic analysis of Kenya's early post-independence political institutions and processes.[63] Their work provides scholarly grounding for understanding how the political dynamics of the early independence period created institutional patterns that would later manifest as constitutional challenges. This text is valuable in contextualising the political environment within which Kenya's constitutional jurisprudence developed. Its limitation is that, as a product of its era, it does not address the constitutional jurisprudence that emerged from the 2010 Constitution or engage with questions of judicial methodology. This limitation is directly addressed by this study, which extends the analysis beyond the institutional patterns these authors identify to examine the jurisprudential response of Kenya's courts under the 2010 Constitution, assessing whether those courts have treated the institutional failures of the early independence period, so carefully documented by Gertzel and his co-authors, as a constitutive element of the historical memory they are obligated to honour in their adjudication.

Mboya (1993) articulates a vision of constitutional governance rooted in social justice, economic development, and the collective aspirations of newly independent peoples.[64] His writing draws an explicit connection between political freedom and substantive economic and social transformation, anticipating the transformative constitutionalism debate that would later animate comparative constitutional theory. This collection is useful for the present research in demonstrating that the normative aspirations embedded in constitutional texts are not invented by courts but are retrieved from the historical discourse that surrounded constitutional founding. While Mboya establishes the normative aspirations that informed Kenya's constitutional founding, he does not examine whether courts have successfully retrieved and operationalised those aspirations in their interpretive practice.

[63]C Gertzel, M Goldschmidt &D Rothchild (eds) 'Government and Politics in Kenya: A nation-building text' (1969) *East African Publishing House* 83-84.

[64]T Mboya 'The Challenge of Nationhood: A collection of speeches and writings' (1993) *Heinemann* 266–278.

This study fills this gap by examining whether the transformative vision Mboya articulates has been given judicial expression in Kenya's post-2010 constitutional jurisprudence, and what lessons that comparative experience holds for evaluating Uganda's courts' engagement with the equally transformative aspirations of the 1995 Constitution.

Oloo (2013) documents popular attitudes toward the 2010 constitutional reform process and the extent to which it was understood as a response to Kenya's history of constitutional abuse.[65] Oloo's empirical contribution is relevant to the present research because it establishes that the transformative purpose of the 2010 Constitution was not a judicial invention but a popularly understood and endorsed aspiration. This provides important context for evaluating whether Kenyan courts have been faithful to the constitutional mandate they received. However, Oloo's contribution is empirical and sociological rather than jurisprudential, and does not itself examine whether the courts have honoured the popular mandate he documents. This study addresses that gap by moving from the popular constitutional consciousness Oloo documents to an assessment of whether judicial practice has given it operative effect, providing the jurisprudential analysis that his empirical account does not supply.

Wotshela (2026) examines the colonial dimensions of South Africa's constitutional history, tracing the imperial relationships and racialized power structures that formed the backdrop to the eventual establishment of the Union of South Africa in 1910.[66] Wotshela argues that the colonial inheritance is not merely historical background but continues to inform the normative assumptions embedded in law and governance. This perspective reinforces the argument that Uganda's constitutional jurisprudence cannot be fully understood without attending to the colonial and post-colonial dimensions of Uganda's legal history. However, Wotshela's piece is primarily a historical study of imperial-colonial relations rather than a constitutional or jurisprudential analysis. His focus remains on the political and diplomatic dimensions of the Churchill-South Africa connection, and he does not engage with how colonial history has been received or deployed by South African courts as a matter of constitutional doctrine. This study addresses this gap by examining how the South African Constitutional Court has translated the colonial and apartheid history that Wotshela's work illuminates into substantive constitutional doctrine, demonstrating how courts can give operative

[65] A Oloo 'The Constitution of Kenya 2010: Kenyans Give a Thumbs Up' *Afrobarometer Briefing Paper No* 109 (2013) 1.
[66] L Wotshela 'Winston Churchill and South Africa: An Enduring, yet Debatable Connection, 1899–1955'(2026) accessed on 28th April,2026 at **https://doi.org/10.1111/1468-229x.70089**.

interpretive weight to inherited historical injustice rather than merely acknowledging it as background narrative.

Seekings (2007) provides a rigorous account of the structural dimensions of racial inequality under apartheid and its legacies in the post-apartheid order.[67] His work demonstrates that the historical injustices that South Africa's courts are asked to address are not abstract or remote but structurally embedded in the present social order. For the Ugandan study, Seekings' framework raises an important question: to what extent do Uganda's courts recognise that the historical injustices of the pre-1995 era, including the atrocities of various regimes, remain structurally embedded in present inequalities and social relations, and how does this recognition, or its absence, shape constitutional adjudication? While Seekings provides an important structural framework, his work does not examine how courts have engaged with the structural legacies he identifies, a gap that this study addresses by examining how courts in South Africa have engaged with the country`s past.

Larmer (2017) raises an important conceptual question about the nature of Ghana's constitutional founding, challenging the assumption that formal independence represented a genuine transfer of constitutional authority rather than a reorganisation of colonial power relations under new management.[68] This question is directly relevant to any study of historical memory in constitutional jurisprudence, because it problematises the moment from which a court's historical narrative begins. If independence was not a clean break but a reconstitution of existing power arrangements, then courts invoking the constitutional founding as a historical reference point must do so with greater critical self-awareness. While Larmer raises this important conceptual challenge, he does not examine how Ghana's courts have responded to it in practice. This study fills this gap by examining the extent to which courts in Ghana have engaged with the country`s history.

Owusu (2008) situates Ghana's volatile history, including its repeated military interventions and constitutional suspensions, within a framework of global political economy.[69] This perspective is valuable because it suggests that courts engaging with constitutional history must be attentive not only to domestic political events but also the effects of such events on other areas like the economy. However, Owusu's framework is primarily structural and economic rather than jurisprudential. He

[67] J Seekings 'Race, Discrimination and Diversity in South Africa' (2007) 149 *CSSR Working Paper No 194*, 4.
[68] M Larmer 'Was the Gold Coast "decolonised" or did Ghana win its independence?' (2017) *University of Oxford* 1.
[69] KG Owusu 'Military Coups In Ghana, 1969–1985; A By-Product Of Global Economic Injustices?' (2008) *Linköpings Universitet–Sweden* 5.

does not examine whether Ghana's courts have incorporated an awareness of these broader structural forces into their constitutional interpretation, or whether the global political economy dimensions of Ghana's constitutional instability have found expression in judicial reasoning. This study addresses this gap by examining whether Ghanaian courts have adopted an interpretive approach that is attentive to the broader structural context of past constitutional failures.

Vanderpuije (2017) reflects on the lessons of Ghana's constitutional history from the vantage point of independence, drawing attention to the constitutional experiments Ghana undertook before arriving at the relative stability of the 1992 constitutional order.[70] His study is relevant because it shows that Ghana's history of Constitutional development was not linear but shaped by repeated experimentation, failure, and reform before achieving relative stability under the 1992 Constitution. While Vanderpuije identifies the lessons of Ghana's constitutional history at the level of political analysis, he does not examine whether those lessons have been internalised by Ghana's courts as a matter of constitutional interpretation. The gap between identifying historical lessons and giving them judicial effect is precisely the gap this study addresses by examining the extent to which courts in Ghana have embedded historical memory in their constitutional jurisprudence.

Blocher and Garrett (2025) provide an indispensable theoretical foundation for this research. They observe that the relevance of historical facts to constitutional law has never been greater or more contested, and that across an increasingly wide range of constitutional disputes, justices have invoked historical facts to ground their decisions, even as they express divergent views about why history matters, how much it matters, and what weight to assign to particular kinds of historical evidence. [71] This observation is foundational to this research because it frames the methodological challenge at the heart of constitutional historicism: history is not a monolithic or self-interpreting resource. Courts that invoke it must make deliberate choices about which history, whose history, and for what interpretive purpose. While Blocher and Garrett provide the theoretical framework that underpins this study's central argument, their analysis is primarily drawn from United States constitutional contexts and does not directly address the Ugandan experience.This study fills this gap

[70]AO Vanderpuije 'Statement To Parliament On The Political Lessons From Ghana At 60 And The Way Forward' (2017) 1, accessed on 29th April 2026.

[71] J Blocher & BL Garrett 'Applying History as Law: The Role of Historical Facts in Implementing Constitutional Doctrine' (2025)104 *Texas Law Review* 4.

by relocating the discussion of historical memory from a predominantly United States–centred constitutional discourse to the Ugandan constitutional experience.

1.10 Chapter Synopsis

This study is divided into five chapters:

Chapter One introduces the research topic and presents the historical background of the study. It further outlines the research objectives, research questions, and the methodology adopted for the study.

Chapter Two explores the history of the Republic of Uganda including constitutional, political and social aspects.

Chapter three examines the extent to which historical memory has been reflected in Uganda`s Constitutional jurisprudence since 1995 by analyzing various landmark court decisions.

Chapter Four provides a comparative analysis of selected jurisdictions, examining the extent to which historical memory has been incorporated into their constitutional jurisprudence. The selected jurisdictions include Kenya, South Africa, Ghana and United States of America.

Chapter Five presents the conclusion and recommendations. It synthesizes the key findings from the preceding chapters and, on that basis, advances targeted recommendations on how the incorporation of historical memory can be strengthened and more effectively integrated into constitutional adjudication.

CHAPTER TWO

EXPLORING UGANDA`S HISTORY

2.1 Introduction

2.2 The Pre Colonial Period (Before 1894)

2.3 The Age of Colonialism (1894-1962)

2.4 The Post-Colonial Period (1962-1995)

2.5 The 1995 Constitution

2.6 Conclusion

'…*History is who we are and why we are the way we are'*

- David McCullough

2.1 Introduction

Uganda's constitutional and political history is one of the most turbulent and instructive on the African continent. This chapter explores that history in three broad phases: the pre-colonial era, the age of British colonial rule, and the post-independence constitutional journey from 1962 to 1995. The pre-colonial period reveals a landscape of sophisticated kingdoms and decentralised societies whose internal dynamics, rivalries, and social structures would profoundly influence the nature of colonial administration and post-independence politics. The arrival of British colonialism in 1894 did not create Uganda from nothing; rather, it superimposed a new constitutional and administrative order upon a pre-existing, complex political terrain. That colonial order, entrenched through Orders-in-Council, bilateral agreements with kingdoms, and a judiciary that served imperial rather than popular interests, left deep structural imprints on Uganda's post-independence constitutionalism.

The independence era, inaugurated in 1962[1], inherited both the promise of self-determination and the unresolved contradictions of colonial rule. The chapter traces how those contradictions between

[1]BJ Odoki 'The Challenges of Constitution-making and Implementation in Uganda' in *Constitutionalism in Africa: Creating Opportunities, Facing Challenges. Constitutionalism in Africa: Creating Opportunities, Facing Challenges* (2001) *Kampala Fountain*

centre and region, between elected government and traditional authority, between legality and power culminated in successive constitutional crises. The abrogation of the 1962 Constitution, the pigeon-hole Constitution of 1966, the Republican Constitution of 1967, the military dictatorship of Idi Amin (and the contested return of Obote each represent a chapter in Uganda's prolonged struggle to reconcile governance with legitimacy, and authority with accountability. The chapter concludes with the rise of the National Resistance Movement and the making of the 1995 Constitution widely regarded as Uganda's most ambitious and principled constitutional instrument. The 1995 Constitution is examined not merely as a legal document but as a political response to history: an attempt by a generation of Ugandans to break decisively from a cycle of tyranny, constitutional illegitimacy, and institutional collapse, and to build a democratic, rights-respecting state on firmer foundations[2]. Understanding this history is indispensable to any serious engagement with Uganda's present constitutional order.

2.2 The Pre Colonial Period (Before 1894)

Long before the demarcation of contemporary Uganda's geopolitical borders, its constituent populations, or more precisely, their ancestral lineages, had already established deep-rooted societies within the region. Consequently, the organic existence of these indigenous peoples fundamentally precedes the artificial legal and colonial frameworks that subsequently demarcated the nation's boundarie.[3]Uganda's pre-colonial history featured diverse kingdoms, pastoral economies, and intricate social structures. Centralized states like Buganda and Bunyoro dominated the region, shaping politics, society, and trade long before European arrival. Powerful kingdoms emerged around the 14th century, with Buganda rising as the most centralized under kabaka (king) as the supreme leader of the region[4]. Bunyoro-Kitara, an earlier empire, focused on pastoral power and

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Publishers 265; AA Otunnu 'Politiccs and the Military in Uganda 1890-1985'(1987) *St.Martins Press* XV;A Kizito 'The post- independence conflicts in Uganda: A manifestation of the classical imperialistic divide and rule policy of the British colonial administration in Uganda'(2015) *Developing Country Studies* 56;HC Epstein 'Another Fine Mess:America,Uganda and the War of Terror' (2017)*Columbia Global Reports* 25; DW Nabudere 'Imperialism and revolution in Uganda'(1980)*Tanzania Publishing House* 28.

[2] Preamble of the 1995 Constitution of Uganda.

[3] SR Karugire 'A Political History of Uganda'(1980) *Heinemann Educational Books* 1

[4] The Kabaka wielded supreme executive, judicial, and military authority. His power was counterbalanced though never truly checked by a class of chiefs (bataka and bakungu) who administered territorial units (saza) on behalf of the crown. Crucially, unlike the hereditary chieftainships common elsewhere, Buganda's territorial chiefs were appointed and dismissed by the Kabaka, creating a system of merit-based (or at least loyalty-based) administration that enhanced royal authority and weakened potential aristocratic rivals. This administrative flexibility allowed Buganda to rapidly expand its territory at the expense of neighbouring states, particularly Bunyoro.However, not all of pre-colonial Uganda was organised into kingdoms. The Acholi, Langi, Iteso, and Karamojong peoples of the north and east were primarily

military expansion, often clashing with Buganda over territory. Smaller polities, like Ankole and Toro, operated as decentralized chiefdoms with cattle-based hierarchies, fostering rivalries that defined regional power dynamics [5].Society revolved around clans, age-sets, and kinship ties, with pastoralists valuing cattle as bride wealth and status symbols. Farming communities practiced subsistence agriculture, while artisans specialized in ironworking and pottery, supporting hierarchical classes of royals, nobles, and commoners. Spiritual beliefs centered on ancestor worship and local deities, reinforced through rituals that maintained social cohesion across ethnic groups like Baganda, Banyoro, and Bahima[6]Agriculture formed the backbone, with crops like bananas, millet, sorghum, and livestock sustaining communities on fertile lands. Trade networks exchanged salt, iron, cattle, and bark cloth via local markets and long-distance routes linked to East Africa, boosting prosperity without currency. Iron tools enhanced farming productivity, while craft specialization in kingdoms like Buganda spurred urban-like centers and surplus accumulation[7]

2.3 The Age of Colonialism (1894-1962)

Prior to 1894, the sovereign state now known as Uganda did not exist as a single constitutional entity, although the various kingdoms and communities that would later form it had long-established political systems and identities. Uganda emerged as an administrative unit in 1894 when the British Government declared it a British Protectorate. [8] Even then, it took several years for British authority to be extended across the territory and for Uganda's present boundaries to be fully defined. Before colonial consolidation, the area consisted of more than fifty diverse chiefly and non-chiefly societies, which were subsequently brought together under the Protectorate. In 1902, an Order in Council

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organised along clan and lineage lines, without centralised monarchies. Among the Langi, for instance, authority was diffused among clan elders, lineage heads, and recognised war leaders (rwodi). Decision-making was characteristically consensual, achieved through deliberation among senior men, and no single individual or family commanded permanent, overarching political authority.These societies were not, however, primitive or disorganised. They possessed sophisticated mechanisms for conflict resolution, resource management, age-grade systems that regulated social transitions .The Acholi, in particular, developed the Rwot (chiefship) as a limited form of political leadership, though its powers remained constrained by council and custom.

[5] Y Boadu 'The Economic and Geopolitical history of Uganda ,Pre Colonial and Colonial times' (26 September 2024) available at https://yawboadu.substack.com/p/economic-and-geopolitical-history-b57 (accessed 7 March,2026).

[6]Turkana Wildlife Safaris 'The Rich Tapestry of pre Colonial Uganda :A Historical Odyssey'(1 October 2024) available at https://turkanawildlifesafaris.com/pre-colonial-uganda/,accessed (accessed 7 March2026).

[7] As above.

[8]KC Katiba 'Compendium of Constitutional Reform Proposals under the 1995 Constitution of Uganda (2023) *Eastern Africa Centre for Constitutional Development* 4 availableat: Https://Www.Kituochakatiba.Org/Sites/Default/Files/2024-04/A-Compendium-Of-Constitutional-Reform-Proposals-Under-The-1995 Constitution-Of-Uganda.Pdf ; Nabudere (n 1 above) 28.

established the constitutional framework for the administration of the new territory, officially named Uganda. [9]

Among the most significant political entities incorporated into the Protectorate were the Kingdoms of Buganda and Bunyoro, together with the principalities of Ankole and Toro. While the British successfully concluded agreements with several of these entities, Bunyoro, under the leadership of King Kabalega, resisted colonial rule and challenged the extension of British authority over his kingdom. However, faced with the superior military power of the British, who were supported by Buganda as an ally, Bunyoro was ultimately defeated. As a reward for its cooperation, Buganda received a substantial portion of Bunyoro's territory. This territorial transfer gave rise to the long-standing controversy known as the 'Lost Counties' dispute. The rest of Uganda consisted of tribes none of which had a central authority or one with sufficient power to command unquestionable obedience from the whole tribe. Nevertheless, many of the tribes enjoyed some kind of order under tribal or clan leaders and chiefs. [10]

The first entity to establish a form of formal administration in Uganda was the Imperial British East Africa Company (IBEAC), a private company operating under a royal charter. The charter authorised the company to administer territories under its control, including the collection of taxes, the administration of justice, and the exercise of general governmental authority in accordance with treaties concluded with local rulers. Although the company exercised significant administrative powers, it remains unclear whether it acted directly as an agent of the British Crown. [11]

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[9] The 1902 Order-in-Council started with a preamble stating by 'Whereas, by treaty, grant, usage, sufferance and other lawful means, His Majesty has power and jurisdiction in the Uganda Protectorate, now therefore by virtue and in exercise of the powers conferred on His Majesty by the Foreign Jurisdiction Act it is ordered as follows..' Provisions were also made for the administration of Uganda. The officer responsible for the administration was designated as Commissioner and he was to be assisted by a Deputy Commissioner and other officers. The Commissioner had power to make laws rules and regulations and in In the exercise of his legislative powers, the Commissioner was to be subject only to the general or special instructions of the Secretary of State in London. He was to respect existing native laws and customs in so far as they were not repugnant to justice or morality as understood and practised by the British. Further, he could by Ordinance, order that laws of the United Kingdom, India or any other colony be applied to Uganda generally, subject to stated exceptions and modifications.

[10] GW Kanyeihamba 'Constitutional and Political History of Uganda: From 1894 to Present' (2010) *LawAfrica Publishing (K)Limited* 2.

[11] However, the analysis of some of these agreements indicates that the rulers did not understand the treaties they were signing and even if they did they did not have a choice to dictate their own terms. For instance, in 1890 the company persuaded Kabaka Mwanga of Buganda to agree to terms of a treaty which is supposed to have been made after the council and with the full consent of the chiefs of all parties of my state.Therefore The rulers were not sophisticated enough to realise that in signing the so-called agreements and treaties they were giving away their birth rights and the rights of their subjects. At the time they had no notion of what words like ceding, sovereignty, and government meant.

In 1891, financial difficulties forced the company to withdraw from Uganda. One of its most influential officials, Captain Frederick Lugard (later Lord Lugard), had been stationed in the territory and encountered a society deeply divided by religious conflict. Working closely with Kabaka Mwanga, Lugard succeeded in restoring a measure of stability and concluded a new treaty with Buganda in April 1892. Convinced that British withdrawal would be a strategic mistake, he returned to Britain and campaigned against the proposed abandonment of the territory. As a result, the British Government appointed Sir Gerald Portal, then Consul-General in Zanzibar, to assess the situation. By 1893, Portal had declared Uganda a Provisional Protectorate, negotiated a new agreement with the Kabaka of Buganda, and recommended that Britain assume direct responsibility for the administration of the territory. Acting on these recommendations, the British Government formally declared Uganda a Protectorate in 1894. This brought Uganda within the scope of the Africa Order in Council of 1889, which empowered the local British representative to exercise extensive executive, judicial, and administrative authority. [12]

The period was also marked by intense religious rivalry among Roman Catholics, Protestants, and Muslims, whose competition for influence often escalated into conflict. These divisions were further complicated by the involvement of local rulers, particularly Kabaka Mwanga of Buganda and Kabalega of Bunyoro, who sought to advance their own political interests. British officials also became deeply involved in these struggles and, through a combination of diplomacy and strategic alliances, eventually established control over the territory. The religious divisions that emerged during this period would continue to influence Ugandan politics well beyond independence. [13]

Having established formal authority, the British then moved to define and consolidate the territories that would constitute the Protectorate of Uganda. Under prevailing principles of European imperial law, claims to sovereignty could be justified through treaties, grants, conquest, usage, or other recognised means. [14] Agreements acknowledging British suzerainty had already been concluded with

[12] Uganda Order in Council (1902) 4-12.
[13] GW Kanyeihamba 'Constitutional Law and Government in Uganda'(1974) *East African Literature Bureau Nairobi* 39 -43.
[14] Berlin Africa Conference, 1884-1885 ; This was held under the chairmanship of Otto von Bismarck, was a meeting of major European powers convened to regulate trade and territorial claims in Africa. Representatives from countries such as Germany, Britain, France, Belgium, and Portugal participated in the conference. Although no African representatives were invited, the conference established principles for the partition and occupation of African territories, most notably the doctrine of effective occupation, which required European powers to demonstrate actual control over a territory before claiming sovereignty over it. The conference accelerated the 'Scramble for Africa' leading to the division of the continent among European colonial powers with little regard for existing ethnic, cultural, or political boundaries. Its

several rulers, including those of Buganda, Toro, and Ankole. To regularise the administration of the Protectorate, existing agreements were revised, new agreements were negotiated, and additional territories were incorporated through Orders in Council. The new Buganda and Toro Agreements were concluded in 1900, while the Ankole Agreement followed in 1901. Earlier arrangements with chiefs in Busoga and northern Uganda were largely disregarded as the colonial administration pursued a more uniform system of governance. Through successive Orders in Council, non-kingdom territories were gradually incorporated into the Protectorate. Bunyoro occupied a unique position within this process. Following the defeat of Kabalega, the British claimed sovereignty over Bunyoro by right of conquest rather than by treaty. Consequently, unlike the other major kingdoms, Bunyoro did not conclude a formal agreement with the colonial administration until 1933. Despite these different methods of incorporation, every agreement and Order in Council emphasised that the various kingdoms, chiefdoms, and districts formed part of a single political entity, the Protectorate of Uganda. Every agreement concluded with the kingdoms and every Order in Council issued for the districts affirmed that these territories formed constituent parts of a single political entity, the Uganda Protectorate. This position was expressly reflected in the preamble to the 1902 Order in Council, which provided that:

> Whereas, by treaty, grant, usage, sufferance and other lawful means, His Majesty has power and jurisdiction in the Uganda Protectorate, now therefore by virtue and in exercise of the powers conferred on His Majesty by the Foreign Jurisdiction Act it is ordered as follows….[15]

The Ugandan judiciary was also formally established under section 15(1) of the 1902 Order in Council, which created 'Her Majesty's High Court of Uganda' and conferred upon it unlimited civil and criminal jurisdiction throughout the Protectorate. The court was composed entirely of expatriate white judges who served at the pleasure of the Crown. As a result, it possessed little genuine institutional independence and functioned largely as an instrument of colonial administration. The 1902 Order in Council concentrated both legislative and executive authority in the hands of the British Commissioner, who exercised extensive powers through ordinances that frequently curtailed the rights of Africans. Among the most controversial was the Deportation Ordinance, which authorised the removal of individuals deemed troublesome by the colonial authorities. It was employed, for example, against the Bataka activists during the disturbances of 1945. The ordinance

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decisions had profound and lasting consequences for Africa, shaping colonial administration, territorial boundaries, political development, and many of the governance challenges that persisted long after independence.

[15] Preamble of the Uganda Order in Council (1902).

provided neither judicial oversight nor any limit on the duration of detention or exile. Rather than acting as a safeguard against executive excess, the courts generally upheld these measures. [16] In *R v Mukwaba and Mukubira*, the High Court declined to examine the legality of the Kabaka's deportation, treating it as an act of state beyond the scope of judicial review. [17]In addition to endorsing executive repression, the courts also undermined African legal traditions through the application of the repugnancy doctrine under section 20 of the 1902 Order in Council. This doctrine recognised customary law only insofar as it was deemed consistent with colonial notions of justice, morality, and good conscience. [18]

Until 1920, the Uganda Protectorate was governed in practice by the dictates of a single man, the Commissioner. Although he was nominally assisted by other officials, his complete command over their appointments reduced those officials to little more than executors of his personal will, rather than public servants exercising independent functions. The years from 1902 to 1920 may reasonably be characterized as autocratic and arbitrary, if not always in day-to-day practice, then certainly as a matter of law. In 1920, a new Consolidating Order-in-Council was promulgated, making provision for Executive and Legislative Councils, and redesignating the Commissioner as Governor. Membership of both councils was to be determined by His Majesty, the King of the United Kingdom. Unlike his predecessor, the Governor was no longer to exercise unchecked authority over those who assisted him; they were instead to hold office at the pleasure of the appointing authority. The composition and functions of the Executive Council were not spelled out in the Order itself but were set out in the Royal Instructions of 1921 made pursuant to it. The Order also established a Legislative Council whose constitution and procedures were likewise prescribed by the Royal Instructions of 1921.[19] Acting on those Instructions, the Governor formulated Standing Orders and

[16] B Kabumba 'The Judiciary and Human Rights in Uganda: History, Challenges, and Prospects'(2025) *Chapter Four Uganda Public Interest Paper No. 2*, 9 .
[17] *Mukwaba & Ors v. Mukubira & Ors* (1952-6) ULR 74 ;also see *Re G. L. Binaisa* [1959] EA 997.
[18] See *R v Amkeyo* (1917) KALR 14 ; *Gwao bin Kilimo v Kisunda bin Ifuti (1938)* 1 TLR 340 ; *Mwenge v Migadde* (1932-5) ULR 97.
[19] The Legislative Counci l was to consist of the Governor and such other persons, not being less than two at any time, as His Majesty directed by Royal Instructions. The Council was empowered to make laws and regulations for the administration of justice, law and order and good governance of Uganda. However, the power of the Legislative Council to make laws was subject to certain limitations. The Governor was given a veto over the legislative powers of the Council.

Rules of the Legislative Council, adopted in 1926, which remained operative with only minor amendments until 1949. [20]

With the establishment of the Legislative Council, indigenous Ugandans began pressing for the right to be represented on it. Their claim was initially dismissed by the colonial authorities, though it attracted sympathy among the Council's unofficial members and within the church. Even so, actual representation was slow in coming. In 1941, the question of African representation was formally put before the Council by an unofficial member, but the official response was hostile and the matter was set aside. It was not revived until 1944, when Mr. Fraser, another unofficial member, again raised the question, doing so indirectly by calling for an expansion of unofficial membership generally. In 1945, the appointment of a new Governor, Sir John Hall, marked a shift in colonial policy regarding African participation in governance. Speaking on 18 June 1945, in his Communication, Hall dispelled any remaining uncertainty about the prospect of African representation on the Legislative Council and signaled the administration's intention to pursue greater inclusion. He expressed the hope that African representatives would soon join the Council, enabling them to participate more directly in governmental affairs and in the development of laws and policies that profoundly affected their lives and the future of their country. [21]

On 23 October 1945, the Governor announced to the Legislative Council that the Secretary of State had approved his proposal to appoint three indigenous members to the Council. [22] This marked the first formal inclusion of Africans in the colony's central legislative body. Representation, however, was limited to Buganda and the Western and Eastern Provinces. The Western Province was to be represented on a rotational basis by the Katikkiros (Prime Ministers) of Bunyoro, Toro, and Ankole. Buganda was allocated one representative chosen from among the Kabaka's three ministers, while the Eastern Province was to be represented in rotation by the Secretaries-General of Busoga, Bugisu, Bukedi, and Teso. The first African representatives were scheduled to take their seats in December 1945. Notably, Kigezi and the Northern Province were excluded from this arrangement.

[20] It should be noted that although the Council was passing laws intended to govern the local population, the average European arrogantly believed that he knew what that population wanted better than the Africans themselves. This paternalistic attitude prevailed in all British colonies.

[21] Kanyeihamba (n 10 above)16.

[22] The Governor also stated that these representatives would have a dual duty in the Council and in the country. First, they would represent and explain the Government's policies to their people in the country. They were to be men of substance and authority, of ripe experience and possessed of a developed sense of responsibility which may be expected from those holding high office in the Native Governments and Administrations. They were introduced as Honourable Members Kawalya-Kagwa, Nyangabyaki and Zirabamuzale.

The justification given was that their tribal and administrative institutions had not yet developed to a level that, in the view of the colonial administration, warranted the establishment of centralised native executive structures. The gradual expansion of African participation in the Legislative Council continued over the following years. By 1948, the Council comprised the Governor as Chairman, six ex officio members, four official members, and ten unofficial members, including four African representatives. In March of that year, the number of African representatives was doubled, and arrangements were made for six additional members to be elected. By 1950, the Council's unofficial membership had risen to sixteen, consisting of eight Africans, four Asians, and four Europeans, while the number of official members was increased to six. [23].

Further constitutional reforms followed. In 1959, the colonial government announced that direct elections would be introduced in 1961. Before this could occur, several important constitutional questions had to be addressed, including the adoption of universal adult suffrage, voter and candidate qualifications, the right of women to vote and stand for election, the representation of non-African communities, and the status and representation of Karamoja in the future Legislative Council. To preserve impartiality, it was also proposed that the Speaker would not possess a casting vote, thereby reducing the government's relative voting strength within the legislature. To consider these issues, a Constitutional Committee was established under the chairmanship of J. V. Wild. Its report, published in December 1959 and commonly known as the Wild Report, recommended that direct elections be held throughout Uganda in 1961. The Committee further proposed the adoption of the Westminster system of government, including a Cabinet collectively responsible to the Legislature. These recommendations laid the foundation for Uganda's transition towards representative government and eventual independence. The old Legislative Council was dissolved early in 1961. This more or less signified the beginning of the end of the British rule in Uganda. From now on, the Government of the country would be in the hands of the elected representatives of the people. The British would still have the trump card, but it was a matter of months rather than years before it became clear that independence was a matter of formality. Henceforth, the shape of the Uganda Government would be the responsibility of Ugandans themselves[24]

[23] New Vision 'Did you know that before 1945, there was no African Representative in Partliament ?'(23rd September 2020) https://www.newvision.co.ug/news/1527703/1945-african-representative-parliament (accessed 6 June 2026).
[24] J Mugaju and J Oloka- Onyango (eds) 'Non-Party Democracy in Uganda: Myths and Realities' (2000*) Fountain Publishers, Kampala* 15-18.

The newly constituted Legislative Council convened for the first time on 17 April 1961, with the Governor serving in the largely ceremonial role of President. By this stage, the colonial administration had shifted its focus from maintaining direct control to facilitating Uganda's transition towards self-government and independence. In his opening address, the Governor congratulated the newly elected members and announced that the Secretary of State for the Colonies would later that year convene a constitutional conference in London to determine the framework for Uganda's advancement to independence. He emphasised the importance of ensuring that the conference was broadly representative of all interests within the country. At the same time, he acknowledged that several challenges remained to be addressed before independence could be attained, particularly the existence of tribal and regional divisions and the need to foster greater unity and cooperation among Uganda's diverse communities so as to overcome longstanding suspicions and differences. For many British colonies that attained independence during the 1960s and 1970s, a constitutional conference in London was a crucial step in the transition to self-government. [25]

It was within this context that Ugandan delegates gathered in London to negotiate the constitutional framework for an independent Uganda. Despite broad agreement on many issues, several contentious matters remained unresolved. [26]Among the most divisive was the question of the lost Counties, territories transferred from Bunyoro to Buganda during the colonial period. Buganda opposed the proposal for a referendum that had been recommended by the Munster Commission and accepted by the British Government. In an effort to break the deadlock, the Secretary of State proposed a compromise whereby a Commission of Inquiry, composed of members of the Privy Council, would be appointed to examine the issue in detail and make recommendations for its resolution. [27]

Following the return of the delegations from the 1961 London Constitutional Conference, both the political parties and the traditional institutions reassessed their strategies in light of the evolving constitutional landscape. Under the new constitutional arrangements, elections to the Buganda

[25] The fact that fundamental decisions about a colony's constitutional future were often made in the imperial capital rather than within the territory itself led some commentators to question the extent to which the process reflected genuine self-determination. Although colonial delegates frequently welcomed the opportunity to participate in discussions in London, the political centre of the British Empire, the decision to hold such conferences there also enabled the British Government to retain significant influence over the constitutional arrangements that would accompany independence.

[26] Odoki (n 1 above) 258-261.

[27] HF Morris and JS Read 'Uganda: The Development of its Laws and Constitution' (1966) *Stevens and Sons, London* 179-182.

Lukiiko were required to be held by March 1961. The elections resulted in the Uganda People's Congress (UPC) securing 37 seats and the Democratic Party (DP) 24 seats. As anticipated, the Lukiiko subsequently selected its 21 representatives from among supporters of Kabaka Yekka (KY), strengthening the emerging UPC–KY alliance. [28]Within two months of the coalition assuming governmental responsibility, a further constitutional conference was convened in London. Attended by representatives of the same political and traditional interests, the conference was tasked with considering the next phase of Uganda's constitutional development. Since the experiment with self-government had proved successful, attention shifted to the attainment of full independence. The June 1962 Constitutional Conference was therefore convened to review existing arrangements, address the remaining constitutional issues, make any necessary amendments to the 1961 Constitution, and agree on the date upon which Britain would formally transfer sovereignty to Uganda. Contrary to expectations, the outstanding constitutional questions were resolved with relative ease, paving the way for Uganda's independence later that year. On the remaining constitutional matters, the conference was able to achieve broad consensus and agreed upon the framework of Uganda's Independence Constitution. It was resolved that Uganda would attain independence on 9 October 1962. To give legal effect to this transition, the British Parliament enacted the Uganda Independence Act[29] in August 1962. The Act provided that, from 9 October 1962, the territories that had constituted the Uganda Protectorate would become a sovereign state known as Uganda.[30] It further stipulated that the British Government would thereafter cease to have any responsibility for the governance of Uganda and that future Acts of the United Kingdom Parliament would not apply to Uganda unless expressly provided[31]. In addition, the Act ended the application of the Colonial Laws Validity Act 1865 to Uganda[32], thereby ensuring that legislation enacted by the Ugandan Legislature could no longer be invalidated on the ground that it was inconsistent with English law. [33]

From a constitutional perspective, the Uganda Independence Act presented an interesting paradox. Although Uganda was formally attaining independence, it remained within the Queen's dominions, and Ugandans continued to owe allegiance to the British Crown. Matters of nationality and

[28] Morris (n 27 above) 28.
[29] Uganda Independence Act 1962 (cap 57).
[30] S.1(1) of the Uganda Independence Act 1962.
[31] S.1 (2) of the Uganda Independence Act 1962.
[32] First schedule, paragraph 1 of the Uganda Independence Act 1962.
[33] First schedule, paragraph 3 of the Uganda Independence Act 1962.

citizenship were initially regulated by a British imperial statute rather than by laws enacted by Uganda's own elected legislature. Thus, while political independence had been granted, important constitutional ties to Britain remained intact. Following the completion of the necessary constitutional and legal arrangements, Queen Elizabeth II was represented at the independence celebrations by His Royal Highness, the Duke of Kent. On 9 October 1962, he formally handed over the constitutional instruments that transformed Uganda from a British Protectorate into an independent sovereign state and a member of the Commonwealth. Sir Walter Coutts, the last colonial Governor, assumed the position of Governor-General as the Queen's representative in Uganda. Present at the ceremony were Prime Minister Milton Obote, members of the government, opposition leaders, the Kabaka of Buganda, other traditional rulers, and numerous dignitaries. Across the country, celebrations marked the historic occasion with great enthusiasm and national pride. Yet, despite the achievement of formal independence, Uganda's journey towards complete constitutional and political self-determination was far from complete. Significant challenges remained before the country could exercise full control over its own destiny. [34]

2.4 The Post-Colonial Period (1962-1995)

The attainment of independence marked a watershed moment in Uganda's constitutional history. The transition from colonial rule to self-governance brought with it the urgent task of establishing a constitutional framework that would govern the newly independent state. This period spanning from 1962 to 1995 was characterised by significant constitutional turbulence, political instability and repeated departures from constitutionalism and the rule of law. Uganda experienced a succession of constitutional arrangements, military coups, abrogations of constitutional order and periods of authoritarian rule that profoundly shaped the country's legal and political landscape. It was a period that tested the resilience of constitutional governance and ultimately laid the groundwork for the more comprehensive constitutional settlement that culminated in the 1995 Constitution.

2.4.1 The 1962 Constitution

Uganda attained independence on 9 October 1962 under a constitutional framework that embodied the essential features of constitutional governance. The Independence Constitution was the product of negotiations among the country's principal political actors and sought to reconcile competing

[34] ABK Kasozi 'The Social Origins of Violence in Uganda, 1964–1985' (1994) *Fountain Publishers* 47-49.

political, regional, and traditional interests. To achieve this balance, it established a system of representative parliamentary government, with a legislature elected at regular intervals and a Cabinet drawn from and accountable to Parliament. The Constitution also accommodated Uganda's diversity by granting federal and quasi-federal status to Buganda and certain other kingdom areas, while maintaining a unitary system of administration for the rest of the country. In addition, it defined the powers and functions of the principal organs of government and provided a framework for the exercise of political authority. On the first anniversary of independence, the Constitution was amended to replace the Governor-General with a ceremonial President as the head of state. Following this amendment, the Kabaka of Buganda (Kabaka Muteesa 11) was elected as Uganda's first President.[35]

The office of President, occupied by the Kabaka II, contained an inherent constitutional contradiction. As President of Uganda, he was required to act on the advice of the Cabinet, while as Kabaka of Buganda he was expected to act in accordance with the advice of the Buganda Government and the Lukiiko.[36] Given these dual responsibilities, conflict between his national and traditional roles was almost inevitable. Mutesa, who had long been accustomed to exercising considerable personal authority as Kabaka, found it difficult to adapt to a constitutional office that vested him with limited powers and required him to act largely on ministerial advice. His difficulties were compounded by his relationship with Prime Minister Milton Obote. Mutesa never fully accepted Obote as a national leader and regarded him with deep suspicion. The fact that executive authority was exercised by a commoner who served as Prime Minister made it even harder for Mutesa to reconcile himself to his largely ceremonial position as Head of State. Over time, a series of incidents reinforced his sense of dissatisfaction. In its efforts to project Uganda's image as a newly independent and sovereign state, the Government sought to display photographs of national leaders in public places and on television. However, concerns arose that displaying the President's portrait might blur the distinction between his position as Head of State and his role as Kabaka,

[35] Notwithstanding this first amendment to the Independence Constitution, very little in the country changed. The President was to be a constitutional head in the sense that he would act on the advice of the Government, led by the Prime Minister. In order to avoid future conflicts, the amendment defined the President's powers in more precise terms than the independence constitution had done in respect of the powers of the Queen or Governor-General. In moving the second reading, of the Amendment Bill on this matter, the Minister of Justice, Grace Ibingira, emphasised the main purpose of the change which was apparently to enable Uganda serve the nexus of imperial rule and become a truly African independent, sovereign state. Uganda is not a kingdom, neither is it a republic when we have monarchies: nor can we be a monarchy containing, as we do, so many republican districts, submitted to the learned minister of Justice.

