PAPER NO. PAP/015

MAKERERE UNIVERSITY

MAKERERE INSTITUTE OF SOCIAL RESEARCH / INTERNATIONAL ALERT

THE CONSTITUTION AS A MEDIATOR IN INTERNAL CONFLICT.

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Paper presented to the International Seminar on Internal Conflict, 21st - 25th September, 1987; sponsored by International Alert, London; Makerere Institute of Social Research, Makerere University; International Peace Research Institute, Oslo; and the United Nations University, Tokyo.

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THE CONSTITUTION AS A MEDIATOR OF INTERNAL CONFLICT

- THE CASE IN UGANDA.

HISTORICAL INTRODUCTION*

A constitution, as an instrument that lays down an agreed arrangement as to how the framework and the principal functions of a government and the principles governing the operation of those organs, has frequently been used in conflict resolution in Uganda. The first instruments of constitutional importance were the so called native agreements. It all started from the time the British began moulding Uganda into a country.

The British Imperial East African Company

The first European to arrive in Uganda was J. H. Speke who came "in search of the source of the Nile". He arrived at the capital of the Kabaka of Buganda, Mutesa I, in 1862. But it was really the missionaries whose presence and activities led to the assumption of control of Uganda by the British. When the explorer and journalists, H. M. Stanley, visited Mutesa's Court in 1875, he persuaded the Kabaka to allow missionaries to come to Uganda. The first party of missionaries representing the Church Missionary Society arrived in 1877, followed soon after by Roman Catholic Missionaries. Religious competition for influence resulted in conflicts and religious wars which plunged Buganda into a state of social disorder with economic disaster for the trading companies which persuaded the British government to assume political control.

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The British Imperial East African Company was granted a Charter authorising it to develop the British sphere of influence in East Africa. In 1890 Lord Lugard, a captain serving with the Company, under-took to keep law and order in Buganda. In order to avoid possible conflict over jurisdiction over Europeans, jurisdiction over Europeans was resolved by an agreement which was of constitutional importance. The agreement gave powers to the company's agent in Buganda:

a) To be the sole arbitrator of disputes between Europeans resident in Buganda with appeal to the higher authorities of the country;

b) To be the sole administrator of European affairs in the country.

c) To sanction any agreement or treaties between the Kabaka and other European powers; and

d) To be responsible for the collection, assessment and apportion of the revenues of the Kingdom.[2]

The Company ruled Buganda for barely a year when financial problems forced the British Government to declare Uganda a protectorate in 1892. The following year, Portal, who was appointed Commissioner for Uganda, made an agreement with Kabaka of Buganda which deprived the Kabaka of powers over external affairs and jurisdiction over non-Baganda including the Europeans. The Commissioner was granted the right to interfere with the administration of justice by the Kabaka and decla red that the court of the Commissioner was to be the Supreme Court of Appeal. Assessment of taxes and disposal ofrevenue was to be subject to the control of the Commissioners.[3] This Agreement did not, however, provide sufficient foundation for British rule in Buganda.

The Buganda Agreement 1900

The real foundation for the protectorate government in Buganda was laid by the signing of the Buganda Agreement of 1900. In 1899 Sir Harry Johnstone was appointed Special Commissioner for Uganda and charged with the responsibility of concluding an agreement to regulate more precisely the relationship of Britain with Buganda.

The main provisions of the Buganda Agreement were that:

a) The Kabaka and Chiefs agreed to renounce, in favour of Britain, any claims tribute they had been getting from the tribes bordering on B uganda;

b) B uganda was to rank as a province of equal rank with any other provinces into which Uganda would be divided;

c) The revenues of the Kingdom of Buganda would merge in the general ~~provinces of the~~ whole Protectorate;

d) Laws made for the general administration of Uganda were to be applicable to Buganda;

e) The Kabaka would continue to be recognised as ruler by the British Government only as long as he and his Chiefs and his subjects conformed to the Laws and regulations made for the administration of the Kingdom by the Protectorate Government;

f) The Kabaka was thenceforth to be know as his highness the Kabaka of Buganda; his successor was to be elected by the Lukiko among the members of the royal family with the approval of the British Government ;

g) The Kabaka was to exercise direct rule over his subjects but his courts were to have no jurisdiction over any person who was not a Muganda;

h) Buganda was to be divided into twenty counties at the head of each was to be a chief appointed by the Kabakas government with approval of the Protectorate Government;

i) To assist the Kabaka in the administration of his Kingdom he would appoint a prime Minister to be known as Katikiro, a Chief Justice and a Treasurer;

j) The legislature of the Kingdom of Buganda was to be known as the Lukiiko consisting of the Katikiro, the Chief Justice, the Treasurer, all county chiefs, three representatives appointed by the Kabaka. The functions of the Lukiiko were to discuss all matters concerning the administration of the kingdom and forward to the Kabaka resolutions regarding measures to be adopted in the administration of the kingdom. The Kabaka could not, however, give effect to such resolutions without the consent of the Protectorate Government.

k) In judicial matters the Lukiiko was to be a Court of Appeal from decisions of courts of first instance held by the chiefs of counties;

m) The right of the Kabaka to raise an army for the defence of his kingdom was preserved but it had to be exercised on the advice of the commissioner and the arming and equipping of Kabaka's army was to be undertaken by the Protectorate Government;

n) Nearly all the fertile land in Buganda was allocated by the Agreement to the Kabaka his family, ministers, chiefs and other well to do notables. This is what came to be known later as Mailo land.

The right to minerals found in these estates was to belong to the owner of the estate subject to a ten percent ad voleren duty. Mineral rights outside private estates were to belong to the central government.[4]

King Kabalega of Bunyoro strongly resisted colonisation by the British and fought hard to keep the British out of Bunyoro. Nevertheless a large part of the Kingdom of Bunyoro was over-run by British forces with the help of the Kabaka of Buganda. When E.J.L. Berkeley was the Administrator in Uganda Protectorate with the consent of the foreign office, all territories of Bunyoro south of River Kafu were incorporated into Buganda. The Kingdom of Bunyoro thus lost a large part of its territory. The Buganda Agreement of 1900 confirmed the territorial boundarie between Buganda and Bunyoro.

Because the Buganda Agreement, 1900, gave Buganda a special status in Uganda, it became the cause of conflicts to follow.

The Toro Agreement, 1900

The next deal was made with the Kingdom of Toro. The Agreement with Toro was much more simpler than the Buganda Agreement. It divided the Kingdom into six counties, and recognised Chief Kasagama as the Omukama or supreme chief over all Toro, so long as he had his chiefs and subjects abiding by the agreement. The Omukama and all the chiefs were given the right to nominate their successors. All waste and uncultivated lands, forests, mines, minerals and salt deposits were to be the property of the British Government. As with the Buganda the Batoro were to pay hut and gun taxes and no chief was allowed to levy on other chiefs or on his subjects tribute of gifts of any kind without the permission of the central government.

Justice was to be administrered by the chiefs of the six counties. The King of Toro, his ministers and chiefs were granted estates out of waste lands. But what was granted to them was much less than what was granted to their counter-parts in Buganda.

An agreement based on the Toro model was concluded with Ankole in the following years. The King, his ministers and senior chiefs were given waste lands and the rest of the kingdom was declared Crown Land.

The Uganda Order in Council, 1902

The Agreements established working relationships between the British Government and the Kingdoms. The constitutional framework for the administration of the country was laid by the Uganda Order in Council, 1902. The order in Council (a) defined the boundaries of Uganda; (b) provided for the administration of the Protectorate by a Commissioner; (c) empowered the Commissioner to make laws by the promulgation of ordinances; and (d) set up a High Court with powers to administer justice according to written laws, principles of common law, doctrines of equity and statutes of general application. "Its jurisdiction was to be exercised in accordance with the Penal code and the Civil and Criminal Procedure Codes of India".

Uganda Order in Council 1920.

The Uganda Order in Council of 1920 introduced new constitutional changes. It created an Executive Council consisting of such persons as the Imperial Government appointed. It also created a Legislative Council consisting of the Governor, his executive Council and such persons, not being less than two, as the Imperial Government directed.

The Buganda Agreement, 1955

Another major constitutional development was the Buganda agreement 1955. This Agreement was precipitated by a series of misunderstandings between the Kabaka, his Lukiiko and Ministers on one hand, and the Protectorate and the British Governments, on the other hand. The British wanted to develop Uganda as one united country; the Baganda wanted to have a special status; the British Government wanted to give Uganda independence as a unit, Buganda wanted to have her independence separate from the rest of the country; the British Government wanted national representation in the legislative council, the Baganda opposed and boycotted it; British government ministers talkdd of an East African Federation, Buganda opposed it. Matters came to a head in 1953 when the Kabaka refused to sign a document prepared by Governor Sir Andrew Cohen in which he was required to undertake to cooperate with the protectorate government and welcoming the British Government's decision not to press ahead with the issue of federation. The British Government withdrew its recognition of the Kabaka and the was deported to Britain. It was only when he, his Lukiiko and Ministers undertook to co-operate with the protectorate government that he was allowed to return. The new relationship between the British Government and Buganda was laid in the Buganda Agreement, 1955.

