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G.W. KANYEIHAMBA

# CONSTITUTIONAL AND POLITICAL HISTORY OF UGANDA

FROM 1894 TO PRESENT

**SECOND  
EDITION  
2010**



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GW KANYEIHAMBA LLB, LLM, PHD, LLD, SC.

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## DEDICATION

This book is dedicated with love and gratitude to my dear wife Susan and our children, Sarah Kwezi, Joel Martin Masiko and Ruth Katungi Kanyeihamba and my daughter in Law, Katherine Kateera, whose abundant love, extreme tolerance and deep understanding have sustained me throughout my adult life.

I also dedicate it to my late beloved parents, Zakaliya Barorora and Malyamu Kyenda and my brothers and sisters and especially to Furida Baremirwe and the late Charles Ngambeki, all of whose love, work ethics, honesty, integrity and humanity I endeavoured to emulate, and to my friends and all Ugandans, good and true, whose warm companionship advice and understanding have been invaluable for my existence and well being.

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I acknowledge with thanks and appreciation, the generosity, confidence and understanding of His Excellency, President Yoweri Kaguta Museveni who, over the years entrusted to me, the performance of duties and functions of high offices of state in the Republic of Uganda and who has given me ample opportunities since the early 1980's to participate in, observe and learn about public service and its intricacies for the advancement and improvement of the well being of our people and country and not least, for creating and sustaining an environment in which this kind of writing is possible.

I am indebted to Dr James W Katalikawe of the Faculty of Law Makerere University who assisted me in, revising and updating sections of Chapters 1 and 2 which also appear in my earlier book "Constitutional Law and Government in Uganda".

I acknowledge the many sources and published materials I consulted while preparing this book and the details of which I have given in the notes to each Chapter. I wish to acknowledge specially the work and writing of Yoweri Kaguta Museveni, ABK Kasozi and of Gingyera book. I am indebted to Mzee Canon John Bikangaga, my mentor in serving the public and Honourable Eriya Kategaya, a long standing political friend, both with whom I discussed some salient features of this book.

I am indebted to the Honourable the Chief Justice of Uganda, Benjamin Odoki, whose works I also referred to and who encouraged and tolerated my exposure as a judge when discussing this book publicly. I wish to thank my friends, the Daughters of St. Paul, who constantly kept me in their prayers as I prepared this book.

I wish to thank my readers and editors, Ernest Sempebwa, and Robert Kalule for an excellent job well done.

I acknowledge the long life devotion and companionship of my friends Professor J Kwesiga, Dr William N Nganwa, the late Jonathan Kateera, esq. and the late Dr James Kahirimbanyi and Mr Paul Kadoma.

Lastly but not least, I acknowledge, with thanks, the enthusiasm and professionalism of my publisher, LawAfrica Publishing Limited whose belief in my work and ability to complete it for publication remained undiminished throughout the relevant period.

Despite all the assistance I received, any mistakes, errors and misstatements which may be found in this book are entirely my own.

**GW KANYEIHAMBA**

**KAMPALA- JANUARY 2010**

## FOREWORD

Justice George Kanyeihamba is eminently qualified to write on the Constitutional and Political History of Uganda, not only because he is an expert and specialist in constitutional matters but also because he is a native of Uganda and has lived through some of the crises and upheavals he has written about.

The trouble the author took to dig up the past records that have formed the bulk of his story and his use of those records are impressive.

I wish to thank Justice Kanyeihamba for putting on record so clearly the country's recent constitutional past, and I am sure his book will be of great use to future researchers, and others whose interest will be simply to enhance their general knowledge.

**CANNON JOHN BIKANGAGA**

**MAKINDYE, KAMPALA – JUNE 2002**

## PREFACE

Retracing the steps to the past in the study of Uganda's politics and history has in recent years become a dominant approach. It is a rather simple exercise that one can execute in the full awareness that one is safe. Many of the key actors are, after all, either dead or simply out of power and, therefore, harmless or helpless and, hence, not in a position to challenge the writer's contentions. Sometimes this approach has yielded reasonable accounts of the country's chequered political history. But it has also given rise to some very questionable body of literature, especially when authors have chosen to stand with their "back to the present", as it were, and have opted to look instead only at that single lane leading into the past. The results, as one might expect, have tended to be literature that is demonological in character and, generally, unbalanced with an undue emphasis on the political devilry or evils that certain leaders of the past are said to have committed.

In the measure that attention has been accorded to the present (times), one often sees in such efforts a tendency toward undue precaution or guardedness, at best; and, at the worst, equally undue inclination toward sycophancy in favour of leaders of the time and their deeds. In the process, the latter two have, far too often, come off not quite as they truly are in real life.

If the study of Uganda's politics and history is to be raised to a higher level of intellectual excellence, the past has indeed to be studied; so must the present; and even the Future must be studied. But and it is a strong "But", all this must be done with a greater degree of level-headedness, with more honesty, and with greater objectivity. Our people and our posterity deserve nothing less than that.

Justice Kanyeihamba's book is a welcome effort toward that end. His treatment comprises a good mix of critical analyses of a Past spanning the years from the beginning of the Declaration of the Uganda Protectorate in 1894 to the exit of Obote and the end of his Second Regime of the 1980-1985, up to the Present. The route traversed by the author in regard to the former period, is, indeed, littered with the mischiefs and inept decisions and policies of past leaders. But there is also some appreciable effort to give credit where it is due. I say some, advisedly' because that is what it really is. But this is no serious reservation as far as I see it. The time is, in any case, long overdue for such key leaders of that period and their supporters, as may still be living to rise up to the occasion and present their own accounts in the interest of a better appreciation of the country's political history. How wonderful it would be in that regard, if Kanyeihamba's effort in relation to

this period could provide to them the desired stimulus to embark upon that noble road!

It is without doubt, however, that it is Justice Kanyeihamba's treatment of the Present that the greatest attention is likely to centre upon for the present. The author is, to the best of my judgment, not hostile to the present regime of President Yoweri Kaguta Museveni. His treatment, is instead, a friendly lamentation occasioned by practical lapses committed by the regime, and by hopes and expectations originally raised by the NRM itself, but hopes and expectations which appear to be receding into the background without arousing any serious concern. All this is done with courage in a very incisive, forthright, and, in my view, very constructive manner. Using the kind of "balance sheet approach" that accountants usually employ, Justice Kanyeihamba duely presents the major positive achievements of the regime, since it came to power in 1986 and in an equally even-handed manner he also presents its major shortcomings to date. Not wishing to bias the judgment of the reader unduely, this is as far as my summary of Kanyeihamba's treatment of the Present can go here. I wish only to add that the treatment makes for the most exciting, scintillating, and really thought provoking reading.

These lines of mine were penned precisely when a three day Cabinet retreat or seminar (5 June 2002) was being held at the National School of Leadership at Kyakwanzi in Wakiso District near Kampala under this very pertinent theme: "The Yet Unfulfilled Strategic Vision of the NRM". What an opportune moment it would have been if this book with its ideas and thoughts had already been out on the streets! But such retreats have more or less become annual events; and, so one should hope that reflections along the lines sketched out in this book by its author are not yet too late. But even before the next one comes there are plenty of other opportunities in which such reflections can be discerned. President Yoweri Museveni and his government, the National Resistance movement, all of us in this county, and even all of our well-wishers from outside, stand to benefit by taking this honest, forthright, and really constructive contribution by Justice Kanyeihamba seriously. His need not be necessarily "the last word" on the issues he has raised, but his contribution deserves attention as a "friendly initiative" by someone who is not only a Uganda patriot, but also one whose disposition toward the present regime is generally kindly and positive.

**PROFESSOR A GINGYERA PINCYWA**

**KAMPALA INTERNATIONAL UNIVERSITY**



## CHAPTER ONE

### HISTORICAL BACKGROUND: THE FOUNDATIONS OF UGANDA

#### 1.1 DECLARATION OF A PROTECTORATE

Until 1894 the sovereign state we now know as Uganda was, in constitutional terms, unknown even though its constituent parts pre-dated it, having been in existence long before it was made a state. It was in that year that the British Government declared Uganda a British Protectorate; and so, Uganda as an administrative unit was born. It was sometime however before the British and their corroborators were able to administer the whole country and for its current boundaries to be finally delineated. Until then the country consisted of a collection of over 50 diverse chiefly and non-chiefly societies.<sup>1</sup> These were subsequently grouped together to form the new Protectorate.<sup>2</sup>

The term Uganda is also of recent origin. It is derived from the term Buganda, but how that came about is fascinating, albeit not surprising.

It is now widely accepted that the first Europeans to set foot in the country were always accompanied by the Swahili speaking Arabs, Nubians and Zanzibaris from the East Coast of Africa. It is also true that both the early European adventurers and their aides were unfamiliar with the local languages used in the hinterland, and therefore had problems with the nomenclature of some personalities and places they visited.<sup>3</sup> In particular, they appeared to have had problems with Bantu words beginning with the letters “BU” such as Buganda, Bugishu, Bunyoro and Busoga to mention but a few. Such words were, apparently usually misunderstood, mispronounced and misspelt. Thus for, example, the Kingdom of Buganda, about which much was made in Europe at the time, was in the early dispatches and agreements usually referred to as the Kingdom of Uganda;

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1 Thomas Pakenham. *The scramble for Africa* Abacus 1991, Chapter 23.

2 See: HB Thomas and AE Spencer: *A History of Uganda Land Survey* [Entebbe, 1938]. For a detailed study of Uganda up to the 1930s, See: *Uganda* by Thomas and Scott, published in 1935 by Oxford University Press on the authority of the Uganda Protectorate Government.

3 Sir John Milner Gray, *Early Treaties in Uganda* (1888-1891), *Uganda Journal*, 12 (1948).



and when it, together with its surrounding areas were brought under the British colonial rule, the whole country was named Uganda.<sup>4</sup>

That, briefly is the etymology of the word Uganda, and that is how our country acquired its name. Thus, the pre-independence Uganda leadership was, thanks to the unpronounceable “BU” spared the difficulties which their counterparts elsewhere in Africa have had to grapple with in finding a new name for their country.<sup>5</sup>

Be that as it may, in 1902, an Order-in-Council-the Constitution of the nascent Protectorate was promulgated and provision made for the administration of Uganda – the official name of the new territory.<sup>6</sup> Besides the Kingdom of Buganda, which incidentally retained its original name, there was the Kingdom of Bunyoro and the fledgling principalities of Ankole and Toro with which the British wished to conclude bilateral agreements. Bunyoro, through her powerful and energetic King Kabalega, was unwilling to accept foreign rule. He therefore challenged the British imperial expansion and extension of British suzerainty over his Kingdom Bunyoro. Unfortunately, however, he was fighting the much superior force of the British with their modern weapons, with the assistance of the Buganda Kingdom as an ally, and not surprising he lost the struggle. For its help and corroboration, Buganda Kingdom was generously rewarded. A large part of Bunyoro was added to Buganda and so the problem of the “Lost Counties” was born.<sup>7</sup> That Bunyoro should have occupied an enviable position in Uganda was not surprising. Of the four ‘kingdoms’, Bunyoro had always been the more powerful and extensive. It is a historical fact that at one time Bunyoro’s rule extended to Busoga and parts of Buganda. Originally, the Kingdom of Toro was part and parcel of the Kingdom of Bunyoro but the King’s son who had been sent there to govern the area usurped the royal power and declared Toro a separate and independent kingdom.<sup>8</sup> The rest of Uganda consisted of tribes none of which had a central authority or one with sufficient power to command unquestionable obedience from the whole tribe. Nevertheless, many of the tribes enjoyed some kind of order under tribal or clan leaders and chiefs. Tribal chiefs differed from the Kings in many ways. The former were usually members of a ruling family whereas the latter were upstarts having personal influence of wealth, witchcraft or valour. A chief could come from any family of the tribe. Moreover, for all intents and purposes, the Kings ruled their

4 Thomas Pakenham. *The scramble for Africa*, op.cit, page 27. Index page 737. ‘Uganda’ See: Buganda.

5 As to the names of “Buganda” and “Uganda”, See: Proclamation G 1969, page 65.

6 Sir John Milner Gray: *Early Treaties in Uganda*: Uganda Journal, 12 (1948).

7 See: the letter of Toro’s Prime Minister to the Governor of Uganda, dated 27 December 1961.

8 Prince Kasagama of Bunyoro and first King of Toro.

Kingdoms as sovereigns but the chiefs governed on an *ad hoc* basis. For example, there might have been several chiefs in one tribe none of whom claimed sovereignty over the others. One chief might be the guardian of tribal rites and gods, one might be the war leader, and yet another might be the medicine man.

The tribe would obey and give allegiance to any of the three chiefs in their respective spheres of influence. As regards everything else, the chiefs were like any other member of the tribe. Moreover, if for some good reason, another member of the tribe claimed to be a better medicine man or a better war leader, he might be declared or declare himself leader instead of the incumbent one.<sup>9</sup>

In determining the territorial boundaries of Uganda, no serious consideration was given to the ethnical or tribal groupings of the peoples within the territory. Britain was not alone in her colonial expansion. She had to take into account the interests of other European imperial powers and to respect their claims.<sup>10</sup> The colonial interests at the time were not peoples but spheres of influence, strategic military positions, raw materials, trade, and other economic considerations. Consequently, boundaries of regions claimed by these powers followed mountain ranges and river beds rather than tribes. Latitudes and longitudes were more acceptable as territorial limits than peoples.<sup>11</sup> Such natural boundaries did not coincide with tribal and ethnical boundaries. They invariably crossed them. Thus, one writer observed:

“Like many other African countries, Uganda as a territorial unit is the creation of the colonial period. Its external boundaries were determined first by international agreements and then by administrative convenience and at almost no point do they fall into an ethnic pattern.”<sup>12</sup>

Today some Uganda tribes share common heritages and cultures with their brothers and cousins living outside Uganda and because these brothers and cousins have come under the influence of some other imperial power, these peoples often differ in allegiance, education and development. This phenomenon is not unique to Uganda and her neighbours. It is evident elsewhere in Africa.

The first Europeans to visit Uganda were motivated and attracted by a variety of reasons including, anthropological, religious, geographical curiosity, the route to India and trade. Indeed, the first organisation ever to start some kind of

9 Basil Davidson: *The search for Africa. A history in the making* pages 44-171.

10 The Berlin West Africa Conference, 1884-1885, attended by European Imperial Powers came to this understanding. Preamble to the UOC, 1902.

11 Werner Holzer's "*The Tribe-Africa's favourite scapegoat*" in *Africa*, number 5 of 1970.

12 Morris and Read, *The British Commonwealth*, series number 13, 1966, page 13.

administration in Uganda was a private company by the name of The Imperial British East African Company. Its charter authorised it “to undertake the duties of general administration, the imposition and collection of taxation and administration of justice in the areas under its control.” These powers were to be exercised within the scope and in accordance with the treaties the company concluded with local rulers. It is not certain whether in exercising these powers and functions, the company did so as the agent of the British Crown. The available evidence suggests that initially, the British Crown did not hold herself responsible for the company’s actions.<sup>13</sup> The object of granting these powers seems to have been for the benefit of the company and for the development of the areas in which it operated. Be that as it may, the analysis of some of these agreements indicates that the rulers did not understand the treaties they were signing and even if they did they did not have a choice to dictate their own terms. For instance, in 1890 the company persuaded Kabaka Mwanga of Buganda to agree to terms of a treaty which is supposed to have been made “after the council and with the full consent of the chiefs of all parties of my state”. The company was to afford protection to the kingdom and, in return, the Kabaka was to acknowledge the company’s suzerainty over his kingdom. All resident Europeans in the kingdom were to be subject to the jurisdiction of the company’s agent. The Kabaka could not make treaties with or grant concessions to other European powers without the agent’s consent. The agent was to be the *ex officio* President of a Committee of Finance and Revenue which was responsible for the collection, assessment and apportionment of the revenue of the kingdom. The Kabaka’s army was to be organised by the company’s officials. The agent’s advice and consent were necessary before Buganda could wage war or undertake any serious matters of state.<sup>14</sup>

The agreement Stanley Morton procured from the Omugabe of Ankole’s envoy and the benefit of which he later transferred to the British East African Company was probably one of the worst examples of such treaties. It was couched in the following terms:

“We (B) Uchuku, Prince of Ankori and Mpororo by authority and on behalf of my father Antari the King and the chiefs and elders of the tribe of Wanyankori occupying and owning the territory of Ankori and Mpororo do hereby cede to Bula Matari (H. M. Stanley), our friend, all rights of government of the said districts and do hereby grant him or his representative the sovereign right of government over our country for ever.”<sup>15</sup>

13 JH Speke, *Journal of the discovery of the source of Nile* (1863).

14 M Perham, *Lugard, Volume 1* (London, 1956). See: Foreword to Uganda reference in number 1 above written by Lugard himself.

15 Cited in Sir John Milner Gray op.cit.

It is apparent from the above examples that whatever the company, and later on, the British Government, wished to procure by agreement from these rulers, it got without much difficulty.

The rulers were not sophisticated enough to realise that in signing the so-called agreements and treaties they were giving away their birth rights and the rights of their subjects. At the time they had no notion of what words like “ceding”, “sovereignty”, and “government” meant.

In any case, they were tricked by persons who called themselves friends when they arrived in their respective territories. Indeed, according to the Banyankore/Bakiga custom, Stanley committed one of the gravest sins imaginable for he concluded this agreement after he had entered into blood-friendship with Buchunku and according to local custom it is better to betray a blood-brother than a blood-friend.

From the beginning, Britain was lethargic in actively promoting her interests in Uganda. When Stanley returned to Europe he wrote an account of his journey in a publication called *Through Darkest Africa*.<sup>16</sup> The British merchants became sceptical about trade prospects and the Government became reluctant to take on further responsibilities for what they described as yet another backward country. However the activities of Belgium in the Congo, the financial difficulties of the Imperial British East Africa Company and the evangelical activities of the Church Missionary Society forced the British Government to reconsider her position. Leopold II, King of the Belgians had realised the significance of Stanley's discoveries and founded an International Association of the Congo which soon became exclusively Belgian and supported entirely by the King's own private purse.<sup>17</sup> British imperialism had great supporters in the country who were not prepared to see Britain left behind by other imperial powers.<sup>18</sup>

In 1891, the company decided, through financial difficulties to withdraw from Uganda. One of its ablest servants, Captain Frederick Lugard, later Lord Lugard, had been posted to Uganda. On his arrival he had found the Baganda people torn apart by religious strifes. He managed to control the situation and with the co-operation of Kabaka Mwanga, he signed a new treaty in April, 1892. He became convinced that even if the company was pulling out, it would be a mistake for

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16 Cited in Thomas Pakenham, op.cit page 60.

17 JM Coote, “The Kivu Mission”, 1909-1910, *Uganda Journal*, XX2 (1956, pages 105-112, memo by Anderson, 13 September 1893, F.O. 84/2258 (cited from the History of East Africa below).

18 *History of East Africa* (Oxford, 1963), pages 58-60.

Britain to do so. In June of the same year he left for Britain to campaign against the planned evacuation of the territory.<sup>19</sup>

Lugard was not alone in advocating that the British keep their foothold in Uganda. He was joined by the Church Missionary Society which was apparently interested in spreading Christianity, and other anthropological organisations which advocated the total abolition of slavery. They took up the Uganda cause. Meetings were organised, speeches made and articles written about the country. Members of Parliament were lobbied. As a result of this pressure and campaigns British public opinion came out strongly in favour of Britain staying in Uganda. The British Government, albeit reluctantly, decided to appoint a one-man Commission in the person of Sir Gerald Portal who at the time was Consul General of Zanzibar. By 1893, Portal had declared Uganda a Provisional Protectorate, presented a report recommending that Britain should take over the responsibility or the administration of Uganda and concluded a new agreement incorporating his recommendations with the Kabaka of Buganda.<sup>20</sup>

The new agreement was on the same lines as the treaties which had been made by the company, except that this time the company was replaced by the British Government which was to secure for Buganda, “*British protection, assistance and guidance*”.<sup>21</sup> There were two new provisions, which perhaps the company could not have been able to conclude with Buganda, namely, that the foreign relations of Buganda were to be the responsibility of the representative of the British Government and that slave trading and raiding should be prohibited. The British representative was to have a sufficient number of supporting staff to enable him to effect the terms of this agreement.

In 1894, a reluctant British Government finally committed itself by declaring Uganda a British Protectorate.<sup>22</sup> By this declaration, Uganda came within the ambit of the Africa Order-in-Council, 1889, which authorised the local consul to establish local jurisdiction under which he was to exercise considerable executive, judicial and administrative powers.<sup>23</sup> The missionaries including Moslems who had come to Uganda succeeded in converting many local inhabitants to their respective faiths, but unfortunately, either by design or otherwise, they do not appear to have succeeded in preaching peace among all men. Hence, this period was also

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19 See: Margery Perham, Lugard: The years of adventure, 1858-1998.

20 See: Portal papers, Rhodes House, Oxford University.

21 G. Portal: The mission to Uganda, London, 1894.

22 See: H Bernit Hanson : Mission Church and State in the Colonial Setting, London, 1984, pages 59-64 and Uganda, Order in Council, 1902, pages 4-12.

23 UOC, 1902, pages 4-12.

characterised by internecine religious quarrels, strifes and wars in which the new converts – Roman Catholics, Protestants and Moslems battled for influence and supremacy. Secular rulers notable Kabalega and Mwanga took advantage of these wrangles and participated in them to assert their own authorities, and so too did the British. So it was that through various manoeuvres and diplomatic moves, the British representative assisted by his staff managed to play off one faction against another and eventually got the situation under control. The religious differences were to continue even after independence.<sup>24</sup>

At the same time, the people of Uganda were to benefit by taking advice from religious leaders who established schools and saw themselves as arbitrators between the colonial administrators and their charges the Africans. By 1900, the foundations of British constitutional administration of much of the Protectorate were already firmly laid.

The next step which the British Government took was to declare and consolidate what territories came to constitute the Protectorate of Uganda. It had been agreed between the European imperial powers that any claim of sovereignty over a territory would be maintained if the territory had been acquired “*through a treaty, grant, usage, sufferance and other lawful means*”<sup>25</sup> Agreements accepting British suzerainty had been concluded with various chiefs and rulers in Buganda, Ankole, and Toro to name but a few. These new arrangements were unsatisfactory, for whereas the various treaties were entered into with each kingdom or chieftainship separately but this time Britain wanted all of them to be part and parcel of the whole protectorate. It became necessary to enter into new agreements, revise the old ones and, where none existed, to declare territories as part of the Protectorate by promulgating Orders-in-Council. The (B) Uganda and Toro new agreements were concluded and signed in 1900. The agreement with Ankole was signed in 1901. The old agreements under which some chiefs in Busoga and the northern region of the country had accepted the British sovereignty in exchange for protection were ignored. Those were not considered by the British to be of any constitutional significance because the chiefs did not represent or command full authority of their respective tribes. Instead, Orders-in-Council incorporating these areas within the new Protectorate were made and published. This process of incorporation by Orders-in-Council continued until all the non-kingdom districts came under the wing of the Protectorate administration. Bunyoro remained in a different category of its own. Her King had been defeated and the British claimed

24 See: GW Kanyeihamba: *Constitutional Law and Government in Uganda*, EALB, Nairobi, 1974, pages 39-43.

25 Berlin Africa Conference, 1884-5.

sovereignty over her domains by conquest. Consequently, no formal agreement was concluded with her rulers until 1933.<sup>26</sup>

Thus, though the agreements were concluded between two parties, that is the rulers on behalf of their subjects, on the one hand, and the British representatives on behalf of the British Government, on the other, the Orders-in-Council incorporating the non-kingdom districts were, in the main, *ex parte*. So, while the Kingdoms “voluntarily” joined the British “Protectorate”, the non-kingdom districts were in effect, annexed. The kingdoms therefore had a special relationship with the colonial power and continued to regard themselves as being in a privileged position even after Uganda attained her independence. The kingdoms may be assumed to have agreed to what was incorporated in the treaties. The non-kingdom districts were not so lucky as to be consulted and, therefore, they cannot be deemed to have agreed to the Orders-in-Council incorporating them in a Uganda in which other areas of the kingdoms were claiming privileges at their expense.

Every agreement with a kingdom and every Order-in-Council of a district spelt out the fact that each kingdom or district was part and parcel of one state, the Protectorate of Uganda. Of all the kingdoms, Buganda never understood or fully accepted this arrangement and throughout the colonial period and up to independence, she still claimed to be, in many respects, a state within a state. This attitude was to lead to serious repercussions after independence, but more of that will be discussed later.<sup>27</sup> In the meantime, the rudiments of British rule, as set out in the 1902 Order in Council will be examined.

## 1.2 THE UGANDA ORDER-IN-COUNCIL 1902

The 1902 Order-in-Council started with a preamble stating that:

“Whereas, by treaty, grant, usage, sufferance and other lawful means, His Majesty has power and jurisdiction in the Uganda Protectorate, now therefore by virtue and in exercise of the powers conferred on His Majesty by the Foreign Jurisdiction Act it is ordered as follows: ...”,<sup>28</sup>

The Order went on to define the territorial limits of the Protectorate together with its administrative divisions. It empowered the Crown, acting through a Secretary of State, to declare from time to time, if he so desired, that any areas under his

<sup>26</sup> *Ibid.* See: new text, Morris and Read, op.cit.

<sup>27</sup> This attitude partly contributed to the founding of KY and the 1966 crisis.

<sup>28</sup> OIC, Preamble.



protection may form part of the protectorate and conversely that parts of the protectorate might cease to be so.

Provisions were made for the administration of Uganda. The officer responsible for the administration was designated as Commissioner and he was to be assisted by a Deputy Commissioner and other officers. The Commissioner was vested with the powers of the Government of Uganda and for this purpose he was to have an Official Seal by which his acts would be authenticated. All rights in, or in relation to crown land were vested in him. All mines and minerals the rights to which no one possessed and the means of working them were vested in him. He was vested with the prerogative of mercy which he would exercise in the name of the Crown. All Ordinances, Proclamations, Regulations and Rules or other notifications in Uganda were to be published in the Gazette or in any other manner the Commissioner thought fit.

The Commissioner also had power to make laws rules and regulations:. Thus, article 12 of the Ordinance provided that the Commissioner:

“May make Ordinances for the administration of justice, the raising of revenue, and generally for the peace, order and good Government of all persons in Uganda.”<sup>29</sup>

In the exercise of his legislative powers, the Commissioner was to be subject only to the general or special instructions of the Secretary of State in London. He was to respect existing native laws and customs in so far as they were not repugnant to justice or morality as understood and practised by the British. Further, he could by Ordinance, order that laws of the United Kingdom, India or any other colony be applied to Uganda generally, subject to stated exceptions and modifications.

Besides the laws made or authorised by the Commissioner, laws contained in the First Schedule to the Foreign Jurisdiction Act of 1890 were made applicable to Uganda as if it “*were a colony or possession*”. The application of the latter laws were subject to the Uganda Order-in-Council and to the exceptions, adaptations and modifications as described in the Order.

Under Article 15 of the Order, a High Court of Uganda to be known as His Majesty’s High Court of Uganda was established with full civil and criminal jurisdictions in all cases and over all persons in Uganda. Judges of this court were appointed and dismissed at the pleasure of His Majesty, the King of England. The Commissioner was authorised to make Ordinances establishing subordinate courts including courts of special jurisdiction. Appeals to and from these courts and the High Court were also to be provided for by similar Ordinances. Article 10 gave the

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*Ibid.*



Commissioner power to appoint discipline and dismiss public officers, magistrates, judges other than those of the High Court, court registrars, court principal officers, clerks and subordinate officers of all courts. The High Court was empowered to make rules with the approval of the Commissioner, for regulating court practice and procedures, court fees, and conditions under which lawyers could practise and appear in Uganda courts. An authenticated copy of these rules was to be submitted to the Secretary of State by the Commissioner after he had approved them. The Commissioner was accorded personal and proprietary immunity from legal process, but the Government of Uganda was made liable for the acts done by its officers under article 23 of the Order.

The Order, summarily diminished the role of native customary laws by providing that:

“In all cases, civil or criminal, to which natives are parties every court (a) shall be guided by native law in so far as it is applicable and is not repugnant to justice and morality or inconsistent with any Order-in-Council or Ordinance, or any regulation or rule made under any Order-in-Council or Ordinance; and (b) shall decide all such cases according to substantial justice without undue regard to technicalities of procedure and without undue delay.”<sup>30</sup>

The next part of the Order gave the Commissioner wide powers of removing and deporting from Uganda, persons he considered undesirable or dangerous to the peace and order in Uganda. The last part of the Order dealt with laws that were to cease to have effect in Uganda as a result of this Order.<sup>31</sup>

### **1.3 EXECUTIVE AND THE LEGISLATIVE COUNCILS**

Up till 1920, the Uganda Protectorate was ruled virtually by the Orders of one man - the Commissioner: he was the head of the Protectorate, Executive Officer and the law-maker. With the exception of the High Court and its judges, he controlled all the other courts and their personnel. While it is true that he was assisted by other public officials, the fact that he exercised full patronage over them, reduced them to mere tools for the implementation of the Commissioner's policies rather than Government officers with separate functional roles. The period between 1902 and 1920 may be described as dictatorial and despotic, if not in practice, at least in law.

In 1920, a new Consolidating Order-in-Council was promulgated and provision made for the establishment of Executive and Legislative Councils. The

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<sup>30</sup> UOC, 1902, 12(8).

<sup>31</sup> *Ibid.*

Commissioner was to be redesignated Governor. Members of the two councils were to be designated by His Majesty, the King of the United Kingdom. The Governor, unlike the Commissioner, would no longer have full control over the persons who were to assist him in governing Uganda. Instead, they were to hold office at the pleasure of the appointing authority. The only power the Governor had over them was that of suspending them from either council but such suspension was subject to the confirmation by His Majesty through one of his Principal Secretaries of State.

The membership and functions of the Executive Council were not provided for in the Order. They were set out in the Royal Instructions of 1921 made under the Order and provided that the Executive Council was to consist of the Chief Secretary, the Attorney-General, Financial Secretary, Director of Medical Services, Director of Agriculture, and the Resident of Buganda. In addition, the Governor could appoint persons within and outside the public service as members of the Council. The former were styled official members while the latter were called unofficial members of the Executive Council. Power was also given to the Governor to summon at his own discretion and, at any time, any person within the Protectorate to attend Council meetings. It is apparent not only from these instructions but also from the practice which prevailed at the time that the Executive Council was dominated by civil servants who happened to be in the administration of the Protectorate<sup>32</sup>

The powers of the Executive were limited in the following respects: It was up to the Governor whether or not an Executive Council meetings were called. The Council could only transact business when summoned by the Governor. Its quorum was three, which meant that with two of the members, the Governor could transact business in the name of the Council. In any case, the Governor could act without consulting the Executive Council. Even in cases where he consulted them he was not bound to act in accordance with their advice. The Royal Instructions provided specially that the Governor was entitled to act in opposition to Council's advice so long as afterwards he reported to His Majesty the King giving grounds and reasons for his action. The Governor was obliged to accept any motion or question raised for discussion by any member of the Council, but his freedom of action remained unlimited. However, the fact that a member could insist that minutes of the discussions, advice or opinions given be recorded at length and the fact that copies of all the Council minutes had to be submitted to the King through one of his Principal Secretaries of State, forced the Governor to

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32 *Ibid.*

accept advice and to act with restraint.<sup>33</sup> The Order also established a legislative body known as the Legislative Council and its constitution and procedures were set out in the Royal Instructions of 1921.

The Legislative Council was to consist of the Governor and such other persons, not being less than two at any time, as His Majesty directed by Royal Instructions. The Council was empowered to make laws and regulations for the administration of justice, law and order and good governance of Uganda. However, the power of the Legislative Council to make laws was subject to certain limitations. The Governor was given a veto over the legislative powers of the Council. Moreover, His Majesty reserved for himself the residuary powers to legislate for the Protectorate, on any matter. To that end, the Governor was authorised to assent to bills at his discretion, but he could also be specifically ordered by the British Government either to assent or refuse to assent to any bill as they saw fit. No laws could be effective unless first assented to. Moreover, certain bills were reserved for the assent of His Majesty personally and these included any bill which was repugnant to or inconsistent with any provisions of the Royal Instructions. The qualifications, appointment and style of the members of the Legislative Council were the same as those of the Executive Council. There was no requirement that members of one Council should not sit in the other. Indeed, the *ex officio* members of both Councils were the same.<sup>34</sup> The unofficial members of the Legislative Council were appointed for three years. In either Council those who held office by virtue of their offices ceased to be members if they resigned or were sacked from their offices.

The Royal Instructions authorised the Governor to propose to the Council standing orders and rules to ensure punctuality and attendance and provided for other matters.<sup>35</sup> Business was transacted through debates and decisions taken by a simple majority of the members.<sup>36</sup> Following the Royal Instructions, the Governor framed Standing Orders and Rules of the Legislative Council which were adopted in 1926 and continued with minor amendments to be used with minor amendments until 1949.

It will be noted that all the members of the Legislative Council including support staff were Europeans. Naturally, this state of affairs was greatly resented by the Africans and the Indian Communities.

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33 *Ibid.*

34 Senior Civil Servants: See: Compositions in the Proc.Legco, 1921-1926.

35 Restraint was negative and political, rather than positive and legal.

36 Royal Instructions, 1921, cl.27; LN 7 of 1921 and LN7 of 1935.

The Indian community in the Protectorate had over the years steadily increased. Most of them were to be found in towns and trading centres engaged in trade and commerce. They claimed a right to be represented in the Council. When the question for the appointment of unofficial members of council arose, the Governor proposed that one of them be an Indian. The Indian community which had over the years steadily increased objected on the ground that in view of their numbers, one representative was not enough and was unacceptable. However, neither the Governor nor the Indian Community for different reasons were amused and, it was not until 1926 that the latter agreed to nominate one of them, one Chunibhai Jethabhai Amin, as an unofficial member of the Council. His first appearance in the Council meeting was welcomed by the Governor in the following terms:

“It gives me, as I feel sure it gives all Honourable Members, much pleasure to see a representative of the Indian community on the Legislative Council of this Protectorate the activities and development of which the community has played, is playing such a considerable part.

I am glad to take this opportunity of publicly paying tribute to the valuable services rendered to Uganda by that enterprising and law-abiding community. I have observed, with great satisfaction, the cordial relations which subsist between the European and the Indian communities here, and I feel that the presence on this Council of the Honourable Members is a step in the direction of still closer co-operation in the furtherance of the interests of the Protectorate as a whole.”<sup>37</sup>

The official colonial attitude was that a closer understanding between the ruling European community and the Indian commercial community would maintain stability in the country. This was necessitated by political expediency rather than a realisation that the Indian, educated as he was, was a proper person to sit in the Legislative Council. Of course, the officials did not seriously consider the question of whether or not the Uganda citizenry should be represented in the Council. “*The natives were still too backward to contribute much to the development of their country*”.<sup>38</sup> Their interests were apparently in the safe hands of one of the official members.

The proceedings of the Legislative Council indicate that as soon as the Indian representatives started taking their seats in the Council, the Colonial Government was effectively reminded of the special position the Indian community occupied in the country. Thus, for example, at the December sitting of the Legislative Council of 1931, an Indian representative asked the government why qualified Indian veterinary officers were not given the same terms and conditions of employment as

37 Proceedings of the legco. 1921, cl.27; LN 7 of 1935 op.cit.

38 Proceedings of the legco. 1921, cl.27; LN 7 of 1935 op.cit. *ibid*.

were given to European officers with the same qualifications. Again, while debating the Co-operative Society's Ordinance Bill of 1945, Mr Jaffer, an Indian representative made the following plea:

"I have no desire, Sir, to raise any racial issues arising out of this Bill but as an Indian member I feel it is my duty to put forward the Indian view point on this Bill.... I therefore trust, Sir, that there is no intention behind this measure to eliminate the Indian trader from his legitimate and rightful pursuits in trade. On this point I crave, Sir, for a statement from Your Excellency so as to set at rest the anxiety of the Indian traders who are long established in trade in Protectorate."<sup>39</sup>

The Governor reassured Mr Jaffer on the position of the Indian traders and no one spoke for the interests of the African peasants who were supposed to benefit from the provisions of the Bill. In 1941, Dr MM Patel, an Indian representative said:

"Your Excellency, I have not seen a Bill of this nature and of such importance published with such scanty notes as appear at the end of the Bill for the benefit of the general public."<sup>40</sup>

The general public was the Indian community since the Bill in question was "*Imposition of a Tax on Excess Profits*," which would affect the Indians merchants and traders almost exclusively.

Although the Council was passing laws intended to govern the local population, the average European arrogantly believed that he knew what that population wanted better than the Africans themselves. This paternalistic attitude prevailed in all British colonies. For instance, in supporting this view, Lord Milner, the Governor-General of Tanganyika had this to say:

"The only justification of keeping an official (European) majority in any colony is that we are convinced that we are better judges, for the time being, of the interests of the native population than they are themselves."<sup>41</sup>

However, this attitude was mere camouflage for the more sinister motives of the colonial powers, for even then the "natives" were recognised as sophisticated enough to look after their own affairs. Under the so-called doctrine of indirect rule, the chiefs were allowed to make laws and determine cases in certain specific matters involving their own people and customs. Under the various Native Government and Local Administrations Acts, indigenous rulers and chiefs made bye-laws and no one ever suggested that these bye-laws were bad or uncivilised. Indeed, the Governors of the period had nice things to say about the ability of the

39 Proceedings of the legco. 1921, cl.27; LN 7 of 1935 op.cit.

40 Proceedings of the legco. 1921, cl.27; LN 7 of 1935 op.cit. *ibid*.

41 Governor Turnhull of Tanganyika cited in GW Kanyeihamba: *Constitutional and Government*; op.cit page 15.

“native” rulers and their advisers. Thus, Governor Archer, addressing the Fourth Session of the Legislative Council made the following remarks:

“Speaking generally, I find that a spirit of contentment and goodwill is evident among the natives of the Protectorate as well as a sense of growing prosperity and advancement. The Native Governments are good, as there is practically no abuse (of power).”<sup>42</sup>

Paternalism was, of course, part and parcel of colonialism which needless to say was based on the assumption of the superiority of the imperial race over the subjugated peoples. The myth of superiority was a necessary instrument for keeping a small minority, the colonial masters, in complete domination over a large majority, the colonised people. If these people were allowed to sit in the Council and debate Bills on equal terms with the Europeans, they might have thought and proved that they were as good, if not better, than their colonial colleagues. The next step might have been for them to demand the posts of members of the Council and ultimately the Governorship itself! The same paternalism was applied to the Indian community. The Indian sub-continent was still very much a colony and if the Uganda Indians were given positions of responsibility, their brothers and cousins back home might have got an incentive to demand similar positions in their motherland. Hence for a long time Uganda, like many other colonial possessions, was governed by an oligarchy of aliens. They formed the Executive and the Legislative Councils. They provided personnel of the courts and the administration throughout the country.

The citizen was kept in the background to be used on government work whenever necessary. He was expected to obey laws he or she had had no chance to contribute anything to them and which had been formulated, passed, administered and executed by British officials in the British manner they knew best. The Uganda citizen, unlike the Indian resident was not even allowed a token representation on the body that made these laws. This was part of the colonial history. It was also one of the effective tools by which those under the colonial yoke were later to use in demanding self-rule and independence.<sup>43</sup>

## 1.4 EXTENDING REPRESENTATION TO THE PEOPLE

With the establishment of the Legislative Council, indigenous Ugandans had began to claim the right to be represented on it. The claim was first ignored by the colonial officials but it found support among the unofficial members of the Council

42 Proceedings of the legco; op.cit. *ibid*.

43 See: Thomas Pakenham, *The scramble for Africa*, op.cit page 624. See: the maiden speech of Kawalya-Kaggwa to the legco. Extracts in GW Kanyeihamba: *Constitutional Law and Government*, op.cit, page 21-28.

and the Church. However, there was disagreement among the supporters of that claim as how the representation was to be attained. Some thought that Ugandans should be represented by Europeans. Others took the view that only the indigenous people understood their own problems and their own interests and those of their fellow countrymen and women better. They should therefore be represented by their own people. The latter group were themselves further divided as to whether such representation should be drawn from the ranks of chiefs or from the general public.<sup>44</sup> As shall see later, when the Colonial Government eventually accepted the idea of extending representation to the bulk of the population, it preferred chiefs.

Even so, it was sometime before such representation was allowed. It was in 1941, that the question of the representation of the Africans was formally introduced by an unofficial member of the Council. The initial official reaction to the idea was however hostile and the issue was shelved. It was not until 1944 that the question was raised once again by Mr Fraser, one of the unofficial members in the Council. He championed the cause albeit indirectly by raising the issue of increasing the unofficial representation. In that year, he moved a motion in the Council which, although not accepted at the time, was to contribute greatly to the realisation that the Africans had a right to be represented. His motion read in part as follows:

“Your Excellency, I beg to move the following motion: ‘Be it resolved that Government give immediate consideration to the enlargement of the Unofficial representation on the Legislative Council in view of the greatly increased responsibilities devolving on Unofficial Members in their capacity as advisers to Government during the last 23 years and also in regard to the possible extension of these responsibilities in the post-war development proposals for Uganda now under consideration. I would, Sir, point out that there is no question of politics behind this and I am not asking either for increased Unofficial representation of Europeans or Indians, as I consider that as a nominated Unofficial Member, I represent all sections of the community, whether it be African, Indian or European.’ (Members: Hear, Hear!)”<sup>45</sup>

Mr Fraser went on to give a comparative analysis of unofficial representations in other British colonial territories at the time as follows:

Uganda which had 4 million Africans, 27,000 Asians, 2,700 Europeans and a budget of £2½ million a year had only four Unofficial Members on the Legislative Council and none on the Executive Council. Tanganyika which had 5 million Africans, 34,000 Asians and 6,000 Europeans and a budget of £3 million had ten

44 Proc. Legco, 23 and 24 cs, 1943-44, pages 21-28.

45 Proc. Legco, 23 and 24 cs, 1943-44, pages 21-28.

Unofficial Members, 13 official and 6 of the Unofficial members were on the Executive Council as well. The Bahamas in the West Indies with a smaller population than either Uganda or Tanganyika provided the best example of the greatest number of Unofficial Members on both the Legislative and Executive Council. Mr Fraser continued:

“In my short term of office as an Unofficial Members of this Council I have seen that none of the members, either official or unofficial, have sufficient time to study everything that comes before this Council as they should and I believe that this can only be achieved by a division of the work amongst a large number of members ...

Apart from this, Sir, Council needs more advice on a larger variety of matters than it receives at present and, in my opinion, consideration should be given to *African representation* on this Council, either by an *African* member, or by a person other than a Government official who can voice the *African's* view point in an unbiased manner and without fear of incurring Government's displeasure. The four Unofficial Members of this Council are drawn from a similar walk of life and though they may be conscientious advisers to Government on matters of finance and general development problems, they are not conversant with specialised subjects such as education, medical and *African* welfare which are to form a large part of Government activities in the future.” [Emphasis mine]<sup>46</sup>

Mr Fraser's motion was seconded and supported by two other unofficial members, Mr Jaffer and Mr Dakin. The latter particularly supported the view that no question of proportional representation was involved. He suggested that the Africans ought to be represented by Church Missionaries who worked among them and understood them better than any other expatriates. Even so, the Governor was not prepared to hear any more. He promptly intervened in the debate to set out the official policy. He felt that the motion raised a “constitutional issue” for which the time had not come. The Governor went on to say that it would be inconvenient and inopportune to increase the number of unofficial representatives and that the organisation in the Council would be difficult to achieve. In any case, the time for motions for constitutional changes had, in his view, not yet come. Mr Fraser's was evidently premature and though he demolished His Excellency's arguments by counter arguments backed by facts, when the motion was put to a vote, it was overwhelmingly defeated by the members of the Council.

Nevertheless, within less than a year, the British Government's attitude towards these “constitutional issues” of representation in Uganda had undergone a

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*Ibid.*



fundamental change. The Second World War was coming to an end, the working class led by the Labour Party in Britain was soon to be swept into power, the colonial peoples, including Ugandans, had distinguished themselves in combat as supporters and colleagues of the British soldiers and as a result the extension of representation could no longer be put off. Besides, the peoples' agitation and the cogent advocacy presented by unofficial representatives like Fraser, left the British with little doubt that the representation of the Africans far from being premature was, in fact, long overdue.

In 1945, a new governor for Uganda was appointed. On 18 June 1945, in the Communication from the Chair, the new Governor, Mr Hall removed any lingering doubts that the Africans would soon be represented on the Legislative Council and had no hesitation in announcing a new policy. He said:

"I hope also, that before long we shall be able to welcome to our deliberations as colleagues representatives of the **African** race so that they may be associated more closely with the business of Government and the framing of measures which so intimately affect their lives and the *future of their country*" (emphasis ours).<sup>47</sup>

Not only was this pronouncement of great constitutional importance but it indicated a complete reversal of the Government's previous policy. It is interesting to note that the members who were present at the time do not appear to have grasped the importance of this announcement, it may have been their previous appeals for such representation, they subconsciously hoped that no Africans would be nominated to represent the indigenous people but they would be represented by members of the other races. Be that as it may, a few months later, on the 23 October 1945, the Governor proudly informed the Council that the Secretary of State had approved his proposal for the appointment of three indigenous Legislative Councillors. He declared:

"The principle that this Protectorate should be *administered primarily for the benefit of its African population* no one nowadays seriously challenges... Africans should have an effective voice and should take an effective part."<sup>48</sup>

The Governor also stated that these representatives would have a dual duty in the Council and in the country. First, they would represent and explain the Government's policies to their people in the country. They were to be men of substance and authority, of ripe experience and possessed of a developed sense of responsibility which may be expected from those holding high office in the Native Governments and Administrations. Only Buganda, Western and Eastern Provinces

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47 Proc. Legco., 24th cs, 1943-1944, pages 21-28.

48 Sess. 24 of legco. Proceedings page 3.

were to be represented. The representation was to be as follows: The Katikiros (Prime Ministers) of Bunyoro, Toro and Ankole would represent the West in rotation. Buganda was to be represented by one of His Highness's (the Kabaka's) three Ministers<sup>49</sup> and the East was to be represented by the Secretaries -General of Busoga, Bugisu, Bukedi and Teso, again in rotation. The first three representatives would take their seats in the Council the following December. However, that would leave Kigezi and the North unrepresented. For them, representation in the Council was still but a dream. The reasons for this were stated by the Governor in the following terms:

"It will not have escaped the notice of Honourable Members that the system of nomination which I first described will leave the Nilotic districts in the North without direct representation. Their tribal and administrative organisations have not yet in all their districts advanced to the stage requiring the creation of centralised native executives and thus of appointments similar to Secretaries -General but they are already developing."<sup>50</sup> The Governor's view of Kigezi must have been the same.

The Governor added that interpreters may be necessary for the African representatives as was the practice in Zanzibar. In order to avoid the danger of the Unofficial Members defeating Government, the Governor announced that "another Official Member would be appointed to avoid the fundamental change in the constitution."<sup>51</sup>

As previously, no member of the Legislative Council made any comment on the Governor's statement. It appears as if gloom had descended on the Council and members were not sure what the introduction of the Africans' representatives would do to their cosy life in the Chamber and they did not have long to wait. On 4 December 1945, an important event in the constitutional development of Uganda took place. Among cheers and shouts of "Hear! Hear! three new members set their feet in the Legislative Council. They were introduced as Honourable Members *ME Kawalya-Kagwa*, *P Nyangabyaki* and *Y Zirabamuzale*.<sup>52</sup> In his communication from the Chair, the Governor did not begin with this important event. He dealt with other matters and then finally, as an after thought, said:

"Last, but by no means least, I welcome in the most cordial spirit our three new African Councillors, whose presence here today gives me, and I know, all members of this Council great pleasure and a great hope and confidence in the future. They will learn

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49      Communication from the Chair, Proc. Legco. 1953-4, 24 ss.

50      *Ibid.*

51      *Ibid.*

52      See: membership of the Legco. Op.cit.

from us, and we also shall learn from them; and our combined wisdom and experience will, I am confident, contribute much to the progress and well being of this country.”<sup>53</sup>

Two things are significant in the Governor’s welcoming speech. Firstly, whereas before every new member was welcomed as the “Honourable Member” the new members were welcomed as “*Our three new African Councillors*”. Secondly, all other members were always welcomed as persons of experience whom the Council was privileged to receive. In this case, however, it appears that the new Councillors had come “to learn” from the other Honourable Members. It was left to Mr Jaffer, unofficial member and one of the veterans of the Council and significantly a non-European, to give the welcoming speech. However, he, too, did not have much to say about the new members. For the first time in its history, an indigenous ‘representative Honourable Kawalya-Kagwa, addressed the Council as a member. In his maiden speech he must have surprised his listeners by his dignity and clarity of mind: he said:

“Your Excellency, on behalf of the African Unofficial Members I wish to express our gratitude and appreciation for the welcome extended to us and for the gracious step taken by the Secretary of State for the Colonies in allowing your Excellency to appoint three African members to serve on this Council. The honour conferred upon us is great and I am sure will please the African communities, but we are not unmindful of the task placed on our shoulders and we feel our presence here may very well assist the Council to reach decisions on matters affecting Africans with a better understanding of the African mind. I hope your Excellency will allow me to refer to the responsibility which lies on the Government to advance the interests of African people in its care. I feel that the three important points which should occupy Government are the: improvement of health, elimination of ignorance, and the improvement of living conditions. Sir, I should like to draw attention to the fact that the introduction of a cash economy has disturbed the African society and shaken (it) to its very foundation—our customs. Unless the African is trained in the new economy and the art of earning money and spending it wisely, he will be ruined and his progress will be impossible. Lastly, Sir, I assure you on behalf of the African members that we shall serve the Council loyally, diligently and in the interests of this country and those of the empire.”<sup>54</sup>

After his speech, Honourable Kawalya-Kagwa was loudly applauded by the other Honourable Members. He presented the people’s view in a modest but lucid manner. He had indicated that the new members of the Council would project the people’s image and serve the interests of their country first and those of the empire second. He touched on the same problems that today are still the bane of our government, namely, the fight against “disease, ignorance and poverty” The question of educating our people in cash economy and in the mechanics of

53 Communication from the Chair, op.cit.

54 Proc. Legco. 1945.

commerce and trade is still with us today. Kagwa's maiden speech was to set the tempo that was to guide our politicians to independence. Thus, the first Ugandan member ever to have addressed the Legislative Council had the foresight to give a summary of some of the policies the independence Government of Uganda was to adopt nearly 30 years later. It may be said that Mr Kagwa was too modest considering that he was one of only three members in a Council of more than ten Councillors but at the time even this modest representation in a Council that had hitherto been dominated by the European members was a revolutionary step.

Although Honourable Kawalya-Kagwa was loudly applauded, no other member felt that his speech ought to be seconded or commented upon. Immediately after Kawalya-Kagwa's speech, His Excellency, the Governor considered it convenient to adjourn the Council for a few minutes. Nevertheless, henceforth, all matters relating to the welfare of the people of Uganda were to receive more attention than had hitherto been the case. Thus, whenever bills which affected the majority of the population were being debated, the new members found opportunities to speak and 1946 was before the Council. The Bill which was intended to make provision for the maintenance of law and order was a harsh and unfair piece of legislation. It empowered the Provincial Commissioner to impose wholesale punishment on a community where there had been disturbance and the culprits were not identifiable. Hon. Nyangabyaki found it necessary to comment on clause 3 of the Bill, and did so with effective irony. This is what he said:

"Under section 3, Power is given to the Provincial Commissioner to mete out wholesale punishment to a community where disturbances take place but as far as I can judge the African way of thinking, this method if applied to him alone, and however justified, will arouse his suspicion; a primitive people like ourselves are not likely to understand how one can be punished for the wrongdoing of another ..."<sup>55</sup>

Had such a law been passed in Britain it would have been considered primitive and barbaric and therein lies the effectiveness of Mr Nyangabyaki's speech!

By 1948, the Legislative Council consisted of the Governor as Chairman, six *ex officio* members, four official members and ten unofficial members including four representatives of the Uganda people. In March 1948, this number was doubled and arrangements were made for six other members of the latter to be elected. By 1950, the Unofficial Members of the Council had become 16, eight group

Africans, four Asians and four Europeans. The official side was correspondingly increased to six.<sup>56</sup>

### **1.5 THE BEGINNING OF RESPONSIBLE GOVERNMENT**

In 1952, a new and dynamic Governor, Sir Andrew Cohen, arrived in Uganda to assume the mantle of colonial rule.<sup>57</sup> It was the beginning of a new era. He soon announced that representation outside Buganda would be based on the district rather than the province. This meant an increase in the unofficial membership of the Council. In order to ensure that the Government would continue to function without being defeated by the Unofficial and representative side of the Council, a new category of nominated members, who were to be known as cross-bench members was introduced. The cross-benchers were free to discuss and debate any matter according to their conscience but when it came to voting they were obliged to support the Government policy. By 1954, the Council was almost truly representative. It consisted of the Governor, nine Ex-officio members, eleven cross-bench members, and twenty seven representative members. The Government thus had the majority of two.

In the same year it was announced that every district except Karamoja, would elect a representative to represent it on the Legislative Council. Such representatives were to be elected by District Councils and, what is more, some of these were to be included among the cross-benchers. The new chamber was also, for the first time, to include two women, albeit both European – Mrs Saben and Mrs Boase. Thereafter, many Government officials began to feel the impact of the representative members.

Thus, Honourable A Maini, now a Government Member, had reason to complain:

“Your Excellency, the role of Unofficial Members of the Legislative Council is beginning to get pretty difficult. I have been told that because of views I hold in regard to payment to Unofficial Members of the Legislative Council, my name is mud with certain sections of the community.”<sup>58</sup>

So, did Mrs Saben, She too, had this to say:

“My first criticism of Government action is to state on the floor of this House my disapproval of asking members to approve the estimates of this Protectorate,

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56 To prevent Government being defeated by surprise.

57 It was Cohen's policies and determination which paved the way to Uganda's independence.

58 Proc. Legco. 6th Sess. 1956. page 35.

incorporating constitutional changes in this chamber, without the courtesy of placing those constitutional changes on the floor of the House.”<sup>59</sup>

Nonetheless, constitutional changes could no longer be delayed. They continued expeditiously. Thus further changes of which the most important was the ministerial system of government, were introduced in early 1955. Two Ugandans were made Ministers; Mr Mungonya from Ankole District became the Assistant Minister of Social Services while Mr Nabeta from Busoga became Parliamentary Under-Secretary in the Ministry of Local Government. By the end of the year, three more Ugandans were made Ministers, thus bringing their total to five. The number of people’s representatives was also increased and this swelled the membership of the Council to 61, including the Governor and the first Ugandan woman to grace the chamber, Honourable Mrs Kisosonkole. The cross-bench ceased and became the back benchers on the Council. Nevertheless, the representative side of the Council was not an opposition in the accepted sense, since the Government was not a Party Government but a Colonial Government. What then was the difference between the members on the Government side and the representative’s members? The differences between the two were outlined by the Governor in the following terms:

“The duties of representatives were (a) to check the Government and keep it up to mark (b) to voice the needs of the people and (3) to take a lead where necessary. The Government back - bench members were now free to vote and speak as they liked except that on an issue of confidence they were still obliged to support the Government. In addition, members especially representative members, had to tour their constituencies frequently and to dispel ignorance and spread understanding.” However, the Governor forgot one important duty of the representative members which was that they were there also to gain experience which would aid them afterwards, for it was now no longer seriously doubted that the country would in the near future gain independence.<sup>60</sup>

In the following year the Government announced that direct elections would be introduced in 1961. However, before that, certain issues had to be resolved, not least of which were: the universal franchise: the voters and the candidates’ qualifications, the right of women to vote and stand for election, the representation of the non African communities and the status of Karamoja and its representation in the 1961 Legislative Council. Buganda was given a choice of either direct or indirect elections for her Legislative Councillors while all the other districts were to have theirs elected by the District Councils as before. As usual, Buganda was to be treated differently. It was to be given, for want of a better word, the opportunity to elect her representatives, either indirectly or directly. Elsewhere, however, the

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59 6th sess. Legco. op.cit. *ibid*.

60 Proc. of 6th sess. 1956, op.cit. *ibid*.

Government considered direct elections absolutely necessary for, and a precondition for self government this was explained by the Governor thus:

“If direct elections on a common roll were introduced in 1961, this will be a positive step forward towards self-government ... Self-government cannot be a reality in any country unless it has men and women who can effectively run its political institutions, its civil service, its local government bodies, its professions and its economic life ... Equally essential is the building up of as strong Central Government ... We respect your desire to move forward towards self-government. At the same time we ask you to remember the part the Government is playing. To help you forward is the first and most important Government policy”.<sup>64</sup>

The Governor was right. All these things were essential if Uganda was to steer a clear path to self- government. However, there was one important omission in his otherwise unchallengeable statement. The British Government and its representatives in the protectorate had almost completely ignored to plan and effect the things the Governor was now mentioning as being vital. All along, the people had been pressing for full participation but their appeals were largely ignored. Political parties were almost non-existent. What was even more discouraging was the fact that even those who attempted to form political parties were often declared dangerous agitators. The recruitment of Ugandans to the civil service was a deliberately slow process notwithstanding that by this time there was a sufficient number of qualified and educated Africans. Local government was largely left to evolve on its own and the laws passed in connection with it were mainly for control, rather than for development. Here the kingdom territories can be singled out as being left alone to enable their rulers to continue the practice of feudalism. The professions were still largely in the hands of non-Africans and non- citizens. There was no attempt to plan any systematic programme of education through which professional qualifications would be obtained. The few who made it to the professions were in the main self-inspired as in the teaching service. The Governor’s assertion that a strong Central Government was an essential element before self-government was either a slip of the tongue or a mere bluff. It was well known that at the time, the colonial policy was designed to encourage tribalism rather than nationalism. With a few exceptions, local governments and administrations were built around the tribe as the most important unit. Inevitably, local administrators owed loyalty to the tribe first and the state second. The notion of nationhood of Uganda was not well known until after independence.<sup>61</sup> Certain regions, notably the kingdoms, were treated and encouraged to feel as nations within a nation. Buganda had the privilege of being treated more or less as an equal

61 *Ibid.* Interestingly, Honourable Kawalya Kagwa opposed direct elections of representative of Buganda Lukiiko Opposition to the direct election of the Katikiro (Prime Minister of Buganda) in 2006.



of the imperial power, more so than any other region, and no attempt was made to bring it to the belief that it formed part and parcel of the Protectorate. This state of affairs was in fact, subsequently entrenched in the 1962 Constitution which not only created the kingdoms federal or semi-federal states in relation to the Central Government, but also devoted more space to local government than any other matter found in the Constitution.<sup>62</sup>

Nevertheless, Governor Cohen must be given the greatest credit for having done, in the short period he had, all he could, to prepare the Protectorate for self-government. He mounted an educational programme which brought more Ugandans to the civil service than had been done previously. His confrontation with the Kabaka of Buganda, a staunch traditionalist, was a prelude to the same confrontation the same ruler was later to have with Milton A. Obote, a political nationalist shortly after independence. Cohen intervened at every level of Government to ensure that the policy of “Africanising” the Uganda administration was effectively followed.<sup>63</sup>

That policy had previously been explained in the following terms:

- “(1) I am directed to invite the attention of Heads of Departments to Government’s intention steadily to increase the number of Africans in the Civil Service. This policy is not new and was originally promulgated many years ago and embodied in Standing Order 28. Nevertheless in certain directions notably the Clerical Division of the Local Civil Service it has not been consistently followed ...
- (2) His Excellency the Governor wishes it to be clearly understood that the gradual Africanisation of the services as Africans become fit to carry more and more responsibility is the policy of the Government with which nothing must be allowed to interfere. In the process departments must be prepared to accept some degree of loss of efficiency.
- (3) As regards professional appointments, Africans will be appointed to European level posts in substitution ... This process ... has already begun in the education and medical departments.
- (4) As regards lower levels, His Excellency wishes it clearly understood that no further appointments to the pensionable establishment will ordinarily be allowed of Asians in the Clerical and General Divisions of Local Civil Service and comparable posts. ... Only allowed for staff particularly required to be Asian to deal with Asian community ... where it is essential to employ an Asian he should be taken on temporary terms ... or contract”<sup>64</sup>

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62 The 1962 Constitution and Schedules.

63 See: the confidential instruction circular by the Chief Secretary on Africanisation of government Departments, 26 September 1951; number 516 of 1951, ref. C 2336 quoted in the text.

64 *Ibid.*



In spite of this evidently long standing Government policy, those who were responsible for implementing it had clearly ignored it.<sup>65</sup> Otherwise, it would have been unnecessary for this crush programme. However, having revisited it, Sir Andrew pursued it with vigour. He thus authorised the expenditure of large sums of money for the improvement of social services and other amenities. He streamlined local administrations and made them more democratic and representative.<sup>66</sup> His governorship will always be remembered as the period in which the Colonial Government's policy in theory was put into practice to train Ugandans for the great responsibilities of Government which lay ahead. Cohen's work was remarkable considering that in the early 1950s, the question of when Uganda would become self-governing was still remote and speculative. When the history of Uganda comes to be written historians may well reveal Sir Andrew's other qualities, but constitutionally, he must be rated among the greatest colonial administrators.

It was with sadness therefore that many Ugandans said goodbye to Sir Andrew in 1957 at the end of his tour. Most would have wished to see him remain until independence. Indeed, it is believed by some people that he was not given a second term of governorship because he had done too much good for the Africans. His two successors were not of the same calibre. His immediate successor, Sir Frederick Crawford, was a reactionary Governor who left no memorable mark on the country. The last Governor, Sir Walter Coutts was in the country but for a short time. The former was destined to end up with the fortunes and misfortunes of the rebel racist regime of Rhodesia while the latter was destined not to govern but to preside over the winding up of the British rule in Uganda.<sup>67</sup> The match towards independence was so advanced that even Sir Fredrick Crawford would have found it difficult, if not impossible to slow it down. Therefore, as soon as he arrived in the country he announced that a Speaker would preside over the Legislative Council and that the Governor would only continue to preside at ceremonial occasions.

In order to maintain impartiality, the speaker would have no vote and this would reduce the Government's relative voting power. It was also announced that two extra nominated Government back-benchers would be appointed to preserve the *status quo*. The first Speaker, Sir Griffin, was appointed in 1958. Earlier in 1957, the Governor had extended the life of the Legislative Council in order to enable it

65 Life was organised on a racial basis. European and Asian hospitals, schools and clubs each different and distinct from the African Counter-parts.

66 District Administrations (District Councils) ordained, 1955.

67 Burke FG: *Local Government and Politics in Uganda*, Syracuse, 1964.

to complete arrangements for the country-wide direct elections to the Council. These were duly completed and in the following year, the first directly elected members joined the Council and as soon as this new Council assembled, further constitutional changes were announced by the Governor. In particular, it was announced that a Committee was to be appointed:

“To consider and to recommend to the Governor the form of direct elections on a common roll for representative members of the Legislative Council to be introduced in 1961, the number of representative seats to be filled under the above system, their allocation among different areas of the Protectorate, and the method of ensuring that there will be adequate representation on the Legislative Council for non- Africans.”<sup>68</sup>

The Chairman of the Committee was to be a Mr JV Wild, and his report which came to be known as the Wild Report, or the Report of the Constitutional Committee was published in December, 1959; and its recommendations may be summarised as follows:

The Committee recommended that direct elections should , in all parts of the country be held in 1961; that a common roll would be introduced and it should include non-indigenous persons residing in Uganda but this should not necessarily entitle such persons to claim automatic citizenship or rights in land. The number of elected representatives was fixed at 76; 20 for Buganda, 20 for the Eastern Province, 17 for Western Province, 15 for the Northern Province and 4 for the urban areas. No special recommendation was made for separate representation of the Asian and European communities; the Committee being of the view that their inclusion on the common roll was sufficient. The Committee recommended universal adult suffrage based either on the occupancy of land or residence in Uganda for five years out of the eight years prior to registration.

The Committee further recommended the Westminster model of Government and a cabinet of ministers responsible to the Legislature. The new Legislative Council would be known as the National Assembly and on its first meeting was to act as an electoral college for the election of the specially elected six members. The Party with a majority would have the right to form the Government. On the composition of the Government, the Committee recommended that besides the Chief Secretary, the Attorney General and the Minister of Finance, all Ministers would be chosen from elected or specially elected members of the National Assembly. The Governor would still appoint Ministers and allocate portfolios to them in consultation with the leader of the majority party. It was recommended that the Ministers including the three *ex officio* members would form the Council of

Ministers. There was disagreement as to the status and role of the majority leader, but a majority of the Committee recommended that he be named and styled Chief Minister and preside over the Council of Ministers which would be responsible to the National Assembly. The Governor would have reserve powers to veto the decisions of the Council and to legislate over the heads of the National Assembly if necessary.

The minority in the committee was not prepared to go so far. They wanted the Council of Ministers to remain advisory to the Governor and to let the matter lie until after the general elections. The question of whether Uganda should have a unitary or federal form of Government was discussed at length but was not resolved. Instead, the Committee recommended that a committee consisting of official District representatives and directly elected representatives as well as a constitutional expert should be convened to further consider the issue. Another matter which was raised was whether or not there should be a second chamber. The Committee did not recommend it but felt that it might be desirable at some future date to revisit the matter when the Governor's reserve powers have been lost. However, not all the recommendations of the Constitutional Committee were accepted. The Governor's Communication from the Chair commenting on the report is illuminating:

"First I confirm that it is Her Majesty's Government's resolve to lead Uganda by appropriate stages to full self-government, and to this end to develop democratic institutions of Government which will properly reflect the particular circumstances and meet the needs of Uganda. Secondly, Her Majesty's Government accepts that the legislature of Uganda should have an elected majority. Thirdly, that elections to this legislature should be on common roll with a further extension of franchise and without, for the reasons stated in the constitutional committee's reports, any special electoral safeguards for minorities. Fourthly, that direct elections should be held throughout the whole Protectorate on the common roll basis...as early as can be arranged in 1961. Finally, that there shall be in the Executive, at present called the Executive Council, a majority of non-official Ministers; ... Of these non-officials, the Governor will seek to appoint as many as possible ... from the elected members of the Legislative Council. In the present circumstances of Uganda, ... the Executive Council...should continue to be presided over by and advisory to the Governor, and that the appointment of Chief Minister would be premature."<sup>69</sup>

Although the new National Assembly met in April with the leader of the majority party only as leader of the House, by July, that leader, Hon. Ben Kiwanuka had become the Chief Minister. By May 1962, the majority leader was Milton A. Obote and the Council of Ministers had become the Cabinet and instead of being

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<sup>69</sup> Communication from the Chair, op.cit.

advisory to the Governor, it was now responsible to the National Assembly. The National Assembly was now in the Parliamentary Building that was opened in Sept.1960 by Hon. Ian Macleod, then British Secretary of State for Colonies. His opening remarks are memorable for their prophesy. He said:

“... As the years go on, I am sure that this chamber will witness many varied scenes... so in the future, there will be many hours of hard slogging at the day to-day business of Government. There will be bitter scenes when matters of great controversy are under discussion and party feeling is at its height. There will be scenes of high drama and sometimes, of low comedy as well.”<sup>70</sup>

The events of 1966 which will be discussed in the next Chapter appeared to fulfil this prophesy. Macleod, went on to talk about the constitutional changes expected in 1961 and appealed to everybody to play his or her part in the coming general elections . He expressed the British Government’s desire to see Uganda move towards independence soon. The old Legislative Council was dissolved early in 1961. This more or less signified the beginning of the end of the British rule in Uganda. From now on, the Government of the country would be in the hands of the elected representatives of the people. The British would still have the trump card, but it was a matter of months rather than years before it became clear that independence was a matter of formality. Henceforth, the shape of the Uganda Government would be the responsibility of Ugandans themselves.<sup>71</sup>

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70 No provision was made in the case of a stalemate. CF. Article 26 of the 1967 Constitution.

71 Austin D: The British Point of No Return? In Gifford and Louis: The Transfer of Power in Africa.



## CHAPTER TWO

# THE FORCES WHICH DETERMINED THE DESTINY OF UGANDA

### 2.1 POLITICAL PARTIES

According to Edmond Burke a political party is a body of men united for promoting by their joint endeavours, the national interest upon some particular principle in which they are all agreed.<sup>1</sup> Indeed, it is said that man is a political animal and however hard he is suppressed he will always come up and show his true political colours. It is therefore, not surprising that during the colonial era political and pseudo-political parties, associations and movements existed in one form or another throughout the country.

However, during the colonial period, men who founded or led such parties were considered dangerous agitators since only the colonial power had arrogated to itself the right and prerogative to determine what was and was not in the national interest.<sup>2</sup> The fact that political movements were able to exist and have their voices heard is a credit to the indigenous leaders. Buganda must be given the credit for having been the home ground for most of the political activities within the Protectorate. This is not surprising, considering that the colonial government against which most of the political movements were operating was based in Buganda. Moreover, Buganda having been placed and treated in a privileged position and manner, found herself accommodating most of the assets about which politicians are wont to shout.<sup>3</sup> What was more at the time, it was the Baganda who were sophisticated and educated enough to produce leaders of movements that were opposed to the colonial establishment. It follows that the early political movements were Kiganda in inception, leadership and character. Most of those leaders were concerned with matters which were almost exclusively in Buganda. It was movements like these that are alleged to have been responsible for the assassination of Nsibirwa, a Katikiro of Buganda, who was thought to be a stooge

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1 Cited in Harvey J and Bather L: *The British Constitution*, (4 ed). Macmillan Education, 1977, page 176.

2 Gariyo Zie: *the Press and Democratic Struggles in Uganda, 1900 – 1962 in Uganda FEP Book 12*, Vienna, 1999, page 405.

3 Garaner Thompson: *Governing Uganda*, Fountain Publishers, Kampala, 2003, ch.15.

of the colonial regime.<sup>4</sup> Similar Baganda inspired movements inspired the wage riots of the 1940s, the campaign to stop the selling of vegetables to the Europeans in Kampala markets and the conflicts that arose as a result of the British Government's refusal to transfer Uganda from the Colonial to the Foreign Office. But these early movements were more *ad hoc* and transitional than reflective of political parties with a permanent and viable purpose. However, soon more radical and purposeful movements were soon to emerge.

The oldest political party in the true sense of the word was the Bataka Party which was also a Kiganda inspired and led organisation. Baganda intellectuals who wished to rally peasants, workers and landlords that were in opposition to the colonial regime founded it in 1946. It demanded "*the admission of Africans to the processing and marketing of cash crops, an increase in the purchase prices of cotton and coffee, the reduction of taxes and the conversion of the Lukiiko into an elective body.*" The same party vigorously opposed the British proposed federation of the East African Territories of Kenya, Tanganyika and Uganda. In this, the party was inspired by the desire to preserve the traditions and status of the Kabakaship and the fear of domination by the Kenya white settlers.<sup>5</sup>

A slightly more appealing political party was founded by I K Musazi two years later and came to be known as the Uganda African Farmers' Union (UAFU). The Union championed the interests of the African farmers and voiced grievances about crop price control and demanded participation of local farmers in the ginnery industry. The enlightened elite among the British radical elements in the United Kingdom shared the concerns of the Union. In the terrible riots of 1949, both the Bataka Party and the Farmers' Union were proscribed for the part they are alleged to have played in those riots. But soon afterwards, the Union reappeared under the different name of the Federation of Partnerships of Uganda African Farmers with Musazi still at its helm. In the following years, the federation underwent a metamorphosis to re-emerge in 1952 as the Uganda National Congress. It was now truly a national party with viable policies and platitudes to sell to the people. It was to play a considerable part in the political activities of the Protectorate. In order to arouse the interest of the people in the whole country, party branches were opened up-country and these became quite active especially in the Kingdom districts. The colonial regime was not the only target of Congress's criticism as the letter quoted

4 Mulira J: *Nationalism and Communist Phobia in Colonial Uganda, 1945 to 1966*, in Mawazo, Kampala, Volume 5 number 1.

5 See: Joint Select Committee on Closer Union in East Africa, Volume II minutes of Evidence, HC 156, 1931, page 99.

below and written by the party's Ankole branch member, to the Treasurer of Ankole Native Government, indicates:

"I am sorry to see that you are careless about the Omwigarire's (Queen's) life who is now sick. Why did you leave the Omugabe (King) of Ankole alone in such difficulty of taking the Omwigarire to Mulago Hospital, Kampala? ... He hired Mr Kakure's car at UShs 348 shillings from his own pocket: Were there no funds in the Ankole Native Government? I will be very pleased to receive your early reply explaining as to why the Omugabe should have spent his own money on transporting Omwigarire when she is sick."<sup>6</sup>

A Mr A B Murari signed this letter as a member of the Uganda National Congress and its copies were sent to the Enganzi (Prime Minister) of Ankole, the District Commissioner and the President of the Uganda National Congress.

Whereas previously, political movements had been concerned with the improvement of the colonial *status quo* rather than with independence, Congress's ultimate objective was the attainment of independence for Uganda. The party's slogan became "*self-government now*." In 1953, Buganda faced a crisis because of the political differences of the time between the kingdom and the colonial administration. The British had raised the question of federation of East Africa again. The Baganda, led by their Kabaka, violently opposed federation. Since 1950, the Buganda Lukiiko, had been suspicious of the unifying tendencies of the colonial government, and the Kabaka had refused to nominate Buganda's representatives to the Legislative Council. The British Government pressed hard for him to do so but he remained obstinate. The Governor proposed a compromise but the Kabaka rejected it. In November of that year, British recognition of the Kabaka was withdrawn on the ground that he had failed to give loyal co-operation to Her Majesty's Government, contrary to article 6 of the Buganda Agreement. The Kabaka was deported to England.<sup>7</sup> The deportation aroused wide indignation among the members of Congress and other political movements all of which started working for the return of the Kabaka. At the same time, all sorts of many people joined Congress hoping it would improve their lot. Feudalists and landlords found in Congress a shield against the loss of their privileges especially if as feared, Uganda was to join the "*White man's county of Kenya*". Thus, Congress came to attract all sorts of members who were not always in agreement about its major policies. A struggle between moderate and radical elements of the party soon developed. In 1955, a new party mainly composed of right-wing elements surfaced. The new party, which was called the Progressive Party was actually conservative in

6 Ankole Local Government, Kamukuzi Archives: Official Letters, 1961.

7 Kasozi ABK *The Social Origins of Violence in Uganda*. Fountain Publishers Ltd. Kampala, 1994 from page 63.



nature and unlike Congress tended to identify itself more with Buganda interests than with those of the whole country. Consequently, its existence was short lived.<sup>8</sup>

It is important to note at this juncture that most of the political movements up to now had been founded and led by Protestants. This was true of both The Uganda National Congress and the Progressive Party whose followers were mainly Protestants. The Roman Catholics viewed these parties with apprehension and distaste. They particularly feared the myth perpetuated by some commentaries that these political parties were inspired by Communism and Communism was the archenemy of "true" Christianity. Moreover, the Roman Catholics had other grievances. They complained that patronage of appointments in the colonial government, in the Buganda, in the other kingdoms and in other local administrations favoured Protestants at the expense of Roman Catholics. On the whole, there was some truth in this complaint for, apart from Buganda where specific government positions were earmarked for Roman Catholics and a few for Muslims, everywhere else the governing hierarchies were dominated by Protestants. This domination was not by accident. The British Monarch whom everyone served and was a subject of was Protestant, so were the Kabaka and the other hereditary rulers in the Protectorate and so were the other important chiefs in the local administrations. The Protestant Missionaries who were much closer to the ruling class exerted more influence in obtaining money for their educational programmes than the Catholic missionaries did. It was easier for the sons of Ugandan Protestants to get scholarships and go to Britain for further studies than it was for the sons of Ugandan Catholics. On the whole, there was much more understanding and mutual appreciation between the Protectorate Government and the Protestant missionary schools than with Catholic ones. The latter were often and generally regarded and treated as strictly private. Moreover, many of the teachers in Catholic schools were French or French Canadians or Italians whose English was just their second language whereas the teachers who managed and taught in Protestant schools, were mainly English or British. Consequently, there could have been no doubt that Protestant educated boys and girls fared better in interviews conducted by English administrators and therefore came to be preferred against candidates taught by '*foreigners*' in Catholic educational establishments.<sup>9</sup>

Be that as it may, by the early 1950s, the leaders of the Uganda Roman Catholics in Uganda had come to realise that in order for catholic voices to be heard, they too needed to have a political party of their own and so it was that in 1954 the Democratic Party (DP) was founded as the answer to the Protestant led

8 Kasozi ABK op.cit.*ibid*.

9 Mudoola: *Religion and Politics in Uganda*: African Affairs 77, number 306, January 1978, pages 22-35.

political parties. Though Roman Catholic inspired, it was still based in Buganda and led by Baganda.<sup>10</sup> The political parties, as they stood in 1957 and early 1958, might have satisfied the aspirations, hopes and needs of Protestants and Roman Catholics in Buganda, but they did not cater for the rest of the country. Whether the UPC or the DP succeeded in winning the general elections and whatever government emerged in the country would still be dominated by Baganda. If the character and leaderships of these political parties did not change, Uganda would only be ruled by Baganda politicians.<sup>11</sup> An alternative had to be found by the non-Baganda nationalists which, as will be seen shortly, occurred shortly after the elections of 1958.

