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Amy N. Lippincott

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# IS UGANDA'S "NO-PARTY" SYSTEM DISCRIMINATORY AGAINST WOMEN AND A VIOLATION OF INTERNATIONAL LAW?

## I. INTRODUCTION

In the wake of colonialism, democratic governments have recently been established in many African countries. Under the watchful eye of the international community, these countries have frequently taken steps to address widespread allegations of human rights abuses and discrimination, including establishing and amending their constitutions and participating in various international conventions and treaties. While these documented efforts made by African nations to eliminate discrimination are commendable, it is crucial to ensure that the action taken is actually implemented and enforced.

Uganda is a prime example of an African state that has ratified various human rights treaties and established a democratic election process and universal suffrage in its constitution.<sup>1</sup> The international community has acknowledged Uganda for taking such measures, but questions whether these provisions have been implemented as they should be.<sup>2</sup>

Enactment of laws or constitutional provisions for the domestic implementation of international obligations is an important first step in conforming with the treaties a state is party to,<sup>3</sup>

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1. See UGANDA CONST. ch. 4; Angela M. Wakhweya, *Women's Health and Human Rights in Uganda: To Be or Not to Be, That Is the Question!*, in THE CHALLENGES OF WOMEN'S ACTIVISM AND HUMAN RIGHTS IN AFRICA 266, 270 (Diana Fox & Naima Hasci eds., 1999) (commenting that Uganda has ratified all the major international instruments that claim greater attention to the role of women in society).

2. See Human Rights Watch, *Hostile to Democracy, the Movement System and Political Repression in Uganda*, at <http://www.hrw.org/reports/1999/Uganda> (1999) [hereinafter *Hostile to Democracy*].

3. See U.N. Office of Legal Affairs, *Strategy for an Era of Application of International Law - Action Plan*, at [http://untreaty.un.org/olainternet/action\\_plan.htm](http://untreaty.un.org/olainternet/action_plan.htm) (last visited May 20, 2002) [hereinafter *Action Plan*].

but this is not enough to satisfy the state's duty under international law.<sup>4</sup> States must ensure that the domestic laws that have been established to implement international law are complied with and properly enforced.<sup>5</sup> To that effect, the United Nations has drafted an Action Plan, providing states and UN departments with advisory guidelines to aid and ensure states' compliance with international law. As stated in the Action Plan:

Just because a national legal system contains rules which are designed to ensure the implementation of the State's obligations under international law does not mean that those obligations will be complied with. Those rules of national law need themselves to be observed. In particular, they need to be implemented in a manner consistent with the State's international obligations.<sup>6</sup>

In determining whether Uganda is complying with its obligations under international law, it is necessary to determine the international law by which Uganda must abide.

International legal scholars now recognize the emergence of a right or entitlement to democracy among members of the international community.<sup>7</sup> This entitlement includes the right of equal access to political participation for men and women,<sup>8</sup> because discrimination against women undermines a state's democratic framework.<sup>9</sup> The right has been drawn from customary law and a collection of treaties and decisions by various international organizations, including the UN.<sup>10</sup> The most significant of these documents, for the arguments set forth here, is

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4. *Id.*

5. *Id.*

6. *Id.*

7. See Susan Marks, *The End of History? Reflections on Some International Legal Theses*, 8 EUR. J. INT'L L. 449 (1997), available at <http://www.ejil.org/journal/Vol8/No3/art5.html>.

8. See *General Assembly Seeks Further United Nations Contribution to Countries in Transition Moving Towards Democracy*, U.N. GAOR Press Release, U.N. Doc. GA/9359 (1997).

9. *Id.*

10. See U.N. CHARTER; International Covenant on Civil and Political Rights, Dec. 16, 1966, 993 U.N.T.S. 171 [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3; *Universal Declaration of Human Rights*, G.A. Res. 217A, U.N. GAOR, 3d Sess., pt. 1, Res., at 71, U.N. Doc. A/810 (1948).

the International Covenant on Civil and Political Rights ("ICCPR"), which has codified equal political access into international law.<sup>11</sup> Though international law has been widely criticized as being difficult, if not impossible to enforce, the ICCPR has set forth enforcement mechanisms for its provisions.<sup>12</sup>

In countries like Uganda, where women have traditionally lagged far behind men in taking active political roles and even voting, action must be taken to ensure compliance with international law. Uganda has taken the beginning steps of abiding by its obligations as a signatory to the ICCPR by including numerous equal rights provisions in its Constitution.<sup>13</sup> But this is not enough under international law to satisfy the ICCPR's requirement that, "States Parties . . . undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant."<sup>14</sup> The provisions set out in Uganda's Constitution must actually be implemented to conform to the ICCPR and the Constitution itself.

Despite wording in Uganda's Constitution elevating women to a political standing equal to that of men, this Note argues that Uganda has not taken the necessary implementation steps, particularly permitting a multi-party system. Without implementation, Uganda has defied its own Constitution and international law. It is important to note that Uganda is not alone in this respect. To set forth a clear example, the remarks of this Note are tailored solely to Uganda, but a similar discussion could be applied to many recent democracies or developing nations in Africa and around the world. Uganda was selected as an excellent example because of its willingness to make improvements regarding the treatment of women.<sup>15</sup>

Part II of this Note will begin by summarizing the relevant background information on Uganda, including data regarding the country itself and the Constitutional provisions relevant to the discussion. Part III will discuss the legal theory that has evolved regarding a right to democracy and equal political par-

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11. See ICCPR, *supra* note 10, art. 25.

12. *Id.* arts. 40, § 1, 41, § 1(a)-(b).

13. See UGANDA CONST. ch. 4.

14. ICCPR, *supra* note 10, art. 3.

15. Uganda has a progressive Constitution including an affirmative action plan establishing quotas for women holding public office. See UGANDA CONST. art. 78, § 1(b).

ticipation. This discussion will include a summary of several international legal documents that have codified the legal theory into international law, creating Uganda's obligation to include certain rights when its Constitution was drafted. Next, in Part IV, the Note argues that the "no-party" system in Uganda fails to give women equal political access, which violates both Uganda's Constitution and international law. As will be discussed, international law is also violated by failure to allow freedom of association and assembly. The Note will conclude in Part V with a discussion on how the international community can enforce the international law provisions violated by Uganda.

## II. BACKGROUND

### A. *The Physical and Political Structure of Uganda*

Located in East Africa, Uganda is a small nation roughly the size of Oregon.<sup>16</sup> Uganda achieved its independence from the United Kingdom in 1962, but did not adopt its present-day English common law system and Constitution until 1995.<sup>17</sup> The period between Uganda's independence and the ratification of the current Constitution was a tumultuous period of dictatorship and guerilla war.<sup>18</sup> The era was typified by Idi Amin's violent rule from 1971-1979. Amin's reign was characterized by atrocious human rights violations resulting in a death toll of between 300,000 and 500,000 civilians<sup>19</sup> and the arbitrary arrest and torture of many others.<sup>20</sup>

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16. See Central Intelligence Agency, *The World Factbook 2000 - Uganda*, at <http://www.cia.gov/cia/publications/factbook/geos/ug.html> (2000) [hereinafter *The World Factbook 2000*].