Under the Agreement, the British Government undertook to recognise the Kabaka as a ruler so long as he ruled in accordance with a constitution for Buganda (which was made an integral part of the Agreement). Buganda agreed to be represented in the Legislative Council by candidate submitted by the Katikiro to the Governor.

Under the Constitution of Buganda, which was Schedule One of the Agreement, the Kabaka was made a constitutional monarch. The conduct of his government was to be done by his ministers. The Governor retained the power of vetoing appointment of ministers by the Kabaka and the power of approving draft laws made by the Lukiko and the annual estimates of expenditure of the Kingdom. The Agreement made Buganda virtually a federal state within Uganda Protectorate. The Protectorate and British Governments breached the Agreement by requiring Buganda to participate in country wide elections to the Legislative Council. Buganda boycotted both the elections and the constitutional committee appointed to recommend the manner in which the elections were to be conducted and instituted a legal action in the High Court, praying the Court to declare that the Legislative Council (Elections) ordinance, 1957, was contrary to the Agreement. The Court dismissed the suit when the Protectorate government pleased that the Agreement was an act of state which could not be questioned in any court. The decision of the High Court[6] was confirmed by both the Court of Appeal for East African[7] and the privy Council.[8]

As independence approached more conflicts called for resolution through constitutional mediation. The first of these was Buganda which wanted to secede unless its position in general and that of the Kabaka in particular was clearly defined in an independent Uganda. The other kingdoms made similar claims. Membership of political parties reflected religious aligments. There were boundary disputes between Buganda and Bunyoro relating the counties lost by Bunyoro to Buganda at the beginning of the century. The Bakonjo and Bamba, the Sebei, and the people of East Acholi district wanted separate districts. The town Mbale was claimed b both Bugi hu n B k i.

The Uganda Relationships Commission, 1961.

In December, 1960, the Secretary of State for the Colonies, Sir Ian Macleod, appointed a Commission under the Chairmanship of the Right Honourable, the Earl of Munster, to examine and advise on the form of Government best suited to an independent Uganda.

The terms of reference of the Commission were:

"To consider the future form of government best suited to Uganda and the question of the relationship between the Central Government and the other authorities in Uganda, bearing in mind:

(a) Her Majesty's Government's known resolve to lead Uganda by appropriate stages to independence and to this end, to develop stable institutions of government which will properly reflect the particular circumstances and meet the needs of Uganda; and

(b) the desire of the people of Uganda to preserve their existing institutions and customs and the status and diginity of their rulers and leaders; and

(c) the special relationship that already exists between her Majesty's Government and his Highness the Kabaka's Government and the Native Governments of Bunyoro, Ankole and Toro as set down in the various Agreements that have been made with the Traditional Rulers and peoples of Buganda, Bunyoro, Ankole, and Toro, and to make recommendations"

The Commission reported in 1961, and it was mainly their report and the Wild Report of 1959, which laid down principles upon which the foundation of the independence constitution of Uganda was based.

The Report took into consideration the peculiar position of Buganda and the other Kingdoms in the country and the need to keep the country one, within a federal and semi-federal structure. The main recommendations of the Commission were that:

(a) As far as claims for succession by Buganda were concerned, it was unacceptable to allow Buganda to separate from the rest of the country.

(b) Buganda's relationship with Uganda should be federal.

(c) The Central government should have exclusive powers over a few special matters such as foreign affairs, the armed forces and the central police. Buganda should have exclusive power over other matters such as the Kabakaship, the Lukiko and traditional institutions. The residuary powers shall be shared, subject to the central legislature's over-riding power in the last resort.

(d) Buganda should be given a guarantee that Uganda laws affecting the Kabakaship and Buganda's other exclusive subjects should be of no effect unless agreed to by the Kabaka and the Lukiko. This guarantee would be by law, which the courts would enforce. Buganda should have the deciding voice in settling the form of guarantee.

(e) The Kabaka should become a genuine constitutional monarch and withdraw from politics.

(f) If one of the Buganda members of the central legislature became a Minister or Parliament Secretary of the Uganda Government he should cease to be a member of the Lukiiko and there should be a by-election for his Lukiiko seat.

(g) A directly elected Lukiiko, if it so wished, could choose to act as an electoral college to elect the representatives from Buganda to National Assembly.

(h) The Lukiiko should use a system of proportional representation to elect the Buganda representatives in the Central legislature, so that various bodies of opinion should be represented.

(i) Adults of either sex resident in Buganda should be allowed to vote in Lukiiko elections. The national electoral register should be used.

(j) Subject to the usal disqualifications, all voters should be allowed to stand as candidates for election to the Lukiiko.

(k) The life of the Lukiiko should be three years.

(l) The power of dissolution should be vested in the Kabaka acting on his Prime Minister's advice.

The report then addressed itself to the framework of the independence constitution and suggested the following :

(a) Uganda should be a single democratic state with a strong government at the centre. Within this state Buganda should stand in a federal relationship and the three other agreement kingdoms in a semi-federal relationship.

(b) The law requiring direct elections to the Lukiiko and specifying the franchise should be enshrined in the Uganda constitution. The constitution should require Buganda to be represented in the National Assembly either by direct or by indirect elections, at her option. The choice should be signified by the Kabaka acting on advice after a resolution by the Lukiiko.

The National Assembly should have no power to make laws on the following subjects without the consent of Buganda, signified as above;

i. The Kabakaship.

ii. The Kabaka's government, including the public service and local government.

(iii) The Lukiiko, as to its powers and procedure.

(iv) Traditional or customary matters to be defined.

Lukiiko should have no power to make laws conflicting with the national constitution; or laws on foreign affairs, nationality, the armed forces, the national police force, and about central government taxes.

On other matters, both the National Assembly and the Lukiiko have power to make laws but in case of conflict the National Assembly's legislation should prevail.

(c) The other Kingdoms should have the same guarantee as Buganda for their monarchies, the constitutional power of their rulers and ceremonies and traditions connected with their monarchies and their cultures. The Kingdoms' rights to appoint Ministers should be recognised in the constitution. Legislation passed by the Kingdom councils should legally be bye-laws, but should be called "laws".

(d) The constitution should provide for the courts to decide dispute about its meaning and operation.

(e) Until independence, the Head of state was to be the Governor representing the Queen. Afterwards it may may be best to appoint a Governor General at first, to allow time to debate the problem.

(f) The Legislative Council was to become the National Assembly. After independence it would become a sovereign legislature, subject to the restrictions of the constitution.

Constitutional amendments should require a two-thirds majority. The courts of law should have power to declare unconstitutional legislation invalid. Universal adult suffrage and a common roll were recommended. The Central Government should maintain a single electoral register for the National Assembly, the district councils and the Buganda Lukiiko. The Assembly should be elected for a five year term subject to earlier dissolution by the Head of State on the Prime Minister's advice. The constitution should provide for the resignation of the government if defeated on a vote of confidence; for the post of Leader of the opposition; and for the right of parliamentary opposition. There should be no ex-official nominated members. The system of specially elected members should continue for ten years, but thereafter only if the assembly so resolves by a two-thirds majority. British cabinet conventions should be followed.

The Head of State should exercise the prerogative powers of the Crown on ministerial advice (e.g. to declare war and peace, summon and dissolve the National Assembly and make treaties).[9]

The Uganda Constitutional Conference, 1961.

Soon after the publication of the report of the Uganda Relationships Commission, a constitutional conference took place in London to decide upon the constitutional structure of an independent Uganda. The Report formed the basis of discussion at the conference and the main question was which recommendations were not to be adopted. In this opening speech the Secretary of state for the Colonies expressed his conviction that the Report of the Relationships Commission provided a framework within which the Conference could reach agreement on a constitutional which would take Uganda to the final stage before independence, and that the proposals

placed before the conference was based upon the Commision's recommendations. He went on to suggest that the recommendations of the Commission, with regard to Buganda provided the best and perhaps the only way of securing the co-operation of the people of Buganda in the creation of an independent Uganda.

The Conference was a momentous occasion for Uganda because it was agreed upon, formed the basis of the independence constitution. The principal conclusions reached were as follows:-

1. The Legislature of Uganda was to be single chamber styled the National Assembly, composed of eighty-two elected members and nine special elected members. All the elected members were to be elected by universal adult suffrage. The boundaries of constituencies were to be reviewed from time to time by an Electrol Boundary Commission.
2. The leader of the majority party in the National Assembly was to form a Government and become Prime Minister.
3. There was to be public and Judicial Service Commission to make appointments to the Public Service and the judiciary respectively.
4. The posts of Provincial Commissioners were to be abolished but those of district Commissioners were to be retained.
5. There was to be a High Court for Uganda consisting of the Chief Justice and other judges. The retiring age of a judge was to be sixty two. Appeals were to lie from the High Court to the Court of Appeal for Eastern Africa. But appeals were to lie direct to the Privy Council on questions of interpretation of the Constitution.