[36] HF Morris & JS Read (n 27 above) 82.

particularly as some of his supporters had begun portraying him as the emperor of Uganda.The Government therefore chose to display the Prime Minister's portrait instead. Mutesa viewed this decision as a slight to his status and was similarly displeased whenever Obote addressed the nation or received public acclaim at official functions, interpreting such occasions as deliberate attempts to diminish his standing as both Kabaka and President. The distinction between Mutesa's dual roles was further complicated by his frequent travels throughout the country. Although these journeys were funded from public resources, it was often unclear whether he was travelling in his capacity as President of Uganda or as Kabaka of Buganda. Even when attending functions in the latter role, he occasionally expected the Ugandan Government to bear the associated costs. For example, he saw no impropriety in requesting the Uganda Police Band to perform at celebrations marking his official birthday as Kabaka. [37]

The constitutional position of the President further contributed to these tensions. The constitutional amendment establishing the presidency provided that where the President was required to act on the advice of another person or authority, no court could inquire into whether such advice had been received or followed. Although intended to protect the dignity and neutrality of the office, this provision also enabled a President to disregard ministerial advice without judicial scrutiny. While the provision was later amended to require the President to act in accordance with the Constitution, tensions between Mutesa and the central government persisted. These tensions culminated in 1964 when the long-awaited referendum on the Lost Counties of Buyaga and Bugangaizi was finally held. As expected, the electorate voted in favour of returning the territories to Bunyoro. The final constitutional step required the President to execute the instrument effecting the transfer. Mutesa, however, refused to do so, arguing that he could not transfer the governance of his subjects to another country. His refusal revealed the extent to which he continued to view Buganda as distinct from Uganda itself. While this position reflected sentiments shared by many Buganda traditionalists, it placed him in direct conflict with his constitutional obligations as President. A constitutional crisis was ultimately avoided only because the Constitution authorised the Prime Minister to give assent where the President declined or failed to act. [38]

The first attempt to strengthen the Independence Constitution through amendment ultimately proved unsuccessful. One reason was that the office of President was occupied by an individual who

[37] M Mahmood 'Politics and Class Formation in Uganda' (1999) *Fountain Publishers, Kampala* 242-247.
[38] Section 62(2) of the Independence Constitution (1962).

had not obtained a mandate from Uganda as a whole. Eligibility for the position depended largely on being a traditional ruler of a kingdom or district, yet the office of Head of State required legitimacy that extended beyond any single region. In a country comprising numerous regions and communities, it was problematic for the highest constitutional office to derive its authority primarily from one traditional constituency. The arrangement was further undermined by the expectation that the President would maintain dual loyalties, to his kingdom and to the Ugandan state. When these loyalties came into conflict, allegiance to the kingdom prevailed. More fundamentally, the Constitution attempted to reconcile hereditary traditional authority with modern democratic governance, two systems founded on different principles and often pulling in opposite directions. The tensions inherent in this arrangement ultimately contributed to its failure.[39]

By this time, the UPC/KY coalition Government had began to show signs of strain. In January, 1963, the Ugandan People's Congress decided to contest two seats for the Buganda Lukiiko by-elections, against the wishes of Kabaka Yekka, which itself was contesting for the same seats. The decision of Congress immediately brought the suspicions between the two partners into the open.[40] To amend fences, the leaders of Kabaka Yekka called an urgent meeting after which they issued a public statement saying that the alliance was still firm. By that time however, the writing was on the wall for everyone to see. Worse was to follow. Amid the confusion that followed shortly afterwards, a number of Kabaka Yekka members of the National Assembly crossed over and joined the Uganda People's Congress. A year later, the Prime Minister, was now habitually lashing out and criticising at both the Democratic Party and the Kabaka Yekka indiscriminately. For example, while addressing a public gathering at Namulonge, and to a predominately Baganda audience, Obote declared that the time had come for all Ugandans to put in a national effort for the achievement of their social and economic betterment. It is further reported that he launched a strong attack on Kabaka Yekka, alleging that some of its leaders were working with the Democratic Party in campaigning against the UPC :

> I am trying to tell you that there are some leaders of Kabaka Yekka who are prepared to work with DP. UPC has done a lot for the Baganda. And what do we get back? They ridicule and insult us ... You have got your brains and you can think and decide what party to join … K.Y, is making you his machine and insulting you and your GOD…

[39] Mamdani (n 37 above) 227-231.
[40] HR Hancock 'Patriotism and Neo-Traditionalism in Buganda: The Kabaka Yekka ('The King Alone') Movement, 1961–1962' (1970)11(3) *Cambridge University Press* 419-434.

> When DP opens branches in Buganda nobody objects but if UPC does the same, people object.[41]

One result of the speech was a libel case filed by Ben Kiwanuka against Obote, which Kiwanuka ultimately lost. More controversially, the press reported that Obote had been heard supporting the idea of a one-party state, a claim that sparked strong anger among Buganda leaders and Kabaka Yekka spokesmen, who interpreted it as yet another calculated attempt by Congress to weaken and eventually eliminate them. However, this reaction appears somewhat contradictory, since a one-party system would most likely have undermined the Democratic Party, widely seen as the main political rival of the Buganda establishment, while potentially leaving Congress as the dominant, if not sole, political force in the country. This is further complicated by the fact that Kabaka Yekka consistently insisted that it was not a political party.[42]

In any case, the final link in the coalition was broken following the referendum on the Lost Counties and their transfer to Bunyoro. This decision was deeply humiliating for Buganda and was widely interpreted as further evidence of betrayal by the UPC. The resulting outrage was not limited to political elites; it also spread to the general public in Buganda. As a consequence, Katikiro Kintu's administration was held responsible for the embarrassment and was forced to resign. Several Buganda representatives in the Mengo National Assembly who had not aligned themselves with the UPC also resigned their seats, including Mayanja-Nkangi, a former minister in the coalition government. In the aftermath, traditionalists and Kabaka Yekka supporters invited him to form a new Buganda-based political movement.[43]

By this stage, there was no longer any doubt that the Kabaka's Government stood in open opposition to the Central Government of Uganda. For a time, Kabaka Mutesa remained the constitutional head of two increasingly hostile administrations, Buganda and the national government. His eventual decision to side with the weaker of the two, Buganda, would later contribute to his downfall. Meanwhile, the Uganda People's Congress (UPC) had become stronger than at any point since independence. In addition to support from Kabaka Yekka members, a number of Democratic Party followers in the National Assembly defected and aligned themselves

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[41] GSK Ibingira 'The Forging of an African Nation: The Political and Constitutional Evolution of Uganda from Colonial Rule to Independence, 1894–1962' (1973) *Viking Press, New York* 288-290.

[42] Regarding Kabaka's role in politics ; see A Nsibambi 'The military and democratic transition in Uganda' in HB Hansen &M Twaddle M(eds) *From Chaos to Order ;the politics of Constitution Making in Uganda, (1995) Fountain Publishers, Kampala* 41-44.

[43] Mamdani (n 37 above) 220.

with the UPC. Across the country, reports of former supporters of both the Democratic Party and Kabaka Yekka joining the UPC appeared regularly. In Parliament, the ruling party had by then secured enough support to govern on its own, while nationwide defections and declarations of support further strengthened its political legitimacy.[44]

It should be noted that the independence Constitution does not seem to have cared much about the wishes of the electorate. The fact that the leader of the largest party was unable to command the support of the National Assembly should not have been the only criterion on which the party was to be deprived of the right to form a government. The party could have been requested to elect a new leader who would find the support or, alternatively, the President could have dissolved the Assembly and ordered new elections.[45]

The Uganda independence constitution, like the internal self-government constitution, provided for comprehensive powers to be vested in the executive. This was to be vested in the majesty, represented by the Governor- General. [46] The constitution also stipulated that the cabinet would be collectively accountable to parliament.[47] This gave power of control over the government to the parliament, however this was later proved to be a toothless organ. Ibingira observed that;

> it was entrusted to an untried cabinet which had no experience at all or even responsibility in managing the affairs of the people. One of the greatest mistake committed by both Ugandan politicians and the protecting power,, was that a party whose leaders were never tested in the exercise of executive responsibility should have been given such vast and awesome powers as were enjoyed in this independent African government. So long as the politician has no real or specific responsibility to execute and thus be judged for he can say the sweetest or most convincing words and he will not be easily contradicted, no matter how ill-suited he may actually be .[48]

The Cabinet, whose function was to advise the Prime Minister, was appointed by the President. Yet, it was the Prime Minister, rather than the President, to whom the people of Uganda had entrusted the power of government. It should be noted that the most glaring weakness of the Independence Constitution was the way it distributed power in Uganda. The National Assembly was handicapped by the federal powers that were granted to the four kingdoms and the territory of Busoga. It had no authority to legislate on the offices of the rulers, their powers, obligations and duties. It could not

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[44] As above; Kanyeihamba (n 10 above) 71.
[45] J Oloka - Onyango 'Constitutional Transition in Museveni's Uganda: New Horizons or Another False Start*?*' (1995) *Journal of African Law, School of Oriental and African Studies* 23-25.
[46] Art 61 of the Constitution of Uganda (1962).
[47] Art 63(2) of the Constitution of Uganda (1962).
[48] Ibingira (n 41 above) 256.

determine public holidays or festivals of the state. A further provision prohibited the National Assembly from legislating on matters agreed upon by the Governments of Uganda and the state. The Assembly had no authority to change or alter the provisions of a state's constitution even though this was incorporated in the schedules to the Uganda Constitution[49]

Customary law was excluded from the legislative authority of the National Assembly, yet if Uganda was to progress toward true nationhood, it was essential that some aspects of customary law be examined at the national level and reformed to align with modern developments. Similarly, key sectors such as land, education, and administrative personnel were placed outside the jurisdiction of both the central government and the National Assembly, making effective national planning extremely difficult, since the very instruments needed for economic development were beyond its control. The country's circumstances demanded greater centralisation of authority and a more uniform direction of governance, yet the Constitution appeared to promote the opposite outcome. In addition, it required the central government to collect revenue across the country and then redistribute substantial portions of it back to the federal states in which it was collected, further limiting the effectiveness of national fiscal planning.[50]

The independence Constitution also drew a clear distinction between Buganda and the other federal states, providing Buganda with a separate schedule and unique constitutional arrangements. Whereas the constitutions of the other states clearly set out areas of exclusive legislative competence for their own legislatures, in Buganda's case the approach was reversed, with only those matters reserved for the National Assembly being specifically listed. In addition, Buganda was guaranteed 50 per cent of customs revenue collected within its territory, along with a further 50 per cent contribution from general revenue through an annual statutory grant, which could not be reduced without prior consultation with the Kabaka's Government. [51]

The degree to which the Independence Constitution prioritised the federal states is evident in its structure and content. The main provisions governing the rest of the country were contained in only 131 articles, many of which were themselves concerned with limiting the powers of the central authorities in their dealings with the federal states. In contrast, the schedules dealing with the constitutions and related arrangements of the five federal states extended to more than 200 articles,

[49] 5th Schedule to the Independence Constitution of Uganda (1962).
[50] Mamdani (n 37 above) 37-242.
[51] Schedule 9 of the Independence Constitution (1962).

reflecting their extensive constitutional detail and importance. Furthermore, only two articles were devoted to local government administration in the districts, despite the fact that these districts contained the overwhelming majority of Uganda's population.[52] From the above, it is clear that the Independence Constitution placed greater emphasis on division than on unity. It elevated regional interests above national priorities and strengthened regional leadership at the expense of national authority. As a result, regional political power was firmly entrenched, making it difficult for central government institutions to design and implement effective national policies. Efforts aimed at achieving political, cultural, and economic transformation were therefore likely to face significant obstacles rooted in this deep-seated regionalism. Yet, Uganda urgently required such transformation.[53]

The constitution also lacked political legitimacy for it was not an expression of the will of the majority, nor did it claim to have the consent of the masses even though it can be claimed that they were acting through their elected representatives. Lacking political legitimacy, the Constitution could not withstand the test of political pressure, for if it were threatened with abrogation the masses would be reluctant to defend it. That this same Constitution continued in force until 1966, is evidence that the forces of divisionism and traditionalism were stronger and more influential than the radicals had otherwise imagined.[54]

However, several conspiracies were reported during this period. Despite the Uganda People's Congress (UPC) having attracted many supporters from Kabaka Yekka and the Democratic Party, it soon began to face internal difficulties. By 1965, divisionist and traditionalist tendencies had infiltrated the party and gained active support among its rank and file. Increasingly, dissenting voices began to emerge across the country, challenging the official party line, including those of some of its most influential leaders, which deepened confusion within the party. Following the successful referendum and the final transfer of the 'Lost Counties' to Bunyoro in 1964, hostility in Buganda toward Milton Obote and the UPC government intensified. Traditionalist leaders at Mengo, the kingdom's capital, began to explore every possible political avenue to weaken and ultimately remove Obote from power. This led to the formation of a political alliance between the Kabaka, his

[52] Odoki (n 1 above) 265-268.
[53] Nsibambi (n 42) 44-46.
[54] HB Hansen and M Twaddle (eds) 'Uganda Now: Between Decay and Development' (1988) *James Currey, London* 93-96.

ministers, and dissatisfied elements within the UPC. Among these was a faction led by the then Minister of Justice and UPC Secretary-General, Grace Ibingira.[55]

In conjunction with the Mengo traditionalists and with the consent of the President, Edward Mutesa 11, the King of Buganda, the conspirators approved the contents of a letter which was sent to Her Majesty, Elizabeth 11, the Queen of the United Kingdom and Head of the Commonwealth, requesting her government to supply them with guns so that they could fight and overthrow Milton Obote from the government of Uganda. Her Majesty declined the request. The conspirators next turned to the British High Commission in Uganda and requested it to get in touch with British private firms of gun- manufacturers and ask them to supply guns. Gail and Roberts, gun manufacturers were contacted but they too declined to assist the conspiracy. Somehow however, through other means the sources of which have remained secret, the conspirators managed to get hold of some guns and ammunition. This was the second conspiracy. It was purely military and was truly set.[56]

The next phase of the conspiracies was political in nature. King Mutesa and the first group of conspirators began to win support from individuals within the Central Government, Parliament, and opposition groups to join their effort to remove the Obote government from power. As part of the strategy to discredit the government, opposition members in Parliament were encouraged to raise accusations of corruption and abuse of office against Obote and his close associates, with the intention of provoking a full parliamentary debate that could ultimately lead to a motion of no confidence in the government. The feudal and traditionalist elements involved in the conspiracy believed that they had suffered significant losses under Obote's leadership. In their view, the honour and prestige of traditional authority required a government that would respect rulers, chiefs, and the property rights of the privileged elite. The Obote government, which presented itself as reformist and radical, was seen as prioritising ordinary citizens over traditional leaders and their supporters. This shift, they believed, needed to be reversed through the formation of a government aligned with traditional institutions rather than the broader population. A third conspiracy was alleged to have been inspired and led by the Prime Minister himself. According to his critics, including King Mutesa, this group was accused of seeking to dismantle the Independence Constitution, establish a left-wing

[55] A Adoko 'Uganda Crisis' (1970) *African Publishers, Kampala* 119-121.
[56] G Pinchwa 'Arms and Men in Uganda' (1978) *East African Literature Bureau* 2.

dictatorship, undermine Uganda's long-established customs and traditions, and transfer private property, built through individual enterprise, into state ownership.[57]

However, an examination of available evidence on the first two conspiracies suggests that they did somehow exist. Hitherto, the role of branding UPC a radical and near-communist party had fallen on the Democratic Party, but was soon joined by some UPC members. At the Gulu Party Conference, for example, no less a person than the Secretary-General of the party, Grace Ibingira, participated in a move designed to expel one of the party's leading radicals, John Kakonge, from the top leadership, on the grounds that he was too socialist. It has been observed that in their zeal to oust Obote from the Premiership, the dissenting elements within UPC joined forces with the traditionalists and opposition members to make concrete plans and to carry out manoeuvres for the deed.[58]

The strategy adopted by the anti-Obote faction was a carefully calculated political one. Their objective was to remove the government from power through ostensibly legal means, using parliamentary debates, motions of censure, and constitutional procedures to undermine its authority. Among the most notable of these initiatives was the motion concerning the so-called Gold Allegations. At its core, the motion sought to discredit the leadership of the Uganda People's Congress (UPC) and its government. On the surface, it appeared to concern allegations that Idi Amin, then Deputy Commander of the Uganda Army, had unlawfully acquired valuable commodities, including gold, ivory, coffee, and money, from the Congo (now the Democratic Republic of the Congo) and had used them for personal enrichment. Initially, the matter seemed to involve little constitutional significance. However, as the debate unfolded, the focus expanded beyond Amin himself. The allegations came to implicate Prime Minister Obote and two of his cabinet ministers, who were accused of having benefited from the proceeds obtained through the Congolese operations. It was alleged that the gold and other valuables had been acquired not merely for Amin's personal gain but primarily to enrich Obote and his associates. Although Amin was said to have received financial rewards and promises of promotion within the military hierarchy, critics contended that the principal beneficiaries of the alleged loot were the Prime Minister and his cabinet colleagues.[59]

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[57] Adoko (n 55 above)129-131.
[58] Kanyeihamba (n 10 above) 80.
[59] Pinchwa (n 56 above) 9-11.

It was essential for the conspirators that the motion be moved with conviction and oratory. The convincing words would be found in the mouths of one Daudi Ocheng and others. Ocheng's oratory and his manner of delivery were captivating. Both the motion and its proposer were carefully and strategically chosen. The success of the motion would mean the constitutional downfall of the Obote Government, but before that moment, convincing evidence had to be found. Documents and witnesses had to be sought and produced. The conspirators found him to be an ideal political instrument.[60]

It was customary for members of the Uganda People's Congress (UPC) in the National Assembly to meet as a parliamentary group whenever major government policies, important political issues, or significant motions were due to be introduced and debated. In accordance with this practice, the group met to consider Ocheng's motion and, after discussion, unanimously agreed that it should be rejected. This decision effectively meant that the motion would not proceed to debate in the National Assembly. Nevertheless, because the matter was of considerable public importance, the government was obliged to explain the reasons for its rejection. The Prime Minister and his colleagues accordingly presented their position on the issue and appear to have satisfied all those present, including some individuals involved in the conspiracies. The motion itself raised two constitutional issues with important political implications. First, regardless of the truth of the allegations, debating the motion would have cast doubt on the integrity of the Prime Minister and his associates and could have seriously undermined public confidence in the government. Given that dissenting voices within the UPC had already become increasingly vocal, such a debate would likely have been politically damaging to the ruling party, which, like any political organisation, was unwilling to risk its own destruction. Second, and more significantly, it was widely understood that the Uganda Government maintained an ambiguous position regarding the ongoing civil war in the Congo, making the issues raised by the motion particularly sensitive. [61]

The Prime Minister and some other members of the National Assembly had occasion to go up-country and this, prompted the promoters of the motion to gather courage and reassess the situation. Accordingly, the conspirators decided to revisit the Ocheng motion, but on this occasion, it would be considered by the Cabinet rather than by the UPC Parliamentary Group. Here, the members of the conspiracy within the Cabinet would lead the debate for reversal of the

[60] L Ocheng 'Why my father, Daudi Ocheng, is the father of Tarehe Sita' *Nile Post* (February 8, 2021) https://nilepost.co.ug/opinions/96752/why-my-father-daudi-ocheng-is-the-father-of-tarehe-sita (accessed 6 June 2026).
[61] Mamdani (n 37 above) 258-263.

Parliamentary group's earlier decision. So, on the 4 February 1966, the Cabinet met behind closed doors and the conspirators were able to trick their gullible colleagues into agreeing to the reversal. The UPC Parliamentary group was not informed of the Cabinet's decision until the afternoon of that same day, shortly before the motion was due to be debated in the National Assembly. That the Cabinet was legally entitled to meet in the absence of the Prime Minister is not in doubt but to reject the previous advice of their supporters in the Assembly was highly suspect. Moreover, by convention, they should not have accepted and debated such an important motion in the absence of the leader of the government who was in the country, and who, moreover, had advised against it. Politically, the Cabinet had blundered in ignoring the most influential members of the party, the Parliamentary Group. In fact, this amounted to a tacit withdrawal of confidence from the Prime Minister and an attempt to rule without the party.[62]

The Cabinet's sudden reversal of its position on the motion plunged the UPC Parliamentary Group into confusion and uncertainty. Members found themselves in a difficult position. Opposing the motion would have exposed deep divisions within the party, while supporting it would have suggested a lack of confidence in the integrity of their own leadership, including the Prime Minister. Faced with these competing risks, the group chose to prioritise party unity over the defence of individual leaders. Although the conspirators had succeeded in securing a debate on the motion, their victory was only partial. The debate that followed was among the most vigorous and memorable ever witnessed in the National Assembly. Ironically, despite the high standard of parliamentary oratory, the motion itself was viewed by its critics as having originated from political intrigue and an attempt to undermine the UPC leadership. Emotions ran high throughout the proceedings, with speakers on both sides recognising that the outcome could have significant political consequences. [63]

Supporters of the motion portrayed it as a matter of national importance, arguing that it was necessary to defend the rule of law and uphold public accountability. They maintained that the allegations of corruption and the possibility of a conspiracy against the Constitution were too serious to ignore and therefore required a thorough investigation. Some speakers presented the motion as a patriotic effort to expose wrongdoing and protect the interests of the nation. Opponents, however, condemned the motion as being founded on unsubstantiated accusations, rumours, and political

[62] Adoko (n 55 above) 83.
[63] Ibingira (n 41 above) 297-301.

maneuvering. They challenged the accusers to repeat their allegations outside Parliament, where they could be subjected to legal scrutiny through libel proceedings. Critics argued that the charges lacked credible evidence, pointing out that they were unsupported by formal complaints, affidavits, or other verifiable documentation. They further warned that adopting the motion could be interpreted as an implicit endorsement of allegations against the Prime Minister and two cabinet ministers without due proof. Several speakers expressed concern that the debate had revealed unprecedented divisions within the government, with ministers openly contradicting one another and disclosing matters that would ordinarily remain confidential. Others suggested that the controversy reflected broader struggles for power within the state, including alleged attempts by rival factions to manipulate military leadership for political ends. In their view, the debate had degenerated into an exchange of hearsay and speculation, and they argued that the implementation of the motion would not resolve the country's problems. Instead, they called for decisive and firm action by the government to restore stability and order.[64]

Despite these developments, the motion was passed, with only one dissenting vote cast by John Kakonge. The result plunged Uganda into a period of profound political uncertainty and confusion. Rather than providing clear national leadership and direction, the crisis created an atmosphere in which rumours, speculation, and conjecture dominated public discourse and political decision-making. Stability gave way to uncertainty as divisions emerged among the very leaders entrusted with governing the country. For many Ugandans, this was a moment when the nation appeared to be without effective leadership. Some expected the Prime Minister to resign, while others speculated that he might flee the country. There were even those who suggested that governmental authority should be transferred to the army. Obote, however, pursued none of these courses. Instead, he delayed his return to the capital while maintaining contact with his closest advisers and carefully considering the most appropriate response to the crisis. Once he had settled on a course of action, he moved decisively and with remarkable speed, taking both his opponents and supporters completely by surprise.[65]

Following the passage of the motion, the National Assembly ordered the immediate suspension of Idi Amin from the Army and called for an investigation into his bank accounts. While this decision was not, in itself, of major constitutional significance, its broader implications were politically

[64] Kanyeihamba (n 10 above) 85-86
[65] Adoko (n 55 above) 141-144.

important. As the parliamentary debate unfolded, it became increasingly apparent, even to some of Obote's supporters that the allegations extended beyond Amin and touched upon the Prime Minister himself. Political momentum appeared to be shifting in favour of the conspirators, while Obote's loyalists found themselves defending him under increasingly difficult circumstances. The passage of the motion was merely the beginning of a much larger political confrontation. Across the country, tension mounted as citizens anxiously awaited the next development and, more importantly, the individual who would take the next decisive step. Constitutionally, the President was in a position to act. Under the Independence Constitution, he possessed the authority to dismiss the Prime Minister if it could be shown that the latter no longer enjoyed the confidence of the National Assembly. The successful passage of the motion created such a possibility. The very motion that Obote had opposed and persuaded his party supporters to reject had now been adopted by the Assembly, including with the support of some of his closest cabinet colleagues. In these circumstances, the President could reasonably have interpreted the outcome as equivalent to a vote of no confidence and proceeded to remove the Prime Minister from office. [66]

It was Obote who then took the initiative. On 12 February 1966, he returned to Kampala to confront the allegations and criticism directed against him. Unlike a triumphant leader returning from victory, his return was marked by uncertainty, as neither he nor his supporters could predict how events would unfold. Once in Kampala, Obote firmly rejected the accusations and strongly defended both his own reputation and the integrity of the colleagues implicated alongside him. As the situation developed, many supporters who had become uncertain amid the political turmoil began to reaffirm their loyalty and rally behind him. Various proposals were also put forward in an effort to resolve the crisis. Subsequently, the Cabinet convened, and Obote challenged any minister who believed the allegations against him to resign from the government. None accepted the challenge. The Cabinet then agreed to establish a Judicial Commission of Inquiry to investigate the claims. To guarantee impartiality, the commission was composed of distinguished High Court judges from the neighbouring countries of Tanganyika and Kenya. Although the commission completed its work, its report was never published during Obote's time in power, giving rise to considerable speculation about its findings.[67] However, the evidence that was received in public by the Commission, the behaviour of some of the key witnesses to the Commission, and the number of revelations which have been made public by many people who were closely connected with the

[66] Morris (n 27 above) 201-204.
[67] Nsibambi (n 42) 48-51.

events of the period leave little doubt that the Prime Minister was telling the truth or that a great deal pertaining to the allegations had been merely speculative.[68]

During the few days following the Premier's return, revelations were made as to who was behind the plan to overthrow the government. It was alleged that a number of soldiers and officers were being trained to stage a coup d'etat. On the 22nd of February 1966, the Prime Minister called in advisers and decided to arrest the situation. It was decided that the members of the Cabinet who had been actively engaged in the plot to overthrow their own government should be arrested and. deported.[69] A Cabinet meeting was summoned for seemingly routine business but for the plotters who included the four ministers implicated in the conspiracy to remove Obote from office, it would be the last Cabinet meeting they would attend for a very long time, if ever. Two days later, the Prime Minister suspended the Independence Constitution, abolished the post of President and Vice-President; and assumed the powers of government. [70]

The Prime Minister's action was glaringly unconstitutional. Following the suspension of the Constitution, and until the enactment of a new constitution by Parliament on 15 April 1966, Uganda was governed in practice by a de facto rather than a de jure administration. During this period, the country experienced considerable uncertainty and instability, with many fearing that the suspension of constitutional rule could pave the way for an authoritarian government exercising power through decrees. Nevertheless, on 24 February 1966, the Government formally endorsed the Prime Minister's actions. Almost two months later, he presented proposals for a new constitution to the National Assembly. The adoption of these proposals brought the Independence Constitution to an end and ushered in the 1966 Constitution.[71]

2.4.2 The 1966 Constitution

It must be pointed out that neither the suspension nor the ultimate abolition of the 1962 Independence Constitution had any immediate bearing on the continued existence of traditional rulers in Uganda. What these events signified was simply the triumph of the people's elected representatives over traditional and hereditary authority. The Government's decree made it

[68] The Commission's Report was published after the Army Coup detat of 1971 and found Obote and the Cabinet Ministers named in the allegations to be unfounded. The report is ambivalent on the army officers who were also named. Government Archives, Entebbe, 1971.

[69] These were Hons. Ibingira, Kirya, Magezi Dr Lumu and Mathias Ngobi.

[70] New Vision 'Today in history: Obote becomes president' (3 March 2020) https://www.newvision.co.ug/news/1515957/history-obote-president (accessed 1 June 2026).

[71] Popularly known as the Pigeonhole Constitution.

unmistakably clear that any resistance to the will of elected representatives would carry serious consequences. The abolition of the Constitution underscored the supremacy of political power and put the rulers on notice that their continued existence depended on their willingness to operate within the new framework. The Kabaka was set on a path that would lead to his removal from power and, in falling, he would bring down the other traditional rulers with him, only for them to be restored after 1986 by the then revolutionary Government of the NRM.[72]

The position the Kabaka had taken ultimately proved disastrous for both him and his kingdom, and the worst was yet to come. Not long after, a new Constitution, commonly referred to as the 'pigeon-hole' or 'revolutionary' Constitution, was brought into force. Its provisions diverged fundamentally from those of the Independence Constitution in numerous respects. It established a unitary system of government and purported to do away with federal and semi-federal arrangements 'for ever.'[73] The special statuses and entitlements that had been accorded to the federal states were entirely removed. Buganda and those who stood with her, not without justification, viewed the new Constitution as a repudiation of the very terms on which they had consented to be part of Uganda under the Independence Constitution.[74]

It is significant that the new Constitution obliged members of the old National Assembly to take an oath of loyalty to it and to the new leadership of Uganda. Six Buganda members declined to do so. Acting without seeking the counsel of their ministers, the Buganda leadership convened a Lukiiko sitting to assess the situation. The opening act of that meeting was the adoption of a resolution commending the members who had withheld their allegiance from the new Constitution.[75] Draft resolutions calling for Buganda's secession, the refusal to recognise the Obote government, and the removal of the Central Government from Buganda's territory were placed before the Lukiiko and debated extensively. Predictably, there were those who voiced opposition. In the end, however, the motion that the Lukiiko resolves not to recognise the Uganda Government at all and that its headquarters must be relocated away from Buganda soil was carried. The course was now set. The tenor of some of the speeches delivered in support of the motion left no room for ambiguity about

[72] D Katungi 'Kings Without Kingdoms : How NRM Restored Hereditary Monarchies in Uganda' (Jan 28,2025) : Kings without Kingdoms: How NRM Restored Hereditary Monarchies in Uganda (accessed 6 June,2026).
[73] Preamble to the Interim Constitution of 1966.
[74] BJ Odoki 'The Path to Constitutionalism in Uganda' in A. Byaruhanga (ed),*Constitutional Developments in Uganda* (2005) *Fountain Publishers* 32-35.
[75]See: the proceedings of the Buganda Lukiiko (Parliament), February, 1966.

the direction Buganda's leaders intended to take. One particularly inflammatory address roused the assembly in the following terms:

> Gentlemen the time has come to carry out our plans…the essence of this motion may be analogically explained in terms of ants. Red ants live in their anthill and are divided in two: The Queen who is only one and many soldiers whose main task is to see that none touch the Queen at all. Should any try to do so, the alarm is raised, war begins and the soldiers fight to death before the Queen can be harmed. Thus Obote's constitution is a move to harm the Queen, Kabaka Mutesa II. We have now raised an alarm by calling this Lukiiko. Let the fight begin at once, let all die to save the Queen.[76]

This amounted to an unambiguous repudiation of the new Constitution by the Buganda Lukiiko and a direct challenge to Obote's central government, which duly treated it as such. Without delay, the committed Buganda county chiefs dispersed to their localities to mobilise for armed conflict, while the Central Government began receiving disturbing intelligence that Buganda was intent on breaking away from Uganda and that arms and ammunition were being stockpiled within the Kabaka's palace compound at Mengo. The county chiefs abandoned any pretence of concealment and openly urged the Baganda to gird themselves for war. By 23 May 1966, the insurrection had reached a point where the Uganda Government felt compelled to intervene. Three of the most defiant county chiefs were arrested and placed in detention. Their arrests were met with the beating of war drums across much of Buganda. Lawless elements within the kingdom took matters into their own hands. Roads were obstructed or rendered impassable. Public order collapsed in many parts of Buganda. Reckless destruction of government property followed. The situation descended into chaos and disorder. The Government could no longer stand aside. The Cabinet resolved to deploy a small unit to determine whether arms and ammunition were indeed being stored at the Kabaka's Mengo palace. When that unit reached the palace gates, however, it was met with gunfire from the palace guards and was effectively decimated in the firefight that ensued. The Uganda Army had no choice but to send in reinforcements, and following a prolonged and intermittent exchange of fire, the palace was encircled. Against all odds, the Kabaka managed to slip away unnoticed by scaling the palace wall, eventually making his way to the United Kingdom where he lived out the remainder of his days in poverty and despair.[77] The manner in which the Kabaka met his end would breed deep resentment towards Obote among the Baganda for generations to come.[78] The turmoil unleashed by the

[76]Mamdani (n 37 above) 272-275.
[77] *New York Times* 'Obote Against the Kabaka' (27 May 1966) https://www.nytimes.com/1966/05/27/archives/obote-against-the-kabaka.html [accessed 6 June 2026].
[78] Adoko (n 55 above) 117.

rebellion claimed many Ugandan lives. Civilians, soldiers, and police officers perished, the great majority of them guiltlessly. Property of every kind was either wrecked or damaged. Over and above the state of emergency already in place, the Government was compelled to enforce a curfew for a period, adding further hardship to the lives of ordinary people.[79]

When Obote abrogated the 1962 Constitution in 1966, both the government established by proclamation and the Interim Constitution of 1966 were subjected to legal challenge in the High Court. Kanyeihamba notes that the 1966 Interim Constitution, which incorporated the provisions of the proclamation abrogating the Independence Constitution, introduced several material changes. The office of Prime Minister was abolished and supplanted by that of an Executive President. The new President was required to be a member of the National Assembly, a departure from the Independence Constitution under which the President was neither an executive officer nor an Assembly member. The Uganda (Independence) Order-in-Council of 1962 was repealed. The country's federal architecture was dismantled, and with it the High Court of Buganda and the fiscal independence of the federal states. Provision was made for the direct election of Buganda's representatives to the National Assembly. The offices of President and Vice-President were abolished. Ministers and members of Parliament were briefly stripped of their positions. The central legal question that arose was whether a government constituted under the 1966 Interim Constitution, itself of questionable legal validity, possessed the authority to enact the Emergency Powers (Detention) Regulations of 1966. The sweeping powers vested in the President during a state of emergency had the effect of concentrating all authority in a single individual, to the exclusion of all other groups. This was brought into sharp relief by the case of *Ibingira and Others v Attorney General of Uganda*[80]. Grace Ibingira and his fellow ministers had been arrested and held under the Deportation Ordinance, The Uganda High Court dismissed their case. The Court of Appeal for East Africa reversed that decision and directed the Government to release them. They were subsequently re-arrested and exiled to Patiko in Northern Uganda. Parliament then enacted the Deportation (Validation) Act 1966, which effectively nullified the court's ruling in respect of Ibingira and his colleagues. It has been contended that the court chose to overlook the numerous deficiencies in the

[79] A doko (n 55 above)162-165.
[80] *Ibingira and Others v Attorney General of Uganda* [1966] 1 EA 306 .

detention order and the emergency regulations enacted to validate it, out of fear of the consequences of crossing the Executive.[81]

A similar disposition was later evident in *Odongkara and Others v Kamanda and Another,* where the court dismissed the application with costs on the narrow ground that the notice of motion did not adequately set out the basis on which it was brought.[82] In the 1969 case of *Opoloto v Attorney General,* the Court sustained the summary removal of the applicant from his position as Commander of the Uganda Army, holding that the President possessed prerogative powers to dismiss civil servants and service officers without giving any reason.[83] Of further importance was the matter of Mr Matovu, who had been detained under those same regulations and instructed his lawyers to bring an application for a writ of Habeas Corpus. The Government's position was that an effective revolution had occurred, destroying the existing legal order, and that the new legal order rested not on the 1962 Constitution but on the revolution itself. Matovu ultimately lost, with the court holding that a revolution in law had taken place, that a new legal order had been established, that the Constitution had been effectively abrogated, and that the 1966 Constitution was accordingly valid. [84]

2.4.3 The 1967 Republican Constitution

It bears noting that both the preamble to and Article 145 of the revolutionary Constitution of 1966 stipulated that the Constitution would remain operative until such time as a Constituent Assembly was established by the National Assembly for the purpose of enacting a new constitution. The country was expectant, and did not have long to wait. The Government announced that proposals for a new constitution would be put forward during 1967. The timing, however, attracted considerable criticism. Buganda, the region most directly affected, remained under a state of emergency, and many people, with good reason, voiced concern that no one in Buganda would feel safe proposing amendments or mounting opposition to the Government's proposals while emergency powers hung over them. A review of the debates that followed the publication of those proposals does indeed confirm that the bulk of the proposed amendments and the most pointed criticisms originated from individuals and groups within the Buganda area. The Government took heed, withdrawing some of its own proposals and incorporating many of the amendments, before resubmitting a revised draft to the National Assembly for further deliberation and adoption. The

[81] J Oloka-Onyango 'Political Question Doctrine in Uganda: An Analysis of the Technicalities on the Realization of the Freedoms of Expression, Association and Assembly in Uganda' (2017) *Chapter Four Uganda* 2.
[82] *Odongkara and others v Kamanda and another* [1968] 1 EA 210.
[83] *Opoloto v Attorney-General* [1969] 1 EA 631; also see *Re Ibrahim and others* [1970] 1 EA 16.
[84] *Uganda v. Commissioner of Prisons, ex Parte Matovu* (1966) EA 514.

Constituent Assembly ultimately accepted the Government's amended proposals and gave Uganda a new Constitution.[85]

The Constitution preserved a multi-party system of government, even though by the time of its enactment the opposition was visibly weakening, beset by poor organisation and mounting desertions. Although enacted "in the name of all people of Uganda and generations yet unborn," the Constitution amounted in substance to little more than a consolidation and entrenchment of the political trajectory that the Government had set since independence.[86]

The Constitution reorganised Uganda into eighteen local administrations, known as districts, in place of the previous division between local government and other administrative units. The powers and functions of these districts were addressed in Chapter Eight of the Constitution. The Constitution also made provision for the Public Service, placing the powers of appointment, discipline, and dismissal of public officers in the hands of the President. In practice, however, these functions were discharged by Service Commissions: the Public Service Commission, the Teaching Service Commission, and the Judicial Service Commission. The administration of justice was entrusted to the Judiciary, with the High Court of Uganda, vested with unlimited jurisdiction in both civil and criminal matters, at its apex. Provision was also made to safeguard the independence of the Judiciary. In all other material respects, the Republican Constitution was, like any constitution, a reflection of its era. Unlike its predecessor, the Government now possessed all the instruments it needed to advance its policies of national unity and economic development. In keeping with many of its counterparts across the African continent, it was disposed towards socialist development policies. Some years later, the Government put out a series of documents outlining its proposals for a "Move to the Left," which served as the blueprint for the mixed economy to which it was committed. These plans and other envisaged policies were, however, abruptly cut short by the military coup of 25 January 1971 which, though carried out in the name of democracy, brought with it, as events would show, one of the most savage dictatorships Uganda has ever endured.[87]

[85]The Republican Constitution of 1967 was a unitary one. In theory the Constitution was partly flexible and partly rigid. There were provisions that could be altered by the ordinary process of parliamentary legislation and there were those which were entrenched, particularly those containing the more fundamental laws of the state.

[86] Hansen (n 54 above) 101-104.

[87] Kasozi (n 34 above)72-74.

2.4.4 Uganda Under Military Rule

Uganda was so thoroughly associated with Obote, both at home and on the world stage, that the prevailing question was not when he would be compelled to yield power to a more capable successor, but rather who would take over if he were to die while still in office. Obote himself had on one occasion expressed the conviction that he was among the rare breed of African leaders who had nothing to fear from a coup. [88]

It is possible that what he meant was that fear of a coup would never deter him from doing what he believed was right, but the general understanding was that he was saying the army was too loyal to him ever to move against him. Over eight years, Obote and those closest to him had successfully constructed an extensive network of government informers operating under the banner of the so-called General Service Department, ensuring that virtually every public officer was kept under surveillance and reported upon. [89]

The issue, therefore, concerns what went wrong and how the situation developed. There were suggestions that external powers had a hand in the Uganda Army coup of January 1971, and early developments after the takeover lent some credibility to this theory. The first voice broadcast on Radio Uganda following the coup belonged to an unidentified non-African. The new military leader was observed being driven around the capital, Kampala, in the company of two Israeli Army officers. When Amin was subsequently asked at an international press conference whether the Israelis had been behind the coup, he replied that it was Obote himself who had brought them there in the first place. These occurrences were later accounted for, and no credible evidence has emerged to support the view that foreign powers assisted the Uganda armed forces in removing Obote. The proximate cause of Obote's undoing was his mishandling of the armed forces. Rumours of an impending coup had been circulating for some time, and discontent in certain quarters of the army was widely known, yet there was no indication that a coup was immediately imminent.[90] Had he not alienated the army by neglecting to convene the Army Council to address improvements to soldiers' conditions of service, had he not taken it upon himself to interfere in military promotions, had he not gone along with his advisers' counsel to remove particular officers from their posts and order

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[88] Mugaju (n 24 above) 20-23.

[89] Over a period of eight years, Obote and his closest associates had so managed to build up a corps of government spies under the auspices of the so-called General Service Department that every public officer was closely watched and reported on.