17. It is interesting to note that a Constituent Assembly, with several female members, worked to create the new constitution. The women in the Assembly formed a "Women's Caucus" and fought successfully for gender-neutral language and an enhanced affirmative action progress for an increase of the number of women in Parliament, among other accomplishments. See UNITED NATIONS DEV. PROGRAM, WOMEN'S POLITICAL PARTICIPATION AND GOOD GOVERNANCE: 21ST CENTURY CHALLENGES 59-60 (2000), available at <http://magnet.undp.org>.

18. See *The World Factbook 2000*, *supra* note 16.

19. Microsoft Encarta Online Encyclopedia, *Amin, Idi*, at <http://encarta/msn.com> (2001); Government of Uganda, *Biography of Idi*

Also, Uganda is a poor, developing country and is ranked 141 out of 165 states in the UN's most recent *Human Development Report*.<sup>21</sup> Despite this, the country's standing has improved in recent years and has even received praise from the World Bank and the International Monetary Fund ("IMF").<sup>22</sup> Nicholas Stern, the Chief Economist of the World Bank, recently remarked that Uganda's sustained levels of development and achievement in economic management are most impressive.<sup>23</sup>

In 1996, Uganda held its first popular presidential election since achieving independence, resulting in the election of Lieutenant General Yoweri Katunga Museveni, who remains President today following re-election in 2001.<sup>24</sup> President Museveni has received much praise for his progressive determination and vision, and his improvement of Uganda's economic situation,<sup>25</sup> but one major source of criticism to many is Uganda's prohibition against political parties.<sup>26</sup>

### B. Uganda's "No-Party" System

Uganda claims to operate under a no-party system with one recognized political organization, the National Resistance Movement ("NRM"), to which all Ugandans belong.<sup>27</sup> The organization, maintains President Museveni, who is also its chairman, is not a political party but a movement that garners the support of all Ugandans.<sup>28</sup> The NRM has often been ac-

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Amin Dada, at <http://www.uganda.co.ug/millennium/amin.htm> (last visited May 20, 2002).

20. See *Hostile to Democracy*, *supra* note 2.

21. UNITED NATIONS DEV. PROGRAM, HUMAN DEVELOPMENT REPORT 2001, at 143 (2001) [hereinafter HUMAN DEVELOPMENT REPORT 2001].

22. *Hostile to Democracy*, *supra* note 2.

23. *Ugandan President Hails World Bank's Support*, XINHUA NEWS AGENCY, Oct. 16, 2001, 2001 WL 29176126.

24. *Id.*

25. See Declan Walsh, *Home News: President Refers to Historic Links Between Ireland and Uganda*, IRISH TIMES, Oct. 22, 2001, 2001 WL 28827283; *Ugandan President Hails World Bank's Support*, *supra* note 23 ("[T]he World Bank was impressed by Uganda's achievement in economic management and the sustained levels of development.").

26. See *Country Profile: Uganda*, BBC NEWS (July 26, 2001), at [http://news.bbc.co.uk/1/hi/english/world/africa/country\\_profiles/newsid\\_106900/1069166.stm](http://news.bbc.co.uk/1/hi/english/world/africa/country_profiles/newsid_106900/1069166.stm) [hereinafter BBC NEWS].

27. See *The World Factbook 2000*, *supra* note 16.

28. *Id.*

cused of resorting to coercive measures during elections.<sup>29</sup> President Museveni himself is reported to have blatantly urged Ugandans to vote for the chosen candidates from the NRM.<sup>30</sup>

The Ugandan Constitution does not outright ban political parties, but they are implicitly banned because they are prohibited from public activities including campaigning and fundraising.<sup>31</sup> Article 269 of the Constitution forbids political organizations from holding public rallies and from offering a platform to campaign for or against a candidate for office.<sup>32</sup> Additionally, the Constitution outlaws "carrying on any activities that may interfere with the movement political system for the time being in force."<sup>33</sup> This language is ambiguous because it serves as a catch-all, encompassing practically any action taken by a political organization, ostensibly prohibiting their existence.

As the NRM has characterized itself as a "movement" and not a political party, its leaders argue that it is exempt for the regulations promulgated under Article 269.<sup>34</sup> This assertion has received much criticism and has prompted members of the international community to characterize Uganda as a "one-party" state, falling short of true democracy.<sup>35</sup> There is an increasing sense of frustration among Ugandans with Museveni's version of democracy and the coercive power he exercises with it.<sup>36</sup> Museveni defends his view, arguing that a multi-party system encourages ethnic hatred.<sup>37</sup> Increasingly fewer people believe his argument, worrying about his apparent contempt for the democratic process.<sup>38</sup> In fact, a recent Internet poll on the government of Uganda's website shows 59% of the 256 poll

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29. See *Hostile to Democracy*, *supra* note 2.

30. See Katy Salmon, *Museveni Foe Reelected to Another Term*, INTER PRESS SERVICE, June 27, 2001, 2001 WL 4804450.

31. See *Seven Killed as Ugandans Vote in Parliamentary Elections*, DOW JONES INT'L NEWS, June 6, 2001 (on file with author).

32. UGANDA CONST. art. 269(c)-(d).

33. *Id.* art. 269(e).

34. *Hostile to Democracy*, *supra* note 2.

35. *Id.*

36. *Id.*

37. See Salmon, *supra* note 30.

38. *Id.*

participants are in favor of an immediate return to multi-party governance.<sup>39</sup>

In June 2000 a national referendum was held on the political system in Uganda. The vote appeared to overwhelmingly support the continuation of the current no-party system.<sup>40</sup> Museveni believes that the results of this referendum serve as proof that Ugandans are happy with the NRM in power and Article 269.<sup>41</sup> Opponents question the legality of the referendum and point out that less than 50% of the total electorate actually voted.<sup>42</sup>

Members of the international community argue that the entire concept of a referendum on the topic is inconsistent with international law.<sup>43</sup> The referendum would essentially be voting on the internationally recognized human rights of freedom of association and assembly, which is incompatible with human rights standards.<sup>44</sup> Human rights are universal and cannot be relinquished by a vote.<sup>45</sup> Also, Human Rights Watch, a non-governmental organization ("NGO"), argues that it would be virtually impossible to have a fair vote on the topic as the NRM has control of the government and access to state funding to spread its message opposing political parties.<sup>46</sup> Opposing organizations would not be allowed to take any action or access any funding in support of their opinions under the rules promulgated by Article 269.<sup>47</sup> In fact, Museveni and the NRM are alleged to have mounted campaigns to encourage voting against the multi-party system with such slogans as: "If you

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39. Government of Uganda, *Online Poll*, at <http://government.go.ug> (last visited Mar. 1, 2002).

40. See *People in Power: Uganda*, CAMBRIDGE INT'L REFERENCE ON CURRENT AFFAIRS, Sept. 19, 2001, 2001 WL 10618105; *Uganda: Review*, AFRICA REVIEW WORLD OF INFO., Sept. 14, 2001, 2001 WL 26372417 (more than 90% voted against allowing multiple political parties).

41. See *People in Power: Uganda*, *supra* note 40; *Uganda: Review*, *supra* note 40.

42. See *People in Power: Uganda*, *supra* note 40; *Uganda: Review*, *supra* note 40.

43. See *Hostile to Democracy*, *supra* note 2, § I.

44. *Id.*

45. *Id.*

46. *Id.*

47. UGANDA CONST. art. 269.



elect Multi-Partyists insecurity is going to come back,” and “we liberated you.”<sup>48</sup>

### *C. Constitutional Provisions Relating to Women's Political Participation*

Despite the Constitution's continued shortcomings in political organizing, Uganda has one of the more gender-equal Constitutions with various provisions mandating the equal treatment of women with men and the eradication of discrimination.<sup>49</sup> It is this language that was enacted in keeping with the ICCPR regulations and that this Note argues has not been followed in practice.