6. Buganda was to have a special status:-

a) It was to be represented in the National Assembly by twenty-one members elected either directly by the people or indirectly by the Lukiiko.

b) The Lukiiko was to have sixty-eight directly elected members and not more than thirty two nominated or ex-official members.

c) The Lukiiko was to have exclusive powers to make laws for Buganda on the Kabakaship including the powers, duties and obligations of the Kabaka and his ministers, the public service of Buganda, and traditional and customary matters relating to Buganda.

d) There was to be High Court for Buganda which would administer justice in the name of the Kabaka and having the same jurisdiction with respect to Buganda as the High Court of Uganda was to have in respect of the whole of U ganda.

7. Justice was to be administered in Ankole, Bunyoro and Toro in the name of the respective ruler.

8. Each district administration was to be given the right to appoint a constitutional head.

9. The constitution of Uganda was to contain a chapter protecting the fundamental rights of the individuals enforceable in the High Court.

The Business of the 1961 Conference was to decide the form constitution providing for internal self-government. The Constitutional Conference sought, so far as was possible, to ensure that they would form a suitable basis for Uganda's constitution after independence.

The self-government constitution was introduced in March, 1962. Responsibility for the conduct of Uganda's internal affairs passed to a Cabinet of Ministers drawn exclusively from the National Assembly. The leader of the majority party in the National Assembly, Mendicto Kiwanuka, became Uganda's first prime Minister.

The Uganda Independence Conference, 1962.

In April, the Rulers of Ankole, Bunyoro and Toro, and delegations representing their governments, in discussions with the Secretary of State, put forward a demand for federal status for their Kingdoms.

They were accompanied by the Kyabazinga (elected Constitutional Head) of Busoga, a district which had traditional institutions of its own, and a delegation from the Busoga district Council, who associated themselves with the demand for federal status.

In these discussions the Secretary of State agreed that, provided that detailed provisions could be worked out and embodied in new Agreements, the three kingdoms, should be accordéd certain exclusive legislative powers, together with safeguards for their Rulers and traditional institutions. He also agreed the appropriate revenue should be secured to the Kingdoms in the Uganda constitution but added that the details of this would have to be worked out later in the light of the fiscal commission's recommendations. Finally, he stated that if agreement could be reached on these matters they would be entrenched in the Constitution and would be expressed in the new Agreements as a federal relationship. The Secretary of State was, however, unable to agree that the United Kingdom Government should enter into an Agreement with Busoga (which unlike the Kingdoms had no existing Agreement with the United Kingdom Government); and the question of the

future position of Busoga was left for further consideration.

It was announced on 10th May, 1962 that a Conference would open in London on 12th June to resolve those matters requiring decisions before independence. The relationship between Uganda and the Kingdoms (including Busoga) was still defined in Agreements with the United Kingdom Government, which could not persist after independence.

Meanwhile, a general election was held in Uganda on 25th April 1962, which resulted in a change of Government. New registers of electors had been prepared to give effect to the decision of the 1961 Conference that universal adults suffrage should be introduced throughout Uganda. In the elections in the constituencies, the Uganda Peoples Congress secured thirty seven seats and the Democratic Party twenty two (but two subsequently by elections increased their strength in the National Assembly to twenty-four). Twenty one representatives of Buganda were elected by the Buganda Lukiiko, the majority of whose members had themselves been directly elected at an election in Febuary. All the Buganda members were members of the Kabaka Yekka movement. Mr. A. M. Obote, leader of the Uganda Peoples Congress, then succeeded Mr. B. Kiwanuka as Prime Minister at the head of the coalition Government comprising his own party and the Kabaka Yekka.

The Uganda Independence Conference opened at Marlborough House in London on Tuesday, 12th June, 1962, under the chairmanship of the Secretary of State for the Colonies, the Rt. Hon Reginald Maudling, M.P. The work of the Conference was largely undertaken in three committees - A Constitutional Committee, a Fiscal Committee and a Citizenship Committee.

In addition, there were many informal meetings between various groups and individuals taking part in the Conference. The recommendations of the Committees and the outcome of these informal meetings were considered by the conference in plennory session. The conclusions reached at the Independence Conference amended the provision of the self-government constitution and the final result was the Uganda Constitutional Instruments, 1962. On October 9, 1962 the Uganda (Independence) Order in Council, 1962, was laid before the British Parliament and the formal Constitutional Instruments were handed to the Prime Minister, Milton Obote, by the Duke of Kent representing the Queen on October 9, 1962, and Uganda became an independent member of the British Commonwealth of Nations.

THE CONSTITUTION OF UGANDA, 1962.

Federation:

There were two features of the independence constitution which were distinctive and tailored to the circumstances of the country. It was here that the constitution acted as a mediator at its best. Uganda was forged into a united country from a collection of tribes with varying history, tradition and customary institutions. One of these distinctive features was the federal status given to Buganda within U ganda. Though the constitution formally declared that Uganda was to consist of the federal Kin doms of Ankole, Buganda, Bunyoro and Toro and the territory ofBusoga in addition to the "republican" districts it was only Buganda which had any substantial degree of autonomy within Uganda. In practice the other kingdoms and Busoga continued to be controlled by the central government like any other district of Uganda.

Powers given exclusively to them were limited to the position and the status of their rulers.[10] But the relationship of Buganda to the rest of the country was really federal.

Matters with respect to which the Buganda Lukiiko had exclusive powers are:

a) The Kabakaship;

b) The powers, obligations and duties of the Kabaka as such;

c) the status of the Kabaka's ministers as such and their powers, obligations and duties in addition to those conferred by or arising under a law passed by the Parliament of Uganda;

d) the public service of Buganda;

e) matters relating to taxation agreed to between the Kabaka's Government and the Central Government;

f) Buganda's public debt, public holidays and festival;

g) traditonal and customary matters relating to Buganda alone.[10]

Matters reserved for the Central Government included foreign affairs, immigration, national defence, internal security, penal law, the judicial system, public finance, public health and the public service of Uganda. Matters over which the legislature of other "federal states" had exclusive powers to make laws were limited to the office of the ruler, his powers, obligations, and duties, public holidays and festivals, traditional and customary matters relating to that state alone. They could exercise jurisdiction over other matters only after arrangement with the central Government.[11]

Constitutional Amendments:

Another distinctive feature of the Uganda independence constitutionwas the procedure of amending the entrenched provisions of the constitution. A Bill for an Act of Parliament to amend the constitution had to be supported on second and third readings by not less than two-thirds of all the members of the National Assembly. But if the act was to make provision for the transfer of any part of Uganda from one federal state to another or to a district, thd district or federal state to which it was to be transfered had to consent to the transfer by a resolution supported by not less than two-thirds of all the voting members of legislative assembly or council of each the states or districts concerned. The federal structure, the fundamental rights, and matters over which a federal state was given exclusive powers could not be changed by the central legislature without similar consent given by the legislative assemblies of the federal states that would be affected by the change. The res ult of this was that the position of the Rulers, the Bill of rights and the agreed boundaries of Uganda could not be changed unilaterably by the central government.

"The Lost Counties"

We have already been that at the end of the last century all Bunyoro territory South of River Kafu were transferred to Buganda and the Buganda Agreement 1900, confirmed the transfer. Bunyoro called this territory " the lost counties".[12]

From that time many attempts were made by the Bunyoro to recover these counties from Buganda. In 1912 the Mubende - Bunyoro committee was formed as a political organisation whose main aim was the return of the counties to Bunyoro. In 1912 when speaking

before a joint parliamentary Commission investigating the desirability and the feasibility of closer union in East Africa, a prominent Munyoro complained to the secretary of State for the colonies about the loss of Bunyoro territory. But the Colonial Secretary refused to go into the question, maintaining that it had long been settled. When signing the 1933 and 1955 Agreements with the British Governemnt the King of Bunyoro made formal public statements reserving Bunyoro's claims to the lost counties. His claims were not heeded. But the Banyoro did not give up. His claims were reinforced by five petitions addressed to the Secretary of State for the Colonies between 1945 and 1954. Several representations were also made by the Mubende-Bunyoro Committee between 1951 and 1955. But all were turned down.

In 1958 the Omukama or King of Bunyoro asked the Colonial Secretary to refer the dispute to the Judicial Committee of the Privy Council. This was also rejected on the ground that there were no justiciable legal issues which could properly be considered by the Privy Council. The Uganda Relationships Commission recommended that a referendum should be held in two of the disputed counties - Buyaga and Bugangazi - and the other county to be made by Bunyoro. The Commission advised that if the people of the counties chose to join Bunyoro, the counties should be handed over at independence. The recommendation of the Commission was rejected by the Kabaka's government and the Constitutional Conference of 1961. The Colonial Secretary accordingly appointed a Commission of Privy Councillors to investigate the dispute. The terms of reference of the Commission were:

> "Having regard to the paramount need for the people of Uganda including Buganda to move together into independence in conditions which will ensure peace and contentment,

to investigate the allegations of discrimination, to receive representations from those concerned and to advise whether any and if so, what measures, should be taken to deal with the situation".

The counties in which the investigation was to be conducted were Buyaga, Bugangazi, Buwekula, Buruli and Bugerere and portions of the counties of Singo and Bulemezi. After its investigations, the Commission recommended that Buyaga and Bugangazi should be returned to Bunyoro before independence day while the Governor was still in office. But that there was to be no changes in the status of the territoy east of Mubende District.