[90] SP Langseth, J Katorobo, E Brett and J Munene (eds) 'Uganda Landmarks in Rebuilding a Nation' (1997) *Fountain Publishers, Kampala* 260.

the arrest of the Chief of Staff, it is highly unlikely that the coup of January 1971 would ever have materialised.[91]

Obote's policy of promoting officers from his own ethnic background while sidelining clearly more qualified personnel from other regions was unlikely to secure the loyalty of the army as a whole. Although soldiers are trained to obey orders, they remain individuals capable of recognising unfair treatment, even when it affects others outside their own communities. His critics argued that this pattern of favouritism within the military leadership demonstrated that his public commitment to national unity was largely rhetorical rather than genuine. Over time, growing loyalty to Idi Amin, combined with lingering resentment over Obote's leadership style, contributed to the events that culminated in the January 1971 coup. The then Minister of Defence, Oboth Ofumbi, later explained that soldiers had informed Amin they could no longer serve under Obote and urged him to assume power. Although Amin initially resisted, they persisted until he eventually agreed, which is why the takeover was only announced at around 4:00 p.m. Ofumbi further noted that the coup received widespread support from soldiers across the country, which explained the absence of resistance in other military units.[92]

In spite of the short time it had been in power, the Idi Amin military government lost no time in issuing contradictory policy pronouncements and making inconsistent decisions. Originally, it was declared that there would be no President until civilian rule was restored. Then, on 13 March 1971, Decree No. 5 was gazetted, redesignating the military head of state as President.[93] In doing so, the government reproduced Article 24 of the 1967 Constitution, which set out the status and privileges of the President, but omitted two of its provisions. One of the omitted provisions specified that the President would not hold any other remunerative office; the other required that the President's salary, allowances, and pension or gratuity be determined by Parliament. No explanation was offered for these omissions, though practical considerations and the convenience of the moment must have driven the decision.[94]

The military government swiftly came to appreciate that political activities would have to be curtailed if its reconstruction agenda was to proceed without interference. An initial directive barred

[91]Government Notice number 82 of 1971.
[92] Kanyeihamba (n 10 above) 112-113.
[93] Legal Notice number 1 of 1971.
[94] Part of the 1967 Constitution which were preserved by Legal Notice number 1 of 1971 still referred to the President as Head of State.

politicians from making public statements. This was followed by a decree imposing a temporary ban on all political activity. The decree prohibited any individual from organising, participating in, or fundraising for any political party or organisation, or from taking part in any public gathering or procession for the purpose of spreading or communicating political views or information. All organised political activity was accordingly banned. Existing political parties and their officials retained the right to administer their own internal affairs, but no new parties were permitted to be established. In the aftermath of the coup, politicians were told to return to their home regions and acquaint themselves with the people they came from, though they were to do so as ordinary citizens rather than as political figures. Political life was thus driven out of public spaces and relegated to private homes and drinking establishments. [95]

The decree additionally placed restrictions on the movements of former Members of Parliament, party officials at various levels, mayors, deputy mayors, former members of the General Service Department, district councilors, and town councillors. All such persons were required to remain within the districts in which they habitually resided. Those wishing to travel elsewhere within Uganda were obliged to inform their District Commissioner of their intended destination and to report back on their return. Leaving the country altogether required the written authorisation of the Minister of Internal Affairs. Breach of the decree was punishable by up to eighteen months in prison, a fine of ten thousand shillings, or both. The prohibition had extra-territorial reach: any Ugandan who promoted the cause of a Ugandan political party while abroad was equally caught by it. Jurisdiction to try offences under the decree was confined to a Magistrate's Court sitting under a Chief Magistrate. The enactment of the decree made it necessary to amend Articles 10, 17, 18, and 19 of the 1967 Constitution. The military government also found it necessary to issue a decree providing for the continued detention of individuals who had been taken into custody during and in the aftermath of the military operations that accompanied the coup.[96]

In its original form, the Decree was designed to last for six months. It contained a provision stipulating that a person released from detention or acquitted under the ordinary criminal law would not remain subject to detention under the Decree. Section 5 denied any person held under the Decree the right to pursue any civil remedy in respect of the detention or of anything done to him or her while in detention. In this particular respect, the Decree was harsher than the emergency

[95] See the Detention Decree which came into force on 13 March 1971.
[96] The Detention (Periscription of time limit) Decree.

regulations that had been in place under the Obote government. The two regimes were alike only in that the fact of detention was not open to challenge in court; under the earlier emergency regulations, however, a detainee who claimed that any of his other rights had been infringed could bring an action before the courts and had a right of appeal to the Court of Appeal. Ironically, the military government emphasised how much it valued individual liberty. It was therefore unfortunate that it completely deprived a detainee of any civil rights even if he or she could prove that the detention was a mistake. It soon became necessary to amend the decree in order to give the military government extra powers.[97] One of the severest and most amply justified accusations against the Obote government was the constant resort to emergency powers and regulations under which persons were detained for unascertained reasons and periods of time without access to the ordinary courts.[98] The nation was relieved and thankful when the military government ceremoniously and by decree revoked the emergency powers laws.[99] The powers under these laws had been used to detain politicians, suspects, and innocent persons alike. Most people in Uganda who did not always see eye to eye with the Obote regime were terrified by the emergency powers laws which, as has been revealed, were used indiscriminately. The idea that a suspect could not suffer imprisonment without conviction by a court of law appeared to have been restored to the people of Uganda by the military government as a fundamental right. It was therefore with profound consternation that the nation learnt that the military government had found it necessary to reintroduce detention laws. These came in a decree empowering the minister of internal affairs to order the detention of any person whom the minister was personally satisfied was either a person who had conducted or was conducting himself in a manner dangerous to peace and good order or had endeavoured or was endeavouring to excite enemity between the people of Uganda and the government or had intrigued or was intriguing against the government.[100]

The period for which persons could be detained was extended. Powers of arrest were given to many people and the description of a person who was subject to arrest and detention was much wider under the new amendment decree than had been the case before.[101] It is suggested that the new law was superfluous in view of the government's clearly stated policy. Unfortunately, detention laws can never be as harmless as they would appear to be. The actions of the Obote government had

[97] Decree 13 of 1971.
[98] Hansen (n 54 above) 111-114.
[99]Decree number 9 of 1971.
[100] See Decree number 13 of 1971.
[101]As above.

demonstrated how harmful such laws can be. Extraordinary powers are effectively used to suppress freedom and to deprive innocent people of their basic rights and fundamental freedoms. There was no guarantee that officers of the military government and the police would not make mistakes or indeed arrest innocent persons as was the case under the Obote government and, as we shall see later, this is precisely what they extensively did.[102]

In light of the foregoing, it is evident that following his seizure of power, Amin systematically dismantled constitutional governance through Legal Notice No. 1 of 1971, subordinating the 1967 Constitution to his personal decrees.[103] The High Court in *Uganda v Alfred James Kisubi* gave judicial legitimacy to this arrangement, ruling that in any conflict between a decree and the constitution, the decree would prevail.[104] Having concentrated all state authority in his own hands, Amin went on to issue decrees that methodically stripped Ugandans of their fundamental rights. Beyond extending detention periods, bail was effectively abolished under the Trial on Indictments Decree No. 26 of 1971; indefinite detention without trial was institutionalised under the Detention (Prescription of Time Limit) Decree No. 7 of 1971; suspected robbers could be shot on sight under Robbery Suspects Decree No. 7 of 1972; and the government placed itself beyond any legal accountability. His military forces, emboldened by these unrestrained powers, gave themselves over to widespread brutality, killing, torturing, and murdering without consequence.[105]

It should also be noted that the year 1977 was the centenary year for the founding of the Church of Uganda which, together with its sister denomination, the Roman Catholic Church, witnessed, in the initial years of development, the first Christian martyrs on a large scale in Africa. Archbishop Janani Luwum, who was then chairing the committee organising the centenary celebrations, became the most prominent martyr of the Amin era. His killing was the culmination of an unrelenting campaign of murder, destruction, and savagery, an orgy of barbarism reminiscent of some of the darkest episodes of the Second World War, which had already claimed thousands of lives, devastated property, and demoralised Uganda. In the wake of the Archbishop's murder, Ugandan exiles in Britain resolved to establish the Uganda Group for Human Rights, with the purpose of bringing the atrocities being committed in Uganda to international attention and campaigning for the protection

[102] Pinchwa (n 56 above) 24-27.
[103] Kabumba (n 16 above) 23.
[104] *Uganda v Alfred James Kisubi* [1975] HCB 173.
[105] Kabumba (n 16 above) 23.

of human rights; this too occurred in 1977.[106] Until then, most Ugandans had opted to remain silent, fearing that speaking out would invite retribution against family members still living inside Uganda. The risk of coming out openly against a ruthless regime was not without peril. Even though the Uganda Group for Human Rights was non-partisan, non-combatant, and humanitarian in character, the lives of members of its Executive Committee were threatened. Despite this, the Group held firm to its principles and continued its work. As it persevered, many other organisations with broadly comparable aims sprang up across the globe. It is these bodies that campaigned for and ultimately succeeded in bringing about a unified national conference, underwritten by the Tanzanian Government, which took shape at the Moshi Conference of Ugandan Exiles in March and April 1979 and gave birth to the Uganda National Liberation Front.[107]

Amin governed Uganda for nine dreadful years. When he was at last compelled to flee the country through the combined efforts of Tanzania's People's Forces and Ugandan guerrilla fighters, the world exhaled in relief, in the expectation that those of Amin's kind would never be permitted to rise again in what people hoped would be a reborn Uganda. Virtually every Ugandan welcomed the end of the Amin regime and looked forward to a future of peace and calm, one in which citizens would no longer be subjected to inexplicable killings or the arbitrary arrest and detention of thousands of innocent people, acts which had all appeared to carry the sanction of government. The record of Amin and his government in Uganda from January 1971 to April 1979 stands among the most abhorrent in the annals of recorded history, comparable only to the regimes of Hitler in Germany and Nero of the Roman Empire. No ruler in the modern era has provoked such deep revulsion and loathing among his own people as Amin did in Uganda. Alongside Adolf Hitler of Germany, Idi Amin of Uganda has attracted more analysis and commentary from the world's press than almost any other leader. In his commentary on Arms and Men in Uganda, Gingyera-Pinchwa

[106] Otunnu (n 1 above)138-139.

[107] The Uganda National Liberation Front (UNLF) was formed in 1979 as a coalition of Ugandan exile and opposition groups united in their effort to remove Idi Amin's government. It brought together a wide spectrum of actors, including politicians, academics, professionals, military officers, and representatives of humanitarian and civic organisations. In terms of its composition, it broadly reflected Uganda's ethnic, regional, and political diversity, although it was not a single, ideologically unified movement. Instead, it functioned as an umbrella organisation meant to coordinate opposition efforts and present a collective national front against the Amin regime.The UNLF was closely associated with the military campaign led by the Uganda–Tanzania War, during which exile forces and allied groups supported the Tanzanian army in overthrowing Amin. After Amin's fall, the UNLF became the political authority that helped establish a transitional government in Uganda.Within the UNLF, different factions existed, reflecting varying political visions and leadership struggles. One of its key roles was to provide a framework for post-Amin governance, leading to the formation of the UNLF Government under Yusuf Lule and later Godfrey Binaisa. However, internal disagreements, lack of a strong unified ideology, and competing ambitions among its leaders made it difficult for the UNLF to maintain cohesion in the long term.

described the extraordinary fascination that Amin generated in the international media as 'Amin-philia.' [108]

Idi Amin shares a telling characteristic with many other leaders who have fallen from power. He was warmly and enthusiastically received when he and the armed forces took control in January 1971. Yet the outpouring of jubilation and relief that accompanied his removal in April 1979 was far greater and more heartfelt than the celebrations that had greeted his arrival nine years before. At a public occasion during that same period, Amin declared openly that he feared no one save Allah, and all who heard these words applauded him as a bold and courageous military officer whose qualities of leadership seemed to promise much for Uganda. When that same Idi Amin, now wielding absolute power, murdered or gave orders for the murder of figures as prominent as the Chief Justice of Uganda, the Archbishop of the Church of Uganda, ministers of government, senior civil servants including the Vice Chancellor of Makerere University, and countless others running into the thousands, Ugandans would look back on those words with sorrow, and with the realisation of how profoundly they had all misread what Amin had meant.[109]

On assumption of power, while simultaneously announcing the release of a number of political detainees, Amin gave a public undertaking that his government would neither hold prisoners nor consign citizens to prison. The Ugandan public applauded. Amin honoured that pledge by not putting many people behind bars. What he and his government did instead was far worse. Under cover of that promise, thousands of innocent Ugandans who were charged with or merely suspected of treason or other offences were rounded up and slaughtered wherever they were found. Under Amin, officially sanctioned murders and assassinations became the routine instrument for resolving disputes, real or fabricated, between the state and its citizens. It was once again with profound sorrow and mortal dread that Ugandans came to understand the true meaning of Amin's ominous undertaking that he would not be taking prisoners. Shortly after seizing power, Amin and his army published eighteen reasons that they claimed justified their overthrow of Milton Obote's elected government. These included allegations of violations of citizens' rights, gross mismanagement of the economy, and an abysmal record in running the country's affairs. Yet Amin's own conduct in office, the atrocities perpetrated by his government including the murder and enforced disappearance of untold thousands of innocent citizens and even some foreigners, demonstrates in retrospect that the

[108] Pinchwa (n 56 above) 5.
[109]A Mazrui 'Soldiers and Kinsmen in Uganda: The Making of a Military Ethnocracy' (1975) *Sage Publications, London* 138-141.

Amin government was guilty of the very same wrongs it had attributed to Obote, and of far graver crimes besides. The eighteen grievances that had been cited to justify the seizure of power pale against the catalogue of horrors that the Amin government itself inflicted. One such irony played itself out in Uganda's history during the period from 1971 to 1977, when a regime that had promised so much by way of peace and security visited nothing but wave upon wave of violence and insecurity upon the very people whose lives and property it had in 1971 professed to safeguard. [110]

Kasozi observes that the Military Police, which had been established under Obote, was expanded under Amin, and that Makindye, its headquarters, acquired a grim notoriety as a place of slaughter. He further observes that:

> Thousands of people in Uganda were tortured by Government agents. Detainees might be made to go through humiliating muscular ordeals such as hopping like a frog, while being beaten. The victim's eyes might be gauged out and left hanging out of their sockets. During the wheel-torture, the victim's head was put in a wheel-rim that was repeatedly struck with iron bars. People were beaten with hammers, mallets, or iron bars to break their limbs as well as to kill them. Wires were attached to victim's genitals, nipples, or other sensitive parts of the body and then connected to an electric battery or wall socket. Women were raped or otherwise sexually abused. Prisoners were slashed with knives and bayonets, body organs were mutilated and limbs cut off. Prisoners might be lined up and every second one would be ordered to hammer the first to death, the second would hammer the third, and so on, until only one was left to tell the tale to other prisoners. Such incidents often happened at Makindye prison. These were by no means the only forms of torture, there were many others. Important or prominent people were killed like other prisoners. However their bodies were dismembered and their parts used for ritual purposes. Few victims were given a proper burial. Their bodies were thrown into rivers such as the Nile at Karuma, Jinja and other places in Uganda's many lakes, Victoria, George, Albert, Salisbury, Kioga, Wamala, etc, in mass graves or burnt in their houses or cars. [111]

For Ugandans therefore, state-sponsored terror, murder, torture, and the naked trampling of human rights became the unremarkable routine of government. [112] There was also a severe and sustained economic deterioration in the country, which worsened alongside the increasing use of state-sponsored violence[113]. As the government's repressive practices intensified, the economic situation continued to decline, disrupting production, weakening public institutions, and undermining investor and public confidence. This created a cycle in which political instability and economic

[110]Kasozi (n 34 above) 97-112.
[111] Kasozi (n 34 above) 114.
[112] PJ Allen 'Days of Judgment: A Judge in Idi Amin's Uganda'(1987) *William Kimber,London* 255-258.
[113] R Reid 'A History of Modern Uganda' (2017) *Cambridge University Press* 236 -238.

collapse reinforced each other, leaving the country in an increasingly fragile and deteriorating condition.[114]

2.4.5 Liberation of Uganda from the Idi Amin Regime

Various Ugandans had their reasons for rising up against Idi Amini Dada. Politicians cited lack of democracy, while others cited the detoriating economy.[115]Therefore throughout the years of Idi Amin's murderous rule, the regime had at no point been without both armed and covert opposition, at home and abroad, with those who resisted internally frequently meeting with savage reprisals. The earliest resistance to the regime arose from its determination to cleanse the armed forces by identifying and removing soldiers it suspected of residual loyalty to Milton Obote and the UPC. In the end, it was the external opposition networks of Ugandan exiles based in East and Central Africa and further afield, supported openly and discreetly by Uganda's neighbouring countries, that mounted a sustained military and diplomatic challenge and ultimately drove Amin and his government out of Uganda. [116]

As far back as September 1972, a poorly conceived and compromised invasion launched by armed exiles from Tanzania into southern Uganda ended in complete failure. The venture achieved nothing militarily, but it handed the Amin regime a convenient pretext to round up and liquidate opponents and to carry out sweeping reprisals and indiscriminate destruction of life and property in the areas it suspected of sheltering or sympathising with the opposition. It was not until 1978 that a shared understanding of how to confront and remove the Idi Amin regime began to take shape among the various groups involved. The idea was to draw all those opposed to Amin, whether their orientation was military, political, or humanitarian, under a single umbrella organisation with a unified leadership structure. After a period of mutual consultation, the leaders of several groups convened in Lusaka, the capital of Zambia, in August 1977 and deliberated for approximately three days. The outcome was the establishment, by the groups represented, of the Uganda National Movement. Although the Lusaka gathering was attended by several UPC delegates, among them the late Adonia Tiberondwa,

[114] KP Donovan 'Disciplining Citizens and Commodities: Economic Crimes and Accusations in 1970s Uganda' (2024) *The Journal of African History 24*2-245.
[115] P Kutesa 'Uganda's Revolution 1979-1986 : How I Saw It'(2006) *Fountain Publishers,Kampala* 1.
[116]Pichwa (n 56 above)16-19.

Obote and his inner circle opposed the new organisation's existence and set about undermining it, both in Zambia where Obote resided in exile, and elsewhere.[117]

Notwithstanding this, the Uganda National Movement proved to be the seed from which unity among those Ugandans opposed to Idi Amin would grow. The Movement brought home to opposition leaders the realisation that without solidarity and close cooperation among themselves, their separate efforts would amount to little. The sole dissenting voice from this realisation was Obote. He and those around him took the view that any Ugandan or Ugandan group fighting Amin should do so by whatever means available, but with the ultimate objective of restoring Obote and the UPC to power, as they remained in their eyes the legitimate elected government of Uganda. Those who had assembled in Lusaka proceeded to recruit additional groups to their cause, and together they began mapping out a more coherent and better coordinated united front against the Amin regime. Meanwhile, in Tanzania, the Ugandan exile community there had also put in place an ad hoc coordinating committee aimed at fostering unity, with the longer-term goal of restoring democratic governance, first within the opposition movement and ultimately within Uganda. Working in close consultation and cooperation with the Tanzanian Government and people, the Consultative Committee convened and organised the Moshi Unity Conference of Ugandan exiles. Museveni's FRONASA, which participated in the conference, was in due course brought around to accepting the proposals and authority of the Consultative Committee.[118]

The Moshi Unity Conference took place between 24 and 26 March 1979. In the course of its proceedings, a Constitutional Committee chaired by Kanyeihamba was elected to draft the constitution of the umbrella organisation that the conference would bring into being. The Tanzanian Government, and in particular its then Minister of Foreign Affairs, later to become the President of Tanzania, Ndugu Mkapa, played a vital role in ensuring that the conference completed its work promptly and without disruption. By that stage a small number of participants, including Yusuf Lule, had been quietly informed that the establishment of the front was a matter of the utmost urgency, as Gaddafi of Libya had threatened to enter the conflict on Amin's side against Tanzania, which would have turned it into a war between Ugandans themselves. And that is precisely what came to pass. The conference established an umbrella body known as the Uganda Liberation Front (UNLF),

[117]Although the founders of the movement had resolved to keep its existence a top secret for a while, Obote's informers who attended the meeting leaked the news of its formation to the extent that following its formation, the International Press revealed it and its leaders.

[118]M Mamdani 'Slow Poison : Idi Amin,Yoweri Museveni ,and the Making of the Ugandan State' (2025) *The Belknap Press of Havard University Press* 129-136.

charged with prosecuting the war against the Idi Amin regime, forming a national government for Uganda, and restoring democracy and freedom to the country.[119]

As the deliberations at Moshi unfolded, most delegations had expected Lule to be returned as Chairman unopposed and by acclamation. It was therefore with considerable surprise that delegates witnessed Paulo Muwanga, a committed UPC loyalist, being put forward as a candidate for the chairmanship of the front. It emerged that the UPC factions at the conference had been convening strategy sessions through the night and had drawn up plans to shape the direction of the UNLF. One such plan was to secure control of the chairmanship of the Military Commission. The tactic was to place Muwanga's name in nomination for the front's chairmanship, knowing he lacked the support to succeed, and then, following his defeat or withdrawal, to propose him for the chairmanship of the Military Commission as a gesture of compromise and goodwill towards groups hostile to Obote's return.[120]

When the proceedings resumed, Dr Martin Aliker rose to address the assembly on a point of information. He informed the delegates that during the recess, some members had contacted Tanzania's State House to determine its position regarding the emergence of two contenders for the chairmanship of the UNLF. According to Aliker, the response from Tanzania was clear and unambiguous. If Paulo Muwanga were elected chairman, Tanzania would withdraw its support and the delegates would have to seek another country from which to continue their activities. However, if Yusuf Lule were elected, he would be received at State House and assisted in the formation of a government in exile. With Tanzania deeply committed both militarily and diplomatically to bringing down Amin and his regime, the UNLF had reckoned on the process taking a considerable period of time, certainly months and possibly years..[121]

Kasozi provides a vivid account of the closing days of the Idi Amin regime, noting that events unfolded at a pace that outstripped everyone's expectations. After the fall of Jinja, Amin's forces had been in retreat, leaving a trail of brutal violence against civilian populations in eastern and northern Uganda. In their wake, they sowed a path of bloodshed stretching from Jinja through Nakasongora to Fort Portal. Thousands of people were shot dead and their possessions looted. Vehicles of every description were seized from defenceless civilians. Then, on 11 April 1979, two weeks after the

[119]The UNLF Constitution, Preamble.
[120] YK Museveni 'Sowing the Mustard Seed: The Struggle for Freedom and Democracy in Uganda' (1997) *Macmillan, London* 57-60.
[121] Kanyeihamba (n 10 above)143.

meeting at Moshi and before the UNLF had solidified either as a functioning political institution or as a battle-hardened fighting organisation, Kampala fell to Tanzanian forces and a small contingent of Ugandan exile fighters. People who had had no prior working relationship with one another were abruptly thrust into positions carrying significant power and responsibility. Most Ugandans nonetheless welcomed the overthrow of Idi Amin's regime, and indeed many had actively supported the war against him by supplying the fighting forces with intelligence, food, shelter, medical supplies, vehicles, and companionship. Regrettably, in the aftermath of the victory, lawless groups of Ugandans went on a rampage of looting and destruction of national and private assets. Crops were ruined and livestock slaughtered; houses, factories, and public buildings were gutted; school supplies, textiles, and stationery were plundered; food, furniture, and clothing were removed from homes and shops; office records were lost or stolen; tools and equipment were stripped from workshops; and thousands of vehicles were driven across the borders into Sudan, Tanzania, Zaire, and Kenya. [122]

Kampala and other urban centres were descended upon by looters and opportunists from outlying villages, who made off with anything they associated with the wealth of Amin's supporters or allies. Electric kettles, typewriters, adding machines, telephones wrenched from their wall fittings, and even toilet seats were carted off to villages that had no electricity or modern plumbing; where items were too bulky or cumbersome to remove, they were wrecked beyond salvage. The country appeared to have taken leave of its senses. On top of all this, vengeful attacks and killings targeting anyone thought to be connected with the former regime, whether as an enemy, supporter, associate, or mere relative, became commonplace. The scars left by these events on Uganda as a nation would prove long-lasting. It was against this painful backdrop that the UNLF took office as the new government of Uganda. It had been agreed at Moshi that the UNLF government would hold power for a period of two years only, during which it would be required to plan and organise general elections conducted on democratic principles.[123]

A point of considerable significance is that the UNLF was not possessed of a national army in the proper sense of the term. The two largest armed formations within the UNLF, that is those aligned with Obote and those loyal to Museveni, owed their allegiance to their respective commanders, as did several smaller groups, including those of Robert Serumaga, one group called Save Uganda Movement, and Kayiira of the Uganda Freedom Movement. Oyite Ojok, the UNLF Commander,

[122]Kasozi (n 34 above) 126.
[123] The Constitution of the Uganda National Liberation Front (UNLF).

gave his loyalty not to President Yusuf Lule but to former President Milton Obote and to Paulo Muwanga, the UPC stalwart and Chairman of the Military Commission. Oyite Ojok consistently refused to acknowledge Lule as President of Uganda. When referring to him, he would do so politely as the Chairman of the UNLF, while reserving his deference and military salute for Paulo Muwanga, the Chairman of the Military Commission. The defiance that President Lule was shown by officers such as Oyite Ojok came as no surprise to those who were familiar with the circumstances surrounding the formation of the first UNLF Government. [124]

The dominant military presence in Uganda within the UNLF framework was, however, that of the Tanzanian People's Defence Forces. By virtue of this armed strength, Tanzania effectively held the decisive voice in Ugandan affairs. The UNLF administration was, in reality, not much more than a client government of Tanzania, and for whatever actions or failures of action it may have been responsible, the Tanzanian government must bear a share of the accountability, for it was Tanzania that was effectively in charge. As the episode at Mwanza was shortly to demonstrate, when Lule and his associates gave any appearance of charting a course independent of Tanzania's wishes, their removal from power became a foregone conclusion.[125]

2.4.6 The Mwanza Confrontation

Having permitted the UNLF to govern Uganda's affairs for no more than three months, the Tanzanian Government resolved to make plain to Lule the boundaries of his authority. With the barest notice ever extended between the governments of supposedly 'sovereign' states, Mwalimu Julius Nyerere summoned Lule and his Cabinet to travel to Mwanza in northern Tanzania for what

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[124] The arrogant refusal by Oyite Ojok to recognize Lule as President haunted Lule to the extent that one morning while this writer was at work in his chambers as Attorney General, President Lule called and directed him to go and see him at once in State House, Entebbe, which he did. On arriving there, Kanyeihamba was taken directly to see the President who told him that the President had received advice as to how to solve the insubordination of Oyite Ojok. He directed Kanyeihamba to amend the Army Act and delete the section which provided that the Army Commander shall be a member of the Defence Council. At first Kanyeihamba thought that the President was joking but when he saw people in State House who had given the President advice, Kanyeihamba refrained from laughing at this absurd proposal. He advised that if the army commander was insubordinate to the Commander in-Chief and President of Uganda, the law provided ways and means of dealing with that insubordination including dismissing him from his command and appointing a replacement. Kanyeihamba declined to draft an amendment to the Army Act, as it would have been manifestly absurd to have a national army commander who was barred from the membership of the Defence Council. The incident about the army commander illustrates the modus operandi of President Lule in seeking advice. He would call in ministers or advisors, one by one, and discuss with each of them the subject matter at hand, instead of calling them together in one meeting and getting their collective views in the presence of one another. He would then act, often against certain other opinions which could have been more politically sound or acceptable.

[125] Daily Monitor ' Lule rises and falls in 68 days' Saturday, June 15, 2013 — updated on January 09, 2021 https://www.monitor.co.ug/uganda/magazines/people-power/lule-rises-and-falls-in-68-days-1545064 (accessed 6 June 2026).

was described as a brief exchange of views with the Tanzanian Cabinet on the progress achieved by the UNLF. Nyerere was a shrewd and experienced statesman who had been at the centre of national and international politics since the 1950s; in such matters, Lule was a newcomer of barely three months' standing. It was plain to anyone watching that Nyerere would prevail in any contest between them. On 9 June 1979, ministers were individually telephoned by the Principal Secretary to President Lule and directed to present themselves at Entebbe Airport to accompany the President to Tanzania for a working lunch at Mwanza. At the meeting, Nyerere addressed them:

> President Lule and your Ministers. You are welcome. I hope you had a nice rest after lunch. We have called you here to sort out a few things. The war with Amin is not yet over. We hear that his troops may still be in the northern parts of your country. Mopping up must continue. We must resolve the presence of your most important exile here, Milton Obote. Tanzania Wananchi are asking that 'we have liberated Uganda. Why is Obote still here?' You will be meeting him later this evening. Then there is the question of payment. Tanzania has sacrificed so much life, equipment and property in liberating you. There is talk of compensation. But also how is our continued presence in Uganda. How is it to be paid for? These matters must be resolved before you return to Entebbe. [126]

At a subsequent meeting, a radio cassette was placed in the middle of the room near Mwalimu Nyerere and, as though by prior arrangement, he switched it on. It broadcast, loudly and unmistakably, a report that a political crisis had gripped the new Government under Professor Yusuf Lule and that it was confronting serious political difficulties. Nyerere then invited anyone present to respond. Paulo Muwanga, who only a short while before had been on his knees imploring President Lule not to remove him from Cabinet but to be assigned even a minor role, on the grounds that idleness as an ailing old man would hasten his death, was the first to deliver a bombshell. He leveled at Lule the accusation of being the worst dictator the African continent had ever produced. In Muwanga's telling, Lule had entirely set aside the UNLF Constitution and every rule that had been collectively agreed upon at Moshi. Muwanga went further, alleging that Lule was governing in complete isolation, taking no counsel from anyone and disregarding the fighters who had brought him to power. In Muwanga's assessment, Uganda could not begin to heal from the devastation of Amin's rule so long as Lule remained at its helm. It later emerged that a number of proposals were to be discussed that afternoon, with some of the deliberations reserved exclusively for the heads of delegation. These proposals included the incorporation of Obote into the UNLF government as Vice President, the payment of compensation, and the funding of the continuing Tanzanian military

[126] Kasozi (n 34 above) 136-139.

presence in Uganda. Additional demands were made by the Tanzanian side. While the greater part of these proposals was acceptable to the Ugandan delegation, those carrying financial implications required verification, assessment, and proper budgetary provision. The proposal that Obote should return to Uganda and take up a senior government post before the end of the two-year transitional period was firmly rejected by a large majority of the Ugandan delegation. As the delegation was about to depart from Mwanza, Nyerere addressed Lule and instructed him to consult with his people on the issues discussed and to present the outcome to him the following Friday, not in Mwanza, but in Dar es Salaam. Following consultations, Lule found that opposition to Obote and to his immediate return to Uganda in a senior ministerial capacity was overwhelming. As instructed, President Lule duly travelled to report the outcome of his consultations to Nyerere the following week, and the consequences of that report became a matter of history. From that point forward, Nyerere worked in concert with Lule's opponents within the UNLF to engineer his removal from office.[127]

2.4.7 The Removal of Yusuf Lule from the Presidency

In the wake of Lule's report to Nyerere that Ugandans were unwilling to accept all the proposals that had been put forward at the Mwanza encounter, Nyerere covertly assembled a group of Ugandan leaders who were hostile to Lule for private consultations. These were drawn principally from UPC supporters and certain radical elements within the UNLF. Their meeting with Nyerere was conducted in secrecy. It was at that gathering that a scheme to remove Lule from office was devised and the means of executing it agreed upon. The plan was to table a vote of no confidence in Lule as Chairman of the UNLF, which would simultaneously and effectively strip him of the presidency of Uganda. The motion and the stated grounds for Lule's removal were rehearsed and refined in Tanzania. On 19 June 1979, the conspirators convened with approximately a dozen members of the National Consultative Council who were known to be opposed to Lule's continuation in office. The President was invited to join the group in a room at State House, whereupon one of the conspirators produced a draft resolution of a vote of no confidence in the Chairman of the UNLF and declared that the meeting would be called to order as a special session of the NCC to deliberate on the motion. The Chairman of the NCC was in attendance to preside over the special session. It must be said plainly that while there was nothing objectionable in a number of NCC members seeking a meeting with and consulting the Chairman and President, it was

[127] Museveni (n 120 above) 65-69.

unconstitutional under both the UNLF Constitution and the Constitution of Uganda to convene a special session of the NCC or to put a vote of no confidence to debate in the manner in which it was done.[128]

The vote of no confidence was duly passed. Through the President's Principal Private Secretary, the Attorney General counseled Lule against resigning the presidency. However, within a short time the conspirators identified and settled on a number of candidates willing to succeed Yusuf Lule, and Godfrey Binaisa eventually emerged as their preferred choice. He was sworn in before Lule had tendered his resignation. For approximately forty-eight hours, Uganda found itself with two individuals simultaneously holding the office of President. Contrary to what Nyerere had previously communicated to Lule, Tanzania wasted no time in announcing to the world its recognition of the Binaisa government, on the basis that Lule had been democratically removed by resolution of the NCC, which Tanzania characterised as the supreme legislative body of Uganda.[129]

When Lule declined to resign, Nyerere directed that he be physically removed from State House, and President Lule was transported to Dar es Salaam ostensibly for consultations with Nyerere, though the real purpose was to vacate State House so that Binaisa could install himself there and acquire some semblance of legitimate authority. Regarding the manner in which his rule came to an end, it was observed that Lule's press conference, in which he apportioned blame to Tanzania, did little to burnish his image as a politician, or as one former colleague at Makerere put it, as a reluctant politician. He had not fully grasped the dynamics of the political forces at work around him. His subsequent involvement in the resistance against Obote during the period 1980 to 1984, however, proved to be a profound education. By 1981 he had developed a thorough enough understanding of Uganda's political landscape to be able to direct a resistance struggle at the head of a well-organised fighting movement. And so ended one of the shortest yet most eventful periods of rule in Uganda's history.[130] It should also be noted that Professor Ssempebwa and another brought proceedings against the Binaisa government for having unlawfully removed Lule from office. The significant case of *Kayira and Semwogerere v Rugumayo, Ojok, Ssempebwa and Eight Others* addressed the manifestly unconstitutional removal of Professor Lule, the first post-Amin era President. In that case, the court affirmed the supremacy of the 1967 Constitution and declared that the authority to make ministerial appointments rested solely with the President, and that the National Consultative Council

[128]As above.
[129] Oloka-Onyango (n 42 above) 26-28.
[130]Hansen (n 54 above) 141-144.

accordingly had no valid power to ratify or approve such appointments. The court further held that the National Consultative Council, acting in its legislative capacity, had no authority to remove the President from office. Notwithstanding this forthright pronouncement, the court went on to hold that even though irregularities had attended the manner in which Lule's removal was carried out, issuing a judicial declaration to that effect would produce dire consequences, particularly given that the change of government had already been overtaken by events. [131]

2.4.8 The Controversial Return of Obote (1980-1985)

It has been said, perhaps rather harshly, that the greatest harm Obote ever did to his country was to return to power by undemocratic means in 1980. Ali Mazrui observed that under both the administration of Idi Amin (1971 to 1979) and the second administration of Milton Obote (1980 to 1985), Uganda endured simultaneously some of the gravest manifestations of both tyranny and anarchy. It is difficult to comprehend how Obote, a man who may not have merited but was nonetheless granted a second opportunity to govern Uganda, could have perpetrated greater violations of the people's rights and governed the same country in a far worse fashion than he had done before.[132]

The end of President Lule's rule opened the way for a concerted campaign by those who effectively controlled the UNLF to engineer the return of Obote and the UPC to power. The President who stepped into Lule's place was even more amenable to manipulation than Lule himself had been. This was President Binaisa, a man more preoccupied with his personal standing and individual characteristics than with the welfare of Uganda.[133]

Binaisa attempted to remove Oyite Ojok from his position on grounds of insubordination, reassigning him as ambassador to Algeria, and appointing Nanyumba as the new army commander. However, neither of these decisions was implemented. On 10 May, the Military Commission under Paulo Muwanga publicly declared that it would not accept the dismissal of Oyite Ojok, contending that the proper procedures had not been observed and questioning Binaisa's authority to remove the army commander without consulting the other organs of the UNLF. As had been the pattern before, the Tanzanian forces appeared to have advance knowledge of, if not a guiding hand in, all

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[131] *Andrew Lutakome Kayiira & anor v Edward Rugumayo & ors*, Constitutional Case No.1 of 1979 [1980] UGCA 3 (21 October 1980).

[132] A Mazrui 'The Blood of Experience: The Failed State and Political Collapse in Africa' (1995) 28 *World Policy Journal* 28-31.

[133] Museveni (n 120 above) 113,118-120.

that was unfolding. As the confrontation between the President and the Military Commission intensified, Tanzanian troops discreetly pulled back from Kampala to await the outcome, positioned to intervene in support of their UPC protégés should the need arise. This effectively brought the Binaisa presidency to a close. It was subsequently announced that the Military Commission had assumed all presidential powers, with the announcement taking care to emphasise that it was the Commission, and not the army, that had taken on those powers.[134]

With the announcement that it was assuming presidential powers, the Military Commission became the de facto President of Uganda, though constitutionally this was deeply problematic, not least because, as has been seen, not all members of the Commission were in agreement with this latest step. Museveni was not party to it. The Military Commission appointed an ostensibly neutral Presidential Commission comprising three Ugandans who were non-partisan but had distinguished records in public service. These were Messrs Wacha-Olwol, Polycap Nyamuchoncho, and Saulo Musoke.T. The electoral process and the decisions shaping it flowed from the office of Paulo Muwanga, the Chairman of the Military Commission. The Democratic Party was manoeuvred into accepting the UPC's approach of stepping back while the latter established the ground rules for the elections and proceeded to oversee them. The UPC rejected the proposal of a single ballot box per constituency, favouring instead a multiple-box arrangement that was widely known to lend itself to electoral manipulation. There is evidence to indicate that the Uganda Patriotic Movement, established under the leadership of Yoweri Kaguta Museveni, had been prepared to boycott the 1980 elections, but the Democratic Party declined to participate in any such boycott.[135]

During the election campaigns, candidates belonging to parties other than the UPC were subjected to beatings, harassment, and detention, and were in many instances prevented from collecting or handling campaign materials to which they were lawfully entitled. Numerous non-UPC candidates were disqualified by partisan UPC registration officers on contrived technical grounds, frequently at the final moment of the registration process, thereby permitting their UPC opponents to be returned unopposed. The ultimate affront to non-UPC candidates was the Military Commission's decision to strip the Electoral Commission of its responsibility for conducting and supervising the elections and to exercise those functions itself. When polling concluded, the Chairman of the Military Commission, Paulo Muwanga, announced the enactment of a new provision prohibiting any

[134]Museveni (n 120 above) 115.
[135]Kasozi (n 34 above) 142.

person, whether an Electoral Commission official, an agent, or an ordinary citizen, from declaring results, on pain of a fine of KShs 500,000 or up to five years' imprisonment, or both.[136]

Even so, Paulo Muwanga's conduct gravely compromised the credibility with which Ugandans and the international community received the announcement that the UPC had won the December 1980 elections. The results were not seriously contested by the principal opposition, the Democratic Party, but Yoweri Kaguta Museveni and the Uganda Patriotic Movement did challenge them. The UPM, as the latter party was commonly known, had committed through its leaders to taking up arms if the 1980 elections were rigged. The available documentary evidence indicates that the Military Commission, through its chairman Paulo Muwanga, and UPC operatives worked in combination to manipulate the electoral laws and procedures so as to guarantee the outcome they desired.[137]

In 1984, a seminar was convened in London under the auspices of the Uganda Group for Human Rights, with the purpose of examining the circumstances of Ugandan refugees in other countries. Distinguished experts on Uganda and Africa participated on the discussion panel. The audience included many Ugandan exiles, the majority of whom had been driven from their country by the misrule of either the Amin or the Obote II government, while others who had endured the full horror of the Amin era inside Uganda had subsequently been compelled to flee under Obote II. A consensus emerged at the seminar that, dreadful as Uganda's situation had been under Idi Amin, it was in numerous respects considerably worse under Obote II. The experts and participants observed that under Obote II the situation was worsened by the presence and conduct of an undisciplined army, UPC youth wingers, and reconstituted intelligence-gathering organs. For some time, Uganda had been enduring a political crisis of such magnitude that the country's human rights record was as dire as could be imagined. Around the same period, a church missionary who had recently returned from Uganda during Obote II, having remained in the country throughout Amin's rule, expressed deep disappointment, observing that conditions had deteriorated. He lamented that during Amin's era he had witnessed fewer dead bodies and less looting and rape by soldiers, and that, at least in the Buganda region, the situation had become worse under Obote II. [138]

In its 1984 report, Amnesty International expressed the gravest concern about conditions in Uganda and documented pervasive detention without trial, torture, the disappearance of citizens, and

[136]Museveni (n 120 above) 122-125.
[137] International Observer Group 'Report on the Uganda General Elections of December 1980' (1981) *Commonwealth Secretariat, London* 24-27.
[138] Amnesty International 'Uganda: Evidence of Torture' (1985) *Amnesty International Publications, London* 14-17.

extrajudicial killings. Certain sources alleged that in the Luwero Triangle, where the Obote II government suspected the population of sympathising with the guerrilla activities of Yoweri Museveni's National Resistance Movement, as many as half the inhabitants had been killed in the course of government counter-insurgency operations. One commentator noted with sadness that where calm had returned, it was the silence of the grave. In a lengthy article published in The Times of London on 3 May 1984, Richard Dowden, writing under the headline "Uganda: Britain's Blind Eye to Terror," observed that the scale of the refugee crisis was itself evidence that conditions under Obote were far worse than they had been under Amin: while approximately 25,000 people had fled Amin's Uganda, the number of those who had fled Obote's Uganda had risen to some 280,000. [139]

It was further noted that the British Parliament's Hansard in the House of Commons showed that at the time, members of all parties had condemned the bloodshed, terror, and violations of human rights taking place in Uganda under the Obote II government, and that members on all sides had urged Her Majesty's Government to bring its considerable influence and its special relationship with Uganda as a Commonwealth country to bear in order to help bring these abuses to an end. It was reported that at that time, Luzira Maximum Security Prison, which had been constructed by the British to accommodate no more than 500 inmates, was crammed with over 200,000 prisoners in conditions unfit for human or animal habitation, devoid of food, medicine, bedding, or any amenity that a reasonable person would consider adequate, and that not a single one of those inmates had ever been brought before a court of law. Also, a seasoned humanitarian practitioner who, drawing on extensive experience in crisis environments, described the situation in Uganda in the following terms:

> What was new for me, was not poverty or violence, but the daily and accepted terror. Ugandans live by the day and their only hope is that they survive. When in 1980 Milton Obote returned to power aided by Tanzanians it was believed that Uganda would be coming out of the nightmare where Idi Amin had plunged it. Four years later, the opinion finds that the country is sinking deeper into murderous chaos. It is true, the term 'mass grave' is in fashion and moves opinions. I saw them. As one walks along a path, a tibia is seen sticking out from the grass on the roadside. The rainy season makes bones emerge to the surface. On enquiring, these are villagers whom the army slew. Reason: They were collecting fruits for guerillas. There are also some large common graves of hundreds of persons. The army forbids my approach to them, but there are vultures and the odour from the wind… It is impossible to give figures. (The Uganda) government avows 10,000 deaths, foreign observers

[139] As above.