First and foremost, the Constitution provides for equal treatment of women with men,<sup>50</sup> including participation in politics.<sup>51</sup> It requires that “Women shall have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities.”<sup>52</sup> The Constitution further states that Uganda shall “provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement.”<sup>53</sup> It even requires the eradication of “laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status.”<sup>54</sup> Once it is proven that a single-party system discriminates against women, these statements support the implementation of a multi-party system, which would enhance the welfare of women and contribute to the realization of their full political potential.

Additionally, in the section relating to the legislature, the Constitution provides for affirmative action. It authorizes the

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48. See Press Release, Foundation for African Development, Referendum Message (Feb. 16, 2000), available at [http://www.uganda.co.ug/fad/press\\_release.htm](http://www.uganda.co.ug/fad/press_release.htm) [hereinafter Press Release].

49. See generally Catherine Harries, *Daughters of Our Peoples: International Feminism Meets Ugandan Law and Custom*, 25 COLUM. HUM. RTS. L. REV. 493 (1994).

50. UGANDA CONST. art. 33.

51. *Id.* § 4.

52. *Id.*

53. *Id.* art. 33, § 2.

54. *Id.* § 6.

election of one female Member of Parliament ("MP") for every district.<sup>55</sup> Women currently hold 17.8% of the seats in Parliament.<sup>56</sup> Uganda cites the purpose for the affirmative action provision as attempting to "redress the imbalances created by history, tradition or custom."<sup>57</sup>

Despite the establishment of this quota system for increasing the amount of women elected to public office,<sup>58</sup> the lack of political parties still mars this benefit. Additionally, the quota system is often viewed as a tokenism meant to appease the international community because of the use of selective recruitment of women.<sup>59</sup> In their selection of female candidates, the party leaders are able to deliberately avoid women who hold firm independent views in order to ensure that no threat to the male control of the political machine arises.<sup>60</sup> In the context of one-party states in Eastern Europe, it appears that two objectives are satisfied by establishing quotas: (1) to show that the state is in favor of promoting women's participation; and (2) to be sure that the seats are filled with "controllable" women.<sup>61</sup>

As one can imagine, the above, despite their limitations, are still quite progressive, ambitious provisions for a new democracy to have. Uganda has received great praise for the lengths its Constitution has gone to, in an attempt to remedy the historical discrimination and marginalization of its female population.<sup>62</sup> The problem arises when women are still hindered from realizing their political potential by the lack of domestic implementation and enforcement required to give meaning to these provisions.

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55. *Id.* art. 78, § 1.

56. See HUMAN DEVELOPMENT REPORT 2001, *supra* note 21, at 216.

57. UGANDA CONST. art. 33, § 5.

58. *Id.* art. 78.

59. See *The Gender Question: Futility of Tokenism*, AFRICA NEWS, July 29, 2001, LEXIS, Nexis Library, Africa News Database.

60. *Id.*

61. See Ineke van Kessel, *Is Democracy Good for Women: The Impact of Democratic Transitions on the Representation of Women in the National Parliaments of Southern Africa*, Women on the Rise in Politics Lecture (Dec. 14, 1999), at [http://www.niza.nl/uk/press/docs/women\\_onthe\\_rise/lecture\\_vankessel.htm](http://www.niza.nl/uk/press/docs/women_onthe_rise/lecture_vankessel.htm).

62. See *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Uganda*, U.N. OHCHR, paras. 278-344, U.N. Doc. A/50/38 (1995).

#### *D. Political Participation of Women in Uganda*

Lack of political participation by women is pervasive across Africa. The continent is rife with impediments to women realizing their full political potential, including rampant illiteracy, lack of self-confidence, and societal attitudes towards women.<sup>63</sup> Uneducated women are intimidated by the voting process, which they do not understand. Conversely, educated women are disinterested in voting because they do not believe that their vote is meaningful under a single-party system.<sup>64</sup> Rural female populations find it difficult to gain access to the polling sites, as they may be required to travel long distances<sup>65</sup> and urban female populations are tired of Museveni's one-party rhetoric.<sup>66</sup> As voters, women feel useless, as they believe their vote will only go to the NRM.<sup>67</sup> The women of Uganda are entitled to equal political access and a meaningful vote.

#### *E. New Political Developments in Uganda*

Currently before the Ugandan Parliament is the controversial Political Organizations Bill ("POB").<sup>68</sup> This is not the first time the POB has come before the MPs. In fact, it had been passed by Parliament in February 2001 and sent on to President Museveni for signature. Museveni rejected the POB, sending it back to Parliament for reconsideration, saying: "Political organizations should not be allowed to operate at district level and below until enough consensus has been generated on this matter."<sup>69</sup> If he is using the results of the June 2000 referendum on the topic as the basis for his position, it can hardly be considered determinative as there are numerous questions

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63. See Rosemary Okello & Arthur Okwembah, *Politics: Where Are All the Young Women?*, NATION (KENYA), May 5, 2000, 2000 WL 8703880.

64. See Salmon, *supra* note 30.

65. Amy S. Patterson, *Women in Global Politics: Progress or Stagnation?*, USA TODAY, Sept. 1, 2000, 2000 WL 9015003.

66. See Salmon, *supra* note 30.

67. *Id.*

68. Human Rights Watch, *Ugandan Parliament: Rights at Risk*, at <http://www.hrw.org/press/2002/02/uganda0221.htm> (Feb. 21, 2002) [hereinafter *Uganda Parliament: Rights at Risk*].

69. See *Ugandan President Rejects Political Bill 2001*, XINHUA NEWS SERVICE (April 19, 2001), at <http://www.xinhuanet.com/english/20010419/399199.htm>.

surrounding the legitimacy of the referendum.<sup>70</sup> Nevertheless, despite Museveni's misgivings, the POB is far from liberal. It would keep all existing restrictions in place, but allow political organizations to open up branches at district level only.<sup>71</sup>

As stated, the POB is again before Parliament awaiting reconsideration. NGOs have decried the bill, arguing it, "seeks to solidify the de facto one party system . . . and violates the rights to freedom of assembly and association."<sup>72</sup> Dr. Apollo Milton Obote has sided with the NGOs against Museveni, calling upon Ugandan MPs to block the POB. Dr. Obote, the exiled former President of Uganda, argues that the POB, "seeks to entrench President Yoweri Museveni's dictatorship."<sup>73</sup> To allow women an equal opportunity in government the strict opposition against political parties must be lifted.

### III. AN ENTITLEMENT TO DEMOCRATIC GOVERNANCE

As referred to in the introduction, an emerging right to democratic governance has been established within the international legal community. Legal scholar Thomas Franck is credited with recognizing this right in his seminal 1992 article.<sup>74</sup> The basis behind this theory, writes Franck, is that democratic entitlement has become a "norm" in today's international system.<sup>75</sup> States seeking legitimacy on an international scale, which is very important to budding democracies and new governments, must conform to the international community's norms and laws.<sup>76</sup> In order to conform to these norms, the states must govern with the consent of their people.<sup>77</sup> This method of governing places control largely in the hands of the

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70. See Press Release, *supra* note 48.