Under the Legislative Council (Elections) Ordinance of 1957, many of the representatives outside Buganda were directly elected in 1958. However, Ankole and Bugisu had both refused to accept the system of direct elections. Accordingly, the Ankole representative was as before elected by the District Council and that of Bugisu was nominated by the Governor. The Buganda Lukiiko had also rejected the system of direct elections for political reasons. In the Districts where direct elections were accepted and held, the elections produced five seats for the Uganda National Congress and one seat for the Democratic Party. The remaining members were independents. After the elections, the representatives from outside Buganda formed a new party called the Uganda People's Union. The new party managed to draw five members from the independents and two from the National Congress thus, becoming party wise numerically and the biggest group in the Legislative Council. Like those of the National Congress, many of the supporters of the People's Union Party felt little loyalty towards the Roman Catholic Church.

Thus, by 1958 there were three major political parties in Uganda, namely, the Uganda National Congress, the Democratic Party and the Uganda's People's Union. The first and last parties were shortly transformed, one for worse and the other for better. There had been periodic splits in the National Congress resulting largely over policy disagreements and personality cults. In 1959, there occurred one great split that was to influence Uganda for the next two decades. Among the influential members of the party at the time was one Milton Obote who, unlike the old guard of the party, was politically capable and had the ability to look beyond the horizons of independence.<sup>12</sup> Milton Obote did not regard independence of Uganda as the ultimate objective. For him, the goals of the future

10 Mudoola, *op.cit. ibid.*

11 See: Mugaju, Akiiki: *The Demise of U.P.C and the Rise of Nuyo in Uganda*, African Review 3, number 2 (1973) pages 291-307.

12 See: Kanyeihamba: *Constitutional Law and Government in Uganda*, EALB, Nairobi, 1975, page 39.

were more important and independence, though necessary, was a beginning of greater things to come. He had neither the time nor the patience to continue with the old timers of the National Congress like Ignacious Musazi. He therefore dramatically but effectively, broke away from the Uganda National Congress taking with him the several other members of the party. They formed a break away rival party called Uganda Peoples Union under his leadership. Soon afterwards, negotiations for the merger of the new party and the Uganda National Congress followed.<sup>13</sup>

In 1960, the two parties merged under Obote's leadership and the new merged party was called the Uganda People's Congress. For practical purposes, the old Uganda National Congress was dead. From then until the mid-1960s, the fight for the control of independent Uganda would be between the Uganda People's Congress and the Democratic Party. The latter was destined to form the first self-government of Uganda and then through miscalculations, incompetence and misfortunes, lose the second general elections and to be deserted by its enlightened followers and eventually to politically wither away.<sup>14</sup> A study of the two parties at the time shows some remarkable differences. The Democratic Party suffered from a number of handicaps. It lacked leaders with stature and foresight to plan for the future. Those who had these qualities were often frustrated by the top leadership of the party and were among the first to abandon the party when opportunities arose to do so. The party was conservative in its policies and several of its influential leaders were either pompous or parochial which did not endear them to the whole population. It had no potential future ministers for almost all its leaders and personnel were novices who had had no chance of being tried in either party politics or government posts because of the colonial policy of preferring Protestants as noted earlier. The party relied heavily on invoking religious loyalty without much appreciation of the fact that the plight of the nation required a different and secular appeal.<sup>15</sup>

For the reasons given, the Democratic Party failed to attract the majority of Ugandans. Even when it won the first self-government general election in 1961, its legitimacy was seriously in doubt.<sup>16</sup>

13 Kabwegyere Tarsis Bazana: *People's Choice, Peoples Power*, Fountain Publishers, Ltd. Kampala, pages 15-16.

14 Mudoola, op.cit. *supra*.

15 In 2006, the party was for the first time led by a Protestant John Ssebaana Kizito. It did not fare well in the elections.

16 It is argued that in this regard, it was not different from UPC.

On the other hand, the Uganda People's Congress started off with enormous advantages. Firstly, it was a radical political movement which was led by a self-confessed radical and socialist. This enabled it to attract and rally the educated youth and the common man to its cause.<sup>17</sup> Secondly, most of its leaders being Protestants turned out to be men and women who had been hired by the Protectorate government to serve in the public service and had therefore acquired ministerial and administrative experience during the colonial regime. This enabled the party to speak and act with confidence and authority.<sup>18</sup> Thirdly, and perhaps more importantly, Congress was led by non-Baganda and was therefore able to sell itself to the rest of the country where the population formed the majority of the electorate. Fourthly, some of the members of the party had been involved in movements like Pan Africanism and the struggle against colonialism and were consequently internationally known and more appealing to the rest of the world.<sup>19</sup> Fifthly, being more radical and socialist, at any rate in theory, the Uganda People's Congress was later able to attract Roman Catholics to its fold than the Democratic Party managed to do with Protestants. Sixthly, because it was not pro-Roman Catholic and because the Kabaka and his henchmen distrusted the Roman Catholic-led Democratic Party, Congress was later able to join hands with the Kabaka Yekka Party to oust the Democratic Party from power. Lastly, and this has never been admitted in official circles, the British Administration preferred the Uganda People's Congress to form the first African Government of Uganda rather than the Democratic Party which the British considered unpalatable for basing its legitimacy on religious feelings shared with non-British Peoples even though this was grossly unfair since the majority of the Congress adherents and supporters were of African religious beliefs.<sup>20</sup>

Be that as it may, the two major political parties quickly built up nation-wide political organisations with the district elections now being fought on party lines. This brought national politics to the remote villages of the country. Party politics became so important in every district that both the Local Administrations and the District Commissioners' offices became burdened with complaints from disgruntled politicians and citizens who suffered from the actions of political party followers. It became necessary to make new regulations and to give directives as to the conduct of party campaigns. This became even more necessary as chiefs found themselves

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17 See: *The Common Man's Charter which was inspired from these beginnings*. East African Journal, number 1967, pages 9-10.

18 East African Journal, 1967, pages 9-10.

19 Mudoola D: *Chiefs and Political Actions*. The case for Busoga, 1900 – 1962, PHD, thesis: Makerere University, 1974.

20 Ndebeba M: *Kingship and Political Development in Uganda*: Mimeo, Makerere University: 23 July 1994.

more and more involved and participating in party politics whereas at the time they were supposed to be neutral.<sup>21</sup>

The sophistication of party politics as understood in the western world was a new phenomenon in Uganda and it soon became clear that many Ugandans, especially the villagers, did not apprehend what it was all about. Nevertheless, all the political organisations coveted the votes of these people. Methods quite unknown to the western world from where the notion of democracy was inherited were devised to bring the understanding of party politics to the ordinary people. As the majority of the Uganda electorate were illiterate, symbols identifying each party had to be used in the campaigns and the elections. Each party had to be very careful as to what symbol it used to identify itself. An election might be won or lost not by the party's policies but by the significance, the electors attached to its symbol. In the 1961 general elections, the Democratic Party chose a hoe as its symbol and the Uganda People's Congress chose an open hand and these remained the symbols of the parties throughout the period the two parties struggled for power.<sup>22</sup> During the election campaigns, especially in the remotest villages of the country, much talk would be on the meaning of the symbol rather than on the positive policies of the party. The question, whether the hand was more important as the creator of the hoe or whether the hoe was more important since it cultivated the food that fed the hand, was likely to raise more interest than whether the Uganda People's Congress was radical and the Democratic Party conservative. From this period and between the grant of independence and to-day, the fortunes of pluralism in Uganda have fluctuated, but their existence has continued.<sup>23</sup>

## 2.2 THE TRADITIONAL RULERS

In the last chapter, we noted that Uganda prides itself in having ancient and traditional rules. With independence on the horizon and short of independent sovereignty for each of their kingdoms, the traditional rulers of Uganda would have preferred to remain in a Uganda led by the colonial government than a Uganda led by self-made local politicians. Apart from the exile of the Kabaka, the rulers had always been very well treated by the colonial regime.<sup>24</sup> The dignity and privileges they were accorded and enjoyed were not only symbols to remind the British

21 This was still the position in the 2006 elections.

22 See: The Manifestos of the two parties for the General Elections in 1962.

23 Mugaju JR: *The illusion of Democracy in Uganda: 1955-1966* in Democratic Theory and Practice in Africa.

24 Kikingray, D: The maintenance of Law and Order, in British Colonial Africa, 85 Africa Affairs at 429, July, 1986.

Colonial administrators that they, too, had a hereditary monarch, but it was an indicator that their rule in Uganda was founded on regal legitimacy. Be that as it may, the indigenous rulers viewed the coming and development of political parties in Uganda with great apprehension. They regarded politics as a threat to their way of life. Hitherto, their subjects had always looked up to them as their guardians and natural rulers of the earth. Even their own subjects who regarded the rulers as autocratic and these were many, refrained from making formal criticism of the kings for fear of what might happen to them.<sup>25</sup>

The traditional rulers saw the new politicians as a dangerous group of upstarts who were ready to step into their shoes and command the loyalty of the people at their expense. By this time, the colonial government had succeeded in curbing most of the rulers' despotic powers. The only ruler who still enjoyed and exercised great powers was the Kabaka of Buganda, especially after his triumphant return from exile in England. Nevertheless, all the Kings still wielded great influence in their respective kingdoms. They exercised patronage over certain appointments and approved others. Persons who displeased them were still liable to punishment without resort to the ordinary courts of the land.<sup>26</sup> They enjoyed personal grandeur unsurpassed in Uganda. They possessed great palaces in their kingdoms. Their persons were inviolable almost to the point of being sacred. Their children and other royal personages were lavishly maintained at the expense of their subjects. State cars, royal household goods and royal regalia were purchased and provided for them at public expense. They took precedence over all persons within their kingdoms. Any subject so bold as to question the decision of the ruler committed an unwritten offence of the greatest gravity and would be publicly condemned and might suffer a punishment greater than death. If they happened to find anything or property within their kingdom which pleased their eyes, the same might be requisitioned for their benefit, and the owners were not supposed to complain. They enjoyed certain immunities befitting any monarch in the world.<sup>27</sup> These then, were the privileges that the rulers stood to lose and perhaps it was only natural that they should have desired to preserve them.<sup>28</sup>

In their fight against the ascendancy of political parties, the traditional rulers were often supported by two sets of groups. The first group consisted of traditionalists and feudalists who had always benefited under royal patronage. These

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25 Gupta R: *Obote: Second Liberation* (1983).

26 Twaddle Micheal: *Kakungulu and the Creation of Uganda, 1968 – 1928* (1993).

27 Omara – Otunnu: *The challenge of Democratic Pluralism in Uganda*, 35 *Nairobi Law monthly* (1991) page 34.

28 Karugire: *The Roots of Instability in Uganda*, 1988.

too stood to lose a great deal under the new system. They were the kings' advisers, the chiefs, the landed gentry, and the decision-makers. Most of them were uneducated or had had only elementary education. The politicians were the educated class and the danger lay in this education. The educated would no longer take things for granted. The second group consisted of colonial elements that saw in the kings the chance to continue controlling Uganda and a guarantee for the security of their vested interests. When political party force began to gather momentum, the people against them co-operated and endeavoured to find common causes to resist party politics.

Up till then, the traditional rulers were not always in agreement over the policies of the Protectorate government towards them. The Bunyoro and Buganda kingdoms had always quarrelled over the issue of the "lost counties".<sup>29</sup> The Ankole, Bunyoro and Toro kingdoms had always been jealous of the privileges that the colonial government accorded to the kingdom of Buganda. This is clearly exemplified by a letter the three rulers of those districts wrote to the Governor in 1956:

"We, as rulers of independent Kingdoms to which recognition has been given by Her Majesty's Government by the respective Agreements, wish to express our strong objections to the term "District Council" being applied to our "Governments".... In furtherance of our contentions herein expressed, we would also state that we are at a complete loss to understand the distinction, which is now always drawn between Buganda and our Kingdoms. Various Ordinances do not apply in Buganda "wherein other provisions have been made", and it appears to us that is a false distinction which has been drawn in that all four Agreement States within Uganda Protectorate..."<sup>30</sup>

However, all the Kings had a common cause when they jointly issued the following proclamation from their respective capitals:

"We, the traditional Rulers of the ancient Kingdoms of Ankole, Buganda, Bunyoro and Toro who symbolise the tried customs, ideas and achievements of our people,

WHEREAS	we are concerned that our peoples be free to choose their form of Government without fear or prejudice
AND WHEREAS	we are desirous that National Liberty shall not be achieved at the expense of individual freedoms and ideals.
WE THEREFORE	Have invited our Ministers to take counsel together:
TO	devise means whereby our people may live, together in Amity, and Contentment being secured against possible exploitation by an Individual or Minority Group.

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29 10 July 1956, Entebbe, Government Archives.

30 The fear was supposed to come from the new political parties.



- AND to discuss practical courses of Mutual Action which will advance the Economic and Cultural Wealth of our peoples
- AND to discuss means to safeguard the right of the people to choose and change their own form of Government without fear or favour”<sup>31</sup>.

The common cause and enemy were the political parties, which were now discussing the form of government independent Uganda would have. The Kings may not have realised it at the time, but in the last paragraph of their proclamation they seem to have tacitly authorised the discussion of their own extinction.

The Rulers began either collectively or individually to solicit guarantees and assurances from their colonial masters regarding their own position. Thus for instance, on the 19 September 1962, Rushford, on behalf of the Governor’s office in Entebbe, dictated a telephone message, to the Omukama of Toro:

“To Rukirabasajja, the Omukama of Toro. It gave me great pleasure to visit you at Kabarole last evening. I thank you for your delightful hospitality. I confirm that assurance I gave you ... that in accordance with your views, no reference will be made in the Independence Constitution to criminal proceedings in relation to the Rulers.”<sup>32</sup>

Long before the issue was settled, it was known that whatever form of Government was to be adopted for Uganda, it would be decided by the British Government. The Governor made this quite clear in 1958, when he said: “*I must emphasise that these are matters on which a very special responsibility lies directly with Her Majesty’s Government and cannot be settled here in Uganda but nevertheless I should value any advice the Committee may wish to offer me.*”<sup>33</sup> The traditionalists found support in the correspondence columns of the local Press. One supporter wrote to the *Toro Gazette* expressing the view that any agreement about the future form of government of Uganda should be negotiated with the Rulers and not with the Legislative Council which was not trusted by the people because it was multiracial. Similar letters were published in many other newspapers.<sup>34</sup> One of the reasons why direct elections for representatives of the Legislative Council had been opposed in Ankole and Buganda was the fear that the rulers, the federalists and the traditionalists would lose influence. Direct elections meant the transfer of patronage from this oligarchy to the people. It was mainly on the same ground that Buganda later refused to participate in the federal elections on a common roll in 1961. The Democratic Party, which defied the directive on this issue from the Buganda

31 Entebbe Government Archives.

32 Communication from the Chair.

33 *Toro Gazette*, May, 1958.

34 Ndebesa: *Kingship and Political Development in Uganda*, op.cit. *ibid*.



Lukiiko was later to suffer defeat which drove it into the political wilderness from which it never recovered.<sup>35</sup>

While Ankole, Bunyoro and Toro realised that the best they could get was a federal Uganda in which their special positions as “independent” kingdoms were safeguarded Buganda wanted the lion’s share. When the Kabaka was restored to the throne in 1955, the Buganda traditionalists under Michael Kintu won power and composed the biggest number of supporters in the Lukiiko. Leading opponents of the traditionalists were expelled from the Lukiiko and less enthusiastic chiefs were summarily dismissed from their posts. Political parties were declared alien to Kiganda customs and the clan leaders issued a statement condemning any Muganda who joined political parties. The ‘Kintu’ administration refused to co-operate with the Protectorate government and demanded that powers exercised by the Governor be transferred to the Kabaka. It has been noted that in 1958, the Buganda Lukiiko rejected direct elections for the Legislative Council. As a result, from that year until 1961, Buganda was not represented in the Council. The question arose as to whether, in rejecting direct elections for the Legislative Council, Buganda had broken the 1955 Agreement by which the Kabaka had been restored to the Kingdom. The Agreement provided, *inter alia*, that Buganda had to be represented in the Legislative Council by representatives of whom at least a quarter were directly elected. It was further provided that Buganda’s future representation would be under a system of direct elections.

The Protectorate Government contended that in failing to abide by these terms, the Buganda Government was in breach of the Agreement. In its counter argument Buganda relied on a technicality. The Agreement stipulated that the Legislative Council would be presided over by the Governor who was the representative of the British Crown. However, this arrangement was subsequently unilaterally changed by the colonial government to the effect that the presiding officer would not be called speaker. This enabled Buganda to argue that in replacing the Governor with a Speaker, the character of the Legislative Council as envisaged in the Agreement had changed. In effect, they said, the Crown had withdrawn from the Council. A test case was filed in the High Court but, before the court could reach a decision on the matter, other developments had taken place.<sup>36</sup>

35 *The Katikiro of Buganda v. the Attorney General*, CA number 2 of 1959.

36 See: Nsibambi AR: the Monarchisation of the Kyabazinga and the passing away of Traditional Rulers in Uganda. In *Nigeria, Behavioural Sciences Journal*, 2, 1979.

In 1959, the Uganda National Movement came into being. Its object was to drive the Asians out of business and trade in Buganda by boycotts, intimidation and aggression. The movement was founded and supported by eminent Baganda politicians and feudalists, but it also attracted unruly elements which terrorised the population in Buganda. Those who ignored the boycott orders were severely dealt with by the mobs who, not only beat up many innocent people, but also went on rampage destroying property.<sup>37</sup> Although the movement was proscribed and its ringleaders deported to the northern part of the Protectorate, the boycott continued until 1960. The Movement failed mainly because the rest of the country rejected it as useless and, partly the Uganda People's because Congress, which consisted of the more influential politicians, was against it. Nevertheless, it succeeded in driving small Indian shopkeepers from the rural areas of Buganda. The Asians also fought the boycott by entrusting some of their business to their Baganda friends on the pretext that they had sold out to them.

With pressure mounting in Buganda that the 1959 Agreement should be abrogated, the British Secretary of State approved further discussions with a Constitutional Committee set up by the Kabaka's Government on condition that no amendment would be made until Buganda participated in the Legislative Council. Buganda negotiators insisted that their demands should be met first. The talks failed. The Buganda Lukiiko decided to act. They submitted a long memorandum to the British Queen giving reasons why her protection over Buganda should cease and vowing to secede from the rest of Uganda by 31 December 1960.<sup>38</sup> The British did not take this threat seriously and constitutional developments in the country went ahead as planned including the arrangements for the 1961 general elections. Although Buganda declared herself independent on January the 1<sup>st</sup> of the following year, no steps were taken to make this paper independence a reality. The move can only be interpreted as a tactic to build up a strong position of bargaining power at some future date. In 1966, Buganda was to use the same tactics again with disastrous results.<sup>39</sup>

The general election of 1961 produced interesting results. On the popular vote the Uganda People's Congress was clearly the winner. It collected 494,954 votes as against the Democratic Party's 415,718. However, in terms of seats, the Democratic Party won 43 as against 35 won by the Uganda People's Congress. The diversity between the popular vote and the actual seats won can be explained

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37 However, this was a mere bluff as Buganda has not organised militarily.

38 The Kabakaship was abolished.

39 Welbourne: Religion and Politics in Uganda 1952 – 1962, breakdown, 49% Catholics, 29 Protestants of Christians over the age of 16 years.

by the position taken by the Buganda kingdom. The overwhelming majority of the 4 per cent who had registered to vote in Buganda were staunch Roman Catholics and followers of the Democratic Party.<sup>40</sup> This gave the party 20 seats of the 21 seats allocated to Buganda and yet the 21 seats had been obtained from the lowest numbers of voters in the country when it is realised that 96 per cent of the Buganda electorate had voluntarily or otherwise disfranchised themselves. Where the electorate was not intimidated, Congress had a majority of 15 seats over the Democratic Party. It is also known that certain traditional rulers, notably the Omugabe of Ankole had used their royal influence to boost the fortunes of the Democratic Party. This is understandable, considering that it was a conservative party, which, was likely to respect the wishes of the rulers.<sup>41</sup> The Uganda National Congress managed to win one seat in the Legislative Council and the remaining two were independents. As soon as the Council met, it elected nine specially elected members. The Governor nominated seven members and the three *ex officio* members, the Chief Secretary, the Attorney General and the Minister of Finance were still entitled to sit in the Council by virtue of their office. The total membership of the Council was thus a 100 members. Mr Benedicto Kiwanuka, who was now the leader of the majority party was asked by the Governor to form a government. He therefore submitted ten names for the various Government portfolios. The ten were joined by the *ex officio* ministers bringing the Council of Ministers to 13. Six Parliamentary Secretaries were appointed. Kiwanuka became the leader of the Government side. The Uganda People's Congress formed the opposition under the leadership of Obote. Within the following year the two men would change positions, the former would become the leader of the opposition and what is more, not within but outside the Legislative Council, which later became the National Assembly, since he had been defeated in the 1962 elections and therefore could not sit in the Council, and the latter became the leader of Government.<sup>42</sup>

### 2.3 THE COLONIAL GOVERNMENT

The new Legislative Council was summoned and met for the first time on the 17 April 1961. The Governor became its ceremonial President. Normal business was to be transacted under the chairmanship of the Speaker who at the time was Sir Charles Griffin. The Communication from the Chair that day is memorable for

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40 Ocaya Lakidi (ed.) Perspectives on Politics and Government in Uganda, reviewed in Uganda Argus, 20 August 1971.

41 Composition of the National Assembly, 1962. Government Printer, Entebbe.

42 *Supra*.

one important revelation. The colonial government was no longer very much concerned that Uganda should be left with a strong Central Government. After congratulating the newly elected members of the Council, the Governor went on to say:

“... Later in the year, the Secretary of State for the Colonies will be holding a Uganda Constitutional Conference in LONDON to agree on Uganda’s advance towards independence. The question of composition has to be resolved in such a way that *all interests are represented*. Before independence could be achieved certain problems have to be resolved, *chief one being that of tribal and regional differences*, and the need to ensure that all parts of the country are happily and satisfactorily inter-related so that present *divergencies and suspicions cease*.<sup>43</sup> (Emphasis ours)

It is true that Uganda was and still is inhabited by different tribes and was and still is made up of different regions, but Uganda is not unique, for this is true of most countries of the World. Why did the Governor find it necessary to emphasise tribal and regional differences at this time of Uganda’s development? There is sufficient evidence to show that as independence approached, some tribes and regions thought a great deal about their position and status in an independent Uganda. The feelings for special status were strongest among the traditionalists who controlled the affairs of the Buganda Kingdom. The correspondence in the local press and the evidence which came to various commissions of inquiry in that period indicate a great desire for the kingdoms to be treated in a special way, quite distinct from the way the rest of the country was to be treated.<sup>44</sup> The Buganda attitude was not new. It dated back to the 1900 Buganda Agreement. All along, Buganda had occupied a special position not only in the minds of the Baganda but also in those of the British Colonial administrators.

The British had used the Baganda to penetrate and then to administer the rest of the country. In terms of development, Buganda was more advanced, at any rate educationally and materially, than any other region. The biggest hospitals, schools and other national institutions were all situated in Buganda.<sup>45</sup> The first political movements to challenge the colonial regime and its policies had been founded in Buganda. It was therefore natural that the Baganda should have felt that in an independent Uganda they had either to lead or be left largely on their own in a loose federal structure of government. Thus, in his communication from the Chair, the Governor was expressing fears that existed already. Could it have been

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43        Emphasis ours.

44        *Supra*.

45        Makerere University, Budo, Kisubi and Namilyango, Gayaza, Namagunga (schools for girls), Mulago, Mengo, Nsambya and Rubaga referral hospitals, are the headquarters of the major religious and major banks were all situated in the Buganda Kingdom.

avoided? It can be said that to exaggerate it was to increase rather than reduce the problems, which would later face an independent Uganda. Perhaps, it would have been better to minimise the dangers of tribal and regional differences by not mentioning them at this early stage. It was as if the Governor was providing a cue for those who he knew had been trained to accept a one Uganda.

All along, the struggle had been of the nationalists against the colonialists. The nationalists may have come from the different regions, and belonged to the various tribes of Uganda, but in their fight, they presented a common front as Ugandans. The apprehension felt by the traditional rulers, and their supporters was based, not so much on tribal, as on personal and political grounds. The religious flavour which was permitted to operate, within the political parties crossed the tribal and regional boundaries. Until his speech, tribal consideration was nominal in the minds of enlightened Ugandans who were fighting for the country's independence. It has been argued that Buganda was realistic in her exorbitant demands, but an analyst of the motives of the Buganda feudalists and traditionalists indicates that the tribe was tacitly used merely to reinforce and protect personal vested interests. Within the Buganda chiefly hierarchy, there were non-Buganda who had benefited from the Kabaka's patronage and who were some of the staunchest supporters of Buganda's demands. They included people like Daudi Ochieng an Acholi and a Munyoro by the name of Kununka. Moreover, many among those who violently opposed the privileged position of Buganda were Baganda radicals.<sup>46</sup>

It is therefore reasonable to argue that the average Ugandan who was enlightened, the Ugandan who appreciated what viable states were about and the Ugandan who apprehended the implications of independence, had come to accept and respect Uganda as one nation. The question of what their tribe or region would gain from independence was not a serious issue beyond personal security and ambitions, if any. For some 60 years the people of Uganda had been governed as subjects of an alien colonial power. This alone had contributed in cementing elements of affinity and brotherhood. For certain, the Obotes, the Kiwanukas, the Lwamafas, the Kiryas, the Odakas and the Mayanjas and the Nekyons belonged to different tribes but in the fight against imperialism, they fought, felt and thought as Ugandans. They had now almost achieved their objective and it cannot be imagined that their intention was to divide the prize of independence, for their respective tribes. It was therefore unfortunate that it should be the Governor's speech to highlight ethnic and tribal sentiments.

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See: Kasozi, ABK op.cit.

Could there have been another reason for the Governor's speech? The colonial regime was leaving the country, but her vested interests and the interests of their kith and kin would not be wound up. They would remain behind and the only way to protect them was to leave behind a weak central government torn by local differences and which would not be in a position to challenge the guardians of the vested interests left behind. A weak government could only emerge, if there was so much disunity and tribal feeling among the population that no central authority would be able to contain the situation. In effect, the Governor was advocating dissention. He was thus informing the people of Uganda that now they were about to receive the prize of independence, it was essential for each of them to see that his or her tribe and region got an equal share of that prize. From then onwards, each tribe and each region would heed the Governor's words. Those that had had the same ideas before would be encouraged to increase their demands.<sup>47</sup> The seeds of fear and suspicion, which were sowed on that day would germinate and paralyse the development of Uganda for many years to come. Even the people who had stood out as true nationalists like Obote himself, would not avoid being reminded by their people of the Governor's warning.<sup>48</sup>

However, too much blame should not be put on this particular Governor. He was only continuing the subtle policy of the British Government in tribally divided colonies. In Kenya, the Sudan and Nigeria, as well as in Uganda, the British always exaggerated the differences rather than the common elements among the peoples of those territories.<sup>49</sup> In most cases, local administrations were based on the tribes rather than on sound administrative criteria.<sup>50</sup> In Uganda, the kingdoms were made to feel that they were different nations. Buganda, the biggest and most important region was given privileges which later detected her wishes for role and status in an independent Uganda. Uganda was only known internationally. Internally, the colonial administrators knew and recognised tribes and races. In official forms, in litigation, a person was not a Ugandan but a member of his tribe or race.

In 1959, a Constitutional Committee had expressed strong views about this policy of divide and rule:

"... it is argued that the policies followed in the administration of Uganda have done little to break the various tribal units, but on the contrary have tended to foster them. This is

47 Mudoola, DM: *Post Colonial Politics in Uganda*, Marazo, December 1985, Makerere University, Kampala page 29.

48 During the colonial era, most Uganda Districts and the Central Province of Buganda were named after the major tribes inhabiting them.

49 Mudoola, *Post-colonial politics in Uganda*, op.cit. page 30.

50 They differed in geographical and demographic sizes.

the source of the claim sometimes made that it has been the British Government's aim to divide and rule in Uganda."<sup>51</sup>

The Constitutional Committee was not merely expressing its own opinion. It was reporting the views it had gathered on its deliberative tours throughout the country. Thus, while the majority of patriotic Ugandans expressed a strong rejection of divisionism, the colonial Governor was advocating for a constitution likely to entrench divisions within the country. In this, he was merely echoing the official colonial view. In 1960, the Earl of Munster was appointed as Chairman of a Committee entrusted to make recommendations about the form of government suitable for Uganda. The feudalists and the traditionalists could hardly have found a better champion than this earl who was a representative of the same kind of interests in the United Kingdom itself. His terms of reference spelled out what the British wanted to see recommended. Among other things, he would consider "*the desire of the peoples of Uganda to preserve their existing institutions and customs and the status and dignity of their rulers and leaders, and the special relationship already existing between Her Majesty's Native Governments of Bunyoro, Ankole and Toro set down in various agreements...*"<sup>52</sup>

The Munster Commission's Report contrasts greatly with an earlier Report of the Constitutional Committee headed by Professor Hancock.<sup>53</sup> The former recommended a federal and semi-federal form of government. The latter basing their opinion on the findings of their report recommended that a unitary form of government would be more suitable for the country. The Constitutional Committee, which comprised representatives of all communities in Uganda saw and interviewed more Ugandans than the Munster Commission did. Therefore, there can be little doubt that in appointing the Commission, the British had already made up their minds as to the form of government they intended to introduce in Uganda. Munster's recommendations are only interesting for their contradictions. On the one hand, Uganda was to be a single democratic state with a strong central government. On the other, Buganda was to be a federal state within Uganda. Buganda was not only to have the same semi-autonomy she enjoyed then but she would enjoy more privileges come independence. The members of the Buganda Lukiiko were to be directly elected but once elected, Buganda would decide whether Buganda representatives to the Legislature Council were to be directly

51 Memorandum on Nature Policy in East Africa, Cma. 3573, 1959.

52 Incidentally, the majority of Ugandans lived outside the areas whose indigenous leaders had signed these agreements.

53 See: Proceedings of the Report of the Hancock Constitutional Commission, Government Archives, Entebbe.



elected as well or appointed by the kingdom.<sup>54</sup> One good thing the Munster Commission recommended was the holding of a referendum in two of the “Lost Counties” where the evidence had showed that the majority of the population were Banyoro. The two were Buyaga and Bugangaizi. The ‘lost counties’ were formerly part of the Bunyoro territory which the colonial government transferred to Buganda as a gift for the assistance it received from Buganda in the war against and defeat of King Kabalega of Bunyoro. For years Bunyoro had tried to have the lost counties returned to it without success.<sup>55</sup>

The 1961 Legislative Council was dominated by the opposition members. They outpointed the Government side in debate, outshone it in administrative ability and harassed them for their wrong decisions. Notwithstanding the tradition that in countries where there are two parties of almost equal strength, it is normal for the party in opposition to appear to do better than the Government,<sup>56</sup> in the case of the Uganda of 1961, the successes of the opposition were more spectacular. Unfortunately, as we have already stated, the Democratic Party was ill-equipped for the responsibilities of government. It could not compare favourably with the Uganda People’s Congress in either ability, or tactical politics. It was later to fare badly in Government and disastrously in opposition. Perhaps, it was unfortunate, that the Democratic Party should have formed the first self-government of Uganda. They might have done better in opposition. As it turned out, they were forced to defend themselves by making impossible promises which the opposition were able to attack and render ridiculous.<sup>57</sup> Perhaps the only memorable thing the Democratic Party did was to award generous overseas scholarships to a number of students most of whom were said to be supporters of the party.<sup>58</sup> This turned out not to be politically rewarding, for when the next general elections came, most of the scholars were still abroad studying. They were therefore unable to campaign for or vote for their benefactors.

The leader of the Government Party, Benedicto Kiwanuka, was not a successful strategist. Aware that soon the party would face another election, he made no strategic moves to stall the popularity of the opposition. Experience

54 See: Correspondents Mawagi and Kizito’s letters in the Uganda Argus, 11 March 1959.

55 See: Kwebiha’s (former Bunyoro Prime Minister) letter to the Governor of 27 November 1961 protesting about the New Agreement of that year purported to keep the lost counties in Buganda.

56 De Smith: *Constitutional and Administrative Law*, (4 ed). Penguin Books, pages 269–272.

57 Morris HF and Read, James: *Uganda: The Development of its laws and constitutional*, Stevens and Sons, London, 1966 page 28.

58 Among the recipients was distinguished Justice Joseph Mulenga of the Supreme Court of Uganda in an interview with the author on 6 April 2006. He like this author was on studies in the UK when the 1962 general elections were held.



elsewhere in Africa had shown that any political party which formed the first self-government of a country was always in a position to manipulate the political machinery in its favour leaving the opposition parties to dwindle to insignificance. Obote was later to attract many members of the Democratic Party to his own Congress Party in this way. That the Democratic Party failed to do this, both in government and in opposition, is an indication that the party lacked the right kind of policies and strategy.

On the other hand, the UPC started working in earnest for the coming general elections. Feelers were put out to begin a dialogue with the Buganda kingdom oligarchy. Elsewhere in the country the party gained considerable ground. Whereas before, UPC was looked upon with resentment and suspicion such as in some areas of Buganda, the party began to gain support in such areas. It was obvious by then, that any party which wished to win the coming elections had to work with and tolerate the traditional elements in the country. Obote realised this important factor. He knew that as long as the British were still in control, the only way to succeed would be to play at their game. An assurance that the status and dignity of the traditional rulers would be maintained and their powers remain unfettered, was essential if future negotiations were to succeed. This might have been against Obote's known beliefs but he was a practical tactician. What he conceived as important, at this time was the acquisition of political power. In order to acquire that power it was important to accommodate the political elements which were still in a position to grant or withhold it.<sup>59</sup> Once the power was in the bag, the situation would be reviewed. This is precisely what happened. The strategy, the negotiations and the manoeuvres for this goal may have started in Uganda but they were to be settled outside Uganda at Lancaster House, in London. In a later chapter, we shall discover the mushrooming of traditional rulers in districts which did not have them previously. This was the result of constitutional innovations and political manoeuvres that accompanied the attainment of independence.<sup>60</sup>

## 2.4 THE CONSTITUTIONAL CONFERENCE IN LONDON

For all British colonies which gained independence, in the 1960s and 1970s, a constitutional conference held in London was always a prelude to "self-determination".<sup>61</sup> The fact that the colonial peoples had to go to London to

59 Mugaju J: *The Illusion of Democracy in Uganda – 1955-1966*, op.cit. page 6.

60 *Infra*.

61 Morris and Read, op.cit. page 28.

determine their future at home was an indicator that what they normally got was self-determination with strings attached. It has never been officially explained why it was always necessary to hold this conference in London. It is true that many delegates from the colonies tended to favour it as giving them an opportunity to visit London the seat of the British empire and its financial capital, but in our view the main reasons why the colonial government chose it were political.

We shall venture to suggest the reasons for choosing London as the venue of independence conferences. Firstly, the reason was not to reduce conference expenses because there were always more delegates from the colony than from the British Government. It would have been cheaper to fly the few British negotiators to the colony than to book a whole plane or two to airlift the many delegates from the colony to London. Secondly, it was not because of the competence of the British secretaries who would handle the masses of papers involved in the conferences because there were always plenty of secretaries around the British administrators in the colonies. Lastly, it was not to enable colonial delegates to engage British experts as advisers. These could have been easily flown to the colony without much more expenses being involved. The reasons were political and expedient.

Delegates in a strange country who have left families and businesses unattended back home are more likely to be less difficult during negotiations than if they were operating on the home ground. The distance between their country and London made consultation with those they represented extremely difficult. Both considerations would be likely to favour the British Government when it came to press for compromises. The British Government used to throw lavish cocktail parties for the delegates at which British constitutional experts, ex-colonial administrators, missionaries and those with interests were also invited. In the mingling that followed it was not difficult for the latter, under the guise of impartiality and friendship, to “advise” the delegates in a manner that would be advantageous to them and the British government. Opportunities would be given to the delegations to tour and see the Palace of Westminster, witness the members of the British Government and the Opposition sharing jokes amicably and inspect the magnificent buildings of London. A visit to the Houses of Parliament and to Buckingham Palace was almost always on the list of magnificent buildings to visit and see.<sup>62</sup> From all this, it was hoped the delegates could conclude, subconsciously, that the Westminster model of government was the best for their own country.

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62 This might have been to entertain and occupy the spare time of delegates but the psychological effect that they too might one day establish the same institutions if they copy the British style of governance was not always lost on the planners of the visits.

Surrounded by strange faces and breathing the air of a strange climate, the delegates were likely to consider themselves as one people and to appreciate the things that united them rather than those that divided them. The British are a sports race. They were fully aware that a football game played at the ground of the team home is more likely to be won by the home team than the away game. Moreover, since the accommodation of the delegates was always chosen and fixed by the hosts, it is possible that the delegates' rooms could have been bugged and their movements and visitors monitored. It used to "persuade" any delegate caught to change his or her mind on some vital proposal and may be further appreciated that delegates are human after all.<sup>63</sup> The British host who gave you so much to eat and drink in front of his charming wife and daughter, the man who was, all round a gentleman, the previous night, could not suddenly turn into a devil at the conference table and start ruining your interests. At the beginning of the conference, you might have been suspicious of his motives. At the end, you are likely to accept his suggestions not that they are any better than before, but because you remember the trouble he took to make you comfortable at the London Hilton or at his residence the previous evening.

It was against this background that the Uganda delegates, assembled in London to discuss the future of their country. In spite of all that has been said, there were contentious matters on which the delegates disagreed. Some delegates were even so unhappy about certain developments during the discussions that they staged walkouts in protest. Before considering what was at stake, it is necessary to reveal the nature and character of the Ugandan delegations. Firstly, there were the political parties. Constitutionally, these were the most important because whatever resulted in the talks one or more of them were bound to form the first national government the duty of which would be to implement the provisions of the new constitution. The first duty of the political parties was to get what they considered to be a workable constitution. However, they had their hands tied because they could not afford to disagree with many of the delegations, that were still in a position to influence voting at home. The political parties' position turned out to be one of playing one faction off against another and suggesting compromises where possible. They were particularly concerned with issues that would make them popular at home.<sup>64</sup>

The second group of delegations consisted of the delegates of the non-kingdom districts. Although these did not have much at stake, they favoured a

63 British espionage was not always limited to foreign states: See the evidence in the *Kabaka's Government and Another v. A.G of Uganda and another*, P.C Appeal number 56 of 1964.

64 Proceedings of the Conference.

unitary form of government and they were apposed to any further privileges being granted to the kingdoms. The third group of delegates consisted of the three kingdoms of the Western Province namely, Ankole, Bunyoro and Tooro which were pressing for a federal status akin to that demanded by Buganda. Busoga District aligned itself to this group even though it had never been a kingdom.<sup>65</sup> The fourth group represented the Buganda Kingdom. Their demands were well known, and, apart from the federal status they wanted further privileges which would enable Buganda to function as a state within the state of Uganda. Last, but not least, there was the British delegation. They were interested in seeing that the Westminster model of government was transplanted to Uganda, and that British interests in the country were safeguarded.

As soon as the Conference started, the British chief delegate proposed that the Munster Report provide a framework within which they could reach agreement on a constitution that would take the Protectorate to internal self-government. There being no objection to this proposal, the Report was adopted as the working document of the Conference. But matters of contention soon emerged. Buganda insisted on having an autonomous Police Force, an independent High Court and the right to opt for indirect elections of her representatives to the Legislative Council. Most delegations immediately objected to Buganda having an autonomous police force of its own. Those who objected feared that Buganda might use the force as an army to terrorise the rest of the country and render the independence of Uganda futile. Buganda insisted on its demand and with slight amendments, the status of the Buganda police was agreed to, albeit grudgingly. The High Court for Buganda was also accepted but the judges of the Uganda High Court would continue to preside over the High Court of Buganda. On the question of indirect elections, the Democratic Party registered strong objections. The party's given reason was that it was undemocratic for the constitution to deny the Buganda electorate the chance of electing their representatives to the Legislative Council. However, the main motive behind the objection was a political one. With the understanding that was now evident, between the Uganda People's Congress and the Buganda leaders, it was obvious that if the Buganda Lukiiko nominated their representatives to the Council, the latter would be directed to support the Uganda People's Congress. This would leave the Democratic Party as a minority party, however well the party did electorally in the rest of the country. In fact, this is what happened. The UPC's supported for

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*See: Weekly Events, London, 1961 – 1962.*

Buganda on this issue for political expediency rather because of conviction of purpose.<sup>66</sup>

The next issue of contention at the conference was what was to happen to the so called, "Lost Counties". Buganda refused to accept a referendum as had been recommended by the Munster Commission and, accepted by the British Government. The Secretary of State then proposed a compromise. He suggested that a Commission of Inquiry, composed of Privy Councillors be appointed to investigate and study the problem specifically.

On her part, the Bunyoro kingdom, insisted that the problem be solved by the Conference, and when she realised that the Conference was undecided, her delegation walked out in protest.<sup>67</sup> In their absence, the British compromise was accepted. However, most other delegates expressed the view that the fate of the "Lost Counties" must be determined, by the British, before the granting of self-government. But as events were later to show, this did not happen.<sup>68</sup> At the end of the Conference, it appeared that all parties except Bunyoro and the Democratic Party, were satisfied with the Conference's conclusions. Buganda got her federal status, the other three kingdoms and Busoga got a semi-federal status and the rest were to be unitary in relation to the central government. The Uganda People's Congress came out satisfied because her friendship with Buganda was growing and would soon blossom into a political marriage of convenience. New agreements for the kingdom districts would be made to reflect their new relationships with the central government and the new constitution of Uganda would be promulgated. The Democratic Party lost in another director. Since the beginning of the year, there had been disagreements about whether or not general elections should precede the granting of independence. It would have been advantageous to the Democratic Party if no elections were held before independence since it was in office at the time. However, it was agreed that there should be another general election in April and late in the year before independence would be granted. This proposal signified the beginning of the end of the influence of the Democratic Party as a force in the affairs of the country.<sup>69</sup>

On 1 March 1962, the London Agreement reached in the Conference was affected by a new Uganda Constitution which came into force on that same day. While external matters, defence and internal security were to remain the

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66 Kabaka Mutesa II: *The Descretion of my Kingdom*, Constable, London, 1967.

67 See: *Proceedings of the Conference*.

68 It was decided that the matter would be decided by referenda in the lost counties after the attainment of independence.

69 D.P lost that election and up to 2010, it has never won another one.

responsibility of the Governor, all other responsibilities of the Uganda Government were passed to a Cabinet of Ministers who were drawn exclusively from the National Assembly and were collectively responsible to it. The former Chief Minister, Benedicto Kiwanuka, became Uganda's first Prime Minister. The implementation of the London Agreement meant the enactment and amendment of various laws. The Public Service became executive rather than advisory to the Governor and many expatriate administrators had their contracts automatically terminated after their services had been handsomely rewarded at great expense of the tax paying public.



## CHAPTER THREE

### UGANDA BECOMES AN INDEPENDENT SOVEREIGN STATE

As soon as the delegations returned from the 1961 London Conference, the political parties as well as the traditionalists began to review their positions. In Buganda a movement known as Kabaka Yekka (The Kabaka Alone) was formed, but in accordance with their previous attitude, the traditionalists claimed that the new group was not a political party. It was dedicated; it was claimed, to the cause of the Kabaka, the defence and preservation of Buganda's rights and traditions. Playing, on the passions and greatness of the Baganda, the movement created great impact within the kingdom. Badges displaying (K.Y.) Kabaka Yekka were to be seen everywhere, even outside Buganda where their presence was not always welcome. In Ankole, for instance, the Enganzi, or Prime Minister had to make a statement on the badges:

“We are now satisfied that KY/UPC or UPC KY/Uhuru badges are no longer a cause of breach of the peace in the kingdom. Therefore, this Government does not feel it necessary to continue to prevent the wearing of UPC/KY Uhuru or KY/UPC badges. This does not, however, mean that we shall tolerate affront to Rubambazi, the Omugabe whereby his honour and authority is belittled, for instance, “Kabaka Yekka” as such is tantamount to belittling the Omugabe and his authority in his kingdom and is an offence...”<sup>1</sup>

As can be gathered from the Enganzi's statement, the Uganda People's Congress and Kabaka Yekka had established an alliance. From the feelers of the previous year and the support Congress gave the Buganda delegation at the London Conference, it became more and more apparent that the two had established some kind of fraternal friendship to oppose their common enemy, the Democratic Party. That Kabaka Yekka, an ultra conservative and traditionalist movement should find a common ground to share with Congress, a radical and socialist movement, is not as surprising as it first appears. One of the main reasons why the Democratic Party was founded was to challenge the Buganda establishment, which, at the time, largely discriminated against Roman Catholics. The Buganda authorities were therefore determined to keep the Democratic Party at bay, and out of power. We

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1 See: Ankole Eishengero (council), Proceedings of September 1959.



have also seen that the Uganda People's Congress originated from movements which were mainly founded by Protestants and some Roman Catholics who were loyal to the Kabaka. Politically, Congress was fighting the Democratic Party. It was, therefore, necessary for both enemies of the latter party to join forces against it.

Under the Constitution, direct elections for the Buganda Lukiiko were to be held in Buganda by March 1961. In accordance with their alliance, Congress was to support the Kabaka Yekka candidates, and therefore did not put up its own candidates in the majority of the constituencies. In practice, the fight was between Kabaka Yekka candidates and Democratic Party's nominees. Although the majority of the Buganda electorate was Roman Catholic,<sup>2</sup> loyalty for the Kabaka prevailed over religious feelings amongst the Baganda and, as was expected, Kabaka Yekka won an overwhelming majority of the Lukiiko seats. The elected Lukiiko then opted for indirect elections to the National Assembly, thus ensuring that only Kabaka Yekka supporters would represent Buganda in the Legislative Council. The Democratic Party's majority had all the time depended on the 20 seats the party had won from the 4 percent electors of Buganda. Now that these were to be lost, the results of the April general elections were a foregone conclusion.<sup>3</sup>

The election results gave UPC 37 seats and DP 24 respectively, and as expected, the Lukiiko then chose its 21 representatives from Kabaka Yekka supporters. The only surprise in the country's general election, came from the Bunyoro kingdom, where anti-Buganda feelings were so high that Congress lost its previous support in the District to the Democratic Party. Be that as it may, in accordance with their pre-election agreement, Kabaka Yekka and Congress formed an alliance, thus, bringing the Democratic Party's reign to an end. Indeed, when the new elected members assembled for the first time they, in accordance with the provisions of the Constitution, elected nine specially elected members of the Assembly, and this meant that the Democratic Party's fate was sealed.<sup>4</sup> The UPC/KY alliance scooped all the nine specially elected seats. This brought Congress's strength to 43 and Kabaka Yekka to 24. The Democratic Party was left with its original 24 elected members and the UPC/KY alliance proceeded to form a coalition government over which Milton Obote, as Prime Minister, presided. The UPC/KY alliance also meant that Benedicto Kiwanuka who had been previously elected by a Buganda constituency did not have a seat in Buganda, and though he could have sought one

2 See: Welbourne: *Religion and Politics in Uganda*, 1952-1962.

3 Morris HF and Read, James: *Uganda: The Development of its Laws and Constitution*, Stevens and Sons, London, 1966, page 28.

4 Morris and Read, *op.cit. ibid.*

elsewhere he chose not to do so. This meant that he was no longer a member of the National Assembly and that virtually ended his political career. He remained the Party's leader, in the country while the leadership of the Democratic Party in the National Assembly, was taken by Basil Bataringaya, a non-Muganda, from Ankole. In this arrangement, the party made another political mistake. It should have elected Bataringaya or some other person in the National Assembly as the national leader of the party. Indeed, moves were started by the more radical and younger elements of the party to have Bataringaya elected but the more conservative bosses of the party opposed these moves and then the suggested election of a new leader never materialised. Unlike Benedicto Kiwanuka, Bataringaya was an astute politician and a man of the people. He had another advantage in that he came from outside Buganda. He was also a strategist. In July 1960, while still president of the party branch in Ankole, he joined the secretary and organiser of the branch and wrote to the District Commissioner in the following terms:

"The Eishengero (Parliament of Ankole) refused women folk the vote but said women could stand as (candidates). On that score the Eishengero was, to say the least, misguided and illogical. We are now a laughing stock of the whims and fancies of the present Eishengero ... The same enigmatical body passed a resolution to the effect that the Enganzi (Prime Minister), -the executive head of Ankole, be elected by a few people-the so-called Appointments Board. Is the Protectorate Government to have us believe that this act is a move in the right governmental direction? We know it is not. Is that what the British call democracy? We know it is not."<sup>5</sup>

It is likely that had the Democratic Party elected him national leader, Bataringaya might have been able to salvage their meagre political fortunes, even in opposition. However, as things turned out later, misunderstandings and frustrations in the Party were to force him to abandon a weakened DP and join the Uganda People's Congress where political opportunities awaited him.<sup>6</sup>

### 3.1 SECOND CONFERENCE IN LONDON

Within two months after the coalition took over the responsibilities of government, another constitutional conference was held in London. It was attended by representatives from the same bodies as before. Self-government having worked well, the next step was the granting of complete independence.<sup>7</sup> The constitutional conference of June, 1962, was called to review the situation,

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5 RDC's Archives, Mbarara.

6 He was immediately appointed Cabinet Minister.

7 Report of the Proceedings of the Conference London, Entebbe, 1962.

resolve the remaining constitutional obstacles and amend the constitution of the previous year where necessary, and confirm the date on which Britain would formally hand over the instruments of the constitution declaring Uganda a sovereign and independent state. However, first, five problems had still to be resolved by the conference. Firstly, the semi-federal status which had been recommended for Ankole, Bunyoro, Toro and the special case of Busoga was rejected by the leaders of those regions. They all still insisted on having a federal status given to Buganda. Secondly, the problematical issue of the “Lost Counties” had not been solved. Thirdly, there was the question of financial arrangements between Britain and independent Uganda. It had not been decided what assets and what liabilities Uganda would inherit. Fourthly, the question of compensation and pensions for expatriate civil servants was not yet finalised. Lastly, there was the question of citizenship. It was essential that before independence could be granted, the persons who would be entitled to Uganda citizenship had to be resolved first.<sup>8</sup>

Surprisingly, all the outstanding problems were easily solved by the conference. Suddenly all the delegations appeared generous. The demands of the four regions were met by a compromise which enabled them to remain semi-federal but granted them more powers than had been the case at the previous conference.<sup>9</sup> Busoga would in future be known as the Territory of Busoga and her ruler, the Kyabazinga, would be elected by the Busoga Lukiiko for an indefinite period and be removable only by an adverse vote of not less than two-thirds of the members belonging to the Baisengobi, from which clan he was to be exclusively elected.<sup>10</sup> In accordance with the agreement reached at the previous conference, a Commission under Lord Molson had been appointed to study and report on the situation in the Lost Counties. The Commission did its work from January 1962 and reported in May the same year. The Commission’s recommendation was that two of the “lost counties,” Buyaga and Bugangaizi should be transferred to Bunyoro before independence and that the remainder of the counties should remain part of Buganda.<sup>11</sup> Neither Bunyoro nor Buganda was willing to accept this recommendation. The conference had no visible solution either. In the end, the British Secretary of State advanced his own solution. There would be no transfer of the two counties to Bunyoro. Instead, they would be transferred to the Uganda Central Government which would administer them, provided that after two years, the National Assembly would decide, on a date for a referendum, to be held in the

8 See: Uganda Citizenship Act, Chapter 58 of 1964.

9 LN numbers 229 and 247 of 1962 Constitution, Sch. 5.

10 Sch. 5 of the Independence Constitution.

11 Uganda Argus. 6 November 1964.

two countries, so that the inhabitants there would determine their future. The Prime Minister Milton Obote duly accepted this responsibility on behalf of the Uganda Government amid protests from both the Bunyoro and the Buganda delegations.

In fact, this turned out to be the best solution. Although Buganda persisted in her refusal to accept a referendum, the referendum was eventually held and its results on 5 November 1964 showed that the two counties had decided overwhelmingly to rejoin Bunyoro. In the jubilation that followed the transfer, Bunyoro appeared to have forgotten that the two were not the only “lost counties.”<sup>12</sup> On the other issues, the conference reached general agreement and an outline of the Independence Constitution was formulated and agreed upon. Uganda was to attain independence on the 9 October 1962. The British Government would undertake to support Uganda’s application to the membership of the Commonwealth and the United Nations Organisation. The British Queen would remain the Queen of Uganda.

In August 1962, the British Parliament passed an Act, called the Uganda Independence Act, which, *inter alia*, provided that:

“As from 9 October, the territories comprised in the Uganda Protectorate will together form part of Her Majesty’s dominions with the name of Uganda and henceforth Her Majesty’s Government will have no responsibility for the government of Uganda, and no Act of Parliament of the United Kingdom passed after that date shall extend to Uganda. The Colonial Laws Validity Act of 1865 will no longer apply to any law made by the Uganda Legislature and no such law can be rendered void on account of repugnance to the law of England.”<sup>13</sup>

A proviso to this Act stipulated that nothing in the Act conferred on the Uganda Legislature the power to repeal, amend or modify the constitutional provisions such as the Act itself and the Independence Order-in-Council other than in the manner provided for in the constitutional provisions. The Judicature Act of September 1962 would not be affected by the provisions of the Act.<sup>14</sup> The British Nationality Act of 1948 would be applied in Uganda in the same way it was applied in Britain with regard to British subjects or Commonwealth citizens.<sup>15</sup>

From a constitutional point of view the Uganda Independence Act was an interesting piece of legislation. Uganda was supposedly gaining independence but

12 The others were Buwekula, Buruli and Nakasongola. See: the Toro Prime Minister’s letter to the Governor of Uganda, dated 27 November 1961. *Supra*.

13 Weekly Dairy of World Events, 1964.

14 Common to all newly independent British territories.

15 *Supra*.

she would remain part of Her Majesty's dominions and as such Ugandans would owe personal allegiance to the British Queen. There might have been nothing unusual in this provision. After all, other independent countries of the Commonwealth notably Australia, New Zealand, Canada and South Africa were except for South Africa and they are still in the same position. The reason this was a novel idea is that most of the non- white members of the Commonwealth had decided, shortly after independence, to do away with this relic of imperialism even though the Queen remains the titular head of the Commonwealth. The Act had further provided that the Uganda Legislature had no power to change the manner in which its constitutional provisions could be repealed or altered. Assuming that the Uganda Legislature was to be sovereign then this provision fettered its powers and yet according to the British constitutional theory, the powers of Parliament are legally unlimited.<sup>16</sup>

The Nationality and Citizenship of Uganda were to be determined by a British Imperial Statute rather than by her own people through their elected Parliament. As regards the retention of the Judicature Ordinance, the provision incorporating it was understandable and, in any case, Uganda would have accepted it as a saving clause of expediency for, were all the laws to lapse the administration of justice would not have survived operating in a vacuum since it would have taken the Uganda Parliament some time before enacting new and necessary laws.<sup>17</sup> It was nevertheless quite natural and in accordance with the new status of Uganda to expect its sovereign Parliament to change most of the colonial laws and practices following the advent of independence. That the Uganda delegates did not object to these provisions is politically defensible. What they wanted was independence. The British Government could impose any terms it wished but once Uganda was its own mistress, it could treat the constitution as its own and amend it as it wished. This is not withstanding that there were elements within Uganda who thought they had got the best out of the constitutional provisions and would to challenge any action the new Government of Uganda attempted to take in altering the independence constitution to suit what it thought were the needs, aspirations and pride of Ugandans.<sup>18</sup>

After all the preliminaries and formalities had been concluded, Her Majesty, the Queen of Great Britain and Northern Ireland, the Dominions and Her Other Realms and Possessions, sent her representative, His Royal Highness, the Duke of Kent to release Uganda from her colonial bondage. This, the Duke performed on 9

16 See: Bradley A.W and Ewing K.D: *Constitutional and Administrative Law*, (12 ed). Longman, London.

17 The Constitutional formula for enacting laws takes sometime to achieve the desired results.

18 See: EA Journal, February 1968, pages 31-39.

October 1962, when he handed over the necessary Constitutional Instruments making Uganda independent and a member of the Commonwealth. Sir Walter Coutts, the former Governor became Governor -General as the representative of the Queen of Uganda. Present to receive the instruments of independence were the Prime Minister, Mr Obote, Ministers, leaders of the Opposition, the Kabaka, and other rulers and dignitaries. The whole country was decorated and Ugandans celebrated the occasion with great pomp and dignity. But Uganda was not yet free. Much remained to be done before the country could be master of its own destiny.



## CHAPTER FOUR

### THE DRAMATIC YEARS

The period between 1962-1966 can be described as the period of drama in the development of the Uganda Constitution. It was the transitional period in which, the independence constitution went on trial and was found to be largely unworkable. Morris and Read maintain that “*perhaps more than any other modern constitution in Africa*” *this constitution of Uganda was essentially ‘home-grown’*.<sup>1</sup> In view of what we have already noted, we beg respectfully to differ from the opinion of these learned authors. It has all along been our contention that this constitution was devised by the British and reluctantly agreed to by Ugandans. It was essentially a foreign constitution and of such constitutions, Professor Y Ghai has made the following comment,

... The standard safeguards being the imposition of limitations on the power of the organs of state, the decentralisation of authority and making it difficult, sometimes almost impossible, the amendment to the constitution...The result is that when a colony becomes independent and begins to plan its development programmes, it finds itself saddled with a system of government that is not always suited to its needs”.<sup>2</sup>

There is little doubt that Ghai’s comments applied to the Uganda Independence Constitution. In the first place, the Constitution created a hotchpotch form of government which was both federal and unitary. Although allowing for elements of each form, the Constitution was sufficiently vague for it did not demarcate the boundaries of or distinguish between the territories of Uganda. Uganda consisted of five federal states.<sup>3</sup> Of these, Buganda enjoyed more powers than the other four. Moreover, one of these districts was not a kingdom but was described as the Territory of Busoga. In addition, there were ten districts, which were regarded as Unitary. It was not clear whether they were unitary in relation to the central government or to the federal states. Lastly, there was the curious Territory of Mbale, which was in a category of its own.<sup>4</sup> The relationship between the Uganda Government, and the kingdom of Buganda was clearly a federal one. The same could not be said about the other three Kingdoms or the Busoga territory because

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1 Op.cit. page 82.

2 In mimeo: Faculty of Law, University of Dar es Salaam, 1971.

3 Sch. 5.

4 Sch. 5.



the central government had and exercised more powers with regard to their affairs than it did in the case of Buganda. The term semi-federal was used to describe the relationship of the latter kingdom but even then it did not convey a true legal meaning. It was not clear either whether it was the non-kingdom districts of the country which formed the unitary government of Uganda. Their relationships with the federal and semi-federal states were not clearly spelt out. Then there were the other bits about the Busoga territory and Mbale.<sup>5</sup> These were the questions which the independence constitution failed to answer.

Members of the National Assembly were in two categories. Those from Buganda were elected and nominated by her own Lukiiko. The rest of the members including those from the other Kingdoms were directly elected by the people. This difference made the Baganda members delegates of their legislature rather than representatives of the Buganda electorate and yet the National Assembly was basically that of a unitary state. Thus, Uganda was neither a federal nor a unitary state. However, it was a Kingdom in the sense that it formed part of Her Majesty's dominions. Legally, Uganda was not called a monarchy but the sovereign State of Uganda.<sup>6</sup> It can be concluded therefore that when Uganda was described as federal, semi-federal or unitary, it is not the form of government that was meant but rather the powers of government and authority. Some regions enjoyed privileges and exercised powers that would be enjoyed or exercised by component states of a federal state while others were treated as if they were regions of a unitary state.

The first anomaly to be tackled by an independent Uganda was the British monarchy as head of Uganda. Many of the African and Asian countries which belong to the Commonwealth club had passed through the same stages. On independence, the British Monarch would be declared their monarch and shortly afterwards, they would enact laws that removed her from her throne in the country. They felt that nationalistic sentiments and the sense of independence would not be fully realised until the link with the imperial power was completely severed. Uganda was not an exception. Within the first year of independence there was a strong feeling in the country that the Head of State ought to be a Ugandan. While there was agreement on this change the problem was to find the right candidate. The Uganda Kingdoms would not accept a commoner to occupy the important position of Head of State and thereby become, in importance, greater than their Kings. Buganda went further, no one even if he be King could be Head of State unless he was the Kabaka of Buganda himself. The non-kingdom districts

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5       *Supra.*

6       Preamble.

were not silent either. Unused to the reign of kings, they would not accept one of them to be head of their independent state. After all, they argued; was it not their republican sons who had brought independence and who were now prominent in the government that was running the affairs of Uganda? There was the further problem that if it were accepted that only rulers would qualify to be elected Heads of State then the non-kingdom districts that contained the majority of the Uganda population would never have a chance to produce the head of state of Uganda.

On political and meritorious grounds, the non-kingdom districts' contention was reasonable. This became a real test for the first Government of an independent Uganda. Consultations with the interested parties went on behind the scenes. Eventually, a solution of sorts was found. Uganda would have a President as Head of State elected by the National Assembly and assisted by a Vice- President, for a period of five years. The Head of State would not be a commoner or a politician. He would be a traditional ruler. In order to satisfy the non-kingdom districts a law was passed allowing them to have their own "kings" or traditional rulers who were to be elected by the district under the designation of constitutional head or "ruler". Thus, the hereditary or customary traditional rulers were joined by a host of legally created constitutional district heads as the only people qualified to stand as candidates for the Headship of the State of Uganda. The ruling party, UPC agreed among themselves to elect Sir Edward Mutesa, the Kabaka of Buganda, as the first President of Uganda. The Kyabazinga of Busoga decided to oppose the Kabaka's candidature by himself standing for election. In the end; the Kabaka was elected President and the Kyabazinga Vice-President of Uganda.<sup>7</sup>

On 9 October 1963, the first anniversary of independence, Kabaka Mutesa of Buganda was installed as President, Supreme Head and Commander-in-Chief of the Armed Forces of Uganda. The Queen, though still recognised as Head of the Commonwealth, ceased to be Head of Uganda and the Governor-General left the country.<sup>8</sup> The Baganda were jubilant, the other Kings happy and the rest of the country satisfied, for now there was a possibility that each region had an equal chance to produce the President. Notwithstanding this first amendment to the Independence Constitution, very little in the country changed. The President was to be a constitutional head in the sense that he would act on the advice of the Government, led by the Prime Minister. In order to avoid future conflicts, the amendment defined the President's powers in more precise terms than the independence constitution had done in respect of the powers of the Queen or Governor-General. In moving the second reading, of the Amendment Bill on this

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7 Lakidi Ocaya, (ed.); *Perspectives on Politics and Government in Uganda*, EALB, 1972.

8 Morris and Read, op.cit. page 82.

matter, the Minister of Justice, Mr Grace Ibingira, emphasised the main purpose of the change which was apparently to enable Uganda,

“To sever the nexus of imperial rule and become a truly African independent, sovereign state. Uganda is not a kingdom, neither is it a republic when we have monarchies: nor can we be a monarchy containing, as we do, so many republican districts, submitted to the learned minister of Justice.”<sup>9</sup>

Monumental, as it was, the change did not solve Uganda’s constitutional problems either in this respect or in any other. The dual capacity of the President as President of Uganda and Kabaka of Buganda soon proved to be a political and constitutional embarrassment, both to the holder of the office and to the Central Government.

The President, in the person of Sir Edward Mutesa, was constitutionally required to act in accordance with the advice of Cabinet while as the Kabaka of Buganda, he would act in accordance with the advice of the Buganda Government and the Lukiiko.<sup>10</sup> It was inevitable that issues would rise to split his two personalities. Other beings might have managed to act in the two capacities and resolve any conflicts, but not Sir Edward. He was a man used to making personal decisions in matters of state. He would find it hard to abide by the constitutional provisions which gave him the minimum of powers. Moreover, as he revealed later in his book *The Desecration of my Kingdom*, Kabaka Mutesa never accepted Milton Obote as a national leader. On the contrary, he mistrusted and despised him.<sup>11</sup> That the orders of the Government would be coming from the commoner who happened to be the Prime Minister of the country would make it even more difficult for Kabaka Mutesa to accept his role as a constitutional and ceremonial President. A number of incidents began to occur which annoyed the President. At this time, the Government of Uganda was anxious to project to the people of Uganda, the country’s image as an independent sovereign state to the people. One way of doing this was to display large photographs of Ugandan leaders in public places and on the television screen. If the President’s photograph was displayed this would annoy many republicans who would be confused as to whether it was the President or the Kabaka who was being shown. Some Kabaka fanatics had started boasting that he was now emperor of Uganda.<sup>12</sup> The Government decided that the Prime Minister’s portrait be displayed on television instead. Sir Edward Mutesa was exceedingly annoyed by this turn of events. He always got annoyed whenever the

9 Hansard, 2nd Series, Volume 17, 1962–63.

10 Morris and Read, op.cit. page 82.

11 In the Desecration of My Kingdom, Constable, London, 1967.

12 Uganda Argus, 3 August 1964.

Prime Minister had opportunity to address the nation on some important matter or to attend a public function where the premier was applauded. Mutesa interpreted all this to mean a deliberate affront to his dignity and importance as kabaka and Head of State. Whenever the President toured the country, which were often, his expenses would be met from the public purse. However, at times, it was difficult to know whether he was travelling as the President of Uganda or as the Kabaka of Buganda. Even when he attended functions in the latter capacity he, at times insisted that the Government of Uganda should provide for his comfort and pleasure. For instance, he did not find it wrong to ask the Uganda Police Band to play music at his official birthday celebrations as the Kabaka of Buganda.<sup>13</sup>

Legally, the President could ignore the advice of the Cabinet, for the constitutional amendment had provided that, “where the President is required by this constitution to act in accordance with the advice of any person or authority, the question whether he has received or acted in accordance with such advice in any case shall not be enquired into in any court.”<sup>14</sup> This provision was a two-edged sword. While principally it was intended to be used as a shield to protect the action of the President and enhance his impartiality, it could also be used as a sword for a President who chose to flout the wishes of the majority conveyed through the Prime Minister. The provision was later amended to require the President to act in accordance with the provision of the constitution, but even then Mutesa found himself in conflict with the new amendment. The matter came to ahead in 1964. In that year the long awaited referendum was held in the two Lost Counties of Buyaga and Bugangaizi. As was expected, the voters decided to join Bunyoro. The last act, the execution of the transfer instrument, was to be performed by the President who happened also to be the Kabaka of Buganda at the same time. This, the rather predictably, he refused to do, giving as a reason that he would not transfer the governance of his subjects to another country. The President was still thinking in terms of regarding parts of his country Uganda as being foreign! For this, he may be forgiven for in his mind and those of other Baganda traditionalists, their true “country” will always be Buganda. This refusal might have created a crisis but for another constitutional provision which, allowed the Prime Minister to give assent if the President neglected or declined to do so.<sup>15</sup>

Thus, the first attempt to improve the independence constitution by amendment failed. It failed because the Constitution had created a President who

13 See: Mamdani Mahmood: *Politics and Class Formation in Uganda*, Fountain Publishers, Kampala, Uganda, 1999, pages 242-247.

14 *Ibid.*

15 Section 62(2) of the 1962 Independence Constitution.

had not received the mandate of Uganda as a whole. All he had to do to qualify was to be a ruler of his kingdom or district. But, it was not enough, that only one kingdom or district should determine the qualifications of the highest office in the land, namely, the Head of State. Besides the one region of Uganda, there were 15 others to be satisfied. The concept failed also because the holder of the office was supposed to give two loyalties, one to his kingdom and the other to Uganda and when the crunch came, he preferred his kingdom to Uganda. The Constitution failed also because had attempted to marry the traditional and hereditary authorities with the modern and democratic ones. The marriage was bound to prove disastrous.

By this time, the UPC/KY coalition Government had begun to show signs of strain. In January, 1963, the Ugandan People's Congress decided to contest two seats for the Buganda Lukiiko by-elections, against the wishes of Kabaka Yekka, which itself was contesting for the same seats. The decision of Congress immediately brought the suspicions between the two partners into the open. To amend fences, the leaders of Kabaka Yekka called an urgent meeting after which they issued a public statement saying that the alliance was still firm. By that time however, the writing was on the wall for everyone to see. Worse was to follow. Amid the confusion that followed shortly afterwards, a number of Kabaka Yekka members of the National Assembly crossed over and joined the Uganda People's Congress.<sup>16</sup>

A year later, the Prime Minister, was now habitually lashing out and criticising at both the Democratic Party and the Kabaka Yekka indiscriminately. For example, while addressing a public gathering at Namulonge, and to a predominately Baganda audience, Obote declared that the time had come for all Ugandans to put in a national effort for the achievement of their social and economic betterment. It is further reported that he launched a strong attack on Kabaka Yekka, alleging that some of its leaders were working with the Democratic Party in campaigning against the UPC. *"I am trying to tell you", said Obote, "that there are some leaders of Kabaka Yekka who are prepared to work with DP. UPC has done a lot for the Baganda. And what do we get back? They ridicule and insult us ... You have got your brains and you can think and decide what party to join ... K.Y. is making you his machine and insulting you and your GOD... When DP opens branches in Buganda nobody objects but if UPC does the same, people object ..."* One result from this speech was a libel action by Ben Kiwanuka against Obote. Kiwanuka lost the suit.<sup>17</sup>

16 In Akena Adoko: Uganda Crisis, 1969.

17 High Court civil case number 315 of 1965 (4).

Worse still, it was reported in the press that Obote was heard advocating for a one-party State. The Buganda leaders and Kabaka Yekka spokesmen were shaken with indignation by this report. His speech was interpreted as another calculated move by Congress to destroy them. It is difficult to understand the cause of the indignation. A one-party state would have led to the destruction of the Democratic Party, the archenemy of the Buganda establishment. The process would have left Congress, their ally, as the only political party in the country since Kabaka Yekka had always maintained that it was not a political party.<sup>18</sup> In any event, the last link of the coalition was broken with the referendum on the lost counties and their transfer to Bunyoro.

The transfer of the counties to Bunyoro was a humiliating experience for Buganda. It was seen as another piece of evidence of the treachery practised by the UPC. This time, even the general public in Buganda joined in the commotion that followed the transfer. Katikiro Kintu's administration was blamed for the humiliation and forced to resign. Members of the at Mengo National Assembly from Buganda who had not joined UPC resigned their seats. Among them was one Mayanja-Nkangi who had been a Minister in the Coalition Government. The traditionalists and Kabaka Yekka invited him to form a new Buganda Government.<sup>19</sup> There was no longer any doubt that the Kabaka's Government was now in opposition to the Central Government of Uganda. For a while, Kabaka Mutesa continued to be the constitutional head of two bitterly opposed Governments, that of Buganda and of the Central Government. That he decided to throw his weight behind the weaker of the two namely Buganda would lead to his eventual downfall. The Uganda People's Congress was now in a stronger position than at any other time since independence. Apart from Kabaka Yekka members, many of the Democratic Party followers in the National Assembly abandoned their own party and joined hands with UPC. Elsewhere in the country reports of previous supporters of the Democratic Party and Kabaka Yekka joining UPC were publicised almost weekly. In Parliament, the ruling party had by now gathered so much support that it could rule on its own. In the country, reports of new converts and messages of support gave much weight to the party's legitimacy.<sup>20</sup>

However, before we consider the dramatic developments that led to the eventual downfall of the traditional authorities in Uganda, it is necessary to

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18 As to the role of the Kabaka in politics, See: Apollo Nsubambi in Hansen HB and Twaddle M: *From Chaos to Order*, Fountain Publishers, Kampala, pages 41-44.

19 But See: Mamdani Mahmood: *Politics and Class Formation in Uganda*, op.cit.A.220.

20 It was described by its founders as intended for the protection of the Kabaka of Buganda but See: Mamdani: op.cit. page 220.

examine the provisions of the Independence Constitution further. In addition to the President, who was a constitutional and traditional ruler, there were provisions for a Prime Minister who was a politician. The Constitution provided that the President would appoint the leader of the largest party in the National Assembly as Prime Minister. In the event of there being two political parties with the same number of members in the Assembly, the President was given discretion to choose whomever he preferred. If there was no political party with an absolute majority in the Assembly, the President was given a free hand to pick a Prime Minister. He was empowered to choose the leader of the largest party if that leader commanded support of the Assembly. If there was no support for such a leader, the President would invite the leader of the next largest party and if this one also failed to command support, the process would be continued until a Prime Minister emerged. The Constitution did not provide a method whereby the necessary support would be assessed. There was, for example, no provision which required a leader to ask the National Assembly to pass a vote of confidence in him and his proposed government. This provision is commonly found in countries with multiple parties none of which is likely to win an absolute majority in the legislature.<sup>21</sup> Presumably, the President was entitled to inform himself as to whether the support was available with the British Parliamentary conventions acting as his guidelines.<sup>22</sup>

The Constitution does not seem to have cared much about the wishes of the electorate. The fact that the leader of the largest party was unable to command the support of the National Assembly should not have been the only criterion on which the party was to be deprived of the right to form a government. The party could have been requested to elect a new leader who would find the support or, alternatively, the President could have dissolved the Assembly and ordered new elections. The Prime Minister was an elected member. His Cabinet would predominantly be directly elected. That the same leader should be determined at the discretion of a President who was not directly elected and who had been chosen ruler by his own small region was undemocratic. If the National Assembly passed a vote on no confidence in him or his government, the Prime Minister was required to resign or recommend dissolution of the Assembly. If he failed to do either within three days, the President was entitled to remove him from office. Ministerial offices were established by law but appointments to them, their responsibilities and removal from them were within the prerogative of the President acting on the advice of the Prime Minister. The Cabinet, whose function

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21 e.g Italy, Holland and France.