> suggest the figure of 300,000 of course nearer the truth. One thing is sure: This is one of the current conflicts where most deaths have taken place. [140]

The Obote II government permitted, employed, or turned a blind eye to agents of death and destruction who imprisoned children, coerced young girls into marriage with soldiers, executed suspects without any semblance of trial, detained innocent people, and violated places of religious worship. Consequently, throughout the period from 1981 to 1985, Ugandans were in effect captives within their own country, living at every moment under the pall of insecurity. They endured under a government that many of them had elected in the genuine belief that it would be different from those of Amin and the UNLF. In reality, the misgovernance of Obote II bore an unfavourable comparison with that of Idi Amin and greatly exceeded the abuses committed under the brief administration of the UNLF.[141]

It is difficult to comprehend how Obote, having been given a second opportunity to govern Uganda that he may not have deserved, should have committed graver violations of his people's rights and governed the country in a far worse manner than he had previously done. The most lamentable dimension of the Obote II government is that despite all the controversy surrounding his return to power, his administration had in its early stages attracted the goodwill and backing of a majority of Ugandans and, as has been noted, the support of the international community as well. That matters should have deteriorated so badly and that his government should bear responsibility for such repression and failure of governance is testimony to how far Obote had diminished as a leader since he had brought the country triumphantly to independence from colonial rule in 1962. It was therefore with relief and jubilation that most Ugandans greeted the news of Obote's second removal from power by a military junta in July 1985.[142]

2.4.9 The National Resistance Movement and the Road to Constitutional Restoration

The National Resistance Movement of Uganda has represented a distinctive and unparalleled experiment in political and constitutional innovation in Africa, if not across the world as a whole. From the very outset of its operations, the Movement's purpose extended beyond the capture of territory or the taking of prisoners; it sought to embed itself within the population as an organisation defined by genuine humanity and compassion. It was intent on building popular support not only among Ugandans at large but also within the international community. It set out deliberately to

[140] R Dowden 'Uganda: Britain's Blind Eye to Terror'(1984) *The Times, London* 7.
[141] Kasozi(n 34 above) 169-172.
[142]A Nsibambi 'The Restoration of traditional rulers in Hansen and Twaddle: From Chaos to Order'(1995) *Fountain Publishers, Kampala* 45.

educate and inform all parties, including supporters of Obote, about its objectives, its vision for Uganda, and its capabilities, for its leader Museveni held the firm conviction that the Movement would achieve and retain power only if it adhered rigorously to the correct line in its military, political, and organisational conduct. By degrees, the Movement became not merely a credible political alternative to Obote and the UPC but a source of pride and hope for a growing section of the population, including defectors from the UPC and other parties who were drawn to its cause. Without these principles and qualities, the Movement would never have commanded the popular support that allowed it to obtain local supplies and provisions, capture arms and equipment from government soldiers, or persuade thousands of citizens, military officers, and civil servants to abandon their previous allegiances and join its ranks.[143]

It is noteworthy that immediately after the general elections of December 1980, it became apparent that those elections had been neither free nor fair. Without delay, Yoweri Museveni and his close associates in Uganda commenced meetings to discuss ways and means of preventing Uganda from sliding back into outright dictatorship. The Movement was structured to comprise a political wing, known as the National Resistance Council, and the National Resistance Army, with the former serving as the political and supreme organ of the Movement. The Council held responsibility for the Movement's overall policy and operated through key functional committees, among them the Finance and Supplies Committee responsible for war zones, and the Political and Diplomatic Committee, which sensitised and politicised the population and the international community on Ugandan affairs.The National Resistance Army was charged with prosecuting the war, instilling political consciousness in its ranks, educating the civilian population, and defending the people. These objectives were pursued through the Movement's carefully constructed organisational framework extending from the grassroots up to the top leadership. The Movement also enforced a strictly binding code of conduct on both its military and civilian cadres. It established and mentored resistance councils at the village, parish, sub-county, and county levels, maintaining regular consultations and guidance between these councils and the Movement's senior leadership. It imposed exacting standards of moral and ethical conduct and ensured that those who fell short were counseled or subjected to appropriate sanctions.[144]

[143] Mugaju J & J Oloka-Onyango (n 24 above)101.

[144] The National Resistance Army (NRA) was the military wing of the National Resistance Movement . Formed in 1981 under the leadership of Yoweri Museveni, the NRA waged a guerrilla war against the government of Milton Obote following disputed elections held in 1980. Operating primarily from the Luwero Triangle, the NRA pursued a five-year

With Obote's assumption of power, Tanzanian forces began withdrawing from Uganda, completing their departure by December 1981.[145] By mid-June 1981, the NRM had not only expanded in both size and quality but had formed and deployed fighting units throughout much of the central region of Buganda. As the struggle continued, international journalists sought access to the conflict zones within Uganda, and NRM members of the Diplomatic and Publicity Committee in the United Kingdom vetted a number of applicants, and introduced them to Museveni, Chairman of the NRA's High Command, who welcomed them to areas that the NRM had liberated or brought under its control. The photographs and footage produced by these journalists were widely circulated and broadcast around the world and, combined with the NRM's own publications, broadcasts, and press conferences, enabled a global audience to understand what was happening in Uganda and to appreciate the philosophy, seriousness of purpose, and capabilities of the National Resistance Movement. Between 1981 and 1984, the fundamental weaknesses of Obote and his government were progressively laid bare before the international community, and between 1984 and 1985 a dramatic shift occurred in that community's attitude towards the Obote administration. By the opening of 1985, most Ugandans and serious international observers had concluded that the end of the Obote II government was imminent and that succession by Museveni and his NRM was inevitable. Between July 1985 and January 1986, further hundreds of Ugandans were killed or had their rights gravely violated and their property destroyed. The NRM pressed ahead with its military operations virtually without interruption. By the close of September 1985, the NRA had taken control of much of the Luwero Triangle, Masaka, and large parts of western Uganda. In the interim, the Kenyan Government agreed to sponsor, host, and preside over peace talks between the Military Council and the National Resistance Movement Council, attended also by other Ugandan political parties and groups, with the exception of the UPC. [146]

The Lutwa junta regarded itself as the legitimate government of Uganda, and no government in recorded history has ever willingly and voluntarily surrendered its authority to govern to a rival organisation. The National Resistance Movement, whose forces were in control of most of the

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armed struggle aimed at ending political instability, authoritarian governance, and human rights abuses. In January 1986, the NRA captured Kampala and assumed state power, marking a significant turning point in Uganda's political development. Following its victory, the NRA became the national army and later evolved into the Uganda People's Defence Force (UPDF). The movement's rise to power profoundly influenced Uganda's constitutional and political trajectory, culminating in far-reaching governance reforms and the eventual adoption of the 1995 Constitution.

[145] A Cowell 'Tanzanian Withdrawal Leaves Kampala Jumpy' 10th July (1981) The New York Times accessed on 6th June 2026.

[146] Kanyeihamba (n 10 above) 193 .

country and whose leadership understood that it would be condemned if it surrendered power to the junta on the very threshold of victory, was in no position to stand down. The junta's decision to incorporate discredited soldiers from the Amin era and to retain the visibly disintegrating remnants of Obote's military was the act of a government bereft of political vision or principle. Accordingly, from their strongholds in Buganda and the western parts of the country, the military forces of the National Resistance Movement mounted their final coordinated assault. At the Katonga River, in the swampland between Masaka municipality and the capital Kampala, the NRA fought and secured its final celebrated victory and entered Kampala in triumph, where the population received its soldiers as liberators. In the aftermath of this historic victory and during the mopping-up of UNLA remnants in the city's outskirts, fighters from a number of the smaller military groups laid down their arms or joined the NRM's victorious advance. [147]

With the NRA's entry into Kampala, the NRM became the sole organisation possessed of both the power and the programme required to form a government that the population would accept, a government which remains in office without interruption to this day. During the period from 26 January 1986, when the National Resistance Movement assumed power in Uganda, to 1995 when the country promulgated a new constitution, the Movement can be credited with a number of significant achievements in governance, several of which brought about fundamental transformation in the country. It was throughout this decade that Ugandans, individually and collectively, in private reflection and public discussion, engaged deeply with the economic development of their country alongside debates on three other central questions: the drafting of a new constitution, the commitment to and protection of human rights, and the meaning of democracy in Uganda. It was during this period that respect for and the protection of human rights were most prominent, and the hallmark of the National Resistance Movement was unmistakably evident. [148]

The greatest achievement of the National Resistance Movement was the drafting and promulgation of the Uganda Constitution of 1995. The principal task of the interim Government was, however, the restoration of democracy and the rule of law. At this juncture in Uganda's history, the NRM was keenly aware that without democracy there can be no enduring peace or stability. The NRM held firmly that it is the inalienable right of all peoples to choose their government freely and to determine the manner in which they are governed. Rigged or manipulated elections are an affront to

[147] Museveni (n 120 above) 169-171.

[148] Human Rights Watch 'Hostile to Democracy The Movement System and Political Repression in Uganda' (1999) *Human Rights Watch* 58.

the people and a certain recipe for instability, conflict, and upheaval. It equally maintained that constitutions imposed on the people by deception or by force cannot serve as the foundation for the stable and peaceful governance of a nation. Accordingly, one of the NRM government's primary obligations was to bring about a swift yet orderly return to democratic government in the aftermath of its removal of the Obote regime. [149]

2.5 The 1995 Constitution

The supreme law of the land, the Constitution of Uganda, [150] is inaugurated by a significant Preamble and is underpinned by the National Objectives and Directive Principles of State Policy. It is conceived as a dynamic, living instrument intended to secure good governance, uphold fundamental liberties, and promote the welfare, dignity, and protection of all persons within Uganda. The makers of the Uganda Constitution and in the name of all Ugandans, recalled the country's history which had been characterized by political and constitutional instability. They took into consideration, the struggles of the Uganda people against the forces of tyranny, oppression and exploitation.[151]They committed themselves to building a better future by establishing a stable socio-economic and political order through a popular and enduring national Constitution founded on the principles of unity, peace, equality, democracy, freedom, social justice, and progress. The framers of this Constitution went on to adopt, enact, and bequeath it to themselves and to future generations as the Constitution of Uganda. They further declared that the National Objectives and Principles of State Policy enshrined therein are intended to guide all organs and agencies of the State, as well as all citizens, organizations, and other bodies and persons, in the interpretation and application of the Constitution or any other law, and in the formulation and implementation of policy decisions aimed at establishing and promoting a just, free, and democratic society. [152]The 1995 Constitution underscores the sovereignty of the people, affirming that all power belongs to them and is to be exercised in accordance with the Constitution.[153] The people, therefore, express their will and

[149] B Wamala ,A Mbabazi,A Kivejinga ,K Kaheru,J Sabiti & J Tumusiime (eds) 'Mission to Freedom : Uganda Resistance News 1981-19885' (2014) *Fountain Publishers* 261.
[150] Art 2 of the Constitution (1995) 6.
[151] Preamble (n 2 above).
[152] As above.
[153] Art 1 (1) of the 1995 Constitution of Uganda.

consent regarding their governance through regular, free, and fair elections of their representatives, or by means of referenda. [154]

Among the Constitution's most consequential provisions are those contained in Chapter Four, which entrenches an extensive catalogue of fundamental rights and freedoms and provides the constitutional foundation for their protection. Chapter four of the Constitution, has been hailed by experts and commentators as one of the finest and best structured Bills of Rights adopted by any state[155]These rights and freedoms are to be respected, upheld and promoted by all organs and agencies of government and all persons.[156] The parliament is also empowered to enact any laws which are necessary and demonstrably justified in a free and democratic society.[157] Substantially, under Article 46, it is provided that during a period of an emergency, an Act of Parliament shall not be taken to contravene the provisions contained in Chapter four of the Constitution if it authorizes measures that are reasonably justifiable for dealing with that state of emergency except that such an Act may not derogate from the absolute rights protected in Article 44 of the Constitution and which are the rights to a fair hearing, freedom from torture and inhuman or degrading treatment or servitude and the right to an order of Habeas Corpus.[158] Every person in Uganda has a right to belong to, enjoy, practise, profess, maintain and promote any culture cultural institution, language, tradition, creed or religion in community with others. Minorities have a right to participate in decision–making processes and their views and interests shall be taken into account in the making of national plans and programmes.[159]The NRM initially recognized the principle that democracy needs to be buttressed by the protection of human rights, the suppression of the people and public agencies' likely to threaten or abuse them and the disciplining or punishment of those who violated them. In this regard, it created first the Commission of Inquiry into past violations of Human Rights in Uganda which recommended the establishment of a permanent Commission of Human Rights which was later established by the 1995 Constitution.[160]Correspondingly ,in order to promote democracy ,chapter 5 presents the representation of the people providing for a right to vote[161].It also

[154] Art 1 (4) of the 1995 Constitution of Uganda.
[155] GPT Mukubwa 'The Promotion and Protection of Human Rights in East Africa' (2000) 6(2) *East African Journal of Peace and Human* Rights 134–138.
[156] Article 20(2) of the 1995 Constitution of Uganda .
[157] Article 21(4)(c) of the 1995 Constitution of Uganda.
[158] Article 44 of the 1995 Constitution of Uganda.
[159] Article 37 of the 1995 Constitution of Uganda.
[160] Art 51 of the 1995 Constitution of Uganda.
[161] Article 59 of the 1995 Constitution of Uganda.

creates an electoral commission[162] which should perform its functions independently and impartially, without interference from any individual or institution.[163]

The justifiable provisions of the Constitution are derived directly from International law and practices. Thus, it is provided that women shall be accorded full and legal dignity of the person with men. Under article 33(6) of the Constitution, laws cultures, customs or traditions which are against the dignity, welfare or interests of women or which undermine their status, are prohibited by the Constitution. The most notable achievement of the NRM government in this area was the establishment of affirmative action for women and other disadvantaged groups so that their status and opportunities can be brought to the level of that of men and ordinary people.[164] Children shall have the right to know and be cared for by their parents or those entitled by the law to bring them up and shall be the responsibility of the state and the parents of the child. The law shall accord special protection to orphans and other vulnerable children. Moreover, any child under the age of five years found in Uganda and whose parents are unknown, shall be presumed to be a citizen of Uganda by birth. Article 12(2) (b) allows a person who has lived in Uganda continuously for a period of up to twenty years to be automatically registered as a citizen on application, a provision which was intended to benefit refugees as well. It should be noted the history of Uganda clearly shows that some relationship exists between various aspects of citizenship on the one hand, and democracy ,or rather the absence of democracy on the other.[165]In the broad context of Uganada`s history in general and also in the context of the Constitution making process, the issue of citizenship has not only provoked drastic action and impassioned debate but it also rauises serious issues about democracy in Uganda in terms of past and its prospects. The constitution makes an effort to address such issues under chapter three.[166]

Another important milestone in the quest for unity and reconciliation in the country by the NRM was the restoration of traditional and cultural leaders in Buganda, Toro, Bunyoro and Busoga and several other districts which wished to revive or create such leaderships.[167] The region of Ankole which had previously been ruled by a monarch eluded a solution throughout this period of the NRM

[162] Art 60 of the 1995 Constitution of Uganda.
[163] Art 62 of the 1995 constitution of Uganda.
[164] Art 32 of the 1995 Constitution of Uganda.
[165] FW Jjuuko 'Citizenship — A Test of Democracy in Uganda' in Founding the Constitution of Uganda: Essays and Materials (2011*) LawAfrica Publishing (K) Ltd* 63.
[166] Articles 9-19 of the 1995 Constitution of Uganda .
[167] Chapter sixteen of the Constitution (articles 246-258 of the 1995 Constitution of Uganda.)

partly because the majority of the population in that region did not wish to see monarchy restored and partly because of the utterances and pre-emptive decisions and acts of Prince John Barigye, the heir apparent who allowed himself to be associated with such premature acts as crowning and naming him King of Ankole before the Banyankole and the NRM government had opportunity to consider and resolve the issue of the traditional and cultural leader for that region. Nonetheless, the restoration of traditional and cultural leaders in the rest of the country and the return of cultural treasures and regalia even in Ankole enhanced calmness and peace in the areas benefiting. Throughout the whole country, the NRM's policy of encouraging the revival and practices of popular traditions and cultures including music and dances while discouraging those which degraded women, became popular and a catalyst for peace, stability and tranquility in the country.[168]

Also ,it was very clear that the problems created over the past nine decades in the land holding systems had not been resolved by various constitutions and legislations .Indeed some of these enactments like the Land Reform Decree 1975 and Traditional Rulers (Restitution of Assessts and Properties) Statute 1993 had compounded the problems.The outstanding issues were several but uniform system of land tenure,fair and equitable distribution of land ma ximum utilization of land v social disruption and foreigner`s access to land were considered to be the major ones[169].However,all the above major issues were discussed in the Report of the Uganda Constitution Commission. The recommendations of the Comission constitute Chapter fifteen of the 1995 Constitution.[170]

Furthermore, a look at the 1995 Constitution indicates that provisions have been made relating to taxation and spending powers of the government .Chapter 9 of the Constitution therefore modifies chapter 9 of the 1967 Constitution.Art 152 specifically provides that no tax shall be imposed except under the authority of an Act of parliament This corrected the then existing vacuum as the croen does not tax by analogy but by statute.[171]The constitution further makes a strict separation of powers by creating three equal organs of government. These organs are the legislature[172],executive[173] and the

[168] BJ Jean 'Democracy and Culture in Uganda' (1998)4(1) *East African Journal of Peace and Human Rights'* 1.
[169] PM Walubiri 'Land and Property Rights' in Founding the Constitution of Uganda: Essays and Materials (2011) *LawAfrica Publishing (U) Ltd* 128–129.
[170] Art 237-245 of the 1995 Constitution.
[171] RO Wengi 'Taxation, Spending Powers and Currency Regulation' in Founding the Constitution of Uganda: Essays and Materials (2011) *LawAfrica Publishing (U) Ltd* 145–146.
[172] Chapter six (articles 76-97 of the 1995 Constitution of Uganda).
[173] Chapter seven (articles 98- 125 of the 1995 Constitution of Uganda).

judiciary[174].The constitution makes it clear that in the exercise of judicial power, the courts shall be independent and shall not be subject to the control or direction of any person or authority.[175]

In light of the foregoing, it may be argued that the greatest and most enduring contribution of the National Resistance Movement to Uganda's political and constitutional development is the enactment of the 1995 Constitution. More than any other reform associated with the Movement, the Constitution provided a comprehensive framework for governance and sought to address the recurring challenges that had characterized Uganda's post-independence history. It has been widely acclaimed by constitutional scholars and commentators as one of the most progressive constitutions in the world, particularly for its extensive protection of human rights, its commitment to equality, and its entrenchment of participatory democracy. The Constitution also established a carefully balanced system of government, defining the powers, functions, and relationships of the various organs and institutions of the State. Given Uganda's history of political instability, constitutional crises, and authoritarian governance, many commentators regarded its provisions as representing the most appropriate constitutional arrangement that could have been devised to promote democratic governance, national unity, and the rule of law.[176]

2.6 Conclusion

Uganda's constitutional and political history from the pre-colonial era to 1995 is fundamentally a story of the recurring tension between power and legitimacy. Pre-colonial Uganda was defined by competing sovereignties of the expansionist kingdoms of Buganda and Bunyoro, clan-based polities in the east and north, and pastoral hierarchies in Ankole and Toro. Rather than harmonising these competing interests, British colonialism froze them into constitutional arrangements that privileged certain groups over others, and its institutional pathologies of executive deference by the judiciary, coercive ordinances, and the repugnancy doctrine were substantially inherited at independence. The 1962 Independence Constitution amplified Uganda's internal tensions by entrenching federal privileges for Buganda and the kingdoms, placing regional loyalty above national identity. This structural contradiction produced inevitable crisis: the Kabaka-Obote confrontation, the unconstitutional abrogation of the Constitution in 1966, and the republican Constitution of 1967

[174] Chapter eight of the Constitution (articles 126-151 of the 1995 Constitution of Uganda).
[175] Art 128(1) of the of the 1995 Constitution of Uganda.
[176] Kanyeihamba (n 10 above)216.

achieved not through law but through force, establishing the dangerous precedent that power, rather than legality, was the ultimate arbiter of Uganda's political life.

The Amin era represented the lowest point of Uganda's constitutional experience, characterised by the complete subordination of law to executive decree and unchecked state violence. Although the liberation struggle of 1979 offered a moment of potential renewal, the disputed 1980 elections revealed that cultures of political manipulation and institutional disregard remained deeply entrenched. It was against this accumulation of historical failures that the 1995 Constitution emerged as a conscious repudiation of Uganda's constitutional past, embedding an entrenched bill of rights, separation of powers, and affirmative action for marginalised groups. Its framers understood that Uganda's recurring crises were the predictable consequences of constitutions lacking popular legitimacy and failing to constrain power. Whether the foundations laid in 1995 prove durable ultimately depends on the degree to which those who hold power genuinely internalise the principles enshrined

CHAPTER THREE

THE EXTENT TO WHICH HISTORICAL MEMORY HAS BEEN REFLECTED IN UGANDA`S CONSTITUTIONAL JURISPRUDENCE SINCE 1995

3.1 Introduction

3.2 Contextual Use of History in Constitutional Interpretation.

3.3 Misapplication of history

3.4 Correct application of history

3.5 Neglect of history

3.6 Conclusion

'WE THE PEOPLE OF UGANDA:
RECALLING our history which has been characterised by political and constitutional instability;
RECOGNISING our struggles against the forces of tyranny, oppression and exploitation;
COMMITTED to building a better future by establishing a socioeconomic and political order through a popular and durable national Constitution based on the principles of unity, peace, equality, democracy, freedom, social justice and progress...'

- Preamble of the 1995 Constitution of Uganda

3.1 Introduction

A constitution is not merely a legal document but also an expression of collective memory, reflecting a society's understanding of its past, its aspirations for the future, and the lessons it seeks to preserve. Uganda's 1995 Constitution, shaped by decades of authoritarian rule, political instability, and human rights abuses from the colonial era through post-independence regimes[1], was intentionally crafted in response to that history, seeking to address its legacy, institutionalize its lessons, and advance a democratic, rights-based state. [2] In this sense, history is not incidental but a foundational interpretive lens that informs the Constitution's values, structural design, and transformative purpose. However, this does not suggest that courts are required to invoke historical memory in every constitutional dispute. Rather, historical interpretation is most compelling and

[1] Preamble of the 1995 Constitution of Uganda.
[2] BJ Odoki 'The Challenges of Constitution-making and Implementation in Uganda' in *Constitutionalism in Africa: Creating Opportunities, Facing Challenges. Constitutionalism in Africa: Creating Opportunities, Facing Challenges* (2001) *Kampala Fountain Publishers* 264 ; also see N Wanamela 'The Notion of the Veil of Ignorance in Uganda`s 1995 Constitutional Reforms' (10 February 2024) available at https://kujenga-amani.ssrc.org/2024/09/18/the-notion-of-the-veil-of-ignorance-in-ugandas-1995-constitutional-reforms/(accessed 1 June 2026).

necessary in cases where constitutional issues are deeply rooted in Uganda's political or social history, or where similar patterns of injustice have previously arisen. In such instances, historical awareness becomes an essential interpretive aid in ensuring that constitutional adjudication does not repeat past wrongs or ignore the context that gave rise to particular rights and institutional safeguards.

To unpack this dynamic, the discussion proceeds in three key dimensions. First, it scrutinizes cases where history was misapplied, leading to interpretations that distorted constitutional intent or perpetuated inequities. Second, it highlights instances of correct historical application, where courts drew on the past to deliver principled, contextually grounded rulings. Third, it identifies missed opportunities,cases where historical memory was overlooked, yet could have illuminated better paths to justice.

3.2 Contextual Use of History in Constitutional Interpretation

History refers to a narrative about the past in respect of a situation or context, or to the origins of law or legislation, or simply to any fact about the past that may be deemed relevant. It is an evidentiary tool for any interpretive exercise. It does not, in and of itself, direct an interpretive effort, but may be used to further one interpretive preference or another. Thus, a court embarking on a purposive interpretative approach might well deploy history to push its decision one way or another. Constitutional interpretation however encompasses a very wide range of tasks of varying complexity and difficulty, depending on the issue at hand. At one end of the spectrum, courts may encounter issues that are simple and do not require them to go beyond the plain words of the constitution. Such questions might, for example, involve the determination of whether a particular constitutional amendment has in fact come into force. At the other end of the spectrum, courts may encounter issues of much greater complexity.[3]In such situations courts may engage with the country`s history to facilitate constitutional interpretation. Emphasis has been placed on the fact that there is an element in constitutional interpretation, requiring a judge to be thoroughly steeped in the history and public life of the country. This indicates both the broad view of intent that sound constitutional

[3] KYL Tan 'Interpreting the constitution: The use and abuse of history'(2023) 20(5) *International Journal of Constitutional law* 1960-65.

interpretation necessarily requires and the importance of history in shaping constitutional jurisprudence.[4]

While reference to history is valuable in facilitating constitutional interpretation, this does not suggest that courts are required to invoke historical analysis in every constitutional dispute. Rather, recourse to history is most compelling where the issues before the court are deeply rooted in a country's political or social evolution, particularly in constitutional and human rights adjudication or in matters concerning the legacy of past injustices. In such contexts, historical interpretation serves as an essential interpretive aid, ensuring that constitutional adjudication remains sensitive to the conditions that gave rise to particular rights and institutional safeguards, and guards against the repetition of past abuses. Correspondingly, an interpretation rooted in history may be required to illuminate the framers' intent when words are ambiguous or where provisions remain silent on how the controversy at hand should be resolved. In more complex situations, history may be called upon to resolve conflicts and contradictions within the text itself or to uncover the causes of those conflicts.[5]

However, there are clear instances where historical inquiry should not play a central role. In cases involving straightforward procedural or technical questions, administrative compliance, timelines, or jurisdictional disputes, reliance on history may be unnecessary and may even obscure the applicable legal standards. Similarly, in disputes requiring the application of settled principles to contemporary conditions, courts may deliberately avoid rigid historical approaches. This position is well illustrated in *Brown v. Board of Education*, where the Court rejected an exclusively historical inquiry into the original understanding of the Equal Protection Clause. Instead, it emphasized that in addressing public education, it cannot turn the clock back to 1868 when the amendment was adopted or even to 1896 when *Plessy v Ferguson* [6]was decided but rather, it must consider education in light of its present role in society. Thus, the Court turned away from history and, instead, decided the case

[4] EV Rostow 'The sovereign prerogative: the supreme court and the quest for law' (1963) *Yale University Press* 93-94 .
[5] Tan (n 3 above)1958.
[6] *Plessy v Ferguson* 16 S. Ct. 1138 (1896);The case follows the facts that in 1890,the state of Loiuisiana passed a law called the Separate Car Act .It required black and white people to sit in different train cars.Acivil rights group decided to challenge the law .They asked a man called Homer Plessy to help them .Plessy was seven –eighths white and one – eighth black,but Louisinia law still considered him black.On 7th June,1892,Plessy bought a first class ticket and sat in the train car reserved for white people.When he refused to move,he was arrested.Plessy argued that his arrest violated his rights under the 14th Amendment ,which promises equal protection under the law for all citizens. ALouisinia judge named Howard Ferguson ruled against him.Plessy took this case all the way to the Supreme Court.However ,in a majority of 7 : 1 ,the Supreme Court ruled against Plessy with Justice Henry arguing that the 14th Amendment was make people legally equal,but it was not meant to force the two races mix socially.

based upon the importance of education in 1950s America. [7] The Court relied upon social science evidence that segregation in public education created a feeling of inferiority which adversely effected the educational opportunities of the African American students.[8] This demonstrates that constitutional interpretation must sometimes evolve beyond historical intentions to remain relevant and just. It has been further argued that the Court cannot properly assess the relevance of history to the issue before it without a careful and thorough examination of the historical record. At the same time, it is emphasized that neither an excessive reliance on history nor a neglect of it is desirable in judicial decision-making. [9] Moreover, the 'history-only' approach has been criticized as flawed, on the ground that it does not in practice constrain judicial discretion. [10]

3.3 Where History was misapplied

Since the enactment of the 1995 Constitution, Ugandan courts have had numerous opportunities to engage with the country's troubled historical past as a tool of constitutional interpretation. However, in several notable instances, the judiciary has fallen short of meaningfully applying historical memory to inform its decisions. Rather than drawing on the lived experiences of repression, institutional abuse, and constitutional rupture that preceded the 1995 constitutional order, courts have at times rendered decisions that ignore, oversimplify, or sideline this history ,undermining the transformative promise the Constitution was designed to deliver.

3.3.1 ***Male Mabirizi v Attorney general*** [11]

The consolidated petitions in this case arose from the enactment of the Constitution (Amendment) Act No. 1 of 2018, which removed the presidential age limit of seventy-five years from Article 102(b) of the 1995 Constitution of Uganda. The Bill was introduced as a private member's Bill by Hon. Raphael Magyezi. At the Committee of the Whole House stage, two additional amendments were introduced ,one extending the tenure of Parliament and Local Government Councils from five to seven years, applied retroactively to 2016, and another reinstating presidential term limits.[12] After Parliament passed the amended Bill and the President assented to it, five petitions were lodged challenging specific provisions of the resulting Act and were consolidated for joint hearing given

[7] *Brown v. Board of Education* 347 U.S.483 (1954) 492-93.
[8] *Brown* (n 7 above) 494.
[9] GJ Simson 'Role of History in Constitutional Interpretation a Case Study'(1985)253 *Cornell Law Review 270.*
[10] TC Galligan 'History and Constitutional Interpretation.What is Really there?' (2025)23(1) *The University of New Hampshire law review* 110.
[11] *Mabirizi v Attorney general* [2018] UGCC 4.
[12] *Mabirizi* (n 11 above) 2-5.

their overlapping issues.[13] The agreed issues before the Court were wide-ranging, covering fourteen key questions including the validity of the removal of the presidential age limit, the violence and military presence during the Bill's passage, whether the process of consultation complied with constitutional requirements, and whether Parliament's own Rules of Procedure had been violated.[14]

The Constitutional Court viewed the 1995 Constitution as the product of a highly participatory process led by the Justice Odoki Constitutional Commission and the Constituent Assembly in response to Uganda's troubled history. It expressed concern that, despite the effort and hope invested in it, the Constitution had already been amended about five times, more frequently than subordinate laws, thereby undermining its status as the supreme law and weakening a fundamental principle of the constitutional order .[15] Going further, the Court expounded the meaning of the preamble's call upon Ugandans to recognise their struggles against the forces of tyranny, oppression and exploitation, describing it as a solemn call to always recall their history, the people killed under Idi Amin, those jailed or tortured on account of ethnicity, religion or political belief, those deported from their homes, and those who sacrificed their lives during the civil war that ended in 1986. [16] However, by a majority decision of 4:1, with Justice Kakuru dissenting declared that Sections 1, 3, 4 and 7 of the Constitution (Amendment) Act No. 1 of 2018, which removed the age limits for the President and the Local Council V Chairperson, had each been passed in full compliance with the Constitution and therefore remained lawful and valid[17] , a decision that was upheld on appeal despite invoking Uganda`s history.[18]

This conclusion is particularly striking given that it was the very same Court that so eloquently and passionately invoked Uganda's painful history of tyranny, oppression and exploitation recalling the bloodshed, the lives lost, the imprisonments, the torture, and the political instability that had plagued the country as the very foundation and justification for the protective provisions enshrined in the

[13] These were Const. Petition No. 49 of 2017, *Male Mabirizi v. AG*; Const. Petition No. 3 of 2018, *Uganda Law Society v. AG*; Const. Petition No. 5 of 2018, *Gerald Karuhanga v. AG*; Const. Petition No. 10 of 2018, *Prosper Businge v. AG*; and Const. Petition No. 13 of 2018, *Abaine Jonathan Buregyeya v. Attorney General.*
[14] *Mabirizi* (n 11 above) 29-34.
[15] *Mabirizi* (n 11 above) 51-54.
[16] *Mabirizi* (n 11 above) 377.
[17] *Mabirizi* (n 11 above) 201.
[18] Three separate appeals were filed in the Supreme Court . These were Constitutional Appeal No 02 Of 2018,Male Mabirizi Kiwanuka V Attorney General Consolidated With Constitutional Appeal No. 03 Of 2018 ,*Karuhanga Kafureeka Gerald And Ors v Attorney General* and Constitutional Appeal No. 04 Of 2018,*Uganda Law Society v Attorney General* ; Appeal From The Judgment Of Justices Of The Constitutional Court (Owiny-Dollo, DCJ; Kasule; Kakuru; Musoke & Cheborion, JJCC) dated 26th July 2018 in Consolidated Constitutional Petitions No. 49 of 2017; 03 of 2018; 05 of 2018; 10 of 2018 & 13 of 2018.

1995 Constitution. Yet, notwithstanding this solemn recollection of history, the majority appeared to depart from the very lessons it had itself drawn from that history, by upholding the removal of a constitutional safeguard that had been deliberately crafted by the people of Uganda, through a painstaking participatory process, as a bulwark against the recurrence of the very tyranny and oppression the Court had so earnestly recalled. In so doing, the majority, it may be argued, failed to honour the spirit and intent of a Constitution born out of sacrifice, struggle and the collective resolve of a people determined never to return to the darkness of their past. The refusal to develop the basic structure doctrine, which Justice Kakuru's dissent demonstrated was analytically available, deepens this concern. The doctrine would have provided a principled basis for distinguishing between amendments that adjust the constitutional text and amendments that attack its foundational architecture. Given that the Court had itself identified the frequency of amendment as a cause for serious concern, the failure to articulate any doctrinal limit on what Parliament may amend ,and by what process, left the Constitution's most important structural protections without juridical defence. The majority's silence on this point was not a neutral omission; it was a choice to leave open a path that the Court's own historical analysis suggested should be foreclosed.

The Supreme Court's reasoning compounds rather than corrects these difficulties.[19] The Chief Justice's finding that the age limit was not a basic constitutional pillar because Uganda's historical oppressors were not aged seventy-five fundamentally misreads how structural safeguards function.[20] Constitutional provisions are not designed to match the biographical details of past abusers. They are designed to address the category of wrong those abusers represent. The presidential age limit guarded against the indefinite entrenchment of executive power in a single individual which is precisely the danger that Uganda's history of military coups, abrogated constitutions, and one-party governance had made vivid. To hold the provision constitutionally insignificant because no past dictator happened to be elderly is to confuse the instrument of the abuse with its structural cause.

Justice Arach Amoch's textual approach, suffers from the same purposive blindness. She asserts that the framers of the Constitution did not perceive the Constitution as an eternal document that could not be amended in any way[21] and that they would have expressly stated so, had they intended that the President should vacate office upon attaining the age of 75.[22]This approach is irreconcilable

[19] *Male Mabirizi v Attorney general* [2019] UGSC 102.
[20] *Mabirizi* (n 19 above) 22-24 (Judgement of Justice Katureebe).
[21] *Mabirizi* (n 19 above) 100 (Judgement of Justice Arach).
[22] *Mabirizi* (n 19 above) 102,187-188.

with the Court's own declaration that the Constitution must be interpreted with knowledge of Uganda's history and the spirit of its preamble. [23] The framers who constructed the 1995 Constitution through a painstaking participatory process were not engaged in technical qualification-drafting, they were building institutional guardrails against a recurrence of concentrated, unaccountable power. To read the age limit provision without engaging with that purpose is not fidelity to the text; it is a departure from the interpretive framework the Court had itself adopted.

What emerges from the foregoing is a consistent pattern across the majority at both court levels: history was invoked as a solemn backdrop but was not honoured as a constitutional compass. Each court recalled Uganda's painful experience of tyranny, oppression yet both proceeded to reach a decision on the age limit that that history directly contradicts. What the 'Age-Limit' decision means for Uganda`s jurisprudence can be viewed not just from what the court said, but also what it did not say. The decision itself is a missed opportunity to prevent the incremental nibbling away at the constitution. It was a missed opportunity to assert the power of Constitutional restraint, the power of checks and balances.[24]

3.3.2 *Lumu Robert Kizito and ors v Norbert Mao and ors* [25]

The petitioners challenged the cooperation agreement between the Democratic Party (DP) and the National Resistance Movement (NRM), as well as the subsequent appointment of Norbert Mao as Minister of Justice and Constitutional Affairs. They argued that the agreement undermined constitutional democracy and violated several constitutional provisions, particularly those relating to political participation and multiparty governance. [26]In addressing the above issues, the court undertook an extensive review of Uganda's political evolution, tracing alliances and coalitions from the nationalist movements of the 1940s and 1950s, through the Uganda People`s Congress (UPC)-Kabaka Yekka (KY) alliance at independence, the suppression of party politics during Idi Amin's regime, the Uganda National Liberation Front (UNLF) umbrella arrangement, and finally the NRM's 'broad-based' political system. From this historical survey, the court concluded that political alliances were deeply rooted in Uganda's political tradition and that neither the Constitution nor the Political Parties and Organisations Act prohibited such cooperation agreements. Consequently, the

[23] *Mabirizi* (n 19 above) 7-9 (Judgement of Justice Katureebe).
[24] B Tusasirwe 'The Basic Structure Doctrine and Constitutional Restraint: Take-away from the Age Limit Decision' (2019) 46(1) *East African Law Review* 40.
[25] *Lumu Robert Kizito and ors v Norbert Mao and ors* Constitutional Petition 26 of 2022 [2026] UGCC 2 (2 March 2026).
[26] *Kizito* (n 25 above) 34.

court held that the DP-NRM agreement and Mao's ministerial appointment did not contravene the Constitution.[27]

However, the court's deployment of history reflects a significant misapplication of historical reasoning in constitutional adjudication. The historical examples relied upon by the court, particularly the UPC-KY alliance and subsequent concentration of political power, were not merely illustrations of political cooperation, they were also cautionary episodes associated with political instability, collapse of constitutional order, and erosion of democratic accountability. Instead of interrogating these historical failures, the court reduced history to evidence that coalitions have always existed in Uganda.

This approach conflated historical occurrence with constitutional legitimacy. The mere fact that political alliances have repeatedly appeared in Uganda's history does not necessarily mean that every alliance is constitutionally consistent with the democratic values embedded in the 1995 Constitution. The Constitution was enacted precisely against the backdrop of Uganda's troubled political history, including manipulation of political arrangements for consolidation of power. Therefore, the relevant constitutional question should have concentrated on whether a particular cooperation agreement promoted or undermined the constitutional principles of multiparty democracy, political pluralism, and representative governance. The court further misapplied history by portraying the NRM's origins as a 'broad-based' movement in largely positive terms[28], without sufficiently engaging with the historical criticisms of the movement system itself, including its long suppression of competitive multiparty politics before the 2005 constitutional reforms. By selectively invoking aspects of Uganda's political history that normalised coalition-building while overlooking the authoritarian tendencies historically associated with dominant-party arrangements, the court adopted an incomplete and sanitised reading of history.

Ultimately, the decision illustrates how constitutional history can be invoked rhetorically yet stripped of its normative force. The court used history descriptively, to show that alliances are not new, but failed to use history critically, as a constitutional warning against political arrangements capable of undermining democratic pluralism. In this sense, the judgment transformed Uganda's constitutional

[27] *Kizito* (n 25 above) 35-36.
[28] As above.

history from a cautionary guide into a tool for legitimising the very forms of political dominance and institutional weakening that the 1995 Constitution sought to prevent.

3.3.3 *Amama Mbabazi v Yoweri Museveni and ors* [29]

In this case, Amama Mbabazi challenged the validity of the 2016 presidential election, arguing among other things that Yoweri Museveni had threatened voters by warning that electing another candidate would return Uganda to war. Mbabazi contended that such statements amounted to intimidation contrary to the Presidential Elections Act (PEA) because they pressured voters into maintaining the political status quo out of fear of instability. [30]In dismissing this ground, the Supreme Court relied heavily on Uganda's constitutional history of political instability,tyranny and oppression as reflected in the Preamble to the 1995 Constitution. The Court however concluded that reminding Ugandans of this history during an election period could not amount to intimidation or unlawful threats, but was instead a legitimate reference to the country's past experiences. [31]

However, the Court's reasoning demonstrates a problematic use of constitutional history. The Preamble's recollection of Uganda's turbulent past was intended as a normative warning against the recurrence of violence and authoritarianism, not as a justification for invoking fear during political campaigns. By treating references to war as harmless historical reminders, the Court detached history from the constitutional values it was meant to protect, particularly free political choice and democratic participation. The Court failed to appreciate the political context in which the statements were made. In an electoral environment where memories of armed conflict remain deeply significant, warnings that a change in leadership could lead to war carry an inherently coercive effect. Such statements cannot be viewed as neutral historical reflections because they exploit collective historical trauma to influence voter behaviour. Rather than safeguarding the constitutional commitment to free and fair elections, the Court normalized the use of fear rooted in Uganda's violent history as an acceptable electoral strategy. The judgment therefore illustrates a broader misapplication of history in constitutional interpretation. Instead of using history as a constitutional caution against fear, instability, and manipulation of political power, the Court transformed it into a tool for legitimising rhetoric capable of undermining electoral freedom. In doing so, it reduced the

[29] *Amama Mbabazi v Yoweri Museveni and ors* Presidential Election Petition no.1 of 2016 [2016] UGSC 3.
[30]*Mbabazi* (n 29 above) 1-2.
[31] *Mbabazi* (n 29 above) 279-280.

constitutional memory of Uganda's past suffering into a political resource that incumbents could invoke without constitutional consequence.