The redommendations of the Commission were considered at the Independence Conference of 1962 and it was agreed that there was to be no transfer of territory before independence; but the disputed counties of Buyaga and Bugangazi were to be administered by the central government and that a referendum was to be held after two years to find out the chbice of the people living in the disputed counties. They were to be given three alternatives: to remain in Buganda, to be transferred to Bunyoro or to remain a separate district within Uganda.

These conclusions of the conference were incorporated into the Uganda Constitutional Instruments of Independence. Section 26 of the Uganda(Independence) Order in Council, 1962, provided that in order to ascertain the wishes of the inhabitants of the counties of Buyaga and Bugangazi as to the territory of Uganda in which each of them should be included, a referendum should be held after 9th October, 1964, on a day appointed by the National Assembly. Only those who would be registered voters for elections to the National Assembly would be entitled to vote in the referendum.

The questions to be submitted to a voter in the referendum in each county was to be such as to ascertain whether the voter wishes his country to form part of the Kingdom of Buganda, or to form part of Kingdom of Bunyoro or to be established as a separate district of Uganda. The referendum was to be organised and conducted in such manner as parliament would prescribe. The choice of the majority ofthe voters in the referendum was to be implemented by amending the Independence Constitution by a simple majority in the National Assembly. These measures were implemented in 1964 when a referendum was held. Two of the disputed counties, Buyaga and Bugangazi, voted for their re-union with Bunyoro and Parliament passed the necessary Bill for their transfer.[13] Another victory for the Constitution as a mediator in internal conflict in Uganda.

THE SOVEREIGN STATE OF UGANDA.

The Constitution of Uganda (First Amendment) Act, 1963.

We have already seen that the Independence Constitution made the Queen of Britain the Head of State as an interim measure. The question that was debated was: who should succeed the Queen as Head of State? The Baganda insisted that no Commoner was to take precedence over the Kabaka. Consequently the question of the Headship of State become a hot issue.

Uganda broke her constitutional links with the British Crown one year after independence, on October, 9 1963. This was done by the enactment of the constitution of Uganda (First Amendment) Act, 1963. The Act established the office of President, who was to be the Supreme Head of State and Commander-in Chief of the Armed Forces.

He was to take precedence over allpersons in Uganda and not liable to any proceedings whatsoever in any court. He was exempted from direct personal taxation and no property held by him in his personal capacity could be compulsorily acquired. The Act also created the office of the Vice-President who was to perform the functions of the President and enjoy the constitutional privileges of the President when the President was out of the country, or for some other reasons he was unable to perform the functions of his office, or when the office of the President was vacant. If the Vice-President was unable to perform the functions of the President, presidential functions were to be performed by the Chief Justice.

The President and the Vice-President were to be elected by the National Assembly from among thetraditional rulers of the federal states and the constitutional heads of districts. The term of office of thePresident and the Vice-President was limited to five years. They could be removed from office by a resolution of the National Assembly. A resolution for their removal could only be moved by the Prime Minister. If it was moved by a member of the National Assembly other than the Prime Minister, the member moving the resolution had to satisfy the Speaker that not less than one half of all the members of the Assembly had signified in writing their intention to vote in support of the resolution. A resolution for the removal of the President of the Vice-President had to be supported by the votes of not less than two-thirds of all the members of the National Assembly.

The Office of the President was purely constitutional. He had no discretion to refuse to assent to bills.

Like the Governor General he had to act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet. He could act at his own discretion only when appointing a Prime Minister, removing a Prime Minister from office after the expiration of the term of the Assembly. Where the President had neglected or declined to do so, the Prime Minister was given the power to inform the President that it was his intention to do that act himself after the expiration of that period, if the to be specified by the Prime Minister. At the expiration of that period, if the President had not done that act, the Prime Minister could lawfully do it himself. An act done under such circumstances by the Prime Minister was deemed to be act of the President himself. The practical effect of this was that the Prime Minister could assent to bills, make statutory instruments, appoint persons to public office, and exercise all the powers of the President, if the latter declined or neglected to do so.

Sir. Edward Mutesa II, the Kabaka of Buganda, was elected the first President of Uganda and Sir Wilberforce Nadiope, the Kyabazing (Ruler) of Busoga, was elected Vice-President. The election of Sir Edward Mutesa was made possible by, and because of, the alliance between the Uganda People's Congress (UPC) and the Alteratraditionalist Kabaka Yekka (KY) (Kabaka Only).

Though Uganda broke its constitutional links with the British Crown, the country was not declared a Republic. Instead, it was sytled "The sovereign State or Uganda". The whole constitutional set up was an anomaly. The Head of State was styled "President" at the national level. But to his Buganda tribe, he was a King who was the Head of State of a nation conmposed of four kingdoms and eleven districts.

However, due to power struggle between the ranks of the UPC on one hand, and between the President and the Prime Minister, on the other, Prime Minister Obote twarted an attempt to remove him from power by suspending the Independence Constitution in March 1966. He later abrogated it and replaced it with an interim constitution in April 1966.

With all respect, in adopting the Constitution of Uganda, 1966, the members of the National Assembly acted irresponsibly. When introducing it to the House, Obote spoke for two and a half hours, castigating the Kabaka, accussing him of making his two roles as Head of State and the Kabaka of Buganda and of making an attempt to overthrow his government with the aid of foreign troops. He then went on to explain the main provision of the Constitution, and moved a motion that "the 1962 constitution be abolished and it is hereby abolished", Members of the National Assembly shouted "Yea, Yea", without even seeing the copies of the new constitution. Obote told them to pick up their copies from their pigeon holes. The 1966 constitution was used by Obote to resolve the conflict within the ranks of the UPC on one hand and that between him and Sir Edward Mutesa, on the other.

The major chages brought about by the 1966 Constitution were the following:-

A) The 1962 Constitution was abrogated in toto and replaced by the new one. This enabled the country, for the first time, to have what is called an "autochthonous constitution:" that is, a constitution that derives its validity not from an Act passed by the British Parliament, but has the force of law through its own native authority. Uganda thus had a constitution that was home-grown and not authorised by a British Act of Parliament.

b) One of the entrenched provisions in the 1962 constitution was the federal structure. Uganda was said to consist of federal states, districts, and the territory of Mbale. The Federal states were Buganda, Bunyoro, Ankole, and Toro and the territory of Busoga. Under the 1966 constitution Uganda was said to consist of Kingdoms, districts and the territory of Mbale. The effect of this was to abolished federation in Uganda and for the first time the country became a unitary State.

c) Under the 1962 constitution the legislature of a kingdom or the territory of Busoga had exclusive power to make laws relating to (i) the office of the ruler, (ii) powers, obligations and duties of the rulers, (iii) status of the Ministers of the government of the Kingdom as such and their powers, obligations and duties as such, other than those conferred by or under a law enacted by parliament; (iv) such taxation matters and matters relating there to as may be prescribed by parliament; (v) matters incidental to the legislative assembly of the Kingdom and other authorities established by the constitution of the kingdom; (vi) public holidays and festivals of the kingdom; and (vii) traditional and customary matters were made no longer exclusive by the 1966 constitution. The parliament of Uganda could also legislate upon them; and if the legislation of the kingdom assembly was inconsistent with the legislation of parliament the act of parliament prevailed, and the law made by the Kingdom was to be void to the extent of the inconsistency.

d) Whereas the Constitution (First Amendment) Act, 1963, established a constitutional head of state, the 1966 constitution established an executive president. All the executive authority of Uganda was vested in the President, but he was required to exercise it in accordance with the advice tendered to him by the cabinet. The President was to be the leader of the majority party in the National Assembly. The President had to appoint a Vice-President from among the members of the cabinet.

e) Under the 1962 constitution certain categories of people were entitled, as of right, to be registered as Uganda citizens if they made the appropriate applications in the manner prescribed by parliament. These included (a) alien women married to Uganda citizens, (b) naturalised British citizens under the British Nationality Act, 1948; and (c) persons born in Uganda before independence but neither of his parents was a Uganda citizen born in Uganda. In all these cases the minister had no discretion to refuse the registration of such persons as citizens of Uganda. Under the 1966 constitution, only married women and naturalised British citizens could be registered as of right on application. The minister was given the power to refuse to register the citizen a person born in Uganda but neither of whose parents was born in Uganda.

f) One of the points of disagreement at the Uganda Constitution and Independence Conferences was the right of Buganda to opt for indirect elections to the National Assembly. Despite strong objections by the Democratic Party, the 1962 Constitution gave Buganda Lukiiko the right to decide whether representatives of the people of Buganda in the National Assembly were to be directly elected or to be elected by the Lukiiko acting as an electoral college.