22 Wade and Phillips: *Constitutional Law*, (7 ed) Chapter 1.



was to advise the Prime Minister, was appointed by the President. Yet, it was the Prime Minister, rather than the President, to whom the people of Uganda had entrusted the power of government.

Under the Independence Constitution, the National Assembly was an anomalous body. It was partly elected and partly nominated. Buganda was guaranteed a certain number of members to the Assembly notwithstanding that the populations of the regions were bound to fluctuate, thereby rendering it necessary to reduce or increase the number of seats appropriately for each region. The Lukiiko indirectly elected the Buganda representatives while the rest of the representatives were directly elected by the people. The Lukiiko electorate included, not only the elected representatives, but also the Ministers in the Kabaka's government, and the Kabaka's personal nominees.<sup>23</sup> This meant that only persons who had the confidence of the Kabaka and his government rather than that of the Baganda as a whole, were qualified to represent Buganda interests in the National Assembly. In effect, the Baganda were disenfranchised by the Constitution. Yet, the National Assembly was supposed to legislate for and debate matters that affected Uganda as a whole. Buganda had another right. She could, after dissolution, by resolution, declare that her own representatives be elected by the Lukiiko itself and not by direct elections as everywhere else. The system of indirect elections in Buganda was therefore, capable of being maintained forever, if the independence Constitution endured.

The Constitution provided for qualifications and disqualifications of candidates for the National Assembly. What is not certain is what would have happened if Buganda decided to choose from among her guaranteed number of representatives, persomight could have created a crisis if the majority members of the National Assembly successfully challenged these qualifications.<sup>24</sup>

The most glaring weakness of the Independence Constitution was the way it distributed power in Uganda. The National Assembly was handicapped by the federal powers that were granted to the four kingdoms and the territory of Busoga. It had no authority to legislate on the offices of the rulers, their powers, obligations and duties. It could not determine public holidays or festivals of the of these state. A further provision prohibited the National Assembly from legislating on matters agreed upon by the Governments of Uganda and the state. The Assembly had no authority to change or alter the provisions of a state's constitution even though this

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23 The Buganda Constitution, Article 20.

24 Fortunately, no such questions were raised throughout the relevant period.



was incorporated in the schedules to the Uganda Constitution.<sup>25</sup> Only the legislature of the state concerned had the power to alter its constitution with the support of a two-thirds majority of its voting members, and the National Assembly was expected to approve, again, with a two-thirds majority, the legislation in question. There was no room for disagreement. The Constitution was particular in distinguishing Buganda from the rest of the federal states in that there was a separate schedule for her alone and the enacting formulae were different. For the other states the constitution listed matters over which the legislatures of those states had exclusive legislative competence but with Buganda only those matters over which the National Assembly had this competence were listed. From the wording, it can be deduced, that while the National Assembly had residual legislative powers, in respect of the other states, for Buganda, the residual powers were vested in the Buganda legislature.<sup>26</sup> It was not the case, however, that even with the listed matters of Buganda, over which the National Assembly had competence, that its power was exclusive. The National Assembly's power, was further limited by a proviso to the effect, that if the National Assembly legislated on certain matters within the schedule which were considered to be of special significance to Buganda's interests, then the legislation could not be enforced without the consent of the Buganda legislature. Although a similar provision operated with regard to the other state matters, there was, nevertheless a great difference.

With the others, the case would only arise if the National Assembly legislated on matters that were in the exclusive legislative power of the state legislature, whereas with Buganda, the provision affected even those matters that were specifically placed under the National Assembly exclusive competence. Matters that were supposed to have special significance to Buganda included the Buganda Courts' Ordinance, the Public Lands Act, as it applied to Buganda, Land Tenure and Local Government in Buganda.

Article 73 of the Constitution specifically prohibited the National Assembly from making laws for the peace, order and good government of the federal states in all matters. It provided:

"The National Assembly shall have powers to make laws for the peace, order and good government of Uganda (other than federal states) with respect to any matter."<sup>27</sup>

The limiting formulae under discussion, were replicas lifted from previous and other federal constitutions such as those of Ghana and Nigeria<sup>28</sup> but Uganda was

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25 5th Scheduled to the Independence Constitution.

26 See: 7th schedule.

27 *Ibid.*

not exactly a federal state. Yet, the Constitution deprived it of sovereignty by limiting its supreme legislative power over the whole country and in all matters. It is apparent that no government, however able, could have directed the development of the country without encroaching upon the reserved and residual powers of the component states. Instead of directing their minds to the social and economic development of the country, the Uganda Government and the National Assembly would be bound to indulge in the semantics of the Constitution as to whether their actions or suggested legislation were within their competence or were reserved for the exclusive powers of the federal states. If Ugandan authorities did not raise the matter, those of the states would be bound to do so to the extent of litigation.<sup>29</sup>

Customary law was excluded from the legislative power of the National Assembly and, yet if Uganda was to follow a path of nationhood it was important that some of her customary laws be analysed nationally and improved to meet with modern developments. Land, education and administrative personnel were all excluded from the jurisdiction of both the central government and the National Assembly and yet no government could seriously and effectively plan for the economy of the country when the tools of such planning were beyond its reach. The plight of the nation was such that centralisation of authority and uniformity of direction were essential. It appeared as if the Constitution was designed to produce the exact opposite.<sup>30</sup>

However, the central government, notwithstanding its weak position and ineffective powers, was still under a duty to provide services to the whole country including services that in a true federal state would have been run by the component states.<sup>31</sup> To incapacitate the central government further, the Constitution required the government to collect revenue throughout the country, and then pay large sums of money back to the federal states where it was collected. For instance, under Schedule 9 of the Constitution, Buganda was guaranteed 50 per cent of the duty revenue collected from Buganda and 50 per cent by an annual statutory contribution from general revenue, which could not be reduced without consultation with the Kabaka's Government. Additional sums would be required to be paid by the Uganda Government to the Kabaka's Government if the latter assumed responsibility for further services within the Kingdom. The extent to which the Independence Constitution regarded the importance of the federal states

28 See: Adoption of Federal Provisions (Northern Region) Ordindua, number 22 of 1960.

29 Bundy, Emory: Uganda New Constitution in EAJ April 1967.

30 Ginyera-Pincywa: A GO: Prospects for a one-party system in Uganda, in EAJ, October 1968.

31 Burke Fred G: *Local Government and Politics in Uganda*: Syracuse, NY Syracuse, University Press, 1964.

can be imagined if it is realised that the main provisions of the national Constitution affecting the rest of the country were contained in 131 articles only and even then, many of the articles dealt with limitations upon the central authorities in their dealings with the federal states. On the other hand, the schedules which dealt with the constitutions and related matters of the five federal states, were covered in more than 200 Articles. What is more, only two articles dealt with local administrations of the districts, which needless to say, contained the overwhelming majority of the Ugandan population.<sup>32</sup>

Apart from the Presidential, Governmental and Legislative matters, which have been discussed, other matters were dealt with by the constitution in more or less the same manner as if Uganda was a unitary state. But even here, there were anomalies and absurdities. For instance, there were two High Courts, namely, the High Court of Uganda and that of Buganda. Both were presided over by the same judges, and the Chief Justice of Uganda was automatically the Chief Justice of Buganda. Proceedings in respect of the rest of Uganda were in the name of Uganda, but in the federal states the High Court administered justice in the name of the ruler of the respective state or territory. For each federal state there was a separate Cabinet, Government and Legislature. The majority of Uganda found it confusing and could appreciate but little of the distinction between the governments which were in control of their country's affairs.<sup>33</sup>

From the foregoing, it may be discerned that the Independence Constitution emphasised division rather than unity. It placed regional interests above national interests and exalted regional leaders at the expense of national leaders. Regional political power was entrenched in such a manner that the central government agencies found it difficult to plan and effect national policies. Any attempts for political, cultural and economic transformation of Uganda were bound to encounter the inevitable obstacles embedded in regionalism. Yet, Uganda badly needed transformation.

Radical leaders had long before independence, realised this, but the Constitution made sure that such changes would be rare and slow. Yet, rather ironically, both proponents of radicalism and conservatism had the same goal in mind! The radicals had the interest of Uganda in view, and so, too, did the traditionalists. The difference between the two lay in the type of Uganda that was envisaged. The radicals were thinking of a modern Uganda in which the social and

32 The Independence Constitution and its schedules.

33 Gukiina, Peter M: *Uganda: A case study in African Political Development*, Notre Dame: University Press, 1972.

economic structures of society were directed for the needs and aspirations of the people. On the other hand, the Constitution was designed to cater for a historical Uganda where traditions and economic power in the hands of a few were guaranteed. The Constitution can claim to have had legality in the sense that those it intended to protect were in effective control of the nation's affairs. However, it lacked political legitimacy for it was not an expression of the will of the majority, nor did it claim to have the consent of the masses even though it can be claimed that they were acting through their elected representatives.<sup>34</sup>

Lacking political legitimacy, the Constitution could not withstand the test of political pressure, for if it were threatened with abrogation the masses would be reluctant to defend it. That this same Constitution continued in force until 1966, is evidence that the forces of divisionism and traditionalism were stronger and more influential than the radicals had otherwise imagined. It is also evidence of the Uganda people's patience to give it a trial. This is not to say that the radical reformers had abandoned their former policies of change and radicalism, it is rather a reflection of the impotence they laboured under in their endeavours to direct Uganda policies. By this time, many people had come to appreciate the fact that the political development of Uganda would be a slow process, requiring great patience. However, the forces which had accepted the status quo became impatient and began plotting to overthrow the same Constitution they were supposed to protect. This, in turn, created a reaction in the radical elements within the Government which decided to act swiftly in order to avert what was feared might have led to anarchy and bloodshed in the country.<sup>35</sup>

#### 4.1 THE CONSPIRACIES

Notwithstanding that the ruling party, the Uganda People's Congress had poached many followers from Kabaka Yekka and the Democratic Party, the party soon found itself in trouble generated from within. By 1965, the divisionist and traditionalist elements had penetrated the party and acquired active supporters within the rank and file of the party followers. Many voices, dissenting from the official line of the party, began to make themselves heard throughout the country. The party was torn by confusion because many of these voices belonged to some of the most influential leaders of the party.<sup>36</sup> After the successful referendum and final transfer of the two "lost counties" to Bunyoro in 1964, the animosity of Buganda towards Milton Obote and the UPC government escalated. Buganda traditionalists

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34 *Supra.*

35 Military in Uganda, Africa Report, December 1966.

36 See: EAJ December 1966.

at Mengo, the capital of the kingdom, began to exploit all possible political angles in the country with the aim of undermining and eventually removing Obote from power. A political alliance between the Kabaka, his ministers and disgruntled elements within UPC was reached. The latter included and was led by the then Minister of Justice, Grace Ibingira, who was at the same time, the Secretary General of the UPC. He had within his group of conspirators, Balaka Kirya, George Magezi and Dr Emmanuel Lumu, who were also Cabinet Ministers in Obote's government. They had also recruited Mathias Ngobi, a prominent member of the opposition party, D.P. The hope of the traditionalists was that this alliance was capable of overthrowing the government led by Milton Obote. This group constituted the first conspiracy.<sup>37</sup>

In conjunction with the Mengo traditionalists and with the consent of the President, Edward Mutesa 11, the King of Buganda, the conspirators approved the contents of a letter which was sent to Her Majesty, Elizabeth 11, the Queen of the United Kingdom and Head of the Commonwealth, requesting her government to supply them with guns so that they could fight and overthrow Milton Obote from the government of Uganda. Her Majesty declined the request. The conspirators next turned to the British High Commission in Uganda and requested it to get in touch with British private firms of gun- manufacturers and ask them to supply guns. Gail and Roberts, gun manufacturers were contacted but they too declined to assist the conspiracy.<sup>38</sup> Somehow however, through other means the sources of which have remained secret, the conspirators managed to get hold of some guns and ammunition. This was the second conspiracy. It was purely military and was truly set.<sup>39</sup>

The next stage of the conspiracies was political. King Mutesa and the first group of conspirators began to persuade others from the Central Government, Parliament and the Opposition groups to join them in the mission to overthrow the Obote government. Part of the plan to discredit that Government was for the Opposition group in Parliament to bring charges and allegations of corruption and abuse of power against Obote and his close associates so that a debate would be staged with the ultimate aim of proposing and passing a Vote of No Confidence in Obote and his government in Parliament. An interesting phenomenon developed. The same people who had been entrusted with the maintenance of the Westminster model of democracy in Uganda were now dissenting from their own

37 See: M Ndebesa: *Kingship and Political Development in Uganda*: Mimeo, Makerere Univeristy, 19 April.

38 Akena Adoko: *Uganda Crisis*, op.cit..

39 See: *Military in Uganda*, op.cit. page 2.

party leaderships and policies. Convention at Westminster required British politicians to disown themselves publicly from their own party and fight against it in the open. Only then could their dissent be legitimate and their stand credible. However, those in Uganda did not resign, either because they lacked the courage to do so, or because they thought that they would be more effective within rather than outside the party. They wished to eat their cake and have it at the same time. They continued to enjoy the privileges bestowed on them by the party. They kept their ministerial *portfolios* thus flattering the Prime Minister, while at the same time working secretly for his downfall.<sup>40</sup>

The feudalists and traditionalists who joined this second conspiracy had thought that they had lost so much under Obote. The dignity and grandeur of traditionalism required a government that respected the rulers, chiefs and the proprietary rights of the privileged few in the country. The Obote Government was radical; at least, it claimed to be.<sup>41</sup> From the policies it envisaged and the actions it took, the Obote Government was putting the common people above the traditional rulers and their henchmen. This trend had to be stopped by the creation of a government which would owe allegiance to the country's traditional groups rather than to the masses.

The third conspiracy was supposed to be inspired and led by the Prime Minister himself. According to his accusers, who included Mutesa himself, this group had as their motives, the destruction of the Independence Constitution, the establishment of a leftist dictatorship, the undermining of Uganda's ancient traditions and customs and the takeover by the state of personal property which had been built through individual private enterprises.<sup>42</sup>

A study of the events at the time reveals sufficient evidence to suggest that these conspiracies in one form or another were genuinely perceived by the respective opponents of each of the groups involved. We shall discuss the third conspiracy first. There is no doubt that the UPC always claimed to be radical and socialist. All along, the party had claimed to represent the masses of Uganda rather than one region. It was natural, therefore for them to oppose anything that was against the interests of those they represented. Obote and his ministers spoke against the rigidity of the Constitution which they saw as a hindrance against radical policies for change and development. The entrenched positions of the federal states became the targets of criticism by Obote and his followers for they

40 Kirunda-Kivejinja. AM: *Uganda: The Crisis of Confidence*: Progressive Publishing House, Kampala Chapter 7.

41 Kasir Ni: Frank Cass, London, 1984.

42 Akena Adoko: *Uganda Crisis*, pages 129-131.

were seen as problematical with regard to the building of one nation, which the party wanted. The party leadership complained about the wastage of maintaining costly palaces, estates and privileges for what it regarded as anachronistic monarchies. With its majority increasing yearly by the defectors from other parties, UPC found it politically expedient to abolish the official designation of the leader of the Opposition in the National Assembly. Government talked in terms of nation building and development that required the feeling of oneness, throughout the country, hence the advocacy, by the Government, of a one-party state. If such a party were to cater for the interests of all, UPC argued, then it was necessary to establish its branches in all the corners of the country—hence UPC's attempts to open party branches within Buganda at the displeasure of Kabaka Yekka (Kabaka Alone) and the Buganda authorities. Nevertheless, such talk and alteration of the independence position agreed to by all was correctly seen by the opponents of the UPC government as a conspiracy to subvert the Constitution.<sup>43</sup>

The development of the country required new attitudes towards the country's traditions and customs; yet, as already observed, these were specifically excluded from the legislative competence of the National Assembly. Not unnaturally, a party dedicated to development would be bound to question the exclusion. The improvement of the social and economic conditions of the masses called for the fair and equitable distribution of the means of wealth, such as land, trade, commerce and industry. It was necessary therefore that the State should acquire an interest in the means of production if the distribution was to be effected.<sup>44</sup> Consequently, if Obote and his Government intended to carry out these changes, it was inevitable that the constitution would change and doing so would be a breach of the understanding which had been incorporated in the independence Constitution.

The apologists for the UPC government have contended that this was no more a conspiracy than the acts of a government legitimately wishing to change the Constitution just like when Uganda ceased to form part of Her Majesty's dominions, or when the Governorship was abolished to be replaced by a Ugandan President, or when the powers of the traditional rulers were altered.<sup>45</sup> It is argued that had these changes been accepted, many Ugandans would have benefited and the changes would have been in line with the way Uganda was developing at the time. Conspirators are secretive by trade. They discuss in whispers and plot by night. They are afraid of being found out before their plans are put into operation. By contrast, the Obote Government, Obote and his colleagues, in the Uganda

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43 Akena Adoko: *Uganda Crisis*, pages 129-131.

44 Milton Obote: Press Conference on 14 February 1966, Kampala.

45 Kabaka Mutesa II: *The Desiration of my Kingdom*, op.cit.



People's Congress, did not hide their ideas. On the contrary, they debated them in public places, shouted them at political rallies and published them in the press and magazines. They were testing the ground and, at the same time, educating the public about unpopular and controversial issues, which they thought were good for the country. This is what is done in other democracies.<sup>46</sup> Moreover, the Uganda People's Congress had not yet reached the stage of self-criticism. Socially and economically, many of its followers were content to benefit under the system as it existed rather than face the uncertainties of changing it. Few leaders looked beyond self-enrichment. It was one thing to applaud what their leader was saying and another to follow it in action. All the changes in the constitution that had hitherto been introduced by the Government had been effected legally and constitutionally. A government can sometimes be wrong and it is possible for politicians to plot conspiracies, but it cannot be said that anyone who advocates change of an established institution, however unpopular that change may be, is a conspirator.<sup>47</sup> On this account alone, it is contended that Obote was not conspiring to overthrow the government of which he was the political head.<sup>48</sup>

However, an examination of available evidence on the first two conspiracies suggests that they did somehow exist. Hitherto, the role of branding UPC a radical and near-communist party had fallen on the Democratic Party, but was soon joined by some UPC members. At the Gulu Party Conference, for example, no less a person than the Secretary-General of the party, Grace Ibingira, participated in a move designed to expel one of the party's leading radicals, John Kakonge, from the top leadership, on the grounds that he was too socialist.<sup>49</sup> It has been observed that in their zeal to oust Obote from the Premiership, the dissenting elements within UPC joined forces with the traditionalists and opposition members to make concrete plans and to carry out manoeuvres for the deed.<sup>50</sup> Apparently, sympathisers with these elements were carefully selected and recruited in the armed forces and arms and ammunitions began to arrive in the country without the knowledge of the Government. There can be no doubt that these were the acts in a conspiracy.<sup>51</sup> It is not certain whether the above arrangements were being made for a *coup d'etat* as the ultimate objective. This is slightly ruled out by the subsequent methods that were resorted to by the conspirators. It is likely that the recruitment of "loyalists"

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46 In U.K such discussions are preceded by a white paper published by the Government.

47 See: Transition Magazine number 38 of 1971.

48 Milton Obote Press Conference, *ibid.*

49 Kivejinja, *op.cit.* ch.9.

50 *The African Review*: Volume 3, number 2, 1973, pages 291-307.

51 Hutchful E: *Military and Militarism in Africa*, Dakar: Codesria, 1989, pages 8-9.



in the army and the importation of arms and ammunition were to be used for the maintenance of law and order by soldiers loyal to the conspirators once power had been obtained by them.

The method chosen by the anti-Obote factions was a sophisticated one. The Government would be ousted from power “legally” by quasi-legitimate motions of debate and censure in the National Assembly. The famous, or infamous depending on one’s viewpoint, among the motions, was one on the *The Gold Allegation*. The Gold Allegation had as its theme, character—assassination of the leadership of UPC and its Government. *Prima facie*, the motion did not appear to involve issues of constitutional importance. It simply alleged that one Idi Amin,<sup>52</sup> then a high-ranking officer in the Uganda Army as Deputy Commander at the time had illegally acquired valuable property including gold, ivory, coffee and money from the Congo, now the Democratic Republic of the Congo (DRC), and that the same had been put to personal use and gain. However, the debate on that motion would later develop in such a way that Idi Amin would not be the only culprit. Allegations would also embrace the Prime Minister Obote himself and two of his Cabinet colleagues. It would be alleged that the gold was obtained to enrich those three leaders. It was to be shown that even if Idi Amin may have personally gained in that adventure by getting sums of money and promised the commandship of the army, the real beneficiaries of the loot were the Prime Minister and his Cabinet colleagues.<sup>53</sup>

It was essential for the conspirators that the motion be moved with conviction and oratory. The convincing words would be found in the mouths of one Daudi Ocheng and others. Ocheng’s oratory and his manner of delivery were captivating. Both the motion and its proposer were carefully and strategically chosen. The success of the motion would mean the constitutional downfall of the Obote Government, but before that moment, convincing evidence had to be found. Documents and witnesses had to be sought and produced.<sup>54</sup> Ocheng was a non-Muganda. He was an Acholi. He belonged to the same ethnic group as the Prime Minister Obote, a Langi. These factors would lend credence to the motion and would turn it into a lethal political weapon. In spite of his ethnic origin however, Ocheng, a personal friend of the Kabaka, was a traditionalist by culture and a feudalist by upbringing and conviction. He had gone to schools and spent most of his adult life in Buganda. He spoke Luganda fluently. He was known and trusted by the Buganda establishment so much so that he, a non-Muganda, was given the

52 The Report of Inquiry was published in August 1971 by the Idi Amin Regime Military Regime.

53 Gingyera Pincywa, op.cit. page 9.

54 See: Ibingira G.S.K: The forging of an African Nationa, NewYork, Viking Press, 1973.

honour to represent the kingdom in the Uganda National Assembly. That fact alone was almost unique in Uganda politics, when one considers that the overwhelming majority of the members of the National Assembly represented and continue to represent tribal areas. He was an excellent debater with a flair for political venom. The conspirators found him to be an ideal political instrument. But, he also personally found in the motion an excellent opportunity to promote the interests of Buganda his adopted kingdom which he loved.<sup>55</sup> The die was cast. The accused on their part, had to prepare for the battle ahead. So it was done.

It was a convention that whenever major political issues or policies of the Government or motions of great importance were to be introduced and debated in the National Assembly, the Uganda People's Congress members of the Assembly House would meet, as a parliamentary group, to assess the situation. Accordingly, the group debated Ocheng's motion, and, as it happened, it was unanimously agreed to reject it. That meant, among other things, that it would not be debated in the National Assembly. However, this was a motion of public importance, and the public would have demanded to know the truth of the matter. So reasons for rejection had to be given. Undoubtedly, the Prime Minister and his colleagues explained their position in the affair. And they seem to have satisfied all the members present, including some of the conspirators.<sup>56</sup>

Returning to the Ocheng motion, in it there were two constitutional issues involved, and both had political connotations. Firstly, whatever might have been the truth, to debate the motion would have cast a shadow on the integrity of the Prime Minister and his colleagues. Indeed, there is no doubt that the public would have lost confidence in the Government. It must be remembered also that, by this time, the dissenters within UPC had become more vocal. Therefore, politically, the motion would have been disastrous to the ruling party and no political party, however, democratic, wishes to commit political suicide if it can help it. Secondly, and more importantly, it was an open secret that the Uganda Government's attitude to the then civil war in the Congo was ambivalent. In public, the Government supported the legal regime of the Democratic Republic of Congo, but privately, and like her sister countries of Tanganyika and Kenya, she sympathised with the rebel leaders of the Eastern Province of the Republic.<sup>57</sup> It was, therefore, not unexpected for the East African Governments to give moral and material support to the rebels, including keeping in safe custody any property entrusted to them by the rebels. Indeed, the Prime Minister did not, at the party

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55 For his profile, See: Kivejinja, *op.cit.* ch.7.

56 Kivejinja, *ibid.*

57 Mukombe – Mpambara: The Gold Allegation: Mimeo: UPC. Archives, Kampala, 1969.

caucus meeting deny that gold ivory and other property might have found their way into Uganda.<sup>58</sup> To have revealed this information, and the revelation was inevitable if the debate went ahead, would not have been in Uganda's public interest. The country would have been accused by the Congolese legal regime of assisting its enemies. The accusation would have damaged Uganda's international reputation besides creating an enemy on her border. This kind of duplicity by governments is well known and practised in international diplomacy.<sup>59</sup> In Britain and the United States of America, it is customary for a minister to make a vague statement about the affair as an explanation. If anyone insists on knowing the truth, the minister is entitled to say that disclosure would be against the public interest and normally the minister's word is conclusive. Thus, there was nothing remarkably unusual about the decision taken by the UPC Parliamentary group to reject Ocheng's motion. Nevertheless, its rejection by the UPC Parliamentary group was a blow to the conspirators. They had to wait for some days before another opportunity presented itself. They did not have long to wait.<sup>60</sup>

The Prime Minister and some other members of the National Assembly had occasion to go up-country and this, prompted the promoters of the motion to gather courage and reassess the situation. Accordingly, the conspirators decided to revisit the Ocheng motion, but on this occasion, it would be considered by the Cabinet rather than by the UPC Parliamentary Group. Here, the members of the conspiracy within the Cabinet would lead the debate for reversal of the Parliamentary group's earlier decision. So, on the 4 February 1966, the Cabinet met behind closed doors and the conspirators were able to trick their gullible colleagues into agreeing to the reversal. The UPC Parliamentary group was not informed of the Cabinet's decision until the afternoon of that same day, shortly before the motion was due to be debated in the National Assembly. That the Cabinet was legally entitled to meet in the absence of the Prime Minister is not in doubt but to reject the previous advice of their supporters in the Assembly was highly suspect. Moreover, by convention, they should not have accepted and debated such an important motion in the absence of the leader of the government who was in the country, and who, moreover, had advised against it. Politically, the Cabinet had blundered in ignoring the most influential members of the party, the Parliamentary Group. In fact, this amounted to a tacit withdrawal of confidence from the Prime Minister and an attempt to rule without the party.<sup>61</sup>

58 Legal Notice number I of 1966.

59 Hewitt Gavin: Terry Waite: why was he kidnapped? Bloomsbury, London, 1991, ch.14.

60 The fact that Obote was on "safari" upcountry assisted by the conspirators.

61 See: Akena Adoko: The Uganda Crisis, 1969, page 133.

According to the doctrine of ministerial responsibility, the Cabinet should have resigned since they fundamentally disagreed with their leader, on a matter of great public interest. This might have forced the Prime Minister to recommend the dissolution of Parliament, but dissolution would not have satisfied those who were against him. The truth of the matter was that, under Obote, UPC had become the most attractive party in the country. The party had proved that it had the capacity to govern, and, an election following dissolution would most likely have resulted in a vote of confidence in the same government. Moreover, the election would have delayed the plans to remove Obote from office. The Cabinet members who supported the Prime Minister did not resign either. Obote was away and they were confused. Resignation might have meant that they were deserting him. In addition, it would have given his opponents ample opportunity to execute their plans without interruption.<sup>62</sup>

The knowledge that the Cabinet had somersaulted on the motion threw the UPC Parliamentary group into a state of panic and confusion. If the group decided to oppose the motion it would mean that the party was split in the middle. If they supported the motion it would mean that the party doubted the integrity of their own leaders including the Prime Minister. Either way, they were bound to lose. Amid the confusion that ensued, the Parliamentary group chose to save the unity of the party rather than the integrity of their leaders. The conspirators had won the battle, but not the war. The motion would at least be debated. The standard of debate was one of the highest ever witnessed in the National Assembly. This is ironic, for the motion under discussion was also one of the lowest in inception and purpose because it was founded on conspiracy and treachery against the UPC leadership. Nevertheless, every speaker was charged with emotion, sensing victory or doom, depending on which side he supported. For the motion it was said by its mover and its supporters thus:

“If I live a hundred years, or for a hundred hours only, this motion shall always be my greatest contribution to my country Uganda.”<sup>63</sup>

“Our blood, the precious blood was shed because of this man and fellow conspirators so that they may get some gold ...”<sup>64</sup>

“Supremacy of the law, and the long arm of the law are the principles at stake. In accepting this motion we approve and endorse both ... But the other allegations of a plot to overthrow the Uganda’s Constitution is indeed very serious; its truth or its falsity I am

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62 Amongst his strongest supporters was John Kabonge who had been sidelined by the party at the Gulu UPC Conference.

63 Daudi Ochieng.

64 Grace Ibingira.

not sure of either. It is therefore, only right that an investigation to expose their falsity or to establish their truth out, into them.<sup>65</sup>

Against the motion it was said:

“I challenge him to repeat these charges outside this House where libel is a subject of court action and damage ... I am willing to resign from the ministerial post on one condition alone, that Ocheng, or one of you repeats the accusations anywhere outside the House.”<sup>66</sup>

All these charges are not backed by any written complaints or by an affidavit. Corruption exposures are now Ocheng's speciality. I do not grudge him the job, but I would like to ensure that he does the good job well by following simple rules. Of reporting any crimes ... Is he afraid of libel ... Go ahead Mr Ocheng... your target is now in sight ... charge a few more ministers of corruption and bribery... the public hear accusation but not its motivations ... might acceptance of the motion not imply that this very House had accepted accusations against our Premier and two of his ministers? clarity is of the essence, much more so for sound reasons... Thus, for the first time, this House has seen ministers clash here. It has seen ministers talk and reveal what they should not. Judging by the trend of these unusual occurrences, we are going to the dogs, we are heading for trouble... It is said that one group of ministers are supporting Opolot to topple the Government and they regard Amin as a stumbling block to them and hence all this big outcry for his removal forthwith. Mr Speaker, this debate is of the lowest standard. Rumours, hearsay and falsehood are being aired from this House. I have taken up the cue and I have said all that I have heard ... Implementing this motion is no solution at all. Only one thing can save us. Firm and very firm action by the Uganda Government.<sup>67</sup>

Others spoke:<sup>68</sup>

All this notwithstanding, the motion was passed with one dissenting voice that of John Kakonge. Uganda was thrown into the darkness of utter confusion. Instead of central direction of purpose, the nation witnessed the chaotic situation with every statement and action based on rumours, innuendos and guesswork. Uncertainty replaced stability. The leaders who had been entrusted with the Government of Uganda had decided to divide it. This was one moment in their history, when Ugandans felt they were leaderless. There were people who believed that the Prime Minister would resign. Some people contemplated his flight from the country and yet others went so far as to advise that

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65 Abu Mayanja.

66 Sam Adoka.

67 John Kakonge.

68 Felix Onama, amongst others.

power of government should be handed over to the army.<sup>69</sup> The Prime Minister was doing none of these things. He took some time to return to the capital. He was in touch with some of his closest advisers and was thinking and planning the right course of action to take. Thereafter, he was able to act and acted so swiftly and effectively that he took both his critics and supporters by utter surprise.<sup>70</sup>

After the passing of the motion, the House ordered the immediate suspension of Idi Amin from the Army and the holding of an inquiry into his bank account. The decision by itself was not constitutionally important. Its importance lay in what was implied. A slur had been put on the character and integrity of the Prime Minister and two of his cabinet colleagues. In supporting the motion, the Cabinet had appeared to endorse the allegations of corruption. As one speech followed another, in the National Assembly, it must have been obvious even to the admirers and supporters of Obote that he was implicated in the allegations. The tide of political power was flowing to the advantage of the conspirators. The Obote loyalists tried to defend him but they were doing so against heavy odds. The passing of the motion was a curtain raiser to bigger issues that were to follow.

The nation was tense with expectations. Everyone waited anxiously for the next move, and more importantly, for the person who would make the move. Speculatively, the then President could have taken the first constitutional step following the passing of the motion. Under the Independence Constitution, the President was empowered to remove the Prime Minister, if he had lost support of the National Assembly. The passing of the motion presented that possibility. The same motion that the Prime Minister had rejected and persuaded his supporters in the party to do likewise had now been accepted and passed by the same people, including some of his closest associates in the Cabinet. It would have been feasible for the President to assume that this was tantamount to a vote of no confidence in the Prime Minister and proceeded to remove him from office.

Constitutionally, the President might have removed the Prime Minister from office and invited one of the conspirators to form a new government.<sup>71</sup> That this alternative was not considered saved Uganda from the catastrophe of a civil war. There is little doubt that the country's leadership was divided on the motion and that each faction might have found support in the country and in the army. The inability of President Mutesa to act does not mean that he considered the possibility

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69 See: Ibingira Grace: *African Upheavals since Independence*, op.cit.

70 Glentworth G. and Hancock, IR: "Obote and Amin: Change and Continuity in modern Uganda politics in *African Affairs* 72, number 298 (1973).

71 In Australia, similar scenario, Prime Minister Whitlam was removed by the Governor. General (representing the queen) and replaced with the leader of the opposition whom the Governor believed command the support of Parliament.

of a civil war. On the contrary, through his own writing later, it is known that he detested Milton Obote and would have welcomed his downfall through any means. The failure to resort to the constitutional procedure by the President would indicate that he was privy to other methods of removal, which were considered more effective. In his book, *The Uganda Crisis*, Akena Adoko, speculates that after the passing of the motion, the conspirators planned to remove the Prime Minister by assassination.<sup>72</sup> The idea of assassination sounds more plausible when other prevailing factors at the time are taken into consideration.

Firstly, not many UPC members of Parliament believed that their leader was guilty of corruption as alleged even though most wished to see the allegations investigated. Secondly, the position of the army was not clear. It must have been obvious to the conspirators that most of the troops were loyal to Obote. Therefore, had the President made a constitutional attempt to remove the Prime Minister from office any new regime might have found it problematical in establishing legitimacy in the country? On the other hand, if Obote was assassinated the situation would have been easier to control. He would have left behind no other person of the same political stature. He would have died with the stigma of corruption still attached to his name. In politics it is not worthwhile to take a momentous decision unless it is followed by an action, which will be guaranteed a fair amount of success which success, moreover, must be backed by political power. There was uncertainty still as to which side the army would support.

It was Obote who took the next step. On the 12 February 1966, he returned to Kampala, the capital, to face his critics. It was, however, not a *Caesar* type return with conquests and spoils to his beloved Rome. At the time, nobody, including the Prime Minister himself, knew exactly what would be the course of events that would follow. In Kampala, the Prime Minister denied the allegations and vigorously defended his character and the integrity of his other co-accused colleagues. Many of his supporters, who had, like lost sheep, wavered amid the confusing events, began to rally to his side and show how loyal they had been. Some suggested means to reach a solution. Later on, the Cabinet met and the Prime Minister challenged any of his colleagues who believed in the allegations to resign from the Government. None did. Subsequently, the Cabinet decided to appoint a Judicial Commission of Inquiry to investigate the allegations. To ensure impartiality, no lesser persons than High Court Judges of the neighbouring countries of Tanganyika and Kenya were appointed to be members of the Commission. There has been a great deal of speculation about the contents of the Commission's report which was never published while Obote was still in power.

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72 *Ibid.* we have not found any other evidence to support this allegation.



However, the evidence that was received in public by the Commission, the behaviour of some of the key witnesses to the Commission, and the number of revelations which have been made public by many people who were closely connected with the events of the period leave little doubt that the Prime Minister was telling the truth or that a great deal pertaining to the allegations had been merely speculative.<sup>73</sup>

The critics of the Obote government were ready to say that the report was not published because it contained the truth of what was alleged.<sup>74</sup> On the other hand, those who supported his government maintain that what was revealed in the public hearings exonerates those who were accused and publication of the full report was withheld because it would not have been in the public interest to do so because of the Government ambivalent policy towards the DRC already alluded to. In view of what has already been said in this Chapter and what the members of the Commission said, the latter view seems to be more plausible.

During the few days following the Premier's return, revelations were made as to who was behind the plan to overthrow the government. It was alleged that a number of soldiers and officers were being trained to stage a *coup d'etat*. On the 22<sup>nd</sup> of February 1966, the Prime Minister called in advisers and decided to arrest the situation. It was decided that the members of the Cabinet who had been actively engaged in the plot to overthrow their own government should be arrested and deported.<sup>75</sup> A Cabinet meeting was summoned for seemingly routine business but for the plotters who included the four ministers implicated in the conspiracy to remove Obote from office, it would be the last Cabinet meeting they would attend for a very long time, if ever.<sup>76</sup> Two days later, the Prime Minister suspended the Independence Constitution, abolished the post of President and Vice-President; and assumed the powers of government. It is said that it was, with reluctance and torment that Obote carried out this exercise. Like Roman *Brutus* who slew *Caesar*, Obote suspended the Constitution, not because he loved it any less, but because he loved Uganda more.<sup>77</sup>

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

74 The Commission of Inquiry into the allegations included eminent judges from Kenya and Tanzania.

75 These were Hons. Ibingira, Kirya, Magezi Dr Lumu and Mathias Ngobi.

76 In fact, with the exception of Dr Lumu, the rest lived long enough to be released and serve in subsequent Cabinets.

77 Obote made a statement to that effect after the events of the overthrow of the Constitution, which was reported in the Press on 14 February 1966.



The Prime Minister's act was obviously unconstitutional. From the day the Constitution was suspended until the 15 April 1966, when a new constitution was passed by Parliament, Uganda was ruled by a *de facto* rather than a *de jure* government. In the meantime, following the suspension of the Constitution, the country experienced a measure of instability and feared the establishment of dictatorial rule by decree. However, on the 24 February 1966, the Government approved the Prime Minister's action; and nearly two months later, the Prime Minister laid before the National Assembly, proposals for a new constitution, thus bringing to an end the Independence Constitution and ushering in, the 1966 Constitution.<sup>78</sup>

Analysing the events of that period and the provisions of the 1966 Constitution, the Independence Constitution of 1962 was neither suspended nor abolished. What happened was that only those parts which dealt with executive powers and Head of Government were altered in order to merge the post of the President with that of the Prime Minister and create an Executive President. However, the changes also brought to an end the federal form of government and gave the National Assembly considerably more powers than those it had enjoyed under the 1962 Constitution. The rest of the constitutional provisions were unaffected.<sup>79</sup> The provisions relating to the Judiciary, the Public Service, the Army and the Police, the Kingdoms and District Administrations, the National Assembly, and the Government Departments remained more or less as before. In other words, apart from the posts and functions of the Executive and Head of Government, which were merged, and the unitary form of government which was introduced, most of the other fundamental laws of the state continued in operation. In suspending the Constitution, the Prime Minister had failed to observe the rules which ascertain the will of the sovereign within a state. The decree of suspension would have been invalid if it had been based on the 1962 Constitutional provisions. The decree had to be founded on a different legal norm rather than the constitution. The norm could only come into play with the suspension and later on, the abolition of the Independence Constitution of 1962. The norm turned out to be an effective revolution.<sup>80</sup>

The suspension of the Independence Constitution and the establishment of the rule by decree ended the period of the conspiracies. However, the strife in the

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78 Popularly known as the Pigeonhole Constitution.

79 *Ibid.*

80 See: Kanyeihamba, G.W: *Constitutional Law and Government in Uganda*: E.A.L.B., Kampala, Nairobi, Dar-es Salaam, 1975, pages 133-141. Also See: the judgment of Saldhan in *Zaribwije and another v Nega and another*, Civil Suit number 928 of 1965 in which he took judicial notice of a coup d'etat.

country continued. Public opinion in Uganda was divided a long traditional and non- traditional lines. Most people in the non-kingdom districts and many radicals in the country welcomed the changes which were regarded as the deathblow to the feudal and traditional elements which they had for long blamed as hindrances to the smooth development of the country. The moves were interpreted by radicals as a positive approach towards the unification of the nation and the creation of a strong and effective central government.<sup>81</sup> The non-kingdom districts were jubilant because they saw in the changes, the whittling away of the privileges of the federal states which they had always resented and opposed. It is to be noted, that while appreciating the new changes, the majority of this group viewed with apprehension the prospects of an indefinite rule by decree with apprehension. They therefore, hoped that the decree was a temporary device through which permanent and democratic institutions would be worked out.<sup>82</sup>

The federal states, other than Buganda, held a different view. They saw the changes as an attack on their privileges and vested interests and, certainly the old leaders within these states regarded the changes as a symbol of doom. Notwithstanding their disappointment, they were prepared to succumb to the inevitable. Although reduced in status and importance, most of them realised that nothing could be done. Like a conquered nation, they looked forward to a favourable truce that would make the new order of things more tolerable.

However, Buganda's response to these events was predictably caustic. It is difficult to determine what the general rank and file of the Buganda population thought. Whether or not their opinion was reflected in their leadership is doubtful.<sup>83</sup> Within the kingdom's leadership there was a sense of utter disappointment. Obote's action was considered unlawful, unconstitutional and anti-Buganda. It was generally believed that Buganda, through her leadership, would resort to any means available to fight against the new regime. However, as on previous occasions, nothing positive was done during the vital months between the "suspension" of the Constitution and its formal abolition by the National Assembly. It is this period that would have been favourable to any forces which wished to disrupt the new hegemony in the State. Everything was still uncertain and the new regime was engaged in political and diplomatic manoeuvres of establishing recognition and legitimacy. Once this legitimacy was established in the country it would be too late for its opponents to challenge it and Obote. As it

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81 East African Standard: 10 October 1967.

82 The 1967 was supposed to be a response to that expectation.

83 See: The evidence of Messrs. Mahmood Ntege-Lubwana and Aloysius D. Lubowa in Uganda Crisis, op.cit. pages 129-131.

turned out, the Buganda leadership waited until the National Assembly had lent legality to the Obote decree by promulgating the 1966 Constitution before they did anything. By this time, the new regime had been recognised by many states. Authority had already been established throughout the country and, if there were any areas of unrest, the Government had contingent plans for any emergency, well in hand.<sup>84</sup>

By the time the new Executive President considered it safe to introduce proposals for the revolutionary and transitional Constitution of Uganda, few people seriously doubted the effectiveness of the decree. Only Buganda had the lingering temerity to offer a challenge to the new regime and when the challenge came most strategists considered it a kind of joke. Immediately after the National Assembly had promulgated the new Constitution, the Buganda leadership offered a rhetoric defiance to the new government which achieved very little by way of Constitutional or political gain.<sup>85</sup>

The reasons for Buganda's failure are not difficult to find. As has been noted already, Buganda had no foresighted leadership. The leadership was nothing more than an introvert oligarchic band of frightened men. The enlightened among them were caught in suspended indecision. They had realised that the fate of Buganda lay with the rest of the country and they would have liked to go along with caution, moderation and co-operation rather than defiance. At the same time, the name of Kabaka withheld their wisdom like magic. They were afraid to disagree with the more traditional elements who shouted for the blood of Obote and his new government. The latter still held onto the feudalistic idea that the word Kabaka was the beginning and end of everything. These were the political demagogues of Buganda who lacked the tactical ability to plan any political or military action on their own. They talked a great deal in abstract terms and did very little that could give impetus to their followers. Thus, Buganda lacked the right kind of leadership at a time it most needed it. While Obote appealed to the masses in the whole country and his actions transcended tribal allegiances, the Buganda leadership did not look beyond Buganda boundaries.<sup>86</sup>

Whereas the Central Government was united behind one man with one purpose, the Buganda leadership was completely divided as to what should be done.

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84 The violence and riots expected by many observers did not materialize.

85 Tony Hughes, *op.cit. ibid.*

86 Hancock, LR: The Buganda Crisis of 1964, in *African Affairs* 69, number 275, pages 109-23.

More importantly, there was the third political factor of the Army. During the colonial period, the majority of the Army recruits came mainly from the Northern Region of Uganda and they still formed the majority of the troops and officers after independence. Obote came from the North. Those who opposed him saw the fight as between the Northern Region and the South. This assumption led them to think that if Obote was removed from office, the Army would intervene. There was thus a psychological fear that a fight with Obote meant a fight against the armed forces. Although their loyalty to the illegal government of the country was not seriously put to the test during this struggle, it was believed that had the conflict turned into a military confrontation, the army would have thrown in their lot with the Obote faction rather than with the Kabaka's. Hence, the desperate moves by the latter to get the United Nations involved and to appeal to the aid of foreign troops.<sup>87</sup> Buganda and the other federal territories were well represented in the public service. Educationally, the Baganda were more advanced than the other territories. By temperament, the colonial administrators had found it more expedient to appoint civil servants who came from the kingdoms and, therefore, appreciated loyalty better than recruits from the non-kingdom regions.

It is possible then that the civil service could have sabotaged the policies of the new regime. However, there were three factors, which ruled out this possibility. In the first place, many radicals welcomed the changes. Moreover, the civil service contained the more educated and the more sophisticated members of the community. They saw the conflict, not as one between one ethnic group and another, but as a conflict between feudalists and traditionalists, on the one hand, and modernists and radicals, on the other. Secondly, Obote and his Government were magnanimous in their treatment of the civil servants from the federal states who were employed not only in the Central Government but also in the Federal Governments. There were no purges or victimizations. Some people called this political bribery. Others called it statesmanship but whatever view one takes, it worked for Obote. Thirdly, Uganda civil servants had been trained in the best British tradition. They were supposed to be neutral and impartial in their dealings with their political masters and so they were.<sup>88</sup> It is also true that most of the public servants had come to accept Uganda as one identity and were able to interpret the difficulties as affecting the whole nation rather than only their kingdom, district, region or tribe.<sup>89</sup>

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87 Africa Report, December 1966.

88 Apter, David: *Political Kingdom in Uganda*: Princeton, NT Princeton University Press, 1967.

89 Goldthorpe, E: *An East African Elite*, Makerere College Students, 1922-1960, EAISR, OUP, Nairobi, 1965.

Furthermore, President Obote, unlike Kabaka Mutesa, was well known internationally, long before he became Prime Minister. He had been involved in such movements as Pan-Africanism and the struggle against colonialism. He had attended many international conferences and meetings where he did not fail to contribute ideas to the discussions. He was already so well known that the international community recognised him as a master of the political game.<sup>90</sup> The Kabaka's reputation was more of a romantic and traditional African monarch than of a modern political tactician. Moreover, Kabaka Mutesa was perceived as representing divisionism and tribalism while Obote stood for unity of Uganda as one nation. Consequently, Obote was able to command the sympathies and political respect of the international community. This can be exemplified by the immediate recognition accorded to his regime by nations of varying political systems after the declaration of the decree suspending the 1962 Constitution.<sup>91</sup>

## 4.2 MONARCHISM GOES INTO HIBERNATION

Neither the suspension nor the eventual abolition of the 1962 Independence Constitution immediately affected the existence of traditional rules in Uganda. These events only reflected the ascendancy of the representatives of the people over the traditional and hereditary rulers. The Government decree had indicated that the challenge against the wishes of the elected representatives could not be taken lightly. The abolition of the Constitution reinforced the idea of the power of politics, warned the rulers that unless they agreed to abide by the new rules their days were numbered. We have seen how the rest of the rulers had accepted the changes, albeit reluctantly, and how the Kabaka of Buganda summarily rejected them. He was destined to fall from power and, in his fall, he would take with him the other traditional rulers only to be reinstated after 1986 by the then revolutionary Government of the NRM.<sup>92</sup>

The Kabaka's stand was in the event to prove catastrophic for him and his kingdom but worse was still to follow. Shortly afterwards, a new Constitution, the so-called "pigeon hole or "revolutionary" Constitution was enacted. Many of the provisions of the new Constitution departed in a fundamental manner from those contained in the Independence Constitution. It introduced a unitary form of government and abolished the federal and semi-federal structures "for ever."<sup>93</sup> The special positions and privileges hitherto reserved for the federal states were swept

90 Gukiina, Peter.M. Uganda: *A case study in African Political Development* op.cit.

91 Legum Clin, ed. Africa: Contemporary record Volume 5; 1973, Praeger, New York.

92 African Affairs 69, number 275, April 1970, pages 109-123 and the Uganda Constitution, 1995.

93 Preamble to the Interim Constitution of 1966.

away. Buganda and her supporters, quite rightly, interpreted the new Constitution as a betrayal of the principles under which they had agreed to be bound with the rest of Uganda under the Independence Constitution. The Independence Constitution had entrenched provisions, which required consultation with the consent of the regions affected by any constitutional amendments to it. These provisions were completely ignored. It was argued on behalf of Buganda that even if the new constitution was good for the country it would have been necessary for the Government to seek a fresh mandate from the Uganda electorate. The National Assembly had, in fact, come to the end of its statutory period of five years.<sup>94</sup>

The Uganda People's Congress had won the elections of 1962 with the Independence Constitution as the supreme law of the country and their mandate did not include the abolition of the same supreme law, which was their creator. Had not Bracton, writing in the thirteenth century said: "*The King himself ought not to be subject to man but to God and to the law, because the law makes him King.*"<sup>95</sup> The National Assembly had been modelled on the Westminster form of government, which, by convention, required the party in power to seek a new mandate if that party intended to introduce new policies that substantially differed from those it was elected to implement. Therefore, it would have been necessary for the ruling party to go to the country in order to make their new policies part of their new election campaign.

As it turned out, the new constitution provided that the members of the old National Assembly were deemed to have been elected for a further term of five years.<sup>96</sup> On the Government side, it was argued that the people wanted the changes and they had to be effected without involving the country in unnecessary expenses of new elections. Moreover, Buganda had been placed and was still under a state of emergency, a situation that was not conducive to proper elections.<sup>97</sup> It could also have been argued that the Government was moving away from the so called Westminster model of government and it would have been inconsistent with that move to resort to it for one procedure and abandon it for another. The convincing argument, however, was that the old constitution was dead and the new constitutional measures were founded on the successful revolution led by the Prime

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94 Having been elected in 1962.

95 In *De Legibus Et Consuetudinibus Angliæ*, (George Woodbine, ed.) 1915-1942.

96 The Interim Constitution, 1966.

97 See: *Mission to Freedom*, op.cit. page 3.

Minister. It is interesting to note that each side was claiming that their viewpoint represented the wishes of the people of Uganda.<sup>98</sup>

In all countries, it is difficult to ascertain public opinion on a particular issue at any given moment in time. This is especially more difficult in developing countries where a great number of people are illiterate and the means of communication are not fully developed. Public opinion in this respect is nothing more than the loudest voice of the minority. Initially, the leaders decide what they consider to be good for the people and the country and, if the choice is good, people who are knowledgeable or who are interested enough may give appraisal or criticism,<sup>99</sup> and this will constitute the magical formula of public opinion. It has been said, not cynically, that people have a right to be governed well and not a right to govern themselves.<sup>100</sup> The majority of citizens, whether in a developed or developing country, are indifferent to national issues. In most situations, the majority view in the country cannot be determined by what the masses thought at the time, but rather by examination of their reaction to the results of the events, which by necessity must be done after the event.

There is no doubt that Buganda was in a quandry. Its leadership was divided as to what should follow the promulgation of the 1966 Constitution. The majority of ministers in the Kabaka's government hoped that sanity would prevail and lead to some dialogue between their government and the Central Government with a view to settling the conflict. They realised that a head-on collision with the Central Government's forces would be disastrous for Buganda. In cautioning for sanity and doing nothing about it, these ministers lost control of the situation. The chiefs and the feudalist elements assumed leadership and called for stronger measures against the Central Government. The new Constitution had required members of the old National Assembly to swear allegiance to it and to the new Uganda leadership.<sup>101</sup> Six of the Buganda members of the National Assembly refused to do so. Without consulting their ministers, the Buganda leadership summoned a meeting of the Lukiiko to take stock, as it were. The first thing that meeting did was to pass a resolution congratulating the members who refused to swear allegiance to the new Constitution.<sup>102</sup> Draft resolutions for Buganda's secession, non-recognition of the

98 In light of political intimidation and electoral bribery, it is not possible at any given time to quest reasonably how many Ugandans will vote for what.

99 The majority of the unenlightened including elected representatives will simply follow what their leaders are instructing them to do.

100 Most African countries have developed in such a manner that people do not have the right to govern themselves.

101 Argus. 15 March 1966.

102 See: the proceedings of the Buganda Lukiiko (Parliament), February, 1966.



Obote regime and the evicting of the Central Government from Buganda were presented and debated, at length, and not surprisingly, there were some dissenting voices. Eventually, the motion, “*that this Lukiiko resolves not to recognise at all the Uganda Government whose headquarters must be moved away from Buganda soil*” was passed.<sup>103</sup> The die was cast. Some of the speeches in the Lukiiko supporting the motion left little doubt about the new manoeuvres by Buganda leaders. One characteristic speech incited the people in the following terms:

Gentlemen the time has come to carry out our plans...the essence of this motion may be analogically explained in terms of ants. Red ants live in their anthill and are divided in two: The Queen who is only one and many soldiers whose main task is to see that none touch the Queen at all. Should any try to do so, the alarm is raised, war begins and the soldiers fight to death before the Queen can be harmed. Thus Obote’s constitution is a move to harm the Queen, Kabaka Mutesa II. We have now raised an alarm by calling this Lukiiko. Let the fight begin at once, let all die to save the Queen ...<sup>104</sup>

Clearly, this was an utter rejection of the new Constitution by the Buganda Lukiiko and a direct challenge to the central government of Obote, and so it was regarded by the latter. When Obote heard about the resolution he is reported to have said: “*This is an act of rebellion. Government will study it and deal with all those involved.*”<sup>105</sup>

In the meantime, having passed the resolution, the committed Buganda county chiefs hurried back to their areas to prepare for war and the Central Government began to receive alarming reports that Buganda was planning to secede from the rest of the country and that weapons and ammunition were being stock-piled in the Kabaka’s palace at Mengo.<sup>106</sup> It was also rumoured that ex-soldiers and other able-bodied persons had been summoned to go to the palace to await the Kabaka’s orders. Although the Buganda authorities continued to explain these movements as intended for paying homage to the Kabaka, strategists in the Central Government had come to believe that the whole exercise was in preparation for a confrontation with the Uganda authorities. The County chiefs no longer hid their intentions. They began inciting the Baganda to be ready for war. By the 23 May 1966, the rebellion was so advanced that the Uganda Government decided to act. Three of the more defiant County chiefs were arrested and detained.<sup>107</sup> These arrests were followed by the beating of war drums in many parts of Buganda. Many unruly

103 Reported in Transition Magazine; 1966.

104 See: Proceedings of the Buganda, Lukiiko, op.cit. *ibid*.

105 Akena Adoko: The Uganda Crisis, op.cit.

106 Hansard, 1966-7

107 Kasozi ABK, op.cit, page



elements in the kingdom decided to take the law into their own hands. Roads were blocked or damaged. Law and order broke down in many parts of Buganda. Wanton destruction and damage of government property followed. Chaos and anarchy were let loose. Lawlessness was the order of the day. The Government could no longer tolerate this state of affairs. They decided that rebellion had to be quelled. To that end, the Cabinet met and decided to send a small detachment to investigate the existence or otherwise of arms and ammunition at the Mengo Kabaka's palace. Unfortunately, however, when the unit arrived at the palace gate the palace guards opened fire and the unit was virtually wiped out in the exchange of fire that followed.<sup>108</sup> Inevitably, the Uganda Army found it necessary to dispatch reinforcements, and after a lengthy spasmodic exchange of fire, the palace was surrounded but miraculously the Kabaka escaped undetected by jumping over the wall of the palace and eventually found his way to the United Kingdom where he settled and later died, a poor and broken man. The circumstances surrounding the death of the Kabaka would not endear the Baganda to Obote for generations.<sup>109</sup>

This sorry episode symbolised the tragedy of Buganda which at the time possessed highly educated and enlightened people and the best economy in the whole country, yet failed to get leaders with the foresight that was required at this crucial time. The naivety with which they approached their relationship with the rest of Uganda would have been a good comedy if it had not been so tragic. A rugged band of ex-soldiers were thought capable of defeating a well-trained army with modern weapons. Reason would tend to lead to the inevitable conclusion that Buganda had been bluffing and did not expect the Uganda Government to act as they did. Nevertheless, it is only the unwise who would have been so gullible as to think that nothing would happen after a State's Army unit is gunned down. It is equally reasonable to assume that the Uganda Government did not expect the organised rebellion that followed. The President's comment quoted above shows clearly that he intended to deal with a few rebels and did not contemplate that the Kabaka would put up a real armed fight. That the Kabaka was proud is certain. That he was surrounded by knaves and incompetent advisers is now well known. There is no doubt that before the period of the conspiracies, the Kabaka was constitutionally, the most powerful man in the land. He was the Head of State and, a monarch of the most powerful and influential kingdom in the land. His privileges, immunities and powers, as President of Uganda, surpassed those of any other man in the land. As the Kabaka of Buganda his powers were almost absolute and his person inviolable. By way of personal and proprietary interests, the Kabaka

108 Akena Adoko: *Uganda Crisis*, op. cit., page 117.

109 Even after his death in 2006, many Baganda jubilated over "the event". The New Vision Newspaper.

lacked nothing. That he should have chosen to follow a path destined to destroy him and his kingdom remains one of the mysteries of Uganda politics. Mutesa II had been knighted by the Queen of England. He was an ardent admirer of the British way of life. Perhaps it is a sad commentary on his life that he he was a great historian to have remembered and appreciated one of the well known political sayings in the English language, “*power corrupts; and absolute power corrupts absolutely*”.<sup>110</sup>

The cost of the conflict was inestimable. For almost a generation, the Baganda lost a kingdom and a king. They also lost the greatest asset of any human community- pride. The rumpus that ensued in the wake of the rebellion took with it many Ugandan lives.<sup>111</sup> Civilians, soldiers and policemen lost lives, most of them innocently. Property of all description was either destroyed or damaged. On top of the Emergency that had been declared, the Government found it necessary to impose a curfew for some time which made the lives of the people miserable.<sup>112</sup> On the credit side, the rebellion awakened many Ugandans to the dangers and futility of divisionism and tribalism. It paved the way for the abolition of the monarchies and the constitutional heads and the establishment of republicanism. It was the forerunner of the Uganda People’s brand of socialism, which will be examined later. The kabakaship and other traditional institutions were abolished.<sup>113</sup> At this particular juncture in Uganda’s history, no one could have foreseen that the Kabakaship and other monarchies in Uganda would one day be restored, and once more assume pride of place in the kingdoms but this time, with a difference.<sup>114</sup>

Sadly however, and as if history truly repeats itself, the late 2009 and early 2010s witnessed yet another clash between the Kabaka and his government and the President of Uganda and his cabinet. This led to the closure by the central government of the Buganda, central Broadcasting service, which as we write is still closed.

#### 4.3 THE REPUBLICAN CONSTITUTION OF 1967: A PRELUDE TO INSTABILITY

Both the preamble to, and article 145 of the revolutionary Constitution of 1966, provided that the constitution would continue in force pending the establishment

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110 Winston Churchill.

111 Kasozi: *The Social Origins of Violence in Uganda*, op.cit.

112 Chapter 3.

113 infra.

114 This was one of the oarchest acts of the NRM administration after taking power in Uganda.

of A Constituent Assembly by the National Assembly, for the enactment of a new constitution. The country was expectant, and did not have long to wait.

Government declared that the year 1967 would witness the introduction of proposals for a new constitution. There then followed, throughout the country, speculative debates and forecasts of the shape and content of the new constitution. There was one subject on which almost everybody was agreed. It was widely expected that the hereditary elements in Uganda would be abolished by the new constitution. The powers of the regions and the special status of the District Administrations were other issues that occupied the minds of most observers. It was felt that if the country was to be really united, these should be reduced in number or abolished altogether. The speculation did not last long. Early in 1967, the Government published its proposals for the new constitution. It was made clear that the proposals were tentative and ample time would be given to all and sundry to think about and debate the proposals.

Nevertheless, the timing was the subject of much criticism. The biggest and most affected region, Buganda, was still under a state of emergency, and many people, quite legitimately, expressed the view that there would be fear for anyone in Buganda to propose amendments or give any opposition to the Government's proposals while emergency powers were looming in the background. It is useful to bear in mind that Kampala, the Capital of Uganda was, and still is, situated in Buganda. It was the seat of the National Assembly, Makerere University, that bastion of academic freedom and thought, and of both Uganda Radio and Television services. All the major national newspapers, periodicals and magazines were printed and published in Kampala. It was therefore obvious that the main appraisers and critics of the Government proposals would be resident within the emergency area. Assuming that the fears were genuine and not politically motivated, the persons who expressed them so publicly must have been extremely brave, otherwise they ought to have realised that the mere revelation of their opposition to Government's constitutional proposals might have prompted the people who wielded authority to resort to the emergency powers in order to silence them. However, as it turned out, nobody was arrested for expressing his or her fears or for vehemently criticising the proposals afterwards.<sup>115</sup>

Indeed, a study of the debates which followed the publication of the Government's proposals shows that many proposed amendments and most of the damning criticisms came from groups and individuals within the Buganda area.<sup>116</sup>

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115 Africa Report number 11 December 1966.

116 See: the letters to "Transition" Magazine, 1966-1967.

The Government listened, dropped some of its own proposals, adopted many of the amendments and a redrafted constitution was resubmitted to the National Assembly for further debate and approval. The freedom with which the proposals were discussed reflected the apparent calm and security that prevailed in the country. It also showed that the expressed fears of a one-man rule and dictatorship were, at that juncture, groundless. The satire and the criticism of the government contained in some of the literature circulating in the country at the time shows that at least the Press was free to express views on the constitution making exercise.<sup>117</sup> Critics of the Government of the day conceded that freedom of speech in Uganda still existed after the events of 1967.<sup>118</sup> In the end, the Constituent Assembly adopted the Government's proposals as amended and created a new Constitution for Uganda. For the first time Uganda became a Republic with an Executive President. Obote assumed this role with John Babiiha as Vice-President.<sup>119</sup>

The Republican Constitution of 1967 was a unitary one. In theory the Constitution was partly flexible and partly rigid. There were provisions that could be altered by the ordinary process of parliamentary legislation and there were those which were entrenched, particularly, those containing the more fundamental laws of the state. These could only be altered by the National Assembly if the Bill proposing such alteration was supported, on the Second and Third Reading by two-thirds majority of the elected members of the National Assembly and certified by the Speaker that it had been passed in accordance with the provisions of the Constitution and then assented to by the President.<sup>120</sup> The Constitution was the supreme law of the land and it prevailed against any other law which was inconsistent with it. Only Parliament could alter, amend or modify the Constitution, in accordance with the prescribed form and manner.

The President, besides being Head of State and Commander-in-Chief of the Armed Forces, was also Head of Government. The Constitution combined the presidential and parliamentary forms of government. The Uganda Government was democratically elected in the sense that it consisted of the members of the National Assembly, the majority of whom were directly elected by the people. It was the President, however, who appointed ministers and deputy ministers and assigned to them departmental and other state responsibilities. Analytically, the President was supreme in executive matters, while Parliament was supreme in legislative matters;

117 Uganda Argus: 27 July 1967; Weekly News, 14 July 1967.

118 Bundy, Emory: *Uganda's New Constitution*, EAJ, July 1966.

119 Had been Minister of Animal, Industry, game and Fisheries.

120 Procedures of Parliament.

the Judiciary was independent in judicial matters and the people of Uganda were through the power of the vote, politically supreme.<sup>121</sup>

The Constitution retained a multi-party system of government even though at the time it was enacted it was obvious that the opposition party was weak and was getting weaker through lack of organisation and desertions by many of its followers.<sup>122</sup> Although enacted “*in the name of all people of Uganda and generations yet unborn*”, the Constitution did little more than consolidate and safeguard the political developments that had come to be endorsed by the Government since independence. Perhaps more to the point, it was intended to clarify the political beliefs of the Uganda People’s Congress after the clashes and difficulties that the people of Uganda had faced in the period following independence. Consequently, it was provided that the Constitution and any other law in conflict with its provisions were subject to judicial review.<sup>123</sup> Under Article 26 of the Constitution, provision was made for the election of the President. Every political party that would have taken part in a general election was supposed to nominate one of its members as a Presidential candidate. Every candidate wishing to become an elected member of the National Assembly would have had to declare his support for one of the Presidential candidates at the time of nomination otherwise and unless he or she himself or herself was a presidential candidate, his or her nomination would have been void.<sup>124</sup> After the general election, the Presidential candidate nominated by the party which emerged with the greatest numerical strength of elected members consisting of not less than 40% of all the elected members of the National Assembly would become President. If no party obtained the numerical strength referred to or if there was a tie, then that general election would be null and void and a new one would be held within three months.<sup>125</sup>

However, if one of the parties had held the numerical strength at the preceding general election it would be entitled to form a new Government to last for two years.<sup>126</sup> The constitutional framers had visualised a situation where the President could have evolved under its provisions but without a working majority. Accordingly, Article 40 stipulated that if the winning party had a majority of less

121 In practice, the President and his ministers wielded greater process than those envisaged in the written letter of the Constitution.

122 See: Englom GF: *Crossing The Floor And The Tension of Rpresentation in East Africa: Parliamentary Affairs*, Volume 21 number 2/1967/8.

123 The Courts were vested with power to nullify Acts of Parliament and decisions of the Executive which they find in conflict with the provisions of the Constitution.

124 Article 26(1)(b).

125 Article 26(e)(ii).

126 Article 28(3)(i).

than ten of all the elected members then, it was entitled to elect such specially elected members as would give it a majority of not more than ten of all the members of the National Assembly.<sup>127</sup> In addition, there were three members who could become members of the National Assembly without falling under the categories of either directly or specially elected members. Under Article 40 (4), if a person became President, Speaker of the National Assembly or the Attorney General, he or she became a member of the National Assembly by virtue of his or her office.

The formulation and implementation of government policy was vested in the Cabinet, which consisted of the President, the Vice- President and such other ministers as might be appointed by the President. It had been a convention, since independence that all ministers automatically belong to the Cabinet in spite of the President's discretion. The Cabinet was collectively responsible to the National Assembly.

The Constitution divided Uganda into 18 local administrations in place of the old divisions between local government and administrations. These local administrations were known as districts and their powers and functions formed the subject matter of Chapter Eight of the Constitution. The Constitution also made provision for the Public Service and placed the powers of appointment, discipline and dismissal, of officers previously in the Public Service, in the hands of the President. In practice however, these powers were exercised by Service Commissions, namely, the Public Service Commission, the Teaching Service Commission and the Judicial Service Commission.<sup>128</sup> The administration of justice was vested in the Judiciary over which the High Court of Uganda which had unlimited jurisdiction in both civil and criminal matters, presided. Provision was also made for the protection of the independence of the Judiciary. In all other respects, the Republican Constitution, like any other Constitution, was a product of its time. The government, unlike its predecessor, had all the tools it required to pursue its policies of national unity and economic development. As regards the latter, it was, in common with her counterparts elsewhere on the African continent, inclined to follow socialist policies of development. Several years later, following the 1997 Constitution, the government issued a series of documents in which it set out its proposals for the "*Move to the Left*," which were the blue print for a mixed economy to which the Government was committed. However, these and other projected policies were rather rudely, interrupted by the 25 January

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127 Article 40(b).

128 See: Jeffries C: *The Colonial Empire and its Civil Service*, 1938 CUP, and Lee JM: *Colonial Development and Good Government*, Clarendon Press, Oxford, 1967.

1971, military *coup d'etat* which, though staged in the name of democracy, ushered in, as it turned out, one of the most brutal dictatorships Uganda has ever had.

In Constitutional terms, the Idi Amin *coup de'tat* was of little significance. It was a mere change of guards, so it was thought at the time. However, the reign of terror it subsequently visited upon the country was of great national and constitutional importance. It is discussed in the Chapter that follows.<sup>129</sup>

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129      Infra.

## CHAPTER FIVE

### THE AGE OF MILITARISM IN UGANDA

The period between 1971 and 1996 can be described as the age of militarism in Uganda. We noted in the last Chapter that the Move to the Left as envisaged by the government of Uganda People's Congress was rudely interrupted by the 1971 January Military *Coup d'état* after which Idi Amin emerged as leader of the country. Although at first welcomed by many Ugandans who had become disillusioned with the Obote rule, that *coup* was to usher in the country, as it turned out, one of the most brutal dictatorships Uganda has ever had.<sup>1</sup>

#### 5.1 THE ORIGINS OF MILITARY RULE

Traditionally, military rule arises either because the state is faced with external aggression of war or an internal state of civil war or insurrection or occupation by a conquering foreign power. Any of these occurrences would make it impossible for the state to carry on the normal business of government under civil rule. Inevitably, the rule of martial law is invoked and the organs of civilian government are suspended. Thus, traditionally military rule is supposed to be of dire necessity and by nature, transitional. As soon as the event that caused it comes to end, military rule ceases or ought to cease and the country returns to the traditional rule of a civilian government.<sup>2</sup> Both politicians and civilians dislike military rule because it is usually controlled by men not properly trained in the art of government and, because, more often than not, it is sustained by force rather than reason. Even in cases where it is absolutely necessary to impose military rule, the general opinion is that it is a necessary evil that should end as soon as circumstances admit. Most constitutional lawyers would not be prepared to describe military rule as a form of a constitution.<sup>3</sup> However, these days military rule has become a common feature particularly in developing countries. Military rule of today is different from the military rule of yesterday. Motives, justification and length of military rule of

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1 See: Graham: *Amin and Uganda*; Granada: London, 1980.

2 See: AW Bradley and K.D. Ewing: *Constitutional and Administrative Law*: (12 ed). Longman, London pages 673-681; De Smith: *Constitutional and Administrative Law*, eds. Harry Street and Rodney Brazier: (4 ed). Foundation of Law. Penguin Books. Harmondsworth, Middlesex, England, pages 509-510.

3 De Smith, op.cit. page 511.



modern states differ greatly from the traditional forms. The reasons for the establishment of military rule have become more political than before.

Some military regimes today justify themselves not by the dire necessity we have described but by alleging the corruption of civilian governments which they proceed from power.<sup>4</sup> Although most military take-overs of governments are accompanied by immediate statements that civilian rule shall be reintroduced as soon as the situation is normalised, many, it not all military regimes have lasted much longer than was envisaged while others have continued in office more or less on a permanent basis. If the idea is that a constitution prescribes the form and manner in which a country is governed, then there can be little doubt that in this context one can speak of a military constitution.

Reasons for establishing military regimes vary from one region to another and from one country to another. Some of the reasons for establishing a military regime are honourable, others dubious, while quite a number are unjustifiable. Some of the worst examples of military take-overs are to be found in Latin America. In this region, armies often ousted an elected civilian government from power simply because the military officers disagreed with the policies of the politicians in power. Such a military take-over can only be described as political.<sup>5</sup> The tendency of course, is for the new military regime to justify its action by branding the ousted government as corrupt or communist. The same practice has been followed in a number of African and Asian countries.<sup>6</sup> The latest example is that of Pakistan where the *coup de'tat* was prompted by the elected President's intention to remove the military commander from his post and the latter resisted with the support of the country's armed forces which declared him President instead.<sup>7</sup>

In some African countries, military rule has been established because the politicians were either genuinely corrupt or too incompetent to plan for any development that their countries badly needed. In others, the military authorities were inspired and coerced by agents of foreign powers or interests. These therefore, have been established as a result of imperialist and neo-colonialist manoeuvres. In a few African countries, the introduction of military regimes has

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4 Ginyera –Pinchwa AM Obote and his Times, NOK Publishers, New York, 1978, pages 231-232.

5 S.P.Huntington: Changing Patterns of Military Politics; Free Press of Glencoe, Inc, New York, 1962, pages 33-34.

6 John Johnson: The Role of the Military in Underdeveloped Countries, Princeton University Press, Princeton, NJ, 1962.

7 Currently that Army Commander is the President of Pakistan, Musharaff.

had no nobler cause than the satisfying of personal ambitions of the man behind the *coup d'état*.<sup>8</sup>

Whatever the cause, as soon as a military regime assumes power, the country's constitution or parts of it are suspended. Many of those who manned the organs of government under the civilian rule are either assassinated or thrown into jails. Institutions like the legislature and political parties are abolished. Martial law is declared and the general public is subjected to arbitrary rule. Only an insignificant number of military regimes ever do anything better than the civilian governments they have replaced. There have been some good examples of military rules notably in Egypt, Pakistan, and Nigeria after the civil war. Some regimes, though not particularly outstanding, can be appreciated for removing from power worse civilian governments hated or disliked by the population. Zanzibar, the Sudan, Somalia, Rwanda and the military coup that overthrew the civilian regime in Nigeria before the rule of General Ironsi, fall into this category. Opinion is divided on whether the overthrow of the Nkrumah government by military officers was a good thing. There is no doubt, however, that under Nkrumah, Ghana enjoyed a favourable status of development which slowed down considerably under the military rule. Most African radicals still consider Nkrumah as an African hero.<sup>9</sup> It is not inconceivable that were he to resurrect and visit many of the progressive African countries today, Nkrumah would be given a welcome befitting any popular head of state and a hero.<sup>10</sup>

Once they have tested the fruits of power, the soldiers become reluctant to relinquish the reigns of government. The desire to continue in office remains long after the motives for which they usurped power have ceased to exist. The desire of how to stay in office becomes their main preoccupation and the agony of the civilians becomes how to remove the soldiers from power. Military authorities may be good at imposing discipline in government departments and in some cases, they have shaken the civil service to the awareness of its duty. Beyond this point, only military regimes which have continued to rely on civilian advice have managed to score modest successes of development during their rule.<sup>11</sup> There can be little doubt that the kind of training and experience a soldier gets are intended to keep him in barracks or at the war front and not in the Cabinet seat.<sup>12</sup>

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8 President Doe of Sierra-Leone.

9 Phyllis M Martin and Patrick O'Meara. Eds. *Africa*, (3 ed). pages 161-162.

10 See: GW Kanyeihamba: *Constitutional Law and Government in Uganda*, EALB, Nairobi, 1975, page 140.

11 John Johnson, op.cit.

12 See: Alhaji Field Marshall, Dr Idi Amin Dada: *The Shaping of Modern Uganda*, Government Printer, Entebbe, 1976.

## 5.2 THE REASONS FOR THE FIRST COUP D'ETAT IN UGANDA

I once observed that writers on African constitutional law end up writing contemporary history!<sup>13</sup> At the time this observation was made, there was no indication that the Obote government would fall from power. On the contrary, it was the opinion of most observers at the time that besides the apartheid regime of South Africa, the Obote government was one of the safest, South of the Sahara. From about 1966, Obote had had no visible rivals for political power in Uganda. Uganda was so much identified with Obote both internally and externally, that the only question was who would replace him if he were to die in office rather than when he would be forced to give way to a better and well known leader. At one time, Obote himself had expressed the view that he was one of the few African leaders who did not fear a *coup d'etat*.<sup>14</sup> It is possible that by this he meant that he would not refrain from doing what he considered to be right for fear of a *coup d'etat*, but it is believed that he meant that the army could not overthrow him because it loved him. In Africa, few leaders last long without the support of the army. Obote had this support. The security forces were still led by the same officers who had helped him to overthrow and crash the Buganda Kingdom- a Kingdom he feared most because it never loved him. Moreover, the majority of the officers and soldiers of the Army and Air Force consisted of men who had been recruited from his own ethnic group in anticipation that they could be expected to support him in any internal political confrontation. Before the *coup d'etat*, Obote had reorganised the armed forces in such a way that only loyal officers who could be trusted, commanded the strategic units and departments. The same could be said of the Police Force, the Prisons Service and other security organs.