3.4 Correct Application of History

Despite the shortcomings noted in the preceding section, Uganda's post-1995 constitutional jurisprudence also contains moments of genuine historical engagement. In these instances, courts have demonstrated a sophisticated awareness of the constitutional moment that gave rise to the 1995 Constitution, recognizing that it was not merely a legal instrument but a deliberate response to decades of authoritarian rule, institutional collapse, and the systematic violation of fundamental rights. By anchoring their reasoning in this historical context, the courts in these cases moved beyond a purely textual reading of the Constitution and instead gave effect to its transformative character. Such decisions reflect the judiciary at its best: treating history as an indispensable interpretive resource, honouring the sacrifices and struggles that shaped Uganda's constitutional order, and ensuring that the Constitution's protective guarantees are interpreted in a manner consistent with the pain and aspirations of those who lived through the periods it was designed to transcend.

3.4.1 *Uganda Association of Women Lawyers and others v Attorney General* [32]

The petitioners challenged several provisions of the Divorce Act on the basis that they discriminated against women in matters relating to grounds for divorce, financial remedies, naming of co-respondents, and settlement of matrimonial property.[33] They argued that the impugned provisions violated the constitutional guarantees of equality, dignity, and equal rights within marriage under the 1995 Constitution. [34] Justice Mpagi Bahigeine interpreted the Preamble to the 1995 Constitution as reflecting Uganda's intention to reject the oppressive and patriarchal colonial legal system and establish a constitutional order based on equality, democracy, social justice, and human dignity. She

[32] *Uganda Association of Women Lawyers and others v Attorney General* Constitutional Petition No.2 of 2003 [2004] UGCC 1(10 March 2004).

[33]The Act entrenched significant gender-based inequalities in divorce proceedings. A husband could obtain a divorce solely on the ground of his wife's adultery, whereas a wife was required to prove adultery coupled with additional aggravating circumstances. The law also imposed unequal procedural requirements, obliging only husbands to name the alleged adulterer as a co-respondent in divorce petitions. Financial remedies were similarly discriminatory: only husbands could claim damages for adultery and recover costs from a co-respondent, while only wives were entitled to seek alimony, with no corresponding rights afforded to the other spouse. Furthermore, Section 26 governing matrimonial property settlements empowered courts to order the settlement of a wife's property for the benefit of a successful husband petitioner, yet provided no equivalent protection or benefit for a wife.

[34]*Uganda Association of Women Lawyers* (n 32 above) 1-2.

argued that the colonial-era Divorce Act embodied outdated assumptions that treated women as inferior to men, which conflicted with the transformative aims of the Constitution. [35]Justice Twinomujuni supported this reasoning by tracing the Divorce Act to 19th-century English matrimonial law, which viewed marriage as hierarchical and male-dominated. The Court used this historical analysis to expose the discriminatory foundations of the law and to show that such inequalities were incompatible with the egalitarian values of the 1995 Constitution. [36]

This was a correct application of history because the Court used history not merely descriptively, but normatively and transformatively. The historical inquiry was directed toward understanding why the impugned law existed, whose interests it served, and whether those foundations remained compatible with the Constitution. In doing so, the Court remained faithful to the constitutional purpose of overcoming the injustices of Uganda's legal and political past. Unlike decisions where history was invoked simply to legitimise existing political arrangements, the Court here treated history as a constitutional warning and as evidence of the inequalities the Constitution sought to eradicate. The decision also reflects a sophisticated understanding that constitutional interpretation must account for historical change. The Court recognised that marriage, once legally understood through patriarchal and colonial assumptions, had evolved into a partnership based on equality and mutual dignity. By acknowledging this evolution, the judges avoided freezing constitutional interpretation within outdated historical traditions and instead aligned it with the transformative character of the 1995 Constitution.

Importantly, the Court did not treat historical practice as inherently legitimate. Instead, it interrogated the oppressive structures underlying colonial legislation and used that analysis to give substantive meaning to constitutional guarantees of equality and non-discrimination. In this sense, history functioned as an emancipatory jurisprudential tool, enabling the Court to expose how inherited colonial norms continued to perpetuate gender inequality despite the adoption of a progressive constitutional order. The judgment therefore stands as an example of the proper use of constitutional history in adjudication. The Court used history consistently with the spirit of the 1995 Constitution by identifying the injustices embedded in Uganda's colonial legal inheritance and ensuring that constitutional interpretation advanced, rather than undermined, the transformative aspirations of equality, dignity, and social justice envisioned by the framers.

[35]*Uganda Association of Women Lawyers* (n 32 above) 6-8 (Judgement of Justice Mpagi Bahageine).
[36]*Uganda Association of Women Lawyers* (n 32 above)15 (Judgement of Justice Twinomujuni).

3.4.2 *Attorney General v Susan Kigula & 417 Others* [37]

In this case, the Supreme Court considered appeals arising from the Constitutional Court's decision on the constitutionality of the death penalty and the mandatory death sentence for murder. While the government challenged the finding that the mandatory death sentence was unconstitutional, the death row inmates argued that both the death penalty itself and execution by hanging violated the constitutional prohibition against cruel, inhuman, and degrading punishment.[38] While deciding on the constitutionality of death penalty, the Court relied extensively and carefully on Uganda's constitutional history. It situated the 1995 Constitution within Uganda's history of political violence, extra-judicial killings, disappearances, torture, and abuse by state security organs. Referring to the Preamble, the Court recognised that the Constitution emerged directly from Uganda's experience of tyranny, oppression, and constitutional instability. Unlike cases where history was invoked merely rhetorically, the Court here used history to explain the specific constitutional problem the framers sought to address: the arbitrary deprivation of life by the state outside lawful judicial processes. [39]The Court reinforced this historical analysis by examining the work of both the Commission of Inquiry into Violations of Human Rights in Uganda chaired by Oder JSC and the Uganda Constitutional Review Commission chaired by Odoki JSC.[40] It noted that the Oder Commission documented widespread atrocities, including torture, enforced disappearances, and extra-judicial killings. Court thus highlighted that Art 22(1) was understood by the court as being clearly designed to confront

[37] *Attorney General v Susan Kigula & 417 Others* Constitutional petition no.3 0f 2006) [2009] UGSC 6 ; (Appeal, and cross-appeal from decision of the Constitutional Court at Kampala (Okello,Twinomujuni, Mpagi-Behigeine, Byamugisha, Kavuma, JJA) in Constitutional Petition, No. 6 of 2003, dated 10th June 2005 .

[38] *Susan Kigula* (n 37 above) 2,32.

[39] *Susan Kigula* (n 37 above) 32.

[40] The Constitutional Review Comission had travelled the length and breadth of Uganda encompassing people`s views on various aspects of the Constitution,one of the subjects on which the Comission specifically sought and received views being the question of death penalty. The Court referred to the findings of the Commission, particularly paragraph 7.106 of its report, wherein the Commission affirmed that it had undertaken a comprehensive and balanced evaluation of the competing arguments surrounding capital punishment. In doing so, it critically examined prevailing international trends toward abolition, acknowledged the global advocacy efforts of organizations such as Amnesty International, and considered the fact that several states including a number of African jurisdictions had renounced the death penalty. While the Commission recognized the evolving global ethos and the normative shift against capital punishment, it ultimately concluded that insufficient justification existed to depart from the majority views expressed during the consultative process.The Court further made reference to paragraph 7.107 of the Commission's recommendations, which unequivocally endorsed the retention of capital punishment within the constitutional framework. The Commission recommended that: (a) the death penalty be expressly preserved in the new Constitution; (b) it be maintained as the maximum sentence for the most egregious offences, namely murder, treason, aggravated robbery, and kidnapping with intent to murder; and (c) its imposition remain subject to judicial discretion, thereby empowering courts to determine whether the ultimate penalty or life imprisonment is appropriate in a given case. Significantly, the Commission also proposed that the continued retention of capital punishment be subjected to periodic national review and public debate to ascertain whether societal attitudes had shifted toward abolition.

and eradicate extra-judicial killings by the state, while simultaneously preserving the death penalty as a constitutionally sanctioned, judicially administered, and democratically endorsed measure.[41]

This amounted to a proper and disciplined application of constitutional history. The Court did not treat historical practice itself as inherently legitimate; rather, it examined the historical conditions that gave rise to the Constitution and used those conditions to interpret the meaning and purpose of Article 22(1). Importantly, the Court distinguished between unlawful state violence and constitutionally regulated punishment imposed through judicial process. Uganda's history of arbitrary killings was therefore used not to justify violence by the state, but to explain why the framers sought to constitutionally prohibit extra-judicial deprivation of life while still preserving a narrowly regulated death penalty administered under the rule of law. The Court's reasoning also demonstrated fidelity to the constitution-making process itself. By tracing the extensive consultations undertaken by the Odoki Commission and the Constituent Assembly debates, the judges showed that retention of the death penalty was neither accidental nor inherited uncritically from previous legal regimes. Instead, it was a conscious constitutional choice made after public deliberation and consideration of competing moral, legal, and international perspectives. In this sense, the Court used history to illuminate democratic constitutional intention rather than to shield existing political practices from scrutiny. The decision therefore illustrates a careful and principled use of history in constitutional adjudication. History was not employed as a rhetorical device or as a justification for inherited state practices, but as an interpretive framework for understanding the constitutional settlement reached after Uganda's experience of systemic human rights abuses. Through this approach, the Court gave substantive meaning to the Constitution by connecting its text to the historical injustices it was intended to remedy while remaining faithful to the deliberate choices made during the constitution-making process.

3.4.3 *Mifumi (U) Ltd & 12 Others v. Attorney General* [42]

In this case,MIFUMI (U) Ltd, a Non-Governmental Organization and a women's rights agency operating in eastern Uganda, and 12 people petitioned the Constitutional Court under Articles 2(1) (2), 137(3) and 93(a) and (d) of the Constitution of Uganda and rule 3 of the Constitutional Court

[41] *Susan Kigula* (n 37 above) 33-34,63- 65.

[42] *Mifumi (U) Ltd & 12 Others v. Attorney General* Constitutional Appeal No.02 of 2014 [2015] UGSC 13 ; Appeal from the judgment of the Constitutional Court sitting at Kampala delivered on 20th March 2010. (Mukasa- Kikonyogo, D.CJ, Mpagi-Bahigeine, Twinomujuni, Byamugisha and Kavuma, JJA) in Constitutional Petition No. 12 of 2007..

(Petitions and references) Rules (S.1. 91/2005) challenging the constitutionality of the custom of paying bride price as a precondition to contracting a valid customary marriage. They also challenged the constitutionality of demanding refund of bride price as an essential pre-requisite for the valid dissolution of a customary marriage. [43]In resolving the issues,the court referred to the British colonial administration in Africa where customary marriage was not fully recognised as marriage due to their objection to polygamy and ' bride price'. The court further refers to Chief Justice Sir Robert Hamilton in *Rex v. Amkeyo*[44], who described customary marriages as 'wife purchase',a position that was maintained for many years during colonial rule [45] Court however clarifies that this was a mischaracterization of customary marriage by colonialists due to their their objection to polygamy and bride price.[46] On that basis, the Court held that bride price itself was consistent with the Constitution . However, it found the refund requirement unconstitutional. [47]

This decision reflects a largely correct use of history because the Court carefully distinguished between authentic customary practice and colonial misrepresentation. By exposing the colonial origin of the 'wife purchase' narrative, the Court avoided relying on historically biased interpretations that had distorted indigenous legal norms. This ensured that constitutional adjudication was not based on inherited colonial assumptions, but on a more accurate understanding of Ugandan customary law within its proper historical context.At the same time, the Court did not treat history as determinative of constitutional validity. While it acknowledged the historical existence of bride price, it subjected its modern legal consequences, particularly the refund requirement, to constitutional scrutiny. This shows a proper hierarchical approach where history informs understanding of a practice but does not override constitutional standards of dignity, equality, and fairness.

Importantly, the Court also used history dynamically, recognising that even long-standing customary practices must evolve when their effects conflict with constitutional values. The analysis of the social and economic consequences of refunding bride price demonstrated that the Constitution operates as a corrective framework that may reform or invalidate aspects of tradition where they produce harm or inequality for example the refund of bride price is unfair to the parents. and relatives of the

[43] *Mifumi* (n 42 above) 2.
[44] *Rex v. Amkeyo* E.A.L.R. (1917) 7.
[45] *Mifumi* (n 42 above) 13, 6.
[46] *Mifumi* (n 42 above) 7.
[47]*Mifum*i (n 42 above) 44,54,71.

woman when they are asked to refund the bride price after years of marriage since it is not likely that they will still be keeping the property ready for refund. Therefore, the effect of requiring the refund of bride price as a precondition for dissolving a customary marriage is that a woman may remain trapped in an abusive or failed relationship where her parents are unable to meet the financial obligation. This situation creates pressure on her not to leave, since doing so could expose her family to financial strain or social conflict, and her return home may be discouraged for economic reasons. In this way, the practice indirectly limits her freedom by tying her ability to exit the marriage to her family's financial capacity rather than her own choice. Most importantly, since marriage is a voluntary union between a man and a woman, it is unjust for its dissolution to depend on the actions of third parties such as parents. Where refund of bride price cannot be made, the marriage may remain legally undissolved even when the relationship has effectively broken down, thereby undermining equality, dignity, and personal autonomy within the marital relationship. Overall, the decision illustrates a sound application of history in constitutional interpretation. History was used to clarify the origin and meaning of bride price, to reject colonial distortions of customary law, and to situate cultural practice within a constitutional framework that prioritises human dignity and equality.

3.4.3 *Major General David Tinyefuza v Attorney General* [48]

In this case, Major General David Tinyefuza challenged threats of military disciplinary action arising from testimony he had given before a Parliamentary Committee on Defence and Internal Affairs concerning the conflict in Northern Uganda. He also challenged the rejection of his resignation from the army and argued that, following his appointment as Presidential Advisor on Military Affairs, he was no longer subject to military law. [49] In resolving these issues, the Court relied extensively on Uganda's constitutional and institutional history. It invoked the Preamble to the 1995 Constitution, emphasising Uganda's history of political instability, abuse of fundamental rights, and authoritarian governance, and noting that the Constitution emerged from a deliberate effort to establish a democratic order founded on freedom, justice, and constitutionalism. The Court further examined the historical evolution of Uganda's military structure, tracing developments from the civilian-controlled Defence Council under the Armed Forces Act before 1971, through the militarised structure established after the 1971 coup, and later reforms under the National Resistance

[48] *Major General David Tinyefuza v Attorney General* Constitutional Petition No. 1 of 1996 [1997] UGCC 2.
[49] *Tinyefuza* (n 48 above)1-2.

Army Statute of 1992. It also referred to earlier judicial approaches such as *Uganda v Commissioner of Prisons, Ex parte Matovu*[50] to reinforce the principle that constitutional litigation concerning fundamental rights should not be defeated by procedural technicalities. [51]

On that basis, the Court held that the petitioner's testimony before Parliament constituted protected expression on a matter of public interest and could not lawfully attract disciplinary sanctions. It further concluded that his appointment as Presidential Advisor effectively removed him from military service, meaning that he was no longer subject to military law or military disciplinary procedures. [52]The Court's use of history in this case was particularly significant because it treated Uganda's constitutional past as a source of constitutional transformation rather than institutional continuity. The Court recognised that the 1995 Constitution was enacted specifically to dismantle patterns of governance associated with military dominance, suppression of dissent, and unchecked executive power. By grounding its reasoning in that historical context, the Court interpreted constitutional rights broadly and in a manner consistent with the democratic aspirations underlying the constitutional settlement. History therefore functioned not merely as contextual background, but as a normative framework guiding constitutional interpretation.

The Court also correctly appreciated the relationship between Uganda's political history and the importance of freedom of expression within democratic oversight structures. The petitioner's testimony concerned military operations and the ongoing conflict in Northern Uganda, matters of immense public importance. In earlier periods of Uganda's history, criticism of the military or state security institutions frequently attracted repression or punishment. The Court consciously rejected that tradition by holding that participation in parliamentary inquiry and expression on issues of governance are protected constitutional activities. In doing so, it used Uganda's past experience of authoritarianism to reinforce constitutional accountability rather than to legitimise restrictions on speech. Further, the Court's historical analysis of military institutions was not abstract or rhetorical. It directly informed the legal determination of the petitioner's status. By tracing the collapse of the civilian-led Defence Council after the 1971 coup and the resulting irregularities in military commissioning structures, the Court acknowledged that Uganda's legal and military institutions had undergone periods of constitutional disruption. This enabled the Court to avoid a rigid formalist

[50] *Uganda v Commissioner of Prisons, Ex parte Matovu [1966] 1 EA 514 (HCU).*
[51] *Tinyefuza* (n 48 above) 9.
[52] *Tinyefuza* (n 48 above) 20, 32-33.

approach that would have ignored the realities of Uganda's institutional history. Instead, the Court interpreted the law pragmatically and contextually, ensuring that historical institutional failures did not undermine substantive rights or legal status. The Court's reliance on the Preamble was also constitutionally disciplined. It did not invoke Uganda's history simply to evoke patriotism or political legitimacy; rather, it connected the historical experience of instability and abuse directly to the constitutional values of democracy, freedom, and social justice. This linkage allowed the Court to treat constitutional rights as substantive guarantees designed to prevent recurrence of past abuses. Consequently, freedom of expression was interpreted not as a narrow individual liberty, but as an essential democratic safeguard necessary for transparency, accountability, and public participation in governance.

Moreover, the Court's rejection of procedural technicalities in constitutional litigation reflected an understanding that Uganda's constitutional history required a more substantive conception of justice. By invoking principles similar to those recognised in *Ex parte Matovu*, the Court reinforced the idea that constitutional adjudication must prioritise protection of rights over rigid procedural barriers, particularly in cases involving state power and fundamental freedoms. This approach aligned with Article 126(2)(e) of the Constitution which requires substantive justice to be administered without undue regard to technicalities. It also reflected reflected the broader constitutional objective of moving away from legal formalism that had historically insulated abuses of power from judicial scrutiny. The decision therefore demonstrates a careful and principled application of constitutional history. The Court did not use history to preserve inherited military authority or justify restrictions on rights. Instead, it treated Uganda's past experiences of militarisation, instability, and repression as the very reason why constitutional protections for expression, parliamentary oversight, and civilian constitutionalism had to be interpreted robustly. Through this approach, the Court gave practical effect to the transformative ambitions of the 1995 Constitution and ensured that historical experience strengthened constitutional accountability and protection of fundamental rights.

In light of the foregoing, it is clear that the Constitutional Court ruled in favor of General Tinyefuza. However, on appeal in *Attorney General v. Tinyefuza*[53], the Supreme Court, by a majority decision, overturned that ruling. The Court held that military officers remain subject to military law even

[53] *Attorney General v Major General David Tinyefuza* Constitutional *Appeal No. 1 of 1997* [1998] UGSC 34.

when serving in civil capacities, and that Major General David Tinyefuza did not automatically cease to be a member of the armed forces upon his appointment as Presidential Advisor. Consequently, his attempt to resign without complying with the prescribed military procedures was invalid. [54]The Supreme Court further emphasized that although proceedings before Parliament and its Committees are privileged, such privilege does not preclude action being taken based on what transpires in those proceedings. While participants are protected for statements made within that context, the content of such statements, especially on matters extending beyond Parliament, may carry serious consequences. In this regard, the Court noted that the petitioner's testimony on military affairs had implications beyond the parliamentary setting, and therefore, the President was justified in being concerned and in seeking investigations into the military shortcomings and misconduct that were disclosed. [55]

A major weakness in the decision lies in the Court's treatment of parliamentary privilege. While the Court accepted that proceedings before Parliament and its committees are privileged, it simultaneously held that the content of statements made during such proceedings could still attract consequences outside Parliament. This distinction substantially weakens the practical value of parliamentary privilege. If individuals, particularly state officials or military officers, remain vulnerable to disciplinary or institutional retaliation after testifying before Parliament, the constitutional purpose of parliamentary oversight is undermined. Effective oversight depends upon candid and uninhibited testimony, especially on issues involving security failures, abuse of power, or institutional misconduct. The Court's approach risks creating a chilling effect whereby witnesses may withhold important information out of fear of reprisal. The decision also blurred the distinction between civilian and military authority**.**By holding that Tinyefuza remained fully subject to military law despite serving as Presidential Advisor in a civil capacity, the Court expanded military authority into civilian governance structures. This approach weakened the constitutional principle of civilian supremacy and accountability by allowing military jurisdiction to continue even after transition into public service roles. The decision therefore risked entrenching militarisation within civilian institutions rather than reinforcing the constitutional separation between military and civilian spheres of authority. Therefore the Supreme Court ought to have upheld the Constitutional Court's decision

[54] *Attorney General* (n 53 above) 38 (Judgement of Justice Kanyeihamba).
[55] *Attorney General* (n 53 above) 32 (Judgement of Justice Kanyeihamba).

because the lower court adopted a more constitutionally faithful and historically grounded approach to the interpretation of fundamental rights and democratic accountability.

3.4.4 *Charles Onyango Obo & anor v Attorney General* [56]

The appellants challenged the constitutionality of section 50 of the Penal Code Act, which criminalised the publication of false news, arguing that it violated the constitutional guarantee of freedom of expression and press freedom under Article 29 of the 1995 Constitution. The Supreme Court ultimately agreed that the provision was inconsistent with constitutional protections for free expression and open public debate, and therefore could not stand. In reaching this decision, the Court grounded its reasoning in Uganda's constitutional history as reflected in the Preamble to the 1995 Constitution. It emphasised that the Constitution was born out of a collective determination to overcome Uganda's history of political repression and to establish a democratic order founded on unity, peace, equality, freedom, and social justice. [57] The Court further stressed that democracy cannot function without the free flow of information and robust public discourse, and that once Uganda committed itself to democratic governance, it also assumed a constitutional obligation to protect expressive freedoms, including criticism and debate on matters of public interest .[58]

Unlike earlier approaches where history was sometimes used to justify restrictive practices, the Court in this case applied history in a constitutionally faithful and corrective manner. It recognised that Uganda's past included periods of severe suppression of speech, media control, and punishment of dissenting voices, and it used this historical experience to reinforce the need for strong constitutional protection of expression. Rather than treating history as a neutral backdrop or a justification for limiting rights, the Court treated it as evidence of why such restrictions must be viewed with suspicion in a constitutional democracy. This approach represents a correct application of constitutional history because it aligns historical experience with the transformative purpose of the 1995 Constitution. The Court did not rely on history to preserve existing statutory restrictions on speech; instead, it used Uganda's history of repression to justify striking down laws that perpetuated similar forms of control over information and public debate. In this way, history functioned as a

[56] *Charles Onyango Obo & anor v Attorney General (*Constitutional Appeal No.2 of 2002) [2004] UGSC 2.
[57] *Obo* (n 56 above)2,46 ; also see Judgement of Justice Byamugisha 55; Judgement of Justice Order,30.
[58] *Obo* (n 56 above)59 (Judgement of Justice kakoora);Judgement of Justice Odoki 50;Judgement of Justice Byamugisha 58;Judgement of Justice Kakoora 59-60.

normative guide, reinforcing the idea that the Constitution was intended to break from authoritarian past practices and entrench a culture of openness and accountability.

The Court also correctly linked historical experience to institutional development, recognising that democratic governance depends on informed citizen participation. By connecting Uganda's past struggles with censorship and restricted political participation to the need for a vibrant media environment, the Court demonstrated that constitutional rights are not abstract guarantees but responses to concrete historical injustices. Overall, the decision illustrates a proper and principled use of history in constitutional interpretation. History was not used to legitimise restrictions on rights, but to explain why such restrictions are incompatible with Uganda's constitutional identity as a democratic society committed to freedom of expression.

3.4.5 *Paulo Kawanga Ssemwogerere and ors v Attorney General* [59]

In this case, the appellants challenged the validity of the Constitution (Amendment) Act No. 13 of 2000, arguing that it was enacted without compliance with the mandatory constitutional procedures for amendment, including quorum requirements, voting thresholds, and certification by the Speaker. The Supreme Court ultimately held that the amendment was unconstitutional and therefore null and void. [60]In reaching its decision, the Court invoked Uganda's constitutional history through the Preamble to the 1995 Constitution, emphasising Uganda's past experience of political and constitutional instability, and the framers' deliberate commitment to establish a democratic order founded on sovereignty of the people, rule of law, and constitutional supremacy. [61] It highlighted that the Constitution was the product of a participatory process involving the people, the Uganda Constitutional Commission, and the Constituent Assembly, and that this history imposed a continuing duty on the judiciary to safeguard the integrity of the Constitution against unconstitutional amendments. [62]Against this backdrop, the Court held that the procedural requirements for constitutional amendment under Chapter 18 were mandatory and could not be waived by Parliament. It found that the Constitution (Amendment) Act No. 13 of 2000 had not

[59] *Paulo Kawanga Ssemwogerere and ors v Attorney General* (Constitutional Petition No.5 of 2002) [2003]UGCC 4; (Appeal from the majority Judgment of the Constitutional Court of Uganda sitting at Kampala on the 17th April, 2002 (Mukasa-Kikonyogo,DCJ, Kato, Kitumba JJA;with Mpagi- Bahigaine and Twinomujuni JJA; dissenting in Constitutional Petition No.7 of 2000).
[60]*Ssemwogerere* (n 59 above) 61.
[61]*Ssemwogerere* (n 59 above) 78.
[62]*Ssemwogerere* (n 59 above) 78.

complied with these requirements and therefore did not validly amend the Constitution. [63] Eventually, the court held that the Constitution (Amendment) Act 13 of 2000 is unconstitutional and should be struck down as null and void.[64]

This case reflects a correct and disciplined application of constitutional history because the Court used Uganda's constitutional past to reinforce the principle of constitutional supremacy and the sovereignty of the people. The historical reference was not decorative; it was directly linked to the interpretation of amendment procedures as substantive safeguards designed to prevent the abuse of constituent power. By grounding its reasoning in Uganda's experience of constitutional instability and past executive dominance, the Court correctly understood procedural requirements not as technical formalities, but as constitutional mechanisms created to prevent a return to arbitrary constitutional change. The Court further used history to clarify the institutional purpose of constitutional entrenchment. The emphasis on the participatory constitution-making process demonstrated that the legitimacy of the 1995 Constitution derives from popular sovereignty, and therefore any amendment process must maintain the same level of seriousness and procedural rigor. This ensured that constitutional change remains consistent with the historical compromise between state power and popular consent that the Constitution was designed to embody.

Importantly, the Court did not treat history as a source of discretion for Parliament, nor did it allow past legislative practice to justify non-compliance. Instead, it used history to strengthen judicial review of constitutional amendments, ensuring that political branches cannot alter the Constitution outside the strict limits imposed by the people's original constitutional decision. Overall, the decision demonstrates a proper application of constitutional history because it transforms historical experience into a constitutional safeguard: Uganda's history of instability and constitutional manipulation is used to justify strict enforcement of amendment procedures, thereby preserving the supremacy, integrity, and stability of the Constitution.

[63] *Ssemwogerere* (n 59 above) 79-80.
[64] *Ssemwogerere* (n 59 above) 82.

3.4.6 *Advocates For Natural Resources Government and Development and ors v Attorney General and anor* [65]

In this case, the petitioners challenged section 7(1) of the Land Acquisition Act on the ground that it allowed government to take possession of land before payment of compensation, contrary to Article 26(2)(b) of the 1995 Constitution which requires prompt, prior, and fair compensation before compulsory acquisition of property. [66]In resolving the issue, the Court invoked Uganda's constitutional history by situating the right to property within the country's past experiences of arbitrary and uncompensated expropriation. It referred to episodes such as large-scale state acquisitions without compensation, including the expropriation of the Kabaka and Buganda government property in the 1960s, the 1969 Nakivubo Pronouncements, and the 1972–1973 expulsion of Asians and confiscation of their property. The Court further relied on the Preamble to the 1995 Constitution, emphasising that it reflects Uganda's history of political instability, abuse of power, and struggle against tyranny, and the framers' intention to establish a constitutional order grounded in democracy, justice, and protection of fundamental rights. [67]On that basis, the Court held that section 7(1) of the Land Acquisition Act, to the extent that it permitted government possession of land before payment of compensation, was inconsistent with Article 26(2)(b) of the Constitution. [68] However, rather than striking down the provision entirely, the Court applied a harmonising interpretation under Article 274 of the Constitution, reading into the statute the requirement of prior payment of compensation to bring it into conformity with the Constitution. [69]

This case reflects a correct and disciplined application of constitutional history because the Court used Uganda's historical experience of arbitrary deprivation of property to give concrete meaning to the purpose of Article 26(2). The historical episodes cited were not used as mere background narrative, but as evidence of the specific constitutional mischief the framers sought to eliminate, namely, unchecked executive power in acquiring private property without adequate safeguards. This ensured that the interpretation of the right to property was anchored in the lived realities that necessitated constitutional reform. Importantly, the Court did not treat past state practice as a justification for maintaining the impugned provision. Instead, it used history to reinforce a strict

[65] *Advocates For Natural Resources Government and Development and ors v Attorney General and anor* Constitutional petition no. 40 of 2013 [2013] UGCC 17.
[66] *Advocates For Natural Resources Government and Development* (n 65 above) 4.
[67] *Advocates For Natural Resources Government and Development* (n 65 above) 7-9.
[68] *Advocates For Natural Resources Government and Development* (n 65 above) 10.
[69] *Advocates For Natural Resources Government and Development* (n 65 above) 66.

constitutional standard requiring prior compensation, thereby preventing a recurrence of the abuses that characterised earlier regimes. This demonstrates a proper use of history as a protective interpretive tool that strengthens, rather than weakens, constitutional rights.

The Court's reliance on the Preamble further confirms the appropriateness of its approach. By linking property rights to Uganda's broader historical struggle against tyranny and instability, the Court correctly interpreted Article 26 as part of the Constitution's transformative agenda aimed at restructuring state–citizen relations and limiting arbitrary state interference with private property. Correspondingly, the Court's decision to preserve the statute through a conforming interpretation under Article 274, rather than nullifying it entirely, also reflects a constitutionally responsible use of history. It ensured continuity of legislation while eliminating its unconstitutional effects, thereby balancing respect for legislative intent with the Constitution's historical commitment to preventing abuse of compulsory acquisition powers.

3.5 Neglect of history

3.5.1 *COL (RTD) Besigye Kizza v Yoweri Kaguta Museveni and anor (2001)* [70]

In this case the petitioner challenged the validity of the 2001 presidential election on grounds of widespread electoral irregularities, intimidation, voter bribery, manipulation of the voters' register, deployment of partisan military personnel, and other violations of the Presidential Elections Act and the Electoral Commission Act. [71]The Supreme Court acknowledged that the election had been marred by serious irregularities, including voter intimidation, vote buying, dishonest conduct at polling stations, circulation of false statements, and failures by the Electoral Commission to properly manage the electoral process. Nevertheless, by a narrow majority, the Court held that the irregularities had not substantially affected the final outcome of the election and therefore declined to annul the results[72].

Unlike other constitutional decisions where courts expressly relied on Uganda's constitutional history as an interpretive guide, the Supreme Court in this case largely failed to meaningfully engage with the historical context that gave rise to the constitutional commitment to free and fair elections.

[70]*COL (RTD) Besigye Kizza v Yoweri Kaguta Museveni and anor* Election Petition No.1 of 2001 [2001] UGSC 15 (6 July 2001).
[71] *COL (RTD) Besigye* (n 70 above) para 3.
[72] *COL (RTD) Besigye* (n 70 above) para 156.

Although the Court recognised the importance of the petition to democracy, constitutionalism, and the rule of law, it treated the electoral violations primarily as isolated statutory irregularities rather than manifestations of Uganda's long history of electoral manipulation, abuse of state power, and political repression. This omission was particularly significant given that the Preamble to the 1995 Constitution expressly recalls Uganda's history of political instability, oppression, and struggles against authoritarian rule, historical experiences that directly informed the constitutional insistence on democratic governance and genuine electoral accountability. Had the Court properly engaged with this constitutional history, it would likely have approached the established irregularities differently. The widespread intimidation of voters, involvement of security forces in the electoral process, manipulation of electoral structures, and interference with opposition participation were not merely technical breaches of electoral law; they reflected patterns historically associated with Uganda's troubled electoral past. The 1995 Constitution sought to break decisively from that history by entrenching principles of political participation, free choice, and electoral integrity. In this sense, the constitutional significance of the violations lay in what they represented within Uganda's broader democratic transition.

The Court also missed an opportunity to reinforce the transformative purpose of the 1995 Constitution. The Constitution was not merely designed to regulate elections procedurally; it was intended to establish a new democratic order in response to Uganda's history of unconstitutional governance and political violence. A historically informed interpretation would therefore have treated electoral integrity as a substantive constitutional value central to preventing recurrence of the very abuses the Constitution was enacted to eliminate. Instead, the Court's reasoning risked normalizing serious electoral misconduct by suggesting that even widespread violations may be tolerated so long as they cannot be conclusively shown to have altered the numerical outcome of an election. Ultimately, the decision illustrates not the misapplication of history, but rather the failure to apply history where it was constitutionally necessary. The Court should have interpreted the electoral violations against the backdrop of Uganda's historical struggles with authoritarianism, electoral abuse, and state coercion. Doing so would have enabled a more purposive and constitutionally faithful understanding of electoral integrity and the requirement of substantial effect. By failing to engage with this historical context, the Court applied electoral law in a manner insufficiently responsive to the constitutional lessons embodied in the 1995 Constitution and the democratic transformation it sought to achieve.

3.5.2 *COL (RTD) Besigye Kizza v Yoweri Kaguta Museveni and anor (2006)*[73]

In this case, the petitioner challenged the validity of the 2006 presidential election on grounds of widespread intimidation, bribery, violence, multiple voting, ballot stuffing, voter disenfranchisement, and other electoral malpractices allegedly committed by both the Electoral Commission and agents of the incumbent President. [74]

In its findings, the Court unanimously acknowledged that the election had not been conducted in full compliance with the Constitution, the PEA, and the Electoral Commission Act (ECA)[75] . It observed that the Electoral Commission had wrongfully excluded some voters by deleting their names from the voters' register, thereby denying them the opportunity to vote [76]. The Court further recognized that the standard of free and fair elections had been undermined in several regions due to bribery, intimidation, and violence. It also held that key electoral principles such as equality of the vote, transparency, and secrecy, were violated through practices like multiple voting, ballot stuffing, and flawed vote-counting procedures[77] Despite these serious findings, the majority of the Court (5 :2) concluded that there was no satisfactory proof that the 2nd Respondent personally, or through his agents acting with his knowledge or approval, committed any electoral offence[78] . Consequently, the Court declined to invalidate the election on the basis of section 59(6)(c) of the PEA[79]. In addition, the Court held that although there had been breaches of electoral laws, those irregularities did not substantially affect the final outcome of the election[80] .

Although the Court briefly referred to Uganda's turbulent history through the Preamble to the 1995 Constitution, it failed to meaningfully apply that history as a substantive constitutional guide in resolving the petition. This failure was particularly evident in the Court's treatment of campaign messages invoking the possibility of a return to war should the opposition succeed. The Court concluded that references to Uganda's past conflicts could not amount to intimidation or threats of violence. Such reasoning underestimated the psychological and political force of historical memory in a country whose population had experienced prolonged armed conflict, state violence, and

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[73] *COL (RTD) Besigye Kizza v Yoweri Kaguta Museveni and anor* Constitutional Petition No.1 of 2006 [2006] UGSC 1.
[74] *COL (RTD) Besigye* (n 73 above) para 7-11.
[75] *COL (RTD) Besigye* (n 73 above) para 98.
[76] *COL (RTD) Besigye* (n 73 above) para 61.
[77] *COL(RTD) Besigye* (n 73 above) para 122.
[78] *COL (RTD) Besigye* (n 73 above) para 128.
[79] *COL (RTD) Besigye* (n 73 above) para 129.
[80] *COL (RTD) Besigye* (n 73 above) para144.

political instability. In the Ugandan context, reminders of war are not politically neutral historical references; they carry profound coercive implications capable of influencing electoral behaviour through fear and insecurity. By dismissing these warnings as harmless political rhetoric, the Court adopted an unduly narrow and formalistic understanding of intimidation detached from Uganda's lived constitutional experience.

More broadly, the Court failed to appreciate that the irregularities it identified were not isolated procedural defects but reflected patterns deeply connected to Uganda's historical struggles with authoritarian governance and electoral manipulation. The 1995 Constitution emerged specifically in response to Uganda's history of political instability, abuse of state power, militarisation of politics, and flawed electoral processes. Free and fair elections were therefore entrenched not merely as procedural requirements but as transformative constitutional safeguards intended to prevent recurrence of those historical abuses. A historically grounded interpretation would have required the Court to assess the constitutional significance of the irregularities rather than confining itself to narrow approach about whether the final vote tally was altered.

The legitimacy of a democratic government is established largely through credible elections conducted in an environment where citizens can participate freely and without fear, political parties and candidates can campaign openly, the media can operate independently, and democratic institutions function impartially. [81]. The circumstances surrounding the 2006 election raised serious concerns precisely because the broader political environment appeared increasingly shaped by state power and incumbency advantage. In practice, constitutional guarantees risk becoming hollow where electoral processes are manipulated to secure political continuity rather than genuine democratic competition. Authoritarian regimes frequently maintain regular elections not as instruments of democratic choice, but as mechanisms for legitimising predetermined political outcomes while preserving the appearance of constitutional governance. In Uganda's context, allegations of patronage, unequal access to state resources, intimidation of opponents, use of security structures, and politically motivated distribution of state benefits reflected broader structural conditions capable of distorting electoral competition long before voting day itself.[82]

[81] F Sekindi 'Presidential Election Disputes In Uganda; A Critical Analysis of the Supreme Court Decisions' (2017)154 *Journal of African Elections* 174.

[82] R Ojambo 'The 1995 Constitution as a Tool for Dictatorship in Uganda: An African Dilemma of Constitutionalism' in *Democracy and Africa: Contemporary Issues in Africa's Democratization and Governance* (2022) *Advances in African Economic, Social and Political Development* 9-10.

Such practices undermine the principle that sovereignty belongs to the people [83]by creating electoral conditions where political outcomes may be heavily shaped by state influence rather than the independent will of the electorate.

The dissenting judgment of George Wilson Kanyeihamba more faithfully reflected the constitutional implications of the violations established before the Court. His reasoning recognised that where irregularities, intimidation, and illegalities are widespread enough to undermine public confidence in the electoral process, annulment may become constitutionally necessary. In his opinion, the only logical outcome was to annul the election. He criticized the majority for inconsistency, arguing that having already found that electoral laws were violated, it was contradictory to uphold the results. He further contended that such a decision was based on speculation rather than firm legal reasoning [84]. Additionally, he faulted the Electoral Commission for failing to produce crucial evidence that could have clarified the disputed issues, arguing that this omission unfairly disadvantaged the Petitioner and undermined the Court's ability to arrive at a just conclusion[85] This approach better aligns with the transformative purpose of the 1995 Constitution, which sought to establish democratic legitimacy after decades of manipulated political processes and abuse of power.

Ultimately, the case illustrates a failure to meaningfully apply history where it was most needed. The Court acknowledged Uganda's democratic aspirations and constitutional commitment to free and fair elections, yet it failed to interpret the established irregularities through the lens of Uganda's historical experience with political coercion, electoral abuse, and concentration of power. A more historically conscious approach would have recognised that the Constitution was designed precisely to prevent the normalisation of such practices and to ensure that electoral legitimacy is measured by the overall integrity, fairness, and credibility of the democratic process.

3.5.3 *Kyagulanyi T/a Bobi Wine Vs Kampala Metropolitan Police Commander & Anor* [86]

The applicant challenged the repeated cancellation of his music shows by police authorities between September and October 2017, arguing that these actions violated his constitutional rights, particularly freedom of expression, assembly, and the right to work under Articles 29 and 40 of the

[83] Article 1 of the 1995 Constitution.
[84] *COL (RTD) Besigye* (n 73 above) para 19 (Justice Kanyeihamba).
[85] *COL (RTD) Besigye* (n 73 above) para 20 (Justice Kanyeihamba).
[86] *Kyagulanyi T/a Bobi Wine Vs Kampala Metropolitan Police Commander & Anor* Misc Cause No. 313 OF 2017 [2019] UGHCCD 113.