71. See *Ugandan President Rejects Political Bill 2001*, *supra* note 69.

72. See *Ugandan Parliament: Rights at Risk*, *supra* note 68.

73. See Alex B. Atuhairi, *Block Parties Bill, Obote Advises MPs*, MONITOR (KAMPALA) (Jan. 2, 2002), at <http://allafrica.com/stories/200201020173.html>. It should be noted that Obote's hands are far from clean. Under his government more than 100,000 lives were lost to human rights abuses and guerrilla war. See *The World Factbook 2000*, *supra* note 16.

74. See Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT'L L. 46 (1992).

75. *Id.*

76. *Id.*

77. *Id.* at 47.

people, the hallmark of a true democracy.<sup>78</sup> As explained below, this norm of democratic entitlement has become international law, thereby requiring states to conform to its principles.

Scholars interpret Franck as establishing that democracy is “an internationally guaranteed human right, in respect of which international procedures of monitoring and enforcement are justified and, indeed, required.”<sup>79</sup> Franck finds the core of the right to democratic entitlement in the right to “self-determination,” which the UN has declared in its Charter to be a fundamental right and a basis on which to build “friendly relations.”<sup>80</sup> The term “self-determination” has been given multiple meanings in international law, but Franck uses the term as the right of people to determine their political destiny in a democratic fashion.<sup>81</sup> It entitles all people to “free, fair and open participation in the democratic process of governance freely chosen by each State.”<sup>82</sup> There have also been various compilations of rights included in the entitlement to democratic governance. The UN has recommended in a non-binding resolution that the right to equal political access be included in the right to political participation.<sup>83</sup> As mentioned earlier, the theory of democratic entitlement has evolved into well-established international law. This entitlement is founded in part on custom and in part on the collective interpretation of treaties.<sup>84</sup>

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78. *Id.* at 50.

79. Marks, *supra* note 7.

80. U.N. CHARTER art. 1, § 2, *interpreted by* Franck, *supra* note 74, at 54. The Charter does not contain a definition of self-determination. *See generally* U.N. CHARTER.

81. *See* Franck, *supra* note 74, at 52. It is important to note that there is no universally accepted definition of self-determination. Eric Ting-lun Huang, *The Evolution of the Concept of Self-Determination and the Right of the People of Taiwan to Self-Determination*, 14 N.Y. INT'L L. REV. 167, 169 (2001). For the purposes of this Note, self-determination is used as Franck describes it and not as its perhaps more common meaning regarding the right of a people to create an independent state or achieve more autonomy within an existing state. *See* Franck, *supra* note 74, at 52.

82. *See* Franck, *supra* note 74, at 59.

83. *Promotion of the Right to Democracy*, U.N. ESCOR, U.N. Doc. E/CN.4/RES/1999/57 (1999).

84. *See* Franck, *supra* note 74, at 47.

### A. *The Customary Law Basis for Democratic Entitlement*

Customary law provides one of the two bases for determining that a democratic entitlement is part of international law. It arises out of the practice of states, followed out of a sense of legal obligation, or *opinio juris*.<sup>85</sup> A few elements of the practice of states include diplomatic instructions and other governmental acts and official statements of policy, whether they are unilateral or undertaken in cooperation with other states.<sup>86</sup> Customary law is generally more difficult to substantiate as there is no clear, binding document signed by the parties involved, as there is in the second category, treaty interpretation.<sup>87</sup>

The Organization of American States ("OAS") stated in a resolution that, "the solidarity of . . . States and the high aims which are sought through it require the political organization of those States on the basis of the effective exercise of representative democracy."<sup>88</sup> This statement would come under the category of official statements of policy undertaken in cooperation with other states and, therefore, is an example of customary law evincing a democratic entitlement. Additionally, the UN Commission on Human Rights ("UNCHR") has recently stated in a non-binding resolution that a right to democratic governance exists. The resolution includes free voting procedures, periodic and free elections and the right to equal access to public service among the criteria for democratic governance.<sup>89</sup>

The UN General Assembly ("UNGA") has also passed a resolution in support of a democratic entitlement. The resolution "[reaffirms the UNGA's] commitment to the process of democratization of States, and that democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems."<sup>90</sup> The resolution calls upon states to encourage democracy by "promoting pluralism . .

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85. RESTATEMENT (THIRD) ON FOREIGN RELATIONS § 102, cmts. b-c (1987) [hereinafter RESTATEMENT].

86. *Id.* at cmt. b.

87. *Id.* at Introductory Note.

88. *Support to the Democratic Government of Haiti*, OAS Official Rec. OEA/Ser.F/V.1/MRE/RES.1/91, at pmb1. (1991).

89. See *Promotion of the Right to Democracy*, *supra* note 83.

90. *Promoting and Consolidating Democracy*, U.N. GAOR 3d Comm., 55th Sess., U.N. Doc. A/RES/55/96 (2001).

. maximizing the participation of individuals in decision making and the development of . . . an electoral system that ensures periodic, free and fair elections."<sup>91</sup> In a conference on gender and democracy, a UN Development Fund for Women ("UNIFEM") advisor also acknowledged a democratic entitlement. He explained, "As a political idea democracy is premised on the assumption that the people are both the subject and the object of democratic governance. This means that the masses of people should enjoy basic freedoms including those of association [and] speech."<sup>92</sup>

As evidence of a democratic entitlement involving Uganda itself, the outgoing United States Ambassador to Uganda said of the 1996 elections that "nobody should deceive themselves that these elections were free and fair in the sense that they met international norms."<sup>93</sup> The above are just a few of the many examples evidencing that customary law exists in support of a democratic entitlement. There is also a more overt basis demonstrating the right: treaty law.

### *B. The Treaty Basis for Democratic Entitlement*

Evidence of the international right to political participation can also be found in, and derived from, concrete treaty language and various UN documents.<sup>94</sup> A primary example of the codification of this norm into international law can be found in the ICCPR, to which Uganda is a signatory without reservations.<sup>95</sup> Additional examples are found in other universal and regional human rights documents, some of which will be discussed below.

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91. *Id.*

92. Achola Pala Okeyo, *Gender and Democracy: The Unfinished Agenda*, Paper Presented at the Third International Conference of the New Restored Democracies on Democracy and Development (Sept. 1997), available at <http://www.unifem.undp.org/gen&dem.htm>.

93. *Hostile to Democracy*, *supra* note 2, § IX.

94. See Gregory H. Fox, *The Right to Political Participation in International Law*, 17 YALE J. INT'L L. 539, 552 (1992).

95. ICCPR, *supra* note 10 (ratified by Uganda June 21, 1995).

### 1. The International Covenant on Civil and Political Rights

The ICCPR, which was ratified in 1966, is a treaty of paramount importance to the international community which sets forth numerous provisions to ensure the enjoyment of civil and political freedom for all people.<sup>96</sup> As the ICCPR is a multilateral treaty, the provisions contained therein are now considered codified into international law.<sup>97</sup> As a rule, international treaty terms are considered binding on the treaty's signatories.<sup>98</sup> Many treaties also contain enforcement provisions to ensure compliance with the binding obligations of the treaty.