The Lukiiko opted for the latter alternative. The 1966 constitution changed this situation. Members of the National Assembly representing constituencies in Buganda had to be directly elected just as in the rest of Uganda.

g) The powers of the Lukiiko were also reduced with regard to the appointment of the Katikiro (the Kabaka's Prime Minister) and Kabaka's Ministers. The 1962 constitution provided that any person could be nominated Katikiro, even if he was not a member of the Lukiko. The Lukiko had also a say in the appointment of Ministers in the Kabaka's government. It was also Lukiko which was to submit to the Katikiro a list of fifteen persons from which the Katikiro could name his cabinet. The 1966 constitution provided that the Kabaka was to appoint the Katikiro from amongst the members of the Lukiko and a person could not be appointed a Katikiro unless he was the leader of the party having a numerical strength which consisted of a majority of all the members of the Lukiko. The Kabaka was also required to appoint his Ministers from among the members of the Lukiko and it was only the Katikiro who was to submit to him a list of persons to be appointed Ministers. The Lukiko was thus completely divested of powers to appoint the Katikiro and Ministers.

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h) In order to ensure that the constitution was interpreted impartially and away from the heat of local controversies, the 1962 constitution provided that appeals had to lie direct to the Privy Council from the decisions of the High Court of Uganda in matters effecting the interpretation of the constitution. This was reversed by the 1966 constitution. No appeals were allowed from the High Court to any other appellate court on issue involving the interpretation of the Constitution. The court of

Appeal for East Africa and the Privy Council were thus deprived of powers to entertain appeals on constitutional matters.

i) The 1962 constituition set up a High Court for Uganda and another High Court for Buganda. This was changed. There was from then on to be one integrated courts system for Uganda thus bringing Buganda into the main stream of the administration of justice then prevailing in the rest of the country.

j) Kingdom and federal assemblies were made wholly representative. Under the 1962 constitutions of the Kingdoms and of Busoga, saza chiefs and in some cases, the relatives of the Ruler and his courtiers were ex officio members. From then on legislative assemblies were to consist of elected members and specially elected members. No provision was made for ex-officio membership of chiefs and other officials.

k) Under the 1962 constitution each district and federal state appointed its own officers through their respective appointments committees. The 1966 constitution vested powers of appointing public officers in the central public service, the government of a kingdom or the council of a district in the President, acting on the advice of the Public Service Commission. The jurisdiction of the public service commission was thus extended to all appointments in the public service, central and local.

l) The bill of rights was left largely as it was. Only one proviso was inserted involving freedom of assembly. Whereas under the 1962 Constitution, freedom of assembly could be curtailed by law in the interests of defence, public safety, public order, public morality or public health and protecting the rights and freedoms, of other persons, under the 1966 constitution freedom of assembly and of association could be restricted by law in the

interests of, among other things, "economic development and the running of essential services". This was aimed at trade unions primarily. It was designed to enable the Government to pass laws regulating the right of collective bargaining.

n) We have noted the fact that under the Buganda Agreement, 1900 and the Agreements made with the Kingdoms of Toro and Ankole land was granted to cheifs and other officials by virtue of their office. The Native (Official Estates) Ordiance, 1919, made the holder of an official estate by the name of the office of which he was for the time being a holder. Subsquent amendements to the Ordiance gave the right to the holder of an official estate to lease such estate with the approval of the commissioner for lands. The rent to be paid for the lease was paid to the person for the time being holding the office to which the part of official estate was attached. This right remained unaffected by the 1962 constitution. The position was, therefore, that a chief or an official to whose office an estate was attached received not only his salary, but also rents. The 1966 constitution reserved this position as it was part of the feudal organisation of the kingdoms, Official estates were vested in district land boards. All rights, interests and other estates in such land was vested in the district land boards of the Kingdom. All rents and other dues accruing from the land had to be paid into the public funds of that kingdom as part of its revenue.

The validity of the 1966 constitution was challenged in Uganda v. Commissioner of Prisons, Ex Parte Matovu.[14]

Micheal Matovu was one of three Baganda Saza (County) Chiefs arrested and detained under the Emergency Regulations. He applied for a writ of habeus corpus on the ground that his detention was unlawful.

One of the issues considered by the constitutional court was the validity of the 1966 constitution. It was held that the 1966 constitution was effectively abolished as a result of a victorious revolution. The 1966 constitution formed a new legal order for Uganda.

THE REPUBLIC OF UGANDA

Section 145 of the 1966 Constitution provided that it was to remain in forde until such time as a Constituent Assembly, established by Parliament, enacted another constitution in its place. The Parliament of Uganda constituted itself into a Constituent Assembly by the Constituent Assembly Act, 1967. The Act gave the Constituent Assembly full powers to adopt a constitution for Uganda by providing that any proposals for a new constitution if adopted by the Constituent Assembly was to become law and constitute the constitution of Uganda without Presidential assent.

The Government made proposals for a constitution for Uganda in April 1967 and were widely debated in the country before presenting to the Constituent Assembly for adoption. The Constituent Assembly debated the proposals for eight weeks and finally adopted them on 8th September, 1967.

In the 1967 Constitution Obote's Government sought to achieve what was desirable but could not be achieved in 1962 due to the compromise that had to be made on behalf of traditionalism and Buganda. The Independence Constitution entrenched the position of the Kingdoms, created a semi-federal structure and duplicated institutions for the sake of accomodating the rival claims of the different parts of the country. The new constitution was disigned to achieve national unity and do away with traditionalism.

On the whole, it left most of the provisions of the 1966 constitution untouched and only weeded out the invidious ones.

Its distinctive features were the following:

(1) Section 118 abolished the institutions of Kingship and constitutional heads of districts and made provisions enabling parliament to pass laws for the payment of compensations to former kings and constitutional heads for loss of office. Section 8(3) and 8(4) expressly provided that no citizen was to enjoy any special privilege, status or title by virtue of his birth, descent, or heridity, and parliament was forbiden from passing any law confe ring any special privilege, status or title upon any citizen of Uganda on the ground of his birth, descent or heredity.

(2) One fundamental change was made in the Bill of Rights provisions. Under the 1962 Constitution, detention without trial was done under the Deportation Act. This Act was successfully challenged in the case of Ibingira and others v. Uganda, as unconstitutional. Section 10(1) (j) of the new Constitution empowered parliament to pass laws giving power to the Government to detain without trial. Section (10) 5 set up procedures for reviewing the cases of detained persons by a judicial tribunal but the Government was not bound to act in accordance with the advice of such a tribunal.

In pursuance of this provision, Parliament passed the Public Order and Security Act, 1967, empowering the President to make order for the restriction or detention of any person who is accused of having "conducted, is conducting or is about to conduct himself so as to be dangerous to peace and good order in Uganda or any part thereof", or "any person who has acted, is acting or is about to act" a manner prejudicial to the defence of Uganda or any part thereof.

(3) Section 45 of the new constitution provided that the elected and specially elected members of the National Assembly who were holding their seats under the 1966 constitution after taking the oath of allegiance to that constitution, were to be deemed to have been elected under the 1967 Constitution. The effect of this was to extend the life of Parliament for another five years without holding elections. Under the 1962 Constitution elections were due in 1968. This was made impossible by the new constitution.

(4) Under the 1962 and 1966 Constitution, the National Assembly could elect up to nine specially elected members. This was changed by section 40 (1) of the new constitution. It provided that if the political party having the greatest numerical strength in the National Assembly has a majority of ten or more of the elected members of the Assembly, there were to be no specially elected members.

(5) Section 2 (1) of the new constitution declared that Uganda "shall be a Republic and shall be known as the Republic of Uganda". The new Constitution was also styled "The Constitution of the Republic of Uganda".

(6) Section 80 (1) abolished Buganda as an entity. Hitherto, before, during and after British rule, Buganda was centrally administered as a unit from Mengo, the Headquarters of Kabaka's Government. Even the 1962 and 1966 constitutions preserved this position. Section 80 (1) of the Constitution of the Republic of Uganda split Buganda into four districts: East Mengo, West Mengo, Masaka and Mubende. Each district was given its own administration, complete with councils, etc. A central government for Buganda ceased to exist, and politically and administratively Buganda was obliterated from the map of Uganda.

Whereas previously, though these districts existed Buganda had only one government, one legislature and one Ruler, the Kabaka. The effectof the changes was to dismantle Buganda as a tribal entity for purposes of local government and central government control.

ARMY ASSUMPTION OF POWER

The Constitution of the Republic of Uganda was not given sufficient time to test its workability and resilience. Some of its Provisions were suspended by the Uganda Armed Forces on January 25th, 1971, when Obote was toppled from power as a result of misunderstandings between Obote and his Army Commander, Major General Iddi Amin Dada.

Eighteen reasons were given for outing Obote from power. But some of these reasons were rationalisations. The eighteen Points enumerated in their radio message to the people of Uganda are so historic that they deserve to be reproduced in full.

The Eighteen Points.

"It has been necessary to take action to save a bad situation from getting worse. We give here below examples of matters that have left thepeople angry, worried and very unhappy.

1. The unwarranted detention without trial and for long periods of large number of people, many of whom are totally innocent of any charges.
2. The continuation of a state of emergency over the whole country, for an indefinite period which is meaningless to everybody.
3. The lack of freedom in the airing of different views on political and social matters.

4. The frequent loss of life and property arising from almost daily case of robbery with violence and Kondilism without strong measures being taken to stop them. The people feel totally insecure and yet kondoism increases everday.