Over a period of eight years, Obote and his closest associates had so managed to build up a *corps* of government spies under the auspices of the so-called General Service Department that every public officer was closely watched and reported on.<sup>15</sup> The effectiveness of this department was further consolidated by arming its personnel with modern weapons and putting at its disposal almost unlimited funds and vehicles. Members of the general service penetrated not only the Civil Service, the Uganda People's Congress Party and the Cabinet but the Judiciary, the Police

13 GW Kanyeihamba: *Constitutional Law and Government in Uganda*, op.cit. preface.

14 In an interview before the Commonwealth Heads of Government Conference in Singapore, January 1971. as to why he was so confident, See: Justus Mugaju and Oloka-Onyango, eds. *Non-party Democracy in Uganda: Myths and Realities*, Fountain publishers, Kampala, 200, pages 20-23.

15 John Chick: *Uganda, The Quest for Control*, *The World Today*, 26 number 1 January 1976, pages 18-28.

and the Armed Forces as well.<sup>16</sup> The power of the National Assembly had been so effectively eroded and neutralised that in most cases the government ruled without it. Frightened of the general service and lacking in personal courage and convictions, the members of the Cabinet gave way to whatever President Obote and his closest advisers wanted done.<sup>17</sup> The local administrations and regional authorities had been stripped of their powers and influence so much so that whatever was proposed from the central government automatically formed part of the fabric of society without much formality.<sup>18</sup> Thus, on the face of it, the Obote government was invincible.

The question then is what went wrong? It has been suggested that foreign powers were behind the Uganda Army *coup de'tat* of January 1971 and this appeared to be the case within a few days of its occurrence.<sup>19</sup> For instance, the first voice to be heard on Radio Uganda after the *coup* was that of an unidentified non-African male person. The new military head of government was seen to drive around the Capital, Kampala in the company of two Israeli Army officers. Later, at an international press conference, Amin was asked whether the Israelis were behind the *coup* and his answer was that it was Obote who had brought them in the first place. These incidents were later explained, and there has been no evidence to suggest that the Uganda armed forces were assisted by foreign powers in ousting the Obote government from power.<sup>20</sup> Dr Kiwanuka then of the Makerere History Department, when giving a lecture on the events of January 1971, was asked this question and his answer was that anyone familiar with political events in Uganda since 1966 could not seriously suggest that it needed foreigners to overthrow Obote and his regime. There is considerable opinion that Obote was disliked by the Buganda region and Kiwanuka's observation at least alludes to this dislike.<sup>21</sup>

We have already referred to some of the mistakes the Obote government made.<sup>22</sup> In addition, it can be said that his policies alienated him from the Baganda, the feudalists, the traditionalists, the businessmen, the religious groups and the intellectuals. These were the same people who had made Uganda what it was by the time Obote took the reins of power. Whatever policies the government

16 Mahmood Mamdani: *Imperialism and Fascism in Uganda*: Heinemann and Tanzania Publishing House, Nairobi, 1983.

17 Akiiki Mugaju: *The Role of the UPC as a party of Government in Uganda*: *Canadian Journal of Africa Studies*, 10, number 3 (1976), pages 443-467.

18 See: Justus Mugaju and Oloka-Onyango, op.cit.

19 Uganda Argus 30 January 1971.

20 Statement by Idi Amin published in the People Newspaper, 27 January 1971.

21 Benedicto Kiwanuka: Statement in Uganda Argus, 30 January 1971.

22 *Supra*.

pursued could only be effectively implemented if prior consultations with and the consent of these people was sought and obtained. Unfortunately, no real consultations were made and no consent was given or deemed necessary. Yet, underneath the political glamour of Obote and his close associates, the influence of those he ignored loomed large and wide. Instead, he preferred to consult theoreticians and students.<sup>23</sup> These were people who knew little, if anything, about what the ordinary man and woman in Uganda wanted. Some of the people Obote associated himself with and sought advice from, lacked the integrity and conviction about the policies they advised him about. Yet integrity and conviction of purpose were the more necessary for the policies he was pursuing.<sup>24</sup>

There are two ways in which a controversial policy can be effectively carried out. The policy-maker must either obtain the consent of the people he considers most influential and to whom the policy is to apply, or, if such consent is not forthcoming, the policy must be such as will appeal in the most convincing manner, to those it is intended for. The Obote government failed to harness either. It attempted to pursue the same policies as Julius Nyerere's Tanzania without the same convictions which had enabled the latter to apparently succeed.<sup>25</sup> Ministers in the Obote government spoke with the Common Man's language but preferred the company and luxuries of the successful businessman.<sup>26</sup> They condemned the businessman without proving to the ordinary man that they themselves were not big businessmen. In the end, the ordinary man considered them deceptive and viewed their policies with cynicism. This was not because the ordinary man did not want socialism or to see the big businessman controlled, but he realised that the leaders he expected to protect him against exploitation were, in fact, corroborators and bedfellows with the exploiters. The only difference was that the leaders were his fellow countrymen and women who hoped that he would be deceived into accepting them as liberators.<sup>27</sup>

It can further be argued that Obote failed because he surrounded himself with the wrong kind of advisers. There were, within his government, persons who were not fit to hold high office of state. These were often talked about and discussed in public and Obote must have heard; but he did not act. Some ministers got

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23 Uganda Argus, 18 August 1971.

24 Uganda Gazette, Volume LXIV, number 5, 5 February 1971.

25 Later, Nyerere regretted that a number of mistakes had been made and his policies did not always work. See: Justus Mugaju and Oloka-Onyango, op.cit.

26 See: John Saul: *The Unsteady State of Uganda, Obote and General Amin: Review of African Political Economy*: Monthly Review, London, 1979; ABK Kasozi: *The Social Origins of Violence in Uganda*, op.cit. page 99.

27 See: The Soldiers' Statement, 1971, GN number 82, 1971.

themselves so involved in various public scandals that had he removed them from the government, his public image would have been improved. Those he decided to remove from office were of such standing, and the causes of removal of such a nature that they were made heroes, and Obote the villain.<sup>28</sup> Indeed, at one time, it looked as if to be involved in a public scandal and to be a failure in life were good qualities for which one could be appointed to high office under the Obote government.<sup>29</sup> It has been said that Obote feared to appoint talented people to public office. This is evidenced by the statement of the soldiers immediately after his overthrow and the public speech given by the then minister of state for defence.<sup>30</sup> In addition, it can be said that Obote feared to annoy some of his close associates because they were in a position to damage or destroy him. It was rumoured that at one time he decided to reshuffle Cabinet and appoint new capable ministers. He introduced a paper at a Cabinet meeting which contained his suggestions for a reshuffled government. Some politically powerful ministers refused to accept his proposals, and in fact one went ahead and tore the piece of paper in front of Obote. The matter of reshuffle ended there and then.<sup>31</sup> However, under the circumstances, Uganda needed a President who could act decisively in the public interest.

While, Obote was an astute politician, however, as a judge of character and the public mood, he lacked the necessary qualities. More concerned with staying in power than with proper administration of State affairs, the Obote government was extremely sensitive to criticism in a negative sense. To it, criticism was anathema. Although welcoming it in theory and publicly, in private they identified criticism with total opposition to their government. The only public discussion that was welcomed was the one which praised government policies and boosted ministers' personal standing in the country. For this purpose, pre-arranged public meetings, rallies and discussions on television and radio were held. Only comments that were favourable to the government ever found space in the government newspapers. Only persons who strongly supported government policies dominated the discussions even though they were not always experts in the topics that were being discussed. Any person who was not prepared to sacrifice professional judgment and accuracy at the expense of blind praise of the policy might not be invited to these

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28 GW Kanyeihamba: *Constitutional Law and Government in Uganda*, op.cit. page 473.

29 AB Kasozi op.cit.

30 Published in "The People" newspaper. 14 May 1971.

31 See: Uganda Argus, 18 June 1968.

discussions again.<sup>32</sup> The notion that Obote's was a government by discussion turned out to be a good trick, for the government would decide on a certain policy and then publish it for public comment, the policy would be critically analysed by expert observers. Suggestions for improvement would be made. Later, the government would enact a law incorporating their policy in its original form without taking into account the criticisms and suggestions that had been made to improve it. In effect, this was no more than a government by information.<sup>33</sup>

The foregoing analysis of the Obote government failures acts as a background and indicates the surrounding circumstances before the army *coup de'tat* of January 1971. It laid the foundation upon which the popularity of the new leaders was to be built. It was to provide the rationale for the political legitimacy of the military government. It would, for a long time, make it difficult for those individuals who were determined to work for the return of Obote or the removal of Amin from power in Uganda.<sup>34</sup>

The immediate cause of Obote's downfall was his alleged maladministration of the armed forces. Although there had been rumours before that there would be a *coup d'etat* and, although it was common knowledge that certain sections of the army were dissatisfied with the Obote rule, there was no evidence of an immediate *coup de'tat*.<sup>35</sup> Had he not displeased the army by failing to convene the Army Council to discuss the betterment of the soldiers' terms of service, had he not personally interfered with army promotions, had he not agreed with his advisers to remove certain officers from their commands and arrest the Chief of Staff, it is most improbable that the January *coup de'tat* would have taken place.<sup>36</sup> It is a matter of conjecture whether at the time the army seized power, it was aiming at liberating Uganda from the Obote misrule. It is only reasonable to assume that if this was so, it was only incidental.<sup>37</sup> Consequently, Obote was deposed because he attempted to kill the goose that laid the golden egg. There is little doubt that the army had put Obote in power in 1966 and had kept him there ever since. By 1969, Obote had become overconfident about his authority over the whole country. He also

32 A comparison between the Makerere Visitation Committee Report and the subsequent Makerere University, Kampala, Act, 1970, is a good illustration of this phenomenon, also See: A.B. Kasozi, op.cit.

33 Omara Otunu, *Amii in Politics and the Military in Uganda, 1980-1985*, McMillan/St Anthony, London, 1987.

34 See: *Journal of Modern African Studies* 13 number 1 1975, pages 85-105.

35 See: P Langseth, J Katorobo, E Brett and J Munene, eds. *Uganda Landmarks in Rebuilding a Nation*: Fountain Publishers, Kampala, (2 ed) 1997, page 260.

36 GN number 82 of 1971. *ibid*.

37 The 'People' newspaper: 27 January 1971.



overestimated the general loyalty he commanded within the armed forces.<sup>38</sup> There is support for the view that Obote had come to regard himself as a *Colossus* of a politician who had no rival in the country and was, therefore, indispensable.<sup>39</sup>

In perspective, the ordinary soldier might have recognised Obote as the President but beyond that fact, the ordinary soldier's love was for the army and his loyalty was to Amin, its leader and his fellow soldiers. General Amin was a soldier apparently loved by the rank and file of the armed forces of Uganda. If the apparent simplicity, the humility, the honesty, the firmness and the bravery and the humane qualities he impressed the civilians with immediately after becoming head of state were the same as those that he had previously revealed to his fellow soldiers, then there can be little doubt that Obote completely misunderstood Amin's character and underestimated the loyalty and love he enjoyed in the army.<sup>40</sup> The fact that Obote personally promoted officers from his own region at the expense of apparently better qualified soldiers from other regions could not have endeared him to the whole army. He may have been taught to obey military orders strictly but being a human being, a soldier can recognise injustice, when it is committed, even if it is not against his own tribesmen. Incidentally, the rumour that Obote preferred his own tribesmen to occupy positions of responsibility in the armed forces is further proof presented by his critics that his advocacy for unity in the country was more apparent than real. The loyalty to Amin and the memory of Obote's misdeeds contributed to the *coup de'état* of January 1971. The then and late minister of Defence, Oboth Ofumbi, had this to say: "*The soldiers then told Amin that they could not serve under Obote any more and that he (Amin) take over power. Amin was not accepting but the soldiers persisted he should. That is why the take-over was announced late at 4:00pm. ... Soldiers supported Amin everywhere. That is why there was no fighting in other battalions...*"<sup>41</sup>

Was Obote the villain who appeared to emerge after the army coup? His successor Idi Amin, did, on more than one occasion say that his predecessor, Obote, was not a bad man but was wrongly advised. This opinion was shared by the first Amin's minister of Foreign Affairs.<sup>42</sup> On the other hand, the former *Katikiro* or Prime minister of Buganda, an ex-detainee and minister in many

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38 Grace Ibingira's statement in the People's newspaper, 13 February 1971.

39 See: ABK Kasozi: *The Social Origin of Violence in Uganda*, op.cit. Ch.4.

40 See: Mawazo Magazine 3 number 1 (1971) pages 32-44.

41 The People's newspaper 14 April 1971.

42 Wanume Kibedi, the People's newspaper. 15 February 1971.



successive Uganda governments, was not prepared to give that much credit to Obote.<sup>43</sup>

Obote was a voluminous reader, especially of newspapers and journals. This reading more or less compensated for his brief university education.<sup>44</sup> He had a good memory for names and figures. He may not have been an intellectual but few intellectuals found him boring or lacking in any political theory they happened to discuss with him. In fact, he enjoyed the company of the intellectuals who regarded him as a hero because of his previous stand against colonialism and, perhaps this partly explains the academic nature of some of his policies.<sup>45</sup> However, he was also a man easily aroused to anger and this was often betrayed in public. He did not forgive easily and his memory served him well against those who had been unfortunate to annoy him.<sup>46</sup> Among other things, his vices were contained in the soldiers' statement after the army *coup de'tat*.<sup>47</sup> Obote was not an easy person to like. Many people were awed by his countenance rather than fascinated by it. He always appeared to be looking beyond his present company and wore an expression of a leader who knew that only very few of those around him could be genuine friends.<sup>48</sup>

As a leader he certainly made mistakes, but he should also be credited with a number of achievements. He believed in the unity of Uganda and it was partly because of this belief that he fought what he suspected to be divisive elements in the country. His methods can be and have been challenged as opportunistic. For instance, in his zeal to break the Buganda resistance against his policies, he went so far in harassing and humiliating the Baganda as a tribe with the result that many of them could never again bring themselves to accept his policies, however well intentioned and sound. The indefinite detention of his critics widened rather than closed the gaps between the tribes.<sup>49</sup> In other words, his desire for unity was a good thing but the methods he used to achieve it only helped to bring about disunity. Nevertheless, nobody seriously denies that unity is good for Uganda. He abolished monarchies as one of the steps to the goal of unity. Some traditionalists expressed the hope that there will be restoration of the kings but Uganda would have stood to lose nothing by remaining a republic.<sup>50</sup> By accepting republicanism, the Amin

43 The People's Newspaper: 13 February 1971.

44 For Obote's educational background: See: ABK Kasozi, op.cit. page 61.

45 Ryan, SD Electoral Engineering in Uganda: Mawazo 2 number 4 (1970), 3.12.

46 Grace ibingira, the People's newspaper, 13 February 1971.

47 *Ibid.*

48 Grace Ibingira: African Upheavals since Independence, Boulder Creek, Co. West View Press 1980, pages 72-76.

49 Grace Ibingira: The Forging of an African Nation, op.cit. page ix.

50 Shaw, Timothy: *Ethnicity as the Resilient Paradigm for Africa in Development and Change*: Volume 17, 1986.

military government indirectly acknowledged that not all aspects of Oboteism were bad. The ideas embodied in the Common Man's Charter, the Nakivubo Pronouncement and the Communication from the Chair, in Obote's quest for the Move to the Left, were interpreted as desirable by experts who saw danger only in the manner in which they were going to be implemented.<sup>51</sup> The team of ministers he had chosen to translate those policies into action did not take them seriously or fully understand them.<sup>52</sup> On the other hand, there were serious defects and gaps in the National Service proposals and Document number 5 so that, even in theory, their value was highly suspect.<sup>53</sup>

Obote's government must be credited with having built more schools, hospitals and roads than was ever contemplated under the colonial regime. However, the construction of Uganda House, the O.A.U. Conference Hall, and the siting of industrial projects in politically strategic places can be described as prestigious and wasteful. It has been revealed subsequently that the ambitious policies and projects of the Obote government left the country in a lot of debts. Nevertheless, indebtedness is one aspect of modern government. Any government which is reluctant to borrow money for building hospitals, schools or for improving communications, may still be criticised on different grounds.<sup>54</sup> The agriculture and animal husbandry ministries as well as industrial output steadily improved under the Obote government.<sup>55</sup>

With regard to foreign affairs, the policies of the Obote government were a mixed bag of failures and successes. From the fiasco and duplicity over the Congo affair in the early 1960s, Uganda had constant troubles with the Sudan over the border and the activities of the *Anyanya*, a separatist movement in that country. Then, there was the *Neogy* case that merged with the question of British citizens of Asian origin in Uganda. Uganda did not always have the right or consistent policies on any of these issues and incidents. Neither did Uganda always fare well in her relations with her partner states in the East African Community.<sup>56</sup> The revelation that subversive elements were being trained in Uganda with the knowledge of

51 Crawford Young: *The Obote Revolution in Africa* Report 11 number 6, June 1966, pages 8-14.

52 Crawford Young: *The Obote Revolution in Africa*, op.cit. *ibid*.

53 See: P Willets: *The Mathematics of Document number 5*, Makerere University, Department of Political Science, 1970.

54 Yoweri K Museveni: *What is Africa's Problems? Speeches and Writings on Africa*, NRM Publications, 1992, Kampala, page 253-268.

55 See: P Langseth, J Katorobo, E Brett and J.Munene, eds. *Uganda, Landmarks in rebuilding a Nation*, op.cit. page 11.

56 Gershenberg, Irving: *Slouching Towards Socialism: Obote's Uganda*: *African Studies Review* 15 number 1 (April, 1972) pages 79-95.

Obote to overthrow the government of Kenya, and the fact that many Kenyan citizens who were employed in Uganda at one time were expelled from their jobs at short notice, did not endear Obote to the Kenyans.<sup>57</sup> However, in international organisations and conferences, caution, reconciliation and radicalism seemed to guide Uganda's foreign policy. Small as it is, Uganda produced an impact and acquired a name that were bigger than herself. Obote can be credited with having firmly placed Uganda on the international map of diplomacy.<sup>58</sup>

### 5.3 THE CONSTITUTIONALISM OF THE IDI AMIN REGIME

At the beginning, the Idi Amin military government carried on the country's administration as if nothing had happened. Certain actions were taken which were clearly unconstitutional. For instance, the dismissals and appointments of some public officers were not in accordance with the constitutional provisions. The Constitution remained the supreme law of the land at that time. Fortunately, no one challenged any of these actions. In 1966, when Obote abrogated the 1962 Constitution, the government established by proclamation and the Interim Constitution of 1966 were challenged in the High Court. The 1966 Interim Constitution which incorporated Obote's provisions of the proclamation which had abrogated the Independence Constitution had made significant changes.

The office of the Prime Minister disappeared and was replaced by an Executive President. The new President was to be a member of the National Assembly whereas under the Independence Constitution, the President was not an executive one nor a member of the Assembly. The Uganda (Independence) Order-in-Council, 1962, was abolished. The federal structure of the country disappeared and so did the High Court of Buganda and the financial autonomy of the federal states. There was to be direct elections for Buganda members of the National Assembly. The posts of President and Vice-President were abolished. For some short duration, ministers and members of Parliament lost their positions. However, the issue that came to be challenged was whether the government established under the 1966 Interim Constitution, being an illegal government, had power to make the Emergency Powers (Detention) Regulations of 1966. Among the persons detained under those regulations was a Mr Matovu and he instructed counsel to file and prosecute an application for the *Writ of Habeas Corpus*.<sup>59</sup> It was contended on behalf

57 Rothchild, Donald and Micheal Rogin: "Uganda" In *National Unity and Regionalism in East Africa*, ed. GM Carter, Ithaca, Cornell Univeristy Press, New York, 1966.

58 Byrd, Robert: *A portrait of Leadership in a New Nation: The case of Uganda*, in *Queen's Quarterly* 69, number 4 (1963) pages 521-536, Gitelson. S.A. major shifts in Recent Uganda Foreign Policy, *African Affairs*, 76 number 304, July 1977, 359-80.

59 *Uganda v. Commissioner of Prisons, ex Parte Matovu* (1966) EA 514.

of the government that there had been an effective revolution which destroyed the then existing legal order and that the new legal order was not founded on the 1962 Constitution but on the revolution. Mr Abu Mayanja, counsel for the applicant, submitted that there had been no act of revolution and that it was not correct to infer that the existing legal order had been destroyed. Both sides adduced evidence to support their arguments. In the end, Matovu lost his case and the 1966 Interim Constitution was upheld as founded on an effective revolution. An extract from the judgment of the Supreme Court of Pakistan in the case of the *State v Dosso and another*<sup>60</sup> was cited with approval by Mr Justice Sheridan, as he then was. His judgement reads in part:

“It sometimes happens, however, that a constitution and the national legal order under it is disrupted by an abrupt political change not within the contemplation of the constitution. Any such change is called a revolution and its legal effect is not only the destruction of the existing constitution but also the validity of the new national legal order. A revolution is generally associated with public tumult, mutiny, violence and bloodshed but from a juristic point of view, the method by which and the person by whom a revolution is brought about is wholly immaterial. The change may take the form of a coup d’etat by a political adventurer or it may be effected by persons already in public positions. Equally, irrelevant in law is the motive for a revolution ... may be prompted by a highly patriotic impulse or by the most sordid of ends ... If the attempt to break the Constitution fails those who sponsor or organise it are judged by the existing Constitution as guilty of the crime of treason. But if the revolution is victorious in the sense that the person assuming power under the change can successfully require the inhabitants of the country to conform to the new regime, then the revolution itself becomes a law-creating fact.”<sup>61</sup>

Thus, a juristic revolution is judged by its success rather than by its motive or method or indeed, the character of the persons effecting it. By the same understanding, there could have been no doubt that the new military government of Idi Amin was the legal government within moments of announcing that they had effectively taken over the reins of government in Uganda. The fact that crowds of people thronged the streets and market places to welcome the new regime, that officials in the former government made public supportive statements, that former ministers and members of Parliament promptly obeyed the orders of the new regime and that the Police, as well as the Prisons Services executed their orders, gave ample evidence of the success and acceptance of the new government. The former President, Milton Obote and his entourage stopped on their way back to Uganda, perhaps fully aware that the old legal order over which they had presided

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60 (1958) 2 Pakistan Supreme Court Reports, 180.

61 In Abrogating the 1962 Constitution, dismissing the then President and Vice-president, Obote ignored the provisions of the Uganda Constitution prescribing such changes.

was no longer in existence. The Obote government should have been the last to question the constitutionality of the military government since it had done the same in 1966, perhaps with one difference. Whereas Obote's was a political revolution backed by military force, the Idi Amin was a military *coup* engineered and executed by the army and, therefore, visibly more successful.

All the same, the military government had still to enact some new laws, if only to legalise what was already a *fait accompli*. It would still have been possible to challenge its acts as unconstitutional. Consequently, the military head of state found it necessary to suspend certain parts of the 1967 Constitution. Under a Proclamation, articles 1, 3, 63 and Chapters 1V and V of the Constitution were suspended. The suspension meant that the Uganda Constitution of 1967 was no longer the supreme law of the land. Its provisions, and indeed, those of any other law of Uganda, could be overridden by decrees passed by the military government.<sup>62</sup> It no longer required Parliament to make the laws of Uganda; and where the Constitution had required the President to act, the military head of state would do so. The proclamation and subsequent decrees did not affect the Judiciary or the Public Service except that with regard to the latter, the powers of appointment, removal and discipline of its members were now by necessary implication vested in the military head of state. In general, the substance of the 1967 Constitution changed but little. Only the organs which operated under it changed.

One of the ways of telling whether or not a regime has established constitutional legitimacy is the recognition granted to it by foreign powers. It is conceded that the Idi Amin military government did not find it easy at the beginning to obtain formal recognition from most foreign governments. There can be no doubt that the government was in firm and full control of the country. What is more, the military government appeared to be more accepted by the people as the true legitimate authority of Uganda than the overthrown Obote government which had become increasingly unpopular by then.<sup>63</sup> Diplomatically, many states were more reluctant to give formal recognition of a military regime than had been anticipated. This appeared to be a new development in international relations towards African governments for, previously, any African regime, which ousted another from power, whether military or otherwise, did not find much difficulty in being recognised.<sup>64</sup>

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62 Legal Notice number 1 of 1971.

63 ABK Kasozi: *The Social Origins of Violence in Uganda*, op.cit. page 102.

64 First, Ruth: *Uganda: The latest coup de'tat in Africa*, the *World To-day* 17 number 3 (March 1971), pages 131-138.

The explanation lies in the personal cults which had evolved around African Presidents over the years after independence. With the attainment of independence, African diplomacy tended to revolve around the person of the President. Friendly relations between African states became personified. Take the countries of East and Central Africa as an example. Tanzania and Zambia were and still are nations friendly to Uganda. Certainly, it can be said that the peoples of the respective states continue to be friendly. However, the real diplomatic friendship was signified in the persons of Nyerere, Kaunda and Obote, respectively. The overthrow of the latter from power meant the destruction of the diplomatic friendship. The late President Nyerere and former President Kaunda found it hard to accept a Uganda without their personal friend Obote. It was immaterial what the Ugandans themselves thought about the change of government.

Moreover, Army *coups de'tat* had come to foretell the doom of many African leaders. As soon as one government was toppled from power by the army, governments of other African states became apprehensive, fearing that it might be their turn next. Non-recognition of military governments served as a deterrent against *coups d'etat*.<sup>65</sup> Another factor that played against the military government in her bid to be recognised was the international stature of Obote. He was often seen by many foreign observers as a leader who was succeeding in uniting a country that had been torn by tribal feuds, traditional elements and religious bigotry.<sup>66</sup> A number of observers, both at home and abroad, interpreted Obote's Move to the Left as a positive step towards the solution of Uganda's economic problems and as an answer to the Uganda's businesses which were managed largely by foreign-dominated companies.<sup>67</sup> It is reasonable to assume that whoever overthrew Obote and his government would be approached by these people with caution and suspicion. Might not the destruction of Obote mean the destruction of his policies? Whatever image Ugandans themselves had of Obote as their leader was not precisely the same image that foreigners had. Information that was given and the explanation of his policies were matters that came from government sources and therefore, were likely to create a most favourable picture of Obote, the national leader.<sup>68</sup>

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65 Falk RA: *The International Law of Civil War*, 1971.

66 See: Grace Ibingira, *The Forging of an African Nation*, op.cit, Ch.5.

67 Grace Ibingira: *The Forging of an African Nation*, op.cit. page 69.

68 The East African Standard, 29 October 1970, Daily Nation, 24 February 1967. Also See: Jorgensen Jan Jelmert: Structural Dependence and the Move to the Left: The Political Economy of the Obote Regime in Uganda. In the Politics of Africa: Dependence and Development, ed. M Show Timothy and A Head Kenneth: Longman, London, 1979.

Obote was fortunate in the sense that when the army decided to topple him, he was already out of the country. This gave him an opportunity to take his own diplomatic moves to ensure that he would continue to be regarded as the lawful authority of Uganda, or at least that the new regime would not be recognised. He sent emissaries to various capitals of the world to impress upon foreign leaders that the new government in Uganda was nothing more than a bunch of military rebels sustained in power by imperialist agents. He personally met some heads of state and pleaded his own case against the Uganda military government. There is evidence that in a number of cases, he or his emissary was the first to see these heads of state or their representatives before the envoys of the Uganda military government arrived or contacted the same.<sup>69</sup> For nearly ten years, Obote had dominated the political life of Uganda. He was better known than any person in the military government. In any event, most if not all the new ministers in Idi Amin's administration had served in one capacity or another in the Obote government. Many had been mere public officials whom Obote had personally appointed. It might not be unreasonable for a foreign observer to think that these people had betrayed him and, therefore, Obote needed sympathy and understanding and therefore the new leaders were rebels supported by traitors.

At home, the military authority did not act as quickly as the situation demanded. We have seen that it took some days before the proclamation signifying a new political order could be published.<sup>70</sup> In other countries where army *coups d'état* have taken place, new governments are announced almost simultaneously with the news of the *coup*. In Uganda, it was several days before the formation of a Cabinet was announced. For some weeks, the new military leadership was without policies, both domestic and external. Recognition takes into account the policies announced by the regime to be recognised. Only a few countries would be prepared to give a blank cheque of recognising a new regime which has not disclosed its policies.

It can also be said that the new minister of foreign affairs in the military government, Wanume Kibedi, though an accomplished student leader, solicitor and advocate, had no experience in public administration and international diplomacy. Diplomacy involves, among other qualities, personal contacts, knowledge of the temperament of states' representatives and the reputation of having done the job before. The ability to convince when one is relatively

69 Most crucially, it was Obote himself or his emissaries who first contacted the governments of Kenya, Tanzania, Zambia and the Sudan. Had these neighbouring countries recognised Idi Amin first it is likely that the rest of the world would have followed in doing so immediately.

70 Date of publication 2 February 1971.



unknown is almost an impossible task. It has been suggested that it would have been more advantageous if the late Apolo Kironde, who had had a distinguished career as a Uganda diplomat, had been made foreign minister, at any rate, in the initial and crucial period after the *coup de'tat*.<sup>71</sup> Perhaps it was with this in mind that the military head of state selected Mr Kironde to lead a mission to Addis Ababa, Ethiopia, with a view to seeing the Emperor and African States' representatives at the headquarters of the Organisation of African Unity.<sup>72</sup>

There were statements made after the *coup de'tat* that might have contributed to the reluctance with which African governments were ready to recognise the military government. One opinion expressed was that foreign powers had influenced the army to overthrow the Obote government. When asked whether in fact the Israelis were behind the *coup de'tat*, the military head of state, as he then was, answered with a rhetorical question to the effect that it was Obote himself who had invited the Israelis to Uganda. Presumably, what he meant was that the Israelis had come to Uganda as technicians on the invitation of Obote and their presence in Uganda was explicable in those terms. On the other hand, the answer could have implied that if the Israelis were behind the *coup de'tat*, Obote had himself to blame. In the latter sense, the answer is at best, ambiguous and some people might have thought that the military head was answering yes to the question. At the time, many African countries were bitterly opposed to foreign governments, especially those of the Western World, interfering in their sister countries' internal affairs. If there were any African country which thought this to be the case, it would not have recognised a regime it thought to be a stooge of imperialists or foreigners.<sup>73</sup>

It was officially and publicly acknowledged that a number of troops had escaped and gone into hiding. Moreover, these troops were said to be armed. The statement did not disclose the number of soldiers who had escaped. Foreign observers could have looked at this as evidence that the Uganda Army was divided into two factions with one having led the *coup de'tat* and the other loyal to Obote and reorganising itself to fight those who had led the *coup de'tat* against him. Few governments will recognise a regime which is likely to be toppled from power within a short period of time.<sup>74</sup> Indeed, at the time there were rumours in Kampala

71 Mr Apolo Kironde led the Uganda delegation that had an audience with Emperor Haile Selassie of Ethiopia. For another explanation See: the statement of Wanume Kibedi in Mawazo, Volume 3 number 1 of June 1971.

72 This was Amin's emissaries and they made a bid to represent Uganda at the OAU Foreign Ministers Conference then being held in Addis Ababa.

73 Tanzania Nationalist newspaper 27 January 1971.

74 Tanzania Nationalist Newspaper 19 March 1971.



that two battalions stationed at Moroto and Mbarara respectively, were in a state of alertness to come to Kampala and fight on behalf of Obote. Another interesting revelation that could have puzzled foreign observers was the statement that the Army did not intend to overthrow the Obote government, that, in fact, what took place was a mutiny. Under normal circumstances, a mutiny does not create a new government. The government may be temporarily incapacitated to control the mutineers but as soon as the situation is under control, the incumbent government is expected back in power. Ugandans might have appreciated the statement, but foreign governments listening to the news could be expected to have waited until troops loyal to Obote overcame the mutiny. As late as May 1971, it was still acknowledged officially that the soldiers who ran away were still at large and that subversive elements throughout the country were persuading new recruits to join the rebels against the military government.<sup>75</sup>

The argument that the Uganda military government should have been recognised because each and every African regime that came to power in similar circumstances was recognised before and immediately, is not very convincing if the matters we have examined are taken into account. However, non-recognition does not, in any way, affect the constitutional nature of a regime. Ultimately, it is the people of the state concerned who determine the legitimacy of their government. In the mid-1960's, the Rhodesian rebel government may not have possessed constitutional legitimacy under international law, but the people of Rhodesia were governed by the Smith regime and this fact was acknowledged by that country's courts.<sup>76</sup>

In spite of the short time it had been in power, the Idi Amin military government did not manage to avoid making contradictory policy statements and decisions. Originally, there was going to be no President until the return of a civilian government. However, on 13 March 1971, Decree number 5 was published changing the designation of the military head of state to President. It was necessary to reproduce article 24 of the 1967 Constitution which described the status and privileges of the President. Two provisions of that Article were not reproduced.<sup>77</sup> One provided that the President would not hold any other office of profit and the other that the salary, allowances and gratuity or pension of the President would be prescribed by Parliament. The government did not give any reason why they found it necessary to make these changes. However, practicability

75 The People's Newspaper, 14 May 1971.

76 Cf. Southern Rhodesia Act 1965 and the Zimbabwe Act 1979 enacted by the British Parliament with the reasoning of the Privy Council in the case of *Madzimbamuto v Lardner – Burke* (1969).

77 Legal Notice number 1 of 1971.

and expediency must have necessitated them.<sup>78</sup> For instance, it might have required decrees to change all the constitutional provisions which mentioned the President in order to provide for the military head of state. The Treaty for East African Co-operation recognised Presidents and not heads of state.<sup>79</sup> Among the accusations against the former government of Obote was the imposition of high and numerous taxes upon the public. The new minister of finance in the military government stated that the same taxes would be kept, for some time. After the army *coup de'tat*, it was announced that the new government would stay in power for at least five years. Although the Cabinet refused to commit itself to a timetable, it appeared as if the government wished to stay in power longer than most people envisaged, and this is actually what happened.<sup>80</sup>

The former U.P.C. government can be justifiably criticised for having decided unilaterally that its party alone was the only party capable of running the affairs of Uganda.<sup>81</sup> By the nature of things and at this period in time, Uganda was not developed to be a one-party state, however desirable the system may be. It was therefore, a great relief to politicians of all parties when the Amin government announced that persons could form and join any political parties they wished. The military government had stated that democracy can only flourish under a multiparty system of government.<sup>82</sup> The government followed its pronouncement by releasing political detainees. Among the detainees released were many leaders of political parties which had been proscribed under the Obote government. Some of the politicians began to campaign immediately. They included members of the Uganda Peoples' Congress.<sup>83</sup> The military government soon realised that it would have to restrict political activities if its work of reconstruction had to go on uninterrupted. Firstly, an order prohibiting politicians from making public statements was issued. Later, a decree was promulgated temporarily prohibiting all political activities. The suspension of Political Activities Decree prohibited any person from managing, taking part in, or collecting subscriptions for any political party or organisation or taking part in any public meeting or procession for the

78 Part of the 1967 Constitution which were preserved by Legal Notice number 1 of 1971 still referred to the President as Head of State.

79 The Presidents constituted the Authority of the Co-operation Treaty.

80 Thus, Decree number 14 of 1971 suspended political activities and the Trial on indictments Decree was for an indefinite duration.

81 AB Kasozi. op.cit.

82 Only to be reversed by Decree number 14 of 1971, which suspended political activities.

83 The include Messers Grace Ibingira, Mukombe Mpambara, George Magezi, Dr Elimu and Mr Bataringaya and Shaban Nkutu. The latter two were later killed by the same regime and others, one by one were later to flee the country.

purpose of propagating or imparting political ideas or information.<sup>84</sup> Thus, there was a total ban on any political activity involving organised political parties. Political parties which were in existence and their officials were allowed to continue managing their affairs but no new party or parties were allowed to be formed.<sup>85</sup> After the *coup de'tat*, politicians were advised to go back to their home areas and regions and know the people. Under the decree, they were supposed to acquire the knowledge as fellow citizens rather than as politicians. Thus politics was forced out of the public rallies and hustings and driven into private bars and private homes.<sup>86</sup>

The decree further restricted the movements of former Members of Parliament, secretaries and assistant secretaries-general, mayors and deputy mayors, former members of the general service department, District councillors and town councillors. These persons were to remain in the districts they formerly and ordinarily resided in. If they wished to move to other districts they had to notify the district commissioner of their area and disclose where they were going and report back to him on their return. If they wished to leave Uganda for any reason, they had to obtain the written permission of the minister of internal affairs. The contravention of the decree carried a maximum punishment of 18 months' imprisonment or a fine of ten thousand shillings or both. Apparently, the decree was not limited to Uganda alone. Any Ugandan propagating political ideas for any political party in Uganda was to be equally guilty even if he or she was abroad.<sup>87</sup> The jurisdiction to try an offence under the Decree was limited to a Magistrate's Court presided over by a Chief Magistrate. The promulgation of the Decree necessitated the modification of articles 10, 17, 18, and 19 of the 1967 Constitution. The military government also found it necessary to pass a Decree for the continued detention of persons who had been arrested during and after the military operations of the *coup d'etat*.<sup>88</sup>

Originally, the Decree was to operate for a period of six months. There was a provision in the Decree to the effect that a person released from such detention or acquitted of a criminal charge under the ordinary law would not continue to be detained under the Decree. Section 5 denied a person detained under the Decree, any action or any legal remedy of a civil nature arising out of the detention or anything done to him during such detention. In this respect, the Decree was

84 See: Section 5 of the Decree for the definition of the term "public".

85 Many of these leaders were soon to be the subject of extra-judicial killings, persecution and harassment.

86 See: the Detention Decree which came into force on 13 March 1971.

87 *Ibid.*

88 The Detention (prescription of time limit) Decree which came into force on 13 March 1971.

severer than the emergency regulations that had existed under the Obote government. The two were only similar in the sense that the issue of detention could not be the subject of court proceedings, but under the former emergency regulations, if a detainee alleged that any of his other individual rights had been denied him or her or violated, he or she was entitled to file an action in court and had a right of appeal to the Court of Appeal. Ironically, the military government emphasised how much it valued individual liberty.<sup>89</sup> It was therefore unfortunate that it completely deprived a detainee any civil rights even if he or she could prove that the detention was a mistake. It soon became necessary to amend the decree in order to give the military government extra powers.<sup>90</sup>

One of the severest and most amply justified accusations against the Obote government was the constant resort to emergency powers and regulations under which persons were detained for unascertained reasons and periods of time without access to the ordinary courts.<sup>91</sup> The nation was relieved and thankful when the military government ceremoniously and by decree revoked the emergency powers laws.<sup>92</sup> The powers under these laws had been used to detain politicians, suspects and innocent persons alike.<sup>93</sup> Most people in Uganda who did not always see eye to eye with the Obote regime were terrified by the emergency powers laws which, as has been revealed, were used indiscriminately. The idea that a suspect could not suffer imprisonment without conviction by a court of law appeared to have been restored to the people of Uganda by the military government as a fundamental right. It was therefore with profound consternation that the nation learnt that the military government had found it necessary to reintroduce detention laws. These came in a decree empowering the minister of internal affairs to order the detention of any person whom the minister was personally satisfied was either a person who had conducted or was conducting himself in a manner dangerous to peace and good order or had endeavoured or was endeavouring to excite enmity between the people of Uganda and the government or had intrigued or was intriguing against the government.<sup>94</sup> The decree further empowered any commissioned officer of the armed forces or any police officer of a rank not lower than that of assistant

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89 The "People" Newspaper 15 February 1971.

90 Decree 13 of 1971.

91 Under the Public Order and Security Act (Chapter 20 of 1967) and the Emergency Powers Act (Chapter 23 of 1968).

92 Decree number 9 of 1971.

93 See: Uganda Argus, 27 July 1967.

94 See: Decree number 13 of 1971. The Armed Forces (powers of Arrest) Decree. A Decree to give powers of arrest to members of the Armed Forces and Prison Services and to make provision for other matters connected therewith and incident thereto Date of Publication: 17 March 1971.

superintendent, to order the arrest of people whom they suspected upon reasonable grounds, of endangering the security of the state.

The Attorney General who was anxious to reassure the people stated at the time, that it was with great reluctance that the government had found it necessary to arm themselves with these powers. He explained: “*The Government has been disappointed to see that some persons, instead of joining in the work of national reconstruction, have been engaged in activities that tend to endanger the security and lives of innocent persons. In order to provide for the protection of the citizens and residents of Uganda, the Government has found it necessary to amend the Detention (Prescription of Time Limit) Decree to detain persons engaged in guerrilla activities and other similar acts*”<sup>95</sup>

The period for which persons could be detained was extended. Powers of arrest were given to many people and the description of a person who was subject to arrest and detention was much wider under the new amendment decree than had been the case before.<sup>96</sup>

There was no justification for the restoration of the much-feared and hated detention laws. If any person was engaged in subversive activities or guerrilla activities which were supposed to be against the government of Uganda, or the security of the state, he or she would have been committing treasonable and cognisable offences for which the Uganda Penal Code Act and the Criminal Procedure Code Act provided sufficient means of dealing with him or her.<sup>97</sup> Previously, the military government had overemphasised that it was a government of action, that it would not act on rumour or idle talk, but on real evidence. By this statement everyone had understood the government to mean that no one would be deprived of his liberty unless he or she was actually involved in the proscribed activities. There would only be certainty if the evidence was of such weight as to raise at least a *prima facie* case capable of being presented in a court of law.

It is suggested that the new law was superfluous in view of the government's clearly stated policy. Unfortunately, detention laws can never be as harmless as they would appear to be. The actions of the Obote government had demonstrated how harmful such laws can be. Extraordinary powers are effectively used to suppress freedom and to deprive innocent people of their basic rights and fundamental freedoms. There was no guarantee that officers of the military government and the police would not make mistakes or indeed arrest innocent persons as was the case

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95 *Ibid.*

96 See: Decree number 13 of 1971, *Ibid.*

97 Penal Code Act And Criminal Procedure Act.

under the Obote government and, as we shall see later, this is precisely what they extensively did.<sup>98</sup>

One economic measure the military government introduced was the reduction of prices of certain essential foodstuffs and the removal of middlemen in the National Trading Corporation which also meant reduction of prices of certain goods.<sup>99</sup> It later transpired that some traders who did not agree with the policies of the military government withheld some goods or charged unlawful prices to frustrate the government's economic policies. It was questionable whether such traders came within the operation of the amendment decree. Nevertheless, persons who criticised any of the policies of the government were arrested and detained. In some cases they were executed.<sup>100</sup>

In perspective, it can be argued that the restoration of the detention law by the military government diluted some of the criticisms which had been levelled against the Obote government by the leaders of the *coup*. It had been said, and the military government was of the opinion, that Obote had no justification for many things he did.<sup>101</sup> It was also argued that sections of the people in Uganda did not accept the Obote regime as being in power legitimately. Obote had therefore, argued that he needed emergency regulations and detention laws to control subversive elements and persons who were against his government and who endangered the security of the state. He is criticised because he could not trust the courts to deal with such people and discover the truth. The military government found it necessary to arm itself with similar powers the exercise of which were not to be questioned in courts of law. The affairs of state appear to be so haphazard and dangerous that their conduct always leads to conflict and agony, irrespective of whoever is in power.<sup>102</sup> It seems that, in the ultimate analysis, the administrative framework and the conduct of state affairs are not the distinguishing characteristics of states but rather, the style and degree of integrity of the people who run one government or another.<sup>103</sup>

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98 *Supra*.

99 In the quest for what Amin called the economic war.

100 Amnesty International, Human Rights in Uganda, June, 1978, pages 3-8.

101 See: the Observer of London, 4 February 1973 and Legal Notice number 1 of 1971.

102 See: Robert O: A portrait of leadership in a New Nation – The case of Uganda Queen's Quartely, 69 number 4 (1963), pages 521-536 and Chick John: Uganda, The quest for control in the World To-day 26, number 1 January 1970, pages 18-28.

103 Gertsel, Cherry: Uganda After Amin: The Continuing Search for Leadership and Control: African Affairs 79, number 317 October 1980, 461-489, Gingyera-Pinchwa: Milton Obote and his Times, NOK Publishers, New York, 1978.

In many respects, the military government of Idi Amin was not very much different from its predecessor. It preferred republicanism to monarchism. It believed in state participation in business, even though the degree of participation was different from that chosen by the Obote government. Ministers under the military government addressed public rallies on the evils of Oboteism just as Obote's ministers used to do over the evils of colonialism, heredity and traditionalism. Some of those ministers tended to capitalise on Obote's past mistakes, which was reminiscent of Obote on Mutesa's mistakes and the British Labour Party's slogan of "The 13 years of Tory Misrule" in the UK of the 1960s.<sup>104</sup>

The Obote government started well by being a government under democracy. It then became a government by decree and ended up being a government by information. It had been hoped that the Amin military government would ensure that when Uganda returned to a civilian rule, there would be a government through regular, free and fair elections and, that such a government would obey the rules agreed upon by the people, prior to its establishment, and that those rules and subsequent policies would be founded on the principle of consult all and act by the consent of the majority.<sup>105</sup> Sadly, none of these expectations were fulfilled. The subsequent years of the Idi Amin regime were to turn into a horrifying nightmare for Ugandans and a scourge for the rest of the world to remember.<sup>106</sup> We shall examine the fall of the Idi Amin regime in the next chapter.

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104 The U.K has two main political parties, namely the Labour party, now in power and the Conservative Party otherwise known as the 'Tory Party'. In the 1970s and 80s the latter party was consecutively elected to office every four or five years and by the time the Labour Party won an election, the Tories had continued in office for some 13-14 years to which their labour opponents referred to as the 13 wasted years of Tory Rule.

105 This was the original concept of the NRM led by President Yoweri K Museveni but as we shall See: later the movement has not always lived up to its promises.

106 Hutton, Pat and Jonathan Block: How the West established Idi Amin and kept him there in Ellen Ray, et.al: The CIA In Africa Volume 2 of Dirty Work, Zed Press, London, 1982.

## CHAPTER SIX

### POWER RIDES NAKED THROUGH UGANDA UNDER THE MUZZLE OF A GUN

The Title which reflects the theme of this Chapter is taken from the book *“Politics in Africa”*<sup>1</sup> by Dennis Austin, published in 1977, a year which is a landmark in the history of Uganda. 1977 was the centenary year for the founding of the Church of Uganda which, together with its sister denomination, the Roman Catholic Church, witnessed, in the initial years of development, the first Christian martyrs on a large scale in Africa.<sup>2</sup> The Archbishop of Uganda, Janani Luwum who was in that year presiding over the organizing committee which was preparing the church’s centenary celebrations, became the most prominent centenary martyr under the Amin regime. Although news of his death shocked the world, he was one of thousands of Protestants, Roman Catholics, Non-conformists, Moslems and non-believers who perished under the same regime. His assassination was a culmination of acts of wanton murder, destruction and carnage-an orgy of barbarism, characteristic of some of the events in Europe in the Second World War which resulted in loss of thousands of lives, destruction of property and demoralization of Uganda.<sup>3</sup>

In the wake of the Archbishop’s murder, the Uganda exiles in Britain resolved to found the Uganda Group for Human Rights to publicize the atrocities committed in Uganda and to fight for human rights; this was also in 1977. Hitherto, most Ugandans had chosen to keep silent for fear of displeasing the regime lest it avenged itself against their loved ones who were still living in Uganda. The risk we took in coming into the open against a ruthless regime was not without danger. This author was elected the first chairman of the group- a post he was re-elected to every year until he returned to Uganda for the second time in 1986 to take up a Cabinet post under the National Resistance Movement

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1 Austin, Dennis *“Politics in Africa, 1977.*

2 Generally See: Pirouette, Louise: *Black Evangelists: The Spread of Christianity in Uganda*; Rex Collings, London, 1978; Melbourne. F.B Religion and Politics in Uganda, EAPH, Nairobi, 1965.

3 Kyemba Henry: *A State of Blood: The Inside Story of Idi Amin*, Fountain Publishers, Kampala, 1997; Martin D. General Idi Amin, Faber and Faber, London, 1975; A.B.K.Kasozi: *The Social Origins of Violence in Uganda*, op.cit. Appendix four.



government.<sup>4</sup> Notwithstanding that the Uganda Group for Human Rights was non-partisan, non-combatant and humanitarian in nature, there were threats against the lives of the members of the Executive Committee of the Group. Nonetheless, the group persistently stood up for its principles and objectives. While it persevered, many other associations with more or less similar aims mushroomed all over the world. It is these organizations which campaigned for and succeeded in convincing others to join in a national conference whose success was underwritten by the Tanzanian Government and which metamorphosed at the Moshi Conference of Ugandan Exiles in March-April 1979. This resulted in the formation of the Uganda National Liberation Front.<sup>5</sup>

The death of Archbishop Janani Luwum of Uganda was an accident in the ritual acts of the Amin regime which eliminated thousands of Ugandans and some foreign nationals. All the same, the world stood by while this carnage went on and on and seemed to paralyze the ability of a caring world to do anything about it. Amin ruled Uganda for nine terrible years. When he was eventually forced to flee the country at the behest of Tanzania People's Forces in collaboration with Uganda guerrilla fighters, the world sighed with relief in the belief that the likes of Amin would never rise again in what they saw as the new Uganda. Nearly every Ugandan welcomed the passing away of the Amin regime and hoped for a better future where peace and tranquility prevailed and where citizens would no longer witness inexplicable killings or arbitrary arrests and detentions of thousands of innocent people, all seemingly sanctioned by government officials.<sup>6</sup>

Those of us who had participated and served in the UNLF government made a solemn promise to the effect that never again would our country pass through the same terrible years of persecution and instability. We were to nurture an administration under a climate designed to enhance freedom and the seeds of democracy. The UNLF would preside over free and fair elections which would have been preceded by the right of everyone to associate, found and join any political party or movement of his or her choice. The armed forces would be national, impartial, patriotic and subordinate to the will of the people. Indeed, for a while these dreams appeared genuine enough under the UNLF administration.<sup>7</sup>

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4 Founder Members included Messrs: Simon Kabuzi, Dr Topher Twesigye, Paul Wangola, Paul Otiti, Rev. Dan Kajumba and T. Tomusange.

5 Tarsis Kabwegyere Bazana: *People's Choice, People's Power*, Foutnain Publishers, Kampala, 200, page 19.

6 Museveni Y.Kaguta: *Sowing the Mustard Seed: The Struggle for Freedom and Democracy in Uganda*: Macmillan, London, 1997.

7 See: Justus Mugaju and Oloka-Onyanggo: *No Party Democracy in Uganda*, op.cit . page 2.

The reasons for these ideals which the UNLF attempted to underwrite are to be found in the brutal manner Idi Amin and his soldiers had governed the country for nearly a decade. The UNLF was a united organization mainly of exiles representing most of Uganda's political, academic, professional, military and humanitarian groups whose memberships mirrored the demographic characteristics of Uganda's opinions, ethnocentrism and regionalism. This is the front whose government took the reins of power after the fall of Amin and in which the author briefly served as Attorney General and Minister of Justice. That the UNLA was able to forge temporary unity and seize power albeit with the military assistance of the Tanzanian forces, is further evidence that both Uganda and the world were not only horrified but embarrassed by the misdeeds and maladministration which Amin inflicted on Uganda for most of the nine years he and his soldiers were in power.<sup>8</sup>

### 6.1 REVULSION AGAINST AMIN AND HIS MILITARY REGIME

Amin and his government in Uganda from January 1971 to April 1979 ranks amongst the worst recorded governments in the history of the world. They are arguably equated with those of Hitler of Germany and Nero of the Roman Empire.<sup>9</sup> No leader in modern times has evoked such revulsion and hatred among his or her people as Amin and his government did in Uganda.<sup>10</sup>

Along Adolf Hitler of Germany, Idi Amin of Uganda has been one of the most analyzed and commented upon leader by the world Press.<sup>11</sup> In his commentary on "Arms and Men in Uganda: An Essay in Insecurity and Political Instability since 1971", Professor AGG Gingyera-Pinchwa has described the attraction and interest Amin generated in the International Press as "Amin-philial", Gingyera-Pinchwa lists and enumerates important works on Amin-philial including "The Making of a Military Ethnocracy," "Amin Death Light of Africa" "Uganda and Human Rights Reports," "I love Amin," "The Story of Triumph Under Fire In the Midst of Suffering and Persecution in Uganda", "A State of Blood", "The Wit and Wisdom of Idi Amin", "Amin and the Tragedy of Uganda", "Amin and Uganda," "Ghosts of Kampala." Amin has been the subject of numerous analyses and comments in the

8 Furley, OW: *Britain and Uganda from Amin to Museveni: Build Eye Diplomacy in conflict Resolution in Uganda*, ed. Kumar Repesinghe, *International Research Institute*, James Curry, London, 1989, pages 275-294.

9 See: Murray R: *The Social Roots and Political Nature of Military Regimes in African Social Studies*, PCW Gutkind, ed., Reprint, 1978.

10 Murray R: *In Africa Social Studies*, PCW Gutking, ed. Reprint, op.cit. *ibid*.

11 Hitler presided over and orchestrated the worst military record of mass murders known to man and his story has been told in many books, translated in many languages and has been the subject of films such as 'Judgment at Nuremberg' of the American Cinema Classics and 'Fatherland' by Hbo Pictures.

world's commonest and obscure publications of newspapers, magazines, and periodicals. He has been the subject of worldwide circulated films such as the "Rise and Fall of Amin" He has also been the subject of musicals both in Uganda and abroad.<sup>12</sup>

Idi Amin, like so many other leaders fallen from power, shares another phenomenon. He was warmly and widely welcomed when he and the armed forces seized power in January 1971. However, the jubilation and relief which followed his downfall in April 1979, were much more pronounced and louder than those which had welcomed him to power nine years earlier. A few months before the armed forces seized power, it had become common knowledge that there was a serious personal rift between President Milton Obote and his senior army officers including Idi Amin. At a public gathering during this same period, Amin stated publicly that he feared no one except Allah (God) and everyone who heard these words applauded Amin as a fearless and brave army officer whose character and quality of leadership augured well for Uganda. Later, when the same Idi Amin, now in power murdered or ordered the murders of such important people as the Chief Justice of Uganda, the Archbishop of the Church of Uganda, Ministers, public officers including the Vice Chancellor of Makerere University and others, in their thousands, Ugandans were to recall with sadness these same words and how they had all misunderstood what Amin had meant.<sup>13</sup>

On the assumption of power and while ordering the release of a number of political prisoners, Amin announced that his government would not hold prisoners or send citizens to jails. Again the general public in Uganda applauded this promise. Amin kept it, by not imprisoning many people, but instead he and his government did worse. Under this promise, thousands of Ugandan innocents who were charged or suspected of committing treason and other offences, were arrested and butchered everywhere. Official murders and assassinations under Amin became, the normal way of settling disputes, actual or imagined, between government and its citizens. It was again with great sadness and mortal fear that Ugandans recalled Amin's ominous words that he would not take prisoners.

Shortly after Amin and his army seized power, they published 18 reasons why they had found it necessary to overthrow the elected government of Milton Obote. While it is not necessary to reproduce these reasons here as they are fully reported elsewhere, examination of the same indicate how the regime justified the overthrow of a government that had violated the right of citizens, mismanaged the

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12 Cited in Gingyera-Pinchwaya's *Arms and Men in Uganda*, op.cit, page 5.

13 ABK Kasozi: *The Social Origins of Violence in Uganda*, op.cit. Appendix 4.

economy and performed abysmally in running the affairs of the nation. However, Amin's own record of performance, the atrocities his government committed in Uganda including murders and disappearances of thousands upon thousands of innocent citizens including some foreigners, show that in retrospect, the Amin government committed the same wrongs if not more than those it had accused the Obote government of doing. Certainly they committed many more heinous crimes than the eighteen reasons they had given for seizing power from Obote.<sup>14</sup>

Professor Gingyera-Pinchywa has written "Facts and public opinion, however stood poles apart from the regimes (Amin's) glowing self-assessment. For all those at home and abroad who had welcomed the regime in 1971, for all those Ugandans whom lived and worked under the regime, just as for those who fled it and lived abroad- for all these, the performance of the military regime became after only a short time, a complete embarrassment and shame."<sup>15</sup>

Professor Gingyera-Pinchywa is only commenting on the regime's economic performance. On the regime's other acts as they related to that most important task of any government, namely the preservation of human life, Gingyera-Pinchywa, having described Uganda as the sick man of Africa, proceeds to write as follows:

"It is now time to summarise the story of insecurity in the Amin years. It is, to start with, a story of many victims known and unknown. How many? At the moment we do not know precisely. But certainly, thousands, and thousands. Some, like ex-ministers Wanume Kibedi and E Rugumayo have tried their hands at some estimates but this is an extremely difficult exercise ... Methods were extremely sadistic and inhuman. Finally, for the perpetrators of these atrocities, it was a story of crime without punishment of any sort whatsoever. So, the fire of insecurity raged on and on right from the beginning in 1971 up to the merciful end in mid 1979 when the regime was defeated at war and ousted from power.

Failure to control robbery with violence and Kondoism. This is not the charge against it (Amin's regime) but it is one of the eighteen reasons given at the beginning in 1971 to rationalize its overthrow of the Civilians. History, it has been said at times is full of ironies. One such irony has been enacted in the history of Uganda in the period 1971 to 1977 when a regime which promised so much peace unleashed nothing but insecurity over insecurity on the people whose lives and property it allegedly had set out in 1971 to protect and preserve. The protection

14 See: Decalo S: *Coups and Army Rule in Africa; Studies in Military Style*, Yale University Press, New Haven 1976.

15 In *Arms and Men in Uganda*, op.cit, *ibid*.

and preservation of itself became not only the overriding goal but the goal for which human lives were spent without any qualm or mercy.”<sup>16</sup>

Another incisive writer on Idi Amin’s Uganda, ABK Kasozi in his “The Social Origins of Violence in Uganda”, in a section of the book headed, “Government by Terror”,<sup>17</sup> he observes.

The Military police created under Obote, was expanded. Makindye, its headquarters, became notorious as a slaughterhouse in Amin’s time. As the economy worsened, another paramilitary unit, the Anti Smuggling Bureau, was created under Bob Astles. It accused successful businessmen of smuggling and hording”...<sup>17</sup>

These repressive agencies helped Amin to gather intelligence on his alleged and imagined enemies and survive in office. Although these methods were crude, they succeeded by not taking chances. Any suspect was instantly presumed guilty and eliminated at once. Kasozi continues:

‘Thousands of people in Uganda were tortured by Government agents. Detainees might be made to go through humiliating muscular ordeals such as hopping like a frog, while being beaten. The victim’s eyes might be gauged out and left hanging out of their sockets. During the wheel- torture, the victim’s head was put in a wheel- rim that was repeatedly struck with iron bars. People were beaten with hammers, mallets, or iron bars to break their limbs as well as to kill them. Wires were attached to victim’s genitals, nipples, or other sensitive parts of the body and then connected to an electric battery or wall socket. Women were raped or otherwise sexually abused. Prisoners were slashed with knives and bayonets, body organs were mutilated and limbs cut off. Prisoners might be lined up and every second one would be ordered to hammer the first to death, the second would hammer the third, and so on, until only one was left to tell the tale to other prisoners. Such incidents often happened at Makindye prison. These were by no means the only forms of torture, there were many others.....Important or prominent people were killed like other prisoners. However their bodies were dismembered and there parts used for ritual purposes.....Few victims were given a proper burial. Their bodies were thrown into rivers such as the Nile at Karuma, Jinja and other places in Uganda’s many lakes, Victoria, George, Albert, Salisbury, Kioga, Wamala, etc, in mass graves or burnt in their houses or cars.’<sup>18</sup>

Thus, for Ugandans, official terrorism, murders and tortures and blatant violation of human rights became the normal activities of government. These government crimes against citizens increased tremendously as the national economic performance became poorer and poorer. Torture, killing and mutilation were no longer confined to alleged subversive elements. Economic crimes such as overcharging, hording, smuggling,

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16 *Ibid.*

17 Page 112.

18 Page 114.

corruption, fraud, illegal currency sales and diversion of essential goods were added on the list of crimes for which person could be shot tortured, dismembered or made to disappear.<sup>19</sup>

As the Economic situation worsened, Amin authorized the ordinary soldier and officers to use the gun to feed and enrich themselves. In one of his many unstatemanlike speeches, Amin told members of the armed forces that the gun is your bread winner, your mother, father and great protector.<sup>20</sup>

Many Ugandans who heard this speech believed that Amin was giving licence to the security forces to get whatever they wanted from civilians by the use of the gun and violence.

The horrendous stories of government murders, torture and other gross violations of human rights were told and publicized by Ugandans and the international press but foreign governments and their spokespersons remained incredulously naïve and non committal and unsupportive of the Uganda opposition groups which wished and longed for the downfall of the worst type of dictatorship anywhere in the world.

At the height of Amin's atrocities against the people of Uganda, this author had, in 1977 become the Chairman of the Uganda Group for Human Rights in U.K, a group which operated in the whole of Europe. He held the post till his return to Uganda in 1986.<sup>21</sup> As shall be noted later, the author's and his group's efforts to inform and move world leaders to react on what was happening in Uganda and act, met with ears and minds that were largely indifferent. However, by the late 1970s, there had arisen many Ugandans both as individuals or in groups and organizations who were strongly opposed to the continuing rule of the Idi Amin regime and were determined to work hard for its eventual removal from power.<sup>22</sup> Following the government murders of many Ugandans which culminated in the assassination of the Archbishop of Uganda and a number of Ministers, opposition groups which included military ones increased their efforts in opposition to Amin. In one important national memorial service held on one day throughout the United Kingdom and at which the Archbishop of Canterbury preached, the Rt. Hon. Archbishop Runcie was heard in deep but audible prayers asking God in His indefinite wisdom to change the heart of Idi Amin, so that God's people in Uganda could be protected and if that were not possible , to let

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19 page 114.

20 *Supra*.

21 Appointed Minister of Commerce, November 1986.

22 Some of these groups operated within Uganda itself. FRONASA and SUM as well as the Obote group confronted Amin's soldiers in Uganda quite regularly.

AMIN GO. Events which followed after those prayers appeared to show that God actually heard and acted upon the prayer of the Archbishop. Incidentally, the Archbishop of Canterbury was not alone in this prayer. He had been preceded and joined then and subsequently by millions of other Christians and religious leaders of all faiths who offered similar prayers.<sup>23</sup>

## 6.2 LIBERATION OF UGANDA FROM THE IDI AMIN REGIME

Yoweri Kaguta Museveni and A.B.K. Kasozi both observe in their writings that throughout the period of the murderous regime of Idi Amin, the regime had always faced armed and subtle opposition at home and abroad, with the former often meeting brutal reprisals.<sup>24</sup>

The earliest opposition to the regime arose out of the regime's desire to purge the armed forces and identify and remove those soldiers it regarded as still loyal to Milton Obote and the UPC.<sup>25</sup>

According to Professor Kasozi, Amin feared the army in which certain elements had staged rebellions and attempted *coups de'tat* in order to take over government and become leaders themselves. As early as March 1974, the Malire Mechanized Regiment had rebelled and fighting amongst rival groups of soldiers erupted in the regiment.<sup>26</sup> In the same year, a number of air force pilots unsuccessfully attempted to remove Amin from power by assassination. Thereafter and until 1979, there were numerous mutinies, rebellions and conspiracies in the Uganda army to worry and preoccupy the thoughts of Amin. However, all these were inhouse and internal fights and attempts.<sup>27</sup>

In the end, it was the external opposition groups of Ugandan exiles in East and Central Africa and beyond, assisted formally and informally from the neighbouring states of Uganda, who amounted a serious military and diplomatic challenge and eventually forced Amin and his government to flee from Uganda.<sup>28</sup>

As early as September 1972, a badly planned and leaked invasion by armed exiles was unsuccessfully launched from Tanzania into southern Uganda. The

23 Bishop F Kivengere: "I love Amin". *The Story Triumph Under Fire in the midst of suffering and persecution in Uganda*: Old Tappan, F.H. REvell 7 Co, NJ 1977.

24 Museveni Y Kaguta: "What is Africa's Problem, op.cit. ch.13.

25 Gingyera-Pincywa; Arms and Men in Uganda, op.cit. pages 16-19.

26 Op.cit. page 120.

27 Graham I: *Amin and the Tragedy of Uganda*, Weltforum Verlag, Munchen, 1979.

28 Tanzania actively assisted Uganda exiles in their efforts to remove Idi Amin from power. Kenya largely kept a blind eye to their activities.



invasion was a total failure but it provided an opportunity and justification for the Amin regime to round up all opponents and execute them and to carry out whole-sale reprisals and wanton destruction of life and property in areas of the country where Amin, his supporters and informers thought or imagined the opposition came from or flourished.<sup>29</sup>

Hitherto, Individual groups of Ugandan military personnel and political activists had acted in isolation to others in the belief that only they had the means and support to overthrow Amin and replace his regime with one of their own.<sup>30</sup> Efforts to persuade others to join one or several of them as junior partners in the post Amin government had always for one reason or another failed.<sup>31</sup>

We have already noted how the Uganda Group for Human Rights was founded in U.K. There were sister groups founded and operating in Germany, Sweden and Denmark. Following the assassination of Archbishop Janan Luwum, other political and humanitarian groups were formed elsewhere. These included the Uganda Passive Resistance in Kenya, the Uganda Action Group in London whose leader, Paul Muwanga supported Obote, the Uganda Freedom Movement (UFM) which was associated with the late Dr Andrew Kayiira then in exile in the USA and on whom, we shall say more later. There were many other smaller groups of some half a dozen to two or three members who formed themselves into anti-Amin organizations wherever they were.<sup>32</sup>

It was not until 1978 that a common vision of how to challenge the Idi Amin regime and remove it from power came to be discussed and shared by many of the groups named above. The vision was to bring together all the groups opposed to Idi Amin, whether military, political or humanitarian, under one umbrella and create one united front with one leadership. After consulting one another, the leaders of the several groups met in August 1977 in the Zambia Capital, Lusaka and deliberated for some three days. The result was the formation by the groups attending, of the Uganda National Movement.<sup>33</sup> Although the Lusaka meeting was attended by several delegates from the UPC, including the late Adonia

29 Later Museveni and the NRM resorted to a protracted warfare which he describes in "What is Africa's problem?" op.cit. ch.13.

30 Museveni with FRONASA and Obote with the UPC and their military wing.

31 Paulo Muwanga then in exile attempted unsuccessfully to persuade this author and the Uganda Group for Human Rights to join the Obote side but instead the group managed to persuade the late Sam Sebagereka who was with Muwanga then to join the group. He was one of the Group's delegates at Moshi and he served as Minister in all the post Amin governments before his death.

32 ABK Kasozi: *The Social Origins of Violence in Uganda*, op.cit. pages 122-127.

33 Prince Barigye of Ankole was elected Chairman: Present at that meeting were also Eriya Kategaya, Martin Alikor and Adonia Tiberondwa.



Tiberondwa, Obote and his close associates opposed the existence of the Movement and started decampaining it in Zambia where Obote lived in exile, and elsewhere.<sup>34</sup> In addition, the organs of the Movement were wrongly structured and therefore turned out to be weak. Its leadership had no common purpose or strength. In the end, the movement withered away.<sup>35</sup>

Nevertheless, the Uganda National Movement became the seed out of which unity of the Ugandans opposed to the Idi Amin would germinate. The Movement opened the eyes of the leaders in opposition groups to the realization that without unity and intimate cooperation amongst them, their individual efforts would be largely wasted. The only exception to this realization was Obote. He and his close associates believed that any Ugandan group and individuals who were fighting Amin should do so by all means, but with the purpose of restoring Obote and the UPC to power since they were still the legitimate elected government of Uganda.<sup>36</sup>

Be that as it may, the group which had met in Lusaka persuaded others to join them and all began to plan for a better organized and operated united opposition against the Amin regime. Regular contacts and purposeful discussions between the groups in Africa, Europe and the Americas became the “*modus operandi*” for fighting Amin and co-ordination of the groups activities became a necessity. On 1 January 1979, seven of the groups met in Nairobi and discussed national unity. The meeting set up a ten-man consultative committee to bring about unity and peace in Uganda.<sup>37</sup>

Meanwhile, in Tanzania, the Uganda group operating there had also set up an *ad hoc committee* for the promotion of unity with a view to establishing democracy both<sup>38</sup> in the groups opposed to Amin and ultimately in Uganda. Some officials of the *ad hoc committee* were co-opted in the consultative committee and they included Professor Yash Tandon, Professor Nabudere and Mr Omwony Ojok. Others on the consultative committee who had been elected at the Nairobi meeting included Professor Tarsis Kabwegere, Dr GW Kanyeihamba, Dr Andrew Kayiira, Dr

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

35 Apart from the Chairman and one or two officials, who were in Southern Africa, the rest of the Executive Committee were scattered in various Capitals of the continents.

36 For instance, Mr Rurangaranga who attended the Nairobi meeting of January 1979 expressed this view and dramatically removed his shirt to reveal war scars and maintained that only the likes of him should be supported to take power in Uganda.

37 Under the Chairmanship of Professor Tarsis B. Kabwegyere.

38 Opposition to the Committee was expressed by the pro-Obote individuals who attended the meeting such as Rurangaranga.

Sinabulya, and Israel Mayengo. Again, although the UPC was represented at the Nairobi meeting, Obote and his associates as well as FRONASA were not keen on that meeting or its resolutions. These groups believed that only Ugandans with a military clout had the ability to change events in Uganda and therefore the consequential right to participate in post-Amin administration. Fortunately for the consultative committee, Tanzania which had already been attacked by Idi Amin on its Kagera- Uganda border, fully supported the efforts of the consultative committee and opposed the views of Obote's and Museveni's groups.<sup>39</sup> Tanzania was anxious to be supported by all Ugandans because she was already engaged in the war against Idi Amin.<sup>40</sup>

In consultation and collaboration with and support of the Government and people of the Republic of Tanzania, the Consultative Committee called and organized the Moshi Unity Conference of Ugandan exiles. Museveni's FRONASA which attended the conference was eventually persuaded to accept the proposals and jurisdiction of the Consultative Committee.<sup>41</sup>

When the Obote group realized that, with the support of the Tanzanian government, the Moshi Conference would inevitably take place, they too reluctantly agreed to attend it but initially with the aim of sabotaging the conference so that it would either fail to take off or come up with resolutions that would be favourable to Obote and the UPC.<sup>42</sup>

It had been decided by the Consultative Committee that only the then existing and known groups of Ugandan exiles would be allowed to participate in the Moshi Conference and that each recognized group would be represented in the Conference by two delegates and two no- voting observers.<sup>43</sup>

The Consultative Committee had set up a credentials sub-committee for identifying and screening the groups' delegates and observers. This sub-committee included Dr GW Kanyeihamba, Professor Y Tandon, Dr Kayiira and Professor T Kabwegere. The first strategy for the UPC group was to ignore the rules

39 This author and the late Dr Andrew Kayiira were called and informed of this support by the Tanzania High Commission in London, shortly after attending the Nairobi meeting.

40 See: Rumulika: *Tanzanian Policy Chapter 4 in Africa Contemporary Records*, ed. Collin Legum, pages 425-426.

41 Unlike Obote, Yoweri Museveni with his fellow delegates and observers attended the Moshi Conference in person.

42 The first hour of the meeting was fruitlessly spent in procedural arguments with Professor Kabwegyere in the chair and when most delegates realized that the conference was not processing, we decided, without the chair knowing, to vote and replace Kabwegyere with the late Semei Nyanzi who was a master at managing difficult meetings.

43 Following consultations amongst the Consultative Committee members after the Nairobi meeting.

established for attending the Conference. First, the group's spokesmen pleaded with the Tanzanian government that the democracy in which everyone involved in organizing the conference believed and wished to see practised in a post- Amin Uganda meant that every Ugandan who was able to attend should be allowed to do so and attend in an individual capacity and have an equal voice and vote with the rest of those attending the conference.

It will be recalled that the Obote support contingent of Ugandans was the largest in Tanzania. Had their proposal been accepted, the UPC supporters would have outnumbered all the other delegates perhaps by hundreds of participants. Fortunately, the Tanzanian Government rejected their proposal upon which the Obote group adopted their second alternative. Overnight, they formed several "*independent*" groups amongst themselves such as the UPC group, the Women League, the Youth league and the Lusaka group and others in an attempt to outnumber or at least have the largest number of delegations of the groups attending the Conference. In this second tactic, the UPC group was spectacularly successful for at least seven of the groups which were eventually credited to attend the Conference sprung from or were sympathetic to the idea of Obote returning to Uganda as President.<sup>44</sup> One interesting incident occurred at the entrance to the Conference hall where Professor Tandon and Dr Kanyeihamba were on duty checking the credentials of delegates. When the UPC group which was accompanied by the former Uganda High Commissioner to London, the late Shafik Arain demanded to be admitted with all the UPC supporters accompanying him and contrary to the rules about the delegates, Professor Yash Tandon reminded His Excellency the ambassador of the rules of admission. The latter retorted with words to the effect, "*Who is this Indian to be ordering us around?*" which was quite amusing to the Ugandans present and who knew Shafik Arain to be a UPC operative. While it was not necessary then or now to know the origins of the ancestors of both gentlemen, Ugandans present could not help noticing that the two Ugandans were of Asian origin and Indians at that. Of course, the most important thing now was that they were both well known to be Ugandans by all of us.

The Moshi Unity Conference was held from 24 to 26 March 1979. During its deliberations, a Constitutional Committee chaired by Kanyeihamba was elected to draft the Constitution of the Umbrella organization, which emerged from the Conference. The Tanzanian Government and especially its then Minister of Foreign Affairs, later to become the President of Tanzania, Ndugu Mkapa, played an important part in ensuring that the Conference would deliberate and finish its

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44 Moshi Conference Minutes, Government Archives, Entebbe, 1979.

business in the shortest possible time and without disruption. By then a few of us including Yusuf Lule had been secretly informed that the formation of the front was of the utmost importance and time was not on our side as Gadaffi of Libya had threatened to join in the war against Tanzania and the UNLF. The confrontation would be between Ugandans and Ugandans in a civil war. This is exactly what happened. The conference formed an umbrella organization called the Uganda Liberation Front (UNLF) to wage war against the Idi Amin regime, establish a national government for Uganda and restore democracy and Freedom to Uganda.<sup>45</sup> The Front adopted the Constitution drafted by the Kanyeihamba Committee and set up four organs. The Consultative Council (CC) which was the policy-making body of the Front and its elected members would form the first legislature in the event of Idi Amin being removed from office. The second organ was the National Executive Council (NEC) that was to partly initiate and implement the policies of the UNLF. It was to act as a Cabinet in the event of the Idi Amin regime falling from power. Two other organs, namely, the Military Commission and the Political and Diplomatic Commission were also created. The first named was to pursue the war effort against the Amin regime and with the latter's defeat, set up a national army.<sup>46</sup> The Political and Diplomatic Commission was mandated to streamline political, and administrative and diplomatic affairs, both at home and abroad.