1995 Constitution. [87]The respondents justified the cancellations on grounds of public order and security, claiming that the applicant's previous performances had incited violence. The court ultimately held that the applicant had failed to discharge the legal and evidential burden necessary to prove that his constitutional rights had been violated and consequently dismissed the application. [88]

Although the court's emphasis on evidential proof reflected procedural principles, its approach was excessively rigid given the constitutional and human rights nature of the dispute. Constitutional litigation, especially where state action is challenged, cannot always be approached through the same strict evidentiary framework applicable in ordinary civil disputes. In many cases involving alleged suppression of rights, the State possesses overwhelming institutional power and control over relevant information, while the affected individual may struggle to produce direct evidence of unconstitutional motive or selective enforcement. By insisting on a narrow evidential threshold, the court risked undermining the protective purpose of constitutional adjudication itself. More significantly, the court failed to situate the dispute within Uganda's broader historical and political context, despite the fact that constitutional interpretation under the 1995 Constitution is deeply informed by the country's history of political repression and state control over dissenting voices. Uganda's constitutional order emerged from a history characterised by suppression of political opposition, restrictions on public assembly, and state interference with freedom of expression. In that context, the repeated cancellation of performances by a politically outspoken artist and public figure should not have been viewed as an isolated administrative matter, but as conduct capable of producing a chilling effect on constitutional freedoms.

A historically sensitive approach would have required the court to interrogate more carefully whether the stated public order justifications masked disproportionate interference with political expression and assembly. This was particularly important because artistic performances, political messaging, and public mobilisation are often intertwined in democratic societies, especially where formal political spaces may already be constrained. The court ought therefore to have appreciated that repeated state interference with the applicant's performances could discourage not only his own expression, but also broader public participation and political engagement. The decision is also open to criticism for adopting an overly formalistic conception of freedom of expression. The court focused primarily on whether the applicant had proved direct denial of expression, yet constitutional

[87] *Kyagulanyi* (n 86 above)1-2.
[88] *Kyagulanyi* (n 86 above)13.

freedoms are not violated only where speech is completely prohibited. Persistent restrictions, cancellations, and regulatory interference may cumulatively discourage expression and participation even where no outright ban exists. By failing to consider the cumulative impact of the police actions, the court adopted a narrow understanding of constitutional harm inconsistent with the transformative aspirations of the 1995 Constitution. Furthermore, the court did not sufficiently scrutinise the broad reliance on public order and security as justification for restricting constitutional freedoms. Uganda's political history demonstrates that vague appeals to public order have frequently been used to suppress opposition activity and dissent. Precisely because of this historical reality, courts exercising constitutional jurisdiction should approach such justifications with heightened vigilance rather than deference. A more purposive constitutional approach would have balanced legitimate security concerns against the need to preserve democratic freedoms in a society historically marked by political control and suppression.

Accordingly, while the court was correct that constitutional claims require evidential support, it failed to appreciate that constitutional adjudication demands a contextual, purposive, and historically conscious analysis. There is a strong argument that in human rights cases, courts should adopt a more flexible standard of proof[89], one that balances evidential requirements with the need to provide effective remedies for potential rights violations. Constitutional rights are intended to provide practical and meaningful protection rather than remain theoretical guarantees defeated by procedural rigidity. Had the court adopted such a flexible and rights-oriented approach, sensitive to Uganda's constitutional history and the realities of state power, it might have engaged more critically with the broader implications of the repeated cancellations and ultimately arrived at a more nuanced and protective interpretation of the applicant's freedoms under the Constitution.

3.5.4 *Centre for Health, Human Rights Development (CEHURD)& Others v Attorney General* [90]

In this case, the petitioners challenged the State's failure to provide essential maternal health services and commodities in public health facilities, arguing that this violated several constitutional rights, including the right to life[91], freedom from cruel and degrading treatment[92], women's rights[93], under

[89] B Kabumba 'The Judiciary and Human Rights in Uganda: History, Challenges, and Prospects (2025) *Chapter Four Uganda Public Interest Paper No. 2,* 35.

[90] *Centre for Health, Human Rights Development (CEHURD) & Others v Attorney General* Constitutional Petition no.6 of 2011 [2020] UGCC 12 (19 August 2020).

[91] Art 22(1) of the 1995 Constitution of Uganda.

the 1995 Constitution. The Constitutional Court, however, declined to determine the substantive issues after the Attorney General raised a preliminary objection based on the political question doctrine. The Court held that matters concerning allocation of resources, health policy, and implementation of government programmes fell within the exclusive domain of the Executive and Legislature and were therefore non-adjudicable by the judiciary. [94]

While the Constitutional Court framed the matter as one involving institutional separation of powers, its approach reflected an unduly restrictive understanding of constitutional adjudication. By treating the petition primarily as a political dispute concerning policy allocation, the Court failed to appreciate that the petitioners were not merely challenging government policy preferences, but alleging constitutional violations arising from state inaction. The effect of the ruling was to insulate significant aspects of socio-economic governance from constitutional scrutiny, thereby limiting access to justice for individuals seeking enforcement of fundamental rights. More importantly, the Court failed to interpret the dispute within Uganda's broader constitutional and historical context. Uganda's constitutional order emerged against a background of systemic inequality, marginalisation, and prolonged neglect of vulnerable groups, particularly women. The Preamble to the 1995 Constitution expressly commits the country to building a social and political order founded on equality, social justice, and human dignity, while the Constitution itself recognises the need to redress historical imbalances through affirmative protection of disadvantaged groups. Maternal health cannot therefore be viewed merely as a technical policy issue detached from constitutional history; rather, it is deeply connected to longstanding patterns of gender inequality and exclusion in access to public services.

A historically conscious and purposive approach would have required the Court to recognise that the persistent failure to provide adequate maternal healthcare reflected broader structural inequalities affecting women in Uganda. Instead of avoiding the matter under the political question doctrine, the Court ought to have examined whether the State had fulfilled its constitutional obligations to protect women's rights and promote substantive equality. Such an inquiry would not necessarily have required the judiciary to formulate health policy or allocate resources directly, but rather to

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[92] Art 24 & 44 of the 1995 Constitution of Uganda.
[93] Art 33(2) & (3) of the 1995 Constitution of Uganda.
[94] *CEHURD* (n 90 above) 12, 25.

determine whether existing government action or inaction complied with minimum constitutional standards.

The Court's rigid reliance on the political question doctrine also risked weakening the transformative character of the Constitution. The 1995 Constitution was intended not merely to organise governmental power, but to transform society by addressing historical injustices[95] and protecting human dignity. Where courts decline jurisdiction too readily in cases involving socio-economic rights, constitutional guarantees risk becoming aspirational rather than enforceable. By refusing to interrogate whether systemic deficiencies in maternal healthcare violated constitutional rights, the Constitutional Court adopted a narrow and formalistic conception of judicial restraint inconsistent with the broader transformative goals of the Constitution. Accordingly, there is a strong argument that the Constitutional Court should have adopted a more contextual and historically informed interpretation of its constitutional mandate. Courts exercising constitutional jurisdiction must remain sensitive to the realities of historical disadvantage and structural inequality, particularly in cases involving vulnerable groups such as women facing barriers to healthcare. A more purposive approach would have recognised that review of alleged constitutional violations does not amount to improper interference with policy-making, but rather constitutes an essential mechanism for ensuring governmental accountability under the Constitution.

However, on appeal in *Centre for Health, Human Rights Development (CEHURD) & 3 Others v Attorney General* [96] ,the Supreme Court adopted a more progressive and constitutionally faithful approach. The Supreme Court emphasised that the Constitutional Court was specifically established under Article 137 to determine whether acts or omissions of state organs are inconsistent with the Constitution, even where such disputes arise within politically sensitive contexts. Justice Esther Kisaakye clarified that the political question doctrine has only limited application within Uganda's constitutional framework and cannot be used to shield the Executive or Parliament from judicial scrutiny where constitutional violations are alleged. [97]

The Supreme Court's reasoning represents a more principled understanding of constitutionalism and judicial responsibility. Rather than viewing constitutional review as incompatible with governance and policy matters, the Court recognised that constitutional accountability necessarily requires

[95] Preamble (n 1 above); art 32 and art 33(5) of the 1995 Constitution of Uganda.
[96] *Centre for Health, Human Rights Development* **(***CEHURD)& 3 Others v Attorney General* [2025] UGSC 69.
[97] *CEHURD* (n 96 above)25-26 *(* Judgment of Justice Kisaakye).

judicial oversight where rights violations are alleged. Thus, it affirmed that where actions or omissions of the Executive or Parliament are alleged to violate the Constitution, the judiciary has both the authority and the obligation to examine such claims.This approach aligns more closely with Uganda's constitutional history and the transformative aspirations of the 1995 Constitution, which sought to ensure that state power would no longer operate beyond constitutional control. . By narrowing the scope of the doctrine, the Supreme Court reinforced the idea that constitutional accountability cannot be avoided simply because a matter touches on policy or governance, thereby strengthening the role of courts in protecting rights and upholding the Constitution.[98]

3.6 Conclusion

Uganda's constitutional jurisprudence since 1995 ultimately reflects a judiciary still negotiating the place of historical memory in constitutional interpretation, with outcomes that range from distortion, to depth, to silence. The cases examined in this chapter show that misapplications of history often stem from selective or instrumental readings of the past, which risk entrenching problematic legacies and diluting the Constitution's transformative promise. By contrast, where courts have engaged history thoughtfully and critically, they have demonstrated an interpretive approach that is both context-sensitive and normatively grounded, using Uganda's political and social trajectory, including its history of political and constitutional instability and struggles against tyranny, oppression, and exploitation, as recalled in the Preamble, to illuminate constitutional purpose and strengthen the protection of rights. At the same time, the absence of historical context in certain decisions reveals a persistent formalism that treats the Constitution as detached from the struggles and aspirations that produced it.

As this chapter has shown, these divergent approaches are not merely academic distinctions but have tangible implications for the development of constitutional doctrine and the lived reality of constitutionalism in Uganda. The task ahead for the judiciary is therefore not simply to invoke history, but to engage it rigorously, acknowledging its complexities while resisting its misuse. In doing so, courts can better align constitutional interpretation with the transformative vision of the 1995 Constitution, rooted in the Preamble's commitment to unity, peace, equality, democracy, freedom, social justice, and progress, ensuring that historical memory serves as a source of insight rather than constraint, and as a bridge between Uganda's past and its constitutional future.

[98] J Oloka-Onyango, 'Political Question Doctrine in Uganda: An Analysis of the Technicalities on the Realization of the Freedoms of Expression, Association and Assembly in Uganda' (2017) *Chapter Four Uganda* 41.

CHAPTER FOUR

COMPARATIVE ANALYSIS ACROSS JURISDICTIONS

4.1 Introduction

4.2 Selected Jurisdictions

4.2 .1 Kenya

4.2.2 South Africa

4.2.3 Ghana

4.2.4 United States of America

4.3 Analysis of Emerging Issues

4.4 Conclusion

'We are formed by the events of the past and how we remember them in the present…'

- David Robertson

4.1 Introduction

This chapter undertakes a comparative analysis of how selected jurisdictions have engaged with their historical experiences in the development of constitutional jurisprudence. It is premised on the understanding that constitutional interpretation is not a purely textual or abstract exercise, but one that is often shaped by a nation's historical realities, including its political evolution, social struggles, and legal development. In this regard, history serves as an important interpretive tool that may influence how courts understand constitutional values, give content to rights, and resolve complex constitutional disputes. The chapter examines the extent to which each jurisdiction draws upon its political, social, and legal history in adjudicating constitutional questions. It further reflects on how courts use history either to reinforce constitutional principles or, in some instances, to limit or constrain their interpretive approach. Through this comparative lens, the chapter highlights both convergence and divergence in judicial approaches to history, illustrating how a country's historical experiences shape, and in some instances limit, constitutional adjudication. The selected jurisdictions

include Kenya, South Africa, Ghana, and the United States of America. The chapter also examines the emerging issues arising from the cases considered.

4.2 Selected jurisdictions

The comparative dimension of this study examines constitutional jurisprudence from Kenya, South Africa, Ghana, and the United States of America, with particular emphasis on the extent to which courts in these jurisdictions have embedded history in constitutional interpretation and adjudication of cases and the determination of constitutional questions arising before them, as well as the interpretation and application of constitutional provisions in judicial decision-making.

4.2.1 Kenya

Kenya achieved self-rule on 1 June 1963 and full independence in December of that year, becoming a republic the following year. The elections that inaugurated the new era were won by the Kenya African National Union (KANU), led by Jomo Kenyatta, defeating its rival, the Kenya African Democratic Union (KADU). The contest between the two parties was not merely partisan; it embodied a fundamental disagreement about the constitutional character of the new state. KANU envisaged a centralised government as the engine of national development, while KADU championed majimboism, a devolved federal arrangement under which the colonial-era provinces would become semi-autonomous regions with control over land and resources. [1] The constitutional structure that Kenya inherited at independence was accordingly the product of bitter compromise. As Ndegwa observed, the independence leaders had no choice but to appear united in the push for self-rule, temporarily burying differences that were real and deep in order to eject an oppressive minority, what he termed a transient unity. [2] KANU agreed, in Odinga's words, to accept a constitution it did not want, on the understanding that once in government it could change it. [3] At the centre of this founding moment was an uneasy coalition of leaders with divergent visions like Tom Mboya who recognised that the challenge of nationhood was inseparable from the challenge of development. [4] Kenyatta, having spent much of the previous decade in detention on false charges of

[1] D Branch 'Kenya Between Hope and Despair, 1963–2011' (2011) *Yale University Press* 1–2.
[2] D Ndegwa 'Walking in Kenyatta Struggles: My Story'(2006*) Kenya Leadership Institute* 250.
[3] O Odinga 'Not Yet Uhuru: The Autobiography of Oginga Odinga' (1967) *Heinemann* 229.
[4] D Goldsworthy 'Tom Mboya: The Man Kenya Wanted to Forget' (1982) *Heinemann* 4.

orchestrating the Mau Mau rebellion, emerged as the undisputed figurehead of Kenya's African population. [5]

Having won the constitutional argument, KANU moved to establish political dominance. The merger of KADU into KANU in 1964 left Kenya a de facto one-party state. Opposition persisted through the Kenya People's Union (KPU), after a split from KANU driven by growing discomfort with Kenyatta's pro-Western, market-oriented policies. Mboya recognised that redistribution would eventually be necessary; Odinga urged the immediate transfer of European-owned land to the landless; Kenyatta regarded development as a matter of individual endeavour. [6] These tensions came to a head with the assassination of Tom Mboya in July 1969, an event that shook Kenya to its foundations. [7]

The early 1970s were marked by the assassination of J. M. Kariuki, a populist Member of Parliament and outspoken critic of inequality under Jomo Kenyatta, whose government suppressed a parliamentary inquiry that implicated senior officials; following Kenyatta's death in 1978, Daniel arap Moi assumed power and initially promoted unity under the Nyayo philosophy, but soon consolidated authoritarian rule, declaring Kenya a one-party state in 1982 after a failed coup attempt, which led to widespread repression including mass arrests, torture at Nyayo House, and atrocities such as the Wagalla Massacre. By the early 1990s, growing internal and external pressure forced Moi to reintroduce multiparty politics, though the 1992 and 1997 elections were marred by violence and manipulation that enabled him to retain power until 2002, when a united opposition led by Mwai Kibaki defeated his preferred successor Uhuru Kenyatta; however, the disputed 2007 election between Kibaki and Raila Odinga triggered widespread ethnic violence[8], leading to a power-sharing agreement brokered by Kofi Annan and paving the way for the 2010 Constitution. From its preamble, Kenya's 2010 Constitution represents a definitive break from the past and a bridge to a

[5] C Gertzel, M Goldschmidt &D Rothchild (eds) 'Government and Politics in Kenya: A nation-building text' (1969) *East African Publishing House* 83-84.

[6] T Mboya 'The Challenge of Nationhood: A collection of speeches and writings' (1993) *Heinemann* 266–278.

[7]Kenyatta's response was to consolidate Kikuyu political solidarity through large-scale oathing ceremonies, pledging participants to keep the presidency under Kikuyu leadership. The ensuing Kisumu massacre, in which security forces opened fire on opposition demonstrators during Kenyatta's official visit, entrenched the ethnic dimensions of Kenyan politics and prompted the banning of the KPU and the detention of Odinga and other opposition leaders. Kenya was openly functioning as a single-party state.

[8]Branch (n 1 above) 278–280.

new era of freedom, justice, and democratic governance.[9] The Constitution honours those who heroically struggled to bring freedom and justice to their land, acknowledging their sacrifices while simultaneously recognising the aspirations of all Kenyans for a government anchored in the essential values of human rights, equality, freedom, democracy, social justice, and the rule of law. [10]

Kenya's constitutional jurisprudence reflects, to a limited extent, the incorporation of historical context in judicial reasoning, particularly in matters of elections, governance, and the protection of fundamental rights. Courts have on some occasions, acknowledged the country's turbulent political past, including periods marked by authoritarian rule, electoral violence, and systemic human rights violations, and has used this background to inform its interpretation of the Constitution. However, this reliance on history has not been consistently or fully developed across all decisions. In a number of cases, the courts have demonstrated a cautious or restrained approach to the use of historical context, even in situations where a deeper engagement with Kenya's constitutional and political history could have enriched the reasoning and potentially led to more robust and context-sensitive outcomes. This inconsistency reveals a broader tension within Kenyan constitutional adjudication between the transformative aspirations of the 2010 Constitution, which is firmly rooted in the country's historical experiences, and the judiciary's occasional reluctance to fully utilise history as a guiding interpretive tool. This is evident in several decisions of the Kenyan courts.

4.2.1.1 *Raila Odinga & 5 Others v Independent Electoral and Boundaries commission & 3 others (2013)*[11]

In this case, the petitioners challenged the validity of the presidential election held on 4 March 2013, alleging serious irregularities in vote tallying, transmission failures, and the inclusion of rejected votes, all of which they argued distorted the final outcome and undermined the integrity of the electoral process. [12]The Supreme Court, however, upheld the election, finding that although irregularities existed, they were not substantial enough to affect the result, and therefore the declaration of Uhuru Kenyatta as President-elect remained valid. [13]

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[9] JM Nyawa 'The 2010 Constitution as Both a Monument and a Memorial; The Role of the Media as a Public Watchdog' (9 September 2017) https://ssrn.com/abstract=3081455 or http://dx.doi.org/10.2139/ssrn.3081455 (accessed 8 My 2026)

[10] Preamble to the Constitution of Kenya (2010).

[11] *Raila Odinga & 5 Others v Independent Electoral and Boundaries commission & 3 others* Petition 5 of 2013 [2013] KESC 6 (KLR).

[12] *Odinga* (n 11 above) 3.

[13] *Odinga* (n 11 above) 6.

In its reasoning, the Court acknowledged that the 2013 election was the first under the Constitution of Kenya (2010) and that it marked an important milestone in the country's democratic evolution[14]. It also recognized its constitutional duty under section 3 of the Supreme Court Act to uphold constitutional supremacy and develop progressive jurisprudence. However, while the Court referred in general terms to the significance of the Constitution, it did not meaningfully anchor its analysis in Kenya's deeper historical experience, particularly the legacy of the 2007–2008 post-election violence, which had exposed the catastrophic consequences of disputed electoral outcomes and weak electoral integrity. A historically grounded approach would have required the Court to interpret the standard of 'substantial effect' in light of this background of electoral fragility and political violence. Kenya's constitutional transformation was driven precisely by the need to prevent a recurrence of contested elections degenerating into national crisis. Against this backdrop, even irregularities that might appear "non-substantial" in a purely technical sense could reasonably be understood as constitutionally significant where they undermine public confidence in the electoral process. By failing to fully integrate this historical context into its reasoning, the Court adopted a narrowly quantitative assessment of irregularities rather than a transformative, legitimacy-focused evaluation.

Further, although the Court cited the constitutional commitment to democracy and lawful governance, it did not sufficiently engage with the Preamble of the Constitution of Kenya (2010), which expressly reflects the people's struggle for justice, freedom, and accountable government after decades of electoral manipulation and authoritarian rule. A deeper engagement with this historical commitment would have required the Court to treat electoral integrity not merely as procedural compliance, but as a substantive constitutional value tied to Kenya's hard-won democratic order. Instead, the Court's reasoning largely focused on whether legal thresholds had been technically met, without fully appreciating that those thresholds themselves were designed in response to a violent electoral past. Ultimately, while the Court succeeded in affirming institutional continuity and electoral finality, it missed an opportunity to develop a more historically sensitive jurisprudence that treats elections not only as administrative processes but as fragile constitutional moments shaped by Kenya's history of electoral conflict. A more historically conscious interpretation would have strengthened the Court's constitutional mandate under section 3(c) of the Supreme Court Act (2011) to develop jurisprudence that respects Kenya's history and supports the consolidation of democratic governance.

[14] *Odinga* (n 11 above) 37.

4.2.1.2 *Raila Amolo Odinga & another v Independent Electoral and Boundaries Commission & 2 others (2017)* [15]

Kenya's political landscape was imbued with renewed hope following the presidential election of *Raila Amolo Odinga & another v Independent Electoral and Boundaries Commission & 2 others*.[16]In **this case**, the petitioners challenged the validity of the presidential election held on 8th August 2017, arguing that the Independent Electoral and Boundaries Commission (IEBC) had conducted the election in a manner that violated the Constitution and electoral laws. They alleged widespread irregularities and illegalities in the transmission, verification, and declaration of presidential results, contending that the election failed to meet the constitutional standards of a free, fair, transparent, and verifiable election.[17]

In reaching its decision, the Court reflected on Kenya's history, particularly the deeply flawed presidential elections of December 2007, which triggered widespread post-election violence. Leading to massive loss of lives[18]The Court further recalled that, in the preamble to its Constitution, the people of Kenya solemnly adopted and enacted the Constitution for themselves and for future generations[19]. In reinforcing this point, it cited with approval the words of Soli J. Sorabjee, former Attorney General of India, who cautioned that history shows even the most well-intentioned leaders can succumb to the temptations of unchecked power, making blind reliance on the goodwill of politicians a precarious act of faith. [20]Against this backdrop, the Court emphasized that any departure from the Constitution, hard-won through decades of struggle, risks eroding its very essence. [21] It underscored that the strength and greatness of a nation lie in its fidelity to the Constitution and its strict adherence to the rule of law, which in the Kenyan Context is underpinned by the Constitution.[22]Against this background, the Court held that the presidential election had not been conducted in accordance with the Constitution and the applicable electoral laws. It found that the irregularities and illegalities identified were substantial and significantly affected the integrity of the election process. Consequently, by a majority decision, the Court nullified the election and ordered

[15]*Raila Amolo Odinga & another v Independent Electoral and Boundaries Commission & 2 other*s Presidential Election Petition 1 of 2017 [2017] KESC 42 (KLR).
[16]As above.
[17]*Odinga* (n 15 above) para 6.
[18]*Odinga* (n 15 above) para 397.
[19]*Odinga* (n 15 above) para 393.
[20]*Odinga* (n 15 above) para 395.
[21]*Odinga* (n 15 above) para 395.
[22]*Odinga* (n 15 above) para 394.

the IEBC to conduct a fresh presidential election within sixty days in strict conformity with the Constitution. [23]

The Court's reliance on history was both principled and constitutionally faithful because it did not invoke historical events merely as rhetorical background, but as an interpretive framework for understanding the purpose and spirit of the 2010 Constitution. Rather than treating the dispute as a purely technical electoral contest, the Court recognized that Kenya's electoral history, particularly the trauma of the 2007 post-election violence, fundamentally shaped the constitutional safeguards governing elections. History was therefore properly applied to give substantive meaning to constitutional principles such as transparency, accountability, credibility, and the sovereignty of the people. The Court also avoided the mistake of using history to justify political expediency or institutional convenience. Instead, it used Kenya's past experiences of electoral manipulation and democratic breakdown to reinforce the necessity of strict constitutional compliance. This reflected a proper appreciation that the Constitution was enacted precisely to prevent the recurrence of flawed electoral processes capable of plunging the country back into instability and violence. The judgment therefore demonstrates a transformative approach to constitutional adjudication, where constitutional norms are interpreted in light of the historical injustices and governance failures they were intended to remedy.

Equally important, the Court appreciated that democratic legitimacy depends not only on the numerical outcome of an election but also on the integrity of the process through which that outcome is obtained. The Court therefore rejected a narrow quantitative approach and emphasized that elections derive legitimacy from compliance with constitutional values and procedures. By invalidating a presidential election despite the political consequences involved, the Court affirmed the supremacy of the Constitution and reinforced the principle that no political process is above constitutional scrutiny. The decision further demonstrated fidelity to the transformative aspirations embodied in the Constitution of Kenya 2010. The Court recognized that the Constitution was the product of Kenya's struggle against authoritarianism, electoral injustice, and abuse of power. By grounding its reasoning in this constitutional history, the Court strengthened public confidence in judicial independence and affirmed the judiciary's role in safeguarding democratic governance and constitutionalism.

[23] *Odinga* (n 15 above) para 405.

The judgment therefore stands as a strong example of the proper use of constitutional history in adjudication. History was not used to preserve past political arrangements or justify existing power structures. Instead, it was used to ensure that the constitutional order emerging from Kenya's democratic struggles was meaningfully protected, thereby preventing the repetition of the very injustices that informed the making of the Constitution.

4.2.1.3 *Odinga & 16 Others v William Ruto & 10 Others; Law Society of Kenya & 4 Others (2022)* [24]

Kenya's 2022 political trajectory reflected a reversion to entrenched electoral disputes, as seen in *Odinga & 16 others v William Ruto & 10 others; Law Society of Kenya & 4 others*. [25]In this case, the petitioners challenged the validity of the 2022 presidential election, alleging irregularities in the transmission, verification, and tallying of results, as well as shortcomings in the electoral technology deployed by the Independent Electoral and Boundaries Commission (IEBC). [26] The Supreme Court dismissed the petitions and upheld the election of William Ruto as President-elect[27], holding that the alleged irregularities had not been proven to the required standard and were insufficient to affect the outcome of the election.[28]

In its reasoning, the Court emphasized the constitutional principles governing election petitions, particularly the burden and standard of proof, electoral finality, and the requirement that an election should only be invalidated where proven irregularities substantially affect the result. While this approach is doctrinally defensible, it reflects a limited engagement with Kenya's historical experience of electoral contestation. The Court treated the dispute primarily as a question of evidential sufficiency rather than as a constitutional controversy situated within a broader history of disputed elections and recurring concerns regarding electoral credibility. By focusing predominantly on whether the irregularities quantitatively affected the final result, the Court adopted a narrow conception of electoral integrity that overlooked the historical significance of public confidence in electoral institutions.

[24] *Odinga & 16 Others v William Ruto & 10 Others; Law Society of Kenya & 4 Others* [20022] KESC 56 (KLR).
[25] As above.
[26] *Odinga* (n 24 above) 5.
[27] *Odinga* (n 24 above)84.
[28] *Odinga* (n 24 above) 18.

A historically informed approach would have recognized that the constitutional framework governing elections emerged against a backdrop of persistent electoral disputes and crises of legitimacy. Consequently, the constitutional significance of electoral irregularities cannot be assessed solely by their impact on vote totals. Their effect on public trust, institutional credibility, and democratic legitimacy must also form part of the analysis. This is particularly important in jurisdictions where elections have historically been sources of political instability and public contestation. The decision therefore overlooks the transformative aspirations underlying the Constitution of Kenya, 2010, which sought not merely to regulate elections but also to restore public confidence in democratic governance. From this perspective, electoral integrity constitutes a substantive constitutional value rather than a purely technical requirement. The Court therefore missed an opportunity to articulate a jurisprudence that connects constitutional interpretation with Kenya's democratic history and the broader objectives of constitutional transformation.

This judgement has further been critiqued as one that raised more questions than answers with regard to its findings, conclusions and recommendations. It has been argued that, whether a court allows or dismisses a petition, the requirement that justice be done and be seen to be done is paramount and should not be overstated. In a presidential election petition, which affects persons beyond the immediate parties before the court, it is especially important that justice is not only delivered but also perceived by a broad section of the public to have been delivered. Both winners and losers must be persuaded by the reasoning of the judgment that the outcome was reached fairly. For this to occur, facts, logic, and the law must be in alignment; where this is not perceived to be the case, errors arise. When such errors arise in a Supreme Court judgment, they are described as 'supreme errors', given their far-reaching consequences locally and globally, not only because they are final and unappealable, but also because they guide lower courts and may be referenced by other supreme courts. It therefore follows that Supreme Court judgments should be free from overt contradictions and beyond public ridicule.[29]

[29] YK Oso 'Supreme Errors: A Critique of The Judgement Of The Supreme Court On 2022 Kenya Presidential Election Petition' (31 October 2022) 1 available at https://www.researchgate.net/publication/364937891_SUPREME_ERRORS_A_CRITIQUE_OF_THE_JUDGEMENT_OF_THE_SUPREME_COURT_ON_2022_KENYA_PRESIDENTIAL_ELECTION_PETITION [accessed 28 May 2026].

In light of the foregoing, it is evident that a more historically informed approach would have acknowledged that even minor hitches, when viewed against Kenya's electoral past, can significantly erode public confidence in democratic processes. While the court adhered to strict legal standards, a more holistic consideration of Kenya's electoral history might have led to a decision that reinforces public trust in electoral governance.

4.2.1.4 *Attorney General & 2 others v Ndii & 79 others* [30]

This case raised a fundamental question in Kenyan constitutional law whether the Basic Structure Doctrine was applicable in Kenya. The case arose from challenges to the Building Bridges Initiative (BBI), a constitutional amendment process initiated following the political rapprochement between President Uhuru Kenyatta and Raila Odinga. The initiative proposed extensive amendments to the Constitution of Kenya 2010, including restructuring the executive and altering key governance frameworks. Petitioners, led by David Ndii, argued that the process was unconstitutional and, more importantly, that there exist implicit limits to the amendment power under the Constitution. This brought into focus the Basic Structure Doctrine, a principle developed in comparative constitutional jurisprudence which holds that certain fundamental features of a constitution cannot be amended.[31]

In its determination, the Supreme Court rejected the applicability of the Basic Structure Doctrine in Kenya.[32] According to the Court, since the Constitution does not expressly limit the scope of amendments, it would be improper for the judiciary to import such limitations through judicial interpretation. The Court emphasized that the people of Kenya retain the ultimate authority to amend any part of the Constitution, provided the prescribed procedures are followed. The Court emphasized this by highlighting that the Constitution of Kenya 2010 provides a comprehensive and self-contained amendment framework under Articles 255 to 257.[33]

However, the Court's reasoning reflects a limited engagement with Kenya's constitutional history and the transformative purpose of the 2010 Constitution. Before the promulgation of the current Constitution, Kenya experienced decades of constitutional manipulation under the independence Constitution of 1963, where formal amendment procedures were repeatedly used to centralize executive power, weaken institutional safeguards, and erode democratic governance. Constitutional

[30] *Attorney General & 2 others v Ndii & 79 others* (Petition 12 of 2021) [2022] KESC 8 (KLR).
[31] *Ndii* (n 30 above) 6-7.
[32] *Ndii* (n 30 above) para 522.
[33] *Ndii* (n 30 above) para 220-224.

amendments were often employed not to strengthen constitutionalism, but to entrench authoritarian rule and diminish political accountability. [34] It was precisely this history that informed the adoption of the Constitution of Kenya 2010 as a transformative constitutional order designed to fundamentally restructure the state and protect against future abuses of power, promote social justice and the rule of law[35].A historically conscious interpretation would therefore have recognized that constitutional amendment procedures alone may not always be sufficient to preserve the core identity and values of a constitutional system. The framers of the 2010 Constitution were not merely concerned with establishing procedures for amendment; they were responding to a history in which constitutional forms had previously been manipulated to undermine constitutional substance. In that context, the Basic Structure Doctrine could have been understood not as a foreign judicial invention, but as a constitutional safeguard aimed at protecting the foundational principles emerging from Kenya's democratic struggles.

The Court's rejection of the doctrine also reflects an overly formalistic and text-bound approach to constitutional interpretation. By focusing narrowly on the absence of explicit textual limits, the Court overlooked the broader constitutional context and the underlying values that animate the Constitution. Transformative constitutions are often designed not only to create institutions but also to prevent regression into the historical injustices that necessitated constitutional change in the first place. A purposive and historically informed reading of the Constitution would therefore have allowed the Court to appreciate that certain foundational principles, such as constitutional supremacy, separation of powers, democracy, and the rule of law, form the essential constitutional order that cannot be fundamentally dismantled through ordinary amendment procedures. Further, the Court's reasoning risks reducing constitutionalism to procedural compliance alone. Kenya's constitutional history demonstrates that authoritarian consolidation can occur even through formally lawful constitutional amendments. The mere fact that amendment procedures are followed does not necessarily guarantee that the resulting changes remain faithful to the Constitution's transformative character. By declining to recognize any substantive constitutional limitations, the Court potentially left the constitutional order vulnerable to future political manipulation through the amendment process itself.

[34] A Oloo 'The Constitution of Kenya 2010: Kenyans Give a Thumbs Up'(2013) *Afrobarometer Briefing Paper No* 109 , 1.
[35] Preamble (n 10 above).

The decision therefore illustrates a missed opportunity to ground constitutional interpretation in Kenya's historical experience. Rather than viewing history as a source of constitutional caution, the Court adopted an interpretation that places near-complete reliance on procedural mechanisms despite the very history that exposed the weaknesses of proceduralism without substantive constitutional safeguards. A more historically grounded approach would have better reflected the transformative aspirations of the 2010 Constitution and strengthened protection against the recurrence of the constitutional abuses that shaped Kenya's constitutional evolution.

4.2.1.5 *Monica Wangu Wamwere and 5 ors v Attorney general* [36]

The appellants sought redress for human rights violations committed during the early 1990s under Kenya's former one-party regime after they were allegedly subjected to torture, arbitrary detention, and other abuses while protesting for the release of political prisoners. [37] Although their claims were initially dismissed for delay and lack of evidence by the high court and Court of appeal, the Supreme Court reconsidered the matter within Kenya's broader historical context of widespread human rights abuses and the failure of the pre-2010 Judiciary to protect victims during the repressive era. The Court recognized that the 2010 Constitution and subsequent judicial reforms were intended to address historical injustices and guarantee equal access to remedies under Article 27(1) [38].Against this backdrop, the Court held that the appellants had sufficiently explained the delay, found that their right to freedom from inhuman treatment had been violated, and awarded each appellant Kshs 2,500,000 in damages. [39]

The Court's reliance on history in this case was careful, principled, and constitutionally appropriate because it recognized that legal claims arising from periods of authoritarian rule cannot be assessed in isolation from the political and institutional realities that shaped them. Rather than applying procedural rules mechanically, the Court appreciated that fear, repression, and lack of judicial independence during the one-party era created genuine obstacles that prevented many victims from seeking timely remedies. History was therefore properly used to illuminate the conditions under which constitutional violations occurred and to explain why delayed litigation in such contexts should not automatically defeat claims for justice. The Court also correctly treated the Constitution

[36] *Monica Wangu Wamwere and 5 ors v Attorney general* Supreme Court petitions No.s 26,34 & 35 of 2019. [2023] KESC 3 (KLR).
[37] *Wamwere* (n 36 above) 2.
[38] *Wamwere* (n 36 above) 4.
[39] *Wamwere* (n 36 above) 28.

of Kenya 2010 as a transformative document intended to confront and remedy historical injustices. By acknowledging the constitutional transition from a repressive order to a democratic constitutional state, the Court demonstrated that constitutional interpretation must remain faithful to the broader objectives of accountability, human dignity, equality, and access to justice. This approach ensured that the Constitution was interpreted not merely as a technical legal instrument, but as a response to Kenya's history of abuse of power and denial of rights.

The decision also reflects a mature understanding of transitional constitutionalism. By recognizing the significance of judicial reforms and the transformation of the judiciary under the 2010 Constitution, the Court accepted that constitutional transitions create new legal and institutional environments within which historical claims may legitimately be revisited. This reasoning reinforces the role of courts in facilitating national healing, accountability, and constitutional renewal after periods of repression. The judgment therefore stands as a strong example of the proper use of constitutional history in adjudication. History was not invoked symbolically or rhetorically, but was directly connected to the interpretation of rights, procedural fairness, and access to justice. Through this historically grounded approach, the Court was able to deliver a decision that advanced substantive justice while remaining faithful to the transformative aspirations of the Constitution of Kenya 2010.

4.2.2 South Africa

South Africa became a self-governing dominion within the British Empire on 31 May 1910, following the formation of the Union of South Africa.[40] However, this independence was limited, as political power remained firmly in the hands of the white minority, with Black South Africans and other racial groups systematically excluded from participation. South Africa is therefore deeply shaped by a long period of institutionalised racial discrimination, culminating in the system of apartheid.[41]Constitutionally, South Africa underwent a profound transformation in the early 1990s as apartheid came to an end. This transition was marked by the first democratic elections in 1994, which led to the establishment of a new constitutional order. The adoption of the Constitution of the Republic of South Africa, 1996 represented a transformative break from the past and a bridge to

[40] L Wotshela 'Winston Churchill and South Africa: An Enduring, yet Debatable Connection, 1899–1955'(2026) **https://doi.org/10.1111/1468-229x.70089** (accessed 1 June 2026).
[41] J Seekings 'Race, Discrimination and Diversity in South Africa' (2007) 149 *CSSR Working Paper No 194*,4.

a new era grounded in human rights, equality, dignity, freedom and the rule of law. [42] This historical background, particularly the legacy of racial discrimination and systemic injustice, plays a central role in South African constitutional interpretation. Courts frequently draw on this past to give substantive meaning to constitutional rights and to ensure that the Constitution is applied in a manner that actively redresses historical inequalities and promotes a more just and inclusive society.

South Africa's constitutional jurisprudence demonstrates a strong and consistent engagement with historical context as a central tool in constitutional interpretation. Courts have repeatedly recognized that the meaning and application of constitutional rights cannot be divorced from the country's past, particularly its history of colonialism, apartheid, systemic discrimination, and entrenched inequality. In this regard, history is not treated as background information, but as a foundational interpretive resource that informs the values, purposes, and transformative goals of the Constitution. This approach reflects a deliberate commitment to ensuring that constitutional adjudication remains sensitive to past injustices while actively shaping a more inclusive and rights-based future. As a result, South African courts have frequently drawn on historical experience to give substantive content to constitutional rights and to guide the development of legal principles in a manner consistent with the Constitution's transformative vision.

The significance of considering a country's historical context when interpreting its Constitution has been firmly acknowledged in South Africa. This was clearly articulated in *S v Makwanyane and Another*[43], where the Constitutional Court emphasized the importance of considering a nation's historical context in reaching its decisions.[44] South African courts have given significant consideration to history, as demonstrated in the analysis below.

4.2.2.1 *S v Makwanyane and Another* [45]

In this case, the accused were convicted of multiple counts of murder, attempted murder, and robbery with aggravating circumstances and sentenced to death on the murder counts, together with additional terms of imprisonment for the remaining offences. The Constitutional Court was required to determine whether the death penalty was consistent with the Interim Constitution. In resolving the issue, the Court invoked history by situating the death penalty within South Africa's apartheid

[42] Chapter 2 of the Constitution of South Africa 1996 ; also see the Preamble of the Constitution of South Africa (1996).
[43] *S v Makwanyane and anor* 1995(3) SA 391 (CC)(6 June 1995).
[44] *Makwanye* (n 43 above) para 39.
[45] *Makwanyane* (n 43 above) above.

past characterised by systemic violence, institutionalised racial oppression, and extensive state-sanctioned disregard for human life. It further relied on the Constitution's postamble as a historically grounded interpretive guide, framing the new order as a transition from a divided and violent past to a society based on dignity, reconciliation, and freedom from vengeance based on Ubuntu. Comparative historical developments were also considered, particularly the global decline of capital punishment as part of an evolving human rights culture. [46] In light of the foregoing, court held that capital punishment was unconstitutional as it violated the rights to life and human dignity, and was fundamentally at odds with the spirit of Ubuntu. Accordingly, the Court held that capital punishment was unconstitutional and invalid under Section 11(2) of the Constitution. [47]

The decision reflects a correct application of history because it uses apartheid history as a foundational interpretive lens for understanding the meaning and scope of constitutional rights. The Court does not treat history as external narrative but as embedded context that explains why the Constitution assigns such strong protection to life and dignity. This ensures that constitutional interpretation remains aligned with the transformative purpose of the legal order, which is to respond directly to a legacy of institutionalised violence. The reasoning further shows methodological control in the use of history because it does not allow historical experience to automatically determine the legal outcome. Instead, history functions to intensify constitutional scrutiny over state power, particularly where irreversible punishment is concerned. The violent nature of the past informs the Court's caution against state-sanctioned killing, while still requiring independent justification under constitutional standards. This preserves the distinction between historical understanding and legal reasoning while allowing history to meaningfully shape interpretive direction.