5. The proposals for National Service which will take every able bodied person from his home to work in a camp for two years could only lead to more robbery and general crime when money are abandoned.

6. Widespread corruption in high places, especially among Ministers and top civil servants has left the people with very little confidence, if any, in the government. Most Ministers own fleets of cars or buses, many big houses and sometimes even aeroplanes.

7. The failure by the political authorities to organise any elections for the last eight years whereby the people's free will could be expressed. It should be noted that the last elections within the ruling party were dominated by big fellows with lots of money which they used to bribe their way into "winning" the elections. This bribery, together with threats against the people, entirely falsified the results of the so called elections. Proposed new methods of election requiring a candidate to stand in four constituencies will only favour the rich and the well known.

8. Economic policies have left many people unemployed and even more insecure and looking in the basic needs of life like food, clothing, medicine and shelter.

9. High taxes have left the common man of this country poorer than ever before. Here are some of the taxes which the common man has to bear: Development tax.
Graduated Tax.
Sales Tax.
Social Fund Tax.

The big men can always escape these taxes or pass them on to the common man.

10. The prices which the common man gets for his crops like cotton and coffee have not gone up and sometimes they have gone down whereas the costs of good, education, etc. has always gone up.

11. Tendency to isolate the country from East Africa Unity, e.g by sending away workers from Kenya and Tanzania, by preventing the use of Ugandan money in Kenya and Tanzania, by discouraging imports from Kenya and Tanzania by stopping the use in Uganda and Kenyan or Tanzanian money.

12. In addition, the Defence council of which the President is Chairman, has not met since 1969 and this has made administration in the Armed forces very difficult. As a result Armed Forces personnel lack accomodation, vehicles and equipment. Also general recruitment submitted to the Chairman of the Defence Council a long time ago has not been put into effect.

13. The creation of a wealthy class of leaders who are always talking of socialism while they grow richer and the common man poorer.

14. The cabinet office, by training large numbers of people (largely from the Akoko ro County in Lango district where Obote and Akena Adoko, the Chief General Service Officer, come from) in armed warfare has been turned into a second army. Uganda therefore has had two armies, one in the cabinet, the other regular.

15. The Lango development master plan, written in 1967 decided that all key positions in Uganda's political, commercial, army and industrial life had to be occupied and controlled by people from Akokoro county, Lango District. Also the same master plan decided that nothing of importance must be done for other districts especially Acholi District. Emphasis was put on developing Akokoro county in Lango District at the expense of other areas of Uganda.

16. Obote on the advice of Akena Adoko has sought to divide the Uganda Armed Forces and the rest of Uganda by picking out his own tribesmen and putting them in key positions in the Army and every where. Examples: The Chief General Service Officer, the Export and Import Corporation, Uganda Meat Packers, the Public Service Commission, Nyanza Textiles and a Russian Textile factory to be situated in Lango.

17. From the time Obote took over power in 1962 his greatest and most loyal supporter has been the Army. The army has always tried to be an example to the whole of Africa by not taking over the Government and we have always followed that principle. It is, therefore, now a shock to us to see that Obote wants to divide and downgrade the army by turning the cabinet office into another army. In doing this, Obote and Aken Adoko have bribed and used some senior officers who have turned against their fellow soldiers.

18. We all want only unity in Uganda and we do not want bloodshed. Everybody in Uganda knows that. The matters mentioned above appear to us to lead to bloodshed only.

For the reasons given above we men of the Uganda Armed Forces have this day decided to take over power from Obote and hand it to our fellow soldier Major General Idi Amin Dada.

The Proclamation

In his subsequent statement Major General Amin accepted the appointment by the Armed Forces and on February 2nd, 1971 he issued a proclamation[15] to legalise his position. The Proclamation suspended Chapters IV and V of the 1967 constitution, disbanded the National Assembly and dismissed all ministers, and continued:- "2. All the titles, privileges, prerogatives, powers, functions and exemptions formerly enjoyed or exercised by one former President of the Republic of Uganda under the Constitution are hereby vested in me with effect from the 25th day of January, 1971, and accordingly the Military Head of State shall be the Commander in Chief of the Armed Forces.

"3. Parliament is hereby dissolved and all legislative powers referred to in the Constitution are hereby vested in me.

"4. All legislative powers shall be exercised by me through the promulgation of decrees evidence in writing under my hand and sealed with the Public Seal.

5. There shall be a Council of Ministers which shall be appointed by me and which shall advise me in the exercise of my executive and legislative powers.

6. Subject to this Proclamation, all liabilities and obligations incurred by the Government of the Republic of Uganda before the 25th day of January, 1971, shall continue in full force and effect.

7. No action or other legal proceddings whatsoever, whether civil or criminal, shall be instituted in any court for or on account of or in respect of any act, matter or thing done during the continuation of operations consequent upon or incidental to the said take-over of the powers of the Government if done in good faith and done or purported to be done in the execution of his

duty or for the defence of Uganda or the Public Safety or for the enforcement of discipline or law order or otherwise in the public interest by a person holding office under or employed in the public service of Uganda or a member of the Armed Forces of Uganda or by any other person acting under the authority of a person so holding office or so employed.

8. (1) Those provisons of the Constitution, including articles 1, 3, and 63 thereof, which are inconsistent with this Proclamation shall, to be extent of such inconsistency, be void.

(2) Subject to this Proclamation, the operation of the Constitution and the existing laws shall not be affected by this Proclamation but shall be constructed with such modifications, qualifications and adaptions as are necessary to bring them into conformity with this Proclamation.

Uganda to Remain a Republic.

Soon after the military take-over there were attempts by ultra-traditionalist elements to revive the idea of kingship and restore most of the provisions of the 1962 Constitution. The Armed Forces dealt firmly and decisively with such tendencies in a statement issued to the Nation on 20th February, 1971, members of the Armed Forces emphatically rejected their opposition to the restoration of Kingdoms. They re-affirmed "in clear terms that there can be no return of feudal kings and kingdoms because Uganda is marching forward and not backward."[16]

The statement also announced the promotion of Major General Amin to the rank of full General and his subsequent appointment to the post of the President of Uganda instead of being the Military Head of State. He was given a mandate to rule for five years from January 25th, 1971.

This announcement was given effect to by the Constitution (Modification) Decree 1971.[17] The Decree restyled the "Council of Ministers" to "the Cabinet" and the "Military Head of State" to "the President". The Constitution (Modification) Decree also made provisions for the appointment and responsibility of ministers and deputy ministers. It created the post of Attorney General who "shall be the principal legal adviser to the Government and responsible to the Government for matters of policy relating to the administration of justice". He was to represent Uganda in all legal proceedings before the courts.

Vesting of Parliamentary Powers.

Another Decree of constitutional importance was the Parliamentary powers (Vesting) Decree, 1971. It provided that where the Constitution or any Act of Parliament provided for any matter, act or thing to be authorised, approved or determined by Parliament or the National Assembly, such authorisation, approval or determination was to be exercised by resolution of the Cabinet. This Decree was designed to fill a lacuna in the Constitution of Uganda. Many acts of Parliament and the Constitution itself provide for certain matters to be dealt with by the Assembly. Subsidiary legislation and reports of public corporations may also be required to be laid before the National Assembly. In the absence of a National Assembly Assembly Cabinet has to exercise such powers.

It was through these and other Constitutional instruments that Amin entrenched himself in power and ruled Uganda for eight years. His conflict with Obote was thus solved not only militarily but also constitutionally.

However, he did not rule in accordance with the constitution. Indeed his proclamation abolished the supremacy of the constitution by declaring void Article one, which provides that the Constitution is supreme law and any law inconsistent with it is null and void to the extent of the inconsistency. This enabled his to pass decrees which derogated from the provisions of the constitution.

To summarise, it is noticed that the main chages brought about by the Military government affected the status and the fundamentality of the 1967 constitution, its sanctity and method of amendment, the abolition of popular government, the vesting of all executive and legislative powers of the State in the President and the powers of the President to appoint ministers without being restricted by qualification requirements. Otherwise the other main provisions of the 1967 Constitution ----- the Bill of Rights, citizenship, the judiciary, public finance, the public service and public land have not been affected, and the administration of the country was conducted in accordance with the 1967 constitution.

Amin's brutal rule was brought to an end by combined forces of Tanzania and Ugandan exile troops in April 1979. Following the example of Amin the new government of the Uganda National Liberation Front also ushered in its rule by a proclamation suspending the very chapters Amin suspended, with the exception that laws made by the new government came with a novel philosophy requiring all major policy decisions made by the government, including political appointments, to be ratified by the National Consultative Council, its legislature. When President Lule refused to act in accordance with this principle he was removed from office by the Council.

Lule was succeeded by Godfrey Binaisa who in May 1980 had a conflict with the Army Chief of Staff, dismissed him and appointed him an ambassador. Using his position and influence in the Military Commission the Army Chief of Staff removed Binaisa from office. The country was ruled by the Military Commission till December 1980 when General Elections were held and handed over power to Milton Obote. On their assumption of office the Military Commission also issued a proclamation similar to that of Prof. Lule but in order to ward off a possible challenge of the legality of their assumption of power, the proclamation provided that it was not to be questioned in any court. To accommodate the Army the Commission amended the constitution to allow the Armed Forces to be represented by ten members in the National Assembly.