Professor Yusuf Lule, the former Chancellor of Makerere University was elected Chairman of the UNLF, a post which meant that with the overthrow of the Ida Amin regime, he would assume the office of President of Uganda. Contrary to opinions expressed elsewhere by some observers that at Moshi Lule was a compromise candidate, the truth is that long before the Moshi conference, Lule had been canvassed and identified as the candidate favoured by most delegates who were expected to attend that conference.<sup>47</sup> In fact the Tanzanian Government had had opportunities on previous occasions to examine and discuss possible candidates for the leadership for any united front that might be formed with their support. Dr Milton Obote with the largest following in exile, a military force and the status of being the immediate former elected President of Uganda and a friend of President Nyerere of Tanzania, would have looked the obvious choice, but not so in the judgment of Nyerere and the Tanzanian government.<sup>48</sup> The wrongs and omissions of Obote which were discussed in an earlier Chapter of this book made him a wrong choice for leadership of such a front. He had alienated himself from the

45 The UNLF Constitution, Preamble.

46 The Uganda National Liberation army (UNLA).

47 See: Kivejinja, Kirunda, AM: *Uganda the Crisis of Confidence*, Progressive Publishing House, 1995, Kampala, ch.12.

48 Kivejinja Kirunda, op.cit page 218.

most important group of Ugandans, namely, the Baganda and, anyone coming in to lead Uganda at the head of a guerrilla force had to be accepted in and receive co-operation from Buganda in which vital institutions of state including Parliament and the Judiciary were situated. Of the potential leaders available and with whom both the exile groups and Tanzania were in contact, Lule was the least controversial. Two weeks before the Moshi Conference, this author who was leader of the Uganda Group for Human Rights in London and Dr Andrew Kayiira who was the leader of the main Anti- Amin group in the USA, were invited by the Tanzanian High Commissioner in London and asked to comment on no other candidates than Yusuf Lule. Before the Moshi Conference, Lule was invited and had discussions with leading personalities in the Tanzanian Government.<sup>49</sup>

Consequently, during the deliberations at Moshi, most delegations expected Lule to be elected unopposed and by acclamation. It was therefore with consternation during the actual elections of office bearers of the UNLF to see Paulo Muwanga, a UPC fanatical supporter, nominated as a candidate for the Chairmanship of the front. Apparently, the UPC conspiratorial groups at the Conference had had a series of meetings during the nights and had made strategic plans for the UNLF. One of those plans was for the UPC to capture the chairmanship of the Military Commission. The idea was to nominate Muwanga for the office of Chairman knowing that he had no support anyway but after his defeat or withdrawal, UPC would put his name forward as Chairman of the Military Commission by way of compromise and reconciliation with the groups which were hostile to the return of Obote.

The nomination of Muwanga threw the delegates, except those privy to the strategy, into utter confusion. Even the Tanzanians present at the conference were not amused. Then the UPC delegates except the late Archbishop (but then only Bishop) Yona Okoth who had actually nominated Muwanga with both men attending the election occasion in uniform, the Bishop in religious regalia and Muwanga in military uniform, in a spirit of reconciliation 'persuaded' their candidate Muwanga to withdraw in favour of Lule.<sup>50</sup> Lule was declared elected. Later, when it came to the election of the chairman of the Military Commission, the conference in the spirit of reconciliation and brotherhood, agreed to the election of Muwanga. The UPC bait was swallowed in whole by everyone

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49 Yusuf Lule, in an interview with the author, 11 October 1979.

50 Another Bishop who attended but remained in the background was Bishop Festo Kivengere who has actually bought the air tickets to Tanzania for the author and his delegation from the Ugandan Group for Human Rights.

including the most astute politician without knowing how vitally important that post would be in shaping the future of Uganda at a future date.<sup>51</sup>

One piece of information which was disclosed by one delegate who appeared much closer to Lule and the Tanzania Government than many delegates was of significance and perhaps was a revelation of where the political wind was blowing to in the affairs of Ugandan exiles at the time. When it became apparent that Paulo Muwanga had been nominated and confusion followed, the chairman of the Conference, the late Semei Nyanzi, adjourned the proceedings to allow delegates to consult one another on which candidate to support. On resumption of proceedings, Dr Martin Alier, stood up on a point of information and said *"During the recess, some of us have had opportunity to telephone State (Tanzania) house and enquire about the Tanzanian reaction to the fact that there are now two candidates for the Chairmanship of the UNLF. The answer from State House is simple and direct. If we elect Paulo Muwanga, Tanzania will not have any business with us. We can pack and find another venue in another country to sort out our mess. If on the other hand, Lule is elected, he will be invited to State House with a view to forming a Government in exile."*<sup>52</sup> No one contradicted Alier. No one questioned the source of his information. What is true however is that after the elections of office bearers of the UNLF, Lule and his colleagues met with the Tanzanian Government. Whether or not they would also have met Paulo Muwanga with the same team or differently composed, remains a mystery and a subject of speculation.

Thus, Paulo Muwanga became the Chairman of the Military Commission of the UNLF. Although Yoweri Museveni was quite vocal and militarily technical in advancing the causes of FRONASA and other military groups, his and those other groups' influence at the conference was quite insignificant. Nevertheless, the role of FRONASA as one of the junior military groups next to the Tanzanian Peoples' Forces and Obote's group in the liberation war, was fully acknowledged and Museveni was elected Vice-Chairman of the Military Commission, Professor Edward Rugumayo became the Chairman of the National Consultative Council, while Professor Dan Nabudere became the Chairman of the Political and Diplomatic Commission. The other major participating military, political and

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51 In 1980, the Military Commission overthrew the Binaisa administration, took office and worked tirelessly for the return of Milton Obote. Although Vice Chairman of the Commission, Museveni was not privy to the goings on in it and was virtually locked out of its secrets and proceedings.

52 Although nominated and urged to accept membership of the Executive Committee of the UNLF and of the Consultative Council, this author declined both nominations and intimated that he did not wish to participate in government as minister or member of the Legislature. Following the Namanga incident on the Kenya-Tanzania border which is described below, the author returned to his University Teaching post in U.K. it was with surprise therefore when he learned from the International Press, that he had been named the Attorney General in the Lule administration.

humanitarian groups were contented with having their respective members elected as officials or members in the organs of the UNLF.<sup>53</sup>

With Tanzania fully engaged militarily and diplomatically in endeavours to have Amin and his regime toppled from power, the UNLF believed that the defeat of the Amin regime would take sometime, certainly months and may be years. In this belief some of the delegates who had flown from abroad to attend the Conference prepared to return to their families briefly before they could return to the affairs of the UNLF. In this endeavour, three of them Professor Tandon, Dr Kayiira and Dr Kanyeihamba took a taxi from Moshi *via* Namanga border post, on their way to Nairobi where they hoped to catch international flights to their diverse, destinations outside East Africa. On reaching Namanga, Dr Kayiira and Dr Kanyeihamba were detained and informed that they would be deported to Uganda as the Kenya authorities had reason to believe that they had been attending a meeting in Tanzania designed to overthrow a friendly government of a neighbouring country namely that of Idi Amin. Both thought this was the end of their earthly lives. However, God had other plans for them. After sometime, the Immigration officer in command of the Namanga post, informed them that although the orders to deport them to Uganda had come from the highest authorities in Kenya, he and other officers at the border had decided to modify those orders because they were sympathetic to what they had heard had occurred in Moshi. They would instead be deported back to Tanzania. That is what happened. Their Ugandan passports were stamped with the ominous two words which every deportee dreads "*Prohibited immigrant*," they were served with deportation papers directing them to leave Kenya immediately by the quickest means available. Before gratefully taking leave of the officers and bidding them farewell, the two enquired as to what fate had befallen their comrade, Professor Yash Tandon. They were pleasantly surprised to be told that for him no action had been taken to stop him because he carried an Indian passport. Many Ugandans escaped death and capture by using passports of other countries or forged papers.<sup>54</sup>

Later, when the UNLF had seized power in Uganda, Dr Kanyeihamba was named the Attorney General in the Government of Yusuf Lule. By that time, he had returned to UK where he was teaching in a University. One night around 10:00 am UK time, which must have been late in East Africa since this was April 1979, he received a long distance call from Nairobi at his UK residence. The caller

53 Thousands of Ugandans had been killed or executed on suspicions of having committed petty offences. Ours was a grave one for it amounted to treason.

54 Uganda exiles in Southern Africa became experts on forging, stamping and issuing travel documents, often free of charge.



identified himself as a Senior Immigration officer and then said, “*Are you professor Kanyeihamba who was deported from Kenya at Namanga post on 28 March?*” When Kanyeihamba said, “yes”, the officer continued, “*Are you the same Dr Kanyeihamba who has been named the new Attorney General of Uganda?*” Kanyeihamba replied, “Yes”. Then the caller informed the new Attorney General of Uganda: “*By the powers entrusted in me by the Immigration Control Act, I hereby rescind the deportation order which was served on you on the date and month aforesaid.*” He posed and concluded, “*Congratulations! You are free to enter and leave Kenya as you please.*”<sup>55</sup>

### 6.3 THE RISE AND FALL OF THE UNLF GERNERNMENT

It will be recalled that when the Moshi Conference ended, we members of UNLF expected the Amin regime to last for sometime. We were wrong. As events turned out, Moshi and the creation of the UNLF with the assistance of Tanzania appear to have accelerated the downfall of the Amin Regime. The UNLF was able to get further assistance from well wishers and friendly government. Tanzania was now fully committed to a bloody war with dictator Amin and threw in its might and soldiers. The UNLF collaborators in Uganda and within the Amin regime supplied the vital intelligence information necessary to finally finish off the regime, which by now, had been weakened by dissensions and incompetence. With a few selected targets bombed or attacked in Kampala, the Capital, the regime collapsed. Amin and his band of senior army officers began to flee from the country, ABK Kasozi summarizes the dramatic events of the last days of the Idi Amin regime thus:

“Events moved faster than expected. After the fall of Jinja, Amin’s soldiers had been on the run, and people in eastern and northern Uganda suffered brutal violence from retreating soldiers. In their wake they left a stream of blood from Jinja, Nakasongora and Fort Portal. Thousands of people were shot and their property vandalized. All types of motor vehicles were snatched from unarmed civilians. Then on 11 April 1979, two weeks after the meeting at Moshi and before the UNLF had crystallized as a political institution or a tried fighting group, Kampala fell to Tanzania forces and a few Uganda exile fighters. People who had never worked with one another were suddenly placed in positions of responsibility involving power and wealth and asked to co-operate.<sup>56</sup> Nevertheless, most Ugandans welcomed the overthrow of the Idi Amin regime. In fact many of them had helped the Tanzanians and the exiles in the war against Amin. They had contributed by providing information, food, shelter, medicines, vehicles and company to the fighting troops. Unfortunately in the wake of victory, unruly bands of the liberated Ugandans themselves went on a spree of looting and destruction of national

55 Apart from Dar es Salaam, Nairobi was the only other convenient airport for Ugandans returning home.

56 The Social Origins of Violence in Uganda, op.cit. page 126.



and individual assets. What could not be carried away was systematically destroyed or damaged. A Commonwealth Team of Observers wrote in 1979.

“Crops were damaged and livestock killed, houses, factories and public buildings were gutted; schools supplies, textiles, and writing materials were looted, food, furniture and clothes were taken from houses and shops, office records were lost or stolen, tools and equipment were taken from shops and thousands of cars and trucks were taken out of the country to Sudan, Tanzania, Zaire and Kenya.”<sup>57</sup>

Kampala City and other towns were raided by hoodlums and looters from rural villages. They carried with them any symbols of wealth which they believed or imagined had been owned or enjoyed by the Amin people or his supporters. Electric kettles, typewriters and adding machines and telephones ripped from their sockets together with toilet seats were taken to the villages where there was no electricity or modern toilets where these goods or property could not be carried, they were destroyed or damaged beyond repair. It was as if the whole country had gone crazy.

In addition, revengeful killings and assaults of anyone imagined to be an enemy, supporter or associate or relative of that enemy became common occurrences. These horrible events were to leave permanent scars on the nation of Uganda. It was against this background that the UNLF became the new government of Uganda. It had been agreed at Moshi that the UNLF government would stay in power for only a period of two years during which time it had to plan for and organize general elections under democratic principles.<sup>58</sup>

In the aftermath of the downfall of the Amin regime, solutions to the problems we have examined called for firm and principled government united behind a strong leader with definite policies of reconstruction and development. Unfortunately for Uganda, the UNLF government was not that kind of government. On paper, the ministers appointed by President Lule were men of high learning. They included several professors, academic doctors and some of the best qualified professionals in the world. In fact, on appointment the President always demanded the *Curriculum Vitae* of all the ministers on appointment. Arguably, the Lule Cabinet must have been the most educated in Africa if not in the world. Unfortunately however, the manner in which they were led, assigned duties and consulted by the leadership of the UNLF meant that as a government, they were the most disorganized bunch of public servants that could be imagined, and in incompetence and non-performance, they compared favourably with the other short-lived Lutwa government of Uganda of 1985. Lacking strong leadership

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57 *Ibid.*

58 UNLF Constitution.

and a sense of direction, the ministers appear to have fallen into one or several factions which began to emerge from the UNLF long before the echo of shouts of its birth in Moshi had died down.

Some of Lule's ministers commenced work in their respective departments by reminding themselves that they were in the government, not to serve President Lule or Uganda but other interests. These interests ranged from political to personal ones. However, there is no doubt that the majority of the delegates and observers who attended the Moshi Conference had hoped and believed that the UNLF objectives would succeed.

Within a short time of their triumphant return to Kampala, the various factions which had converged at Moshi and united under the UNLF saw issues in the country differently and began to divide. These divisions which involved ministers and supporters became prominent throughout the rest of the short period the UNLF was in power. The factions which emerged can be identified and described.

The first group of ministers and their supporters had always regarded the UNLF as a stop gap and stepping stone for the resumption of the glorious past of party politics and patronage. This group anticipated and planned for a return to the old political parties of the Uganda People's Congress, The Democratic Party and the Conservative Party. Some of the more enthusiastic supporters of this group went as far as declining to serve in the UNLF as ministers because they wished to devote all their efforts on rebuilding their old political parties in readiness for the elections which were bound to be held at the end of the UNLF administration. Among these who declined to be ministers was the leader of the Democratic Party, Paul Ssemwogerere. This group included such personalities as Paulo Muwanga, A. Bisase, Otema Allimadi, Omara Atubo and the Army Commander Oyite Ojok.<sup>59</sup>

The second group to emerge was that of ministers and workers who belonged to a radical wing of International Socialism. Many of them had worked or lived in exile in Tanzania and had been meeting regularly there in furtherance of their cause. They planned to capture the organs of the UNLF and use them for the advancement of international socialism. They regarded previous efforts by Obote and his colleagues with their "Move to the Left" as having been failures and former socialist leaders such as Obote himself or Felix Onama as persons who betrayed the socialist cause in Uganda. They considered themselves as the vanguard which would guide Uganda eventually to adopt true socialism. Yoweri Kaguta Museveni might have acted or behaved as if he was in this group. However, he and

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59 Arnold Bisase was an exception however, in that he strongly supported the two years duration of the UNLF under President Lule.

FRONASA had their own separate agenda.<sup>60</sup> Initially, Museveni made efforts to meet with Lule and advise him on how to co-ordinate with other forces and make it possible for the UNLF to succeed. However he, like so many others who had been committed to unity, he was soon disillusioned by the aloofness and non-performance of President Lule and his reliance on conservative elements and Baganda elders in the UNLF and country respectively. Museveni's efforts to reorganize and recruit nationally for the UNLF army as vice chairman of the Military Commission were frustrated by non-operation of other groups which claimed to possess fighting forces. Museveni's efforts to build a national army was further undermined by Yusuf Lule's insistence that it should be regionally balanced with every tribe having a number of recruits into the army according to its population in the country.<sup>61</sup> Thereafter, Museveni preoccupied himself with caring for and expanding his own military force of FRONASA. Nevertheless, Museveni and radicals within the international socialism co-operated and worked together in many areas of policies initiated by the UNLF. The wing of international socialism included leaders such as Edward Rugumayo, Professor Dan Nabudere, Professor Yash Tandon and Omwony Ojwok. They were later to be widely known in Uganda as the "*Gang of Four*".<sup>62</sup>

The third category of ministers and supporters belonged to a camp which may be described as of conservative elements with entrepreneur tendencies and with personal interests intertwined with international political *cum* business connections. Many of the members in this group who had considerable and in some areas decisive influence over President Lule and the UNLF government were actually ministers. They included such personalities as Grace Ibingira, Semei Nyanzi and Martin Aliko. The group also included the likes of George Magezi and Mathias Ngobi. It will be recalled that these are some of the people who were detained by Obote during the 1966 crisis. Therefore, this group like the second already discussed, had no intentions of making it possible for Obote to come back to power. The members of this group had suffered under Milton Obote and they were determined to do everything under the UNLF to ensure that Obote and his associates would not return to power in Uganda.<sup>63</sup>

60 See: YK Museveni: *What is Africa's Problem*, op.cit. pages 134-141.

61 Government Army Recruitment Policy Paper, presented to Cabinet by Lule, May, 1979.

62 See: Rugumayo Edward's Speech reported in the NCC Proceedings of 22 May 1979, Government Archives, Entebbe.

63 In fact, the majority of the groups which participated in the Moshi Conference were opposed to Milton Obote ever coming to power again in Uganda.

There remained a fourth group who clung to the dream that the UNLF was the best thing to have happened for Uganda and that it should be made to endure and succeed. This author belonged to this group which increasingly became least influential in the affairs of the UNLF and of Uganda generally. While this group idealistically stuck to the UNLF constitution and rules to make them work, the other groups were doing their own things and apparently more successfully. As events turned out afterwards, this group became the least successful in its mission. The group included persons such as S Sebagereka, Ateker Ejalu, A Kayiira, S Senabulya and Professor F Sempebwa.

To worsen matters, the UNLF did not have a national army as such. The two biggest groups of armed military men and women in the UNLF, that is those of Obote and Museveni, owed loyalty to their respective group leaders, so did other small ones such as those belonging to Robert Serumaga, one group called Save Uganda Movement and Kayiira of the Uganda Freedom Movement. Oyite Ojok, the UNLF Commander owed loyalty not to President Yusuf Lule but to former President Milton Obote and Paulo Muwanga, a UPC diehard and Chairman of the Military Commission. Oyite Ojok never recognized Lule as President of Uganda. He always politely referred to Lule as Chairman of the UNLF but gave loyalty to and saluted Mr Paulo Muwanga, the Chairman of the Military Commission. .

The insubordination shown to President Lule by officers such as Oyite Ojok was not a surprise to people who knew the background to the formation of the first UNLF Government. There is evidence that while in Tanzania and before Amin fled from Uganda, Nyerere requested Lule to propose names for his Cabinet. Lule's nominees except one were all from the Buganda region. Nyerere who knew Uganda's demographic makeup rejected the nominations. Later, Nyerere, in consultation with Obote, guided Lule on how to compose his Cabinet. Obote had made it clear that unless he participated in the creation of that Cabinet he would continue fighting to return to Uganda as President. He proceeded to name five ministers and select the portfolios they would hold. He also insisted that the commander of his own forces, Oyite Ojok must be appointed Army Commander of the UNLF and only then could he keep silent while UNLF administered Uganda for two years. Apparently, Obote's proposals were fully incorporated and implemented.

The arrogant refusal by Oyite Ojok to recognize Lule as President haunted Lule to the extent that one morning while this writer was at work in his chambers as Attorney General, President Lule called and directed him to go and see him at once in State House, Entebbe, which he did. On arriving there, Kanyeihamba was taken directly to see the President who told him that the President had received

advice as to how to solve the insubordination of Oyite Ojok. He directed Kanyeihamba to amend the Army Act and delete the section which provided that the Army Commander shall be a member of the Defence Council. At first Kanyeihamba thought that the President was joking but when he saw people in State House who had given the President advice, Kanyeihamba refrained from laughing at this absurd proposal.

He advised that if the army commander was insubordinate to the Commander-in-Chief and President of Uganda, the law provided ways and means of dealing with that insubordination including dismissing him from his command and appointing a replacement. Kanyeihamba declined to draft an amendment to the Army Act, as it would have been manifestly absurd to have a national army commander who was barred from the membership of the Defence Council.<sup>64</sup>

The incident about the army commander illustrates the “*modus operandi*” of President Lule in seeking advice. He would call in ministers or advisors, one by one, and discuss with each of them the subject matter at hand, instead of calling them together in one meeting and getting their collective views in the presence of one another. He would then act, often against certain other opinions which could have been more politically sound or acceptable. On being asked why he had chosen one policy against another one, he would explain that everyone concerned had been consulted. This created a great deal of ill feeling and suspicions amongst ministers. Stories were told afterwards that actually he preferred to act on opinions of people who were outside government because they are the only ones he trusted.

However, the greatest military force in Uganda of the UNLF was the Tanzanian People's Defence Forces. Through this army, Tanzania had the final and decisive voice in the affairs in Uganda. Tanzanians controlled all the vital points of security of Uganda. They had capacity to initiate any policy and insist upon it being implemented by Lule and his government. Their military and security personnel guarded the President of Uganda and State House. It was they who assisted in the management of personal services to President Lule.

The foregoing account was fairly known by many Ugandans and only the uninformed expected the UNLF administration under Yusuf Lule to perform any better or last longer than it did. Any meaningful understanding of the Uganda situation under the UNLF must take into account the then Tanzanian's military and foreign policies towards Uganda. The UNLF administration was simply a little more than a puppet government of Tanzania and any acts or omissions it may have been responsible for, the Tanzanian government must bear part of the blame, for

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See: The Uganda Army Act.

they were in charge. As the events at Mwanza clearly illustrate, when Lule and his associates appeared to deviate from the wishes of the Tanzanian government, and follow an independent line, their removal from office became inevitable.<sup>65</sup>

#### **6.4 CONFRONTATION AT MWANZA**

After only three months allowing the UNLF to run the affairs of Uganda, the Tanzanian Government decided to show Lule the limitations of his powers. At the shortest of all notices of all times given between governments of “sovereign” states, Mwalimu Julius Nyerere informed Lule that he, Lule should go with his Cabinet to Mwanza, in Northern Tanzania and meet the Tanzanian Cabinet for a short exchange of views on the progress so far made by the UNLF. Nyerere himself named the portfolios of ministers the holders of which he wanted to accompany Lule to that meeting. Most holders of these portfolios came from the first and second groups of ministers described earlier in this chapter. Most if not all were hostile to Lule and his close associates. President Lule noticed this phenomenon. However, instead of consulting Cabinet or close associates about the invitation and his entourage, Lule appears to have consulted one or two officials in State House and then made a decision which turned out to be disastrous for him and his administration. He first decided to reshuffle Cabinet and changed many of the holders of portfolios identified by Nyerere. Several of these had been the personal choices of Milton Obote. The new team to accompany Lule would not be exclusively what Nyerere and Obote wanted. It included ministers and officials from the third and fourth groups of people who were running the UNLF. One of the ministers who was reshuffled out was Paulo Muwanga. Having been initially the Minister of Internal Affairs at the instance of Obote, he was dropped in the reshuffle. However, learning of his fate, Paulo Muwanga went to see Lule and using his beguile and humility which are characteristic of many Ugandan politicians, Muwanga was reappointed immediately as minister of Labour. However, Muwanga’s former portfolio was now given to Dr Andrew Kayiira. Mr Ejalu who had been minister of Information and had been invited to Mwanza was reshuffled and made minister of Regional Co-operation. Grace Ibingira was appointed as minister of information. Before the reshuffle, Professor Dan Nabudere had been minister of Justice. After the reshuffle, Dr GW Kanyeihamba who had been Attorney General was appointed to hold both portfolios and became Minister of Justice and Attorney General. There were other changes. These changes were made without Lule first consulting Nyerere or Obote who had had a hand in the making of the first Cabinet. They were exceedingly annoyed it seems however that

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Infra.

Nyerere was not to be defeated. He appears to have persuaded Lule to agree that despite the reshuffle, the Ministers who had previously occupied those portfolios should also accompany Lule to Mwanza.<sup>66</sup>

Mwalimu Nyerere an astute and seasoned politician had been at the helm of national and international politics since the 1950s and in this kind of politics Lule was a mere infant of less than three months. It was obvious who would win every round of confrontation between them. On 9 June 1979, Ministers were telephoned individually by the Principal Secretary to President Lule and informed that they were wanted at Entebbe airport to accompany the President to Tanzania for a working lunch at Mwanza. Most of us did not know who else was going and why. At Mwanza lakeside the Uganda visitors were met by a multitude of people. The Cabinet, the Army, the Police, national and regional leaders, The Tanzanians serving in Uganda with UNLF and welcoming dancers including snake charmers were all there. This was about 12:30 pm. Instead of going into the expected meeting, we Ministers and other officials were led to Mwanza hotel while Lule was taken to Mwanza Sate lodge.

In the hotel, we were individually taken to a single room where a bed had been prepared, a towel, soap, toothpaste and toothbrush placed. All this generosity appeared strange considering that we had been told that we would only be there for a couple of hours at most. Be that as it may, we were served an excellent lunch and waited for further developments

At about 4:00pm., we were collected from the hotel and taken by coaches to a nearby Secondary School building where we were later joined by the Tanzanian government. We all sat there and waited without anyone uttering a word. The Tanzanian government sat on one side and the UNLF administration sat opposite them with its leader, Yusuf Lule. It was about 4.30 pm when our chief host, President Nyerere drove in. We all stood up. I did not notice whether our own President Yusuf Lule stood up as well. We were signalled to sit down which we did. For the next five minutes or so nothing was said. The silence was unbearable. One could have dropped a needle and it would have been loudly heard. Then, Nyerere spoke. His message may be paraphrased as follows:

“President Lule and your Ministers. You are welcome. I hope you had a nice rest after lunch. We have called you here to sort out a few things. The war with Amin is not yet over. We hear that his troops may still be in the northern parts of your country. Mopping up must continue. We must resolve the presence of your most important exile here, Milton Obote. Tanzania Wanainchi are asking that ‘we have liberated Uganda. Why is Obote still here?’ You will be meeting him later this evening. Then there is the

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66 That is how both Paulo Muwanga and Ateker Ejalu managed to be present at the Mwanza meeting.



question of payment. Tanzania has sacrificed so much life, equipment and property in liberating you. There is talk of compensation. But also how is our continued presence in Uganda. How is it to be paid for? These matters must be resolved before you return to Entebbe.”<sup>67</sup>

Lule was not asked to say anything. No one else spoke. Nyerere closed the meeting with these words, ‘*We shall meet again at 8pm at the state lodge.*’ Most of us Ugandans at the meeting, perhaps with the exception of those who knew what it was all about, were speechless. None of us had closed our offices or informed those in our residences that we would be staying the night out. There was curfew at Entebbe. No aeroplanes could land or take off after 6pm. As Nyerere closed the meeting, it was after 6pm. There was no way we were going to leave Mwanza that night. This explained the presence of newly acquired personal effects of towels, toothbrushes and soap at Mwanza hotel.

At 8:00pm the Uganda delegation with its leader, President Lule, were in the state lodge lounge seated. Shortly, afterwards, Nyerere, accompanied by Milton Obote came in and sat at the front facing the Ugandans. Greetings were exchanged. For the first time since one tried to remove the other from office by Parliamentary means and the other detained the other under emergency powers, Ibingira met Obote face to face. They exchanged greetings as if nothing had ever happened. After the exchange of greetings all round, we all resumed our seats. There was a radio cassette in the middle of the room near Mwalimu Nyerere and as if on cue, he switched it on. It broadcast loudly and clearly the following:

“This is the BBC. World News. In Uganda, there is a political crisis. The new Government under Professor Yusuf Lule is facing acute political problems. As we broadcast, we understand that Lule and his Ministers have gone to Tanzania to meet that country’s President who may have the solution ...” Nyerere switched off the radio and addressed us. “There you have it gentlemen. We have a serious crisis in Uganda. The whole world knows now”.

Frankly, we Ugandans present were baffled by this news. Until that very moment, we did not know we had a crisis in our country. We had not discussed anything resembling a crisis since coming into government. It was a curtain raiser for what was to transpire subsequently.

Mwalimu Nyerere then asked whether anyone had anything to say about it. Paulo Muwanga who had only a short time ago been kneeling and appealing to President Lule not to drop him from Cabinet but to be given something small so that he remains active since as a sick old man, he might die quickly if he remains

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As recalled by author who attended the meeting as minister of Justice and Attorney General in the Lule Administration.



idle,<sup>68</sup> was the first one to drop a bombshell. He accused Lule of being the worst dictator Africa had ever had. According to Paulo Muwanga, Lule had totally ignored the UNLF Constitution and all the rules agreed to by everyone at Moshi. Muwanga further alleged that Lule was not consulting anyone and was ignoring the fighters who put him in power. In Muwanga's opinion, Uganda could not recover from the ravages of Amin's regime if Lule remained President of Uganda. The next to speak was Minister A. Ejalu who started his contribution by disclosing that the whole of Uganda was waiting anxiously to welcome its President Nyerere, that Ugandans consider themselves very fortunate in having three Presidents, namely, their beloved Mwalimu Nyerere, President Milton Obote and the President Lule, in that order, and it would be a great day of celebrations if the three Presidents were to stand side by side soon in Uganda. He then criticized Lule for ignoring the Moshi spirit and the National Consultative Council which was after all, the supreme organ of the UNLF. Ejalu did not spare Milton Obote whom he accused of trying to sabotage the UNLF and kill Ejalu himself.<sup>69</sup> Yoweri Museveni gave what I considered an impartial and reconciliatory speech stating that he had warned President Lule not to ignore the NCC and to consult all the forces which had created the UNLF. Museveni expressed the belief that the differences which had occurred within the UNLF, could easily be solved if everyone listened to common sense and he did not see any crisis as reported on the BBC. Dr Arnold Bisase and Grace Ibingira spoke eloquently in support of Lule and his government. They dismissed the accusations that Lule was a dictator or did not consult others before making decisions. As Minister of Justice and Attorney General, I was next asked to comment. I identified the main problem as being structural and constitutional.

As liberation groups, we had met at Moshi and created a Front with organs and adopted rules of conduct because at the time we thought we would continue fighting for sometime before Amin could be defeated or removed. The structures and organs were designed for a guerrilla front outside Uganda and not a government inside Uganda. However, Amin had fallen more quickly and sooner than we had expected. Consequently, when we got into government, the radicals and NCC insisted that we should govern the country under the UNLF constitution and rules, but others including President Lule, argued that now we are in charge of Uganda as a country, we had to be governed by the Uganda Constitution and not by rules intended to govern us while we were still a liberation front. Nyerere listened attentively. Most Ugandans heard me in silence but with nods of approval, here and there. Nyerere must have thought I was diverting the

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68 As later narrated by James Senabulya, former Principal Private Secretary to Lule.

69 Apparently, assassins had been hired to do the killing but bungled the assignment.

audience from his mission. He stopped me in mid sentence and asked, ‘*Are you not a lawyer?*’ when I said ‘yes,’ he continued, “ *These problems are political not legal.*’ *Next?*” Others spoke for and against Lule. As it was getting late in the night our host adjourned the meeting for the following day for 2:30pm. On adjournment, President Lule consulted some of us and we resolved that whatever happened the following day we would inform Nyerere that we would go home that day.

In the morning we discovered that a number of proposals would be discussed that afternoon and some of the discussions would only involve the heads of the delegations. The proposals included the acceptance of Obote into the UNLF government as Vice President, payment of moneys in compensation and for the upkeep of the Tanzanian forces in Uganda. There were other demands from the Tanzanian side. While most of the demands and proposals were acceptable to the Ugandan delegation, those which involved expenditure needed verification and assessment as well as budgeting for. The demand that Obote return and serve in the UNLF government before the expiry of the two years was rejected by the overwhelming majority of the Uganda delegation. The afternoon discussions continued more or less on these proposals and demands. As talks progressed, it became increasingly clear that the Tanzanians had no intention of releasing us until we had agreed to all their terms.

During these talks, President Lule revealed that the Uganda President and Ministers had decided to go home that afternoon in time to beat the Entebbe airport curfew. Both Nyerere and Obote were obviously angry and upset by this development. We felt that if Nyerere had not feared some International criticism, he might have decided to detain us at Mwanza until we agreed to his demands. The interrogation before Nyerere and Obote the previous evening had left most of us feeling so inadequate and as a puppet government. Indeed, at times during the discussions, some of us felt as if we had been naughty school children who had been taken up to the headmaster and his deputy for telling off and correction.

When we insisted that we would be leaving Mwanza that afternoon and actually left the State Lodge, Nyerere with a heavy heart and anger, accompanied us to Mwanza airstrip. As we left for our planes, Nyerere turned to Lule and said, “*Lule go and discuss these matters with your people and report the results to me next Friday not here this time but in Dar es Salaam.*” After consultations, Lule found that the hostility towards Obote and his immediate return to Uganda as a senior Minister in the UNLF was very strong. As directed the following week, President Lule went and reported the results of his consultations to Nyerere and the consequences of that report became history. Thereafter, Nyerere conspired and co-operated with Lule’s opponents within the UNLF to remove Lule from office. Different versions

of the dramatic events leading to the eventual removal of Lule from office have been told.<sup>71</sup> The version in this book was partly narrated by Lule's Principal Personal Secretary, the late James Senabulya and by President Lule himself when he returned to UK via Dar- es- Salaam where he had been detained by the Tanzanian authorities, against his will.<sup>70</sup>

## **6.5 REMOVAL OF YUSUF LULE FROM THE PRESIDENCY**

Following Lule's report to Nyerere that Ugandans were not willing to accept all the Tanzanian proposals disclosed at the Mwanza encounter, Nyerere clandestinely called some Ugandan leaders who were opposed to Lule for consultation. These leaders were mainly UPC supporters and some radicals within the UNLF. Their meeting with Nyerere was in secret. It was at that meeting that a conspiracy to remove Lule from office was hatched out and methods of doing so were finalized. The conspiracy was to pass a vote of no confidence in Lule as Chairman of the UNLF which would also effectively remove him from office as President of Uganda. The motion and the reasons for removing Lule were discussed and rehearsed in Tanzania.

On the 19 June 1979, the conspirators met a dozen or so members of the National Consultative Council whom they knew to be against Lule continuing to rule Uganda. It was agreed that the NCC or any other UNLF business would be suspended so that the conspirators and those they had persuaded to join them, numbering less than half of all the members of the NCC could "consult" with the President on some issue of national importance. When the conspirators and their newly converted colleagues entered state house at Entebbe, the Tanzanian security forces sealed all entrances to State House. Incidentally, in order to make the vote of no confidence appear democratic, the conspirators had invited several members of the NCC whom they knew to be supportive of Lule.

The President was invited to join the group in one of the rooms in State House and one of the conspirators produced the draft resolution of a vote of no confidence in the Chairman of the UNLF and announced that the meeting would be called to order as a special session of the NCC to debate the motion. The chairman of the NCC was present to preside over the special session. Let it be said from here that whereas there was nothing wrong with a few members of the NCC seeking a meeting and consulting with the Chairman and President, it was unconstitutional, both according to the UNLF constitution and that of Uganda to call a special session of the NCC or to debate the motion of a Vote of No

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According to both Yusuf Lule and his Principal Private Secretary, James Senabulya.

Confidence. Calling of meetings of the NCC required the giving and publishing of notices for specific periods of time to all members. Secondly, because the UNLF was to have held office for only two years and organize elections, the delegates at Moshi had outlawed any votes of no confidence in the leadership of the Front which they feared would be diversionary regarding the tight schedule the government had to fulfil before the general elections.<sup>71</sup>

Be that as it may, the meeting was held with the President virtually under house arrest. Efforts by other Ministers and NCC members to go to Entebbe and participate in the debate were frustrated by the Tanzanian security forces. Sometime during the meeting at State House, the President had opportunity to telephone the Attorney General and appraise him of the developments at State House. After being reassured by the President that the Tanzanians were impartial in the matter, the Attorney General who had by then consulted the then Chief Justice, SWW Wambuzi, advised the President not to attend the meeting and to ignore any resolutions passed at that meeting, as anyone wishing to implement them would have to go to court to enforce them. In retrospect, the Attorney General should have heeded the earlier words of President Nyerere that these matters were political and not legal. Lule was forced to attend the rest of the meeting where apparently he offered no solution. The vote of no confidence was passed. Through the President's Principal Private Secretary, the Attorney General advised Lule not to resign the Presidency. However, within a short time, the conspirators found a number of candidates willing to replace Yusuf Lule and eventually Godfrey Binaisa emerged as their final choice. He was sworn in before Lule resigned. For some 48 hours, Uganda had two Presidents in office. Contrary to what Nyerere had told Lule, Tanzania immediately announced to the whole world that Tanzania was recognizing the new government of Binaisa as the new President since Lule had been democratically removed by resolution of the NCC, the supreme legislative body of Uganda.<sup>72</sup>

When Lule resisted from resigning, Nyerere ordered his removal from State House by force and President Lule was taken to Dar es Salaam apparently to 'consult' with Nyerere but actually the plan was to remove him from State House so that Binaisa could establish some kind of legitimacy by occupying it himself.

Although Nyerere persisted in telling the world that Lule had gone to Dar es Salaam voluntarily, the truth of the matter was that Lule had been taken and kept there against his will. Apparently, while there, the Tanzanian high authorities again

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71 UNLF Constitution.

72 Broadcast on the BBC, 21 June 1979.

and again asked Lule to put out a public statement that he had accepted changes which had taken place democratically in Uganda. According to James Senabulya, the departure of Lule from Dar es Salaam was carefully planned by him and Senabulya by way of a trick. Since Nyerere was still putting out a statement that Lule was in Dar es Salaam voluntarily, Lule used that knowledge to escape. He sent Senabulya to the British Airways booking office in Dar es Salaam who secretly booked two one way air tickets to London, UK and then secretly communicated with a reporter of the BBC that Lule had decided to leave Tanzania and rejoin his family in UK. The BBC flashed the news to the international press and it was broadcast worldwide. Nyerere had for a change been beaten at his own game. The end of Lule is footnoted by ABK Kasozi thus:

“Lule’s Press conference, in which he blamed Tanzania, did not improve his image as a naïve politician, or as one of his former colleagues at Makerere put it, a reluctant politician. He did not fully comprehend the dynamics of the prevailing political forces. However, his involvement in the struggle against Obote in the period 1980-84 taught him a lot. By 1981, he had grasped the nature of political forces in Uganda to such an extent that he knew exactly how to co-ordinate a resistance struggle at the head of a well organized fighting movement.”<sup>73</sup> Thus, ended one of the briefest but most dramatic rules of Uganda. What followed thereafter is the subject of the next Chapter.

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73 The Social Origins of Violence in Uganda, op.cit. page 132.

## CHAPTER SEVEN

### THE RETURN OF OBOTE AND CONTINUED MISRULE

The end of the rule of President Lule ushered in a period of activities intended by those who were in effective control of the UNLF to return Obote and the UPC to power.<sup>1</sup> The UNLF was turned into an instrument for that purpose, In consequence, whereas other observers see that period as an extension of the UNLF, we see it as the beginning of the UPC campaign to stage a comeback. The President who replaced Lule was even more of a manipulatable puppet than Lule himself. This was President Binaisa who cared more about his image and personal traits than the interests of Uganda.<sup>2</sup>

It will be recalled that in the early days of independence, Binaisa was one of the Baganda identified as a nationalist. It was this characteristic that attracted the radical elements including FRONASA to accept him as a worthy replacement of President Lule. Moreover, because Lule was a Muganda himself, the conspirators who removed him thought, quite rightly, that the Baganda whose support for any government in Uganda is crucial would not rebel in great numbers if Lule's replacement was himself a Muganda.

The facts and circumstances surrounding the Binaisa Presidency and the last period of the UNLF under the Military Commission's Chairman, Paulo Muwanga as *de facto* President, show quite clearly that the Front had ceased to matter and the persons who were in charge of its affairs were controlled and directed by forces which were loyal and took and executed orders of government directly from the leaders of the Uganda Peoples' Congress. In our view the UNLF principles and *modus operandi* expired with the Presidency of Yusuf Lule.

#### 7.1 UNLF, THE TROJAN HORSE OF UPC

In Greek mythology, the inhabitants of Troy City were besieged by the Greeks under Agamemnon who wished to recover his brother's wife by the name of

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1 See: Yoweri K. Museveni: Sowing the Mustard Seed: the Struggle for Freedom and Democracy in Uganda, McMillan, Kampala, pages 118-120.

2 Museveni : Sowing the Mustard Seed, op.cit. page 113.

Helen from the City. The siege is said to have lasted ten years and when everyone was getting tired, the Greeks devised the Trojan horse. A wooden figure of a horse concealing soldiers within it was constructed by the Greeks who persuaded the Trojans to take it inside the city as a gift and upon entry soldiers emerged out of the horse and defeated Troy.<sup>3</sup>

The election of Godfrey Binaisa by the conspirators on 20th June 1979 was quickly endorsed by the Tanzanians. It had become obvious by then that both the Military Commission and the Tanzanian Government had all along been working for the return of Obote and the UPC to power. Museveni's efforts to create a national army was largely unsuccessful. The other members of the Military Commission were, Oyite Ojok, the right handman of Obote who successfully recruited more soldiers for the UNLA than anyone else and therefore became the most powerful individual member of the Commission. The other members, Tito Okello who later briefly became head of state, Zed Maruru and Captain Omaria had no clout or great numbers of following in the army. Consequently UPC allied itself with the Military Commission knowing that its Chairman, Paulo Muwanga and the Army Commander, Oyite Ojok, both in the service of Obote and the UPC, were the real power in Uganda. It was not long before the Military Commission assumed the responsibilities of the UNLF government and the affairs of state of Uganda. On the political front, Paulo Muwanga and Oyite Ojok, were franked and assisted by the duo of Chris Rwakasisi and Dr Luwuliza-Kirunda who were later to figure prominently in the government of Obote<sup>11</sup> as senior and influential Cabinet Ministers. Of the remaining forces in the country, only Yoweri Museveni, now Minister of Defense with his FRONASA could have mounted a reasonable challenge against the forces of Obote, Muwanga and Oyite Ojok. However, that possibility was thwarted by the machinations of the UPC operatives and anti- Museveni elements within government who tricked Binaisa into believing that Museveni had ambitions to challenge Binaisa's presidency.<sup>4</sup> Naively, Binaisa agreed and removed Museveni from the Defense Portfolio. This left the UPC and Oyite Ojok a free hand to depose President Binaisa at any time of their own choosing. Although many members of the NCC disapproved of the removal of Museveni from the powerful portfolio of defence, they continued to work with and support both Binaisa and the army commander. This has been a characteristic failing of Ugandan successive Parliaments. They never seem to stand up for the principles they believe in. Invariably, powerful members of the Executive and the armed forces tend always to have their way. The first test for the Binaisa Presidency

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3 Described in Homer.

4 Kasozi ABK: *The Social Origins of Violence in Uganda*, op.cit. page 134.

came when the NCC, by a large majority passed a resolution to hold general elections in December 1980 under one political organization, namely the UNLF. However, the UPC groups both in the Council and outside it opposed the resolution arguing that to do so would be tantamount to establishing a one party state. In this stand, the UPC was strongly supported by one influential D.P member of the Council, Lawrence Sebalu and the opponents of the resolution issued a joint Press statement denouncing the decision of the majority in the NCC.<sup>5</sup> There followed public debates and rallies for and against the resolution. The army commander, Oyite Ojok who was supposed to be apolitical began to address public rallies on the merits of multiparty democracy and promised to fight for the principle if need be.

In the wake of these apparent conflicting opinions from the leaders of the UNLF, law and order in the country disintegrated. Numerous murders, rapes and robberies took place. It was then that the army commander assumed the responsibilities of government. Oyite Ojok authorized and personally carried out searches for suspected criminals and subversive elements. He ordered the arrest of some seventy two persons including many journalists. The arrests were followed by indiscriminate shootings in the capital, Kampala. For a period, it appeared as if Uganda had no effective government and President Binaisa had become a prisoner of his own army.

Binaisa attempted to relieve Oyite Ojok of his command. He dismissed Oyite Ojok for insubordination and appointed him ambassador to Algeria while naming one Nanyumba as the new army commander. None of these decisions materialized. On 10 May, the Military Commission under Paulo Muwanga, announced publicly that it would not accept the dismissal of Oyite Ojok as it had not been done in accordance with procedures and in any event, the Commission challenged Binaisa's powers to dismiss the army commander without consulting the other organs of the UNLF. Apparently, as before, the Tanzanian forces were in the know if not counselling for all that happened. As the crisis loomed, the Tanzanian troops tactfully withdrew from Kampala to await the outcome from the conflict between the President and the Military Commission. They were ready to intervene on behalf of their protégés, the UPC. Effectively, this ended the Binaisa Presidency. It was later announced that the Military Commission had taken over all the Presidential powers. The announcer emphasized that it was the Military Commission and not the army which had taken those powers.<sup>6</sup>

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5 Kasozi ABK: *The Origins of Violence in Uganda*, op.cit, page 134.

6 Museveni: *Sowing the Mustard Seed*, op.cit, page 115.



## 7.2 THE MILITARY COMMISSION AS CHIEF EXECUTIVE OF UGANDA

With the announcement that they were taking over Presidential powers, the Military Commission became the de facto President of Uganda but constitutionally this would have been quite awkward mainly because as we have seen, not all members of the Commission were in agreement with this latest move. Museveni was not privy to it. Paulo Muwanga as chairman of the Commission should have been declared President but this would have been interpreted as meaning that UPC had once again overthrown the Constitution of Uganda for the personal benefit of its leaders. In the end, the Military Commission appointed an irrelevant and harmless Presidential Commission consisting of three Ugandans who were non-partisan but had had distinguished careers in public service. These were Messrs Wacha-Olwol, Polycap Nyamuchoncho and Saulo Musoke.<sup>7</sup> It is not recorded whether the three ever jointly or singly signed and sealed any official Presidential document, but all the same the important decision of state would henceforth be taken by the UPC leadership in collaboration with Paulo Muwanga and Oyite Ojok. ABK Kasozi concludes the sad episode of the Binaisa President with a befitting epitaph thus:

“Binaisa remained like a sitting duck at State House for a few days and was then transferred to a private residence in Entebbe. After his fall, he realized that his private secretary and head of security had been serving Obote’s interests. As soon as a cloud appeared over Binaisa’s future, these servants, in the manner typical of Uganda’s petty bureaucratic bourgeoisie politicians, simply shifted their loyalties to the Obote forces”<sup>8</sup>

Some Ugandans may wish to take issue with Mr Kasozi with regard to his final remarks cited above. It is true that there were politicians and bureaucrats who remained principled and loyal to and as their respective fallen leaders. James Senabulya, the Principal Private Secretary to President Lule remained faithfully loyal until the death of his boss, President Lule. This author who has served in Lule’s government briefly as Attorney General was vigorously persuaded to join the Binaisa administration and was pursued abroad on at least two occasions but declined the offer because he held the strong view that the removal of President Lule had been effected unconstitutionally. One of the posts offered to him was the portfolio of Minister of Foreign Affairs which was not a small job. Professor Ssempebwa and another, sued the Binaisa government for having illegally removed Lule from office. There have been other Ugandans who have shown the courage of their convictions by declining senior posts offered to them by the government of the day.

7 Lagal Notice number 5 of 12 May 1980.

8 Kasozi ABK: *The Social Origins*, e.t.c., op.cit, page 99.

Kasozi maintains that the reason the Military Commission acted in these strange ways was so that they could give power to Obote in a manner that would be perceived to be democratic and legal.<sup>9</sup> Tanzania was anxious that this be so. This is the reason why the UPC and Tanzania went to all the trouble of organizing and conducting the general elections of December 1980.

Nevertheless, the electoral process and decisions emanated from the office of Paulo Muwanga, the Chairman of the Military Commission. The Democratic Party was tricked in accepting the UPC proposal to lie low while the former was laying down the ground rules for the elections and eventually supervising them. The UPC faction in the army was the only one with effective military power. The other participating parties were disadvantaged in many respects. Although forewarned about the unlevelled ground for all the parties and given a hint as to how they could insist on equality of opportunities and access to media, the Democratic Party declined the advice. They believed the assurances given to them by some military senior officers and the Tanzanian government that all would be well in the elections and should the DP win those elections, forces greater than UPC military force would guarantee security for the new government. Ultimately, when the elections came, almost every step was designed to favour Obote and the UPC. For instance, the Military Commission ensured that the majority of the returning officers would be those in favour of UPC winning. Their colleagues who were known to be supporters of DP or whose loyalty was not known had their services terminated.<sup>10</sup>

The UPC rejected the idea of one ballot box for every constituency preferring a multiple system of boxes which was known to be favoured by those who wished to cheat at elections. The UPC candidates were facilitated by the Military Commission which provided them with government vehicles and protection. UPC was given free access to the government's media such as radio, television and government newspapers. Writes on the 1980 elections list many transgressions by both the UPC and the Military Commission against the chances of any success by the other participating political parties. There is evidence to show that the Uganda Patriotic Movement founded with Yoweri Kaguta Museveni as leader was prepared to boycott the 1980 elections but the Democratic Party refused to join the proposed boycott.<sup>11</sup>

9 Walubiri M. Peter: *Uganda Constitutionalism at Cross Roads*: Uganda Law Watch Centre, Kampala, 1988, page 99.

10 In *Social Origins of Violence in Uganda*, op.cit, page 136.

11 Lule Yusuf Entrusted with a message to the leaders of the other participating political parties – in a meeting in Nairobi attended by Bidandi Ssali for UPM but not by representatives of D.P or the C.P even though invited as a matter of urgency. Also See: Kasozi, *Origins of violence*, etc, op.cit, page 142.

In the ensuing election campaigns, candidates belonging to parties other than the UPC were beaten, harassed, detained and in many cases refused to collect or handle election materials to which they were by law entitled. Many non-UPC candidates were rejected by UPC partisan registration officers on some technical grounds often at the last minute of registration so as to allow their UPC opponents to be elected unopposed. The ultimate insult to the non-UPC candidates who were standing in the election was the decision by the Military Commission to work for the UPC. For this purpose, the Commission removed the responsibilities of conducting and supervising the election from the national Electoral Commission and exercised them itself.

When the elections closed, the Chairman of the Military Commission, Paulo Muwanga announced the creation of a new law which prohibited ‘anyone’ whether chairman, secretary, agent of the Electoral Commission, or private citizen, to announce results.’ Anyone doing so would be committing a crime and would be fined the sum of KShs 500 000 or imprisonment for up to five years, or both.<sup>12</sup> Only Muwanga himself could announce any results if he was satisfied that a candidate had been properly elected. Admittedly, there is some evidence that in some areas, particularly in Buganda, some DP supporters were getting over enthusiastic and claiming that they had won seats even where the counting of votes had not commenced. Some of that party’s supporters released inaccurate news and broadcast it in the international media that their party had won the elections in Uganda and would be forming the incoming government. Certainly, such enthusiasm and falsity needed to be contained but not in the manner Paulo Muwanga did it. Following Muwanga’s announcement, rumours circulated all round that the reason the new law had been issued was because UPC had found that it was losing the elections very badly. Some people thought the announcement was a prelude to a military takeover of government. In addition, and according to Kasozi:

“Overnight, so it is reported, the leader of the UPC and the chairman of the Military Commission stayed together in intensive conference in a house in Kololo, doctoring the results”,<sup>13</sup>

While it is true that the Secretary to the Electoral Commission, Mr Vincent Ssekoono was forced to flee from his post at the Commission’s offices and actually went into exile, there are no other independent sources to confirm the doctoring of results referred to by Mr Kasozi.<sup>14</sup>

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12 The Uganda Times of 19 July 1980.

13 op.cit, page 143.

14 The Standard Newspaper, Nairobi, 12 December 1980.

All the same, Paulo Muwanga's statement severely undermined the credibility with which Ugandans and the international community received the news that UPC had won the elections of December 1980. Be that as it may, the results were not seriously challenged by the main opposition, namely the Democratic Party. However, Yoweri Kaguta Museveni and the Uganda Patriotic Movement did. The UPM as the latter party came to be popularly known, had undertaken through its leaders, that if 1980 elections were rigged, its leadership would fight the riggers. We shall see in the next Chapter that that is what happened.

The literature and records available indicate that the Military Commission in the person of its chairman, Paulo Muwanga and the UPC operatives combined to manipulate the electoral laws and procedures to ensure that the results they wanted from the elections would be guaranteed. This writer, then Chairman of the Uganda Group for Human Rights in London, at the time, and then a well known International Media commentator on African Affairs was interviewed by the BBC shortly after the results were announced in Uganda. What he said then was almost prophetic. He said:

"If it is true that in the electors in Uganda have voted for the Democratic Party but the army has imposed Obote and the UPC on the people, this is a recipe for disaster in Uganda."<sup>15</sup>

That statement was also heard by some of the ruthless operatives in the UPC and they would keep the author in exile for another six years.

### **7.3 OBOTE II; NO LESSONS FROM THE PAST**

It has been said, perhaps rather harshly, that the greatest disservice Obote did to his country was to return to power undemocratically in 1980. Ali Mazrui in his comment on "The Blood of Experience. The Failed State and Political Collapse in Africa," said:

"Under both the administration of Idi Amin (1971-1979) and the second administration of Milton Obote (1980-1985) Uganda experienced, simultaneously, some of the worst excesses of both tyranny and anarchy."<sup>16</sup>

In 1984, a seminar was held in London under the auspices of the Uganda Group for Human Rights. The object of the Seminar was to discuss the status of Ugandan refugees in other countries. Eminent experts on Uganda and Africa sat on the discussion panel. Among those present were foreign journalists and tourists who had visited Uganda and investigated claims of human right violations under Obote

15 The BBC Focus on Africa. Also See: Commonwealth.

16 Observer's Report on the elections of 1980, pages 19-32.

II. There were many Ugandan exiles in the audience and most of them had fled from the misrule of both the Amin and Obote II governments. Others who had lived in Uganda even throughout the terrible days of the Idi Amin regime had been forced to flee during Obote II. There was a consensus at that meeting that, unspeakably awful as the Uganda situation under Idi Amin was, it was in many respects, much worse under Obote II, than it was under Amin. The experts and the participants observed that under Obote II, the situation is exacerbated by the presence and activities of an uncontrollable army, the UPC youth wingers and the resuscitated intelligence gathering bodies. For sometime then Uganda had been experiencing a political crisis of such gigantic dimensions that the country's record on human rights was as bad as could possibly be imagined.

About the same time, a church missionary who had just returned from the Uganda of Obote II but who had lived there throughout the Amin era lamented:-

"In Amin's time I never saw many dead bodies, I never saw much looting and raping by soldiers. Things in the Buganda area at least, have got worse since Amin."<sup>17</sup>

In its report of 1984, Amnesty International believed that the situation in Uganda warranted the gravest concern and revealed incidents of widespread detentions without trial, torture, disappearances of citizens and death. Some sources suggested that in the Luwero triangle where the Obote II government suspected the population to be sympathetic to the guerilla activities of Yoweri Museveni's National Resistance, half of the population had been eliminated by the government's anti guerilla campaigns. One commentator observed sadly that: "If things are quieter there, it is the quietness of the graves."<sup>18</sup>

In a long article in the "Times" newspaper of London of 3 May 1984, Richard Dowden under the headline "*Uganda: Britain's blind eye to Terror*" wrote:

"The number of refugees is further evidence that the situation under Obote is much worse than it was under Amin. Whereas there were about 25,000 refugees from Amin's Uganda, there are now about 280,000 from Obote's Uganda"<sup>19</sup>

One of the then well respected groups that is, respected by the then UPC government was the British-based Church of Uganda Association whose many members tended to be sympathetic with a UPC-led government in Uganda because UPC was mainly supported by the Church of Uganda Christians. The overwhelming number of the Association members were ex-missionary teachers and civil servants who worked in and liked Uganda both during and after the

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17 in "La Croix".

18 Dr Nick Metcalfe.

19 The Times of London.

colonial period. One of their publications in 1985 contained a report on the situation in Uganda after Obote had been returned to power as President for the second time. The report concluded:

“We sense that the greatest problem is one of security. There is shooting every night. The roadblocks where there is frequent looting and even killing are a source of income for the soldiers who man them”<sup>20</sup>

In the same period, Dr Barbra Harrell- Bond, then of Oxford University reported on the horrors she discovered in the Sudan which were the consequences of misrule in Uganda of Obote<sup>11</sup>. She had encountered refugees in Sudanese camps. Thousands of Ugandans who had fled from persecution, massacre and torture by Ugandan soldiers in Northern. She received evidence of hundreds of Ugandan refugees “facing slow death by starvation and disease, having been continually running from raids carried out by Ugandan armed forces in that part of the country.”<sup>21</sup>

The British Parliament’s *Hansard* in the House of Commons showed at the time that many MPS of all parties had condemned the “*bloodshed, terror and violation of human rights in Uganda*” under the Obote II government, and it was further reported that all sides of the House, “*urged Her Majesty’s Government to use its undoubted influence and special position in this (Uganda) Commonwealth country to help bring these evils to an end.*”<sup>22</sup>

The 1985 yearly report of the French magazine ‘La Croix’ headlined, “*eight months in Uganda-Daily Terror,*” The medical co-ordinator of a humanitarian body, T. Michel had just returned from a visit to Uganda. He also had already visited troubled countries such as Thailand, Somalia and Angola and was therefore familiar with conflicts and death and was one not to easily exaggerate situations. Nevertheless, on Uganda he wrote:

“What was new for me, was not poverty or violence, but the daily and accepted terror. Ugandans live by the day and their own hope is that they survive. When in 1980 Milton Obote returned to power aided by Tanzanians it was believed that Uganda would be coming out of the nightmare where Idi Amin had plunged it. Four years later, the opinion finds that the country is sinking deeper into murderous chaos. It is true, the term ‘mass grave’ is in fashion and moves opinions. I saw them. As one walks along a path, a tibia is seen sticking out from the grass on the roadside. The rainy season makes bones emerge to the surface. On enquiring, these are villagers whom the army slew. Reason: They were collecting fruits for guerillas. These are also some large common

20 Association’s Annual Report, 1981.

21 Harrell-Bond, Barbara: UNHCR Report on Northern Uganda and Sudan.

22 British House of Commons Hansard.

graves of hundreds of persons. The army forbids my approach to them, but there are vultures and the odour from the wind... It is impossible to give figures. (The Uganda) government avows 10,000 deaths, foreign observers suggest the figure of 300,000- of course nearer the truth. One thing sure: This is one of the current conflicts where most deaths have taken place.”<sup>23</sup>

A British medical doctor, Nick Metcalfe of Manchester was invited by the Uganda Government to work in the country and on 15 May 1985 he wrote to British Ministers and reported on Uganda thus:

“I dearly loved the country and the people from its many different tribes. However , I grieve very much for the gross abuse of human rights that is going on In Uganda. My main concern here is not the restriction of basic liberties, the collapse of democratic government ... but it is an execution on the scale of not killing of opponents but the mass murder of innocent *people*. *I base this on having worked in one area for a year and subsequently working and traveling around a majority of the country.*”<sup>24</sup>

The local population affected and the Uganda Press largely remained silent for fear of further liquidations and murder, but in 1985, ‘*Munnansi*’ which was then publishing news in Uganda touched on the violence that were being perpetrated on the people by government forces and then concluded,

“Luzira Maximum Security Prison was built by the British to hold no more than 500 prisoners. Now over 200,000 inmates are crammed in Luzira Prison in an environment unfit for human or animal habitation. They lack food, medicines, beddings or anything else a British (sic) might consider decent for her dog or horse... none of the inmates have ever appeared in court.”<sup>25</sup>

We have found it necessary to cite a number of foreign writers and observers on the Uganda of Obote II to show how extensive and wide the gross violations of human rights including life were under Obote II, because it is often alleged that Ugandans, especially those who live in exile, tend to exaggerate the human rights situation in Uganda. Much of the evidence alluded to here was collected in the 1980s when this author was the Chairman of the Uganda Group for Human Rights, a humanitarian organization of Ugandans and supporters, based in London at the time. The Uganda Group for Human Rights prided itself on its impartiality, objectivity and evidential comment. The members of the Group like any other Ugandans had relatives and friends who were killed or deprived of their humanity but their passion and love for our people did not affect their impartiality or objectivity in reporting the events and incidents at home, impartiality and

23 op.cit. *ibid*.

24 Report laid before the House of Commons: See: Archives.

25 24 December 1981.



objectivity is what made our reports credible and encourage the world to speak and act on what was happening in Uganda.<sup>26</sup>

#### 7.4 THE ECONOMIC MIRAGE UNDER OBOTE II

At independence, the Ugandan economy was in excellent form. It was one of the strongest in black Africa.<sup>27</sup> Comparative world economic data of the period excluded Uganda from the poorest countries of the world. By the time the first Obote government came to be overthrown by the army in 1971, the economy was not in good shape and bad economic performance was one of the reasons given by the soldiers for overthrow of the UPC government from power. By the time Obote violated the Independence Constitution, declared himself President, dismantled the traditional infrastructures, suppressed the electoral process and established an authoritarian presidency, the Uganda economy was weaker still and as if this was not enough to dampen Ugandan morale of development, Obote's first government had preached not fully adopted what they called socialism and the move to the left while at the same time Obote Cabinet Ministers and the UPC elite and operatives were busy and greedily grabbing available national assets themselves.<sup>28</sup> Ownership of best farmlands and industrial sites, company shares, firms and personal chattels such as expensive cars and large houses were sometimes mysteriously transferred from legitimate owners to ministers, members of their families or friends. In between these acquisitions, ministers toured the country advocating for socialism. People may have kept silent but they were not fooled. They recognized the campaign for socialism for what it was- A cleverly staged smokescreen behind which members of the government and their families and close associates could deprive the people of their birthright and inheritance under the principle of "*What you have, we share, what I have, I keep*".<sup>29</sup>

What the people of Uganda had ministers would share with them and what the ministers had, they would keep. This was the kind of move to the left many Obote ministers preferred while taking everything on the right. In reality few of the cabinet ministers understood or cared what the Move to the Left meant.

Consequently, whatever else we have said about Amin by the time he took office in 1971, the Uganda Economy was already on the downward slide.<sup>30</sup> In fact,

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26 In inception and work, the Group was a political.

27 World Bank Report.

28 Africasia Magazine: number 24, December 1985.

29 Africasia Magazine: number 25, January 1986.

30 Institute of Development Studies, Bulletin 7 number 4, April, 1975, pages 11-22.



during the first half of his regime's period, with the coffee boom on the world market, Amin did considerably better in preserving and utilizing the national wealth. Had his government not ushered in a rampage of looting, destruction of and anarchy, the UNLF life and property and may be the Obote II government would have inherited a better economy.

A number of Western governments got committed to supporting the Obote II government regardless of its bad record on the Human Rights situation. The financial loans and gifts donated by these governments were supplemented, sustained and spearheaded by the World Bank and the IMF. In a bid to win international recognition and the badly needed foreign exchange, the government accepted all the conditionalities imposed by the donor countries, the World Bank and the IMF. A study commissioned at the time in Sweden revealed that much of the money given to Uganda did not benefit the common people. The study concluded:

"The man who bears the full burden of the economy, the common man, does not benefit. Indeed, one sees more new cars on the unrepaired streets and shops stocked with video sets, colour TVs and the like."<sup>31</sup>

An International Catholic Weekly publication observed at the time:

"Uganda imported a hundred Mercedes Benz cars for the top men and women. These cars were ordered during the period when lack of drugs and starvation were rampant in Luwero, Karamoja and West Nile. Not only all illicit gains of the powerful come from loans made by the IMF and others aid donors. The ancient art of smuggling particularly of Uganda's main crop-coffee is in the hands of individuals who control instruments of government in Uganda to-day."<sup>32</sup>

Obote was his own Minister of Finance during the 1980-1985 administration. In his budget statement of 1984, Obote increased the minimum wage for group employees to 6 000 shillings per month and everyone in Parliament applauded the increase. However, the monthly wages as increased could not cover a family's weekly shopping. A family of three persons would need at least two bunches of Matoke (cooking bananas) a week. Each bunch cost at least KShs 3 000. The family would have needed KShs 6 000 for Matoke alone. Milk, sugar, meat and vegetables would have needed a similar amount of money, if not more. Then, if any members worked in the centre of the City he or she would have needed some 300 a day for fares to and from work which would have brought the family expenditure far beyond their total income and we have not mentioned soap, medicine and other necessities which such a family would have needed to merely

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31 World Bank Report.

32 la Croix. op.cit.

survive. It was a little short of a miracle that ordinary workers managed to survive in this kind of economy. They supplemented their meagre income by doing odd jobs outside the working hours and working in the evenings for other relatively wealthier Uganda residents who were economically better endowed than themselves. Many Ugandans had access to some pieces of land in which they could grow their food. In fact throughout the turbulent years of Uganda, its people have survived on informal and subsistence economy.<sup>33</sup>

On the other hand, Ministers, senior public servants and senior security officers, their families and associates were seen to be quite affluent. Much of the country's resources which earned foreign exchange currencies and percentages of moneys donated or loaned to Uganda for development and other budgetary requirements were effectively diverted to private hands. The scale of corruption in the country was such that many Ugandan leaders and public officials siphoned off part of national income for private personal use.

At one time during the Obote II government, economists who had researched into the Uganda situation concluded that since the fall of Idi Amin, Uganda had earned or received sufficient funds and equipment to rebuild the country's infrastructure, roads, buildings and equip schools and hospitals with most of what they required as well as be able to pay regularly the personnel working in those institutions.<sup>34</sup> Unfortunately for the country, much of these funds had either been wasted on the internal wars and conflicts or diverted to personal use. Thus, during the Obote II rule, the roads and streets in the country were under disrepair and full of manholes, the conditions were so bad that only drivers who were under the influence of alcohol were seen to drive vehicles in straight lines. There were chronic shortages of clean water, electricity, medicine and personnel in all Uganda institutions. The educational system had become corrupted and educational standards fallen alarmingly.<sup>35</sup>

Earlier, we referred to a French periodical which described events in Uganda in 1984, its sad narrative continued with the following:

"It is daily terror. The peasants are literally held in servitude by the army which lives on them, makes them work and appropriates to its self the harvest of coffee, maize and beans. Along the distance separating one (region) from Kampala I counted 14 military

33 Coleman, Cliff, LJS and Doombos, M.R (eds): government and rural Development in East Africa. Essays on Political penetration. The Hague, Martinus Nijhoff 1977, Hansen, Holger Bernt and Twaddle, Nicheal, (eds): Uganda Now, James Goory, London, 1986.

34 In Hansen and Twaddle; Uganda Now, op.cit.

35 See: Langseth P, Katorobo, J, Brett E, and Munene J: Uganda Landmarks in rebuilding a nation; Fountain Publishers, Kampala, 1997, pages 216-217

rod blocks. At every stop the army takes its dues. A bunch of bananas, bought for 50 shillings from the peasants is thus resold at 2000 shillings in the Capital City.”<sup>36</sup>

It is inconceivable that Obote, a person who may not have deserved but was given a second opportunity to rule Uganda should have committed graver violations of people's rights and misgoverned the same country in a much worse manner than he had previously done. The easiest explanation could be that a result of his removal from power in 1971, he harboured mortal wounds of damage to his ego and pride and remembered those who he deemed to be responsible for the overthrow of his first government with such deep hatred that he regarded his second coming as a golden opportunity to hunt them down and inflict terrible revenge upon them. While there is some evidence for this belief, nevertheless Obote<sup>11</sup> represents more than mere revenge. Between 1981 and 1985, several Ugandan Ministers and public officials visited and passed through London and other capitals of the world. It is there that they felt free to comment on the state of affairs upon which they and Obote presided. Many of them stated that they and their President, Obote were prisoners of the Uganda army under the Commander of Oyite Ojok. There is some truth in these claims. It becomes evident earlier on in the administration of that government that the army commander and several associates of his felt that without them and the Military Commission, Obote and UPC would not have regained state power in the country. What is more Obote and UPC knew this to be a fact. There was another matter Obote remembered. In 1970–71, he had ignored the murmurings in the army that all was not well in his relationship with it, and he had been overthrown. He would not make the same mistake. This time he let them have their way. The result was that whatever Oyite Ojok and senior officers in the army wished to do or have, the government would oblige and accept their demands unconditionally. Besides being the chief of the army, Oyite Ojok demanded and was made a Member of Parliament, he could attend Cabinet and UPC caucuses whenever he desired. He demanded to be and he was appointed the chairman of the Uganda Coffee Marketing Board. At the time, the foreign exchange money earned from the sale of coffee excelled all the moneys obtained from all other Uganda exports combined. Some foreign banker recalling what Oyite Ojok had earned from his combined posts and banked abroad and whose clients included the Government of Uganda remarked:

“Individual Ugandan officials have so much money in foreign banks that if they could lend to their Government a fraction of the money salted away, the Uganda government would become solvent and would not have to rely on foreign loans and handouts”<sup>37</sup>

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*Ibid.*

As in the days of Amin, the rank and file of the army under Obote II was not always paid or paid on time. The soldiers were therefore left free to pay themselves by preying on the civilian population through extortion, terrorism, coercion, robbery and looting.

The international media periodically reported the unstoppable, the uninvestigatable and therefore the unpunished crimes by the Uganda army against its population.<sup>38</sup> In their search for Museveni's liberation movement in the bushes in the central province, Uganda soldiers unleashed a reign of terror on the civilian population. Whole communities were decimated by rampaging hordes of soldiers who pillaged, raped and looted with relish and lust. The Times of London lamented at the time:

"The ravages and apathy have left many Ugandans, once noted for their charm and civility, with little respect for law and life. To-day, many live only by deceit or by accommodation with violence."<sup>39</sup>

Against the barrage of these accusations, the rest of the world stood by and watched and incredulously did nothing. On a number of occasions, representations of opposition groups visited world capitals and sought audience with world leaders to report the calamities in Uganda. Very few succeeded in getting the desired audience and where it was forthcoming, fewer still convinced any leader to do anything. On a number of occasions, the Uganda Group for Human Rights petitioned and briefed the Prime Minister and Leaders of the Opposition parties with only the Liberal party showing that it was concerned and was amongst those actively engaged in policies to produce changes in Uganda. At one time the then Prime Minister, Jim Callaghan said that it was a policy firmly held in the Commonwealth that members do not interfere in the internal affairs of sister member states and it is for the people of Uganda to change their own leader if they so wished. Mrs Margaret Thatcher then leader of the later remarked that if the reports the Group had presented to her were accurate, they (the British Government) would consider what to do about it. Needless to say that nothing was done.<sup>40</sup>

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37 A Swiss banker who wished to remain anonymous in conversation with representatives of the Uganda Group For Human Rights, asking for financial support for Ugandan Refugees stranded in Europe, May, 1984.

38 op.cit. *ibid*.

39 op.cit. *ibid*.

40 Margaret Thatcher, then leader of the opposition Conservative Party in conversation with this author, then Chairperson of the Uganda Group For Human Rights, who was lobbying for support of NRM struggle.

However, whenever Obote's ministers or diplomats denied that their government was committing atrocities against the people, foreign governments appeared willing and ready to accept those explanations. They preferred to believe Obote's emissaries rather than for instance, seasoned and impartial reports from the respected London 'Times' newspaper.<sup>41</sup>

Spokesmen of the British government at the time were some of the worst examples of a duped officialdom. When in 1984 the U.S.A Under Secretary for Human Rights stated that between 100,000 and 200,000 people had died in operations by the Uganda army, the British High Commission in Uganda queried the accuracy of those figures and asserted in passing that in fact things were actually improving since the overthrow of Ida Amin. In 1985, the same High Commissioner congratulated the Uganda government on its improved human rights record and on the growing harmonious relations between civilians and the army. This was definitely contrary to the findings of actual researchers who had visited Uganda and whose remarks we have discussed in this chapter.

In 1985, Shafik Arain, then Uganda High Commissioner in London and Obote's chief propagandist addressed a meeting at the Commonwealth Institute Kensington, London and claimed that since the Obote II government came to power, the economy of Uganda had made tremendous leaps forward on its way to recovery and that at the time of his speech, Uganda was the only country in East Africa whose balance of payments was in the black. The majority in the audience did not believe him while others called him a liar for they all knew differently. Most unusually, his counterpart, the High Commissioner for Tanzania was so upset by the speech that he stood up spoke a contradicting Shafiq Arain.<sup>42</sup>

The makeup of the Obote Cabinet was not one that would have endeared him to the population. Obote found himself saddled with individuals who claimed to have helped him back to power and who apparently left him with no other choice but to appoint them to senior posts in the Cabinet. It is true that some of these ministers such as Paulo Muwanga who became Vice President and Kirunda Luwuliza and Chris Rwakasisi had worked tirelessly for his return to power. In politics, persons who help a leader to gain or regain power are rewarded by being appointed to senior posts in government or otherwise. The nature and importance of the posts to which they are appointed will depend on their contribution, standing and character both in the leader's organization and in the country.

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41 op.cit.

42 Also See:: Gadozo, Wilberforce: Uganda's Statement in Africasia number 25, January 1986, pages 43-44.

Unfortunately for Uganda, the politicians who had worked hard for the return to power of Obote and whom he felt he had to appoint to senior posts in government had such character that was not designed to endear them to the Uganda population. At the same time, the President appointed them to head and run ministries whose responsibilities, functions and powers affected every Ugandan in the country. This further undermined the credibility and legitimacy of the Obote II government.<sup>43</sup>

Another group of fanatical supporters who undermined the credibility of the Obote II administration were the numerous UPC functionaries who held posts in diverse organs and institutions of government and of the party and were spread all over the country. They included the party's local and constituency chairmen, secretaries and other officials.<sup>44</sup> These are the people who aided the Uganda National Resistance Army in identifying victims for torture and assassination and property for looting and seizure. The soldiers, the secret police which was known as the National Security Agency (Nasa), in collaboration with the UPC functionaries, between them, engaged in murder, torture, looting, rape and terrorism in many places of the country. In their diverse missions to achieve these misdeeds, these hordes of murderous government agents would set up official road blocks and private road barriers at which they would wait for the travelling public. They would then stop, rob, torture and rape anyone whoever they were. Hardly any of such victims escaped with their lives or without being tortured or mutilated.<sup>45</sup> The Obote II government used allowed or tolerated these agencies of death and destruction to imprison children, force young girls into marrying soldiers, execute suspects without trial, detain innocent people and to desecrate holy places of religious worship. Thus, for the period, between 1981-1985, Ugandans were virtually prisoners in their own country with the nightmare of insecurity hanging upon them every moment of their lives. They suffered under a government which many of them had elected in the belief that it would be different from those of Amin and the UNLF. In reality, Obote II's misgovernance of Uganda compared notoriously with those of Idi Amin and certainly by far exceeded those committed under the UNLF short-lived administration.

Milton Obote II did not arouse the same international revulsion as Idi Amin because of a mistaken belief of the international community that no one else could do worse than Amin. Obote was also shielded by diplomats and representatives of

43 See: Kasozi: *The Social Origins of Violence in Uganda*, op.cit . page 151.

44 Kasozi. op.cit. ch.7.

45 An Amnesty International Report: Torture in the Eighties, 1984, from page 130.

the countries of the West and the World Bank and IMF who had invested heavily in the recovery of Uganda from the ravages of Idi Amin.

The most regrettable aspect of the Obote II government is that notwithstanding the controversies surrounding his return to power, his government had soon gained the goodwill and support of a majority of Ugandans and as we have seen, had also the support of the international community. That things should have gotten out of hand and that his government should be held responsible for such repression and abysmal performance is evidence of how Obote had become ineffective leader since triumphantly bringing the country's independence from the colonial rule in 1962. It was therefore with relief and jubilation for most Ugandans when Obote was overthrown for the second time by a military junta in July 1985.<sup>46</sup>

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46      Nsibambi Apollo: *The Restoration of traditional rulers in Hansen and Twaddle: From Chaos to Order*, Fountain Publishers, Kampala, page 45.

## CHAPTER EIGHT

### THE NATIONAL RESISTANCE MOVEMENT IN THE BUSH

A number of writers on Uganda affairs discuss the shortlived administration of General Tito Okello Lutwa which overthrew the Obote II government from power in January 1985 as a separate phenomenon in the political and constitutional changes in Uganda. We, on the other hand see it as an event which occurred in the period between the fall of the Obote II government and that of Museveni's National Resistance Movement.<sup>1</sup> In our opinion, by the time the Okello Lutwa incident happened, the National Resistance Movement was so posed on the threshold of acquisition of power that without that event, nothing could have stopped Museveni and his freedom fighters from seizing political power in the country that year or soon thereafter. However, this is not to belittle or ignore the political and constitutional importance of the Lutwa event as a trigger mechanism for the NRM in its defeat of the Obote II government. We shall first discuss the existence and importance of other organizations which opposed and fought against the Obote II government for they too assisted in the weakening and eventual defeat of that government.