Finally, the judgment reflects a sophisticated use of constitutional temporality in which history informs both rupture and continuity within the legal system. The postamble and Ubuntu are used to anchor a normative break from retributive traditions, while comparative historical trends reinforce the broader direction of modern constitutionalism. This ensures that the conclusion is not only consistent with South Africa's historical transformation but also aligned with the evolving global understanding of human dignity and punishment. Overall, history was correctly invoked because it clarified the purpose of constitutional rights, anchored interpretation in South Africa's lived

[46] *Makwanye* (n 43 above) para 33.
[47] *Makwanye* (n 43 above) paras 260 - 261.

historical experience, and strengthened the conclusion that state executions are incompatible with a constitutional order founded on dignity and the rejection of past violence.

4.2.2.2 *Democratic Alliance v Minister of Cooperative Governance and Traditional Affairs and ors* [48]

In this case, the Minister declared a national state of disaster in response to the COVID-19 pandemic and issued extensive regulations under section 27 of the Disaster Management Act (DMA), including nationwide lockdown measures restricting movement, gatherings, transport, trade, and other constitutionally protected freedoms. The Democratic Alliance challenged the constitutionality of section 27 of the DMA, arguing that it effectively created a disguised state of emergency without complying with the safeguards and parliamentary oversight required under section 37 of the Constitution. [49] In resolving the issue, the Court invoked South Africa's historical experience during the pre-democratic era, where states of emergency were repeatedly used to justify severe human rights violations, suppress political opposition, and limit access to judicial protection for the majority of the population. Against this background, the Court emphasised that section 37 of the Constitution deliberately establishes a high threshold for declaring a state of emergency and incorporates important safeguards, including parliamentary oversight, mechanisms for challenging both the declaration itself and legislation enacted under it, and strict limitations on the extent to which constitutional rights may be derogated. [50] It was on this basis that the Court concluded that a state of disaster cannot be equated with, or treated as, a disguised state of emergency. [51]

The decision reflects a correct application of history because the Court used South Africa's experience of emergency rule to explain the constitutional purpose behind section 37 and the strict safeguards attached to it. The historical abuse of emergency powers during apartheid provided the context necessary for understanding why the Constitution carefully regulates situations in which ordinary constitutional protections may be suspended or limited. By grounding its interpretation in this historical experience, the Court ensured that constitutional meaning remained connected to the conditions that shaped the democratic constitutional order. The Court's reasoning further demonstrates methodological discipline because history was not used merely as political caution or

[48] *Democratic Alliance v Minister of Corperative Governace and Traditional Affairs and ors* (CCT 150/24) [2026] ZACC 8 (27 February 2026).
[49] *Democratic alliance* (n 48 above) para 162.
[50] *Democratic alliance* (n 48 above) para 166.
[51] *Democratic alliance* (n 48 above) para 15-17.

moral rhetoric. Instead, it served a precise interpretive function by clarifying why the Constitution distinguishes between a state of disaster and a state of emergency. The Court carefully analysed the legal structure of both regimes and recognised that, unlike a state of emergency under section 37, a state of disaster does not permit wholesale derogation from constitutional rights. The existence of judicial review, constitutional scrutiny, and limits on executive authority therefore prevented the DMA framework from amounting to authoritarian emergency rule in constitutional disguise.

The judgment also reflects a proper understanding of how history operates within constitutional interpretation in transitional democracies. South Africa's constitutional system emerged from a past in which legal mechanisms were repeatedly manipulated to legitimise repression and shield executive power from accountability. By recalling this history, the Court interpreted the Constitution in a manner that protected the integrity of its safeguards against abuse of power while still recognising the state's obligation to respond effectively to a public health crisis. This balanced approach ensured that history informed constitutional reasoning without collapsing all forms of crisis governance into the category of emergency rule. Overall, the decision illustrates a principled and historically grounded approach to constitutional interpretation. History was correctly invoked to explain the constitutional distrust of unchecked emergency powers, to reinforce the importance of safeguards against abuse, and to justify the distinction between a constitutionally regulated state of disaster and a formal state of emergency. In this way, historical experience strengthened the Court's reasoning while preserving the constitutional framework designed to protect democracy, legality, and fundamental rights.

4.2.2.3 *Minister of Home Affairs and Another v Fourie and Another (Doctors for Life International and Others, Amicus Curiae); Lesbian and Gay Equality Project and Others v Minister of Home Affairs and Others* [52]

In this case, Ms Marié Adriaana Fourie and Ms Cecelia Johanna Bonthuys, were a same-sex couple who sought legal recognition of their relationship through marriage. They challenged the common law definition of marriage and provisions of the Marriage Act on the basis that they excluded same-sex couples from the status, benefits, and responsibilities of marriage, thereby violating the constitutional rights to equality and dignity.[53] In reaching its decision, the Court invoked history by

[52] *Minister of Home Affairs and Another v Fourie and Another (Doctors for Life International and Others, Amicus Curiae); Lesbian and Gay Equality Project and Others v Minister of Home Affairs and Others* [2005] ZACC 19 (1 December 2005).
[53] *Minister of home affairs* (n 52 above) para 45.

examining the traditional development of marriage law in South Africa, which had historically recognised only heterosexual unions while excluding same-sex relationships from legal and social recognition. [54] The Court further referred to the long history, both domestically and internationally, of discrimination, marginalisation, and persecution of gays and lesbians. Against this background, the Court emphasised that the Constitution represents a decisive break from a past founded on exclusion and intolerance and instead establishes a democratic order based on equality, dignity, and respect for diversity[55]. In light of these considerations, the Court held that the common law definition of marriage was inconsistent with the Constitution and therefore invalid to the extent that it excluded same-sex couples from enjoying the status, benefits, and responsibilities accorded to heterosexual couples. The Court affirmed that a democratic, universalistic, and egalitarian society must embrace diversity and accept individuals for who they are. To penalise individuals on the basis of their sexual orientation was found to be a profound affront to human dignity and a violation of the right to equality.[56]

The decision reflects a correct application of history because the Court used historical exclusion as an interpretive framework for understanding the constitutional significance of equality and dignity. The historical marginalisation of same-sex couples was not treated as a mere social fact but as a constitutional context explaining why the protection against discrimination on the ground of sexual orientation occupies such an important position within the constitutional order. By grounding interpretation in this history of exclusion, the Court ensured that constitutional rights were understood substantively rather than formally, recognising that equality requires more than identical treatment and must address structures of historical disadvantage. The Court's reasoning also demonstrates methodological discipline in the use of history because it did not treat the historical existence of heterosexual marriage as sufficient justification for continuing exclusion. Instead, it distinguished between historical practice and constitutional validity. The fact that marriage had historically been limited to opposite-sex couples was acknowledged, but the Court refused to elevate tradition above constitutional principles. This prevented history from operating as a conservative restraint on constitutional transformation and ensured that historical continuity remained subject to constitutional scrutiny.

[54] *Minister of home affairs* (n 52 above) para 57.
[55] *Minister of home affairs* (n 52 above) para 59.
[56] *Minister of home affairs* (n 52 above) para 60.

Importantly, the Court correctly appreciated that the Constitution was adopted precisely to transform social and legal arrangements that had previously entrenched exclusion and hierarchy. The historical discrimination faced by gays and lesbians informed the Court's understanding of the harm caused by exclusion from marriage, particularly the denial of equal social recognition and legal status. By recognising this, the Court interpreted the Constitution in a manner that addressed the continuing effects of past discrimination rather than merely prohibiting future unequal treatment. The judgment therefore reflects a substantive conception of equality rooted in historical consciousness and constitutional transformation. The Court further used history dynamically by recognising the evolving nature of legal and social understandings of family and intimate relationships. Reference to prior judicial decisions and legislative developments expanding recognition of same-sex relationships demonstrated that legal concepts such as "family" and "spouse" are not historically fixed but capable of constitutional development. This allowed the Court to situate same-sex marriage within an ongoing constitutional evolution towards greater inclusion and recognition of human dignity.

Overall, the decision illustrates a principled and historically grounded approach to constitutional interpretation. History was correctly invoked to expose the roots of exclusion, to explain the transformative purpose of the equality guarantee, and to ensure that constitutional interpretation actively dismantled rather than preserved patterns of historical discrimination. In this way, the Court used history not as a justification for retaining traditional limitations, but as a constitutional guide for achieving a more inclusive and egalitarian legal order.

4.2.2.4 *The National Coalition for Gay and Lesbian Equality & anor v The Minister of Justice & ors* [57]

This matter concerned the confirmation of a declaration of constitutional invalidity of - (a) section 20A of the Sexual Offences Act, 1957, (b) the inclusion of sodomy as an item in Schedule 1 of the Criminal Procedure Act, 1977 (Schedule 1 of the CPA) and (c) the inclusion of sodomy as an item in the schedule to the Security Officers Act, 1987 (the Security Officers Act Schedule), made by Heher J in the Witwatersrand High Court on 8 May 1998. These declarations were made and referred to the Constitutional Court of South Africa for confirmation under section 172(2)(a) of the 1996

[57] *The National Coalition for Gay and Lesbian Equality & anor v The Minister of Justice & ors* CCT11/98 [1998] ZACC 15.

Constitution.[58] In resolving the matter, the Court invoked history by examining the development of South African criminal law and its historically unequal treatment of gay men. It noted that under the pre-constitutional legal order, sodomy was criminalised as unlawful and intentional sexual intercourse between males, regardless of consent, while comparable private consensual sexual conduct between heterosexual adults or between women was not criminalised. The Court used this historical distinction to demonstrate that the offence was rooted in a long-standing pattern of legal discrimination against homosexual men within South Africa's pre-constitutional legal system[59].Against this backdrop, the Court held that the impugned statutory provisions and the common-law offence of sodomy were inconsistent with the Constitution and therefore invalid because they unfairly discriminated on the basis of sexual orientation and violated the rights to dignity, privacy, and equality. [60]

The decision reflects a correct application of history because the Court used the historical operation of sodomy laws to expose the structural nature of discrimination embedded within the legal order. The offence was not analysed in isolation as a neutral criminal prohibition, but within the broader historical context in which criminal law had been used to stigmatise and marginalise individuals on the basis of sexual orientation. This ensured that constitutional interpretation remained attentive to the unequal social realities produced by the pre-constitutional legal system and prevented formal legal analysis from obscuring the discriminatory impact of the law. The Court's reasoning also demonstrates methodological discipline because history was not used merely to condemn past prejudice or generate moral disapproval of earlier legal systems. Instead, historical context served a precise interpretive function by explaining why constitutional guarantees of equality, dignity, and privacy required heightened scrutiny of laws targeting same-sex conduct. The fact that sodomy laws selectively criminalised conduct associated with gay men while permitting equivalent conduct in heterosexual relationships revealed that the offence lacked genuine neutrality and operated as a mechanism of exclusion and social subordination. History therefore clarified the constitutional significance of the discrimination rather than replacing legal analysis itself.

Importantly, the Court correctly recognised that the Constitution was adopted to dismantle inherited structures of inequality embedded within both legislation and common law. By tracing the historical

[58] *The National Coalition for Gay and Lesbian Equality* (n 57 above) para 1.
[59] *The National Coalition for Gay and Lesbian Equality* (n 57 above) para 14.
[60] *The National Coalition for Gay and Lesbian Equality* (n 57 above) para 106.

development of sodomy laws, the Court demonstrated how legal rules can perpetuate stigma and reinforce societal prejudice even where they appear formally legal or historically accepted. This historical awareness allowed the Court to interpret constitutional rights substantively, recognising that equality requires not only equal treatment in the present but also the removal of laws whose origins and effects are tied to systemic discrimination. The judgment further reflects a transformative use of history because it rejects the assumption that long-standing legal traditions automatically possess constitutional legitimacy. The historical existence of the offence was acknowledged, but continuity with past legal practice was treated as insufficient justification for retaining a law incompatible with constitutional values. In this way, the Court ensured that constitutional interpretation remained forward-looking and transformative rather than deferential to discriminatory legal traditions inherited from the past. Overall, the decision illustrates a principled and historically grounded approach to constitutional interpretation. History was correctly invoked to reveal the discriminatory foundations and operation of sodomy laws, to explain the constitutional importance of protecting sexual minorities, and to guide the removal of legal remnants of exclusion from the post-apartheid constitutional order. The Court therefore used historical context not simply to recount past injustice, but to strengthen constitutional reasoning directed toward equality, dignity, and substantive freedom.

4.2.3 Ghana

Formerly known as the Gold Coast, Ghana became the first sub-Saharan colony to gain independence in 1957[61]. Its early history was defined by a volatile cycle of four short-lived republics and five military coups[62], creating a landscape characterized by authoritarianism. Preceded by the 1957, 1960, 1969, and 1979 constitutions[63],which were frequently suspended or amended to allow for one-party rule and rigged referendums, the current 1992 Constitution was promulgated to significantly protect democracy and human rights .[64]

The Court's use of history in Ghana reveals a mixed and uneven approach in its reasoning. In certain cases, it has relied effectively on Ghana's constitutional and institutional history to clarify the

[61] M Larmer 'Was the Gold Coast "decolonised" or did Ghana win its independence?' (2017) *University of Oxford* 1.
[62] KG Owusu 'Military Coups In Ghana, 1969–1985; A By-Product Of Global Economic Injustices?' (2008) *Linköpings Universitet–Sweden* 5.
[63] AO Vanderpuije 'Statement To Parliament On The Political Lessons From Ghana At 60 And The Way Forward' (2017) 1, accessed on 29th April 2026.
[64] Chapter 5 of the Constitution of Ghana (1992).

purpose of legal provisions and to reinforce the protection of fundamental rights and key public offices, resulting in more convincing and well-grounded decisions. In other cases, however, the absence of a meaningful engagement with historical context, particularly in matters involving discrimination, governance, and electoral integrity, has limited the depth of its analysis. A more consistent and deliberate use of history could have provided a stronger interpretive foundation and led to decisions that more fully reflect the values and realities underpinning the Constitution.

4.2.3.1 *Prof. Kwadwo Appiagyei-Atua & 7 ors v Attorney General* [65]

In this case, the applicants challenged the constitutionality of the Imposition of Restrictions Act, 2020 (Act 1012), enacted in response to the COVID-19 pandemic. The Act empowered the Executive to impose restrictions on individual freedoms in the interest of public health and safety following the declaration of a public health emergency. The applicants argued that the Act violated several provisions of the 1992 Constitution, particularly those governing limitations on fundamental rights and the constitutional framework regulating states of emergency. [66] The Court held that Act 1012 was unconstitutional because it relied on Article 21(4) to confer extensive emergency-type powers on the Executive outside the constitutional procedures and safeguards established under Articles 31 and 32.[67]In determining the issue, the Court relied on Ghana's constitutional history, particularly the views expressed during the 1991 consultative process preceding the adoption of the 1992 Constitution. The Court observed that the framers deliberately placed strong emphasis on the protection of human rights because of Ghana's previous experiences with abuses of power and violations of civil liberties. It therefore stressed that constitutional provisions dealing with rights and limitations must be interpreted broadly and purposively in a manner that advances constitutional protection rather than executive convenience. [68]

The decision reflects a correct application of history because the Court used Ghana's constitutional development to explain why the Constitution establishes strict controls over emergency powers. The historical experience of excessive executive authority and weak protection of rights provided the necessary context for understanding why the Constitution differentiates between ordinary limitations on rights and the exceptional framework governing states of emergency. History therefore assisted

[65] *Prof. Kwadwo Appiagyei-Atua & 7 ors v Attorney General* [2023] DLSC 15177.
[66] *Prof Kwadwo* (n 65 above) 11.
[67] *Prof Kwadwo* (n 65 above) 36.
[68] *Prof Kwadwo* (n 65 above) 30.

the Court in identifying the constitutional purpose behind Articles 31 and 32 and prevented an interpretation that would undermine those safeguards through ordinary legislation. The Court also approached history in a legally focused manner by connecting past constitutional concerns directly to the interpretation of the disputed provisions. Rather than using history as a general warning against governmental abuse, it specifically demonstrated how the framers intended emergency powers to operate within carefully regulated constitutional boundaries. This enabled the Court to conclude that Article 21(4), which permits limited restrictions on rights, could not legitimately be expanded into a source of broad emergency authority capable of bypassing the constitutional regime designed for exceptional situations.

Another important aspect of the judgment is its recognition that constitutional rights become most vulnerable during national crises. By insisting that even pandemic responses remain subject to constitutional procedures, the Court affirmed that constitutional supremacy cannot be suspended indirectly through legislation enacted outside the emergency provisions of the Constitution. The reasoning therefore reflects a historically informed understanding that emergencies have often been used to justify concentration of power, making judicial enforcement of constitutional safeguards especially important in such periods. The judgment ultimately demonstrates a careful and persuasive use of history in constitutional interpretation. Historical experience was used to clarify the purpose of constitutional safeguards, to reinforce the need for limits on executive authority, and to ensure that the Constitution remained the controlling framework even during a public health crisis. In this way, history strengthened the Court's protection of fundamental rights and preserved the integrity of Ghana's constitutional order.

4.2.3.2 *Ghana Center For Democratic Development & 8 Ors V Attorney-general*[69]

In this case, the plaintiffs challenged the constitutionality of a directive from the Office of the President requiring the Auditor-General to proceed on accumulated leave and the subsequent appointment of an Acting Auditor-General. They argued that the directive violated the constitutional independence and security of tenure guaranteed to the Auditor-General under Articles 70 and 187 of the 1992 Constitution. [70] In reaching its decision, the Court relied on Ghana's constitutional history, particularly the Proposals of the Constitutional Commission for a

[69] *Ghana Center For Democratic Development & 8 Ors V rs Attorney-general* Writ No.JI/01/2021 [2023] GHASC 23 (May 31,2023).
[70] *Ghana Center For Democratic Development* (n 69 above) 2.

Constitution for Ghana (1968) (Akufo-Addo Report). The Report emphasised that the office of Auditor-General was intended to enjoy security of tenure comparable to that of judges of the superior courts and that its independence from executive influence was essential to effective constitutional accountability. [71] Consequently, the Supreme Court held that the President lacked constitutional authority to compel the Auditor-General to proceed on leave or to appoint another person to act in that office while the substantive office holder remained lawfully in office. The purported appointment was therefore declared unconstitutional and void. [72]

The case demonstrates a correct application of history because the Court used the historical foundations of the office of Auditor-General to explain the constitutional purpose behind its protection from executive control. The historical materials revealed that the framers deliberately intended the office to function independently in order to safeguard accountability and financial oversight within the constitutional system. By interpreting Articles 70 and 187 in light of this constitutional history, the Court ensured that the meaning of security of tenure and institutional independence remained faithful to the objectives that informed their inclusion in the Constitution. The reasoning further reflects an appreciation that constitutional safeguards may be undermined indirectly even where there is no formal removal from office. Although the Auditor-General had not been dismissed, the directive compelling him to proceed on leave effectively disrupted the exercise of his constitutional functions and created room for executive interference. The Court's reliance on the historical concern about protecting oversight institutions from political influence enabled it to adopt a broader and more realistic understanding of constitutional independence rather than a narrow procedural one.

The judgment also illustrates how historical context can guide constitutional interpretation without displacing the constitutional text itself. The Akufo-Addo Report was not treated as an independent source of law, but as an interpretive aid clarifying the rationale behind the constitutional structure governing the Auditor-General. This allowed the Court to connect constitutional language with constitutional purpose and to prevent executive action that would weaken the autonomy of an office specifically designed to hold government accountable. There was therefore a principled and persuasive application of history in the Court's reasoning. Historical context was used to clarify the

[71] *Ghana Center For Democratic Development* (n 69 above) 24.
[72] *Ghana Center For Democratic Development* (n 69 above) 42.

constitutional design of the office, reinforce the importance of institutional independence, and protect the integrity of constitutional accountability mechanisms from executive encroachment.

4.2.3.3 *Dr Prince Obiri Korang v The Attorney General*[73]

In this case, the plaintiff argued that section 104(1) of Act 29, which criminalises 'unnatural carnal knowledge,' is inconsistent with Article 18(2) of the 1992 Constitution. The plaintiff contended that the provision unlawfully and arbitrarily interferes with the right to privacy, affecting not only consenting adults engaged in same-sex relations but also heterosexual adults whose private conduct could fall within its scope. [74]The Court, however, held that section 104(1) of Act 29 does not contravene the Constitution. It found that the plaintiff's reliance on private morality as a basis for expanding or limiting the constitutional right to privacy was not supported within the broader framework of Ghana's constitutional order. The Court further emphasized that constitutional provisions must be understood in light of the traditions, culture, and customs of Ghana. On that basis, it concluded that the plaintiff's claim lacked merit and dismissed the action. [75]

However, the Court ought to have engaged more fully with Ghana's broader historical experience of discrimination and exclusion, particularly entrenched inequalities and the historical marginalisation of minority groups. Although the Court invoked culture and tradition, a deeper historical analysis may have produced a more balanced constitutional interpretation sensitive to both cultural context and the protection of vulnerable minorities. By placing significant emphasis on prevailing social and cultural norms, the Court risked allowing majority moral attitudes to shape the scope of constitutional rights without sufficient scrutiny of their exclusionary consequences. Constitutional interpretation in a democratic order requires not only respect for social traditions but also careful evaluation of whether those traditions are compatible with constitutional commitments to dignity, equality, and substantive justice. This would have allowed the Court to approach the interpretation of constitutional rights in a manner more attentive to the interests and protection of historically vulnerable groups.

The reasoning also gave limited attention to the transformative purpose of the 1992 Constitution and the role of constitutional rights in protecting individuals from discriminatory treatment rooted

[73]*Dr Prince Obiri Korang v AThe Attorney General* Writ no.J1/ 18/2021 [2024] DLSC17701 (24th July 2024).
[74]*Dr Prince Obiri Korong* (n 73 above) 4-5.
[75]*Dr Prince Obiri Korong* (n 73 above) 57.

in social prejudice or historical exclusion. Ghana's constitutional history reflects a movement toward greater protection of human rights and limitations on arbitrary state interference. In this context, the Court could have more carefully considered whether criminalisation disproportionately affects homosexual persons in a manner inconsistent with Article 17, which guarantees equality before the law and protection from discrimination. The case accordingly demonstrates the limits of the Court's use of history in constitutional interpretation. While historical and cultural context was acknowledged, the analysis did not sufficiently engage with the historical experiences of marginalised groups or the discriminatory origins and effects of the impugned provision. As a result, the Court's approach to history remained incomplete and less responsive to the Constitution's broader commitment to equality and protection of minorities.

4.2.3.4 *John Dramani Mahama v Electoral Commission and anor* [76]

The Petitioner, who was the Presidential Candidate of the National Democratic Congress (NDC) in the 7 December 2020 presidential elections, brought an action against the Electoral Commission as the 1st Respondent and the Presidential Candidate of the New Patriotic Party (NPP) as the 2nd Respondent. Among the reliefs sought was an order restraining the 2nd Respondent from holding himself out as the President-elect of Ghana. [77]Although the Court acknowledged that certain errors had occurred, it dismissed the petition on the basis that the Petitioner failed to demonstrate how those errors and the unilateral corrections made by the 1st Respondent affected the validity of the results declared by the Chairperson of the Electoral Commission on 9 December 2020. The Court held that the Petitioner did not provide sufficient evidence to rebut the presumption of irregularity. Consequently, the petition was dismissed, and the request for a rerun of the election was refused.[78]

The Court approached the petition primarily through the lens of evidentiary sufficiency, focusing on whether the petitioner had established that the admitted errors materially affected the election outcome. Although this reflects an important principle in election litigation, a broader engagement with Ghana's electoral history could have provided additional constitutional context for evaluating the significance of those irregularities. In democratic systems where electoral legitimacy is closely tied to public trust, even procedural inconsistencies may carry wider constitutional implications beyond their immediate numerical effect.

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[76] *John Dramani Mahama v Electoral Commission and anor* Writ no.J1/05/2021 [2021] DLRYSC 7AA4.
[77] *Mahama* (n 76 above) 2-3.
[78] *Mahama* (n 76 above) 57.

The reasoning also did not substantially consider the historical sensitivity surrounding electoral disputes in Ghana's democratic development. Elections in constitutional democracies serve not only to determine political leadership but also to maintain institutional legitimacy and political stability. Against this background, greater attention to Ghana's experience with electoral tensions and public concerns about transparency may have justified a more probing examination of the Electoral Commission's conduct and the constitutional implications of unilateral corrections to election results.

A broader historical perspective could also have strengthened the Court's role in reinforcing democratic confidence and constitutional accountability. Courts adjudicating presidential election petitions operate within a broader constitutional environment in which public perception of fairness and institutional integrity is critically important. By engaging more directly with Ghana's democratic experience, the Court may have produced a more comprehensive constitutional analysis attentive not only to strict procedural proof, but also to the broader values of electoral credibility, transparency, and public confidence in democratic governance.

4.2.4 United States of America

The United States declared its independence on July 4, 1776, when the Continental Congress adopted the Declaration of Independence, separating the thirteen colonies from British rule. [79]The United States(US) Constitution was constructed on September 17, 1787 after months of conflicting views, heated debates and clashing ideas. The founders of the Constitution were delegates appointed by the state legislatures to represent each state's welfare. [80]The US Supreme Court has long relied on history in constitutional cases.[81]In an increasingly wide range of cases ,a majority of the Justices have invoked historical facts to ground their decisions, even as they express very different views about

[79]E Ekinns & H Johnson '53 Percent Don't Know Why We Declared Independence from Britain in 1776' (3 July 2025) available at **https://www.cato.org/blog/53-dont-know-why-we-declared-independence-britain-1776** accessed on 28th April,2025.

[80]RR Beeman, 'The Constitutional Convention of 1787: A Revolution in Government' available at https://constitutioncenter.org/ .(accessed 28 April 2025).

[81] J Blocher & BL Garrett 'Applying History as Law: The Role of Historical Facts in Implementing Constitutional Doctrine' (2025)104 *Texas Law Review* 4.

why that history matters , how much it matters , and how much weight to give various kinds of history.[82]

The United States Supreme Court has, to a significant extent, relied on historical analysis as a guiding tool in constitutional interpretation, using the nation's legal traditions, founding principles, and early understandings of the Constitution to shape its decisions. This historical approach is often presented as a means of grounding judicial reasoning in objective and enduring sources of meaning, rather than contemporary preferences or policy considerations. The court`s justification for that approach also lies in the fact that defining the meaning of the constitution according to its original or historical meaning limits a judge from engaging in un bridled discretion when deciding cases. [83] However, this commitment to history has not always been applied with equal consistency across all cases. In certain instances, the courts have engaged selectively or insufficiently with relevant historical context, even where a fuller and more rigorous examination of that history might have supported clearer reasoning or led to more balanced and persuasive conclusions.

4.2.4.1 *Dobbs v. Jackson women's health organization* [84]

In this case, the dispute arose from Mississippi's Gestational Age Act, which prohibited abortion after 15 weeks of pregnancy except in cases of medical emergency or severe fetal abnormality. Jackson Women's Health Organization challenged the law, arguing that it violated the constitutional protections recognised in *Roe v Wade*[85] and *Planned Parenthood v. Casey*[86], which prohibited states from banning abortion before fetal viability. The lower courts held the Act unconstitutional, but the Supreme Court reversed those decisions and held that the Constitution does not confer a right to abortion, thereby overruling Roe and Casey. [87]In reaching its decision, the Court relied heavily on historical analysis, emphasising that fundamental constitutional rights must be deeply rooted in the nation's history and traditions. It examined English common law, early American legal practice, nineteenth-century abortion statutes, and other historical legal authorities. The Court concluded that

[82] Blocher (n 81 above) 4.
[83]TC Galligan 'History and Constitutional Interpretation.What is Really there?' (2025) *The University of New Hampshire law review* 110-112.
[84] *Dobbs v. Jackson women's health organization* 597 U.S. 215 (2022).
[85] *Roe v Wade* 410 U. S. 113 (1973).
[86] *Planned Parenthood v. Casey* 505 U.S. 833 (1992).
[87] *Dobbs* (n 84 above) 45-46.

abortion had historically been treated as unlawful or subject to criminal regulation and that there was no historical basis for recognising abortion as a constitutionally protected right at the time. [88]

The Court's reasoning reflects a deliberate originalist approach in which history was treated as the primary basis for determining the existence and scope of constitutional rights. Rather than relying on evolving social values or contemporary understandings of liberty, the majority focused on whether a right to abortion was deeply rooted in the nation's historical traditions at the time of the Fourteenth Amendment's adoption. The extensive examination of common law principles, historical statutes, and early legal authorities therefore served to anchor constitutional interpretation within a historically defined legal framework.

The historical analysis was also central to the Court's rejection of Roe and Casey. By arguing that abortion restrictions had long existed within Anglo-American legal tradition, the Court sought to demonstrate that the earlier precedents lacked sufficient grounding in constitutional history and text. History thus operated not simply as contextual evidence but as a constitutional standard against which prior judicial decisions were measured. This enabled the Court to present its decision as a restoration of historically consistent constitutional interpretation rather than the creation of a new constitutional doctrine. The judgment therefore reflects a clear and methodical application of history in constitutional interpretation. Historical sources, legal traditions, and longstanding practices were used systematically to define the scope of constitutional rights, evaluate prior precedent, and justify the conclusion that abortion protection lacked sufficient grounding in the nation's historical and constitutional tradition.

4.2.4.2 ***Students for fair admissions, inc v President and fellows of Harvard college*** [89]

The petitioner challenged race-conscious admissions policies at Harvard University and the University of North Carolina, arguing that they violated Title VI of the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment. The Supreme Court ultimately held that the admissions programmes were unconstitutional because they involved impermissible racial classifications and could not be justified under the Equal Protection Clause. [90]In reaching this

[88] *Dobbs* (n 484 above) 18.
[89] *Students for fair admissions, inc v President and fellows of harvard college* 600U.S.181 (2023).
[90] *Students for fair admissions* (n 89 above) 40(Judgement of Justice Roberts);(Judgement of Justice Thomas) 58 ; Judgement of Justice Gorsuch) 25 ; (Judgement of Justice Kavanaugh) 8.

conclusion, the Court engaged extensively with the historical background of the Fourteenth Amendment and the Reconstruction era. It referred to the post-Civil War constitutional reforms, including the Thirteenth and Fourteenth Amendments, and the enactment of civil rights legislation aimed at securing equal citizenship. The Court emphasised that these developments reflected a foundational constitutional commitment to equal treatment before the law and used this historical context to support the view that government decision-making based on race is fundamentally inconsistent with the Equal Protection Clause. [91]

There was a correct application of history because the Court did not treat historical context as mere background narrative but as an interpretive tool for identifying the constitutional meaning of equality. By tracing the origins of the Fourteenth Amendment, the Court grounded its analysis in the historical objective of dismantling racial hierarchy and establishing equal citizenship. This allowed it to assess modern admissions policies against the original constitutional commitment to equality rather than treating equality as a flexible or policy-driven concept detached from its constitutional foundations.

The reliance on Reconstruction history also helped the Court maintain doctrinal consistency in interpreting the Equal Protection Clause. By focusing on the constitutional transformation that followed the Civil War, the Court reinforced the idea that state action involving racial classifications must be subject to the most stringent scrutiny. History therefore functioned as a stabilising framework that ensured continuity between the original purpose of the Fourteenth Amendment and its modern application in education policy.

Importantly, the Court's reasoning shows how historical interpretation can define the limits of permissible governmental action. The emphasis on equal citizenship and the rejection of race-based distinctions reflected a historical understanding that constitutional equality requires treating individuals as individuals rather than as members of racial groups. This historical grounding enabled the Court to justify its conclusion that admissions policies relying on race could not be reconciled with the constitutional structure of equal protection. Overall, the decision reflects a sound use of history in constitutional interpretation because historical analysis was central to defining the meaning of equality, evaluating the legitimacy of race-conscious policies, and aligning contemporary constitutional doctrine with the foundational objectives of the Reconstruction Amendments.

[91] *Students for fair admissions* (n 89 above) 3 (judgement of Justice Thomas).

4.2.4.3 *Washington v Glucksberg* [92]

In this case, the respondents, physicians, terminally ill patients, and a counseling organization challenged Washington State's ban on assisted suicide, arguing that it violated a liberty interest protected by the Due Process Clause of the Fourteenth Amendment. They claimed that the Constitution protected a right for competent, terminally ill adults to seek medical assistance in ending their lives. [93]In its reasoning, the Court placed strong emphasis on historical inquiry, examining legal traditions and societal practices to determine whether the asserted liberty interest was deeply rooted in the nation's history. It found that assisted suicide had long been prohibited across Anglo-American common law, with a consistent tradition of criminalising assistance in ending another person's life for over seven centuries. [94] The Court also noted that most American states continued to prohibit assisted suicide and that federal legislation reinforced this position, reflecting a sustained legal and moral commitment to the protection of life. In light of that history, court concluded that that respondents' asserted 'right' to assistance in committing suicide is not a fundamental liberty interest protected by the Due Process Clause.[95]

There was a correct application of history because the Court relied on a long, continuous, and consistent legal tradition to define the scope of substantive due process rights. Rather than treating liberty as an open-ended concept shaped by contemporary preferences, the Court used historical practice as an objective benchmark for identifying which liberties qualify as fundamental. This ensured that constitutional interpretation remained grounded in established legal tradition rather than subjective judicial assessment. The historical analysis also provided a coherent framework for distinguishing between deeply rooted liberties and newly asserted rights. By demonstrating that assisted suicide had been consistently prohibited across centuries of legal development, the Court used history to show that the claimed right lacked the enduring acceptance required for recognition under the Due Process Clause. This reinforced the principle that fundamental rights must be objectively demonstrable through historical continuity rather than modern policy arguments.

In addition, the Court's reliance on history helped maintain stability in constitutional interpretation by linking modern constitutional claims to long-standing legal principles. The emphasis on Anglo-

[92] *Washington v Glucksberg* 521 U.S 702(1997).
[93] *Washington* (n 92 above)702.
[94] *Washington (*n 92 above)710-719.
[95] *Washington* (n 92 above)702,735,738 .

American common law and state legislative practice ensured that the analysis was not limited to recent developments but reflected a broader historical consensus on the protection of human life. This approach strengthened the legitimacy of the Court's conclusion by showing that it aligned with an enduring legal tradition. Overall, the decision reflects a structured and persuasive use of history in constitutional reasoning because historical tradition was central to defining the scope of liberty under the Fourteenth Amendment and to rejecting the recognition of assisted suicide as a fundamental constitutional right.

4.2.4.4 *Kennedy v Bremerton School District* [96]

In this case, a high school football coach, Joseph Kennedy, was dismissed after engaging in brief, quiet prayers at midfield following football games. He challenged his dismissal, arguing that it violated his rights under the Free Speech and Free Exercise Clauses of the First Amendment. The school district defended its actions on the basis that it was seeking to avoid violating the Establishment Clause. [97]In its decision, the Court emphasised that the Establishment Clause must be interpreted with reference to historical practices and understandings. It reiterated that an approach grounded in original meaning and history is not an exception but the established method in its Establishment Clause jurisprudence. The Court held that both the District Court and the Ninth Circuit had failed to properly apply this historical framework. It further stated that no historically sound interpretation of the Establishment Clause requires government hostility toward religion or the suppression of private religious expression. [98]On this basis, the Court concluded that the Free Exercise and Free Speech Clauses of the First Amendment protect an individual's right to engage in personal religious observance without government retaliation, and that the Constitution neither requires nor permits the suppression of such expression.[99]

The decision reflects a correct use of history because the Court did not treat the Establishment Clause as a flexible modern policy tool, but instead anchored its meaning in the historical relationship between religion and government at the time of the Founding. By relying on original understandings and early constitutional practice, the Court ensured that its interpretation was tied to the constitutional design rather than contemporary administrative anxieties about perceived

[96] *Kennedy v Bremerton School District,*869 F.3d 813,820 (CA9 2017).
[97] *Kennedy* (n 96 above)1.
[98] *Kennedy* (n 96 above) 5.
[99] *Kennedy* (n 96 above)1,11-32.

endorsement of religion. This historical grounding helped preserve continuity between the First Amendment's text and its intended purpose. The Court's reliance on historical practice was also appropriate because it clarified the boundary the Founders intended to draw between state establishment of religion and individual religious expression. History showed that the Establishment Clause was directed at preventing the creation of an official state religion and coercive religious conformity, not at suppressing private, voluntary acts of faith. By using this historical distinction, the Court correctly separated government action from personal religious observance, avoiding an interpretation that would extend constitutional restrictions beyond their original scope.

In addition, the historical approach strengthened constitutional coherence by aligning the Establishment Clause with a consistent tradition of religious liberty protection rather than a shifting standard based on institutional caution. This prevented the clause from being applied in a way that would require hostility toward religion in public life. By grounding its reasoning in established historical understandings, the Court maintained doctrinal stability and ensured that constitutional protections for both free exercise and free speech were interpreted in harmony with their historical foundations.

4.2.4.5 *Trump v United States*[100]

In this case, former President Donald Trump was indicted on federal charges relating to efforts to overturn the 2020 presidential election results. He argued that he was absolutely immune from criminal prosecution for actions taken within the scope of his official duties as President. The Supreme Court rejected the claim of absolute immunity, but held that a former President enjoys at least a presumptive immunity for official acts, while no immunity applies to unofficial conduct. [101]

The Court grounded its reasoning in constitutional structure and the separation of powers, emphasising the need to preserve an energetic and independent executive. It reasoned that exposing a President to criminal prosecution for official acts could unduly interfere with the discharge of constitutional responsibilities. In contrast, the dissent relied more directly on historical materials, including Alexander Hamilton's writings in the Federalist Papers, which suggested that a President, unlike a monarch, remains subject to ordinary legal accountability after leaving office. On this basis, the dissent concluded that the majority adopted an unprecedented and overly expansive view of

[100] *Trump v United States,*603 U.S.593 (2024).
[101] *Trump* (n 100 above) 7,8 and 43.

presidential immunity, inconsistent with , and a mockery to the constitutional tradition that no person, including a former President, is above the law. [102]

There was an uneven use of history in the majority's reasoning, as it placed greater weight on structural inference than on a sustained engagement with Founding-era understandings of presidential accountability. A more comprehensive historical analysis, including early constitutional writings and the original conception of the Presidency as distinct from monarchical immunity, might have provided stronger justification for limiting the scope of immunity. Such an approach could have ensured closer alignment between the doctrine of presidential immunity and the historical principle that executive power is subject to legal constraint rather than personal privilege.

The dissent's approach demonstrates a more direct use of history by situating presidential accountability within the Founding-era rejection of monarchical immunity and the expectation that public officials remain subject to the law. This historical framing highlights that constitutional design was intended to prevent the emergence of an unaccountable executive. In that sense, history could have supported a narrower conception of immunity that preserved accountability while still protecting legitimate executive functions. Overall, the case illustrates that while history was present in the reasoning of both the majority and dissent, it was not applied with equal depth or consistency. A more thorough engagement with constitutional history may have produced a more balanced doctrinal outcome, ensuring that presidential immunity remained firmly anchored in the original understanding that no individual, including a former President, stands above the law.

4.3 Emerging issues

The comparative analysis of constitutional jurisprudence across Kenya, South Africa, Ghana, and the United States reveals a number of significant and recurring themes that emerge from the engagement or lack thereof of courts with their respective national histories. These emerging issues are not merely academic observations; they carry profound implications for the legitimacy of constitutional adjudication, the protection of fundamental rights, and the durability of democratic governance. The following issues merit serious scholarly and judicial attention.

[102] *Trump* (n 100 above) 1(Judgement of Justice Sotomayor).

4.3.1 The selective and inconsistent use of history as an interpretive tool

Perhaps the most pervasive issue emerging from the comparative analysis is the selective and inconsistent manner in which courts across all four jurisdictions engage with historical context. While each jurisdiction has at various points invoked history as an interpretive resource, none has done so with uniform rigour or methodological consistency.

In Kenya, the contrast between the 2017 and 2022 presidential election petitions is instructive. In *Raila Amolo Odinga v IEBC (*2017)[103], the Supreme Court drew meaningfully on the trauma of the 2007 to 2008 post-election violence to underpin its decision to nullify the presidential election, demonstrating that history could serve as a substantive guide. Yet in the 2022 petition[104], a strikingly similar factual matrix involving electoral irregularities, public distrust, and allegations of systemic manipulation produced a decision that largely ignored this same historical backdrop. This selective reliance undermines the coherence of Kenya's constitutional jurisprudence and risks rendering historical reasoning a tool of judicial convenience rather than principled interpretation.

In the United States, the same tension is observable. In *Dobbs v. Jackson Women's Health Organization*[105] *and Washington v. Glucksberg*[106]*,* the Supreme Court deployed detailed historical analysis to deny recognition to claimed constitutional rights. Yet in *Trump v. United States*[107], the majority created an expansive doctrine of presidential immunity with little serious engagement with Founding era understandings of executive accountability. In Ghana, the Court engaged meaningfully with constitutional history in cases touching on institutional independence, such as the Auditor-General matter[108], but conspicuously failed to draw on Ghana's history of colonialism, discrimination, and governance failures in the electoral[109] and human rights contexts. [110] This inconsistency points to a broader challenge: courts must develop a more principled and transparent methodology for determining when and how history informs constitutional reasoning.