When Obote was overthrown once again in July 1985 in order to avoid conflicts the new regime appointed a Military Council to be supreme authority of the government of Uganda consisting of the representatives of the forces tht fought against Obote's regime, except Museveni's National Resistance Movement, which had its eyes on taking power. When it ultimately took over power it also legalised itself by a proclamation. The possible conflict between the civilian administration and the Army (that actually did the fighting to take over power) has been resolved by creating two parallel bodies to be responsible for the over-all affairs of Uganda. These are the National Resistance Council (NRC) and the National Resistance Army Council. The former has supreme authority of the government of Uganda, acts as both legislature and a political organ. However, it is required to take into consideration the views of the latter in deliberating on all matters before it and the latter has the power to send matters to the former for consideration.

In order to resolve the conflict between democracy and dictorship the proclamation makes provision for representatives of political groups and districts to be elected to the NC and declares that the government is to rule for only four years. It is, ho wever, the future that will tell whether or not these promises will be fulfilled.

THE FRAMEWORK OF A NEW CONSTITUTION FOR THE REPUBLIC OF UGANDA.

A constitution being a document containing rules in accordance with which the people's affairs are to be managed, must be accepted to the people, understood by them and respected by them. It follows, therefore, that it must be the people to have the type of constitution they want. For this reason all the people have the right to participate in making theirconstitution. One of the methods of doing this is to appoint a constitutional Commission which travels all over the country to recieve the views of the people on the type of constitution they want. After that the commission should make a report in the form of a draft constitution, which must be submitted to the people for further debate. The people should then elect their representatives to a constituent assembly which considers the draft. Each representative must be in close touch with his constituents so that he reflects their views accurately. The constituent assembly must pass the draft by two thirds majority to become the constitution.

Before this can be done, there must be complete peace throughout Uganda. Peace achieved through a military victory perpetuates bitter memories. It is accordingly suggested that efforts to implement the Amnesty Act should be intensified and those at war now with the NRA should be given the opportunity to air views on the type of government they want to be established

in Uganda. It must, however, be emphasized that what a Constitution should contain must always depend on the expectation of the people, their history, cultures andtraditions. The expreinces of other countries is also of assistance in constitution drafting. I now proceed to give the options that are open to the people of Uganda, starting with the Executive.

The Executive

The executive is the branch of the government responsible for the administration of the laws and the affairs of the state. They are the people who weild actual power in he country. It is essential that the range and limit of their powers be laid down in the constitution. The constitution also defines the relationship between the executive and the legislature. A constitution may create either a parliamentary or presidential form of government.

The Parliamentary form of Government has been developed in Britain over the years as the power of the Sovereign has been nibbled away by successive parliaments which has the final say in legislative matters, taxation and piblic expenditure; and a government can be forced to resign by a defeat in parliament. In matters of legislation parliament can make and unmake laws. The executive branch of the government is chosen among, and is responsible to the legislature. The chief of state, either a president of a hereditary monarch, has no real powers and is a mere figurehead. Good examples of countries with parliamentary formsof govemnment include Federal Republic of Germany, France, United Kingdom, and the Nordic countries. In France power issharedbetween the President and the Prime Minister.

Ina variation is the cabinet governemnt where most decisions affecting the affairs of the people are made by the cabinet.

This is the type of government established by the Constitution of the Republic of Uganda, 1967. It, is therefore, not very easy to distinguish between the prliamentary and presidential forms of governments.

The presidential form of government, as it exists in the United States, means that the executive and the legislative branches of the government are separately elected, each with its own clearly defined powers. The executive consists of an independent President whose Ministers are not members of Congress (Parliament) and who cannot be dismissed by the legislature by a vote of no confidence or by loss of support in the legislature.[18] This form of government also operates in Tanzania.[19]

To avoid degenerating into dictators, constitution curtail the powers of the president or his tenure of office. Under the constitutions of the United states, Nigeria and Ghana, political appointments by the president are subject to ratification by the legislature. No president can serve for more than eight years. In Switzerland Supreme Executive and governing authority is the Federal Council composed of seven nebers. The function of the President is to chair meetings of the Federal Council. The President serves only a one year term.[20] In the Soviet Union the Council of Ministers is the "highest executive and administrative authority of the USSR". They are formed by the Supreme Soviet and are responsible and accountable to it.[21]

When a President is elected directly by the people he is cognate with the legislature. He cannot be dismissed from office by a vote of no confidence. But if he commits a serious crime, he can be impleached, and if the impleachement is successful, he stands removed. This is, for example provided by the constitutions of Nigeria, Ghana and the United States.

The Legislature.

The constitution must make it clear who can make laws for the country; what could be the compostition of the legislature; how must the representatives of the people be elected; in what manner they must make laws; and to what extent the government must be answerable to the representatives of he people.

Legislatures may either be unicameral or bicameral. It is unicameral when it is composed of one chamber only. It is bicameral when it is composed of two chambers. In the latter system, power is shared by two more or less co-ordinate legislative organs. Normally, the lower house is more directly representative of the people, elected on a wider franchise. The upper house, the second chamber, is either elected on a restricted or derivative franchise or may contain nominated or hereditary elements or direct representatives of certain classes, interests or geographical divisions of the nation, as in the United States. The two houses may or may not be of equal authority.

The creation of a second chamber is due to the belief that it is desirable to have a body, less directly controlled by popular opinion which may exercise delaying and supervisory powers over legislative proposals. They are also created to ensure that in a federal state, the constituent states have an equal voice in national affairs. This is because the lower house represents the population of the Union rather than the state. It, is therefore, possible for the states to be under-represented and outvoted in the lower chamber. The upper chamber is designed to off-set this disadvantage. The upper chamber is composed of equal representatives from each state thus giving the voice of the smaller states equal weight to that of the the bigger states.

In the United States, the Senate, or the upper house, is representative. Each state is represented by two senators elected by the people of that state. In the United Kingdom, the membership of the upper house, the House of Lords, was originally hereditary. Sons of the nobility who succeeded to their fathers' titles could become members. Creation of life descendants succeeding to the title is now common.

Upper houses can be a cause of delay and deadlock in the legislatative process. For this reason, some constitutions provide for joint sessions in case of a deadlock. The constitutions of some countries give the upper house sole powers with regard to certain matters. For example, in the United States, the Senate has the sole power of ratifying treaties and the appointment of senior public officers by the President. In Britain, until 1910 the House of Lords was on par with the House of Commons in matters of ordinary legislation. It had full powers of initiation and rejection. There was no arrangement for breaking deadlocks. The Parliament Act, 1911, took away the powers of the Lords. It provides that when a money bill has been passed by the Commons, it must be sent up to the Lords. If the Lords do not pass it within one month, the royal assent must be given to it regardless of the views of the Lords. Thus, they lost all powers over taxation and appropriations for expenditure. In the case of other bills, they must also become law and the royal assent must be given to them if they have been passed by the Commons three times in three successive sessions within two years. Their extreme power is thus limited to holding up a bill for two years.

The recuring question is always: what to do with a representative who loses the confidence of his constituents? Before they became de jure one party states, Kenya and Zambia had constitutional provisions requiring an incumbent member of the National Assembly to resign his seat and seek a fresh mandate from his constituents if he crossed from one political party to another. In other words "crossing the floor" entailed resignation from the parliament.

Under Article 107 of the Constitution of USSR "Deputies who have not justified the confidence of their constituents may be recalled at any time by decision of a majority of the electors "

The constitution of the German Democratic Republic provides that a deputy who grossly infringes his duties can be recalled by his electors.

In he past political opportunism tempted some members of the National Assembly to cross from the opposition to the ruling party. Ugandans have therefore, lessons to learn from the above cited constitutional provisions.

Rights of the Individuals.

Government is the collective power of the people. Government exists as a service institution in order to ensure that the life of each individual in society is safe and that there isno unauthorised interference with his personal liberty, property and other rights. Consequently, it is the function of every constitution to strike a balance between the power of the state and the right of the individual. Most constitutions accordingly guarantee the fundamental rights of the individual and give him access to the courts if these rights are infringed by the government.

However, the rights guaranteed by various constitutions vary from country to country. Some entrench more rights than others. For example, the constitutions of the socialist states guarantee such rights as the right shelter, food, work, education to vote, participate in making political decisions, leasure time and recreation, social care in old age, and to encourage mother tongue and culture.[22] This include the duty to serve in military service, respect for the right of others, observance of the constitution and other laws protection of public property, etc. The African Chapter on Human and Peoples Rights also enumerates such duties.[23]

The Judiciary

Settlement of disputes between one citizen and another and the contuinent of anti-social elements inthe community is one of the most important functions of every government. Public institutions must exist to dispose of trouble cases and deal with criminals, These institutions are usually the courts. The courts are so fundamental in any organised soceity that the constitution must lay down what they will consist of their personnel and their hierarchy. The fundamental law of the land must also lay down unequivocally the relationship of the courts with the other organs of the government - the legislature and the executive. The rule of law and national stability depend on this relationship.