As evidence supporting a right to democratic entitlement, Article 25 of the ICCPR requires every state party to provide its citizens with the opportunity to participate as voters and as candidates in "genuine elections" which will demonstrate the "free expression of the will of the electors."<sup>99</sup>

Uganda ratified the ICCPR, without reservations, in 1995 — the same year its Constitution was completed. Under the ICCPR, states parties are required to make laws and amend their constitutions in accordance with the rights established in the Treaty.<sup>100</sup> In establishing its Constitution, Uganda included the necessary provisions to comply with the terms of the ICCPR.<sup>101</sup> Though not explicitly, the ICCPR implies further requirements beyond the mere creation of laws. It seems to demand actual implementation of the laws created. For example, in an article specifically addressing gender inequality, the ICCPR states: "The State Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant."<sup>102</sup> Uganda has not taken this step. The laws are established in its Constitution to comply with international law created by the ICCPR, but Uganda does not follow through

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96. *Id.* at pmb1.

97. *See* Statute of the International Court of Justice, June 26, 1945, art. 38, § 1(a), 1976 Y.B.U.N. 1052, 1055.

98. *See* RESTATEMENT, *supra* note 85, § 102.

99. ICCPR, *supra* note 10, art. 25.

100. *Id.* art. 2, § 2.

101. *See generally id.*; UGANDA CONST.

102. ICCPR, *supra* note 10, art 3.



with the actual implementation of ICCPR rights, thereby violating international law.

## 2. Other Examples of Codification of the Legal Theories on Democracy

Other treaties in addition to the ICCPR substantiate the claim that the legal theories on democracy have moved beyond mere theory and into international law. Such treaties include the American Convention on Human Rights ("American Convention"),<sup>103</sup> The African Charter on Human and People's Rights ("African Charter")<sup>104</sup> and the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW").<sup>105</sup>

The treaties to which Uganda is not a signatory, such as the American Convention, can be seen as evidence of customary international law.<sup>106</sup> Customary international law results out of the practice of states followed from a sense of legal obligation.<sup>107</sup> This practice includes "diplomatic acts . . . and other governmental acts and official statements of policy . . . undertaken in cooperation with other States," (i.e., treaties).<sup>108</sup> A multilateral treaty can show that an idea is widely accepted and can contribute to the growth of customary law.<sup>109</sup>

The provisions in Article 23 of the American Convention are almost identical to the language in Article 25 of the ICCPR, which lends credence to the theory that the right to equal access to political participation has become customary law.<sup>110</sup> Article 23 states that every citizen has the right to "vote and to be elected in genuine periodic elections . . . that [guarantee] the free expression of the will of the voters."<sup>111</sup> In interpreting this

103. See American Convention on Human Rights, Nov. 22, 1969, 1114 U.N.T.S. 123 [hereinafter American Convention].

104. See African Charter on Human and Peoples' Rights, June 26, 1981, O.A.U. Doc. CAB/LEG/67/3 Rev. 5 [hereinafter African Charter].

105. Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

106. See RESTATEMENT, *supra* note 85, § 102, cmt. i.

107. *Id.* § 102(2).

108. *Id.* at cmt. b.

109. *Id.* at cmt. i.

110. American Convention, *supra* note 103, art. 23.

111. *Id.*

provision when reviewing a state party's election process, the focus of the Inter-American Commission on Human Rights ("American Commission") has been on the issue of whether the election is "authentic."<sup>112</sup> Section IV.A. of this Note will discuss what is meant by the term "authentic."

Additionally, the African Charter requires that states allow each citizen the right to "freely participate in the government of his country, either directly or through freely chosen representatives."<sup>113</sup> This provision, found in Article 13, seems to imply that the elections must be held without coercion or intimidation by its use of "freely chosen."<sup>114</sup>

Finally, the CEDAW obliges states parties to ensure that all discrimination against women in both the political and public spheres is eradicated.<sup>115</sup> It naturally follows that this requirement would include the removal of all impediments to women's equal access to political participation, including the existence of a one-party system if it is proven to have a discriminatory effect on women.

#### IV. HOW UGANDA'S ONE-PARTY SYSTEM IS IN VIOLATION OF ITS OBLIGATIONS UNDER INTERNATIONAL LAW

##### *A. Uganda's One-Party System Violates International Law*

A combined reading of the ICCPR and the various other international documents setting forth the norm of democratic entitlement creates the criteria for a free and fair election.<sup>116</sup> The elections cannot merely be used to lend authority to borderline authoritarian regimes; instead they must create a competitive process for the attainment of power.<sup>117</sup> One of the key aspects of a competitive process and a fair election is the allowance of a multi-party system.<sup>118</sup> The structure of one-party states can make it "difficult if not impossible, for independent

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112. See Fox, *supra* note 94, at 566.

113. African Charter, *supra* note 104, art. 13.

114. Fox, *supra* note 94, at 568.

115. See CEDAW, *supra* note 105, art. 7.

116. See Fox, *supra* note 94, at 552.

117. See Richard R. Marcus et al., *Popular Definitions of Democracy from Uganda, Madagascar, and Florida, U.S.A.*, J. ASIAN & AFR. STUD., Feb. 1, 2001, 2001 WL 25289658.

118. See Fox, *supra* note 94, at 560, 606.

candidates to emerge on the electoral field."<sup>119</sup> As stated above, Uganda's no-party system can be interpreted to be a one-party system and, therefore, clearly violates this criterion. It has been said that "No one party regime in Africa can boast of democratic practice or a good record on human rights."<sup>120</sup>

Many international conventions also provide for the rights to freedom of association and assembly.<sup>121</sup> As will be later discussed, these dual rights can be interpreted to demonstrate that multi-party democracy is well established in international law. The numerous provisions setting forth the rights to freedom of association and assembly, combined with interpretations on democratic entitlement, show that there is much international support for the proposition that one-party systems are not compatible with the right to democracy.

### 1. Customary Law Evidence that One-Party Systems Violate International Law

Very few democratic states still operate under a one-party system, with an increasing number of states changing to multi-party systems in recent years. The move by many states from a single-party system to a multi-party system serves as evidence of customary law. Since very few states still have one-party systems, a broad practice is shown. As the transition to multi-party systems has followed various international documents with positions against single-party democracies, it can be argued that the states' are acting out of a sense of obligation. This satisfies the two requirements for proving customary law.<sup>122</sup>

Zambia, Tanzania, Lesotho and Malawi are all examples of African nations that have made the move from single-party

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119. Pierre A. Louis, "Obscure Despotism" and Human Rights in Togo, 23 COLUM. HUM. RTS. L. REV. 133, 155 (1991/92).

120. Okechukwu Oko, *Partition or Parish: Restoring Social Equilibrium in Nigeria Through Reconfiguration*, 8 IND. INT'L & COMP. L. REV. 317, 356 n.251 (1998) (quoting Peter Anyang' Nyong'o).

121. See African Charter, *supra* note 104, arts. 10-11; American Convention, *supra* note 103, arts. 15-16; ICCPR, *supra* note 10, arts. 21-22.

122. See RESTATEMENT, *supra* note 85, § 102(2).

systems to a multi-party system since 1990.<sup>123</sup> Partly in response to demands by pro-democracy groups to end the one-party rule in Zambia, the government amended the Constitution to allow formation of political parties.<sup>124</sup> In neighboring Democratic Republic of the Congo ("D.R.C."), the government of Laurent Kabila recently proposed a constitution with strong language in favor of multiple parties. Article 22 of the Constitution states that "Political pluralism is recognized and guaranteed in the [D.R.C.]."<sup>125</sup> Article 23 goes on to provide that "No one may impose a single party over all or part of the national territory."<sup>126</sup> Following popular resentment manifesting itself in the form of protests and riots, the West African state of Togo adopted laws replacing its one-party system with a democratic multi-party system.<sup>127</sup> It was believed that this step was necessary to "entrench the democratic ideals in the Togolese political culture."<sup>128</sup>

In addition to the individual cases discussed above, some of the treaties discussed below are also evidence of customary law. The treaties to which Uganda is not a signatory cannot be binding on Uganda under treaty law, but can be binding under customary law as they set forth examples of the practices of states, followed out of a sense of legal obligation.<sup>129</sup>

## 2. Treaty Law Evidence that One-Party Systems Violate International Law

Several multilateral treaties have established the right to freedom of association and freedom of assembly.