#### 8.1 OPPOSITION GROUPS AGAINST THE OBOTE II REGIME

In the previous chapter, we discussed the Military Commission's assumption of Presidential powers after the removal of Yusuf Lule from office in June 1979, as part of the match to power by Obote II. It was from that time onwards that open opposition was seen to emerge and grow against the incumbent government. A group of fallen President Lule's former associates who included Andrew Kayiira, Sam Sebareka, Arnold Bisase and other many UNFL leaders fled from the country and began to plan for a military opposition against the UPC.<sup>2</sup> By June 1980, these with others including this author had already had consultations with Yusuf Lule and several other former ministers who had served under him and agreed to unite together and seek external assistance to overthrow what they saw as the second dictatorship of Milton Obote. By October that same year, a

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1 e.g Kasozi A.B: The Social Origins of Violence in Uganda, op.cit, page 175.

2 African Confidential, 12 February 1981.



considerable number of Ugandans, mainly originating from the Buganda region had consulted with one another, met and founded the Uganda Freedom Movement (UFM). The founders of UFM elected veteran politician, the late Balaki Kirya as its first chairman. Unlike the leadership of the National Resistance Movement which will be examined later, the UFM leadership was externally based. It began to recruit soldiers who came mainly from the Amin and UNLF former soldiers and defectors. Again, unlike the NRM, the UFM did not believe in a people's army or a protracted struggle.<sup>3</sup> UFM wanted a quick solution founded on sabotage and *coup d'e' tat*. In February 1981, it unsuccessfully mounted a military offensive intended to remove Obote from power. This was done by a series of uncoordinated but subversive activities in and around Kampala which were carried out at places such as Luzira Prison, the Kampala main Post Office, Radio Uganda and several other strategic places. For some period, the UNLFA soldiers who were on duty in Kampala, actually fled from their posts. The government was shaken by these events. In April the same year, the UFM whose leadership was often impervious to reason and caution attempted another *coup de'tat* which also ended in total failure.<sup>4</sup> The reasons for the failures of the UFM were easy to see. It was poorly led from outside Uganda and its recruitment and deployment of its fighters were haphazard and amateurish. To weaken the UFM further, its leaders quarrelled amongst themselves on tribal and religious grounds and logistically fought one another. They also heavily depended on foreign donors and sources for financial and military support.<sup>5</sup>

Despite its seemingly insurmountable problems, the UFM made a third assault on the government yet again in February, 1982. Not surprisingly, this also ended in fiasco with many UFM fighters killed or defecting to the side of Museveni's National Resistance Movement which was now also in full engagement militarily against the Obote army. This latest skirmish of the UFM is remembered for alerting the international community to the knowledge that Obote II was facing a serious rebellion and was opposed by armed guerrilla organizations. Unfortunately, to make matters worse for UFM, its Chairman, Balaki Kirya was abducted from Kenya by Obote's secret agents in July 1983. He was flown to Uganda and imprisoned. Being a non-Muganda and honest, Kirya's integrity and age had been the unifying factors which UFM now missed. Kirya's Vice-Chairman, Badru Kateregga, perhaps afraid of the unfolding misfortunes of the organization, chose to

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3 Kasozi, op.cit, page 166.

4 Omara-Otunnu, A: *Politics and the Military in Uganda, 1890-1985*, MacMillan, London, 1987.

5 Odonga Ori Amanza: *Museveni's Long March from Guerrilla to Statesman*; Fountain Publishers – Kampala, 1998, page 67.

keep a low profile. These occurrences effectively cut communication channels between the UFM executive in Nairobi and its fighters in Uganda who were led by Lawrence Ssemakula and Dr, Lutakome Andrew Kayiira. The only effective operative for the UFM who stayed in Nairobi was its fundraiser, Mr Henry Kajura. Deprived of the counselling of the likes of Balaki Kirya, the internal wing of UFM fighters became careless and with the encouragement of foolhardy Kayiira, they recruited anybody who so wished or was persuaded without careful screening. This meant that they were soon infiltrated by Obote's agents. In September 1982, the UF Military camp was stormed and overran by Obote government forces and many of UFM fighters were captured or killed. Some of the captured fighters were publicly displayed and shown to the media. This episode more or less ended the UFM efforts as a serious fighting force against Obote II. Some of its founder members and supporters survived beyond its demise to found the Federal Democratic Movement of Uganda or FEDEMU led by an NRM defector by the name of Lawrence Ssemakula who decided that the Democratic Movement should emulate the National Resistance Movement and fight Obote from within and not outside Uganda. His dream was unfortunately short-lived for he, like Balaki Kirya of UFM was abducted from Nairobi but sadly killed while in the custody of the Obote government. Ssemakula was replaced by Dr Lwanga as nominal head of that organization. Its military commander, Nkwanga who had also commanded UFM military forces was later executed by his captors on behalf of the new military junta of Tito Okello on the suspicion that he supported Yoweri Kaguta Museveni of the NRM.<sup>6</sup>

There also emerged during this period another fighting group called the Uganda National Rescue Front. It consisted of Ugandans of the West Nile region who had fled to the Sudan during the UNLF operations in that area and the takeover of the Uganda government in 1979. The chairman of this particular Front was one Brigadier Moses Ali who had briefly served as a minister in the Idi Amin's government and who was well-known and liked in the Sudan government circles. The Sudanese government had not been pleased with the defeat of Idi Amin or the manner in which he had been toppled. They resented the fact that Nyerere, a President of a foreign and mainly Christian government had toppled a Muslim leader to replace him with Obote whom they saw as a hostile leader who was who was sympathetic to the Southern rebel Christians opposed to the Sudanese government.<sup>7</sup> Thus, comfortable in a friendly environment, the Uganda National Rescue Front managed to mount several military raids into Uganda between 1980

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6 Kasozi, *op.cit.*, page 170.

7 Kasozi, *et.al. op.cit. ibid.*

and 1982 and scored a number of victories against the Uganda government forces. In fact, by 1982, the Rescue Front held and was in control of much of northern West Nile. Although beleagued by internal struggles and dissensions, the Uganda National Rescue Front did a great deal of psychological harm against Obote II and the UPC government. Obote government's claim that it was being opposed by a clique of Southern, disgruntled tribal leaders was exposed as a lie by the existence and operations of Moses Ali's Front which was from the northern part of the Country, Obote's own home ground.<sup>8</sup> The world realized that with the Rescue Front's entry into the war against his government, Obote was nationally widely discredited and disliked. However, the Rescue Front also fought militarily. Between December, 1982 and January, 1983, it carried out several military operations in West Nile region as a result of which nearly 15,000 Ugandans fled from that area and went to the Sudan as refugees. This refugee exodus further undermined the credibility of the Obote II government. However, like the Uganda Freedom Movement, the National Rescue Front lacked discipline and ideology. It was motivated by the sheer desire to get into political power quickly. It did not have any code of military discipline and some of its soldiers often mistreated civilians. Nonetheless, the Rescue Front played an important role in weakening the government defenses and diverting its military equipment to tackle the Rescue Front army. Later, the Rescue Front joined up with the National Resistance Movement to strengthen the groups fighting against Obote as well as to reduce the armed groups which would have surfaced after the defeat of the Obote II government. This eased the situation for the formation of a future administration.<sup>9</sup>

There were two other separate groups formed to oppose Obote II. The first of these was the UNLF-Anti-Dictatorship (UNLF-AD).<sup>10</sup> This group was formed by the remnants of the former officials of the Uganda National Liberation Front after it lost power to the Military Commission in May 1980. It will be recalled that there was the group we described earlier on in this book as consisting of radical socialists in the Lule government. Their leaders included well known personalities such as Edward Rugumayo, Dan Nabudere, Yash Tandon, Omwony Ojok.<sup>11</sup> They also attracted people like Pulo Wangoola, a former official of the Uganda Group for Human Rights and key participant in the conspiratorial meetings that eventually planned the removal of Yusuf Lule from the chairmanship of the UNLF at Sate

8 Africa Confidential, *ibid*.

9 Selected Articles on the Uganda Resistance War-NRM Publication, Kampala, 1986.

10 Professor Dan Nabudere was often the torch bearer of this group: See: Hansen HB and Twaddle, in Uganda now; Currey, London.

11 The first and last were later to serve as ministers in the NRM government under Museveni, 2001 – 2006.

House, Entebbe. They also included one Luutu–Mukasa. Theirs was purely a political and diplomatic offensive. They continued to advocate for the ideals of unity and freedom which had been underwritten in the UNLF Constitution and the Minutes of the Moshi Conference.<sup>12</sup>

The UNLF Anti-Dictatorship organization remained mainly theoretical and lacked a military backing which was essential in the situation prevailing at the time in Uganda. In any event, noble and attractive as the group's dogma was to the intellectuals of Uganda, it failed to appeal to the peasants of the country who formed the great numbers of the population. The propagandists of the Anti-Dictatorship group wrote and published excellent articles advocating for democracy and unity in Uganda. However, their articles were mainly read by Ugandans in exile and their foreign intellectual friends. The group's leaders such as Edward Rugumayo, Dan Nabudere, and Yash Tandon travelled to different capitals of Africa and beyond advocating for the concepts, principles and benefits of democracy, unity and freedom in Uganda. They described the gross violations and other anti-people indulgencies of the Obote II government with accuracy and feeling. The audiences which these academics addressed were sometimes moved to tears.<sup>13</sup> Unfortunately, for the group and sadly for Uganda, the majority of the population who should have heard these messages of hope and salvation were not always in a position to do so.<sup>14</sup> In reality, any envisaged political change in Uganda had to be in tune with the wishes and aspirations of that majority whose support was essential for the overthrow of the Obote II government.

Nevertheless, the Anti-dictatorship group must be credited with having effectively waged a psychological warfare on the Obote II government. The group's speeches and publications which were available within and outside Uganda and which were published in the media appealed to the Uganda intellectuals and educated cadres whose assistance to and co-operation with the anti-Obote forces fighting within Uganda were essential. The international community listening to the group's speeches and reading its publications may not have been in a position to give aid financially or militarily, but it understood fully well the exposure of the Obote II regime as murderous and harmful to Ugandans and this understanding was necessary for the legitimization and tolerance of the political and military offensives against that regime.<sup>15</sup>

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12 Hansen and Twaddle, *Uganda Now*, op.cit.

13 Odongo Ori Amaza: Museveni's Long March, op.cit.

14 They had been forced into exile where they addressed meetings, mainly of foreign participants with some Ugandans who happened to be residents there.

15 See: *Africasia* number 24, December 1985.

## 8.2 THE NATIONAL RESISTANCE MOVEMENT

In our opinion, the National Resistance Movement of Uganda has been a unique superstructure of political and constitutional innovation in Africa if not the whole world. To understand the origins, structures and struggles of the National Resistance Movement (NRM), it is essential to study and understand the background, character, philosophy and vision of its principal founder member and chairman for more than 20 years, Yoweri Kaguta Museveni. Fortunately, a host of scholars and writers have already written and published many volumes of literature on both Museveni and the National Resistance Movement.<sup>16</sup> The character and the political life style of Museveni the leader and President and the existence and *modus operandi* of the National Resistance Movement as a political organization have been the subject of numerous studies and commentaries in books, journals, periodicals, internet, and the Press, local, national, regional and international. Eminent and renowned scholars and intellectuals in politics and constitutionalism have found Museveni and the National Resistance Movement of Uganda fascinating subjects of study, analyses and scholarship.<sup>17</sup> Yoweri Kaguta Museveni himself, writer and effective speaker in his own right has done some considerable writing and is credited with several publications. Some of the work and publications on the subject are listed in this book.<sup>18</sup> Moreover, since this author's first meeting with Yoweri Museveni in the late 1960s, the author's own political life and professional work have been very closely intertwined with those of Museveni's and the National Resistance Movement of which Museveni has over decades become the acknowledged embodiment and personification. perhaps this makes this writer a weak choice for writing about Museveni and the NRM.<sup>19</sup> Consequently, in this Chapter the author intends to comment on and analyze issues by way of clarification and emphasis which, in his opinion, he considers to have been glossed over or whose analysis he personally has a slightly different view from other writers and commentators.<sup>20</sup>

Immediately after the general elections of December 1980, it became known that the elections were not free and fair. It will be recalled that when interviewed by the BBC of London, the author expressed concern about the results and the

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16 See: note 12 in (1 ed), page 221.

17 See: note 15 above.

18 *infra*.

19 Then a lecturer in law, in the Faculty of Social Sciences under which the then department of law was administered, Makerere University, Kampala.

20 *Supra*.

grave consequences of installing the Obote II in government.<sup>21</sup> Immediately after those elections, Yoweri Museveni and his close associates in Uganda began meeting and discussing ways and means of stopping Uganda from slipping back into a fully blooded dictatorship. The government of Obote II must have heard about or detected these meetings which it regarded as subversive. The house where these meetings often took place was attacked and Museveni ran away and went into hiding. Dr Ruhakana Rugunda, a long time close associate of Museveni and this author immediately sent the latter a fax message containing information to him about the attack. The author was the chairman of the Uganda Group for Human Rights in London and Dr Ruhakana Rugunda knew some of its members including the author to be working clandestinely for or with Museveni. The author was instructed to publicise the fact of the attack worldwide and to contact Museveni's supporters in the UK and elsewhere and inform them that Uganda people's protracted war against the Obote II dictatorship had begun.<sup>22</sup> From that day until he was appointed to the post of a Justice of the Supreme Court in September 1997, the political life and beliefs as well as the professional work of the author were devotedly put at the disposal of the country, Yoweri Museveni and the National Resistance Movement.<sup>23</sup>

This author first met Yoweri Museveni in the late 1960s when he, the author, was a young lecturer at Makerere University and Museveni was a finalist at Dar es Salaam University. In those days, the Makerere Debating Society was a vibrant body of ideas and vision and always organized debates on topical issues. Museveni was invited to participate in one of these debates as a principal speaker and the actor, was amongst those who attended that debate. This author was impressed by what Museveni said was wrong with governance in Africa and how it could be remedied. Both men came to know each other more closely and Museveni's ideas were further articulated when both attended the Lusaka meeting in August 1977 which formed the short-lived Uganda National Liberation Movement and again, in 1979 when both were principal activists, planners and speakers at the Moshi Uganda Unity Conference. These encounters led the author to admire the philosophy and vision of Museveni and to identify himself publicly and privately with Museveni's principles and ideas of action in any attempts to put Uganda on the right paths of democracy, freedom and development. In 1979, during the brief administration of President Yusuf Lule, the author worked closely with Yoweri

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21 B.B.C "Focus on Africa".

22 Sent the news item to the Guardian of London and circulated the same amongst the Uganda communities throughout Europe.

23 Until appointed a Justice of the Supreme Court in 1997, the author had been associated with and sewed the liberation movements and the NRM since 1977.

Museveni who was then Minister of Defence and the author was Attorney General and later Minister of Justice as well. Kanyeihamba was privy to Museveni's pledge that if subsequent elections were actually manipulated or rigged so as to deprive Ugandans a free choice of their government, he would contemplate starting a guerrilla campaign against the manipulators and riggers of that election. When this occurred in 1980, Kanyeihamba, then in exile in U.K was among the first to be informed and recruited in the liberation war.

Kasozi has ably described the events which followed Museveni's flight from Kampala. He has written:

"The nucleus of the future National Resistance Movement was born at 8:30am on 6 February 1981 when a platoon of twenty seven young men under Yoweri Museveni attacked Kabamba School of Infantry. Although they did not achieve all their aims, they survived and learned from their experience."<sup>24</sup>

However, the most important description is the systematic and ideologically correct manner in which the movement came to be politically motivated and organized. The aim of the founders of the movement was to organize the people of Uganda, consolidate them into a people's force to fight a protracted war for their freedom. There were no easy ways. There were to be no *coups de' tat* or assassinations of Obote and his ministers. Power would be restored to the people by their own efforts in collectively and individually taking up arms and fighting the forces of oppression and dictatorship.<sup>25</sup>

The leaders of the movement proceeded to organize Ugandans into Resistance Councils of fighters and civilians in a hierarchy of the lowest at the village level with a few families to the highest in the District representing thousands of parishes. The movement was structured in such a way as to have a political wing known as the National Resistance Council and a military wing known as the National Resistance Army with the former being the political and the supreme organ of the movement. The council was responsible for the final policy of the movement and consisted of important functional committees such as the Finance and the Supplies Committee responsible for the war zones and the Political and Diplomatic Committee which politicized and sensitized the population and the international community about Ugandan affairs. There was also the Publicity and Propaganda Committee which acted as the public relations organ of the Movement both at home and abroad. This author was a member of the external wings of the last two named Committees but he and his colleagues in London who included Ernest

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24 op.cit. page 164.

25 *Supra*.



Rusiita, the late Ben Matogo, Joseph Tomusange and Simon Kabuzi liaised with the first Committee in collecting materials and equipment from abroad and giving international publicity for the cause of the movement.<sup>26</sup>

The duty of the National Resistance Army was to organize and win the war, politicize that army, educate the public, and defend the population. These objectives were achieved by the Movement's well-planned organization of its organs and activities from grassroots to the top leadership in the country. In addition, the Movement imposed a strictly binding code of conduct on both its military and civilian cadres. It formed and guided resistance councils at village, parish, sub county and county levels with regular consultations and advice between the councils and the top leadership of the Movement. It also imposed a strong code of moral and ethical behaviour and exposed and counselled or punished any deviants.<sup>27</sup> In its initial stages of operations, the Movement's aim was not just to capture territory or take anyone as prisoner but to establish itself in the population as an organization with a heart and compassion. It wished to consolidate its popular appeal not only to Ugandans generally but also to the international community. It deliberately set out to educate and inform everyone including supporters of Obote about its aims, vision for Uganda and its capabilities, for as its leader, Museveni stated, "*war is a science and not a gamble.*"<sup>28</sup> Museveni firmly believed that the Movement would only succeed and hold onto power if it followed the correct line in military, political and organizational strategies and operations. Slowly but surely, the Movement became not only an ideal political alternative to Obote and the UPC but many in the population including defectors from the UPC and other political parties began to find pride and hope in identifying with and supporting the Movement. Without these principles and qualities, the Movement would not have attracted the support from the population. It would not have been able to obtain local materials and food or capture arms and equipment from government soldiers or persuade thousands of citizens, government army officers and public servants to abandon everything else and climb onto its bandwagon.<sup>29</sup> Stories of the Movement's polite and supportive behaviour towards the civilian population, of persuading captured government soldiers to join its ranks instead of killing them or even of asking them to return to their homes if they did not wish to fight anymore, were published in the local and international media and captured the imagination of everyone. That the Movement assisted the widows and fostered the orphans and

26 Museveni Y Kaguta: *Sowing the Mustard Seed*, op.cit, page 57.

27 Museveni Y.Kaguta: *Sowing the Mustard Seed*,. op.cit, page 57

28 *Ibid.*

29 Mugaju Justus and Oloka-Onyango (eds.): *No party Democracy*, op.cit. page 101.



that it established schools and dispensaries in the areas it conquered and occupied contrasted very sharply with the harsh and oppressive manner in which the Obote II government and its agents treated the population. Overnight, the Movement was transformed from a mere guerrilla fighting organization into a salvation army which every good citizen and foreign well-wisher prayed would liberate Uganda from the shackles of misrule.<sup>30</sup> However, much more work remained to be done.

### 8.3 CONSOLIDATION OF THE NRM PHILOSOPHY

We noted that the fighting wing of the National Resistance Movement which came to be known as the NRA or The National Resistance Army started in February 1981 with a platoon of twenty seven men.<sup>31</sup> As a result of the attractive nature of the Movement caused by the characteristics and qualities which were described earlier on, the small number of the original fighters began to swell by volunteers, defectors from the government forces and recruits to such an extent that the NRA came to be numbered in thousands in a very short time. These numbers continued to increase to such degree that the NRM political wing began to worry as to how they could manage to cater for and maintain such a big and expanding army of freedom fighters. Nevertheless, as already noted, the style and *modus operandi* of the National Resistance Movement not only captured the imagination of Ugandans but of others including foreign governments and institutions which decided to assist financially and materially so that a movement of the nature they had heard about could return Uganda to sanity. In consequence, although a considerable part of the arms and military equipment consisted of what was obtained from internal sources, the NRM's coffers were generously supplemented from friendly governments and supporters.<sup>32</sup>

On the political front, the movement cadres went on the offensive. The majority of the political cadres who had partly founded or supported the Uganda Patriotic Movement which had participated in the 1980 Parliamentary elections as a newly formed political party, became the nucleus of what was to develop later into the National Resistance Movement. Besides the group's leader, Yoweri Kaguta Museveni, the group included Eriya Kategaya, Dr Ruhakana Rugunda, Bakulu-Mpagi Wamala, Alhaji Moses Kigongo and Kirunda Kivejinja, amongst others. The group started meeting clandestinely in various houses in Kampala and planned strategies for fighting against the Obote II government which had come in as a result of irregular and unconstitutional elections and had now shown its true

30 NRA Resistance News, number 1 March/April, 1981, pages 2-7.

31 *Supra*.

32 Libya was particularly helpful. See: *Sowing the Mustard Seed*; op.cit, page 136.

colours as a potentially a dangerous dictatorship. They founded the People's Resistance Army (PPA) meanwhile elsewhere, the former first UNLF President of Uganda, Yusuf Lule, in consultation with several of his former Cabinet ministers and some other influential Baganda elite who were opposed to the Obote II misrule met several times in London and Nairobi and founded an organization called Uganda Freedom Fighters (UFF).<sup>33</sup>

It became obvious to each of the many anti-Obote groups which had mushroomed in such a short period that their divided efforts and divisions within the political and ideological dimensions and the methods of approach to the Obote problem would weaken them further and they might not achieve their objectives. In the end, efforts to unite all the groups fighting against the Obote II government were made in June 1981 both in Uganda and Nairobi. A final unity meeting was held in Nairobi and was attended by the Uganda Freedom Fighters, Uganda Freedom Movement, Uganda National Rescue Front, and the People's Resistance Army. The meeting was only partially successful in that while the others hesitated or declined, the People's Resistance Army under the leadership of Yoweri Kaguta Museveni and the Uganda Freedom Fighters under Yusuf Lule agreed to merge into one and form what came to be known as the Uganda Resistance Movement. Yusuf Lule was elected its Chairman and Yoweri Kaguta Museveni became both Lule's Vice-Chairman and Chairman of the High Command of the merged National Resistance Army while Alhaji Moses Kigongo was elected chairman of the National Resistance Council, the supreme political organ of the new set up.<sup>34</sup> The merger symbolized a very important step in the campaign against the Obote II government. Museveni had been minister of defense and vice chairman of the Military Commission in the UNLF government.<sup>35</sup> Museveni had by then showed that he was a trained, polished, principled and committed guerrilla fighter with a streak of ideological determination to pursue his ideals to their inevitable end. He had all the time on his side since he believed in a protracted warfare. Museveni was supported in the NRA by young men and women of similar ideas and convictions many of whom hailed from the western, eastern and central parts of the country and who were often regarded by senior officers in the Obote government as militarily inferiors. They thus had some scores to settle.<sup>36</sup>

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33 Africa Confidential, 22 number 4 of 11 February 1981.

34 The merger united two important regions of the country against the Obote government, namely Buganda and the Western Region.

35 Mugaju and Oloka-Onyango. No party Democracy in Uganda; op.cit, pages 101-108.

36 Kasozi: *The Social Origins of Violence in Uganda*, op.cit.

Yusuf Lule, a traditionalist Muganda elder, had had distinguished academic and public service career records which the Obote political machine had totally ignored when Lule was hounded and removed from Makerere University and Sate House. Lule who was brought up as a Christian but converted to Islam later, was seen as the flag bearer for the Baganda, Christians and Muslims in the country. Moses Kigongo was also a Muganda and a successful young businessman who happened to be a Muslim also but originated from the war theatre of Luwero Triangle in which many of the confrontations between the Obote forces and those of opposition groups would occur during a five year guerrilla war campaign. The confrontation would be ideological and emotional with almost all the best cards stacked on the side of the anti-government forces. In the end however, the opposition groups would lose thousands of comrades and supporters in the Country for the price of dismantling the political and military forces of the Obote II administration.<sup>37</sup>

As things advanced, Yusuf Lule made one more attempt to bring the Uganda Freedom Movement of Andrew Kayiira on board or closer to the National Resistance Movement. Shortly after the merger of Lule's UFF and Museveni's UPF, this author was invited by Lule to Nairobi and briefed to the effect that he, Lule, had asked both Yoweri Museveni and Andrew Kayiira with one or two of their close associates, to meet with us for discussions on closer ties between our respective organisations. Also invited was Professor Kanyerezi. According to Chairman Yusuf Lule, Museveni and Kayiira trusted both the professor and this author and would respect their joint opinion. The group spent a whole day in a secret venue somewhere near Nairobi, discussing the merits and strengths of Kayiira and his group coming onto board of the united movement now led by Yusuf Lule and Yoweri Kaguta Museveni. This author's view which he expressed and illustrated with examples from history was that whatever different opinions they may have in establishing future good governance in Uganda, they stood a better chance of succeeding if they joined forces. Finally, both gentlemen agreed solemnly to co-operate and exchange military intelligence as well as work closely together in the overthrow of the Obote II government. Unfortunately, the alliance was shortlived. As the war against the Obote government intensified in Uganda, both groups continued working separately and sometimes this fact proved disastrous to either or both of them.<sup>38</sup>

#### 8.4 THE COLLAPSE OF OBOTE II

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37 For some of those who perished See: Kasozi, *The origins of Violence in Uganda*, op.cit. Appendix 5.

38 See: *Sowing the Mustard Seed*, op.cit, page 149.

With the assumption of power in Uganda by Obote, the Tanzanian and their forces began to withdraw from Uganda so that by December, 1981, the Tanzanian fighting troops had quit the country and returned to their own homeland.<sup>39</sup> By mid June 1981, the NRM had not only grown in size and quality, but had formed and stationed fighting units throughout much of the central region of Buganda. The ordinary people in these areas co-operated fully with the fighting forces of the NRM for which they suffered greatly as evidenced by the thousands of human skulls found in the Luwero Triangle.<sup>40</sup> Without the people's co-operation and sacrifices, the NRM and other fighting groups would have found it difficult to defeat the Obote forces so easily and in such a relatively short period as happened.

As the struggle raged on, members of the International Press requested to visit the war theatre in Uganda and NRM members of the Diplomatic and Publicity Committee in U.K and London vetted a number of them including Mr William Pike, later to become the Managing Director and Editor of Uganda's leading newspaper, the "New Vision" and introduced them to the chairman of the High Command of the NRA, Museveni who welcomed them to the areas of the country which the NRM had liberated or was controlling.<sup>41</sup> The photographs and films which these adventurous journalists produced were distributed and broadcast widely throughout the world. Coupled with the NRM's own publications, broadcasts and Press conferences, these films enabled the whole world to understand what was happening in Uganda and to appreciate the philosophy, seriousness and work of the National Resistance Movement. While acknowledging that the other fighting groups were also doing commendable work in a number of areas and carrying out sabotage missions against the Obote government, the greatest number of anti-Obote fighters and the greatest damage must be credited with the NRM and its fighting forces, the NRA.<sup>42</sup>

Between 1981 and 1984, the terminal weaknesses of Obote and his government were exposed to the International community and, between 1984 and 1985, there was a dramatic change in the attitude of that community towards Obote and his administration. The World Bank and the IMF which had selected the Uganda of Obote to be assisted and developed as a model country of the so called Third World countries with enlightened leadership were embarrassed at an

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39 Having satisfied themselves that Obote and Army Commander Oyite-Ojok were in full control of the Country both politically and militarily.

40 Kasozi: *The origins of violence in Uganda*, op.cit. Appendix 5.

41 On return to Europe, William Pike and his fellow journalists published what they found in a film which was broadcast widely and had an immediate impact against Obote 11 government.

42 The Times of London, 27 August 1984; Africa Confidential 24 number 22.

International conference they had organized and financed in Copenhagen, Denmark, to appraise the work and progress made in Uganda. The embarrassment came about when several Ugandans who had been invited to attend were led by Dr GW Kanyeihamba and Mr Joshua Ssempebwa, a defected Ugandan diplomat, in turning the meeting into a critical appraisal of the Obote regime. The meeting was attended by international scholars and economists and included such personalities as Apollo Nsibambi, later Prime Minister of Uganda, Professor Ali Mazrui, Professor Senteza Kajubi and the late Dan Mudooola. The World Bank was represented at that conference by Mrs Katrine Saito. After listening to the address of Kanyeihamba and of the other Ugandans who were critical, she was visibly shocked to learn about the killings and other gross violations of human right in Uganda by a government supported as a model by the Bank. She spent the rest of the conference interviewing Dr Kanyeihamba, Ssempebwa and several other participants who were critical of the Obote government and supportive of Museveni and the NRM. On her return to Washington, Mrs Saito was amongst the World Bank officials who persuaded the Bank to abandon Obote in favour of Museveni and the NRM. Following the successes of the NRM and its assumption of power, Mrs Saito was amongst the very first World Bank officials to visit and work for the Uganda of Museveni and the NRM.<sup>43</sup>

Although some did so in the period of Idi Amin, many diplomats who represented the Obote II government in missions abroad defected to the National Resistance Movement during the early 1980s. They did so after briefing countries to which they were credited. Their defecting reports were always damaging to the government of President Obote. The orchestration of the diplomatic and publicity offensive against Obote totally undermined the standing and credibility of his government. Some foreign governments began to recognize the NRM as a government in waiting and accepted and dealt with its agents and representatives as *de facto* credited diplomats.<sup>44</sup>

In the meantime, Obote was facing serious problems of dissent within his own Cabinet and in the army itself. Obote, supported by ministers Chris Rwakasizi, Peter Otai and Dr Luwuliza Kirunda and those who controlled and operated the National Security Agency, (NASA), wished to fight the NRM and other fighting groups until one or the other side got defeated. Another group in the Government which was led by the Vice President, Paulo Muwanga and had the support of

43 Mrs Saito continued to work and associate with Uganda long after she left the services of the World Bank and since June 2002, she has visited Uganda periodically as a member of an NGO that has been assisting to rehabilitate the country.

44 Government of U.K, Germany and the Scandinavian countries welcomed Museveni and NRM representatives between 1983-1986.

Otema Allimadi and Tito Okello, counselled for negotiations between the government, Museveni and other fighting group's leader, Presdient. Obote decided to support the first faction in government.

On the military front, Obote received terrible news. Oyite Ojok, the army commander and Obote's right handman in the war against guerrillas was killed in a helicopter accident which allowed the guerrillas to claim that the helicopter in which he died had been shot-down by them or their forces.<sup>45</sup> The death of Oyite Ojok not only deprived Obote his ablest fighter but the manner of his death demoralized him, his government and the army itself.<sup>46</sup> At the same time, Ojok's death boosted the morale and fortunes of the Anti-obote forces both at home and abroad. In the first place, many soldiers and public servants defected from the government to join or work with the anti-Obote forces. Secondly, the belief by some of his backers abroad that only Obote with the support of the army was capable of ruling and keeping Uganda intact evaporated with the death of Oyite Ojok, the defections of UNLF soldiers and the spectacular successes of Museveni's "farmers, cattle keepers and academicians" of the National Resistance Army in various battles and skirmishes.<sup>47</sup>

With its own ranks, the NRM itself was not without difficulties from time to time. These are excellently dealt with by Yoweri Museveni himself in several publications.<sup>48</sup> However, in one episode involving a problem affecting the NRM, this author was directly involved as a constitutional lawyer. Earlier on in the activities of the NRM, he acted as the legal adviser to both Chairman Yusuf Lule and the NRM. The first working constitutional document and the proposals therein were first drafted by this author, on the instructions of Chairman Lule and circulated and debated in the organs of the Movement in Nairobi, the bush and London.<sup>49</sup> The document dealt with the progressive structural adjustments of the organs of the Movement from the status of a guerrilla organization to a government in Uganda after victory. Among the proposals were succession and elections in the movement and the setting up of a Constitutional Commission, following the assumption of governmental powers by the NRM in Uganda. When the first Chairman of the NRM, Lule, died in London, there arose serious

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45 Uganda Resistance News: *In Mission to Freedom*, op.cit, page 261.

46 Sowing the Mustard Seed, op.cit, page 153.

47 They were often so described by Obote's military commanders as a way of belittling their fighting prowess.

48 Constitutionalism after Obote, NRM Archives, Kampala.

49 The discussion on the author's correspondence in the Bush were revealed by Ambassador, M. Kyalogonza in conversation with the author, May 1993.

differences as to who should succeed him as Chairman. Conservative elements within the movement itself and some Western governments regarded Museveni as a dangerous radical who would take Uganda into the communist camp if he were to be President of that country. They appear to have counselled or influenced the thinking of the Lule group which had joined hands with Museveni to form the National Resistance Movement to oppose him succeeding Lule.<sup>50</sup> The people opposed to Museveni marshalled their forces in Uganda, Kenya and London to oppose him. They proposed that Mzee Samson Kisseka, who was a confidant of Yusuf Lule and a traditionalist Muganda, should be the one to succeed Lule to maintain parity between the Baganda and the rest of the supporters of the Movement. The proposals and counter proposals surfaced even at the funeral service of the late Chairman Lule which was held in London.

An urgent meeting of representatives of the groups and factions concerned was called in London with Kanyeihamba as a constitutional expert and adviser in attendance. After prolonged discussions and heated arguments the meeting accepted Kanyeihamba's advice that constitutionally, it should be Yoweri Museveni to succeed Lule. Muzee Kisseka, was elected by that meeting to be the interim Chairman and coordinator of the External Committee of the NRM.<sup>51</sup>

Be that as it may, by the beginning of the new year, January 1985, most Ugandans and serious international observers of the Uganda situation had come to the conclusion that the end of the Obote II government was imminent and the succession by Museveni and his NRM was inevitable. In consequence, the *coup de'tat* and takeover of government mainly by Acholi disgruntled soldiers and their supporters that year were acts of mercy killing. Mercy killing is assistance given to a dying person especially when he or she is in great pain so that the end comes more quickly to prevent further pain and suffering.<sup>52</sup>

After his death, Oyite Ojok was succeeded by a relatively young and junior officer by the name of Opon Acak amid protests from senior officers and Acholi soldiers. The latter complained later that they were the ones being selected to go and die in military confrontations with guerrillas while Opon Acak's tribesmen, the Langi, enjoyed a comfortable life in barracks and elsewhere in the country.<sup>53</sup> Sometime in July, there was some misunderstanding between the new army commander, Opon Acak and some Acholi personnel in charge of military

50 Author in conversation with ambassador Joseph Tomusange, 1986, Uganda High commission, Trafalgar square, London.

51 Later to be the first Prime Minister and later Vice-President under the NRM administration

52 Otherwise known as euthanasia.

53 Kasozi, the origins of violence in Uganda, op.cit. page 173.



equipment and ammunition at Mbuya Army barracks in which one Ocherio Nangai, an Acholi was killed. Later, President Obote met with his group which believed that the war should go on, and as he met them, houses of some other army officers who were in sympathy with the group of Paulo Muwanga who desired negotiations, were attacked. This was seen by the Acholis as evidence of Obote's intentions to eliminate them from the conflict. Acholi officers led by one Barjilio Olara Okello mobilized forces and decided to overthrow Obote and his government. On the 27 July 1985, Olara Okello seized Radio Uganda and announced the overthrow of Obote. Obote fled from the country for the second time. A military Council, with General Tito Okello Lutwa as its head and Olara Okello its strongman, was formed to govern the country.<sup>54</sup> The Council hurried to contact the fighting groups and found the remnants of the UFM, FEDEMU and FUNA willing to join the military junta of Tito Okello Lutwa. The National Resistance Movement declined to be so persuaded, especially when it realized that the Military Council was either incapable of stopping or was itself indifferent to the violations of human rights in Uganda in which its soldiers were indulging. In fact, between July 1985 and January 1986, other hundreds of Ugandans were killed or had their rights seriously infringed or their property destroyed. The NRM continued with its military operations in the country virtually uninterrupted. By the end of September 1985, the NRA had occupied much of the Luwero Triangle, Masaka and much of Western Uganda. In between these events, the Kenya government agreed to sponsor, host and preside over peace talks between the Military Council and the National Resistance Movement Council with other Ugandan political parties and groups except the UPC in attendance. An accord of some sort was signed by the participants in Nairobi under the supervision of President Daniel Arap Moi, of Kenya. This was in the December of 1985.<sup>55</sup> However, most Ugandans regarded the talks and the resulting accord as nothing more than an interlude between the downfall of the Obote Government and acquisition of power and control of Uganda by The National Resistance Movement.

No party in the Nairobi negotiations could have taken the accord seriously. The Lutwa junta believed it was the government of Uganda, and no government in the world has ever so willingly and voluntarily surrendered its rights to govern to a rival organisation. The National Resistance Movement whose forces were in control of most of Uganda and whose leadership knew that it would be cursed and lynched if it surrendered power to the Lutwa junta in the jaws of victory, was not

54 The junta was eventually overthrown by the NRM-NRA forces after some seven months in power.

55 See: Sowing the Mustard Seed, op.cit, pages 169-171.



in a position to surrender to the Junta. As already noted, the NRA was ordered to and it continued with its military operations in the country more or less uninterrupted while the peace talks were still going on in Nairobi. In fact, according to the late General Gad Wilson Toko, who was then an Army Colonel and Vice Chairman of the Military Council and Minister of Defence who also attended the Nairobi Peace Talks, those talks turned out to be nothing more than a smoke screen which the NRM/NRA used to gain more time to complete its battles against the Okello Lutwa Junta. Kenya could do have expected full success of the peace it brokered amongst the Ugandan fighting group.<sup>56</sup>

Moreover, most supporters and cadres of the NRM saw the junta as mere prolongation of the Obote II government. Most of its leaders had served under Obote and served him well as soldiers who executed his orders in the atrocities committed against the people of Uganda. The operatives of the Junta continued or failed to stop the same atrocities being committed in the brief period it was nominally in charge of the government of Uganda. It incorporated or absorbed former notorious soldiers who had served in both the Idi Amin and Obote II governments.<sup>57</sup> The employment of the disgraced Amin soldiers and the retention of the apparently disintegrating Obote military forces were acts of the Junta without political principles or vision. Consequently, from their strongholds in Buganda and the Western Region of the country, the military forces of the National Resistance Movement combined in their final assault against their opponents. At Katonga river, in a swamp between Masaka municipality and the Capital, Kampala, the NRA fought and won the final and famous battle and triumphantly entered Kampala where the population embraced and welcomed its soldiers as liberators. In the wake of this famous victory and in the moping up of the remnants of the UNLA in the suburbs of the City, fighters belonging to some of the smaller military groups surrendered or joined the NRM bandwagon of victory.<sup>58</sup> Later, the NRA High Command was to make an error by entrusting one of these joining groups, namely FEDEMU with responsibility of mopping up the remnants of the UNLA in the Northern Region of Uganda where that group inflicted so much havoc on the population there that the consequences would alienate the majority of the population in that region from the NRM for decades.<sup>59</sup> All the same, with the entry into Kampala of the NRA, the NRM became the only organisation with power and plans to form and be accepted by the population

56 The Sowing of the Mustard Seed, op.cit.

57 See: Generally, Gingyera Pinchywa A: Is there a Northern Question, in conflict Resolution in Uganda. Kumar Rupesinghe, ed. Oslok London, 1989, pages 44-64.

58 Sowing the Mustard Seed, op.cit, pages 169-171.

59 See: Father Waliggo John Mary who wants Kony war to continue or end? New Vision, 8.05.2006.

as the next government of Uganda, which, as we write, is still the Government, with uninterrupted duration of over years and since it has recently won another general election, it is expected to remain in office until the year 2011 when changes are expected, both in the mode of governance and the personalities likely to take the reins of government thereafter.<sup>60</sup>

## 8.5 FUNDAMENTAL CHANGES UNDER NRM

Counting the five years it spent in the bush fighting by the year 2006, the National Resistance Movement will have been the only political organization the majority of Ugandans have regarded as the determinant of their affairs for more than a generation.<sup>61</sup> A generation is a very long time for any leader or political organization to acquire and retain power in any free and buoyant democracy.

In our view, the period between 26 January 1986, when the National Resistance Movement took power in Uganda and 1995 when the country promulgated a new constitution, the Movement can be credited with a number of successes in governance several of which have ushered in the country fundamental changes. Many of these changes have been welcomed by the entire population and are likely to remain permanent features of governance in Uganda.<sup>62</sup>

Under the National Resistance Council system now fully incorporated in the Local Government legislation and regulations, Ugandans men and women of all ages, backgrounds, professions and trades, as well as the handicapped, the unemployed participate fully in the political and administrative affairs of their Country, from the village to the parish sub-county, county and District going up to the national government and Parliament.

The principle of allowing and enabling the ordinary people to participate in their government as officials or legislators in local and national bodies ought to be democratic and desirable in any free and democratic society. A number of delegations from other countries have come to Uganda to observe and study how this system of governance operates with a view to adopting it for their own communities. However, things of governance are not as the system appears to suggest.

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60 As for the conduct of those elections, See: Supreme Court findings in Presidential election petition number 1 of 2006 (UR).

61 CBR working paper number 52 of 1998, Kampala.

62 Except perhaps in the Northern Region where civil war and disturbances have continued for a long time. See: New Vision 6 May 2006.

We noted earlier, that this system of government was introduced and operated by the National Resistance Movement and the National Resistance Army during the bush war against the Obote II regime.<sup>63</sup> Under the system, every resident of a village is a member of an official of the village council and or the government of the village which makes policies and decisions on almost all aspects of life, well being and governance in the village. Until 1995, the village council and government were known as the Village Resistance Council and Committee, respectively.<sup>64</sup> The Council sitting as an elective college selected representatives from amongst its elected members to the parish council which also formed a resistance committee and the process would be continued at the sub-county, county and District levels. It is only for the National Resistance Council, that sub-county and county resistance councillors were summoned to form the county, Constituency electoral college to elect a candidate to represent the county in the National legislature. On the seizure of political power in Uganda by the National Resistance Movement, the system of governance as described was adopted nationwide, with the highest of the councils namely the National Resistance Council, becoming the surrogate Parliament and exercising the supreme legislative power of the country.<sup>65</sup>

Colonel Dr Kiiza Besigye, now retired, once ably described the philosophy behind the success of the National Resistance Movement in its early stages. He wrote:

“The NRM political programme was initially based on seven points which were later increased to become the well known Ten Point Programme. The basic consideration in drawing up the programme was that it should form the basis for a broad national coalition of democratic , political and social forces. A national coalition was considered to be of critical importance in establishing total peace and optimally moving them country forward. The programme was therefore referred to as a minimum programme around which different political forces in Uganda could unite for rehabilitation and recovery of the country. It was recognized that there exists many other issues on which the various forces were not in agreement, and there were issues on which the various forces were not in agreement and these issues would remain outside the main program. To achieve unity, it was envisaged that the minimum program would be implemented by a BROAD BASED GOVERNMENT. It was considered important that all Ugandans are able to see themselves in the NRM as if it were a mirror.”<sup>66</sup>

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63 *Supra.*

64 Now re-designated local councils under the Local Government Act.

65 The elections of these councils including the National Resistance Council was by voters lining behind their chosen candidate or his assigned place at the polling station.

66 Col. Dr Kiiza Besigye: Uganda at Crossroads. 14 December 1999.

Between 1986 and 1995, the National Resistance Movement endeavoured to implement the minimum programme which Dr Kiiza Besigye has described and in many aspects of its policies, the movement secured notable successes which can be recognized as having ushered in fundamental changes in the political, economic and social life of Uganda. It was during this period that Ugandans either individually or in groups, in meditation or meetings, were preoccupied with the economic development of their country hand in hand with others and government and with debates and discussions on three other issues, namely the making of a new constitution, belief in and protection of human rights and democracy in Uganda. It was during this decade that reverence and protection of human rights were prominent and the hallmark of the Uganda National Resistance Movement was clearly evident.<sup>67</sup> Citizens, the Press, Non-governmental organizations and other pressure groups paid particular attention and campaigned openly and freely against any alleged abuse or violations of civil liberties, and at every level, the government responded in many instances positively, in favour of the advancement and protection of human rights.<sup>68</sup>

In its efforts to establish and improve the economic situation of the country, the NRM government adopted and practised the policy of barter trade with almost all the countries of the world.<sup>69</sup> In partnership with and the financial support of organizations like the World Bank, the IMF, the Paris Club, the U.K., Germany, Italy and France and the Scandinavian countries, the NRM government placed great emphasis on the economic development of the country in its ten point programme which already has been mentioned. The NRM had recognized that, without meaningful economic rights being enjoyed by the population the quest for other human rights would be futile. Consequently a major goal of the government's programme was the creation of an independent, national, self-sustaining and integrated economy. The beginnings of this economic drive included the rehabilitation of the infrastructure and industries which had been damaged or neglected through the previous decades of national conflicts.

The rehabilitation of the infrastructure and factories stimulated the growth of the economy and encouraged the government and the population to diversify and expand in both agriculture and industry. The government decided to embark on an aggressive export drive, especially of the non-traditional crops such as beans,

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67 Oloka-Onyango J: *Governance, State Structures and Constitutionalism in Contemporary Uganda*: CBR Working paper number 52, Kampala, 1998.

68 Twinomugisha-Shokoro B.K: *How Free is the media in Uganda?* in EAJP and HR, Kampala, 1998.

69 See: selected Reminiscences of Yoweri Kaguta Museveni, 26 January 1988 where Barter Trade is highlighted on the cover.

timber, maize, fish and hides and skins.<sup>70</sup> The export of non-traditional crops was underscored by an aggressive policy of barter trade which was often rendered almost ineffective by a number of ideological and logistical problems. Barter trade is the oldest form of trade by human communities but by the time NRM resorted to it that form had long been overtaken and replaced by modern methods of commerce and trade, by letters of credit, foreign exchange and currencies. The exchange of produce and products for manufactured goods was as cumbersome and misunderstood everywhere as anything else could have been.<sup>71</sup> The then governments in the Western block of ideological divide between the so called capitalist states and the Eastern block of the so called socialist and communist states criticized Uganda for allying herself with the latter countries which welcomed barter trade with her more enthusiastically.<sup>72</sup> At home, senior government officials who had been used to dealing with modern trade and modes of exchange and hard currencies and getting some fringe benefits therefrom, resented the idea of barter trade and sabotaged it whenever they could. On the one hand, cadres who were supportive of the NRM governments' efforts in this sector of trade were either ignorant or inexperienced to match the guiles and acts of the suboteurs. On the other, Uganda was barter trading with countries which possessed resources, equipment and personnel of such nature and experience that outmatched and overpowered the poor efforts of Uganda to strike an equal bargain in this area. For the period in which barter trade was operational, Uganda lost much more produce and products in terms of hard currency and exchange than what she gained in the goods and manufactured items she received in exchange for its valuable coffee, beans, cotton and other products. Some of the products she got from this barter trade were of inferior quality or inoperative compared to those she might have got by just selling her own produce and products on the open market and then using hard currencies to purchase equipment and machinery on of her own choice anywhere in the world.<sup>73</sup> In fact, statistics show quite clearly that when the country abandoned or lessened the barter trade and operated a relatively free and open economy, its balance sheet in trade and commerce improved tremendously.<sup>74</sup>

70 As Minister of Commerce 1986-1989, the author in charge of the Ministry responsible for barter trade traveled widely in the world seeking market and signing agreements for Uganda's products in exchange for manufactured goods.

71 Nevertheless, the country's former heavy dependence on coffee as an export commodity was reduced considerable. See: the Bank of Uganda Reports, 1987-1991.

72 Generally, See: Bhasker, Menon P: *Global Dialogue: The New International Economic Order*, Pergamon Press, Oxford, 1977.

73 Hansen, Holger Bernt and Twaddle, Micheal (eds): *The Dilemmas of structural and Revolutionary Change*, Fountain Publishers, Kampala, 1991.

74 Kaberuka William Dr The Political Economy of Uganda, 1989-1997, in *Uganda: Landmarks in Rebuilding a Nation*, Fountain Publishers, Kampala.

These problems notwithstanding however, the NRM government succeeded in turning a miserable poor economy it had inherited into one which came to be approved by its partners, the World Bank, the IMF and a number of Western countries. Nevertheless, as we shall see later, this apparent success was at a high price paid by the ordinary people of Uganda.<sup>75</sup>

In order to create an environment in which the Uganda society would be transformed, The NRM set in motion a programme of politicization. Ugandans were encouraged and allowed to participate freely and without fear in all democratic and electoral systems of government. The NRM embarked on a policy of liberating the energies of every citizen to contribute to the governance and development of the country. For the purposes of widening democratic principles of participation in governance and development, the government constitutionally and legally accorded equal rights to men and women, the youth, workers and soldiers.<sup>76</sup> However, on the meaning of the equality accorded, different opinions have emerged. For instance, it is debatable whether soldiers who are elected by the army in an electoral college to become members of the Uganda Parliament, have the same rights and obligations as any other member of Parliament representing geographical constituencies or other special groups.<sup>77</sup> President Museveni believed that soldier members of Parliament are of a different category from other members wrote:

The army members of Parliament are not in Parliament to engage in public controversies. They are there as listening Posts (LP) for the Army in the world of politicians ... In a multiparty system, I do not think it would be tenable to have Army members of Parliament for precisely not wanting to involve the Army in partisan politics. However, in the Movement Political System, it is very useful to have the Army MPs as the LPs of the Army and also as its contact points with the politicians' world. Once there is a controversial issue, that may threaten stability, the Army MPs should come back to their constituency (the Army) and seek for guidance. The army would then, sit down, deliberate, and then give the MPs guidance.....It is therefore useful to have Army MPs if they strictly adhere to their mandate: monitor for the Army what is happening in the politicians' world, bring back to us whatever is controversial, we shall together with you NRM members of Parliament design a considered way and approach and give quiet guidance in confidential and political where necessary but do not be publicly controversial yourselves. Otherwise you become part of the problem."<sup>78</sup>

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75        *infra*.

76        Articles 31-36 of the Constitution.

77        Chapter six of the Constitution does not make any special provisions to distinguish the functions or rights of MPs representing special interest groups.

78        Letter to the NRM Caucus in Parliament. P0/30 of 14 December 1999.

Sadly, if we were to accept Museveni's concept and understanding of the Army members of Parliament, we would discover that he was a lonely voice in the wilderness and going by the offences army personnel committed in the 2006 elections, his philosophy is flawed.<sup>79</sup> Since every other general who has spoken or challenged the Army status and the members of Parliament who are soldiers, have behaved, acted and spoken in contradiction to what President Museveni had unilaterally perceived as the status and role of the army representatives in Parliament.<sup>80</sup> On the other hand, the representative members of Parliament for Women, the Youth, the Workers and the Disabled consider themselves full members of Parliament with all the rights, immunities and privileges which membership of that institution of state bestows on each and everyone of its members. In addition they have to take special care of the respective interests of their constituencies when participating in Parliamentary work.<sup>81</sup>

In the transformation of Uganda society, the NRM embarked on a programme of politicization which included *Muchakamuchaka* training exercises courses and seminars.<sup>82</sup> Ugandans freely participate in democratic and electoral system of work. The Uganda Press enjoyed unprecedented freedom and the number of newspapers journals and publications some of which published irresponsibly, multiplied and flourished.<sup>83</sup> Thus women, the youth, soldiers, workers, the disabled and other Ugandans were liberated to a degree hitherto unknown in the country.

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79 Omara-Otunu: Politics and the Military in Uganda, 1980-1995, op.cit.

80 See: Oloka-Onyango J: *Law, Grassroot Democracy and National Resistance in Uganda*, I.J.S.L, Volume 17 number 4 of 1989.

81 Tamale Sylvia: *When the Hens Begin to Crow: Gender and Parliamentary Politics in Uganda*; Fountain Publishers, Kampala.

82 Oloka-Onyango, Law, Grassroot Democracy, etc, op.cit.

83 Twinomugisha – Shokoro, op.cit.

## CHAPTER NINE

### THE BEST LEGACY OF THE NRM TO UGANDA

Notwithstanding the shortcomings discussed elsewhere in this book, the greatest achievement of the National Resistance Movement was the making of and promulgation of the Uganda Constitution of 1995. We have already alluded to the beginning of the ideas for making a new constitution for Uganda by National Resistance Movement long before they acquired political and military power in the country. On the same subject, Dr James Katalikawe wrote:

“The parameters of the 1995 Constitution were, we now know, drawn long before the National Resistance Movement (NRM) came to power in 1986. In its manifesto entitled ‘Towards A Free and Democratic Uganda’; The Policies for Rehabilitation of the Country, the guiding principles were ‘ patriotism, nationalism, democracy, national unity, socio-economic progress, human rights and the rule of law, moral integrity in government and public life, international co-operation and solidarity.’

However, the main task of the interim Government’ as the following extract indicates, was the restoration of democracy and the rule of law. The NRM publication containing the Movement basic principles was framed as follows:

“Dictatorship has bedevilled our country for too long, and it is the wish of our people, and the pledge of the NRM that this evil should be wiped from Uganda once and for all. In the history of every nation there comes a time when the clamour for democratic rights is so great that there can be no peace and no stability unless there is also democracy. Uganda is at such point.

At this point of our history, without democracy there can be no peace and stability. There can be no economic development and prosperity. Thus, if only for this reason, the struggle for democracy is a crucial on. But there is another reason too. The NRM believes that it is the inalienable right of all peoples to freely choose their government, and determine the manner of that government. Rigged or manipulated elections are an insult to the people, and recipe for instability, conflict and upheavals. Constitutions imposed on the people by guise or force cannot be the basis of stable and peaceful governance of men. It will be one of the primary duties of the NRM government to effect a swift but systematic return to democratic government after toppling the Obote regime.”<sup>2</sup>

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1 The making of the 1995 Constitution,, a mimeo: Faculty of Law, Makerere University, 2006,citing from “Towards a Free and Democratic Uganda, NRM Publications, Kampala, page 4.

2 Uganda Resistance News, Mission to Freedom, page 261.



To implement these basic principles, the NRM declared that it would form a broad-based government of national unity and enact an interim – constitution based on Montesqueu’s doctrine of separation of powers.<sup>3</sup> Subsequently and at the earliest opportunity, the interim government would establish and appoint a Constitutional Commission with a mandate to carry out wide consultations both within and outside Uganda. The Commission would then prepare a draft constitution based on the findings of its consultations. The draft would be published and subjected to general and specific criticisms out of which a second and final Draft Constitution would be produced for consideration, adoption and promulgation by a Constituent Assembly. This part of the NRM promises was kept and adhered to strictly and diligently except the enactment of an interim Constitution did not materialise. Instead of an interim Constitution, the 1967 Constitution was retained albeit in a modified form as effected in Legal Notice number 1 of 1986 as later amended.<sup>4</sup>

In March 1989, A Constitutional Commission was duly constituted and mandated to “study and review the Constitution with a view to making proposals for the enactment of a national constitution that would among other requirements,

- (i) Guarantee the national independence and territorial integrity and sovereignty of Uganda;
- (ii) Establish a free and democratic system of government that will guarantee the fundamental rights and freedoms of the people of Uganda;
- (iii) Create viable political institutions that will ensure maximum consensus and orderly succession to government;
- (iv) Recognise and demarcate division of responsibility among the state organs of the Executive, the Legislature and the Judiciary and create viable checks and balances between them;
- (v) Endeavour to develop a system of government that ensures people’s participation in the governance of their country
- (vi) Endeavour to develop a democratic free and fair electoral system that will ensure true people’s representation in the legislature and other levels;
- (vii) Establish and uphold the principle of public accountability by the holders of public offices and political posts and
- (viii) Guarantee the independence of the Judiciary.<sup>5</sup>

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3 This author was amongst the first group of recruit thinkers on this important aspect of our governance.

4 1989 (Amendment).

5 The independence of the Judiciary had always been fairly respected since the days of the colonial days notwithstanding intermittent displeasures with individual judges and judicial officers.

The twenty one member Constitutional Commission headed by Justice Benjamin Odoki mirrored the national character of Uganda and had on its membership representatives of all political parties, religious affiliations and special interest groups such as women, the armed forces, academicians and others. Notwithstanding this wide representation, the Commission was often criticized as having been hand picked by the appointing authority with little, if any, consultations with interested parties, and from time to time, during its work, the Commission and the government had vigorously to defend the Commission's independence and integrity.<sup>6</sup>

Although initially appointed to do and complete its work within a period of two years, the complexity of consultations it held and, lack of adequate funding meant the prolongation of the period it needed to complete its work to nearly four years. Its *modus operandi* was not without criticism. For instance it was said that:

"During the visits of the Commission to localities, people complained that in the meetings and seminars the agenda was fixed and the direction of the discussions was controlled by the Commissioners especially by the guidelines for discussion which they issued. Rumours spread that a draft Constitution had already been written and that the process was for purposes of window-dressing and a sham."<sup>7</sup>

Undeterred, however, the Commission carried out its mandate by travelling the length and breadth of the country including war-torn Districts of Northern Uganda. Canvassing the people's views on a wide range of Constitutional subjects and gathering people's proposals of how they wished to be governed and administered under a new Constitution, the Commission effectively utilised the use of the media, including newspapers, radio, TV and other means of mass communication including the holding of public meetings and the use of theaters and School buildings. The Commission also visited other countries to seek views and learn about constitutional innovations elsewhere. They consulted constitutional law experts both within and outside Uganda.<sup>8</sup> In terms of representation, content and coverage of its work, the Commission's Report is an exemplary piece of writing. However, some of the recommendations from the report which were contained in its draft constitution were often the subject of severe criticism and many were either rejected outright or radically modified by the subsequent elected Constituent Assembly which finally debated and promulgated the 1995 Constitution.<sup>9</sup> In this context it has been said of the draft Constitution that:

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6 See: Commission's Report: Introduction.

7 The Commission's Report: op.cit. Introduction.

8 *Ibid.*

9 New Vision, 14 June 1994.

“Of course, it cannot be claimed that the results necessarily reflected the views of the people with complete accuracy. Apart from anything else, because of the high levels of illiteracy in Uganda (probably about 50 percent or more), it can be assumed that there was some preponderance of elite participation. The Commission made use of its own analysis of Uganda’s problems, an analysis which was, however, influenced by the people’s views.....in its approach it also exercise its judgment in determining the best way to give form and effect to the consensus of the majority view. Hence, it cannot claim to have based its draft on popular views.”<sup>10</sup>

President Museveni himself is on record as having stated that in some significant respects, the Commission watered down what the people wanted especially in relation to the return of political parties on which the Commission’s recommendations differ from the wishes of the majority of the population as recorded in the Commission’s report. Another critic of the Commission’s draft Constitution has said:

“The Commission can also be taken to task for ducking some of the most contentious and divisive constitutional issues of the day, particularly the federal question, the restoration of political parties, the hereditary element and, of course, the system of government most suited to Uganda.”<sup>11</sup>

Notwithstanding the promise it had made during the bush that there would be an elected Constituent Assembly to enact a new Constitution for Uganda, the NRM in government initially recoiled from the idea by enacting Legal Notice number 1 of 1986 (Amendment) Statute of 1989 in which it was provided that the new constitution would be enacted and promulgated jointly by the two organs of the National Resistance Movement, namely, the interim legislature, the National Resistance Council and the army Council.<sup>12</sup>

However, by the time the National Resistance Council came to enact the enabling legislation under which the new constitution would be debated, enacted and promulgated, the mood for a different kind of body to enact the new constitution had radically and dramatically changed. There was now a chorus joined in by political parties, officers of the National Resistance Army and opinion leaders in the country that only an assembly freely elected by the people could enact and promulgate a new legitimate constitution. Wisely, both President Yoweri Kaguta Museveni and senior ministers in cabinet as well as the majority in the National Resistance Council jumped onto the bandwagon of an elected Assembly. Cecilia Ogwal, then Assistant Secretary General of the Uganda Peoples’ Congress (UPC) had asserted firmly:

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10 Hansen, H.B and Twaddle M. (eds) op.cit.

11 Legal Notice number 1 Amendment, 1989.

12 Legal Notice number 1 Amendment, 1989.

“The Uganda People’s Congress (UPC) does not recognize or accept that the NRC and the NRA are the legitimate and impartial organs to deliberate, adopt and promulgate a National Constitution for the people of Uganda. The UPC shall only recognize and accept a Constitution deliberated upon, adopted and promulgated by a Constituent Assembly:

- (a) Composed of representatives who have been freely elected from all parts of Uganda,
- (b) Whose election will be in accordance with universally accepted principles of universal adult suffrage and whose election all political parties will have participated in.”<sup>13</sup>

The people’s popular demand for an elected Constituent Assembly was eventually accepted by the NRC and it enacted the Constituent Assembly Act of 1993. However, the composition and purpose of the Assembly were criticized and regarded by many non-movement Ugandans as ill-intentioned. Thus, one commentator said:

“But there was a sting in the tail. Under the Act provision was made for a fully- fledged Constituent Assembly, but its composition was to be a mixture of directly and indirectly elected delegates as well as presidential nominees. Moreover, the directly elected delegates’ elections were run on a non-party political lines, each candidate being elected on his or her individual merit and, on non-partisan grounds such as political tribal or religious affiliation. Nor were candidates free to conduct their own election campaigns. On the contrary, the returning officer for each electoral area had the power to prepare and conduct one candidates ‘ meeting within each parish in his or her area of jurisdiction, and on the appointed day, time and place, all C.A aspirants had to attend and address the public under his or her supervision.”<sup>14</sup>

The Constituent Assembly was viewed by many opponents of the NRM as the vehicle for sustaining the National Resistance Movement in power for an indefinite period. Although some constitutional law experts had argued that if the CA were to debate and enact a viable and objective constitution, it was important that the delegates elected to do so should be disqualified by law from standing as candidates for the Parliament that was to be elected immediately following the promulgation of the new constitution, the idea was overwhelmingly rejected by both the NRC which enacted the CA Act of 1993 and by the Constituent Assembly itself when it first met and engaged in a general debate.<sup>15</sup>

Consequently, the C.A. electoral process was seen by many participants as a try run for the impending Parliamentary elections and the original purpose of the CA

13 In a letter dated 5 June 1991 and addressed to the Minister of Constitutional Affairs, Kampala

14 Furley O: Democratization in Uganda op.cit. *ibid.* See: also New Vision 14 June 1994.

15 Proceedings of the Constituent Assembly.

was submerged with the present and future personal and political interests of the delegates. After the CA elections, its work was similarly hampered by the same considerations on partisan lines.

It has thus been said that:

“The CA became a highly political forum, in which the main issue became how the various forces involved in the struggle for power could position themselves for the ultimate prize of political power.”<sup>16</sup>

On this same issue, Professor Nelson Kafir observed:

“The Constituent Assembly elections could lay claim on being the most free and fair of Ugandans since independence. But the elections also posed a challenge by adding a transitional stage in the struggle for power and the return to democracy.....At stake are the questions whether the National Resistance Movement (NRM) will be the dominant political force in the years to come...”<sup>17</sup>

Be that as it may, the Constituent Assembly commenced its business in earnest. The quality of contributions in its debates by the majority of delegates was high. The Assembly prepared and adopted its own rules of procedure. Decisions of the Assembly were to be ascertained by the Chairman by way of consensus but divisions were permitted on contentious issues. The CA established a number of Standing Committees through which its work was facilitated. The most important of these Committees were the Business Committee which made recommendations for the day to day running and agenda of the Assembly and the Legal and Drafting Committee which advised the Assembly on legal and contentious issues, dealt with the content and text of the draft constitution, advised on the wording of the text and synchronized all the proposed draft constitutional amendments. The debates on the Constitution progressed through several stages. The first was the general debate. Then there was a recess in which delegates were issued with several documents to read and prepare themselves to debate the constitution Chapter by Chapter and clause by clause. The general debate was intended to heal the wounds of the past, minimize mistrust, build confidence between the delegates and lay the foundation for reconciliation, mutual respect and consensus.<sup>18</sup>

The second phase was the consideration stage where the subject Committees which had been established by the Assembly itself to expedite its work completed their tasks and reported their recommendations to the plenary session of the Assembly for adoption and modifications or remittances, if any. There followed the

16 Mugaju Justus and Oloka-Onyango, op.cit.

17 Movement, Democracy, Legitimacy and Power in ‘No Party Democracy in Uganda’. op.cit.

18 Katalikawe J. *The Making of the Uganda Constitution*, op.cit. page 7.

report stage when a completed subject or Chapter was considered and finally adopted by the Constituent Assembly. After all the chapters had been adopted, the Legal and Drafting Committee carried out the synchronizing, coordinating and finalizing of the final text of the Constitution and on adoption of that Committee's report, the 1995 Constitution was enacted and promulgated on 8th. October 1995 as the Constitution of the Republic of Uganda.<sup>19</sup>

During the CA debates which lasted for some sixteen months, several partisan caucuses were formed to organize support or opposition against certain positions in the Assembly. The main ones were the National Caucus for Democracy, the NRM Caucus, the Buganda Caucus and the Women Caucus. Later, minor ones such as the Minority Caucus, NRA Caucus and the Northern Region Caucus, emerged, working informally. The result of this was that instead of examining and considering the draft Constitution dispassionately, the Constituent Assembly got polarized along sharply divided political lines. Rational and sensible motions originating from groups which the NRM Caucus perceived to be opposition groups were often rejected in favour of what that caucus considered to be its own or its supporters, ideas, however divisive or inferior that latter might be.<sup>20</sup> For instance, the multipartists sensible, practical, convenient and inexpensive motion presented by Hon. Dick Nyai of the multiparty caucus that Presidential and Parliamentary elections be held on the same day was rejected on the advice of the NRM Caucus without any reasonable grounds being given. This occurred after some influential Movementists both in the CA and outside it had held a private caucus meeting and spoke against the motion for political expediency and advantage. The definition and constitutionalisation of the Movement as a political system concept of governance was caucused on wholesale amid the drowning of moderate and rational voices amongst the Movement delegates themselves. The curtailment of the right of association and assembly and the holding of referenda upon the same contrary to the clauses in Chapter 4 of the draft Constitution which had already been adopted by the Assembly guaranteeing the same rights was politically motivated and highly contentious as well as contradictory.<sup>21</sup>

The failure by the NRM diehards, both within and outside the Constituent Assembly, to agree and compromise with other political forces undermined the force and legitimacy of the Constitution. The inflexible attitude exhibited by same

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19 See: Preamble to the Constitution.

20 The author, as Chairman of the Legal and Drafting Committee of the S.A led a team of 15 lawyers-delegates who scrutinized and synchronized every draft amendment proposed by one or more delegates.

21 *Supra*.

leaders negated the envisaged NRM fundamental need for national consensus on the constitutional arrangements which were expected to stand the test of time. An anticipated truly representative Constituent Assembly was turned into a rigid Movement Caucus that reduced what should have been a revered national treasure to be defended at all times into a partisan instrument with contradictions and which would later be rendered less sanctified by the same caucus through political arrogance and misconceptions, as will be seen later in this book.<sup>22</sup>

At the beginning of its deliberations, the Constituent Assembly divided the provisions of the Odoki Commission's Draft Constitution into contentious and non-contentious matters and these were debated and resolved if at all differently by the Assembly.<sup>23</sup>

In general terms, the debates and adoption of non-controversial provisions of the Constitution produced the best results and always either with unanimity or large majorities of delegates in support. The most controversial sections of the draft Constitution generated acrimonious debates and took longer to resolve it at all. The debates were often punctuated by recesses, consultations in the constituencies and walk-outs by the disidents.<sup>24</sup> However, it is to be noted that on the whole, the Constitution reflects the views of the majority of the CA delegates who in turn represented the greatest part of the county's electorate. The NRM caucus and its supporters in the CA which supported all the provisions of the Constitution including the most controversial ones had more than two thirds of all the delegates in the Assembly. Nevertheless, this is not a good reason for complacency for even the tiniest of minorities whose views are constantly ignored or whose rights are violated can organize individually or collectively and cause chaos for the nation and, in some cases may uproot from power those who have denied them the right to share in the governance of their country.<sup>25</sup>

The most important principle enshrined in the 1995 Constitution is that the Constitution vests all power in the people of Uganda who must be governed with their consent, through organs created by the Constitution itself and whose personnel are elected or appointed in conformity with the rules and procedures laid down in the Constitution or other properly promulgated or enacted instruments and laws. The President and the Executive are subordinate to and are subject to the

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22 Proceedings of the Constituent Assembly.

23 See: Uganda Constitution making process, CBR working paper number 38, Kampala, 1993.

24 As provided for in the Constituency Assembly Statute, 1993.

25 Ondoga Ori Amaza, Major General: *Museveni's long march from guerrilla to statesman*; Fountain Publishers, 1998, Kampala, pages 155-156

will of Parliament which is the representative body of the people in whom political sovereignty of Uganda resides.<sup>26</sup>

The Constitution which is the supreme Law of Uganda commences with an important Preamble and a set of National Objectives and Directive Principles of State Policy. The Constitution is an ambulatory living instrument for the good governance, liberties, welfare and protection of all persons in Uganda. The makers of the Uganda Constitution and in the name of all Ugandans, recalled the country's history which had been characterized by political and constitutional instability. They took into consideration, the struggles of the Uganda people against the forces of tyranny, oppression and exploitation.<sup>27</sup> They then committed themselves to build a better future by establishing a socio-economic and political order through a popular and durable national Constitution based on the principles of unity, peace, equality, democracy, freedom, social justice and progress. The framers of this same constitution proceeded to adopt, enact and give themselves and their posterity, the Constitution of Uganda. They declared that the National Objectives and Principles of State Policy enshrined in the Constitution were intended to and were to guide all organs and agencies of the State, all citizens, organizations and other bodies and persons in applying or interpreting the Constitution or any other law and in taking and implementing any policy decisions for the establishment and promotion of a just, free and democratic society.<sup>28</sup>

One of the most important chapters in the Uganda Constitution is Chapter Four which contains rigidly entrenched provisions for the recognition, protection and promotion of fundamental and other human rights and freedoms. These rights and freedoms are to be respected, upheld and promoted by all organs and agencies of government and all persons. Under Article 21 of the Constitution, Parliament is empowered to enact any laws which are necessary and demonstrably justified in a free and democratic society. Drastically, under Article 46, it is provided that during a period of an emergency, an Act of Parliament shall not be taken to contravene the provisions contained in Chapter four of the Constitution if it authorizes measures that are reasonably justifiable for dealing with that state of emergency except that such an Act may not derogate from the absolute rights protected in Article 44 of the Constitution and which are the rights to a fair hearing, freedom from torture and inhuman or degrading treatment or servitude and the right to an order of *Habeas Corpus*.<sup>29</sup>

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26 Article 79 of the Constitution.

27 Preamble.

28 Preamble.

29 Article 44.



Chapter four of the Constitution, has been hailed by experts and commentators as one of the finest and best structured Bills of Rights adopted by any state.<sup>30</sup> The Articles and clauses in Chapter four are worded either in the same way or draw inspiration from international law principles and practices. Although the Constitution attempted to enumerate and incorporate every known right enshrined in the United Nations Universal Declaration of Human Rights and subsequent Protocols and treaties as well as from foreign Constitutions studied by its framers, Article 45 of the same Constitution recognises that the list of present and future rights is inexhaustibly by providing that:

“The rights, duties, declarations and guarantees relating to the fundamental and other human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned.”<sup>31</sup>

For enforcement purposes, Article 50 of the Constitution is important. It provides that any person who claims that a fundamental or other right or freedom guaranteed under the Constitution has been infringed or threatened is entitled to apply to a competent court for redress which may include compensation. Moreover, any person or organization may bring an action against the violation of another person's or group's human right and any person aggrieved by a decision of a court trying the action has free access to an appellate court or tribunal.

The justifiable provisions of the Constitution are derived directly from International law and practices. Thus, it is provided that women shall be accorded full and legal dignity of the person with men. Under article 33(6) of the Constitution, laws cultures, customs or traditions which are against the dignity, welfare or interests of women or which undermine their status, are prohibited by the Constitution. Children shall have the right to know and be cared for by their parents or those entitled by the law to bring them up and shall be the responsibility of the state and the parents of the child. The law shall accord special protection to orphans and other vulnerable children. Moreover, any child under the age of five years found in Uganda and whose parents are unknown, shall be presumed to be a citizen of Uganda by birth. Article 12(2) (b) allows a person who has lived in Uganda continuously for a period of up to twenty years to be automatically registered as a citizen on application, a provision which was intended to benefit refugees as well.<sup>32</sup> Every person in Uganda has a right to belong to, enjoy, practise,

30 See: Tumwine-Mukubwa G.P: The promotion and Protection of Human Rights in East Africa, in EAJPHR, Volume 6 number 2 of 200, pages 134-138.

31 Article 41(1).

32 An opinion not shared by the Solicitor General of Uganda in 2003 in an opinion sought by the Uganda office of the UNHCR.

profess, maintain and promote any culture cultural institution, language, tradition, creed or religion in community with others. Minorities have a right to participate in decision-making processes and their views and interests shall be taken into account in the making of national plans and programmes.

We have emphasized respect for and protection of human rights in full realization that it is the disregard, abuses and violations of human rights which lead or force people, who have been lucky not to be killed or detained, to flee from their countries of origin and become refugees elsewhere. For decades, Ugandans have experienced worst abuses and violations of human rights observed and respected elsewhere in most countries of the world. Since 1979 Uganda governments have been led by Presidents and contained majority Cabinet ministers and senior public officers who have been refugees themselves. As we write to-day, Many Ugandan ministers including the President himself, a number of judges of the courts of Judicature and senior civil servants, officers of the armed forces and the police as well as academicians and business men and women have been refugees simply because their human rights were violated or threatened. Returnees from exile have included many members of Parliament and officials and workmen in all walks of life in the country.<sup>33</sup> In the past, Uganda was a net exporter of refugees, however thanks to the correct policies of the NRM government for much of the time in most parts of the country. In the period between 1990 and now, there has been an influx of Ugandans returning from exile and the country became a net importer of refugees from other countries and especially the neighbouring states. Perhaps because of its past but also because of the generous nature of its people, Uganda receives refugees and treats them well and humanely. Indeed, at times, criticisms have been expressed that successive Uganda governments tend to treat refugees more favourably than their own citizens.<sup>34</sup> In our view however, right thinking people and the international community can only laud the attitude of the governments of Uganda and their treatment of refugees. There was one exception when this generosity was not extended to the Banyarwanda residents in or native to Uganda during the Obote II administration.<sup>35</sup>

With the coming of the third millennium, the situation has dramatically changed. Over the last decade or so, political, economic and social conditions and, the realignment of military forces and political alliances and conflicts in the Great Lakes Region and the Sudan and in East and Central Africa have radically changed

33 See: proceedings of a symposium, Faculty of Law, Makerere University, sponsored by IARLJ. 1999.

34 but See: the expulsion of Banyarwanda under Obote II government, discussed in Kasozi A.B.K. *The social origins of violence in Uganda*, op.cit. page 186.