Some constitutions provide that the members of the judiciary are to be appointed by the President acting alone or in accordance with the advice of a judicial service commission. In United States appointment of judges of the supreme Court must be ratified by Senate.

For lower courts in some of the states people elect their own judges and magestrates. All constitutions give judges security of tenure. They may be removed only for cause and after a thorough investigation by a judicial tribunal. In Britain a judge may be removed if both Houses of Parliament address a prayer to the Queen for his removal. Even a Chief Justice appointed by one government is not removed by another government.

Citizenship

General principles relating to citizenship are also included in most constitutions. Citizenship is an important status to any individual. The rights he will enjoy and the duties expected of him depend on his citizenship status. It is, therefore, essential that the constitution must lay down the rules for the acquisition of citizenship and the circumstances under which it will be lost or renounced.

In acquiring citizenship two principles are applied. Nationality is conferred at birth by the fact either of birth within the territory (jus soli) or descent from one of its national, (jus sanguinis). A combination of the two in various ways is found in the constitutions or domestic legislation of most states.

Federal or Unitary.

Another throny issue for the people of Uganda to consider is whether we should have a unitary or federal constitution.

A unitary state is organised under a single central government. The constituent districts hold power at the discretion of the central government. The essentials of unitary state are: a) the supremery of the central government and (b) the absence of subsidiary sovereign bodies. This means that all or most powers of government are concentrated in one central government.

Good examples of unitary state are the East African countries, Britain and France.

In a federal constitution, the powers of government are divided between the central government and the constituent governments in such a way that the government of each constituent part is legally independent within its own sphere. The Central government has its own area of powers and exercise them without any control from the governments of the constituent parts of the country. The constituent parts of the country on their part exercise their powers without being controlled by the central government. The legislature of the central government and of the parts have limited powers. The indispensable quality of the federal state is, therefore, the distribution of the powers of the government between the federal authority and federating units. The country is organised under a single independent central government for some purposes and under semi-independent regional, state, or provincial governments, for other purposes. In the United States of America and Nigeria, the parts are referred to as 'states', in Canada, they are referred to as 'provinces', in Kenya they were called 'regions' and Switzerland, they are called 'cantons'.

The question is: when should a country have a unitary or a federal constitution? Regardless of its size, where the country is populated by a homogenious people having a common language, culture, history and background, there is no need for a federation. A good example is afforded by the Republic of France. Federation is usually preferred where there is fear of domination of a section of the population by large tribes. This was the position in Kenya at independence.

Similary where widely dissimilar peoples and tribes are grouped together under a single administrative system, federation may be desirable. Switzerland is a tiny country but because each of the twenty two cantons regards itself as seperate and distinct, it is a federal state. Again where the favour for intergration and seperation have been at odds with each other, the fedral solution is a popular formula. This is partly why Nigeria is a federation. Each state enjoys autonomy within unity. Another situation that calls for federation is where the different parts of a country have been enjoying autonomy for a long time but decide to unite into a single state. The United States, Canada, Australia and the Federal Republic of Germany are federations for this reason. Some states, such as Malysia, are federation because each federating unit wants to preserve its traditional cultures, that is the kingship system. Federation provides a solution for winning political support for political and economic intergration for a heteriogenous population.

There is a middle way between a federation and a unitary state This alternative combines devolution of power to regional governments with an over-riding authority exercised by the central Government. This was the formula used to keep Nigeria one at independence, and it is still the position in USSR, Yugoslavia and Federal Republic of Germany.

Another choice is co-operative federalism where the central and regional governments co-operate to carry out functions jointly such as maintanance of law and order, regulation of the econony and transport. This system operates in the United States, Canada, and Australia.

Accommodation of Traditional Rulers

Should the Kings be restored is another matter to consider. The question of traditional rulers is a touchy issue. By the time of colonisation these rulers existed. They were recognised by the colonial powers. When Independence comes what role are they to play? Some countries such as India and Uganda abolished them.

Countries such as Malaysia, Zambia and Botswana preserved them. In Malaysia rulers play ceremonial roles in their areas. The Supreme Head of State is elected by the Conference of Rulers for a period of five years.[25] In Zambia, and Botswana the respective constitutions establish a parallel chamber of Parliament, called the House of Chiefs. In Botswana all money bills and bills if enacted, would affect any provisions of the constitution, the status of chiefs, African Courts, African customary law or tribal organisation or tribal property, must be referred to the House of chiefs. The House is entitled to pass resolutions on the bills and have them submitted to the National Assembly.[26]

The Zambian House of Chiefs acts through the President of the Republic. Its fuction is to consider and discuss any bill introduced into or proposed to be introduced into the National Assembly that is referred to it by the President. The President may also refer any other matter to the House of chiefs. The House subnits its resolutions on any matter referred to it by the President and the President causes the resolution to be laid before the National Assembly.[27]

In Nigeria, there are two types of "traditional" rulers: the Emirs of the North and the Chiefs of East, West and South. The Emirs ruled Muslim Northern Nigeria before colonisation. The British used them to implement the policy of indirect rule.

After independence their powers were slowly whittled away. These days they act as the symbol of their respective tribes and perform purely traditional functions. Other parts of Nigeria did not have traditional ruler. Chiefs were created by the British to implement the policy of indirect rule.

Article 20 of the Constitution of the Federal Republic of Nigeria provides that the "State shall protect and enhance Nigerian culture". One aspect of Nigerian culture is the existence of the Emirs and chiefs. The constitution accordingly establishes a council of chiefs in each state whose function is to advise the Governor on any matter relating to customary law or cultural affairs, inter-communal relations and chieftainship matters. Whenever requested to do so it may also advise the Governor on the matters as the Governor may direct.[28]

Constitutional Amendments.

One of the reasons why theConstitution is referred to as fundamental law is that it is expected to enjoy a maximum degree of sanctity and respect. It should not be changed, modfied or abrogated to suit the policies of successive governments; it is not to be amended so often that it loses its peculiar character of being the source of all laws and governmental powers. That is why in some countries the constitution is more difficult to amend or change than other laws.

A special procedure must be followed before it is amended. In other words some constitutions are rigid. The constitution of the United States affords the best example of rigid constitution. Under Article V of the constitution of the United States, constitutional amendements must be proposed and ratified on national basis. The process is that either two-thirds of both houses propose amendments or the legislatures of two-thirds of the

fifty states petition Congress to call a convention for proposing amendments. In both cases, ratification must take place by either three fourths of the legislatures or by conventions of three-fourths of the fifty States.

Normally amendments have been done by proposal by Congress and ratification by legislatures of the states. The United States Constitution has been made deliberately rigid for the purpose of making Constitutional changes difficult. This ensures that certain fundamental institutions of the American Union are not tempered with by successive Administrations or Congresses. These include the federal structure, the constituent states, the central management of matters like interstate and foreign commerce and the rights of the individuals.

In some other countries, proposal for the amendment of the constitution is referred to the people for approval in a referendum. The people are given the power to reject or ratify proposed amendments.[29] In Australia and Switzerland,[30] for example, it is mandatory for amendment peoposals to be placed before the people for their approval or ratification. In a Federation where the interests of the states and federal governments are set against each other, agreed arrangements entrenched in the constitutions must be protected from rash or sectarian alterations. The constitution accordingly requires special majorities and procedures for amendments. This avoids the possibility of a legislature de-troying the whole fabric of the constituion by a single enactment.

FOOTNOTES

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3. Idi Amin Dada, The shaping of Modern Uganda and Administrative Divisions, (Government Printer, Entebbe, 1976), p. 10.
4. For full text See Laws of Uganda 1951, Vol. Vl, p. 12
5. (1969) E. A. 552.
6. (1960) E. A. 47.
7. (1960) E. A. 784.
8. Report of the Uganda Relationship Commission, 1961 (The Minister Report) (Government Printer, Entebbe, 1961).
9. Report of the Uganda Constitutional Conference, 1961 (H. M. S. O. , London, cmnd. 1523).
10. The Constitution of Uganda, 1962, Schedule I.
11. Ibid, see schedules II, III, IV, and V.
12. The following account was taken from the Report of the Privy Councillors on the Dispute Between Bunyoro and Buganda (1962)
13. Constitution of Uganda (Third Amendment) Act, 1964 (Act 36 of 1964).
14. (1966) E. A. 514.
15. Legal Notice I of 1971.
16. Uganda Argus, February 22, 1971.
17. Decree 8 of 1971.
18. Constitution of the United States of America Art. 2.
19. Constituion of the United Republic of Tanzania, 1977, as amended by Act No. 15 of 1984.
20. Constitution of the Swiss Confederation, Articles 95-99.

Constitutioncf the USSR, Art. 128.

See for example the Constitutions of USSR, German Democratic Republic, Chockslovakia, and Yugoslavia.

Arts. 27-28.

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Constitution of Malaysia, Art. 32.

Constitution of Botswana, Arts, 85 and 88.

Constitution of Zambia, Art. 96.

Constitution of the Federal Republic of Nigeria, Third Schedule, part IIB.

Constitution of Australia Act. 1900.

The Federal Constitution of the Swiss Confederation, Article 120.