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123. See MUNA NDULO, *POLITICAL PARTIES AND DEMOCRACY IN ZAMBIA* 41 (2000), available at [http://www.idea.int/ideas\\_work/22\\_s\\_africa/parties\\_2\\_zambia.htm](http://www.idea.int/ideas_work/22_s_africa/parties_2_zambia.htm).

124. *Id.* at 48.

125. Timothy H. Edgar & Michael D. Nicoleau, *Constitutional Governance in the Democratic Republic of the Congo: An Analysis of the Constitution Proposed by the Government of Laurent Kabila*, 35 *TEX. INT'L L.J.* 201, 217 (2000).

126. *Id.*

127. See Louis, *supra* note 119, at 140.

128. *Id.*

129. See *RESTATEMENT*, *supra* note 85, § 102, cmts. b-c.

The ICCPR provides for the right to freedom of association in Article 22.<sup>130</sup> Freedom of association should be read broadly and is said to include the right to create and join political parties.<sup>131</sup> The only qualification the ICCPR sets forth is that restrictions may be placed on this legal right when "prescribed by law and . . . necessary in a democratic society in the interests of national security or public safety."<sup>132</sup> Museveni has argued that the prohibition on political parties is necessary to prevent ethnic hatred,<sup>133</sup> but no evidence has been put forth showing his concern to be an exercise of the interest of national security.

Like the right to freedom of association, the right to freedom of assembly, created in Article 21 of the ICCPR, can be read to require the allowance of political parties. Nothing is mentioned in the Article qualifying what form the assembly must take, only that it must be peaceful.<sup>134</sup> As meetings of political parties are generally peaceful gatherings, their rights should be protected under Article 21.

The American Convention also provides for the rights of freedom of assembly and freedom of association. Article 15 recognizes the right of peaceful assembly, but, like the ICCPR, allows restrictions when dictated by national safety or public security.<sup>135</sup> The same restriction is also in place in the American Convention's Article 16, which provides for the right to associate freely.<sup>136</sup>

The African Charter, like the ICCPR and the American Convention, provides for freedom of assembly<sup>137</sup> and association, but goes on to create the right not to be "compelled to join an association."<sup>138</sup> An interesting caveat was added to subject the right to the "obligation of solidarity provided for in Article 29."<sup>139</sup> Article 29(4) gives the African individual the affirmative

130. ICCPR, *supra* note 10, art. 22(1).

131. See Karl Joseph Partsch, *Freedom of Conscience and Expression, Political Freedoms*, in *THE INTERNATIONAL BILL OF RIGHTS: THE COVENANT ON CIVIL AND POLITICAL RIGHTS* 209, 235 (Louis Henkin ed., 1981).

132. ICCPR, *supra* note 10, art. 22(2).

133. See Salmon, *supra* note 30.

134. ICCPR, *supra* note 10, art. 21.

135. American Convention, *supra* note 103, art. 15.

136. *Id.* art. 16.

137. African Charter, *supra* note 104, art. 11.

138. *Id.* art. 10.

139. *Id.* at (2).

duty to "preserve and strengthen social and national solidarity."<sup>140</sup> The NRM, as a national movement, could read this to support its contention that political parties could disrupt Uganda's national solidarity as all Ugandans are members of the NRM. Clearly, this is not the case, as there are numerous factions and frequent disharmony within the NRM.<sup>141</sup> Additionally, interpretations of the language in various treaties also point to a conception of democracy that is inconsistent with a one-party system. Interpretation by the UN and commissions established under the treaties set forth a clear pattern evincing that the drafters of the treaties did not intend a single-party system to constitute a valid form of democracy.

From the language in Article 25 of the ICCPR, it is not clear what is meant by the use of "genuine" and "free expression." During the drafting process, one delegate defined "genuine" as guaranteeing that all elections "faithfully reflected the opinion of the population,"<sup>142</sup> but there does not appear to be any definition generally accepted by the drafters. Because one-party states ratified the ICCPR, it can be argued that Article 25 does not preclude one-party systems.<sup>143</sup> But when this provision is viewed in light of all the interpretations that have followed the ICCPR and various subsequent human rights documents, it is clear that single-party systems are contrary to the right to political participation.

Though the ICCPR makes no explicit statement requiring multi-party elections, an argument can be made that a state cannot have a "genuine election" without multiple parties on the ballot.<sup>144</sup> The UN Human Rights Committee ("HRC") itself, which oversees compliance of the ICCPR,<sup>145</sup> has questioned whether one-party elections can ever truly be considered genuine.<sup>146</sup> In a recent non-binding Resolution promoting democ-

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140. *Id.* art. 29(4).

141. *See* Salmon, *supra* note 30.

142. U.N. GAOR 3d Comm., 16th Sess., 1096th mtg. at 179, U.N. Doc. A/C.3/SR1096 (1961).

143. *See* Fox, *supra* note 94, at 556.

144. *See id.* at 556-59.

145. ICCPR, *supra* note 10, art. 40-41.

146. When reviewing country reports regarding compliance with the ICCPR, one of the key aspects the HRC examines is whether a multi-party democracy is in place. *See Comments on Cameroon*, U.N. HRC, U.N. Doc.

racy, the UNGA called upon members to develop and maintain an electoral system that provides for the "free and fair expression of the people's will through genuine and periodic elections."<sup>147</sup> The Resolution goes on to include ensuring the "freedom to form democratic political parties that can participate in elections . . . including through appropriate access under the law to funds and free, independent and pluralistic media."<sup>148</sup>

The American Commission recently had occasion to discuss the role of one-party systems in democracies. While the American Commission's holdings are not per se binding on Uganda, as it is not a party to the American Convention, the decisions serve as further evidence of customary international law because they demonstrate the widespread acceptance of a practice by states.<sup>149</sup> Thus, as such, these obligations would be binding on Uganda.

The American Commission has stated that political parties are the foundation of modern democracy.<sup>150</sup> In past cases, the American Commission has held that "parties are institutions needed in democracy."<sup>151</sup> As stated previously, the focus of the American Commission is on the authenticity of the election. In cases where it has investigated the election practices of a state, the American Commission has concerned itself with the restrictions a state places on political parties when determining authenticity.<sup>152</sup> It has concluded that one-party states are inherently coercive and no coercive political system can be authentic.<sup>153</sup>

Additionally, the European Commission on Human Rights ("ECHR") has held in a 1969 case that the abolition of political parties violates Article 3 of the First Protocol to the European

CCPR/C/79/Add.33, ¶ 5 (1994); *Comments on the United Republic of Tanzania*, U.N. HRC, U.N. Doc. CCPR/C/79/Add.12, ¶ 4 (1992).

147. *Promoting and Consolidating Democracy*, U.N. GAOR, U.N. Doc. A/RES/55/96 (2001).