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[103] *Odinga* (n 15 above).
[104] *Odinga* (n 24 above).
[105] *Dobbs* (n 84 above).
[106] *Washingto*n (n 92 above).
[107] *Trump* (n 100 above).
[108] *Ghana Center For Democratic Development* (n 48 above).
[109] *Mahama* (n 76 above).
[110] *Dr Prince Obiri Korang* (n 73 above).

4.3.2 History as a tool of transformation versus history as a tool of constraint

A second significant issue concerns the dual function of history in constitutional adjudication, its capacity to serve both as a transformative instrument and as a conservative constraint. The manner in which courts deploy history largely determines which of these functions it performs, with significant consequences for the protection of rights.

South Africa's Constitutional Court exemplifies the transformative use of history. In *S v Makwanyane, Minister for home affairs* and the *National Coalition for Gay and Lesbian Equality cases*, the Court consistently used history to expose the injustices of apartheid and the pre-constitutional legal order, enabling it to interpret the Constitution as a decisive break from the past. In this model, history is not invoked to preserve existing arrangements but to justify their transformation. The Constitution becomes, in the Court's hands, a living instrument of redress.

By contrast, in the United States, history frequently operates as a constraining force. In *Dobbs and Glucksberg,* the Court's historical methodology, which requires that a right be deeply rooted in this Nation's history and tradition before it qualifies for constitutional protection, effectively freezes constitutional rights at the point of historical practice, making it difficult for evolving understandings of dignity and liberty to gain judicial recognition. While this approach offers predictability, it also risks entrenching historical exclusions and inequalities under the guise of fidelity to tradition.

This tension raises important questions for constitutional theory: should history be used primarily to honour the framers' intentions and established traditions, or should it serve as a critical lens through which courts identify and correct past injustices? The answer is likely context-dependent, but what is clear from the comparative analysis is that courts must be deliberate and transparent about which function they are asking history to perform.

4.3.3 The relationship between history, public confidence, and democratic legitimacy

A third emerging issue concerns the relationship between judicial use of history and the broader legitimacy of constitutional adjudication in the public eye. Courts that engage thoughtfully with a nation's historical experiences tend to produce decisions that resonate more deeply with the population's constitutional consciousness, thereby enhancing public confidence in the rule of law.

For example by grounding its interpretation in South Africa's experience of apartheid-era emergency rule, the Court in *Democratic Alliance v Minister of Cooperative Governance and Traditional*

Affairs[111]demonstrated that the constitutional safeguards governing states of emergency were deliberately crafted to prevent a recurrence of past abuses. This historical context strengthened the Court's reasoning by showing why the Constitution imposes strict limits on extraordinary governmental powers, making its conclusion more understandable and persuasive to the public. Correspondingly, Kenya's experience demonstrates that presidential election decisions carry significance far beyond their immediate legal effects. When the Supreme Court nullified the 2017 presidential election, its grounding in Kenya's painful electoral history lent the decision a moral authority that transcended its technical legal reasoning. Conversely, the 2022 judgment, critiqued as producing supreme errors,[112] suffered in part from its failure to situate its analysis within the broader history of electoral fragility and public distrust that has characterized Kenyan democracy.

In Ghana, the dismissal of John Mahama's 2020 election petition[113] without meaningful engagement with Ghana's history of electoral tensions arguably left a significant portion of the population unconvinced by the outcome. As observed in the analysis, both winners and losers must be persuaded by the reasoning of a judgment; history, properly deployed, can provide the shared narrative framework that makes such persuasion possible. Also, *Trump v United States*[114] illustrates how the depth of historical engagement can affect public confidence in constitutional adjudication. The majority's limited reliance on Founding-era understandings of presidential accountability left room for criticism that its conception of immunity lacked firm grounding in constitutional tradition. By contrast, the dissent's appeal to historical materials sought to situate the dispute within the broader constitutional commitment that no individual is above the law. The implication is clear: constitutional adjudication is not merely a technical legal exercise but a deeply social and political one. Courts that ignore the historical dimensions of the disputes before them do so at the cost of their own legitimacy and the broader legitimacy of constitutional democracy.

4.3.4 The challenge of addressing historical injustices within contemporary legal frameworks

A fourth issue concerns the practical challenge of translating historical awareness into meaningful legal remedies for victims of past injustices. This challenge is most acute when courts are asked to

[111] *Democratic Alliance* (n 48 above).
[112] Oso (n 29 above)1.
[113] *Mahama* (n 73 above).
[114] *Trump* (n 100 above)

extend the reach of current constitutional frameworks to address wrongs committed under a prior legal order.

The Kenyan case of *Monica Wangu Wamwere* [115]demonstrates both the potential and the limitations of this endeavor. The Supreme Court's willingness to take judicial notice of Kenya's repressive political history, and to use that history to explain the delay in filing human rights petitions, enabled a just outcome that a purely procedural approach would have denied. This illustrates how historical awareness can serve as a bridge between the injustices of the past and the remedial framework of the present.

However, the case also highlights the difficulty of proof: courts still require evidence, and the passage of time inevitably erodes the evidentiary record. Victims of historical injustices face structural disadvantages, not merely personal ones, in accessing remedies through litigation. This raises broader questions about whether courts, acting alone, can adequately address the legacy of systemic human rights violations, or whether judicial remedies must be complemented by legislative and executive mechanisms for transitional justice.

South Africa's transformative constitutional jurisprudence points in a promising direction: by embedding historical awareness into the very methodology of constitutional interpretation, courts can create a framework in which historical injustice is not merely acknowledged but actively rectified through rights adjudication. Yet even in South Africa, the gap between constitutional aspiration and lived reality, particularly on questions of socioeconomic inequality, remains significant, suggesting that history-aware adjudication, while necessary, is not alone sufficient.

4.3.5 The tension between originalism and transformative constitutionalism

A fifth and closely related issue is the theoretical tension between originalist approaches to constitutional interpretation, which tether constitutional meaning to historical framers' intent or founding era practices, and transformative constitutionalism, which understands constitutions as dynamic instruments oriented toward the ongoing realisation of justice.

This tension is most sharply illustrated in the United States, where the Court's methodological commitment to historical tradition in *Dobbs*[116]*, Glucksberg*[117]*, and Kennedy v. Bremerton* [118]has been

[115] *Wamwere* (n 36 above).
[116] *Dobbs* (n 84 above).
[117] *Glucksberg* (n 92 above).

described as a form of history-and-tradition originalism. While this approach has the virtue of constraining judicial discretion and grounding interpretation in identifiable external sources, it carries the significant risk of legitimising historical exclusions. A constitutional right denied to women or sexual minorities in the nineteenth century does not thereby lose its claim to constitutional protection in the twenty-first. As the majority opinion in *Dobbs* illustrated, an originalist methodology can produce outcomes that are historically coherent yet morally and socially regressive.

By contrast, the constitutions of Kenya, South Africa, and Ghana, all post-colonial or transitional instruments, are expressly designed to be transformative. Their preambles and founding provisions situate them as responses to specific histories of oppression, and their courts are, at least in principle, expected to interpret them accordingly. The challenge for these jurisdictions is to develop a historically sensitive interpretive methodology that honours the transformative purpose of their constitutions without descending into result-oriented reasoning or the mere substitution of one form of judicial arbitrariness for another. The Kenyan Supreme Court's rejection of the Basic Structure Doctrine in the *Attorney General v Ndii & ors*[119] represents a missed opportunity in this regard. A court genuinely attentive to Kenya's constitutional history, and to the risk that formal amendment procedures can be weaponised to dismantle constitutional gains, might have recognised that some limits on the amendment power are not judicial impositions but inherent features of a transformative constitutional order.

4.4 Conclusion

The comparative analysis examines the extent to which courts in Kenya, South Africa, Ghana, and the United States have embedded national history in constitutional interpretation and adjudication. It finds that while all four jurisdictions acknowledge history as relevant, they differ significantly in how consistently and deeply it is applied in constitutional reasoning. The United States and South Africa demonstrate the strongest and most structured engagement with history, though in different ways. The U.S. relies on historical understandings and traditions linked to the founding era as a formal interpretive method, while South Africa uses its history of apartheid and colonialism as a transformative tool to reshape constitutional meaning and correct past injustices.

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[118] *Kennedy* (n 96 above).
[119] *Ndii* (n 30 above).

In contrast, Kenya and Ghana show more uneven and inconsistent use of history in adjudication. Kenyan courts occasionally situate decisions within historical and political struggles linked to the 2010 Constitution, but this approach is not consistently applied. Similarly, Ghanaian courts sometimes rely on historical context in constitutional disputes, but in other instances they omit historical analysis altogether, resulting in less coherent reasoning.

Across all jurisdictions, the analysis highlights broader concerns about the lack of clear methodological guidance on when and how history should be used in constitutional interpretation. It also identifies a tension between using history to promote transformation and using it to preserve historical meanings that may limit rights. Ultimately, the study concludes that courts which meaningfully engage with history tend to produce more persuasive and legitimate constitutional decisions, underscoring the central role of historical consciousness in constitutional adjudication.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

5.2 Conclusion

5.2.1 Uganda's Historical Trajectory

5.2.2 Historical Memory in Uganda's Jurisprudence

5.2.3 Analysis of Selected Jurisdictions

5.3 Recommendations

5.4 Suggestions for Further Research

'Those who cannot remember the past are condemned to repeat it'

- George Santayana

5.1 Introduction

This final chapter synthesizes the core findings of the study, drawing together the analysis of the preceding chapters to articulate definitive conclusions about the role of historical memory in Uganda's constitutional adjudication. It demonstrates that while the 1995 Constitution represents a profound rupture from cycles of tyranny and instability, its transformative potential remains under-realised due to inconsistent judicial engagement with the nation's political and constitutional past. By tracing these threads, the study underscores how deliberate incorporation of historical memory can elevate constitutional reasoning from formalistic textualism to a dynamic instrument of justice, institutional accountability, and democratic consolidation. On this foundation, this study advances targeted recommendations on how the incorporation of historical memory can be strengthened and more effectively integrated into constitutional adjudication. These measures aim not only to resolve the methodological inconsistencies and legitimacy deficits identified across jurisdictions but also to fortify the rule of law against erosion. The chapter concludes with suggestions for further research into indigenous knowledge systems, transitional justice, and constitutional education, charting a pathway for scholarly and practical advancement in historically grounded constitutionalism.

5.2 Conclusion

The conclusion synthesises the principal findings and insights derived from the preceding chapters of this study, weaving together the comprehensive historical survey of Chapter Two, the detailed jurisprudential examination of Chapter Three, and the illuminating comparative framework of Chapter Four into a cohesive narrative that underscores the critical interplay between Uganda's constitutional past and its judicial present.

5.2.1 Uganda's Historical Trajectory

Uganda's constitutional and political history from the pre-colonial period to 1995 reflects a continuous struggle between power and legitimacy. Before colonialism, Uganda consisted of different political systems, including the centralised kingdoms of Buganda and Bunyoro, clan-based societies in the east and north, and the monarchies of Ankole and Toro. British colonial rule did not unite these systems but instead reinforced divisions through constitutional arrangements that favoured certain groups. The colonial legal system, created under the 1902 Order-in-Council, established institutions such as the judiciary, executive, and legislative council, but these mainly served imperial control rather than protecting rights. Laws like the repugnancy doctrine and deportation ordinances, together with judicial support for executive power, made law a tool of oppression. After independence, the 1962 Constitution failed to create national unity because it granted federal privileges to Buganda and other kingdoms, leading to the Kabaka - Obote conflict, the unconstitutional abrogation of the Constitution in 1966, and the 1967 republican Constitution, which abolished federalism but established the precedent that political power could override constitutional law.

Idi Amin's regime marked the collapse of constitutionalism through executive dictatorship, widespread human rights abuses, and state violence. Although the 1979 liberation struggle and the Uganda National Liberation Front created hope for reform, the removal of Yusuf Lule and the disputed 1980 elections showed that political manipulation remained entrenched. In response, the National Resistance Movement introduced the 1995 Constitution as a deliberate break from Uganda's troubled past. The Constitution strengthened human rights, separation of powers, affirmative action for women and marginalised groups, and restored cultural leaders within a democratic framework. Its framers believed Uganda's repeated crises resulted from constitutions that lacked legitimacy, protected elite interests, and failed to limit political power. Overall, Uganda's

constitutional history shows that constitutionalism has been fragile and contested, while the 1995 Constitution remains the country's strongest attempt to establish a stable and legitimate constitutional order.

5.2.2 Historical Memory in Uganda's Jurisprudence

In examinining how historical memory has influenced Uganda's constitutional jurisprudence since 1995, the study analysed three categories of cases: those where history was misapplied, those where it was properly applied, and those where it was ignored altogether. The analysis found that courts sometimes rely on selective or politically influenced interpretations of history, producing decisions that distort constitutional intentions, reinforce inequalities, and weaken the transformative goals of the 1995 Constitution. In other cases, judges have used Uganda's political and constitutional history carefully and critically to deliver principled, context-sensitive decisions. By drawing on experiences of instability, oppression, exploitation, and struggles against tyranny, as recognised in the Constitution's Preamble, courts have clarified constitutional values and strengthened the protection of rights. At the same time, some decisions reflect a formalistic approach that separates the Constitution from the historical struggles and aspirations that shaped it.

These different approaches to history have important consequences for the development of constitutional doctrine and for the practical reality of constitutionalism in Uganda. The study argues that the judiciary must move beyond merely mentioning history and instead engage with it rigorously and responsibly while avoiding its misuse. Through a deeper and more balanced use of historical memory, courts can better uphold the transformative vision of the 1995 Constitution and the Preamble's values of unity, peace, equality, democracy, freedom, social justice, and progress. In this way, historical memory can serve as a tool for strengthening Uganda's constitutional future rather than limiting it**.**

5.2.3 Analysis of selected jurisdictions

An examination of selected jurisdictions revealed that constitutional interpretation is rarely a purely textual exercise; rather, it is often shaped by a nation's political evolution, social struggles, and legal history. The experiences of the United States of America, South Africa, Kenya, and Ghana demonstrate that historical memory can play a significant role in constitutional adjudication by providing context, informing constitutional values, and shaping judicial reasoning. The analysis

revealed notable differences in the extent to which these jurisdictions have integrated historical memory into their constitutional jurisprudence. In the United States and South Africa, historical experience has become an integral component of constitutional interpretation, serving either as a foundation for preserving constitutional continuity or as a means of advancing transformative constitutional objectives. In both jurisdictions, judicial engagement with history has contributed to the development of a more coherent and contextually grounded constitutional jurisprudence.

In contrast, the use of historical memory in Kenya and Ghana has been less consistent. While certain decisions have engaged meaningfully with historical experiences and their constitutional implications, others have paid limited attention to historical context even where it appeared relevant to the issues under consideration. This inconsistency reflects the absence of a settled approach to the role of history in constitutional reasoning and, in some instances, has weakened the persuasive force of judicial decisions. Across all four jurisdictions, broader concerns emerge, including the absence of a clear methodology for when and how history should be used, the tension between using history to promote change or preserve existing arrangements, and the link between historically informed judgments and democratic legitimacy.

5.3 Recommendations

The conclusions of this research give rise to the following recommendations, directed at different institutional actors and covering distinct dimensions of the challenge identified. These recommendations are premised on the understanding that the effective incorporation of historical memory into Uganda's constitutional jurisprudence requires action at the levels of judicial practice, legal education, legislative reform, public constitutional literacy, and institutional independence.

5.3.1 Adoption of a principled methodology for historical interpretation

The most significant practical recommendation of this research is that Uganda's Constitutional Court and Supreme Court should develop and adopt a transparent and principled methodology for the use of historical context in constitutional interpretation. The inconsistency identified in this study, where history is sometimes invoked as a constitutional compass and at other times deployed as mere rhetorical backdrop, is not merely a jurisprudential weakness. It undermines the rule of law by making constitutional outcomes unpredictable and susceptible to the perception that history is selectively deployed to support desired conclusions and set aside when inconvenient**.**

A principled methodology for historical interpretation should address at least three questions. First, when is historical context most relevant? This research suggests that historical reasoning is most compellingly required in cases where constitutional provisions were specifically designed to respond to historical patterns of abuse; where the constitutional issue has direct analogues in Uganda's pre-1995 history; or where the constitutional text itself, through the Preamble, the National Objectives and Directive Principles of State Policy, or other historically embedded provisions , expressly directs interpretive attention to the past. Second, what sources of historical context are appropriate? Courts should draw on the records of the Uganda Constitutional Commission, the proceedings of the Constituent Assembly, the reports of historical commissions of inquiry, and credible constitutional and historical scholarship. Third, what weight should historical context carry? This research suggests that historical context must function as a primary interpretive resource, not a secondary embellishment, in cases where the constitutional text is ambiguous, its purpose is contested, or a purely textual reading would produce outcomes inconsistent with the transformative aspirations of the constitutional order.

5.3.2 Constitutional recognition of historical memory as a guiding principle

This research recommends that Parliament, in any future process of constitutional review, considers giving explicit statutory or constitutional expression to the principle that historical memory is a guiding interpretive principle of Uganda's constitutional order. While the Preamble of the 1995 Constitution already contains this instruction implicitly in its opening word 'recalling' the jurisprudential record examined in Chapter Three demonstrates that implicit constitutional commands can be and have been overlooked. Making explicit what the Preamble already implies would strengthen the constitutional foundation for historically conscious adjudication.

Such a provision could take the form of an interpretive clause within the Constitution directing courts, in construing any provision of the Constitution, to have regard to Uganda's political and constitutional history as recalled in the Preamble; the struggles and aspirations of the people of Uganda that gave rise to the constitutional order of 1995; and the transformative purpose of the Constitution as a break from the historical patterns of tyranny, oppression, and constitutional instability that preceded it. This reform would not displace other interpretive principles but would place historical memory alongside text, purpose, and context as a recognised and authoritative guide to constitutional meaning.

At the legislative level, Parliament should similarly ensure that in enacting legislation that concerns fundamental rights or the independence of constitutional institutions, the historical reasons for those constitutional safeguards are considered. A legislature that recalls why constitutional protections were created is less likely to inadvertently or deliberately undermine them.

5.3.3 Enhance public constitutional and historical education

The development of a constitutional culture in which historical memory is genuinely valued depends not only on the judiciary and the legal profession but on the citizenry as a whole. Citizens who understand the history that produced the 1995 Constitution are better equipped to defend its provisions, to hold their institutions accountable, and to resist the incremental erosion of constitutional safeguards. This research therefore recommends a comprehensive programme of public constitutional and historical education, targeted at both the formal education system and the broader public sphere.

Constitutional history should be integrated into civic education and school curricula at different levels. Primary and secondary school students should learn about the struggles that preceded and produced the 1995 Constitution, including the colonial legal order and its institutional legacies, the period of military rule and its human rights consequences, the reform process of the late 1980s, and the participatory work of the Uganda Constitutional Commission and the 1994 to 1995 Constituent Assembly. Understanding these historical experiences is essential to understanding why the Constitution contains specific safeguards, judicial independence, the separation of powers, entrenched fundamental rights, and limits on executive authority, and why those safeguards must be actively protected rather than passively assumed.

Citizens who understand the historical basis of constitutional protections are citizens who can fight against the recurrence of the injustices those protections were designed to prevent. A population that knows why judicial independence matters because it witnessed or has studied what happened when judges were servants of executive power rather than guardians of the law is a population that will resist attacks on that independence. A population that understands why free elections are constitutionally sacred because it carries the memory, direct or inherited, of elections that were not free, is a population that will demand electoral integrity. Constitutional education is, in this sense, not merely an academic exercise but a democratic defence mechanism.

The incorporation of constitutional history should be strongly protected within legal institutions. Law faculties and the Law Development Centre should treat constitutional history not as an optional or peripheral subject but as a core component of legal formation. Every judicial officer appointed to the bench should have received rigorous instruction in the history that produced the constitutional order they are yet to protect.

5.3.4 Strengthen the independence and capacity of the judiciary

The quality of constitutional jurisprudence, including the quality of historical reasoning within it, is ultimately dependent on the independence and institutional capacity of the judiciary. A court that is subject to executive influence, inadequately resourced, or insufficiently trained cannot be expected to produce the kind of rigorous, historically conscious constitutional reasoning that Uganda's constitutional moment demands. This research therefore recommends a suite of measures directed at strengthening judicial independence and institutional capacity.

On judicial independence, the constitutional guarantees of security of tenure, financial independence, and protection from executive interference must be given their full practical effect. The history examined in Chapter Two reveals that Uganda's experience of constitutional failure has consistently been associated with the subordination of the judiciary to executive authority. Reversing that legacy requires not only formal constitutional protection, which the 1995 Constitution already provides , but active institutional vigilance by the judiciary itself, by Parliament, by civil society, and by the legal profession. Any action by the executive or legislature that threatens, diminishes, or circumvents the independence of the judiciary must be recognised as an attack on the constitutional order itself and resisted accordingly.

On institutional capacity, the judiciary requires adequate financial resources, modern legal research infrastructure, and regular access to comparative legal materials and scholarship. Judges engaging with complex constitutional questions that require historical analysis must have reliable access to the relevant primary and secondary sources, including the records of the Uganda Constitutional Commission, the Constituent Assembly proceedings, historical human rights reports, and comparative constitutional jurisprudence from the jurisdictions examined in Chapter Four. The establishment of a well-resourced constitutional research unit within the judiciary, staffed by constitutional researchers and historians, would significantly enhance the capacity of courts to engage seriously and accurately with the historical dimensions of the cases before them.

On judicial appointments, the process of selecting constitutional judges must prioritise demonstrated constitutional literacy, including knowledge of Uganda's constitutional history. A bench composed of judges who understand why the 1995 Constitution was made, what it was designed to prevent, and what its transformative aspirations require will be better equipped to produce the kind of historically grounded, purposively oriented constitutional reasoning that this research has identified as both possible and necessary.

5.3.5 Include a transformative purpose provision

The comparative tension between history serving as a transformative rupture, as exemplified by South Africa's *Makwanyane* approach, and history acting as a conservative constraint, as seen in the United States' originalist framework in *Dobbs* and *Glucksberg*, demands that Uganda embed a Transformative Constitutionalism principle directly within its fundamental law. Parliament should incorporate such an article providing that courts, in interpreting the Constitution, must regard its purpose as a deliberate break from Uganda's legacy of tyranny, military rule, and institutional subversion. This provision would ensure historical context illuminates protections against recurrence while advancing human dignity, equality, and democratic accountability, rather than perpetuating past exclusions or hierarchies.

This explicit directive would prevent rights from being frozen at pre-1995 baselines and compel judges to articulate how their historical analysis aligns with the Constitution's forward-looking goals. During the next constitutional review, the Uganda Law Reform Commission should draft precise wording informed by South Africa's interpretive successes and Kenya's missed opportunities in the BBI case, resolving the transformation-constraint dilemma at its foundational level.

5.3.6 Create a national constitutional history archive and research institute

Evidentiary limitations and source inaccessibility, evident in Kenya's *Wamwere* case and systemic across jurisdictions, necessitate dedicated historical infrastructure. Parliament should establish the National Constitutional History Institute (NCHI) as an autonomous body under the constitutional framework, charged with preserving, curating, and disseminating Uganda's constitutional heritage for judicial, legislative, and public application.

The NCHI would digitise key documents including Constituent Assembly proceedings, Constitutional Commission reports, and human rights inquiries into a publicly accessible digital

repository, complete with interactive timelines tracing crises from colonial inheritances to military governance. It would generate authoritative historical briefs for courts, support amicus submissions to parliamentary committees, and deliver training for judicial personnel, sustained by a dedicated Constitutional Fund equivalent to 0.5% of the national budget. By bridging archival deficiencies that currently hamper robust analysis, the NCHI would empower Uganda's courts to emulate South Africa's transformative jurisprudence while sidestepping the United States' tradition-bound constraints, rendering historical constitutionalism practically viable.

5.4 Suggestions for further research

This research has necessarily operated within constraints of scope that leave significant questions open for further scholarly inquiry. Three areas in particular merit dedicated academic attention.

5.4.1 The role of history and indigenous knowledge systems in constitutional interpretation

This research has drawn attention to the constitutional significance of Uganda's pre-colonial political structures, the sophisticated kingdoms and decentralised polities that constituted Uganda's political landscape before British colonialism , but has not been able to fully explore the relationship between these indigenous constitutional traditions and the post-1995 constitutional order. A dedicated research programme examining the extent to which indigenous knowledge systems, customary governance structures, and African philosophical concepts, such as the principle of ubuntu and its analogues, might legitimately inform the interpretation of Uganda's Constitution would make a valuable contribution to both constitutional theory and constitutional practice.

Such research would also need to grapple with the complex question of how courts can distinguish between authentic indigenous traditions and colonial-era distortions of those traditions. The history of the repugnancy doctrine, through which colonial courts systematically subordinated customary law to imported British standards, means that what presents itself as 'tradition' in contemporary Uganda may in fact be a colonial construction. A rigorous scholarly engagement with this question, drawing on historical assessment, African legal philosophy, and constitutional jurisprudence ,would equip courts and legal practitioners with the tools to deploy indigenous knowledge systems as genuine constitutional resources rather than as uncritical appeals to tradition.

5.4.2 The role played by courts in addressing historical injustices

A second important area for further research concerns the role that Uganda's courts have played, and can play, in directly addressing the historical injustices documented in Chapter Two. This research has focused primarily on the use of history as an interpretive tool in constitutional adjudication, but there is a related and equally important question about whether and how courts can serve as mechanisms of transitional justice, providing recognition, accountability, and remedy for victims of historical human rights violations.

Uganda has not, to date, established a formal transitional justice framework, and the extent to which existing constitutional and legal remedies are accessible to victims of historical violations remains inadequately studied. Research examining the procedural and substantive barriers that victims of historical injustices face in accessing constitutional remedies; the extent to which courts have been or could be empowered to take judicial notice of documented historical patterns of state abuse; and the range of remedies, that courts might award in historical injustice claims, would make a significant contribution to the development of both transitional justice law and Uganda's constitutional jurisprudence.

5.4.3 The role of constitutional education in sustaining historical memory

A third area meriting dedicated research is the relationship between constitutional education and the sustainability of historical memory in Uganda's constitutional culture. This research has recommended enhanced public constitutional and historical education as a means of strengthening the foundations of historically conscious jurisprudence. However, the existing evidence base for understanding how constitutional education actually shapes legal culture, judicial reasoning, and popular constitutional consciousness in the Ugandan context is limited.

Empirical research examining the state of constitutional history education in Uganda's law schools, secondary schools, and civic education programmes; the constitutional knowledge and historical literacy of serving lawyers and judicial officers; and the relationship between levels of constitutional education and the quality of constitutional reasoning in litigation and adjudication would provide the factual foundation needed to design effective education interventions. The goal of such research is to demonstrate, empirically, that constitutional education is a necessity: a means of sustaining, across generations, the historical memory that the Preamble of the 1995 Constitution has inscribed at the very foundation of Uganda's constitutional order.

BIBLIOGRAPHY

Books

Adoko, Akena (1970) *Uganda Crisis* (African Publishers : Kampala)

Allen, Peter Jermyn (1987) *Days of Judgment: A Judge in Idi Amin's Uganda* (William Kimber : London)

Omara-Otunnu,Amii (1987) *Politics and the Military in Uganda 1890–1985* (St. Martin's Press : New York)

Branch, Daniel (2011) *Kenya Between Hope and Despair, 1963–2011* (Yale University Press: New Haven)

Dowden, Richard (1984) *Uganda: Britain's Blind Eye to Terror* (The Times : London)

Epstein, Hellen (2017) *Another Fine Mess: America, Uganda and the War of Terror* (Columbia Global Reports : New York)

Gertzel ,Cherry ;Goldschmidt ,Maure ;Rothchild ,Donald (eds) (1969) *Government and Politics in Kenya: A Nation-Building Text* (East African Publishing House : Nairobi)

Goldsworthy, David (1982) *Tom Mboya*: *The Man Kenya Wanted to Forget'* (Heinemann: New York)

Hansen, Holger Bernt; Twaddle, Michael (eds) (1988) *Uganda Now: Between Decay and Development* (James Currey: London)

Ibingira, Grace Stuart Katebariirwe (1973) *The Forging of an African Nation: The Political and Constitutional Evolution of Uganda from Colonial Rule to Independence, 1894–1962* (Viking Press: New York)

Kanyeihamba, George Wilson (1974) *Constitutional Law and Government in Uganda* (East African Literature Bureau : Nairobi)

Kanyeihamba, George Wilson (2010) *Constitutional and Political History of Uganda: From 1894 to Present* (LawAfrica Publishing (K) Limited: Kampala)

Karugire, Samwiri Rubaraza (980) *A Political History of Uganda* (Heinemann Educational Books: Nairobi)

Kasozi, Abdu Basajabaka Kawalya (1994) *The Social Origins of Violence in Uganda, 1964–1985* (Fountain Publishers: Kampala)

Kutesa, Pecos (2006) *Uganda's Revolution 1979–1986: How I Saw It* (Fountain Publishers: Kampala)

Mamdani, Mahmood (1999) *Politics and Class Formation in Uganda* (Fountain Publishers: Kampala)

Mamdani, Mahmood (2025) *Slow Poison: Idi Amin, Yoweri Museveni, and the Making of the Ugandan State* (The Belknap Press of Harvard University Press : Massachusetts)

Mazrui, Ali (1975) *Soldiers and Kinsmen in Uganda: The Making of a Military Ethnocracy* (Sage Publications: London)

Mboya, Tom (1993) *The Challenge of Nationhood: A Collection of Speeches and Writings* (Heinemann: London)

Morris, Henry Francis ; Read, James Stewart (1966) *Uganda: The Development of its Laws and Constitution* (Stevens and Sons: London)

Museveni, Yoweri Kaguta (1997) *Sowing the Mustard Seed: The Struggle for Freedom and Democracy in Uganda* (Macmillan: London)

Nabudere,Dani Wadada (1980) *Imperialism and Revolution in Uganda* (Onyx Press: London)

Ndegwa, Duncan (2006) *Walking in Kenyatta Struggles: My Story* (Kenya Leadership Institute: Nairobi)

Odinga, Oginga (1967) *Not Yet Uhuru: The Autobiography of Oginga Odinga* (Heinemann: London)

Pinchwa, George William (1978) *Arms and Men in Uganda'* (East African Literature Bureau: Nairobi)

Reid, Richard (2017) *A History of Modern Uganda* (Cambridge University Press: United Kingdom)

Rostow,Eugene Victor (1963) *The Sovereign Prerogative: The Supreme Court and the Quest for Law* (Yale University Press:New Haven)

Wamala,Bakulumpagi ;Mbabazi, Amama ; Kivejinga,Kirunda; Zak, Kaheru, Sabiti, Justin & Tumusiime, James (eds) (2014) *Mission to Freedom: Uganda Resistance News 1981–1985* (Fountain Publishers: Kampala)

Chapters in books

Jjuuko, Fredrick 'Citizenship — A Test of Democracy in Uganda' in Wengi,Richard Okumu (2011)(eds) in*Founding the Constitution of Uganda: Essays and Materials* (LawAfrica Publishing (K) Ltd: Kampala)

Nsibambi, Apolo 'The Military and Democratic Transition in Uganda' in Hansen,Holger Bernt ; Twaddle, Michaeal (1995)(eds) *From Chaos to Order: The Politics of Constitution Making in Uganda* (Fountain Publishers: Kampala)

Nsibambi, Apolo 'The Restoration of Traditional Rulers' in Hansen, Holger Bernt ; Twaddle, Michael (1995) (eds) *From Chaos to Order : The Politics of Constitution Making in Uganda* (Fountain Publishers: Kampala)

Odoki, Benjamin Josses 'The Path to Constitutionalism in Uganda' in Byaruhanga, Archie (2005) (ed) *Constitutional Developments in Uganda* (Fountain Publishers:Kampala)

Odoki, Benamin Josses 'The Challenges of Constitution-making and Implementation in Uganda' in Joe,Oloka-Onyango (2001)(ed)*Constitutionalism in Africa: Creating Opportunities, Facing Challenges* (Fountain Publishers: Kampala)

Ojambo, Robert 'The 1995 Constitution as a Tool for Dictatorship in Uganda: An African Dilemma of Constitutionalism' in Muzee,Hannah; Sunjo,Tatah Emmanuel; Enaifoghe,Andrew Osehi (2022) (eds)*Democracy and Africa: Contemporary Issues in Africa's Democratization and Governance* (Springer :Switzerland)

Tripp, Aili Mari 'The Politics of Constitution Making in Uganda' in Laurel, Miller (ed)(2010)*Framing the State in Times of Transition: Case Studies in Constitution Making* (US Institute of Peace Press : Washington DC)

Walubiri, Peter Mukidi 'Land and Property Rights' in Wengi,Richard Okumu (2011) (ed) *Founding the Constitution of Uganda: Essays and Materials* (LawAfrica Publishing (U) Ltd:Kampala)

Journal Articles

Anslem, Kizito 'The post-independence conflicts in Uganda: A manifestation of the classical imperialistic divide and rule policy of the British colonial administration in Uganda' (2015) 5(24) *Developing Country Studies* 56

Aili, Mazrui 'The Blood of Experience: The Failed State and Political Collapse in Africa' (1995) 28 *World Policy Journal* 28

Anslem, Kizito 'The post-independence conflicts in Uganda: A manifestation of the classical imperialistic divide and rule policy of the British colonial administration in Uganda' (2015) 5(24) *Developing Country Studies* 56

Benson, Tusasirwe 'The Basic Structure Doctrine and Constitutional Restraint: Take-away from the Age Limit Decision' (2019) 46(1) *East African Law Review* 29

Donovan,Kevin Patrick 'Disciplining Citizens and Commodities: Economic Crimes and Accusations in 1970s Uganda' (2024)65 *The Journal of African History* 240

Fred, Sekindi 'Presidential Election Disputes in Uganda: A Critical Analysis of the Supreme Court Decisions' (2017) 154 *Journal of African Elections* 164

Gary,Simson 'Role of History in Constitutional Interpretation: A Case Study' (1985) 253 *Cornell Law Review* 253

Irene, Ovonji 'Constitutional Government and Human Rights in Uganda' (1991) 39(2) *Lesotho Law Journal* 207

John- Jean,Barya 'Democracy and Culture in Uganda' (1998) 4(1) *East African Journal of Peace and Human Rights* 1

Joseph, Blocher ; Garrett, Brandon Levin 'Applying History as Law: The Role of Historical Facts in Implementing Constitutional Doctrine' (2025) 104 *Texas Law Review* 1

Mukubwa, Grace Patrick Tumwine 'The Promotion and Protection of Human Rights in East Africa' (2000) 6(2) *East African Journal of Peace and Human Rights* 130

Mutebi, Frederick Golooba 'Collapse, War and Reconstruction in Uganda: An Analytical Narrative on State-Making' (2008) 28 *Crisis States Working Papers Series* No. 2, 1

Odoki,Benjamin Josses 'Writing a Democratic Constitution' (1993) 1(2) *East African Journal of Peace & Human Rights* 195

Oloka- Onyango,Joe 'Constitutional Transition in Museveni's Uganda: New Horizons or Another False Start?' (1995) 39 *Journal of African Law, School of Oriental and African Studies* 156

Owusu, Kwaku Gyening 'Military Coups in Ghana, 1969–1985: A By-Product of Global Economic Injustices?' (2008)23 *Linköpings Universitet–Sweden* 1

Ssekandi, Francis Muzingu 'Protection of Fundamental Human Rights in the Ugandan Constitution' (2008) 26(1) *Columbia Human Rights Law Review* 1

Tan,Kevin Yewlee 'Interpreting the constitution: The use and abuse of history' *International Journal of Constitutional law* (2023)20(5) 1960

Thomas, Galligan 'History and Constitutional Interpretation: What Is Really There?′ (2025) 23(1) *University of New Hampshire Law Review* 109

Papers

Adam, Oloo 'The Constitution of Kenya 2010: Kenyans Give a Thumbs Up' Afrobarometer Briefing Paper No 109 (2013) 1

Godber,Tumushabe; Job, Kiija Uganda's Political Transition Scenarios to 2026 and Beyond: The Flying Crane, Storm in a Teacup, or Warrior Mad King?′ (2021) *Great Lakes Institute for Strategic Studies, Policy Paper Series* 1, 1

Jeremy, Seekings 'Race, Discrimination and Diversity in South Africa' (2007) 149 *CSSR Working Paper* No. 194, 1

Kabumba, Busingye 'The Judiciary and Human Rights in Uganda: History, Challenges, and Prospects' (2025) *Chapter Four Uganda Public Interest Paper No. 2* ,1

Oloka- Onyango,Joe 'Political Question Doctrine in Uganda: An Analysis of the Technicalities on the Realization of the Freedoms of Expression, Association and Assembly in Uganda' (2017) *Chapter Four Uganda* 1

Reports

Amnesty International Uganda: Evidence of Torture (Amnesty International Publications, London,1985)

Human Rights Watch Hostile to Democracy: The Movement System and Political Repression in Uganda (Human Rights Watch,1999)

International Observer Group Report on the Uganda General Elections of December 1980 (Commonwealth Secretariat, London,1981)

The Ten-Point Programme of the National Resistance Movement (NRM Publications,Kampala, 1986)

Websites

Daily Monitor 'Adoko Nekyon: Man Who Announced DP's Victory that Caused Chaos' (Saturday 05 2018) https://www.monitor.co.ug/uganda/news/national/adoko-nekyon-man-who-announced-dp-s-1980-victory-that-caused-chaos-1754558 [acceseed 1 June 2026]

Daily Monitor 'Lule Rises and Falls in 68 Days' (Saturday, 15 June 2013 — updated 9 January 2021) https://www.monitor.co.ug/uganda/magazines/people-power/lule-rises-and-falls-in-68-days-1545064 [accessed 6 June 2026]

Kalb, Micheal 'Ugandan Rebel Leader Proclaims New Regime' (27 January 1986) *Los Angeles Times* https://www.latimes.com/archives/la-xpm-1986-01-30-mn-2114-story.html [accessed 1 June 2026]

Micheal, Bwambale Asiimwe 'Sixty Years After Independence, Uganda's Transition to Genuine Democracy has Stalled' (9 October 2022) https://democracyinafrica.org/sixty-years-after-independence-ugandas-transition-to-genuine-democracy-has-stalled/ [accessed 8 June 2026]

L Ochieng 'Why My Father, Daudi Ocheng, is the Father of Tarehe Sita' *Nile Post* (8 February 2021) https://nilepost.co.ug/opinions/96752/why-my-father-daudi-ocheng-is-the-father-of-tarehe-sita [accessed 6 June 2026]

New Vision 'Did You Know That Before 1945, There Was No African Representative in Parliament?' (23 September 2020) https://www.newvision.co.ug/news/1527703/1945-african-representative-parliament [accessed 6 June 2026]

New Vision 'Today in History: Obote Becomes President' (3 March 2020) https://www.newvision.co.ug/news/1515957/history-obote-president[accessed 1 June 2026]

New York Times 'Obote Against the Kabaka' (27 May 1966) https://www.nytimes.com/1966/05/27/archives/obote-against-the-kabaka.html accessed 6 June 2026 [accessed 29 May 2026]

Nyawa, Joshua Malidzo 'The 2010 Constitution as Both a Monument and a Memorial; The Role of the Media as a Public Watchdog' (9 September 2017) https://ssrn.com/abstract=3081455 [8 May 2026]

Oso, Willis Yuko 'Supreme Errors: A Critique of The Judgement of The Supreme Court on 2022 Kenya Presidential Election Petition' (31 October 2022) https://www.researchgate.net/publication/364937891 [accessed 28 May 2026]

Turkana Wildlife Safaris 'The Rich Tapestry of Pre-Colonial Uganda: A Historical Odyssey' (1 October 2024) https://turkanawildlifesafaris.com/pre-colonial-uganda/[accessed 7 March 2026]

Tusasirwe, Benson 'Constitution Amendment is Void as it Violates "Basic Structure" Doctrine' *Daily Monitor* (24 October 2017) https://www.monitor.co.ug/uganda/oped/commentary/constitution-amendment-is-void-as-it-violates-basic-structure-doctrine-172328 [accessed 2 March 2026]

Walubiri, Moses 'The Republican Constitution Was Meant to Sort Out Buganda' (13 October 2012) *The New Vision* https://www.newvision.co.ug/news/1306750/republican-constitution-meant-sort-buganda [accessed 1 June 2026]

Wanamela, Nixon 'The Notion of the Veil of Ignorance in Uganda's 1995 Constitutional Reforms' (18 September 2024) https://kujenga-amani.ssrc.org/2024/09/18/the-notion-of-the-veil-of-ignorance-in-ugandas-1995-constitutional-reforms/ [accessed 1 June 2026]

Wotshela, Luvuyo 'Winston Churchill and South Africa: An Enduring, yet Debatable Connection, 1899–1955' (10 February 2026 https://doi.org/10.1111/1468-229x.70089[accessed 1 June 2026]

Yaw, Boadu 'The Economic and Geopolitical history of Uganda ,Pre Colonial and Colonial times' (26 September 2024) https://yawboadu.substack.com/p/economic-and-geopolitical-history-b57 [accessed 7 March 2026]