35 *Ibid.*

people's attitudes and led to confrontations at governmental levels. It has therefore become urgent and necessary that leaders and human rights activists consider seriously the establishment and strengthening of institutions and formal adjudicatory mechanisms for the protection of refugees whose numbers are increasing considerably as a result of conflicts in the region leading both to fleeing refugees and internally displaced persons.<sup>36</sup>

Finally, in its efforts to widen the democratic principles of participation in government and democracy, the NRM not only accorded equal rights to men and women, the youth, the workers, the disabled and the soldiers but it made sure that their representation in public bodies is Constitutionally guaranteed. The most notable achievement of the NRM government in this area was the establishment of affirmative action for women and other disadvantaged groups so that their status and opportunities can be brought to the level of that of men and ordinary people.<sup>37</sup> This guarantee is underwritten in the Constitution. It established and organized political Resistance Councils which were initially supposed to be non-political, from the village to the national level, with the RC Courts system running through the infrastructure up to the level of RC 111 thereby bringing justice to the people.<sup>38</sup> It created special government institutions to assist disadvantaged communities and people such as the Ministry of Women's Affairs, Ministry of Youth, Culture and Sports, the Karamoja Development Agency, the Teso Rehabilitation Reconstruction Commission and the Uganda Northern Region Reconstruction Ministry.<sup>39</sup>

The NRM initially recognized the principle that democracy needs to be buttressed by the protection of human rights, the suppression of the people and public agencies' likely to threaten or abuse them and the disciplining or punishment of those who violated them. In this regard, it created first the Commission of Inquiry into past violations of Human Rights in Uganda which recommended the establishment of a permanent Commission of Human Rights which was later established by the 1995 Constitution. It established the Office of the Inspector General of Government (IGG). It established a Board for the regulation and protection of Non- Governmental Organisations such as the Foundation for Human Rights Initiative, FIDA and ACFORDE and others. These NGOs were encouraged or allowed to organize and participate in both national and international conferences, seminars and study courses covering a diversity of

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36 New vision, 23 February 2002.

37 Article 33 of the Constitution.

38 See: Annual Reports to Parliament of the Respective commissions, Parliament Library, Kampala.

39 These too publish annual Reports on matters of their concern.

subjects. All these activities are to be supported and sustained by an independent Judiciary and Free Press. It devolved power to the people at the grassroots level by a process of the decentralisation of decision-making and developmental policy-issues from the central government control to the jurisdiction of the local government. Admittedly, the RCs now the LCs have not performed as well as had been expected. In some cases individual local leaders or several of them have abused or usurped the local councils' powers and indulged in excesses to the detriment of many residents.<sup>40</sup>

Questions and doubts remain as to whether all the functions and tasks devolved to local councils at different levels were properly assigned. Such functions and tasks have included land use and economic planning and the exercise of judicial powers. There is ample evidence that for some of these functions and tasks, local government councils have been or ill equipped and is deficient in manpower and other resources to be able to perform adequately. Records show that the exercise of judicial powers by some of the local councils and councilors and officials has been incorrect, irrational and in some instances corrupt.<sup>41</sup> Despite mechanisms in the local government for supervision and accountability, this is not always possible either for lack of the necessary and qualified personnel, resources and indifference on the part of the government or those entrusted with these responsibilities. Consequently, it is imperative that a number of aspects of local government be reviewed. Such review may include the reconsideration of the federal demands of the Uganda traditionalists and elsewhere in the country and the transfer and adjustment of some functions and tasks from one level of government to another. Nevertheless, taking power to the people at the local level is an excellent and democratic concept which should be sustained by effective supervision, control and accountability.

The system of local government and how it ought to operate in society, as originally conceived by the National Resistance Movement encourages grassroot democracy and governance by both consent and participation. It has been the subject of study and favourable comments by expert analysts, scholars and observers both within and outside Uganda and is regarded as a popular concept that constitutes a fundamental change and permanent feature of governance in Uganda. However, as the Presidential and Parliamentary elections of 2006 clearly illustrated, the system is only suitable and can only work in a one party state.<sup>42</sup>

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40 Local Government Act, Chapter 243.

41 See: Devas Nick: Who Runs Cities? The relationship between urban governance, partnership and poverty; DIID, U.K

42 The New Vision, 13 June 1994.

Perhaps the greatest innovation introduced and practised by the National Resistance government in Uganda. Movement government has been the recognition and full acceptance of women as equal partners and full participants in the social, political and economic affairs of the country. In politics and government, women's participation and positions from the lowest to the highest offices of state are prescribed and guaranteed by the provisions of the Constitution and the laws of Uganda.<sup>43</sup> Moreover, throughout the years in which Uganda has recognized and accepted the role of women, women's performance has amply justified the belief in their unconditional equality with them. This has shown quite decisively how correct and desirable The policy of recognizing and accepting women as equal partners in society has given rewards to the National Resistance Movement in that empirical research and studies findings show that the greatest number of women in Uganda in every part of the country tend to support the NRM in local and national elections.<sup>44</sup>

For most of the years, 1986–1995, much of Uganda was at peace. For the majority of Ugandans, the National Resistance Movement and its rule during the period we have identified, removed both political and personal fear. In this same period, state inspired persecution, torture and murders which had been common occurrences in previous regimes, were not only strictly prohibited but state officers and army personnel who occasionally committed any of these crimes were sought out tried, convicted and severely punished.<sup>45</sup> The peace and observance of human rights in this period were vigorously monitored and policed by fearless cadres of the NGOs and the national Press. The latter remained to a great degree, free and independent and even when some journalists indulged in inaccurate reporting they were largely left alone, unmolested.<sup>46</sup> From 1996 to the present, the NRM government has not performed well mainly because it has renegated on its previous promises and principles.<sup>47</sup>

The independence of the Judiciary was strengthened, more judicial officers were appointed and relatively well remunerated and court buildings and equipment were mainly through Danish and other donors given priority in the national

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43        Buckley 1: People's Power in Theory and Practice. The RC system in Uganda. Yale University, 1991.

44        See: the Observer Report of the FHRI, March, 2006.

45        Not less than 1/3 of the memberships.

46        Result Analysis, Presidential and Parliamentary Elections, 2001 and 2006.

47        See: Courts' Martial Proceedings Reports, 1861 – 2003.

budget.<sup>48</sup> The police and Uganda People's Defence Forces were subordinated to civil authorities, strengthened and facilitated.<sup>49</sup>

Another important milestone in the quest for unity and reconciliation in the country by the NRM was the restoration of traditional and cultural leaders in Buganda, Toro, Bunyoro and Busoga and several other districts which wished to revive or create such leaderships.<sup>50</sup> The region of Ankole which had previously been ruled by a monarch eluded a solution throughout this period of the NRM partly because the majority of the population in that region did not wish to see monarchy restored and partly because of the utterances and pre-emptive decisions and acts of Prince John Barigye, the heir apparent who allowed himself to be associated with such premature acts as crowning and naming him King of Ankole before the Banyankole and the NRM government had opportunity to consider and resolve the issue of the traditional and cultural leader for that region.<sup>51</sup> Nonetheless, the restoration of traditional and cultural leaders in the rest of the country and the return of cultural treasures and regalia even in Ankole enhanced calmness and peace in the areas benefiting. Throughout the whole country, the NRM's policy of encouraging the revival and practices of popular traditions and cultures including music and dances while discouraging those which degraded women, became popular and a catalyst for peace, stability and tranquility in the country.<sup>52</sup> One of the great ideas to be implemented by the NRM since 1986, is the incorrectly named Universal Primary Education (UPE) under which thousands of Ugandans have benefited by getting free primary education. The policy has meant that the rate of literacy in Uganda has favourably and rapidly increased.<sup>53</sup> However, only a limited number of children from each family are chosen to benefit from this free education. As President Museveni once remarked:

"Fellow Ugandans, I need to remind you that a modern country needs to cope with the following major challenges: employment, widening the tax base, developing the human resource through education for all and improved health care, improving infrastructure and supplying of enough goods and services."<sup>54</sup> Sadly however because of lack of adequate

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48 New Vision. 4 April 1990, editorial.

49 *Infra*.

50 Article 208(2).

51 See: East Africa Journal of Peace and Human Rights, Volume 7 number 2.

52 Barya John-Jean: Democracy and Culture in Uganda, in EAJP and HR, from page 1.

53 Article 33(6) of the Constitution.

54 The expansion has meant more primary and post-primary education institutions. See: Ministry of Education Statistics, 2005.

supporting resources, the expansion of this educational programme has also led to the lowering of standards in many schools.”<sup>55</sup>

Sadly however, because of lack of adequate supporting resources, the expansion of this educational programme has also led to the lowering of standards in many schools. This is one of the statements welcomed by most Ugandans because in the areas listed by the President, his government has had some successes and all Ugandans including the NRM's severest critics have both welcomed and benefited in these fields. It is thus that the greatest gift Uganda had from the NRM is the 1995 Constitution. It has been held by experts as one of the best in the world.<sup>56</sup> Its provisions which had guarantees for human rights, equality and participatory democracy for all citizens, the organs and institutions of government and their relationships with one another whose blend was reckoned to be the best that could have been devised considering the turbulences in the history of Uganda were welcomed by commentators.<sup>57</sup>

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55 The Monitor, 12 March 2002.

56 See: EAJPandHR, Volume 7 number 2, page 165.

57 Generally see: Hansen, H.B and Twaddle M.: From chaos to order, op.cit.

## CHAPTER TEN

### FAILURES OF THE NRM

It is a fact of political life that every government makes mistakes and confronts disasters that may or may not be of its own making. Under the NRM, disasters have been few and far in between, but there have been mistakes and dismal performances.<sup>1</sup>

Whereas it can be said that the NRM has shown commendable tolerance towards religion and tradition and inexplicable tolerance towards the corrupt and abusers of public office, it has also been grossly intolerant of other political parties, their leaders and supporters.<sup>2</sup> With regard to the political freedoms of expression and association, and the right of opposition parties to operate freely and campaign for their chosen brand of policies throughout the country, the NRM has exhibited excessive intolerance going far beyond what is demonstrably acceptable even in a restrictive democracy.<sup>3</sup>

The NRM government has been equally partial in the management and distribution of the country's wealth and economic benefits. In this regard, the government and its principal agents have tended to reward persons closest to the leadership while discriminating against or alienating other Ugandans who aspire to fare and act in the same fields.<sup>4</sup>

It is also widely believed in Uganda that cadres, officials and supporters of the NRM leadership are virtually untouchable. However much they may be tainted with allegations of corruption, abuse of office, incompetent or unqualified, so long as they continue to sing the same unalterable song sung by the leadership in the same tune for all these years, they will always be retained or otherwise rewarded.<sup>5</sup>

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- 1 See: Karugire Samuel .R.: *Roots of Instability in Uganda*, Fountain Publishers, (22 ed) 1996, Kampala, page 5.
  - 2 Okoth Godfrey page : *The Military and Democracy: The Case of Uganda since 1962* in EAP and HR, Volume 2, number 2, page 175.
  - 3 Kwesiga J.B: *The Right To Participate in Governance, in the Defender*, Volume 8, issue number 3, 2005, FHRI page 31.
  - 4 Senkumba John: *The Dilemmas of directed democracy: Neutralising opposition politics under the NRM*, in EAJP and HR. Volume 3 number 2, 1997, page 246.
  - 5 Daily Monitor, 27 January 2006. However, in the new Cabinet of 2006, the President dropped several of those alleged to be corrupt.



It is also true that to a certain extent, economic imbalances in Uganda have been somewhat curbed by the rules and conditionalities imposed on the country by the senior partners of its government, foreign governments, the World Bank and the IMF. On the other hand, notwithstanding the fact that the Uganda government is the junior partner of these powerful friends, its leadership often scathingly criticizes them while at the same time continuing to swallow their bitter pills of conditionalities, presumably in the belief that even though she cannot do without them now or in the foreseeable future, they are nevertheless too big to care about her quarrelsome complaints.<sup>6</sup>

The most fundamental mistake the NRM has made is to tamper with and undermine the country's Constitution the making of which it both inspired and guided.<sup>7</sup> The sighs of relief and jubilations expressed nationwide after the promulgation of the Constitution in 1995 were suddenly and rudely silenced when the NRM leadership, by a series of manipulative moves and acts, resolved determinedly to weaken or alter the same Constitution altogether for no more a cause than transitory and, in some instances, personal reasons. The nature and consequences of these moves and resolutions will be examined in detail later in this chapter.<sup>8</sup>

In our view, the greatest disservice which the NRM government has done to Uganda is its tolerance of corruption in public affairs and its failure to curb incidents of abuse of office and embezzlement of public funds. Indeed, in some instances and as already noted, it would seem that to do these wrongs may qualify some NRM cadres and supporters to be appointed to public offices or to be promoted or otherwise rewarded.<sup>9</sup> This indictment against the NRM leadership does not in any way by itself necessarily imply that the leadership of the NRM is also thoroughly corrupt even if they are to be made aware of the saying that *birds of the same feather flock together*. The main reason for the tolerance of corruption, abuse of office and embezzlement of public funds is what that leadership has always called "*correct politics*" The philosophy of correct politics means that what the NRM leadership believes or conceives to be in its interests and those of the NRM and Uganda must prevail at the expense of everything else. Moreover, correct politics implies that the leader's opinion or policy must be accepted and given unquestionable support. Persons who express contrary opinions may do so and

6 See: Arnold Guy: *Aid in Africa*, Kogan page, London. Nichols Publishing Company, New York, 1979. page 128 – 213.

7 Constitution (Amendment) Act, 2005.

8 Act supplement number 7.

9 The Monitor, 9 February 2002. to be sent to Coventry means to be shunned and boycotted.

even sharply so to the leadership in private, but to do it in public or in a forum not controlled and presided over by the top leadership of the NRM is to betray the principles of “*correct politics*”.<sup>10</sup> In some instances where persons, though very supportive of the NRM dogma, felt principled enough to differ fundamentally from *correct politics*, they were condemned wholesale, sent to ‘Coventry’ or branded as traitors that had let down the NRM and given comfort to the multipartists, “*the enemy*” of the movement.<sup>11</sup> The leadership seems not to have realized that the cadres it discards or ignores seem to be the ones the general public looks up to for principled leadership, truth, justice and good governance. Moreover, it is the excommunicated cadres who are often consulted by some of the leaders who are still retained in the leadership and whose opinions still influence government policies and decisions. The leadership appears not to know or feigns ignorance of these contradictions.

On the other hand, there is sufficient evidence to show that the NRM leadership is aware and has the knowledge of public officials who are corrupt, who have abused public offices and who have embezzled public funds but the same leadership coils away from taking any effective remedial action for fear of upsetting the correct political line.<sup>12</sup> There is also evidence to show that if the government exhibited courage and took the necessary corrective and punitive measures against the culprits, the general public would not only approve but would give political support. Thus, in the late 1980s, Cabinet set up a Committee to fight corruption and embezzlement and incompetence in public administration. The Committee received reports from the Parliamentary Public Accounts Committee which had investigated allegations of corruption, abuse of office, embezzlement of public funds and incompetence in the public service and named officers and other persons guilty or involved those scandals. The Committee took actions which were approved by cabinet and which any reasonable employer might have taken, namely dismissing or some of those found guilty, disciplining or indicting those who had been negligent, and terminating in public interest the employment of those found incompetent or guilty of lesser transgressions. The exercise affected over 300 public officers and the civil service was shaken to its roots.<sup>13</sup> Government officials began to be serious in their work and to ensure that corruption and embezzlement of public

10 Mugaju J. and Oloka-Onyango J: No Party Democracy in Uganda, Myths and Realities.

11 The fate of ministers who opposed the amendment of the Constitution to lift the limitation on the two term tenure of the President such as Kategaya Eriya, Bidandi Ssali and Matembe Miria and their sacking widely reported in the Uganda Press, 2002 – 2004. In the 2006 Cabinet formation, the President and Honourable Eriya.

12 See: the Ssebutinde (Justice) Report on the Police and URA – Government Archives, Entebbe.

13 Cabinet papers, 1989 – 1991.

funds were guarded against. However, some senior ministers and other influential persons in society started complaining that the Cabinet Committee which was then chaired by this author as minister of Justice and Attorney General was spoiling the politics of the NRM because some of those the Committee disciplined were its supporters. In some cases, the President was persuaded by correct politics to redeploy those affected by the exercise or to please them in some other way. It was not long after these complaints, that the Committee was dissolved.<sup>14</sup> It is regrettable that this much needed exercise was halted for no other good reason than political expediency.

Whether the employer is government, a public institution or a private person, employees are hired on a number of criteria and qualifications which include professionalism, honesty, the ability to protect and maintain the employer's tools, equipment and property and of course performance to the desired degree and level. The manner in which suspected corrupt and incompetent officers have been dealt with has meant that in Uganda, the only ground for which one can be removed from office or denied appointment is if one is found guilty of a serious crime. However, as every lawyer knows an acquittal in a criminal trial does not necessarily mean that the accused person is innocent. In some cases, the acquittal simply means nothing more than that the prosecution has failed to prove the case beyond reasonable doubt. This could arise as a result of lack of sufficient evidence, but it could also be because of incompetence or compromises on the part of the people in charge of the prosecution. Thus, in Scotland, courts accept the verdict of *Not Proven* as opposed to *Guilty or Not Guilty* simply to reflect the feeling that the accused is not innocent but the prosecution have failed to prove him or her guilty. As one commentator once put it, the No Proven verdict in Scotland means in Scotland that the prosecution has failed to prove the case against the accused to enable court to give a guilty or acquittal verdict.<sup>15</sup> Thus, in no way stops an employer from terminating the services of the not proven guilty for other wrongs committed other than the criminal charge.

In our view, giving lipservice to the fight against the there evils of maladministration, namely corruption, abuse of office and embezzlement of public funds is simply a disservice to the country and if their continuing practices are not abated, they will destroy any memories of the otherwise excellent work and legacies of the National Resistance Movement discussed elsewhere in this book<sup>16</sup>.

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14 *Ibid.*

15 The Sheriff of Inverness of Scotland in conversation with the author at the Commonwealth Magistrates and Judges Conference, Edinburgh, September 2000.

16 See: Uganda, "Landmarks in Rebuilding a Nation, op.cit..

The NRM government can be indicted for condoning corrupt ministers and officials simply because they support it. There are many examples of principled public officers who stood up against ministers' wrong doings or corrupt ways following laid down accounting procedures and were sacrificed and removed from their posts rather than displease the Ministers concerned.<sup>17</sup>

Hand in hand with unsuitable appointment to public post has been the manner and style of appointment itself. Idi Amin's methods of appointing and dismissing government ministers, and public servants were crude and were rightly criticized.<sup>18</sup> It was his habit to authorize public announcements of his new appointments and dismissals which prompted the Constituent Assembly to propose a provision in the 1995 Constitution that Ugandans should have the right to be informed and consulted before being appointed to public office.<sup>19</sup> While this right may not have extended to disciplining and dismissals, nevertheless the style and manner in which these functions have been performed by the NRM leadership continue to cause embarrassment and concern.<sup>20</sup> Courtesy and good governance imply that a person should be consulted and informed before given any post involving a change of his or her status and loyalty. Similarly, one should be forewarned that their services are no longer required.<sup>21</sup> There have been times during the NRM administration when persons allegedly nominated and announced on the radio or TV and other media by the leader have turned up for swearing in only to discover that they were not the actual nominees he had in mind. In some instances, some ministers have returned from missions abroad and headed for their respective offices directly only to be told that while they were away, the President had reshuffled Cabinet and they were no longer ministers in that department or not at all. Ministers and other public officials affected in this manner are sometimes stripped of government property and facilities which they had hitherto enjoyed with little or no notice at all. This kind of performance by a Government, which contains highly educated cadres and is led by a President who is a graduate, an accomplished economist and a disciplined army officer, is most unfortunate and it has never been fully explained. It can also be said that Uganda has enough cadres to avoid recycling incumbents

17 One such victim was J. Mugaju hounded from the then Ministry of Rehabilitation, 1988.

18 One such minister had actually traveled abroad on duty and on returning he went direct to his office only to be informed by his Secretary that he was no longer minister.

19 An issue that had general acceptance in the C.A. See: proceedings of the C.A, 1994.

20 New Vision, 13 February 1999.

21 Honourable Edward Rugumayo dropped as minister and named ambassador to France without his knowledge. He declined the post.

who have been discredited or censured even if the appointing authority thinks or believes that they are innocent.<sup>22</sup>

In 2004, this author was invited to address Honourable Members of the 7th Parliament on Constitutionalism and Governance.<sup>23</sup> During the discussion of the author's paper and in response to a question, Kanyeihamba stated that whereas the Constitution vests sovereignty in the ordinary people and peasants, it was his opinion that the latter do not by themselves have capacity to make or initiate important decisions of constitutional innovation or on vital policies of the nation. They are often led, guided or misguided by the rulers and the elite of society. Kanyeihamba who himself is a son of peasants and proud of his origins explained that it is the latter groups who originated ideas and amendments to the constitution and then persuade the ordinary people and peasants to accept and vote for their ideas and amendments, sometimes without explaining fully what they mean or intend to do with them. The author's remarks were reported in the Press.<sup>24</sup> The reaction of President Yoweri K. Museveni at the time was unpredictably frightening. The President severely criticized the author for belittling the importance and sovereignty of the peasants in the decision-making process of the country. The President pointed out that the peasants were the rulers and masters of Uganda and as such they were the employers of both the President and the author who is a judge. These remarks and exchanges became the topic of discussion for the rest of the year. Radio shows, T.V discussions and Newspaper and Magazine reports took up the cause and debated the matter.<sup>25</sup>

At an international conference of youth held at Makerere University, 2004 at which President Museveni was Chief Guest and Kanyeihamba Guest Speaker, the President gave a moving speech in which he was urging the industrialization of Africa for development. He noted that in order to develop fully, the economically advanced countries of the world had phased out one class of people amidst them, namely the peasant class. His Excellency explored the youth participating in the conference to find ways of how Uganda and other African countries could do away with the class of peasants so that they develop more meaningfully.<sup>26</sup>

Contradictions in NRM's theories and practices can be discerned in other fields of human endeavour. while encouraging and financing universal primary education

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22 New Vision of 7 March 2002.

23 Workshop for Parliamentarians. Hotel African, 18 March 2004.

24 New Vision, 17 March 2004.

25 The Monitor. 20 March 2004.

26 The Monitor, 21 April 2001 page 8.

and partly financing and assisting in the establishment and running of higher institutions of learning including universities, the NRM leadership had persistently opposed the fixing of minimum educational standards for elective posts including those of Parliamentary candidates.<sup>27</sup>

It is believed that this is because the majority of voters in Uganda are either illiterate or possess the barest minimum educational qualifications and yet all of them by upbringing and the nature of the country's social behaviour, many of them aspire to attain high ranks in the political kingdom of Uganda. In order to please these people who form the majority of the electorate, the NRM leadership has persistently championed their right to stand for elective offices to the extent that in one District Council, one was elected and then appointed by a grateful District Chairperson, treasurer in the District Executive Council with all the ironies and incompetence implied by the appointment.<sup>28</sup>

In order to covet for the votes of the peasants, NRM leaders appear to shy away from appointing highly educated and trained cadres or those who have struggled to be educated. In any event, a nation can only develop and prosper if most of its leaders both at the national and local levels are enlightened through education and have had training in both professional and technical fields. The acceptance and tolerance of mediocrity in Uganda's elections have led to a culture amongst those who do not meet the minimum educational qualifications, to cheat and forge educational certificates and diplomas.<sup>29</sup> However, as President Museveni said on one other occasion, employment, especially of the youth and the widening of the tax base are still unresolved. With regard to the latter, government efforts are often frustrated by the endemic nepotism, corruption and incompetence within government departments including the Revenue Authority. Government efforts to pay exorbitant salaries to some of the officials in these government institutions or to curb the corruption and abuse of office are often frustrated through nepotism and lack of drive on the part of the officials responsible for curbing or eliminating these scourges of public maladministration and corruption.<sup>30</sup>

Interestingly, government does not lack the necessary knowledge about these public misdeeds upon which to base its remedial actions. Mr Sseezi Cheeye is the Director of Economic Affairs in the office of the President. He recently wrote

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27 In the NRM Caucuses in the C.A and during the enactment of Constitutional and Constitution (Amendment) Act, 2005.

28 Kabale LC.V, Council, 2001 – 2005.

29 New Vision.

30 Mainly because they feel that any action they take may be reversed or criticized from authorities above them.

an article which was published in the *New Vision* under the heading “*Peasants have no stake in democracy*”. He proceeded to observe:

“The critical point of democratization of Uganda now is for the led (the governed) to demand total accountability from the leaders and fulfillment of their raised expectations, while at the same time leaders have to make accountability to the led and to be responsible to public demand and views. Unfortunately, this situation cannot be attained in Uganda. The majority of the people who have the political muscle to tilt the balance of power in presidential elections happen to be peasants, who at the same time do not pay tax. The peasants therefore have no stake to ensure that public finances are used prudently. My honest opinion is that from the time NRM adopted the political system of general elections, it was forced to adopt opportunistic politics, of making false promises and of compromising positive economic and environmental policies, just because it wanted to appease a section of peasant voters. For example, in 1996, the NRM government abolished the Anti-Smuggling Unit (ASU) because it wanted to appease voters who at the same time depended on smuggling goods across the Uganda-Kenya borders. In 2001, Bidandi Ssali, then minister of Local Government, resisted construction of a modern housing estate in Nakawa and Naguru slums to appease the poor voters. In the recent general elections, the government allowed human settlements in the national forest reserves. The impact of deforestation, when eventually Ugandans start cutting trees, may be in the next 20 years, will be the environmental genocide.”<sup>31</sup>

Sseezi Cheeye has for years spoken frankly and openly on government officials, institutions and ministers who commit act of maladministration, abuse of office or who are corrupt and incompetent. Thus, he recently castigated the minister of Energy in these terms reported in the Press.

“Internal Security Organisation of Economic monitoring, Teddy Cheeye has accused the Energy Minister Syda Bbumba of telling lies and misleading the government. Speaking on “*To-night with Andrew Mwenda*,” on 93.3 KFM on Tuesday, Cheeye said the way Bbumba and her ministry handle the energy sector, endangers the security of the country.”<sup>32</sup> Despite these revelations and dire warnings, the accuser and the accused continue to serve the same NRM government presumably loyally without political allocits.

What appears worse to man observers of the Uganda’s political scene is that, any of the NRM, close cadres, associates and supporters who express mild and polite views of tolerance and accommodation of other equally nationalistic and political forces in a spirit of reconciliation and nation-building are shouted down as traitors or have their political wings clipped by the NRM leadership. In some instances, such leaders have been removed from office and condemned to the

31 New Vision.

32 Notwithstanding nation-wide criticism of her performance as minister of Energy, she was still nominated for Cabinet posting in 2006. See: *New Vision*, 24 May 2006.



political wilderness of silence. On the other hand, those who give unconditional praise and sing to the tune of the same leadership and those who form opposition parties convert to the same camp are generously rewarded with positions, property and contracts. It matters not that such singers or converts may not be genuine or actually corrupt or corruptible or misbehave. Trust in and reliance on such people remains high as long as they continue as staunch vocal worshippers of the system.<sup>33</sup>

The failure of the NRM to tolerate opposition will in the end destroy the NRM itself. In public and private affairs, tolerance connotes the ability of a person, leader or group of them to allow and forebear other persons to hold and express different opinions or act differently even if they fundamentally disagree with that person, leader or group of them. Tolerance is an art of endurance or patience which characteristically permits variation in opinions and behaviour whether of political, religious or social nature.<sup>34</sup>

Tolerance was once epitomized by a liberal politician who expressed total and unequivocal disagreement with the views of his opponent but also his unconditional commitment to fight to death in his efforts to protect the right of that same opponent to continue expressing those views without hindrance.<sup>35</sup> Tolerance is often equated with liberal democracy. This is democracy which thrives on values beyond what is lawful or constitutional or the dictates of the concept of majority rule. It is not often appreciated that intolerance and dictatorship can exist and often do under majoritism of a democratic phenomenon. Thus, Ronald Dworkin, an American scholar, once described the Bill of Rights as designed to protect individual citizens and groups against certain decisions that a majority of the population might want to make when that majority acts collectively in what it perceives to be its general or common interest.<sup>36</sup>

Tolerance in a democracy results in peaceful co-existence and justice in society. It is reciprocal in that neither the majority nor the minority should be intolerant of each other. The infringement of the democratic principles of tolerance breeds instability, violent struggles for political power and may lead to internal strife and wars. The exercise of governmental powers may be legitimate and constitutional, but the manner of it and its consequences need to be buttressed by the rule of law, tolerance and constitutionalism. As Professor Nwabueze once observed:

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33 The New Vision, 25 May 2006, page 9.

34 For liberalism, see Lee Sueur, Andrew Herberg Javan and English Rosalina: (eds) *Principles of Public Law*, (2 ed) Cavendish, London, 1999.

35 Le Sueur et al. op.cit.

36 Taking Rights Seriously, 1978, cited in Marasinghe and Conklin, op.cit.



“The term ‘Constitutional government’ is apt to give the impression of a government according to the terms of a constitution. There are indeed, many countries in the world to-day with written constitutions but without constitutionalism. A constitution may also be used for purposes other than a restraint upon government. It may consist to a large extent of nothing but lofty declarations of objectives and descriptions of the organs of government in terms that import no enforceable restraint; such a constitution may indeed facilitate or even legitimize the assumption of dictatorial powers by the government. Indeed, it is not an exaggeration to conclude that for many countries, a constitution is nothing more than a proclamation of what governments are entitled to do, and often do to restrain the liberty of citizens or deprive them of proprietary interests. In a number of developing countries, constitutions are perceived by those in power, not as protectors of human rights and liberties of the individual, but as instruments of legitimizing the exercise of power. For opponents of these rulers, constitutions are understood in terms of the governments’ legitimacy to exercise arbitrary power, to impose unreasonable laws, arrest and detain persons whose guilt is often suspect, to impose restrictions on certain freedoms and rights and to do whatever the ruling oligarchy deems necessary and in the interest of society.”<sup>37</sup>

This is the kind of constitutional behaviour which revolutionaries and leaders of military *coups d’etat* find easy targets and overthrow the perpetrators. The successful leaders of the revolutions and *coups d’etat* find it inevitable to impose further measures of repression and restrictions. It may be said at this point that the latter parts of the rules of Obote I, Obote II, Idi Amin and as we shall examine later, arguably the National Resistance Movement government behaved or has behaved in ways similar or perceived to be closer to the description of governments by professor Nwabueze. It has over the years resented opposition group’s desire to share with it political power, let alone their efforts to replace it as alternative governments.<sup>38</sup>

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37 Nwabueze, B.O Constitutionalism in the Emergent states, 1973.

38 Museveni Y.K. “I will fight UPC until I die” in Monitor of 7 March 2002.

## CHAPTER ELEVEN

### THE METAMOPHOSIS OF THE NRM

Since 1996, the National Resistance Movement has unveiled many facets which few Ugandans expected from it. It can be stated that since the promulgation of the 1995 Constitution which was arguably the finest hour of the NRM administration, the movement leadership has appeared to concentrate on political games of how it shall stay in and exclude others from political power and governance of the country longest.<sup>1</sup>

As late as March, 2002, it was reported that President Yoweri Museveni made it very clear that freedom fighters do not simply hand over power and that the transition from the Movement system of government to any other will be gradual and will only occur after a calm and disciplined discussion.<sup>2</sup> It would seem that the President's idea of any transfer of power from the National Resistance Movement does not depend on the provisions of the Uganda Constitution nor on their implementation but rather on the willingness of the Movement and on negotiations with other political forces for such transfer of political power. He praised the military actions of the Chinese army which brutally ended a students' protest in Beijing which had allegedly paralysed the economy of that country. When Omara Atubo, the MP for Otuke County suggested that if the movement government does not open space for other political parties, Uganda may face chaos as happened in Madagascar where disputed elections resulted in civil disobedience and were rejected by the outgoing government. Museveni retorted:

“Do not be tempted, we cannot have a situation like Madagascar, we would break you. We are people in suits by day but in uniform by night. We fought a liberation war.”<sup>3</sup>

Museveni also referred to the elections in Zimbabwe where independent observers had found them not to have been free and fair. According to a Monitor newspaper reporter, Museveni when responding to those reports, posed for dramatic effect and said:

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1        The Monitor, 13 May 2004.

2        The Monitor, 7 March 2002.

3        *Ibid.*

“Do not play around with freedom fighters. You can see Zimbabwe’s Robert Mugabe. Freedom fighters already have entandikwa (a foundation). Liberation armies are not like these mercenary ones which earn salaries. We fought and can still fight. Even if Morgan Tsavangira (Mugabe’s political opponent) had won, do you think Mugabe would have accepted if he had lost? Oh, no. You are playing with fire. It is not possible and it is not necessary. Let everybody use the peaceful channel. I am not against liberalizing politics but I don’t accept your line that we bring multipartism whether the peasants want it or not.”<sup>4</sup>

On the 8 October 1995, a new Constitution for Uganda was enacted and promulgated by the people’s elected Constituent Assembly. This was a great day in the history of the country. The promulgation was effected in the presence of Yoweri Kaguta Museveni, the President of Uganda and Commander in Chief of the Armed Forces of Uganda. It was also in the presence of the members of Parliament of Uganda and the Chief Justice and other Judges. On that day, in his Presidential address, Museveni solemnly undertook to guarantee the sanctity and integrity of the Constitution and to protect it. Indeed, he publicly stated that he would personally return to the bush to fight anyone or any group of people who violated the Constitution or infringed any of the rights enshrined therein. Many of the freedom fighters with whom Museveni had fought a bitter civil war for the right of Ugandans to freely determine their destiny and make their own Constitution were either members or ministers and public officers who were all present and witnessed the promulgation of the Constitution. They all heard Museveni make the promises to protect and defend the Constitution as President and citizen.<sup>5</sup>

Article 1 of the Constitution provides:

1. All power belongs to the people who shall exercise their sovereignty in accordance with this Constitution.
2. Without limiting the effect of Clause (1) of this article, all authority in the state emanates from the people of Uganda, and the people shall be governed through their will and consent.
3. All power and authority of government and its organs derive from this Constitution, which in turn derives its authority from the people who consent to be governed in accordance with this Constitution.
4. The people shall express their will and consent on who shall govern them and how they should be governed, through regular, free and fair elections of their representatives or through referenda.

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<sup>4</sup> The New Vision, 9 March 2002.

<sup>5</sup> In response to a speech by Honourable Omara Atubo, M.P for Otuke County arguing for transfer of power to other political parties.

Article 2 provides that:

1. This Constitution is the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda.
2. If any other law or any action is inconsistent with any of the provisions of this constitution, the Constitution shall prevail, and that other law or Custom shall, to the extent of the inconsistency be void.

Article 3 of the Constitution provides that:

1. It is prohibited for any person or group of persons to take or retain control of the Government of Uganda except in accordance with the provisions of this Constitution.
2. Any person who singly or in concert with others, by any violent or other unlawful means, suspends, overthrows, abrogates or amends this Constitution or any part of it or attempts to do any such act, commits the offence of treason and shall be punished according to law
3. This Constitution shall not lose its force and effect even if its observance is interrupted by a government established by the force of arms; and in any case, as soon as the people recover their liberty, its observance shall be re-established and all persons who have taken part in any rebellion or other activity which resulted in the interruption of the observance, shall be tried in accordance with this Constitution and other laws consistent with it.
4. All citizens of Uganda shall have the right and duty at all times
  - (a) to defend this Constitution, and in particular, to resist any person or group of persons seeking to overthrow the established Constitutional order: and
  - (b) to do all in their power to restore this Constitution after it has been suspended, overthrown, abrogated or amended contrary to its provisions.
5. Any person or group of persons who, as required by Clause (4) of this Article, resists the suspension, overthrow, abrogation or amendment of this Constitution commits no offence.
6. Where a person referred to in Clause (5). of this Article is punished for any act done under that Clause, the punishment shall, on the restoration of this Constitution, be considered void from the time it was imposed and that person shall be taken to be absolved from all liabilities arising out of the punishment

It may be discerned from these provisions of the Uganda Constitution that the Chinese officials who abused or violated the students' and people's human rights and the outgoing government of Madagascar which ignored the people's choice of their new leaders in accordance with the provisions of the Madagascar Constitution would have committed treason against the people of their respective countries. Robert Mugabe's acts and defiance of the electoral law and provisions of the Zimbabwe Constitution would have meant that Mugabe and his conspirators of

ministers, police and army officers who abetted and aided him would have committed the capital offence of treason by rebelling against the people of Zimbabwe and would have been liable to be punished in accordance with the laws under the Uganda Constitution if they were Ugandans.<sup>6</sup>

Article 74(2) of the Constitution provides that the political system in Uganda may also be changed by the elected representatives of the people in Parliament and District Councils by resolution of Parliament supported by not less than two thirds of all members of Parliament upon a petition to it supported by not less than two thirds majority of the total membership of each of at least half of all District Councils. No where in the Constitution is it provided that any freedom fighters who resist the resolution of Parliament as supported by the requisite majorities of local councils, such freedom fighters, however historical or however well they may have fought in the liberation war or whether indeed they can still fight, are exempt from the heinous crime of treason against the people of Uganda. It may therefore be surmised that President Yoweri Museveni who is also obliged to protect and uphold the Constitution of Uganda was quoted out of context or was jesting.

The President's statement sounds ominously threatening, Ugandans should have had little to fear from it. Thanks to Yoweri Museveni and the National Resistance Movement, most contemporary Ugandans are each and everyone, a freedom fighter. They include ordinary peasants, village elders, chiefs, public officers, councillors, teachers, doctors, trade unionists, students, ministers, men and women and honourable members of Parliament who listened to the President's speeches. Although controversial and disliked by some Ugandans, the policy of *Mchakamchaka* or civil defence training is one of the best and most useful ideas brought by the NRM for the defence of Uganda and individual liberty as well as democracy. Induction and practical courses as well as seminars have been regularly organized and conducted at village, county and District levels since the NRM seized power in 1986. Citizens are trained in the art and technique of handling guns and other offensive weapons. They are taught how to defend themselves and their villages against constitutional violations and invaders. Ugandans have all been sensitized and subjected to the indoctrination of resistance against terror, oppression and violations of their hard and blood earned freedoms and rights and are prepared and ready to face the challenge of anyone who wish to rule them through arbitrary means.<sup>7</sup>

Writing in 2000, Justice Benjamin Odoki, Chief Justice observed:

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6 Article 3(3) of the Constitution of Uganda.

7 In the Mchakachaka training sessions.

“The Constituent Assembly completed its historic mission over five years ago. It is now the political challenge of the government and the people of Uganda to commit themselves to internalizing, upholding and defending the Constitution by creating and sustaining a culture of constitutionalism among the polity.”<sup>8</sup>

Unfortunately, lack or inadequacy of civil education and of patriotism, very few Ugandans have been willing or ready to defend the Constitution in the manner and the extent it provided. Subsequent political and electoral events which will be discussed later in this Chapter reveal that President Museveni should have been taken seriously. They will also show that Ugandans who are generally peaceful people are also generally docile and reluctant to take up arms again and fight against violators of their Constitution as they did in the 1980–1986 civil war.

Sadly, since its enactment and promulgation by the Constituent Assembly, the Uganda Constitution of 1995 has begun to show gaping cracks in its armoury of enforcement and implementation. It can be said that a number of causes of these cracks were not fully appreciated or anticipated at the time of debating and adopting the Constitution. Some of the cracks were inspired or created by the NRM government itself through personal aggrandizement or political expediency or by the life style and attitudes of the people of Uganda while several particularly those which have turned out to be controversial, are purely historical.<sup>9</sup>

There is no doubt anymore that whereas before 1996, the majority of the people who served with or under the NRM leadership had come in government historically, the new leaders who are in charge of the movement have no such historical ties.<sup>10</sup> Many have been ardent supporters of the NRM it was in the bush or in its acquisition of logistics, equipment and diplomatic support. Others came in its fold as a result of the Nairobi talks under the Chairmanship of the President Arap Moi of Kenya or the gentleman’s agreement between victorious NRM/NRA and other fighting forces and the then existing political parties of Uganda.<sup>11</sup> These arrangements tended to dent the NRM’s bush theory of democracy under the principle of individual merit. Many did not embrace the NRM philosophy and policies.<sup>12</sup> For historical reasons, the NRM political leadership, its army and security organs had been dominated by cadres from the Western Region of Uganda,

8 Writing in East Africa Journal of Peace and Human Rights, Volume 1 number 2.

9 Generally See: Hansen and Twaddle, (eds.), Uganda Now, op.cit.

10 See: Compositions of both Parliament and Cabinet since 1996.

11 The first government of the NRM was based on accommodating other forces and broadness.

12 Note the conditionalities demanded by the UPC for accepting the making of the 1995 Constitution as reflected in the letter by Cecilia Ogwal, *Supra*.

followed closely by those from Buganda.<sup>13</sup> The principles and ethics of the NRM were conceived and practised fully when the movement was still fighting the guerrilla war and they were reflected in its Ten-Point Programme.<sup>14</sup> In Government, the NRM had to recruit other Ugandans in its ranks. Most of the new recruits in government, public service and the NRA did not share the philosophy, principles or ethics of the NRM. Gradually this expansion and inclusiveness undermined the NRM philosophy. After the 1996 Presidential and Parliamentary elections and contrary to NRM rhetoric, the inner core of NRM ministers, advisers and decision makers became increasingly narrower and narrower and intolerant of others. The core began to outcast independent thinkers, the intellectuals and those who dissented from the uniformity of the voice of the leadership however creased at the sides and in between. Periodically, this inner circle of advisers seemingly became smaller still and its personnel were detected by most Ugandans to be ethnically related to one another either by birth or by marriage, business or to be there for what they could give and get from the NRM system.<sup>15</sup>

Moreover, despite the fact that the members of this inner circle behaved and acted in the same manner and occasionally transgressed beyond the practices of other Ugandans, their rates of survival, or retention of their public positions and jobs continued to generate sympathy and forgiveness from the top echelons of the Movement the greatest. They were seen to be more favoured under similar circumstances.<sup>16</sup> It is this same group of leaders or their relatives and friends who were allegedly appointed to position in and dominated the NRM senior posts of administration, the parastatals and other public institutions. It is this same circle which found it easy to trade with government and acquire government contracts and concessions, loans and recommendations to enter into international and other transactions. Critics of government and the local Press occasionally hinted at these happenings and data but somehow they always appeared to represent the norm in government without the necessity of official comment or explanation.<sup>17</sup> Consequently, it is not surprising that nowadays Ugandans whisper in private that the NRM administration is riddled with blatant ethnicism, nepotism and personal patronage. It is nowadays said that the original principles of the NRM under which employment and appointments on personal merit or qualifications and

13 See: the composition of FRANASA founded by Yoweri Kaguta Museveni, in the 1970s.

14 Sunday Vision, 10 March 2002.

15 Monitor 7 November 1999.

16 Sunday Vision, 20 January 2001.

17 Generally, See: Museveni, *Sowing the Mustard Seed*, op.cit.

professionalism with objectivity, withered away with most of the policies of the Ten-Point Programme that had excited and inspired Ugandans to join or support the NRM in their millions between January 1981 and 1995, abandoned.<sup>18</sup>

Often, the newcomers were appointed to high offices of state and in the administration of the NRM itself. Through suspicions, jealous, misunderstandings and conflicting loyalties, accusations of sabotage, betrayal, corruption and self-aggrandisement were traded between the NRM historicals and the new comers. The former became increasingly intolerant of the latter or joined in the rampant quest for rapid acquisition of wealth and goods through illegal and other means.<sup>19</sup>

The NRM leadership accused previous leaders of government including President Godfrey Binaisa of interfering in commerce and trade personally. The evidence available suggests that the present NRM leadership cannot be acquitted of this same charge.<sup>20</sup> It is indicted for having abandoned its socialist and popular policies in preference for an ultra capitalist economy in which the same leadership or those closest to it, personally benefit. It has been indicted for having managed the Uganda economy in such a way that the peasants have gained very little from it while those in the inner circle, their friends and foreigners have harvested the greatest rewards from it and the wealth of Uganda. In its zeal to industrialise and modernize Uganda, the NRM leadership has generally ignored or marginalized the requirements of the environment, of ecology and the needs of future generations of Uganda.<sup>21</sup> There have been times when the NRM government has accepted policies and modules imported from abroad for which it has become one of the most preferred governments by foreign exploiters in Africa without carefully considering and weighing those modules in relation to the actual and practical needs of Ugandans in the context of the famous words of a great African Chief who had a vision and said that:

“In Africa, land belongs to the dead, the living and the unborn.”<sup>22</sup>

The 1995 Constitution was debated for nearly six years to determine a viable and vibrant system of governance that would ensure that policies would be carefully initiated, debated and passed into good laws and then the implementation of those laws would be cited upon impartially and in the interest of the country. There

18 The Weekly Shariat, Volume 2 number 8, August 1988.

19 Cheeye Ssezi: op.cit. *Supra*

20 Stopford, J.C.B: English Governor and African Chiefs, 1902-3 in JAS, Volume 2 page 309. Also See: *Asante in* [1965] 74 Y.L.J. 848.

21 Provisions in the Uganda Constitution.

22 op.cit, page 17.



would be institutions and mechanisms for ensuring that those who exercise the powers and functions of government are made to account for their decisions and acts.<sup>23</sup> It would appear that the provisions of the Constitution which were intended for these purposes are yet to be invoked and enforced or have been neglected altogether.

Perhaps, the greatest disservice the National Resistance Movement had rendered to Uganda is the monetization of democracy and the abandonment of the principle it had established while in the bush, namely the holding of elections and making appointment to public office on individual merit.

Writing in "Sowing the Mustard Seed," Yoweri Kaguta Museveni observes:

"One of the fundamental elements which influenced our group in those days at Ntare School was revulsion at the sectarian politics in Ankole... The so called Protestant faction was aligned with the UPC and the Catholic and Bahima factions with the DP. These factions were formed by opportunistists seeking public offices they could use to accumulate wealth. In fact Ankole was a microcosm of the sad story of political sectarianism in the whole of Uganda."<sup>24</sup>

It would be very fascinating to read back to President Museveni all that he said and wrote before 1996. To day, his own government is accused of the same ethnic, greedy and sectarian tendencies.<sup>25</sup> The NRM government has ignored to investigate and act on the serious allegations made against those committing those of its ministers and its officials who are accused of corruption, abuse of office and incompetence, not because it thinks they are innocent but because of their political support, ethnicism and sectarianism. In several cases, the accusers have been brave enough to come forward and give evidence in court or Commission's of inquiry. Some of them have had in their possession impeccable written evidence to show that the charges against the suspects but the NRM government has shown no interest in pursuing the matter or disciplining with the accused. In some incidents, those who were accused of offences were either transferred to other offices or promoted to greater ones where they got better chances of cheating the people of Uganda.

The overriding consideration in the new NRM brand of democracy became not the free choice of the people but the election of members who could blindly toe the NRM line of whatever description. Typical of this attitude was the opinion of one Member of Parliament who declared that in any debate and division, he

23 The Monitor, 27 November 2001.

24 e.g. Rugumayo Edward, Omony Ojok and Ssekandi Francis, the Speaker, formerly of opposition parties.

25 Some were appointed ambassadors.

would always support the NRM President whether right or wrong. He was soon made a Cabinet Minister. Several critics of the government were persuaded to join the NRM and become ministers as a way of appeasing them.<sup>26</sup> Predictably, these new recruits to the NRM became more “committed” and defenders of the movement’s faults than its original cadres.<sup>27</sup> On the other hand, politicians and public officers who acted in accordance with the law and the norms of proper governance were often branded traitors, ungrateful or multipartists if they did not toe the NRM line strictly. Some of the independent thinkers would either be dismissed from office, retired or appointed to other posts far removed from the NRM political games of opportunism and survival.<sup>28</sup> The government is rightly condemned for having allowed the democratic electoral processes to deteriorate from the position it found them during the whole of the Obote’s administration. To-day, it has become an acknowledged factor that, unless a candidate is in communion with the NRM leadership and supported by them politically and financially either directly or through wealthy friends of the Movement, it becomes a little short of a miracle for that candidate to be elected to whatever office. It is immaterial whether the evidence shows that the candidate is preferred or is more popular with the electorate than any other in the same contest.

Increasingly, the country is governed and run by cadres who bought their way into government and their main contribution is the unconditional support or moneys they promise to give to the NRM leadership. This system of wanting and giving support for the sake of personal aggrandizement and fortunes, has totally distorted the concepts of the rule of law, liberty, democracy and good governance. Politics in Uganda has become highly personalized and monetized.<sup>29</sup> It seems that nothing else matters to the supporters of the NRM except the leadership and whatever that leadership chooses to do for Uganda, Ugandans are expected to be mightily grateful without questioning the integrity or methods employed.<sup>30</sup> Owing to the patronage exercised by the NRM leadership and the finances it gives to sponsor them electorally, most of its senior cadres fear to advise the President candidly and correctly. Instead, they feed him on lies and distortions of what they

26 The NRM primary elections in 2006 to select candidates for Parliamentary and Local representatives created a lot of animosity and resentment amongst the supporters of the party themselves. This was widely reported in the press at the time.

27 See: both national and international observers’ reports on the 2006 elections, deposited in the offices of the Electoral Commission of Uganda.

28 See: *New Vision* 20 April 2004.

29 As reported in the *New Vision*, 20 April 2004. Later, Ken Lukyamuzi was disqualified for persistently refusing to disclose his wealth as required by law. However, he sponsored his daughter to represent the Constituency and she won the Parliamentary seat.

30 Proceedings of the Constituent Assembly, Parliament Library, Kampala, 1994–1995.

believe he wishes to hear. As a consequence, he occasionally makes statements or pursues policies which are embarrassing.<sup>31</sup>

It is a fact of real politics that every government in the world becomes increasingly unpopular. The longer it stays in power, the less popular it becomes even if it has done exceedingly well. People get fed up listening to the same voices of the same leaders. We have estimated that when a government which has fulfilled all its pledges to the people stays in power for a period of ten or more years, it loses the support of 30-40% of the electorate. By that time people are desperately hoping for a change without anticipating that those likely to come to power may not perform any better than the incumbent. The NRM has not always done the right things and its popularity in the country to-day is at its lowest level since it took the reins of government as the elections of 2006 showed. However, in the 2001 Parliamentary elections, President Museveni campaigned against candidates who but for his opposition, would not have been elected. For instance, many voters in Hon. Ken Lukyamuzi's Constituency of Rubaga Division, Kampala will testify that if Museveni had not decampaigned him he would have lost the election. They say that Museveni's opposition to Lukyamuzi provoked them into voting for him. As if no lesson had been learned, the President again chose to intervene in the local government elections held in 2002. It is believed that the candidate he strongly supported fared much worse than they would have otherwise done.<sup>32</sup> From about the year 2001, the NRM policies and performance became increasingly unpopular and controversial. In the concluding part of this chapter, we shall examine the events of that period.

### **11.1 THE DEMISE OF THE NRM PRINCIPLES**

Article 70 of the Uganda Constitution provides that:

- (1) The Movement Political System is broadbased, inclusive and non-partisan and shall confirm to the following principles:-
  - (a) Participatory democracy
  - (b) Democracy, accountability and transparency
  - (c) Accessibility to all positions of leadership by all citizens.
  - (d) Individual merit as a basis for election to political offices.<sup>33</sup>

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31 See: composition of the Executive Committee, Kabale District Council, 2001.

32 Forging certificate.

33 Article 70(1) of the Constitution.

Recently, the Deputy Attorney General, Adolf Mwesigye was reported to have advised the adherents of the NRM to forget about individual merit and advised that: “*Though the concept of individual merit is lawful. It is prohibited in the NRM party.*” As far as we know, this is the first time ever that an influential member of a political party in any country has ever confessed that the election of that party’s leaders is not based on merit. His view is that elections are about numbers and not merit.<sup>34</sup>

Earlier, we observed that there has been a tendency in the NRM government to give lip service to the fight against the three evils that are currently prevalent in public administration namely, corruption, abuse of office and embezzlement of public funds. We saw this as a disservice to the country and warned that if these practices continue unabated, they will destroy any memories of the otherwise good work and legacies of the National Resistance Movement discussed earlier on in this book. We also observed that since 1996, the National Resistance Movement has unveiled many facets which few Ugandans expected from it. It was said that it can be stated that since the promulgation of the 1995 Constitution which was arguably the finest work of the NRM administration, the NRM leadership has appeared to concentrate more on political games of how to stay in power and exclude others from it longest.<sup>35</sup> These same observations were made in the first edition of this book in 2002.<sup>36</sup> It is only some four years since those views were expressed and yet much has occurred in between then and now to justify the heading of this Chapter as a *metamorphosis*. In the context of this book, metamorphosis means change of character and *modus operandi* beyond recognition of previous characteristics and knowledge.

This part of the Chapter discusses issues which are of so much recent occurrences that sources consist of living personalities, newspapers, magazines, radios, TV shows and discussions.

The seeds of constitutional dismantlement in the Uganda of the NRM, were planted both before and during the constitutional making process of the 1980 and 2006. During the elections of the delegates for the Constituent Assembly and shortly after it was constituted, professional voices were urging that in order to make an objective and enduring constitution, it was essential that the Constituent Assembly delegates be disqualified from contesting as members of the first Parliament in the national elections which would follow immediately after the

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34 See: daily Monitor, 12 April 2006, Inside Politics. This was repeated by the Chairman of the NRM himself in the New Vision, 12 December 2005.

35 See: Daily Monitor of 27 January 2006.

36 Page 282.

promulgation of the Constitution. It was argued that only disqualification would dissuade delegates from building mechanisms within the Constitution to fit their own personal interests.<sup>37</sup> During the first preliminary phases of the deliberations of the Assembly, the idea of disqualification was mooted amongst the delegates and overwhelmingly rejected. As a consequence, the Assembly managed to create a very large Parliament that a small and poor country like Uganda could easily have ill afforded.<sup>38</sup> The decision to create a large Parliament deliberate and based on personal interests of the majority delegates in the Constituent Assembly for this was purely selfishness amongst the majority of the delegates. The Act creating the Assembly had prescribed a large number of delegates to ensure that all the parts of the country, however small, and disadvantaged sections of society were fully represented and participated in the making of the supreme law of the country. Many delegates who had tested the benefits of paid representation in state institutions and organisations took advantage of that and forced the Assembly to accept and incorporate in the Constitution the same principles and geographical divisions in which the constituencies for the Assembly had been designed, for future Parliaments of Uganda. By then they all had decided that they would wish to stand as candidates for the next Parliament, immediately following the making of the Constitution.<sup>39</sup>

The second seed for the future assault on the spirit of the Constitution similarly 'inspired', was the rejection of the proposal to reinforce the Constitutional doctrine of separation of powers. The proposal would have ensured that members of Parliament would not also be members of Cabinet at the same time.<sup>40</sup>

It is not an exaggeration to say that most of the delegates had great expectations to be appointed ministers after being elected to Parliament. To ensure that even those who lost in the constituencies or who could not stand for Parliament for one reason or another, would still be eligible to be appointed ministers, the Assembly widened the Presidential powers of patronage by inserting in the Constitution a clause that empowers the President to nominate ministers from both within and outside Parliament. This would be the very first political carrot the President would use in creating the first huge Cabinet after the adoption of the 1995 Constitution.<sup>41</sup>

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37 Proceedings of the Constituent Assembly, 2004–2005, Parliament Library, Kampala.

38 *Ibid.*

39 Proceedings of the Constituent Assembly. op.cit. *ibid.*

40 The NRM caucus had to meet several times to achieve its objective in the idea of keeping ministers from Parliament

41 Of over sixty ministers.

During the discussions about the size of Cabinet, there was a consensus in the Assembly that in its present state, Uganda cannot afford a big Cabinet. Thus, article 113(2) was uncontentiously inserted with the intention of prohibiting the creation of a big Cabinet. It provides, “*the total number of Cabinet ministers shall not exceed twenty one except with the approval of Parliament.*” The exception was inserted as an afterthought, but it was later used as the rule rather than the exception.<sup>42</sup>

Having established the principle of a small Cabinet, several delegates argued that in the distant future, may be in twenty or thirty years and beyond, the population of Uganda and its wealth and needs would be such as to require a big Cabinet. Certainly, no delegate ever thought that Parliament would be persuaded to invoke the exception in less than ten years let alone within months of coming into force of the Constitution. This is precisely what happened. It was therefore not a great surprise that when the first post Constituent-Assembly Parliament sat and the President nominated more than 21 ministers, Parliament eagerly approved the nominations. Many members who had been delegates in the Constituent Assembly looked forward to being nominated themselves to become ministers at some future date. Forgotten were the principles and reasons upon which article 113(2) of the Constitution had been founded. In retrospect, the Assembly should have placed an embargo on the exception and fixed a time limit before which article 113(2) could not be used to expand the size of the Government contrary to the provision of the Constitution.<sup>43</sup> This breach of the spirit of the Constitution was to be the first of many examples the Executive would utilize to use rather than accede to the Parliamentary will. Henceforth, the Executive would insist and have its wishes fulfilled in any controversial debate in the legislature. For all intents and purposes, Parliament became a lame duck if not a rubber stamp.<sup>44</sup>

## 11.2 WHAT WENT WRONG?

The priorities which inspired African nationalists and liberators to fight for freedom and against repression and injustice altered. The highest preferred by the new African leaders came to be how to stay in power longest for the sake of self. The obvious urge to ensure the security of the state turned into the love of power and the protection of the nation changed into the protection of the leader and his or her immediate supporters even if this could only be achieved at the expense of the

42 The rule has thus been ignored since 1996. In May 2006, The President nominated 68 Ministers for Parliamentary approval.

43 In actual fact, the overwhelming majority of former C.A delegates campaigned and were elected for subsequent successive Parliament. See: Hansard of the 5th, 6th and 7th Parliament.

44 The Monitor, 27 November 2001.

former priorities such as eradication of disease, poverty and ignorance.<sup>45</sup> The leader, his or her immediate family, government loyal Ministers and public servants became the most important assets of the state to be sustained and protected at all costs.

While national policies continued to be formulated and implemented on such subjects as defence, economic development and social services, the implementation tended to first favour first the privileged members of the ruling oligarchy.<sup>46</sup> The social and economic analysis of the *personalised state* began to reveal interesting phenomena. The major beneficiaries of the few economic gains achieved tended to be the leaders and their immediate supporters. The new priorities effectively alienated the middle and industrious classes of the nation who were enlightened to know the meaning and effect of the new emphasis. The leaders were forced to turn to the poor and the peasants who knew next to nothing and who could, on being bribed with a few coins and big but empty promises, do whatever the leaders wished, including voting massively in support of the leader's wishes however whimsical.<sup>47</sup> It increasingly became obvious that without the poor and the ignorant of the state being duped into becoming the vehicles to and instruments of power, the metamorphosed leaders would have starved to death and certainly lost office long time ago. The new leadership of Africa thus chose to survive longest by riding on the backs of the peasants, the poor and the ignorant. Those who questioned the new priorities were threatened with the unleashing of the Military forces against them.<sup>48</sup>

The modern African leaders also realised much earlier that in order for them to survive and prosper personally, they needed to accept the dependence syndrome. The countries they led became client states of the foreign wealthy individuals, corporations and donor states. Being able to thrive on the sweat and blood of foreigners through aid and loans, the new African leadership no longer got inspiration to advocate the right of self-determination which was so popularly utilised during the struggle against colonial rule.<sup>49</sup> Instead, these leaders travelled expensively far and wide to foreign capitals with begging cups seeking handouts and other assistance from the rich.<sup>50</sup> National assets and corporations and utilities

45 See: Kanyeihamba G.W. *Constitutional and Political History of Uganda*, op.cit. page 275.

46 Global Fund for Development: Commission of Inquiry Report.

47 Nabudere Dani W: *The challenge of creating sustainable Peace and Democratic Freedom in Uganda*, in E.A.J.P and H.R., Volume 2 number 2, 1995, page 131.

48 The Daily Nation: Nairobi, 8 March 2006.

49 See: Ngugi Wa Thiong'o: *Decolonising the Mind: The politics of language in Africa Literature* 86 (1986).

50 See: the Monitor 6 June 2002.

were staked out and alienated to foreign international bidders, not always the highest, depending on what kickbacks the leaders' negotiators were able to receive from the potential new owners. In their zeal to industrialise, parcels of land were meted out, and invasions of the environment freely permitted without regard to the needs of ecology and future generations.

The greed and ambitions of the persons closest to the leadership knew no bounds. In order to get rich quickly without working, the economic disease of corruption came to be accepted as normal.<sup>51</sup> In some instances, it was harnessed as a legitimate tool for retaining political power. The freedom fighters and the liberators who had come to power with such wonderful promises and hope for the masses easily abandoned their original missions in preference to personal comfort and wealth. Thus, in Uganda, the NRM abandoned two of its major policies which had endeared it to the population. These were the Ten-Point Programme and the idea of electing or appointing leaders on merit. The idea of fighting vigorously against corruption was abandoned in preference to the retention of political power.<sup>52</sup> Another principle which was abandoned by the NRM was the concept that the government of Uganda should be broadcasted and non-sectarian.<sup>53</sup>

The NRM High Command accused previous leaders including President Godfrey Binaisa of meddling in commercial and trade transactions instead of leaving them to line ministries. Available evidence shows that the present NRM leadership cannot be acquitted of a similar charge.<sup>54</sup> The NRM leadership is accused of having abandoned its socialist, nationalistic and popular policies in preference for ultra capitalist economic ones in which the NRM top leaders or those closest to them benefit personally. The leadership stands accused of having allowed the economy to develop in such a way as to leave the peasants still acutely poor or poorer still while those in its inner circle, their friends and foreign associates have harvested the greatest rewards from the wealth of Uganda. It is one of the bitterest ironies of the NRM philosophies that every five years or so, the same leadership with alleged coercion and bribery, corruptly uses the same poor, the ignorant and the peasants to be sustained in power.<sup>55</sup>

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51 Tusasirwe Benson, op.cit. page 70.

52 Ten Point Programme. See: Paul Arthur Kamwanga's letter in New Vision, 13 June 2006.

53 Mr Amos Nzeyi, a supporter of the NRM in an interview with the author, Uganda Golf Club, on 8 March 2006.

54 Interview with Mr Francis Tumuhairwe formerly of the Ministry of Finance on 9 March 2006. Also See: the attempted sales of the National Dairy Corporation and Kinyara Sugar Corporation, minutes on both in Ministry of finance, Kampala.

55 See: Dr Kizza Besigye: Presidential Candidate's manifesto for the 2006 elections.



It is therefore not surprising that in the labyrinth of governance, executive power can be used to enhance and direct development. Conversely, executive power can be used to create such undesirable conditions that an enlightened population perceives them as intended not only to disadvantage but to frighten it as well.<sup>56</sup> It was observed that in the 2006 elections, the majority of Ugandans yearned for change and could have easily voted overwhelmingly for an opposition candidate, but the majority of them also feared for their lives if the NRM leadership were not to be returned to power. Caution prevailed over valour and most of the NRM leaders were returned to Parliament in those elections although in the process some 80 NRM cadres were defeated by multipartists and independents.<sup>57</sup>

It is not often appreciated that failure or neglect to exercise executive power can be as harmful as abusing it.<sup>58</sup> We have already alluded to the weak or lukewarm attempts of the appropriate authorities in government to respond effectively to allegations of corruption and abuse of office in public affairs.<sup>59</sup>

From time to time, the Press have investigated, discovered and reported several or more holders of public offices who have indulged in corrupt practices or who have the mentality of “*get rich quick*” and do so or, who are connected with shoddy or corrupt schemes and organizations, the acts and behaviour of which are contrary to the leadership code.<sup>60</sup> Many such reports are often ignored by those concerned and, those which are acted upon yield very few positive results. Society can no longer tolerate a situation where holders of public office who are supposed to act impartially and justly in the public interest have enjoined that interest to one of theirs, their family or friends to the extent that the two have become inseparable.

The proper exercise of executive power means a radical departure from the prevailing attitudes, whether official or unofficial, which appear to condone wrong-doing and reward corruption in public administration. A radical transformation of the public service and accountability is long overdue.<sup>61</sup> Perhaps, it is only befitting that we end this Chapter with the summary judgment of the Supreme Court in petition number 1 of 2006 challenging the Presidential elections of that year. It clearly illustrates the metamorphosis of the NRM which started

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56 Dr Kizza Besigye: Presidential Candidate's manifesto for the 2006 elections.

57 *Secret ballot v. Third Term*: Article in the Monitor, 8 October 2003.

58 Daily Nation, Nairobi, 7 March 2006.

59 *Supra*.

60 The Ssebuteinde Commission Report on the URA, Kampala, 2004.

61 See: Ibrahim Ssemujju: Is the 7th Parliament just a Big Balloon? Sunday Monitor, 16 March 2003.

with the greatest of hopes for the country from the bush.<sup>62</sup> The facts of circumstances leading to this petition were given in the joint findings and decision of the Supreme Court on the 6 April 2006.<sup>63</sup>

The Petitioner was one of the Presidential Candidates in the election that was held on 23 February 2006, the results of which were declared by the Electoral Commission, the first Respondent, candidate Yoweri Kaguta Museveni, the 2nd Respondent in the petition had won those elections since he had obtained more than 50 votes as required by the Constitution of Uganda.<sup>64</sup>

The Presidential election was held and conducted under a multiparty system unlike previous ones that had been held since 1996 under the monolithic National Resistance Movement Political System. The Petitioner ran for election as the candidate for one of the participating political organizations which is registered as Forum For Democratic Change (FDC), while the second Respondent stood for election as the candidate for the National Resistance Movement (NRM). There were two other Presidential candidates representing political parties, namely, Miria Kalule Obote for the Uganda People's Congress (UPC) and John Kizito Sebaana representing the Democratic Party (DP). There was a fifth candidate, Bwanika Abed who stood as an independent Presidential candidate.<sup>65</sup>

In his petition, Dr Kiiza Besigye complains that the first respondent failed to comply with several provisions of the Constitution, the Presidential Elections Act and the Electoral Commission Act and actually infringed some of the provisions of the Constitution and these Acts of Parliament. He also complains that section 59(6)(a) of the Presidential Elections Act is contrary to the provisions of article 104(1) of the Constitution. The Petitioner further complains that the entire election process in 2006 Presidential election was characterized by acts of intimidation, lack of freedom and transparency, unfairness and violence and the commission of numerous offences and illegal practices. The petition makes further allegations of breaches of the law by the first respondent in the disenfranchisement of voters by way of deleting them from the voter's register and failing to cancel results from polling stations where gross electoral malpractices had occurred. The petition complains of further malpractices allowed in the election by the first respondent such as multiple voting, vote stuffing, failure to declare results in

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62 See: Selected Reminiscences of President Yoweri Kaguta Museveni: Chairman, NRM/NRC Commander-in-chief of NRA, 2nd Anniversary, 26 January 1988.

63 Reasons for those decisions were to be given at a later date.

64 Presidential elections – Declaration of results by the Electoral Commission on 25 February 2006.

65 A sixth candidate, Ssebagala withdrew from the race, stood for the mayorship of Kampala and won.

accordance with the law and the absence of freedom and fairness in the whole electoral process.<sup>66</sup>

The Petitioner's allegations against the second respondent were listed to include the illegal practices and offences committed by him personally. The petitioner alleged that the second respondent used words or made statements which were malicious or which contained sectarian words or innuendos against the Petitioner and his party and, made abusive, insulting and derogatory statements against the Petitioner, FDC or other candidates. Additionally, the petition alleged that the second respondent made defamatory and derisive, mudslinging, insulting and false statements against the same parties. The Petitioner further alleges that the second respondent committed acts of bribery of the electorate personally or by his agents with his knowledge and consent or approval, before and during the elections designed to interfere or which interfered with the free exercise of the franchise of voters.<sup>67</sup>

In support of the petition, counsel for the Petitioner, presented a number of affidavits with annextures, made submissions and cited authorities in support. In response, the respondents, through their counsel denied all the allegations against them and their counsel presented affidavits together with various annextures, authorities and made submissions in support of their responses.

At the commencement of the proceedings of the inquiry and on request of counsel for the parties, this Court framed five issues for the determination of the petition. These were:

1. Whether there was non-compliance with the provisions of the Constitution, Presidential Elections Act and the Electoral Commission Act in the conduct of the 2006 Presidential Elections.
2. Whether the said elections were not conducted in accordance with the principles laid down in the Constitution, Presidential Election Act and the Electoral Commission Act.
3. Whether if either issue 1 or 2 or both are answered in the affirmative, such non-compliance with the said laws and principles affected the results of the election in a substantial manner.
4. Whether the alleged illegal practices or any electoral offences in the petition were committed by the second respondent personally or with his knowledge and consent or approval.

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66 These allegations were contained in affidavit filed in support of the petition and strenuously denied by the Respondents in like manner.

67 Had the second respondent been found to have committed these electoral offences, he would have been automatically disqualified.

5. Whether the petitioner is entitled to the reliefs sought.

The inquiry into the allegations of the petition proceeded partly under the Constitution, the Presidential Elections Act and the Electoral Commission Act. Both the inquiry and the consideration and findings of the court must constitutionally be completed and the decision of the court pronounced publicly within a period of thirty days which reinforces my firm opinion that the framers of the Uganda Constitution intended petitions in Presidential elections to be expeditiously disposed of by way of inquiries. To have subjected them to the rules and procedures of ordinary trials whether of a civil or criminal nature with their long drawnout indefinite periods of possible adjournments and judgments of which judicial practice in Uganda dictates that they be delivered in about sixty days, would have been unsuitable.<sup>68</sup>

At times during the hearing of the petition, a number of counsel for the parties tended to spend too much time on definitions, explaining and arguing about the meaning and implications of certain terms and expressions in the law before the Justices of the Supreme Court with all that it implies. In my opinion, the thrust and impact of an inquiry of this nature are best appreciated by maximum concentration upon what actually occurred before and during the election. Detailed facts and events and the actual circumstances implied by each allegation of such malpractices as bribery, intimidation and disenfranchisement need to be given with particulars and actual occurrences by credible witnesses if possible, giving testimony produced or deposed to the satisfaction of the court. This is an essential and important inquiry that could have grave consequences to both the parties and the nation as a whole. In our opinion, unsubstantiated and general allegations or those with scanty details will not be able to move the court very far in the direction desired by the party relying on them.<sup>69</sup>

Be that as it may, the parties and their counsel managed to present enough evidence and adequate submissions to enable court to effectively deliberate on the petition. Within a few days of completing the hearing of the inquiry, the court rose to consider its findings and decision which as already noted, it delivered on the 6 April 2006.

On issue number 1, the court found unanimously that there was non-compliance with the provisions of the Constitution, the Presidential Elections Act

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68 The Rules and Practice guidelines prescribe that judgments ought to be delivered within 60 days from the dates of closing the hearings.

69 Many of the allegations made in some of the affidavits were not always substantiated.

and the Electoral Commission Act, in the conduct of the 2006 Presidential Elections by the first respondent in areas of the country in the following instances:

1. In disenfranchisement of voters by deleting their names from the voters' register or denying them the right to vote.
2. In the counting and tallying of the results.

On issue number 2, the court found, again unanimously, that there had been considerable non-compliance with the principles laid down in the Constitution, the Presidential Elections Act and the Electoral Commission Act in the following areas:

1. The principle of free and fair elections was compromised by bribery, intimidation and violence in some areas of the country.
2. The principles of equal suffrage, transparency and secrecy were infringed by multiple voting, vote stuffing and incorrect methods of ascertaining the results.

On issue number 3, by a majority of four to three, the court found that it was not proved to the satisfaction of the court that failure to comply with the provisions and principles as found on the first and second issues, affected the results of the Presidential election in a substantial manner.

On issue number 4, by a majority decision of five to two, the court found that no illegal practices or other offences were proved to the satisfaction of the court to have been committed in connection with the said election, by the second respondent personally or by his agents with his knowledge and consent or approval. By a majority of 4-3, the Court dismissed the petition. After its findings and majority decisions, the court was constrained to comment on four matters which gave it grave concern.

- (a) the continued involvement of the security forces in the conduct of elections where they have been involved in acts of intimidation, violence and partisan harassment;
- (b) the massive disenfranchisement of voters by deleting their names from the voters register, without their knowledge or being heard;
- (c) the apparent inadequacy of voter education
- (d) we also not with dismay the failure of the 1st Respondent to avail to the Court Returning Officers report on the ground that they were not available when it is mandatory for Returning Officers to transmit them to the 1st Respondent.
- (e) the Court found that certain provisions in the electoral law are contradictory and inadequate and should be reviewed, such as sections 24(5) and 59(a) of the Presidential Elections Act, and section 25 of the Electoral Commission Act.

- (f) the Court is of a considered opinion that all institutions and organizations concerned should urgently address these concerns in order to improve electoral democracy in the country.

It may be recalled that the few brave Ugandans who accompanied President Yoweri Museveni into the bush and emerged with tens and tens of thousands more Ugandans who had joined in the cause were motivated by the great desire and conviction to eliminate forever some of the illegalities, malpractices and irregularities which had occurred in the 1981 elections whose ghosts were unfortunately also prevalent in the 2006 elections. The metamorphosis of the NRM was thus complete.<sup>70</sup>

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70 Interestingly, one unacceptable habit the publisher of the selected Reminiscences of President Kaguta Museveni noted was late coming and he advised “personally, I appeal to the President to devise all possible means to curb late coming and early departure from duty. Apparently, this advice had never been driven home.



## CHAPTER TWELVE

### GOVERNANCE FROM CUSTOMARY, THROUGH COLONIAL TO MODERN OBLIGATIONS

Developing countries of which Uganda is one have had to pass and continue to pass through traumatic experiences of governance. Initially, most of them witnessed a head on collision between their traditional culture and colonialism. While the former was elegant, slow and dignified, the latter was sophisticated and mysterious to the population and certainly superior in technology. Inevitably, the latter superimposed its principles and values on the respective communities which were reluctantly forced to abandon their old ways of doing things in preference to the new and alien modules which they could only partially understand and appreciate. The experience was bound to leave lasting scars.

Tsatsu Tsikata of Ghana once observed that in Africa when people speak in terms of written constitutional formulations of human rights, the origin of these statements are inevitably traced to the European events. He continued:

“The overrunning of our societies by European states and the imposition of political institutions from Europe have shaped our modern reality.”<sup>1</sup>

Writing about Tanzania some decades ago, an expatriate sympathiser expressed concern about the African crisis of identify resulting from colonialism and neo-colonialism. He observed that the remarkable thing about Tanzania and indicative of its continued state of dependence was that its definition of socialism was still, to an astonishing state, in the hands of expatriates and this tendency was growing.<sup>2</sup> The same could have been said of many other independent African states. However, with a multiplicity of aid projects, both bilateral and international, the World Bank, and the IMF operations in Africa, the situation of the dependence syndrome has not to-day appreciably altered for the better.<sup>3</sup>

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1 Cited in Kanyeihamba G.W: *Urban Planning and Development in East Africa*, Doctoral Thesis, Warwick University, 1974, Chapter 2.

2 East Africa Study Group Report on Foreign Aid, 1969, Dar-es-Salaam. Institute of Public Administration, paper number 3.