148. *Id.*

149. See RESTATEMENT, *supra* note 85, § 102.

150. *Annual Report 1994*, Inter-American Commission on Human Rights, Rep. No. 1/95, Case 10.804(b), OEA/Ser.L/V/II.88, Doc. 9 rev. at 49 (1995), available at <http://www.cidh.org>.

151. *Id.*

152. See Fox, *supra* note 94, at 567 (interpreting the American Commission's statements in the Seventh Report on Cuba).

153. *Id.*

Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>154</sup> Article 3 mandates that states "hold free elections . . . under conditions which will ensure the free expression of the opinion of the people."<sup>155</sup> Again, Uganda is not bound under treaty law by the decisions of the ECHR, but the holdings are additional evidence of customary international law, which is binding on Uganda.<sup>156</sup>

The African Charter, to which Uganda is a signatory and therefore bound under treaty law, can also be said to support a belief that a multi-party system is a requirement of a true democracy. If, as stated above, "freely chosen" implies without coercion, then the African Charter also prohibits single-party systems if such systems are impossible to exist without coercion.<sup>157</sup> Although an argument can be made that the African Charter does not believe one-party systems are inconsistent with conducting "freely chosen" elections, such an argument is ultimately unpersuasive. The argument that one-party systems are not inconsistent stems from the fact that many of the signatories to the African Charter, including Uganda, exist under one-party systems. Under such theory, it would seem unlikely that parties would sign a treaty that conflicts with their system of government. Moreover, the African Charter leaves out the requirement that voting must reflect the opinion of the people. This would also seem to support an argument that one-party elections are permitted.<sup>158</sup>

However, this argument is countered by a reading of Article 60 of the African Charter, which instructs the African Commission on Human Rights ("African Commission") to "draw inspiration from international law on human and peoples' rights."<sup>159</sup> International law clearly holds that single-party systems are at odds with the democratic system and are, therefore, in violation of international law. While there is no outright prohibition

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154. The Greek Case, 1969 Y.B. EUR. CONV. ON H.R. (Eur. Comm'n on H.R.) 12.

155. Protocol (No. 1) to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Mar. 20, 1952, art. 3, 213 U.N.T.S. 262, 262.

156. See RESTATEMENT, *supra* note 85, § 102(2).

157. See Fox, *supra* note 94, at 102 (summarizing Cuba Report).

158. *Id.* at 568.

159. African Charter, *supra* note 104, art. 60.



on single-party systems, making reference, without qualification to international human rights law, seems to demonstrate that the African Commission should base its evaluations on common principles of international law. This concrete statement is more persuasive than the fact that single-party states signed the Charter.

The UN has also expressed its view that single-party elections hinder equal political access.<sup>160</sup> In its election management capacity, the UN is able to work at a country level to provide voter education, review the electoral process and provide general electoral assistance.<sup>161</sup> In reviewing elections, the UN has made it clear that a standard for multi-party elections as a prerequisite for a fair and free election has been established.<sup>162</sup> This view is most clearly demonstrated in the United Nations Observer Mission to Verify the Electoral Process in Nicaragua ("ONUVEN").<sup>163</sup> In the terms established by the UN, the ONUVEN was obliged to ensure that political parties "enjoy complete freedom of organization and mobilization, without hindrance or intimidation by anyone."<sup>164</sup>

### *B. One-Party Systems Discriminate Against Women*

The patriarchy evident in the sole political machine in Uganda is a serious impediment to women's complete and realized participation in politics. Women have been given the right to participate in politics in the Constitution,<sup>165</sup> but the question is not whether they have the right, but whether they are actually able to be active players within Ugandan politics.<sup>166</sup>

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160. Chiiko Bwalya v. Zambia, Comm. No. 314/1988, ¶ 6.6, U.N. Doc. CCPR/C/48/D/314/1988 (1993).

161. See United Nations Dev. Program, *The Role of UNDP: Electoral Management Bodies and Democratic Governance*, at <http://magnet.undp.org/Docs/electoral/emb/EMB%20Discussions.htm> (1999).

162. See Fox, *supra* note 94, at 590.

163. See *Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections: Report of the Secretary-General*, U.N. GAOR, 46th Sess., Agenda Item 98(b), at II.B.1, U.N. Doc. A/46/609 (1991).

164. *Id.* ¶ 32.

165. UGANDA CONST. art 38.

166. See Judith Van Allen, *Women's Rights Movements as a Measure of African Democracy*, J. ASIAN & AFR. STUD., Feb. 1, 2001, 2001 WL 25289655.

The one-party system in Uganda is a major hurdle for female candidates to cross. Women are unable to start their own party or even seek out an established party that may be more receptive to their candidacy. By establishing a multi-party system in Uganda, women could put forth their own slate of candidates and mobilize to increase female voter turn out. There are numerous non-governmental organizations and other states throughout the world which have encouraged a multi-party system to enhance the equality of political participation.<sup>167</sup> A multi-party system benefits not only women, but the entire state.

Naturally, universal agreement that multi-party democracies are beneficial to women is lacking. Some Ugandan scholars believe that multi-party elections may actually reverse some of the progress women have made.<sup>168</sup> They maintain that establishment of a multi-party democracy would send women, who had just begun to compete in Uganda's current single-party system, scrambling to understand the new system. It has been argued that the shallow progress that women have made depends on the continuation of the stable institutional networks of the single-party system.<sup>169</sup>

There are several examples that run contrary to the argument that transformation from a one-party system to a multi-party system will be detrimental to women. *The Washington Post* reported that "The multi-party movement that gripped Africa during the late 1980's and early 1990's has galvanized women across the continent, leading to a bevy of political groups and spurring hundreds of women to run for office."<sup>170</sup> For example, following the switch to a multi-party system,

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167. *See Democracy in Africa: Hearing Before the Senate Foreign Relations Comm. Subcomm. on Africa*, 105th Cong. (1998) (statement of Susan E. Rice, Assistant Secretary for African Affairs, U.S. State Department).

168. *See Harries, supra* note 49, at 522 (taken from conversations with Enid Byaburakirya, Director, Legal Aid Project of the Uganda Law Society, in Kampala, Uganda (June 23, 1992)).

169. *Id.*

170. Stephen Buckley, *Africa's Women Make Power Moves; Female Officials Fight Hostility to Break Grip of All-Male Rule*, WASH. POST, Feb. 28, 1995, at A1, available at 1995 WL 2080786.

women in Kenya won fifty local political posts, doubling the positions they previously held.<sup>171</sup>

Additionally, the political status of women in Zambia defies the reasoning against multi-party democracy.<sup>172</sup> Since the movement from one-party rule to multi-party democracy, women have begun to seek out political participation and increased representation. A new party was established which sought the input of women and encouraged professional women to join. Numerous women obtained seats as chairpersons of committees of the party.<sup>173</sup>

Furthermore, women in Botswana were able to use the multi-party system to their advantage in order to gain more rights.<sup>174</sup> When the majority party, which had dominated politics since Botswana gained independence, failed to respond to requests and pressure from women to improve their rights and freedoms, women turned to an opposition party where they found a commitment to women's rights and representation.<sup>175</sup> The women voted en masse in favor of the other party, demonstrating their electoral power.<sup>176</sup> Their success illustrates that the existence of legitimate other parties in an election provides women with the leverage to get some of their goals accomplished and serves as a warning to the dominant party to be more responsive to women's rights.<sup>177</sup>

Based on these theories, Uganda fails its requirement to comply with the international norm of democratic entitlement and the equal rights provisions in its own Constitution. The norm of democratic entitlement has become international law through customary law and various international agreements. With women as a whole unable to participate effectively in the political process, they lack the right to self-determination, which is the core of democratic entitlement, and violates international law. This right, and the constitutional provisions es-

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171. *Id.*

172. See Gisela Geisler, *Troubled Sisterhood: Women and Politics in Southern Africa, Case Studies from Zambia, Zimbabwe and Botswana*, AFRICAN AFFAIRS, Oct. 1, 1995, 1995 WL 14760132.

173. *Id.*

174. See Van Allen, *supra* note 166.

175. *Id.*

176. *Id.*

177. *Id.*

established to codify it into Ugandan domestic law, needs to be enforced in order for the provisions to be effective.

## V. HOW TO ENFORCE THE INTERNATIONAL LAW PROVISIONS

A common critique of international law is the lack of effective enforcement.<sup>178</sup> The enforcement of international law requiring equal political participation may require a state to restructure its government or laws.<sup>179</sup> The ICCPR has set forth a system of enforcement. In addition, there are various steps nations can take to attempt to induce compliance by a state violating international law. Finally, suit can be brought in the Ugandan domestic courts.

### A. *The ICCPR's Enforcement Mechanisms*

The ICCPR has set forth various provisions to ensure compliance with the rights it has established. The first of the three enforcement provisions is found in Article 40 of the ICCPR. Article 40 requires states parties to submit reports to the Secretary-General of the United Nations on the "measures they adopted which give effect to the rights recognized [in the Covenant] and on the progress made in the enjoyment of those rights."<sup>180</sup> The second provision is found in Article 41. It permits state parties, who believe that another state party is not "giving effect to the provisions of the present Covenant," to first bring the matter to the attention of that state party.<sup>181</sup> If communication between the two states does not end in a result satisfactory to both parties, the state has the right to refer the matter to the HRC<sup>182</sup> established by the ICCPR.<sup>183</sup> Acceptance of this enforcement mechanism is optional and may be accepted at any time.<sup>184</sup>

An optional third provision attached in a protocol to the ICCPR provides for communications to the HRC by "individuals claiming to be victims of violations of any of the rights set

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178. See RESTATEMENT, *supra* note 85, at Introductory Note.

179. See Fox, *supra* note 94, at 596.

180. ICCPR, *supra* note 10, art. 40, § 1.

181. *Id.* art. 41, § 1(a).

182. *Id.* art. 41, § 1(b).

183. *Id.* art. 28, § 1.

184. *Id.* art. 41, § 1.

forth in the Covenant."<sup>185</sup> There are qualifications to this allowance, such as the exhaustion of all available domestic remedies before bringing a communication to the HRC.<sup>186</sup>

### *B. Additional International Enforcement Options*

As noted earlier, states depend on international recognition to establish their legitimacy as a government. If the actions of a state are repugnant to other states and in violation of international law, the offending state can be shunned and exiled. These states would ostensibly become pariahs.<sup>187</sup> A perfect example of this situation is the apartheid government of South Africa. Its system of white-rule government was deemed illegitimate and practically every state scorned South Africa's government, inducing reform.<sup>188</sup> This might be the best mechanism for enforcing Uganda's violation of international law. Human Rights Watch agrees, stating that "It is unlikely that the initiative for democratic reform will come from inside the NRM-dominated government without significant international pressure."<sup>189</sup>

### *C. Domestic Enforcement Options*

Women in Uganda who feel that the government is not abiding by its international obligations are also entitled to bring suit in Ugandan courts. There have been several successful cases where women have used international obligations to put an end to discrimination in various contexts.<sup>190</sup> For example, Unity Dow, a lawyer in Botswana, sued in Botswana's domestic court arguing that the traditional law establishing different citizenship rules for children of citizen women than citizen men was impermissibly discriminatory.<sup>191</sup> She claimed the law vio-

185. Optional Protocol to the International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 302.

186. *Id.* art. 5, § 2.

187. See Fox, *supra* note 94, at 596-97.

188. *Id.*

189. *Hostile to Democracy*, *supra* note 2.

190. See Ephraim v. Pastory and Another, Tanz. High Ct. (Feb. 22, 1990); Attorney Gen. v. Unity Dow, C.A. of the Rep. of Bots. (July 3, 1992) (opinion of Ammissah, J.P.), available at <http://www.law-lib.utoronto.ca/Diana/fulltext/dow1.pdf>.

191. See *Unity Dow*, C.A., at 160.

lated provisions of the Botswana Constitution, citing Botswana's international obligations under human rights law as guidelines for interpreting the domestic constitutional provisions. The court found the law discriminatory, holding that "the Constitution must be held not to permit discrimination on the grounds of sex which will be a breach of international law."<sup>192</sup>

Women in Uganda could take this same action. The plaintiffs could argue that the one-party system impermissibly violates the Uganda Constitution and its obligations under international law, citing Article 33 of the Constitution and all of the international obligations the state has assumed as signatory to multilateral conventions.<sup>193</sup>

## VI. CONCLUSION

Establishment of a multi-party system is not a cure-all for Uganda's ills. There are many additional hurdles that will arise under a system that allows political choice, but allowing a multi-party system will be a large step in the right direction towards eradicating the inequalities which prevent women from properly exercising their political rights.

Let it not be said that Uganda has failed to take monumental steps in improving human rights for its people.<sup>194</sup> On the contrary, by African standards, Uganda is viewed as relatively progressive.<sup>195</sup> The advances in human rights in general include extensive provisions for the rights of women. Democracy is an ever-evolving process and now that Uganda has established a democracy, further movement can be made to equalize the rights of men and women by utilizing the channels created by the Constitution in compliance with Uganda's obligations under international law. But for this to happen, the constitutional provisions must be given full effect. If the equal rights provisions are not implemented, they are meaningless.

It is women as key decision-makers who have the ability to make drastic changes and improvements for themselves and

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192. *Id.* at 170.

193. UGANDA CONST. art. 33.

194. See BBC NEWS, *supra* note 26.

195. See *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Uganda*, *supra* note 62.

their nation on the whole.<sup>196</sup> To accomplish this, the democratic provisions established in Uganda's Constitution must be observed. The guaranteed administration of the laws established will give meaning to the international legal principles behind them.<sup>197</sup> The administration begins with women being allowed equal political participation, not only under the law, but in practice as well.

Political parties play an essential role in the democratic political process.<sup>198</sup> For women to achieve true access to the democratic process, a multi-party system must be permitted to allow women to organize and mobilize. These advances will give women the right to equal political participation, which is their entitlement. In the words of John Stuart Mills, "Only complete equality between all men and women in legal, political and social arrangements can create the proper conditions for human freedom and a democratic way of life."<sup>199</sup>

*Amy N. Lippincott\**

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196. See Rice, *supra* note 167.

197. See Stacy R. Sandusky, *Women's Political Participation in Developing and Democratizing Countries: Focus on Zimbabwe*, 5 BUFF. HUM. RTS. L. REV. 253, 262 (1999).

198. See NDULO, *supra* note 123.

199. JOHN STUART MILLS, *THE SUBJUDICATION OF WOMEN* (1869), *quoted in* NDULO, *supra* note 123, at 54.

\* The author is a student at Brooklyn Law School, graduating in June 2003. She wishes to thank her family and friends for their continuous support and understanding.