3 Harrell Bond, Barbra: *Imposing Aid*, OUP, London, 1986.



In the case of Uganda, independence did not change the people defining and directing the legal system of that country. Only several years ago, the country received a number of learned expatriates sponsored from USA and England to review its criminal law administration and their report proved a significant input in the country's efforts to reform the criminal law. Danida of Denmark is currently active in the reform of Uganda Courts and the administration of justice and has had some considerable influence on how the structures and jurisdiction of those courts are developing.<sup>4</sup>

A Ugandan senior civil servant, who happened to be an expatriate, warned the government of the day in his retiring report as follows:

"Government has gone in too freely for what is often incorrectly called experts from outside to help with the country's problems. The expatriate has so many disadvantages. As soon as an expert is known to be coming, all the difficult decisions connected with his work are postponed."<sup>5</sup>

It can also be said that the expert consumes much of his allotted time gathering local knowledge, not so much to find who is technically or professionally qualified to assist him but rather who has the authority to legitimise and approve his or her work, however shoddy or mistaken it may turn out to be in the end. Too often, the expert's report is hastily compiled and does not always take into account local realities, conditions or talents, let alone previous research efforts and findings.<sup>6</sup>

Another foreign writer expressed concern about the African crisis of identity.<sup>7</sup> He lamented about the impact expatriates have had on African development. He observed that sometimes alien models of development are deliberately and even occasionally vigorously thrust upon local policy makers by foreign organizations. The United Nations and its specialised agencies and the developed states of the West with their agents provide the funds. The possibility of obtaining foreign aid with its three PS, namely participants, posts and paraphernalia tempts decision-makers, especially when they are not subject to strong or effective count measures against adopting foreign models. To make matters worse, on the principle that he who pays the piper calls the tune, the supervising local ministry of the receiving country dare not question the expatriate's work lest aid is stopped.<sup>8</sup>

4 Kanyeihamba, Doctoral thesis, op.cit.

5 Cited in Kanyeihamba, Doctoral thesis.

6 East Africa Study Group Report on Foreign Aid, op.cit. pages 12-36.

7 Professor Ali M. Mazrui: Mimeo: Coventry University, 1993, on the Marginalisation of Africa conference.

8 East Africa Economic Review: December 1971, Volume 3 number 2.

It has also to be acknowledged that there have been expatriates who have been well intentioned and, who took the trouble to study the culture and local conditions of Africa before embarking on their work. They have done commendable work as a result.<sup>9</sup> Sadly, however, these are few and far between. In light of their poverty and scarcity of own personnel, many African countries will continue to rely heavily on external funds and experts. The principle of utilising such resources will still benefit Africa somehow but Africa must be more critical and selective when accepting them. The Africa crisis of identity has been exacerbated by the end of the Cold War between the Western and Eastern Blocks of countries and the demise of the USSR on what used to be known as the ideological divide between the two blocks.<sup>10</sup>

Underscoring this aspect of the phenomenon, the well-known African scholar, writer and broadcaster, Professor Ali Mazrui, has observed:

“In global terms, the African state has got increasingly marginalized, being pushed into the ghetto of the world systems. Like Africa’s refugees, many African states, were already living, at least partly, on handouts before the 1990s. It has become worse since then. Just as a disproportionate number of refugees in the world are in Africa, a disproportionate number of disabled and impoverished states are also in Africa.”<sup>11</sup>

For instance, Africa must improvise or adjust to assist the poor and the disadvantaged. The experience of the law teacher us that in criminal justice and administration, one can never be too careful. Presumptions of innocence and the necessity to prove criminal charges beyond reasonable doubt can only be but for the general good of society. Nevertheless, if carried to all its logical limits which are considered normal in the developed countries of the west, it could cause hardships and miscarriages of justice. Mistaken identity of suspects, malicious entrapment by investigating agencies, false confessions and errors in presenting and assessing evidence is such occurrences that lead to some innocent persons having to pay very heavily for crimes they may not have committed or participated in. At the same time, the misunderstanding of how modern criminal justice operates on the part of the population has led to indifference and hostility towards those who investigate, prosecute, and try crimes and this has in turn led to yet another kind of injustice which is a record of very low returns of convictions as against the rise in crime.<sup>12</sup> A balance must be struck between the two sides in which the protection of individual

9 Conference Report: Problems of foreign Aid, op.cit. page 275.

10 For a general discussion of this topic, See: Arnold Guy: Aid in Africa, op.cit. Chapters two and three.

11 Mimeo: Marginalisation of Africa; Coventry *Social Justice and the Law in Sawyer G.F.A* University, 1993.

12 Twining William: (ed) *East African Law and Social Change: E.A.I.S.C.A.* Nairobi, 1967, page 258.

liberty and prosecution of crime operate. On the one side, there is the Dworkinian assertion that:

“Some one has a right when he is entitled to insist on doing something or having something done even though the general welfare of everyone else is harmed thereby”.<sup>13</sup>

On the other, the late Mwalimu Julius Nyerere of Tanzania once remarked:

“I agree that in the idealist sense of the word, it is better that 99 guilty men should go free than that one innocent man should be punished. But in the circumstances of a nation like ours, other factors may well arise in which it is better that 99 innocent people should suffer temporary detention than that one possible traitor should wreck the nation. It certainly would be complete madness to let 99 guilty men escape in order to avoid the risk of punishing one innocent person. Our ideals must guide and not blind us.”<sup>14</sup>

Nyerere's views are a reflection of most Africa today and contrast sharply with the western concepts of individual liberty which is often enjoyed and exercised at the expense of the community at large. As already suggested, there is need to strike a balance between the two extreme views. That balance will be possible if the debate between the two extremes is held continuously in a transparent and democratic fashion throughout the years that society is developing.

In developing countries, the overwhelming majority of citizens who seek justice in the courts of law are poor. The idea that a judge or a magistrate is an independent arbitrator often means denial of justice and compassion for the less well to do who cannot afford the services of a lawyer. In the event of the state or the prosecution being represented in a criminal trial, the accused person is left at the mercy of state counsel or the prosecutor. It should be permissible in such a case for a presiding judge or magistrate to intervene at appropriate stages in the proceedings to ensure that justice is done rather than sit back and wait for the parties to battle it out as if they were equal. Accused persons who are not legally represented are often caught out in legal and procedural arguments which they do not always apprehend even when they have good defences. It should be possible for a presiding judge or magistrate to explain, in simple terms to the person who is not represented in court that he or she is entitled to and can apply for bail instead of leaving this right to be enjoyed by only those who are able to afford lawyers. In Uganda, the persons accused of capital offences such as treason, murder and aggravated robbery, are in the happy position of being represented by counsel at the expense of the state while the poor, the ignorant, and the unfortunate who cannot afford legal representation but are accused of lesser offences have to

13 Taking Rights seriously, [1978], pages 1-28.

14 Inaugural lecture: University of Dar-es-Salaam: Reprint, 1964: Reviews of contemporary law: Nyerere's writings and speeches, 1952 -1965, page 123

personally endure allegations made against them in silence or without any adequate response and may be convicted even if innocent.<sup>15</sup>

For many countries in Africa, in the period between the grant of independence by the colonial powers and the struggle to establish national ethos and democracy, there accumulated suspicions and hatreds between the peoples inhabiting those countries. The conflicts therein became such that solutions to them could not be provided for by the dictates of democracy alone. A great deal of compromise and cooperation between opposing communities and factions were in certain instances, enhanced by monolithic organizations while yet, in others, only multiple party organizations could provide the answers. In others, government by delegations from all sections of the country appeared the only logical answer to accommodate the fears and aspirations of everyone.<sup>16</sup> The idea of winner takes all or the holding of victory rallies and feasts in closely contested and controversial elections ought to be discouraged and, at any rate, tinged with moderation and tolerance. In cases of sharp differences in society, it is imperative that predetermined rules of constitutionalism be entertained with restraint and tolerance. An important aspect of the new understanding in governance should be the education of leaders that neither they nor anyone else has a monopoly of wisdom and intelligence or knowledge to originate the right policies or solutions to current national and world problems. Leaders need to accept and appreciate electoral and political defeats and loss of power as proper attributes of democracy and constitutionalism. The system of public administration must guarantee the lives and happiness of previous or ousted leaders in a manner that will discourage them from clinging to power by whatever means as the only way of protecting themselves, their families and friends.<sup>17</sup> It needs to be emphasised again and again, that in developing and poor countries the distribution and access to national wealth and resources is as important as the maintenance of law and order, legalism and constitutionality are as important as the political reality of the situation. The concept of democracy needs to be balanced fairly evenly with the people's rights to be governed well and peacefully.

In most developed countries, the function of law is determined largely by the national ethos, social culture and the political ideology which have long histories

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- 15 For representation in Criminal cases: See: the Penal Code Act, Chapter 106 and the Uganda Constitution, Article 23(3).
  - 16 Diaw Aminata: the National Conference as a new mode of constitutionalism in Oloka-Onyango J. (ed), constitutionalism in Africa, Fountain Publishers, Kampala, 2001, pages 254–261.
  - 17 Museveni Yoweri Kaguta: Sowing the Mustard Seed, McMillan London, 1997.

behind them.<sup>18</sup> In Uganda, as in many other developing countries of Africa, these notions are still in the formative stages. Consequently, public law must be directed to their evolution, growth, consistency and nurture. Regrettably, in some countries, the courts which were established as the last bastion in the defence of the freedoms and rights of the individual and against the oppression by or injustices of public authorities, have been reluctant to confront the Executive while Parliament, the symbol of democracy and liberty, has occasionally hesitated or showed partiality and timidity.<sup>19</sup> Not surprisingly, judicial interpretation of the constitutions or application of the laws lead to direct clashes between the executive and the judiciary on the one hand, and the legislature and the judiciary on the other. Occasionally, such conflicts could only be resolved by one or more of the organs of government resorting to draconian or drastic measures<sup>20</sup>.

In the Nigerian case of *Adegbenro Akintola*,<sup>21</sup> a governor of a Nigerian regional state exercised his constitutional right correctly and dismissed a Prime Minister who had lost the support of a majority of the members of the House of Assembly. The Prime Minister and his government challenged the governor's powers and decision to dismiss them. The matter went to the courts with the final court, then known as the Judicial Committee of the House of Lords of the U.K, declaring that the governor had the power and had exercised it constitutionally and correctly and in the interest of the state and people. On receipt of this final judgment, the government of the state introduced a bill in the House of Assembly which it had easily passed into law that effectively abolished the power of the Judicial Committee and barred it from hearing any appeals from the state.<sup>22</sup>

In the Tanzanian case of *Republic Michael Kamaliza and others*,<sup>23</sup> the Tanzanian High Court convicted a number of persons of treasonable offences. The convicts appealed to the then Court of Appeal for East Africa.

Three of the appellants were acquitted and ordered to be released by the Court of Appeal. Shortly, after the release of those acquitted, one of the successful appellants was re-arrested and detained again. Two months later, the Tanzanian Parliament was persuaded to pass an Act which abolished the right of appeal in

18 Tumwine-Mukubwa: ruled from the Grave: Challenging Antiquated Constitutional Doctrines and values in Commonwealth Africa, in Oloka-Onyango; Constitutionalism in Africa, op.cit, from page 287.

19 Parliamentary proceedings in the 1st amendment of the 1995 Constitution, 2001-2004.

20 Museveni Yoweri Kaguta: What is Africa's Problem: NRM Publications, Kampala, 1992.

21 [1963] AC614.

22 *Ibid.*

23 Crim. Sess. Case number 103 of 1970.

treasonable and related offences to the Court of Appeal for East Africa. In some African countries, judges have been dismissed, kidnapped and killed for giving or concurring in judgments which displeased incumbent governments.<sup>24</sup>

Occasionally, the government may resort to a fiction to achieve its way. In the Uganda case of *Ibingira and others v Uganda*,<sup>25</sup> the applicants, several Cabinet ministers in the first Obote government had been arrested at gun point while in a Cabinet meeting. No charges were preferred against them. They therefore successfully applied for the writ of *Habeus Corpus*. Shortly after the decision of the court, the ministers were re-arrested and taken to a part of Uganda where emergency regulations were in force thereby taking their case out of the ordinary jurisdiction of the courts.<sup>26</sup>

In several other cases, the courts themselves have resorted to extra ordinary measures to administer what they perceived to be justice. In the case of *Otoi v Uganda*,<sup>27</sup> the Court of Appeal assumed jurisdiction in order to render justice even though the law applicable appeared to deny it that jurisdiction while, in the case of *Shah v Attorney General*<sup>28</sup> the same court refused to entertain an appeal brought by the government, reasoning that it had no jurisdiction to do so even though the law applicable appeared to give it that jurisdiction. The court had been happy with what the High Court had decided and did not wish to interfere with what it saw as a good and just decision by going into the legalistic of its jurisdiction.<sup>29</sup>

There have been courts which attempted to avoid situations in which one East African expatriate judge described as a no go areas in these words:

“I ask you to imagine what might happen if the courts of a newly emergent nation, in which the rule of law is not a settled way of life either on the part of the executive or of the people, were by their judicial decisions to enter the political arena.”<sup>30</sup>

In the developed legal systems of the world, conflicts of this nature are easily absorbed without seriously damaging the equilibrium between the organs and institutions of government. In the developing countries, the organs of government, especially the Judiciary and Parliament must stand up and uphold and protect the

24 In Ghana, several judges disappeared under a military regime while in the Uganda of Idi Amin, Chief Justice Ben Kiwanuka was kidnapped from his High Court Chambers and murdered.

25 [1966] High Court Criminal case number 3 of 1966.

26 Ibingira Grace: The Forging of an African Nation, 1973.

27 Crim. Appeal number 163 of 1967.

28 [1970] EA 50.

29 Interview with one of the judges who participated in that decision, with author, 1969, Kampala.

30 Newbold: The Role of a judge as a policy maker in 2 E.A.L.J [1969].

liberties of the people. They must be mindful of the tasks for which they were created and established. In the political, economic and social crises that tend to characterise the developing countries, there can be little doubt that problems of constitutional stability and development will increasingly bring pressure to bear upon the communities and governments concerned. The solution to these problems will consist in part, a culture of tolerance on the part of both the rulers and the governed, and in part, a constant review of the constitutionality of government actions.

In the case of *Semwogerere and Luwum v AG*.<sup>31</sup> the petitioners challenged an Act of Parliament as unconstitutional in the Constitutional Court. The grounds of the petition included, *inter alia*, the allegation that when the bill which later became that Act was allegedly passed, there was no quorum in Parliament as required by the Constitution, and that the procedure used by the Speaker of Parliament in determining the quorum was in conflict with the Constitution. Until the hearing of this petition, no court in Uganda had had the courage to invalidate an Act of Parliament which dealt with fundamental policy of the government of the day. In this case, the particular piece of legislation provided for the holding of a referendum on what political system should govern Uganda for the next five years. The government, supported foreign governments and institutions had invested heavily in the referendum to be held under the Constitution and this particular Act. The eyes of the world were on Uganda. When the matter came up for hearing in the Constitutional Court, counsel for the Attorney General raised a number of preliminary objections including one which stated that courts had no jurisdiction to entertain a matter questioning the internal workings and privileges of Parliament.<sup>32</sup>

The Constitutional Court upheld the objections and dismissed the petition. The petitioners appealed to the Supreme Court which held unanimously, that the Constitutional Court had erred in divesting itself of the jurisdiction to hear and determine the petition. It directed that the Constitutional Court should hear the petition on merit. There followed a barrage of criticisms from government and its supporters that the Judiciary had interfered with the sovereignty of Parliament and taken away its privileges and immunities.<sup>33</sup> It is worth noting that the Uganda Constitution provides that the constitution is the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda and that any

31 Const. Appeal number 3 of 2004 (C.A) (UR).

32 National Assembly had given this protection.

33 The New Vision of 7 June 2000.

other law or custom which is inconsistent with any provisions of the same constitution shall be void, at any rate to the extent of inconsistency.<sup>34</sup>

In between the decision of the Supreme Court and the Constitutional Court's hearing of the petition, the government caused another bill on the referendum to be passed within a couple of hours. This was to save the referendum processes which had been going on continuously under the previous Act had had now become the subject of the petition before the Constitutional Court. The petition was subsequently heard and the Constitutional Court delivered its judgment. It held that the Act in question had been passed improperly without a quorum as required by the Constitution, and that the Speaker had erred when determining that quorum by using wrong methods of ascertaining the quorum in Parliament at the time of passing the bill. There followed a lot of criticism from government spokespersons that the Judiciary was insensitive to the aspirations of the people and that this judgment would paralyse the business of Parliament.<sup>35</sup>

One of the issues to be resolved in the petition was whether a citizen is entitled to use *Hansard* as evidence and call members of Parliament to testify as to what transpired in the Parliamentary chamber during Parliamentary proceedings. Before this petition, the view was that courts had no jurisdiction to compel the production of *Hansard* to be used or that members of Parliament could give evidence in court proceedings. The unanimous judgment of the Supreme Court of seven Justices and of the Constitutional Court of five Justices outlawed the old law which was derived from the British Constitution where Parliament is still regarded, in many respects, as supreme, by enforcing the provisions of article 41 of the Constitution which provides:

"41(1) every citizen has a right of access to information in the possession of the state or any other organ or agency of the state except where the release of the information is likely to prejudice the security or sovereignty of the state or interfere with the right to privacy of any person."

(2) Parliament shall make laws prescribing the classes of information referred to in clause (1) of this article and the procedure for obtaining access to that information."<sup>36</sup>

The lead judgment by this author reads in part as follows:

"The Attorney General did not show nor am I aware that Parliament had made the necessary law under article 41(2). In any event, it would have been incumbent upon the

34 The Monitor, 8 June 2000.

35 Reported in the New Vision of 8 June 2000.

36 By the time this case came to court, Parliament had not made such a law.



Attorney General or Parliament to show that the information to be excluded as evidence in Constitutional Petition number 3 of 1999, came within the exceptions listed in clause (1) of the same article. In my opinion, while it is still a political necessity for a litigant or a petitioner to write to the state, or organ or its agency in possession of information for obtaining that information. Once that information is obtained, with or without the cooperation of the state, or organ or agency concerned, the information obtained is freely usable and admissible in courts of law unless it falls within the exceptions under article 41(1). Moreover, where the state refuses to release such information, the citizen entitled to receive it may take the necessary legal steps to compel its release. In my view, the state, organ or their agencies include Parliament, the Executive and the Judiciary and any of their agencies in their diverse manifestations. Therefore, the Constitutional Court erred in rejecting the evidence presented by the appellants in support of their petition.”<sup>37</sup>

Rule 171 of the Rules of Procedure of Parliament provided:

171. No member or officer and no person employed to take minutes of evidence before a committee shall give evidence elsewhere in respect of the contents of evidence or of any manuscript or document presented to Parliament or a committee or in respect of the House or before a committee without prior leave of the committee on Rules and Privileges.<sup>38</sup>

As already indicated, following the judgments of the Supreme Court and the Constitutional Court, section 15(1) and rule 171 were no longer good laws. They were held to be inconsistent with the provisions of the Constitution and declared null and void. As expected, the consequences of these two decisions have somehow restrained the relationship between Parliament and the Judiciary, on the one hand, and the Executive and the Judiciary, on the other. Some spokespersons of Parliament saw the judgments in the two courts as having undermined the privileges and immunities of Parliament but judges believe that this is not the case. Some ministers claim that they cannot reveal state secrets in Parliament any more as a result of the judgments.<sup>39</sup> The opinion of these ministers is not borne out by historical facts, since in the past, the Executive has actually refused to reveal information in Parliament not even in closed sessions, on the ground that to do so would be harmful to national security. They also seem not to have internalised the contents of article 41(1) under which sensitive information of government would be protected from disclosure.

In 1984, this author stated in an article that:

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37 The Courts decision on this matter was unanimous.

38 *Ibid.*

39 The Chief Justice issued a public Release to that effect.

“It is not surprising that judicial review of a constitution can lead to a direct clash between the Executive and the Judiciary, on the one hand, and the Legislature and the Judiciary on the other. Occasionally, the conflict can only be resolved by one or more of the institutions resorting to drastic measures. Legal systems such as those of the United Kingdom, the USA, Canada and Australia usually absorb the consequences of such conflicts without seriously damaging the equilibrium between the institutions of government. In the Third World countries however, the balance is often destroyed<sup>40</sup> .

In the United Kingdom, a possible conflict between the Executive and the Judiciary which arose out of the House of Lords decision in *Burmah Oil v Lord Advocate* was averted by the enactment of the War Damage Act of the same year.<sup>41</sup>

Commenting on *coups d'etat*, revolutions and counter revolutions, which became popular and accepted forms of changing governments, especially in the countries of Africa, Latin America and Asia in the 1960s and 1970s. Justice A. Akinola Aguda wrote:

“In these dangerous games of revolutions and counter revolutions, the judiciary has had on many occasions, the unenviable duty of upholding repressive and barbaric laws on the pain of dismissal or in some cases even of liquidation. The fact of course is that most governments founded upon the wielding of the gun, or upon palpable illegality... can hardly be expected to have much regard for legality and the rule of law...most principles or legality and the rule of law are ridden rough-shod as if they do not exist or as if they are obstacles to be crushed; in these circumstances, the judiciary being the watch-dog of these principles could not hope for much hearing, not to talk of affection.”<sup>42</sup>

In a recent Act, the Uganda Parliament has succumbed to the demands of the Executive and in record time, amended the 1995 Constitution and purportedly nullified the Constitutional interpretations reached by both the Constitutional and Supreme Courts of the country.<sup>43</sup>

In 1991, Professor Nsibambi wrote that:

“We regret to point out that some of our post-independence governments have disgraced the continent of Africa by devaluing life and property and by treating their states as personal properties ... The elites of Uganda are fragmented along religious ethnic and regional lines ... The process of policy-making, implementation and evaluation should be democratised, decentralised and professionalised. Provision of law and order

40 In constitutional obligation in Developing Countries in Essays on Third World Jurisprudence, op.cit. page 55.

41 [1965] AC 75.

42 The Judiciary in a Developing Country in Essays on Third World Perspectives in Jurisprudence. Op.cit. page 143.

43 Constitutional (Amendment) Act number 1 of 2000.

should be given priority. Public accountability should be institutionalised. Effective participation and democratisation of political process should be institutionalised.<sup>44</sup>

Since then, Nsibambi has been closer to government machinery as Prime Minister. He and other political leaders have had to comment on adjudicatory matters. In some instances, some of these comments have seemed as if they were emanating from judicial officers. For instance, it was in relation to a statement made by Nsibambi, that the Principal Judge found it necessary to make the comment reproduced at the beginning of this chapter. For instance, in the same article, Apollo Nsibambi attempts to blame the Judiciary with the remarks:

“When the Constitutional Court nullified voting by voices, it dealt with a grave matter which had not been addressed by the Parties. In the event, the entire country faced the following absurd consequences of the judgment of the Constitutional Court.”<sup>45</sup>

Nsibambi then proceeds to enumerate those consequences as the invalidation of the appointments and capacity of some of the judges of the Courts of Judicature including those who participated in the hearing of that petition the invalidation of the decisions of Parliament and the nullification of the appointments of certain state officials including the Vice President. Apparently, according to him, the appointment of four of the seven justices of the Supreme Court was void as they had been approved according to the ruling of the Constitutional court, by an incompetent Parliament Committee on Appointments. According to the Prime Minister, the appointment of ministers and the creation of Districts before that decision were all unconstitutional. What then was the authoritative sources of these erroneous views? Apparently, the Prime Minister relied on the political and erroneous legal views expressed in various political fora in newspapers and those of the then National Movement cadres.<sup>46</sup>

It is surprising that Nsibambi continued to hold these views notwithstanding that at the time of the Referendum decision, the Judiciary published a collective opinion of the Judiciary led by the then Honourable Chief Justice himself, SWW Wambuzi, that the decision in that petition in no way or form, affected any previous appointments or procedures elsewhere. In any event, the view expressed by some members of the Constitutional Court in that petition were merely *obita* since they were not part of any of the grounds listed or argued in the petition.<sup>47</sup>

44 In a Mimeo published by MISR, Makerere University.

45 *Ibid.*

46 These were often expressed in private caucuses of the NRM called for the purpose.

47 However, at a Judges' workshop held at the Botanical Beach Hotel, Entebbe, Justice Twinomujuni who delivered the lead of judgment, maintained that that was one of the issues to be determined by the Constitutional court.

Be that as it may, both the Executive and Parliament acted hastily and, in my opinion, prematurely, in proposing and passing the Constitution Amendment Act 13 of 2000. The Attorney General should have waited until an appeal to the Supreme Court, the highest court of the land, had been filed, heard and disposed of. In consequence, when Nsibambi asserts in his speech to the 7th Parliament that;

“When the Judiciary disallowed the use of the voice system, a matter which was not canvassed by parties, its decision had absurd consequences including the freezing of the competence of the Constitutional Court which made the decision.”

He is not only constitutionally in error but is acting as prosecutor, assessor and judge which is prohibited by the Constitution and laws of Uganda.<sup>48</sup>

Recently, the Public Accounts Committee of Parliament appeared to challenge the benefits constitutionally guaranteed to protect the independence of the Judiciary, but the Judiciary has not brought a case against that challenge because the matter has not been considered and decided upon, if at all, by Parliament. The Prime Minister's accusation of the Judiciary for a decision in which the highest court of that institution, namely the Supreme Court, was denied an opportunity to adjudicate upon, is to say the least, grossly unfair. The Premier may be correct to clothe the executive arm of government with a sword but, in our opinion, that sword must be used constitutionally and ought to be legitimate and subject to political and legal restraint. Nsibambi is correct to say that the three arms of government ought to act together harmoniously in a spirit of mutual respect and principles of give and take. In our view however, those principles do not apply when the courts are applying or interpreting the provisions of the Constitution and laws of Uganda, where the Judicial Oath is the overriding consideration. To do otherwise would undermine the concept of judicial independence and impartiality. Consequently, Nsibambi's pleas for the spirit of give and take must be limited to matters other than the exercise of judicial functions.<sup>49</sup> He asserts that:

“In their operational relationship, each of the three arms of the state impact on each other's (*sic*) performance in such a way that none can achieve or fulfil its functions without the support of the others.”

In our view, it is also a matter of regret that Nsibambi found it necessary to claim that he had discovered a tendency among the organs of government in Uganda to exhibit elements of competition and gain operational supremacy over the others. In our considered opinion, the working of the Judiciary has not showed any iota of evidence of such tendencies. If indeed, there is such a tendency, it can only be detected, if at all, in quarters closer to the offices of the other arms of government and if this is so, it is a most unfortunate and regrettable development in the public affairs of Uganda. We need to remind ourselves again and again that in Uganda, it is in the people and the Constitution where sovereignty resides.

48 These notes are assigned by the Constitution and laws of Uganda to assessors, DPP and the Judges.

49 Such as Co-operation and understanding under the doctrine of separation of powers.



## CHAPTER THIRTEEN

### THEORYS AND PRINCIPLES OF GOVERNANCE

Before examining the concepts of governance and constitutionalism, it may be useful to define and describe the centres of government.

Most Constitutions prescribe the different functions performed by the three organs of government, namely the legislature, the executive, and the judiciary. The legislature is that body within a state which is entrusted with the making of new law and the alteration or repeal of the existing law. It is also the organ which is designed to monitor and bring the executive to account. It can also, vary, limit or expand the jurisdiction of the courts by law, provided all these are in conformity with the constitution. Without a legislative body of some sort, no modern state can provide laws readily enough to meet conditions of development obtaining in society.<sup>1</sup>

Nowadays, the most powerful instrument for legal change in the state is legislation. On almost every front of development, there must be some law that lends legality, legitimacy and credibility to what is proposed and done in the interest of the public. However, it is conceded that Parliament must obey the rules which are prior to its sovereignty. Thus, Sir Owen Dixon said;

“The law existing for the time being is supreme when it prescribes the conditions which must be fulfilled to make a law but the question of what may be done by law so made, Parliament is supreme over the law”.<sup>2</sup> The law meant here is of course one which is subordinate to the Constitution.

The executive is the body in the state which is entrusted with the administrative functions of government in accordance with the constitution and laws of the state. It is the organ which initiates and frames most public policies of governance, development and security and, executes the same in conformity with the laws and constitution of the state. It makes the choice and priorities of the manner and time in which the policies shall be implemented. In this regard, members of the executive do make and publish a lot of subordinate legislation by way of rules, regulations and statutory instruments to amplify and supplement the laws made by

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1 For a major work on governance see: Wade HWR and Forsyth CF: *Administrative Law*, (8 ed); OUP. 2000.

2 In [1957] 31 ALJ 240.

Parliament or interpreted by the courts. It is the same organ which finds, distributes, grants or withholds public funds for any public project or development however defined and described. In terms of social, political and economic change and functionally, the executive arm of government has increasingly become the most important of the three organs of government.<sup>3</sup>

The Judicial function consists of the interpretation of the law and its application by rules or discretion to facts of particular cases. The institutions which are entrusted with these functions are the courts of law or the courts of justice or simply, the judiciary. The primary task of the judiciary is to determine the legality of the different kinds of acts and behaviour in society. This does not mean that a court may investigate those acts or behaviour on its own volition. In each case, it is for the individual or a group of them to raise the subject matter of litigation, whether civil or criminal, as an issue for adjudication. Once an issue has been raised appropriately and in a court with jurisdiction on the subject, that court has a duty to hear the parties, reach a decision and finally dispose of the matter in accordance with the laws of the land and the dictates of justice in the particular case as perceived by the presiding judge or judges. Courts are duty bound to reach decisions and justice demands that they do so expeditiously.<sup>4</sup>

In the application of law, courts consider themselves bound by statutory provisions except where such provisions are inconsistent with the Constitution, which is a superior law, in which case the provisions of the Constitution will prevail, at any rate to the extent of inconsistency. Some states give room for judicial latitude and discretion. Occasionally, a court may be faced with a problem where there is no express law. The court then applies the principles and rules of the common law, equity, custom and international law. It may draw analogies from the experiences and practices of courts in other legal jurisdictions. Concepts such as natural justice, fairness and special circumstances of the particular case come into play. Thus, the function of the court is to discover and apply the law to facts and acts, or behaviour and so decide between the merits and demerits raised in submissions and arguments by parties who must be or who represent actual litigants. In common law countries generally, courts are not concerned with speculative, academic, or hypothetical questions.<sup>5</sup>

Nevertheless, where there is no specific law or code which provides directions as to the source of the judge's authority, a judge will normally turn to persuasive

3 See: Ghai Yash: *Reviewing the Constitution of Kenya*: Mimeo, Nairobi, 2002. page 8.

4 CF: *Classical Roman Law in Schlesinger*, RB: *Comparative Law*, Stevens, London, 1960.

5 See: Lloyd Dennis: *Introduction to Jurisprudence*, Stevens and Sons Ltd, London, 1959, ch.11.

precedents, textbooks, the use of analogy and such other aiding devices as may be afforded by custom, trade usage, and logic. Many codes lay down specific instructions as to what other sources judges should resort to. The Japanese Code relies on customs and, in default of that, on reason of equity. The Swiss Code provides that in the last resort, the judge should apply the rule which he would make if he were acting as a legislator.<sup>6</sup>

In this labyrinth, courts will entertain suits and applications from individuals, firms, associations, companies, governments and organizations and determine all, applying the same principles, precepts, rules, values and standards, without fear, favour on ill-will.<sup>7</sup>

In consequence, the role of the Executive must be understood and appreciated in relation to those of the other two organs of government.

In their report on Uganda, Dr John-Jean Barya and Mr Simon Peter Rutabajuka for the Economic Commission for Africa, the learned authors examine the effectiveness of the main arms of government in ensuring democratic, participatory and accountable governance. They assert that institutional effectiveness and accountability refer to the existence of checks and balances among the three arms of government. It also refers to respect for the rule of law by all arms of the state especially the executive. They also see it in the quality and manner in which the state guarantees for its citizens through provisions of or ensuring the provision of health, education, housing, water, transport and other utilities. They examine the institutional effectiveness and accountability in terms of the extent to which civil society exists and operates and in particular the autonomy in which it carries out its activities and lastly, they examine the place and importance of the media in society and its development.<sup>8</sup>

### 13.1 THE DOCTRINE OF SEPARATION OF POWERS

Throughout constitutional history and development, men have expounded the functions of government. In his *"Politics"* the eminent Greek scholar and philosopher, Aristotle, made an attempt to classify the organs of government and describe their functions. He wrote:

"All states have three elements, that which deliberates about public affairs, that which is concerned with magistracies, and, that which is the judicial power." The deliberative

6 Cited in Schlesinger, RB: *Comparative Law*, op.cit.

7 Generally see: Felix F Stumpt: *Inherent Powers of the Court: Sword or Shield of the Judiciary*, SJI, 1994, US, page 308.

8 Publication of Civil Society Forum of Uganda, Kampala, 2003.



element, he identified as the organ which has authority in matter of war, peace, and alliances, the passing of laws and auditing of accounts.”<sup>9</sup>

To-day we identify Aristotle’s deliberative element as the legislature. The second organ, he identified as that which deals with the distribution of public offices, their authority and the manner of appointment. Here, Aristotle was thinking of the authorities and bodies having the power to decide matters of policy and the issuing and enforcing of executive order which is roughly, the equivalent of the modern executive organ. Under the judicial power, Aristotle discussed the staffing and jurisdiction of the law courts.<sup>10</sup>

In the seventeenth century, an Englishman by the name of John Locke also made an attempt to classify and describe powers of government. He saw the fundamental and primary functions of government as involving:

- (a) Legislation, that is the formulation of rules according to which man’s rights, namely, life, liberty and property, were to be judged.
- (b) The executive power, which was supposed to be concerned with the enforcement of laws and penalties, that is the judiciary.
- (c) The federative part, which dealt with the powers of war, peace, leagues and alliances. Thus, Locke equated his federative organ with Aristotle’s magistracies, which is our modern executive.<sup>11</sup>

The greatest exponent of modern ideas about government and its functions was a Frenchman by the name of Montesquieu. In his book, *L’Esprit des Lois* published in 1748, Montesquieu also examined the functions and powers of government. However, he is much more remembered for his exposition of the doctrine of separation of powers of government.<sup>12</sup>

The relationships between the three organs of government, on the one hand, and between the organs and citizens, on the other, are guided by two *formulae* of good governance and freedom, namely, the doctrine of separation powers and the theory of the Rule of Law. In its strictest sense, the doctrine of separation of powers means that the three organs of government, that is the legislature, the executive and the judiciary, should be kept in three separate compartments. This separation is to be recognised and maintained in three ways. Firstly, persons or agencies belonging to one organ should not be permitted to hold posts in one or the other two of the remaining organs. For instance, a member of the legislature

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9 In Aristotle’s Republic

10 See: Vile, ECS: *Constitutionalism and Administrative Law*, 1967.

11 John Locke’s Civil Government.

12 Vile, MJC in *Constitutionalism and the Separation of Powers*, op.cit.

should not be a member of the executive or the judiciary at the same time or vice versa. Secondly, the doctrine means that no organ or its agents should exercise the functions of the one or both of the remaining two organs. Thirdly, no one organ of government by itself should have the power to control one or the remaining two organs. Thus, the executive alone should not be in a position to control the legislature or the judiciary and vice versa, *mutatis mutandis*.<sup>13</sup> In passing, it may be said that there is hardly any constitution in the world which embraces the doctrine in its absolute terms for to do so would result in stalemate in government and make public administration rigid and unworkable and therefore undesirable.<sup>14</sup>

As already noted, the doctrine is closely associated with the name of Montesquieu who lived in the 18th century which is historically regarded as the age of absolute monarchism in Europe. The French king, Louis XIV, who reigned in the period in which Montesquieu lived and wrote, is said to have been the most despotic king of them all. Montesquieu visited England and was struck by the relative freedom individuals enjoyed in that country. He is said to have perceived, erroneously perhaps, that the reason the English enjoyed liberty was because the powers of government were exercised by different organs and officials of government, with each set able to check and stop the excesses of the other organs. He believed that the accumulation of the three powers of government in the same hands results in tyranny. A government of that nature wishing to act despotically can pass any laws it wishes, administer them ruthlessly without regard to the rights of the individual and then corruptly judge any opposition to those laws. He thus concluded that in order to preserve political and social liberty, it was essential for the constitution to ensure that the executive, the legislature and the judiciary were independent and acted independently of each other.<sup>15</sup>

Montesquieu or those who interpreted his ideas were mistaken about the British Constitution.<sup>16</sup> Neither in theory nor in practice, does the British Constitution reflect the strict rules of the doctrine of separation of powers as perceived by some writers. For instance, with regard to the personnel of the organs of government, the presence of the Lord Chancellor in the British government violates the rules of the doctrine. He is the President of the House of Lords when it is sitting as the highest appellate court of the land. He is therefore an important member of the Judiciary and exercises judicial powers. He is also the Chairman

13 See: USA: Constitution, articles 1-3.

14 R. Pound: *The Interpretation of the Law and Constitution*, (8 ed) U.S.A.

15 Generally see: Sueurn Le Andrew, Herberg, Javan and English Rosalina: *Principles of Public Law*, (2 ed).(eds), Cavendish Publishing Limited, London, 1999.

16 Sueurn, Le: *ect. Op.cit.*

(Speaker) of the House of Lords when sitting as the second chamber of the British Parliament thereby making him a legislator. Indeed, in this respect he is much more of a legislator than the speaker of the House of Commons since, unlike the latter who is neutral, the Lord Chancellor can, and often does, participate in the debates of the House of Lords, on bi-partisan lines. The Lord Chancellor is also a member of Cabinet with ministerial responsibilities. There are other aspects of the British Constitution which emphasize fusion rather than separation of the powers of government.<sup>17</sup>

It has been observed by some constitutional writers that it was not Montesquieu who was mistaken about the British constitution but some other scholars who interpreted his work and popularised it.<sup>18</sup> Apparently, it is more accurate to say that what he had in mind is a system of checks and balances between the three organs of government rather than the pure doctrine so that none of them can usurp the authority and powers assigned to the others and that, while accepting the exclusive sphere of influence of each organ, its operation should be with the consent and co-operation of the other two organs. There must be consultations all around. If the executive wishes to adopt a certain policy it must first publish it so that it is in the open and subject to comment and debate. The policy must be considered, discussed and passed into law by the legislature. Any individual aggrieved by the policy either as proposed by the executive or passed by the legislature should have access to the courts for the purpose of determining the validity, legitimacy and constitutionality or legality of the policy or laws passed to implement it. We can still speak of separation of powers with regard to the process of determining the public policy to be adopted. The doctrine further means that in considering the policy to be proposed, the executive should not be unnecessarily hampered by interferences from the legislature or the judiciary. Similarly, when enacting the law to validate the policy, the legislature should not be unnecessarily interfered with by the remaining two organs of government. Finally, when judges are adjudicating upon disputes arising from the way the policy was initiated, passed into law or is being implemented they should do so independently of the other two organs of state. The doctrine further means that each organ should have capacity to impose restrictions on the others should they act beyond or abuse their constitutional powers and ultimately, censure and correct them if they have done so.<sup>19</sup>

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17 Kanyeihamba GW: *Constitutional Law and Government in Uganda*, EALB 1975, page 153.

18 Vile, *Constitutionalism and Separation of Powers*, etc. op.cit.

19 See: Baxi Upendra: *The Indian Supreme Court and Politics*, 48 (1980).

Experience has shown that the functions of government are best performed in a climate of closer consultation and co-operation between the organs of government. This experience has been accumulated over many years.<sup>20</sup> There is also the realization that it is not always easy to identify and distinguish powers which are purely judicial, legislative, administrative or executive and even if this were possible, it is not always desirable that they should be exercised by one organ rather than the others. Under *quasi-legislative* and *quasi-judicial* functions, the executive copes with a great deal of work which would be impossible or incomplete if we were to adhere strictly to the rules of the doctrine of separation of powers. Certain public activities may need the framing of laws involving knowledge of technical matters and therefore call for the expertise of an administrator rather than a legislator. Some rules and regulations may require judicial experience to make even if they are strictly legislative.<sup>21</sup>

In my event, historically, the powers of government had always been seized in the same hands.<sup>22</sup> It is only when governmental activities increased requiring specialized knowledge and sophisticated equipment and operation that the need for separation and selection of one organ to do them arose. Therefore initially, separation of powers came about as a convenient device for division of labour. The idea that separation also discouraged oppression and tyranny came as a by-product of the necessity to diffuse the powers of government for efficiency and effectiveness. Nowadays however, the doctrine has come to be accepted and seen as a means of fostering democracy, justice and liberty in the land. It is a catalyst for judging free societies and a reminder that, ideally, the powers of government should be separated and kept under guard if they are to be exercised justly and in a transparent manner. Let us next examine the rule of law which is closely associated with the doctrine of separation of powers.<sup>23</sup>

### 13.2 THE RULE OF LAW

Closely associated with the doctrine of separation of powers is the theory of the rule of law. The first point to make about it is that the rule of law is not a 'rule' in the sense that it binds anyone.<sup>24</sup> It is merely a collection of ideas and principles propagated in the so-called free societies to guide law-makers, administrators,

20 Brown LN and Garner, JF. *French Administrative Law in Wade*, EC.S and Phillips, Geoffrey G: *Constitutional and Administrative Law*, page 53.

21 *Associate Provincial Picture Houses Ltd v Wednesburg Corporation* (1948) KB 223 (C.A).

22 Elton G.R: *Studies in Tudor and Stuart, Politics and Government*, Volume 1, page 260.

23 (1958) 71 Harv. L.R. 630.

24 Goodhart, AL: *Interpretation of Modern Legal Philosophies*, 293.

judges and law-enforcement agencies. The overriding consideration in the theory of the rule of law is the idea that both the rulers and the governed are equally subject to the same law of the land. Although the theory has gained momentum in the last four centuries, it was well known and practised in ancient civilisations. Thus, Aristotle, the Greek scholar, said, “*The rule of law is preferable to that of any individual.*”<sup>25</sup> Writing in the 13th Century, Bracton, an Englishman, said, “*The king himself ought not to be subject to man but to God and the law since the law makes him king. Therefore let the king render to the law what the law has rendered to the king, viz dominion and power, for there is no King where will rules and not the law.*”<sup>26</sup>

The observance of the rule of law is supposed to result in justice, and the latter was defined by the Roman Emperor Justinian as:

“The set and constant purpose which gives to every man his due. The law is the practical expression of justice, for the precepts of law are these: to live honestly, to injure non-one and to give every man his due.”<sup>27</sup>

Edward Coke thought of law as “as perfect reason, which commands those things that are proper and necessary and which prohibits contrary things.”<sup>28</sup>

“Aquinas regarded law as” an ordinance of reason, a directive judgment that guides men in their choice of means to be used in the attainment of social goals”<sup>29</sup>

The citations enumerated above represent one cultural trend, namely, the Western tradition of culture, law and history. However, similar sentiments and sayings of quality and expression can be found in all human societies, regardless of tradition, history or political systems. For instance, the founders of the Ancient African Law and Custom devised the maxim which translates into “*a monkey should not determine the affairs of the forest.*”<sup>30</sup> This is equivalent to the English and Roman Law maxims of natural law to the effect that “*No man should be a judge in his own cause: or in Latin “nemo debet esse judex in propria causa.”*”<sup>31</sup>

Krishna Iyer, amplified his reasoning in *Indira Nehru Gandhi v Raj. Narain*, by stating that “legality is within the court’s province to pronounce upon, but the canons of political propriety and democratic dharma are polemical issues on which

25 d’Entrieves, AP: *The Nation of the state.*

26 De Legibus Et. Consuetudinibus Angliae: *The Laws and Customs of England*; George D Lod bire, ed. London, 1915-1942.

27 Cited in Lloyd Denis: *Introduction to Jurisprudence*, (8 ed) London, 1979. ch.7.

28 *Principles of law*, op.cit. pages 60-62

29 The philosophy of law of St. Thomas Aquinas: In J Juris. 38 (1974).

30 A concept also known in classical Roman Law.

31 Kanyeihamba GW: *Constitutional Law and Government in Uganda*, op.cit, page 30.

judicial silence is the golden rule".<sup>32</sup> The rule of law therefore precludes arbitrary action on the part of those who run and control government. This is particularly the case with regard to the executive which carries out multifarious duties of state. A government which performs an act which is not supported by law is as guilty of violating the rule of law just as an individual or a group of them who take the law into their own hands.

The greatest exponent of the rule of law was Professor AV Dicey of England who propounded his ideas in a book called, "*The Law and the Constitution*," published articles in periodicals of his time and elaborated upon it in a series of lectures in Britain and the USA.<sup>33</sup> Dicey advanced three distinct concepts of the rule of law which he believed were founded on the workings of the British Constitution and comparative studies of other state constitutions, especial those of Europe and the USA. His concepts can be summarized as follows:

1. No man is punishable or can lawfully be made to suffer in body or in goods except for a distinct breach of the law established in the ordinary legal manner before the ordinary courts of the land.
2. Every man, whatever be his rank or condition, is subject to the ordinary law of the realm and is amenable to the jurisdiction of the ordinary tribunals.
3. The general principles of the (British) Constitution, e.g. the right of personal liberty or public meetings, are the result of judicial decisions determining the rights of private persons in particular cases brought before the ordinary courts of the land.<sup>34</sup>

Practical experience will reveal that there are many exceptions to Dicey's propositions of the rule of law. He has been criticised for being too narrow and for emphasizing the rights of the individual at the expense of the interests of the community as represented by the state. Dicey himself later accepted some of these criticisms.<sup>35</sup> There are, of course, times when the claims of the individual clash with the interests of the community at large and when a citizen's rights conflict with the needs and security of the state. It is nowadays accepted that in the event of such conflicts, public interest must prevail and the only remaining debate is what precisely public interest is. Dicey expressed his views before extensive authority was required to enable governments to carry out a multifarious number of obligations demanded by modern society.<sup>36</sup>

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32 Cited in Upendra Baxi: *The Indian Supreme Court and Politics*. Op.cit.

33 Discussed in Jennings, Sir Ivor: *The Law and the Constitution*.

34 See: Harvey J and Bather L: *The British Constitution*, (4 ed) MacMillan, London ch.13.

35 Harvey and Bather: op.cit.ch.23.

36 Yardley, DCM: *Introduction to British Constitutional Law*, Butterworths, London, 1969.

The performance of functions and services such as town and country planning, education, health, communications, the prevention of modern crime, drug-trafficking, hijacking and terrorism and the enhancing of economic planning, necessitate the formulation of policies, the enactment and enforcement of laws which, quite often, clash with the rights of the individual. Modern government activities have meant that a number of specified public officials need to be vested with special powers of inspection, search, arrest, and seizure, to effectively implement administrative policies. Inspectors, tax officers and police, perform duties which often necessitate the granting to them of powers, privileges and immunities over and above those enjoyed by ordinary citizens. The growth of administrative law shows that state legislatures can no longer claim to have exclusive powers to make all the laws required by the state. Nor can ordinary courts adequately cope with all the litigation and disputes arising from administrative bureaucracies. The ideal of a trial before an ordinary court must of necessity be compromised by vesting the powers of adjudication of technical, scientific and complex disputes in special tribunals of experts. This necessity is brought about, amongst other reasons, by the social and economic costs entangled with proceedings in ordinary courts. Modern crime and political unrest prevailing in many parts of the world have led to the demands for the use of detention and emergency powers which conflict with the rule of law.<sup>37</sup>

Nevertheless, for more than a century, Dicey's formulation of the rule of law dominated this field in common law countries and guided the formulation, interpretation and enforcement of laws in those countries and elsewhere.<sup>38</sup> For some of the developing countries, the rule of law is sometimes seen as a concept of the well to do in the developed countries of the West which is designed to buttress the rights and comfort of the privileged classes in society.<sup>39</sup> However, the importance of the theory can never be overemphasized. Modern government responsibilities have led to a tremendous growth of bureaucratic institutions requiring extensive powers to direct and control human activities. At the same time, it has neither been easy nor practical to enact laws which are effective to guarantee against the abuse of power by these institutions.<sup>40</sup>

Consequently, the rule of law as a general idealistic norm can always be pleaded to challenge apparently arbitrary actions of government authorities,

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37 For a full discussion of Human Rights, see: Hegarty Angela and Siobhan Leonard: (eds) *Human Rights: an Agenda for the 21st Century*: Cavendish Publishing Limited, London, 1999.

38 The New Delhi *Declaration on the Rule of Law*, 1959.

39 *National Party v Jamie* number 1994 (3) SA 483 (EWC).

40 Mureimik E. A Bridge, etc: Introducing the Interim Bill of Rights, (1994) 10 SAJHR 31.

corporations and others. The theory is particularly important in the developing countries where the activities of governments often appear out of step with legal norms and the constitution. There is always great pressure on these governments to transform their societies in the shortest possible time and the rule of law is sometimes seen by those governments as an impediment in the way of development. Consequently, formal restrictions have been deliberately placed on the rights and freedoms implied by the theory of the rule of law.<sup>41</sup>

The primary importance of the rule of law is the moral support it gives to the courts when settling disputes between seemingly defenseless citizens and the mighty bureaucracy of government. Courts will again and again resort to the rule of law to question and sometimes invalidate actions of government. In many democratic countries, courts tend to lean in favour of individual liberty when interpreting rules and decisions which are vague but used to justify public action. The international community will often resort to the rule of law to condemn despotic and fascist regimes.<sup>42</sup>

In conclusion it can be said that the basic common features between the doctrine and the theory are the protection of the rights of the individual and the preservation of political liberty. Liberty can only be found in societies where there is no abuse of powers. Both the doctrine and the theory provide guidelines for a just and well-ordered society. In fact, the two are so closely intertwined, that one may be said to be the *genus* of which the other is a *species*. If adherence to the doctrine of separation of powers means the absence of tyrannical and arbitrary rule, the result is the promotion of the rule of law.<sup>43</sup>

### 13.3 DEVIANCE FROM CONSTITUTIONAL DOCTRINES AND THEORIES

The exercise of governmental powers may be legitimate and constitutional but the manner in which they are exercised and its consequences may have to be buttressed by the rule of law and constitutionalism. As Nwabueze once wrote:

“The term ‘constitutional government’ is apt to give the impression of a government according to the terms of a constitution.

There are indeed, many countries in the world today with written constitutions but without constitutionalism. A constitution may also be used for purposes other than as a restraint upon government. It may consist to a large extent of nothing but lofty

41 Robertson, Geoffrey QC: Freedom, *The Individual and the Law*, New edition, Penguin Books, 497.

42 *Human Rights Quarterly* 3 (Spring 1981), pages 11-13.

43 *Human Rights Quarterly*, Volume 9 number 3, August 1987, page 309.



declarations of objectives and a description of the organs of government in terms that import no enforceable restraint; such a constitution may indeed facilitate or even legitimize the assumption of dictatorial powers by the government. Indeed, it is not an exaggeration to conclude that for many countries, a constitution is nothing more than a proclamation of what governments are entitled to do, and often do, to restrain the liberty of citizens or deprive them of proprietary interests".<sup>44</sup>

In a number of countries, constitutions are perceived by those in power, not as protectors of the human rights and the liberties of the individual but as instruments for legitimizing the exercise of power. For the opponents of these rulers, constitutions are understood in terms of the government's legitimacy to exercise arbitrary power, to impose restrictions on certain freedoms and rights and to do whatever the ruling oligarchy deems necessary and in its interest. It is the kind of constitution that revolutionaries and leaders of military *coups d'état* find an easy target and the overthrow of which encourages further stringent measures against the population.

Apart from governmental restraint, individual rights and freedoms are protected mainly by unhampered access to the jurisdiction of the ordinary courts whose independence and impartiality are constitutionally guaranteed and which must be transparent in the performance of their functions. With notable exceptions, it is access to court that is often projected and intended to moderate the behaviour of rulers while injecting a sense of tolerance all round. Similarly, the idea of constitutionalism does not depend on the letter of the law or on the constitution or indeed on its correct interpretation. While these attributes are necessary preconditions, they need to be supplemented by other considerations such as equity; fairness and the hearing and respect of minority views so as to bring into focus the needs and desires of society as a whole. That is the measure of constitutionalism. Thus, it may be constitutional for courts to be independent and impartial in adjudicating disputes between one individual and another or groups of them and the government but if the courts' decisions are ignored or not implemented, there is no constitutionalism.<sup>45</sup>

The government may be advised not to proceed with a certain policy because of its harshness to citizens but government may insist upon it by persuading Parliament to legitimize it with the passing of the desired law. The law will certainly be constitutional but the policy may not reflect what is constitutionalism

44 BO: *Constitutionalism in the Emergent States*, 1973.

45 Uganda Constitution, 1995, also *infra*.

because it denotes government by law and not under the law, which itself symbolizes intolerance.<sup>46</sup>

For many countries of Africa, the period between the grant of independence by the colonial powers and the struggle to establish national ethos and democracy was characterized by suspicions and hatreds between the peoples inhabiting those countries. The conflicts therein were such that solutions to them could not be provided by the dictates of democracy alone. A great deal of compromise and co-operation between opposing communities and factions was, in certain instances, enhanced by monolithic organizations while yet in others only multiple party organizations could provide the answers. In others, government by delegations from all sections of the country was the only logical answer for accommodating the fears and aspirations of everyone. The idea of winner takes all or of the holding of victory rallies and feasts in closely contested and controversial campaigns was to be discouraged or at any rate, tinged with moderation and tolerance.<sup>47</sup>

In cases of sharp differences in society, it is imperative that predetermined rules of constitutionalism be entertained with restraint, accommodation and tolerance. An important aspect of the new understanding in governance should be the education of leaders that neither they nor anyone else has a monopoly of wisdom and intelligence or knowledge at all times to originate the right policies or solutions to current national and world problems. Leaders need to accept and appreciate electoral and political defeats and loss of power as proper attributes of democracy and constitutionalism. The system of public administration must guarantee the lives and happiness of previous or ousted leaders in a manner that will discourage them from clinging to power by whatever means as the only way of protecting themselves. It needs to be emphasized again and again, that in developing and poor countries, the distribution of and access to the national wealth and resources are as important as the maintenance of law and order, legalism and constitutionality are as important as the political reality of the situation, just as the concept of democracy needs to be balanced fairly evenly with the people's right to be governed well and peacefully.<sup>48</sup>

In most developed countries, the function of law is determined largely by the national ethos, social, culture and political ideology which have long histories behind them. In developing countries, these concepts and ideas are still in the formative stages. Consequently, public law must be directed to their evolution,

46 Contrast the South African Apartheid era, case of *Harris v The Minister of The Interior* [1952] 2 SA 428 and *Attorney General for New South Wales v Trethowan* [1932] AC 526 and their political consequences.

47 The Kenyan Elections crisis, 2007-2008. See: Daily Nation, Nairobi, 8 February 2008.

48 *Free legal Assistance Group and others v Zaire* [2000] AHRLR 1995.

growth, consistency and nurture. Regrettably, in some countries, the courts which were established as the last bastion in the defence of the freedoms and rights of the individual and against the oppression by or injustices of public authorities, have been reluctant to confront the executive while parliaments, the symbols of democracy and liberty have occasionally hesitated or showed partiality and timidity in challenging maladministration and abuse of power by members of the executive.<sup>49</sup>

It is therefore important that arms of government stand up, uphold and protect the values for which they were created. In the political, economic and social crises that tend to characterize the developing countries, there can be little doubt that problems of constitutional instability and underdevelopment will increasingly bring pressure to bear upon the communities and governments concerned. The solutions to these problems will consist, in part, a constant review of the constitutionality of government action and on the other, tolerance on the part of both the rulers and the governed.

In an illuminating guide to the Kenya Constitution, Professor Yash Ghai has enumerated and described the functions of government.<sup>50</sup> In his view, the most important functions include the making of laws, policy making and implementation, the management of the economy, ensuring that law and order and the security of the population are maintained and protected, enforcing laws which protect people's lives, families and property, safeguarding national resources not only for the present but increasingly for future generations, satisfactory resolution of disputes on a variety of matters between members of families, manufacturers and consumers, trading partners, employers and employees, citizens and public authorities, landlords and tenants, educational institutions and students and so on.

Ghai maintains that the satisfactory resolution of these disputes is essential to the security, stability, economic and social development of society. The state has the ultimate responsibility for ensuring national unity and social cohesion and for fostering a sense of public responsibility and commitment to the public good.<sup>51</sup>

Arguably, only in *Utopia* can a government be perceived which is capable of performing all the functions and fulfilling all the conditions we have mentioned and examined. However, the said functions and conditions together constitute the litmus paper against which all governments are tested. Governments which

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49 *Kiiza Besigye v The Electoral Commission and Museveni Kaguta Yoweri*, Presidential Petition number 1 of 2006 (SC), (UR).

50 *Supra*.

51 Ghai, *ibid*.

endeavour to and achieve the greatest number of scores against the test are said to be amongst the best in the World. Governments which score the least of points are said to be amongst the worst.

In the case of Uganda, there is ample evidence to suggest that as a state, the country has never been amongst the best as far as its governments are concerned. The independent government of Milton Obote was found wanting and overthrown by the military government of Idi Amin. The Amin regime published eighteen reasons why it found it necessary to overthrow Obote and his administration. The Amin *junta* was in turn defeated in a civil war. The victors published a catalogue of the failures and the misdeeds of that government. The short administrations of Professor Lule, of the Military Commission and of General Tito Okello also failed and their shortcomings and evidence of misgovernance have been analysed and published in diverse books and articles.<sup>52</sup>

The NRM government which has ruled Uganda since 1986 assumed the mantle of political power with the greatest of expectations that it would be among the best governments in the World. Indeed, in its bush war against the forces of repression and the first years of its rule, it promised and performed to the levels of those expectations. It is not surprising either that it has been during this rule that the greatest number of analyses, publications and filming have been undertaken and recorded revealing what went wrong before. The same Government appointed the Commission of Inquiry into Violation of Human Rights. The findings, conclusions and recommendations contained in its voluminous report is one of the most important public documents preserved in this country's archives. The story of the NRM-NRA told in the *Mission to Freedom* is another classic publication detailing the omissions and transgressions of past governments in Uganda. One of the contributors to *Mission to Freedom* is President Yoweri Kaguta Museveni himself. He wrote;

“At the time of launching the armed struggle, many people in the country did not know what it was all about. Moreover, the majority of Ugandans knew there was something drastically wrong in Uganda, but they did not know that anything could be done to remedy the situation .... The purpose was furthermore to use the paper to keep people informed about what was taking place in Uganda in general and with regard to the resistance war. We also wanted to alert Ugandans and friends of Uganda about the

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52 E.g, Kabwegyere Tarsis Bazana: *People's Choice, People's Power*: Fountain Publishers, Kampala, 2000. Odoki JB: *The Judiciary will not be cowed by the military*: In *East African Weekly Newspaper*, 4 December 2005 at page 5. kasozi ABK: *The Social Origins of Violence in Uganda*, Fountain Publishers Ltd, Kampala, 1994. Kanyeihamba G.W: *commentaries on Law, Politics and Governance*, Renaissance Media Ltd, 2006.

seriousness of the degradation that was taking place in our country as a result of a corrupt system which was being perpetuated by a bankrupt leadership.”<sup>53</sup>

The publication contains news and commentaries about the Uganda National Resistance and its military wing, the National Resistance Army. It is thus evident that in the labyrinth of governance, executive power can be used to enhance and direct development. Conversely, the same executive power can be used to create such undesirable conditions that an enlightened population perceives them as intended not only to disadvantage but to frighten it as well.

It is not often appreciated that failure or neglect to exercise executive power can be as harmful as abusing it. There has always been weak or lukewarm attempts of the appropriate authorities in government to respond effectively to allegations of corruption and abuse of office in public affairs.

From time to time, the Press have investigated, discovered and reported several or more holders of public offices who have indulged in corrupt practices or who have the mentality of “*get rich quick*” and do so or, who are connected with shoddy or corrupt schemes and organizations, the acts and behaviour of which are contrary to the leadership code. Many such reports are often ignored by those concerned and, those which are acted upon yield very few positive results. Society can no longer tolerate a situation where holders of public office who are supposed to act impartially and justly in the public interest have enjoined that interest to one of theirs, their family or friends to the extent that the two have become inseparable.<sup>54</sup>

The proper exercise of executive power means a radical departure from the prevailing attitudes, whether official or unofficial, which appear to condone wrong-doing and reward corruption in public administration. A radical transformation of the public service and accountability is long overdue because this is another clear case of unconstitutionality.

### **13.4 THE STATUS AND ROLE OF THE JUDICIARY IN GOVERNANCE**

Threats and actual breaches of the concepts of independence of the Judiciaries in Africa litter thousands of pages of the continental’s legal history.<sup>55</sup> From the assassinations of several and courageous judges in Ghana, to the murder of Chief Justice Ben Kiwanuka of Uganda, the killings of judicial officers in several countries

53 A Publication by the NRM Secretariat, Kampala. Generally see: Hawkins, E.K: *the Principles of Development Aid*: Harmondsworth: Penguin Books, 1971.

54 New Vision, 28 March 2005, 28 March 2006.

55 Shadrack Gutto: B.O: *The Rule of Law, Democracy and Human Rights: Whither Africa?* In E.A.J.P and H.R. Volume 3 number 1 from page 130.

and the unconstitutional elimination of others for reasons other than legal, the correct role and fair judgments of the members of Judiciaries in Africa and elsewhere have often stood out as the only challenges against the mighty and influential in human society to be crashed as enemies of arbitrariness and authoritarianism.<sup>56</sup> At the same time, every Constitution of most of these states provides for the role impartiality and independence of its judiciary as well as the sanctity and respect for judicial pronouncements. The research into dramas that accompany the misdeeds against the sanctity of the third arm of government indicate disturbing phenomena.<sup>57</sup>

From the work of the Commonwealth panel of eminent judges which I had the honour to lead in Kenya investigating corruption as one of the tools used by the wicked to undermine the independence of the Judiciary to the damning report of the International Commission's Team that also investigated the phenomenon of independence in that same country which I also headed, such phenomena became self-evident.<sup>58</sup>

Several years ago, the Rule of Law broke down completely in the beautiful Kingdom of Swaziland and the Executive especially in the persons of the then Prime Minister and Attorney-General totally abandoned civilized behaviour towards the Judiciary in pursuit of absolute power and unconstitutionality.<sup>59</sup> A team of experts from the International Commission of Jurists whose findings were especially damning of the Executive arm of Government in that country were published. Its report eventually led to the removal of the Prime Minister and the Attorney General but also to the resignation of the then belighted Chief Justice who had been besieged under the ensuing anarchy.<sup>60</sup>

In Tanzania and in Nigeria, there have been incidents in which the mighty executive has challenged and successfully curbed or nullified decisions which the Judiciaries had handled impartially as fair and just.<sup>61</sup>

The recent sieges of the Uganda High Court to which one courageous Uganda judge described as the rape of the temple of justice were widely reported and have not only shown the lengths to which the opponents of an independent Judiciary

56 Tumwine-Mukubwa, GP: *International Human Rights in the Domestic Arena in EAJPHR*, op.cit page 32.

57 Black Mambas incidents in Uganda. *Infra*.

58 Findings and Report.

59 See: Report of the ICJ report.

60 *Ibid*.

61 See: Kanyeihamba GW: *Constitutional Law and Political History of Uganda From 1894 to the Present*, Centenary Publishing House Ltd, 2002, Kampala, pages 312-219.

will go but also the courage of judicial officers who stand up and resist those opponents when they indulge in excesses.<sup>62</sup> This writer actively participated in the aftermath of the second siege when the Uganda Judiciary under the able leadership of the Deputy Chief Justice and Principal Judge resisted the onslaught against it by the armed personnel of the Security Forces and eventually forced the Executive to regret the two siege incidents and promised to do everything in its power to avoid a repeat performance.<sup>63</sup>

The Constitution and the laws of Uganda endeavoured to place the Judiciary at a pedestal. The Constitution endowed it and its personnel with great privileges and immunities. In turn, it is expected to administer the law and render justice to all manner of people without fear, favour or ill will. Great responsibilities are thrust upon the Judiciary in the name of and for the benefit of the people. Any judges who are corrupt can never administer the law or render justice to all impartially or without favour to anyone. Secondly, any Judiciary which has been consistently undermined by members of other organs of state or of the public with general accusations which are unsubstantiated will lack the courage and the credibility to do justice and a Judiciary which is conceived as tainted by corruption, abuse of office or incompetence is not a Judiciary that is likely to perform its duties happily or efficiently.<sup>64</sup>

Can judges engage in judicial activism to advance the recognition and protection of human rights? The answer ought to be in the affirmative. The laws and judicial rules allow them to do so. They only require commitment and courage to do justice and interpret human rights laws liberally. In its report, the Uganda Commission of Inquiry into Violations of Human Rights in Uganda observed rather ominously;

“A country may have the best written bill of rights in the world, but if the state organs, and institutions and, leaders at all levels, and every individual in the country are not committed and do not pay serious attention to them. Human rights as so guaranteed are not worth the paper (s) they are written on”.

The Universal Declaration of Human Rights, 1948, contains a provision to the effect that:

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62 Campbell Tom, et al, (ed); *Human Rights From Rhetoric to Reality*: Basil Blackness, Ltd, Oxford 1986.

63 *Infra*.

64 The Report of the Commonwealth Panel of Eminent Judges on corruption in the Kenya Judiciary. A commission's findings and conclusions, October, 1994.

“Every individual and every organ of society shall strive by teaching and education to promote respect for human rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance.”<sup>65</sup>

Returning to the Uganda Commission’s report, its statement that:

“Another key issue in the perpetuation of the cycle of violence in Uganda has been that of ignorance of human rights by either the law enforcement officers, state agents or their victims” and again.

The assumption that ‘those who do not oppose are safe or that only those who have offended the regime or who belong to the wrong ethnic groups need only worry’ is as dangerous and fallacious as it is disastrous in Uganda”, is a reminder to all Ugandans that none is immune from being a victim of human rights violations, are ominously relevant”.<sup>66</sup>

Ugandans remember with a deep sense of shame and regret that a Chief Justice of Uganda lost his life in the cause of human rights. In the same period and later, many citizens including members of the legal profession perished too. In a previous work entitled “*Constitutional Obligation in Developing Countries*,” I wrote that in the face of massive violations of human rights, a spate of litigation would follow with individuals and groups challenging the conduct of governments. Facing political reality, the courts tended to uphold the governments’ stand in almost all the cases.<sup>67</sup> In considering the actual suspension or abolition of the constitutions themselves, the courts came to be guided by a new method of changing legal norms, namely, the act of revolution. From such cases as *Awoonor-William Abedemal, Uganda v. Commissioner of Prisons, ex parte Matovu*, *Madzimbabuto v Lardner-Burke* and *The State v Dosso* national courts along the length and breadth of the globe in the developing countries declined to contemplate any challenge against the violators of constitutions and human rights. It is reasonable to argue that these decisions, though couched in legal language, were not juridical but political. Nevertheless, they could have gone the other way too.<sup>68</sup>

There is a series of other cases which invalidated the revolutions and outlawed government acts which had violated or intended to violate people’s human rights, but it is also fair to say that many judges in this category were convinced that

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65 *Ibid.*

66 *Ibid.*

67 App. number 1169 (SC) Ghana, [1966] EA page 4, [1969] 2 SA, page 14 and [1958] 2 Pakistan Supreme Court, R 180, respectively.

68 E.g under the inherent powers of the court.



neither the revolutions nor the incumbent administration they were adjudicating about would last beyond their judgments.<sup>69</sup>

With all the guarantees prescribed by the Constitution for the independence and power of the Judiciary and the protection of individual rights and freedoms, there is always the hope that if ever that Constitution and the hard fought for human rights were threatened; the courts would curb that tendency or punish the violators.

### **13.5 THE IDEAL JUDICIARY**

Article 126(1) of the Constitution provides that judicial power is derived from the people and shall be exercised by the courts established under the Constitution in the name of the people and in conformity with laws and with values, norms and aspirations of the people. Clause 2 of the same Article directs courts that when adjudicating cases of both a civil and criminal nature, they shall, subject to the law, apply the following principles:

- (a) Justice shall be done to all irrespective of their social or economic status;
- (b) Justice shall not be delayed;
- (c) Adequate compensation shall be awarded to victims of wrongs
- (d) Reconciliation between parties shall be promoted and
- (e) Substantive justice shall be administered without undue regard to technicalities.

To reinforce the independence and powers of the judiciary, Article 128(1) provides that in the exercise of judicial power, the courts shall not be subject to the control or direction of any person or authority. No person shall interfere with the courts or judicial officers in the exercise of their judicial functions. All organs and agencies of the state shall accord to the courts such assistance as may be required to ensure the effectiveness of the courts. A person exercising judicial power shall not be liable to any act or omission by that person in the exercise of judicial power. The salary, allowances, privileges and retirement benefits and other conditions of service of a judicial officer or other person exercising judicial power shall not be varied to his or her disadvantage. Some of these guarantees and expectations have been ignored, and in some instances breached with impunity by several agents of government.<sup>70</sup>

<sup>69</sup> See: Feltoe Geoff: Whose hands were dirty? An analysis of the Supreme Court judgment in the ANZ case, paper of October, 2003.

<sup>70</sup> See: Amnesty International: The Toll of Impunity. AI Index. AFR 46/034/2002.

Writing a forward to the *Commonwealth Human Rights Law Digest*, Justice AR Gubby, a former Chief Justice of Zimbabwe who was dismissed for his fight to uphold the human rights of the people of Zimbabwe, expressed an opinion on the importance judges should attach to the recognition of international norms and standards in upholding and protecting individual and society's rights. He wrote that:

"It is beyond argument that judicial decisions emanating from Commonwealth Courts, whose reputation for the advancement of human rights is high, provide invaluable information and guidance. They point to progressive changes and innovations in international human rights law with which a municipal judge should strive, where possible to bring domestic law into harmony. A judicial decision has great legitimacy, and will command more respect if it accords with international norms that have been accepted by many jurisdictions than if it is based upon the parochial experience or foibles of a particular judge or court."<sup>71</sup>

There can be no doubt that courts have the power and are constitutionally protected to deal effectively with disputes brought before them alleging violations of human rights. In a number of decided cases, courts have professionally and bravely done precisely that.

Uganda is one of the several countries in the world where judges and courts have been from one government to another, the subject of the displeasure and scathing criticism from other public institutions for upholding the laws and Constitution of the country and for providing legal sanctuary and succour to victims of violations of human rights.<sup>72</sup> From the late and much lamented Chief Justice, Ben Kiwanuka, who dared to adjudicate fairly in a case involving a dispute between an individual and the mighty military government and died for it, to the courage of the late honourable judge Kityo of the High Court who declared illegal a decree of Idi Amin to be a joke and no-law at all, Uganda courts, judges and magistrates have endeavoured vigorously to uphold the rule of law and individual liberty.<sup>73</sup>

An analysis of Uganda laws and rules of court as well as examination of the recent court decisions illustrate, quite clearly, that Uganda Courts, have not only the jurisdiction, the power and courage to intervene in cases where the rights and

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71 Inter-Rights, London, 2003.

72 *Infra*.

73 Other bodies criticised by members of the Executive for upholding or speaking on Human Rights issues have included the IGG, FIDA, NGOs and Church Leaders.

freedoms of citizens are allegedly violated or the exercise of government powers challenged but have been prepared to grant appropriate remedies.<sup>74</sup>

The courage and principled stand that are characteristic of the Uganda Courts generally have not been without their critics. In my recently published book on “*Constitutional and Political History of Uganda, from 1894 to the Present*,” I deal with this matter.

I narrate the case of *General Tinyefuza v. Attorney General*,<sup>75</sup> which is a case of a senior Army Officer who petitioned the court that both the Constitution of Uganda and the act of the President of the Republic in assigning him civilian duties outside the army allowed him to retire from the force without any further act on his part. The case went all the way to the Supreme Court which held that for an army officer to resign from his commission he had to comply with the rules and regulations governing army officers which, in this case, General Tinyefuza had not done.

Government and its supporters welcomed the decision as just, principled and nationalistic. Government opponents condemned it as unjust, anti-people and cowardly and as having denied General Tinyefuza his constitutional rights. In January 2000, the same Supreme Court, in the case of *Ssemwogerere v Attorney General*,<sup>76</sup> held that the Constitutional Court erred in law when it denied itself the jurisdiction to hear that case and ordered to hear the case. The decision was widely condemned by certain elements supportive of Government. At the same time, the opposition parties welcomed it as just and as symbolizing the impartiality and independence of the Ugandan Judiciary.

It would appear from the different reactions to the two judgments and others, that in Uganda, courts are perceived and hailed as independent, impartial and free when one wins a case before them but as timid and partisan when one loses. Petitioners have had mixed fortunes. Some have lost while others have won in those petitions. Some of the losers have been government supporters while others have belonged to opposition groups. Yet, some individuals on the Government side have condemned these petition results as being anti-government and biased against the National Resistance Movement. Nothing could be further from the truth.<sup>77</sup>

74 See: Ssewanyana Livingstone: *Human Rights Observance as a key factor to peace and Governance: in peace in Uganda*, Abidi Syed AH, ed. From page 169.

75 Const. Appeal number 1 of 1997 (SC) (UR).

76 Const. Appeal number 1 of 2000 (SC) (UR).

77 The New Vision Newspaper, 7 February 2006.

Courts are enjoined by the Constitution to adjudicate disputes impartially. They must treat all parties, be they individuals, organizations, government or the state, equally. They resolve disputes brought before them on the evidence produced and the law applicable. Judges must render balanced judgments with compassion, fairness and justice.

A recent decision by one of the High Court learned judges, Justice JPM Tabaro, will suffice to illustrate the point. On 12 June 2002 lawyers applied for a writ of *Habeas Corpus Subjiciendum* for production of one Lt. Benjamin Ahimbisibwe who was allegedly being detained illegally in Makindye Military Barracks. The *affidavit* in support of the applicant sworn by his wife showed that the applicant had been arrested on 4 June 2002 at Bombo Barracks and transferred to Makindye Barracks where he was being detained without trial. When the Court assembled on the 19 June 2002 for the purpose of hearing the application, the court was informed that the applicant had been returned to Bombo Barracks and no record of proceedings was produced in Court to show that any court martial trial had been conducted or any lawful decision taken about him. Having cited the Constitutional and legal provisions applicable, the learned judge said:

“The Constitution is the Supreme Law of Uganda and has binding force on all authorities and persons throughout Uganda ... It is my finding that the respondents have not shown that the applicant is in detention in accordance with the laws of Uganda ... In view of this courts’ finding that the applicant is unlawfully detained, the application for release of the applicant is granted with costs. On failure to produce the applicant before court. I wish to observe that such orders (for the production of the applicant before court) are not negotiable. I would humbly add that they are vital for democratic governance and observance of the rule of law, which are fundamental for the lawful exercise of authority by any person or institution in our country.”<sup>78</sup>

Like that of Justice Tabaro, numerous decisions by other Uganda judges are to be found in the courts archives, libraries and chambers, protecting, declaring, amplifying and outlawing activities which violate the rights and freedoms of the individual and the community as prescribed in the Constitution and the Laws of Uganda. As recently as 2002, a Uganda correspondent of the newspaper “*The East African*” remarked proudly that *Ugandans have trust in their Judiciary because it is vigilant in the protection of their human rights.*<sup>79</sup>

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78 High Court Miscellaneous Causes Application number3 of 2004.

79 The East African, 7 July 2002.

### 13.6 THE MEANING OF THE INDEPENDENCE OF THE JUDICIARY

There is not a single African country I know of which does not theoretically believe in an independent Judiciary. This belief is often expressed in constitutional instruments.<sup>80</sup> The provisions of the Uganda Constitution which prescribe the independence of the Judiciary must be hailed by academic readers as some of the best. Yet the defence of that independence has occasionally led to bloodshed and to the likes of Kanyeihamba making headlines in national newspapers.<sup>81</sup> The only offence committed by these people is to stand up and defend Article 128(1) of the Uganda Constitution which provides that:

“In the exercise of judicial power, the courts shall be independent and shall not be subject to the control or direction of any person or authority”.

The same article goes on to state that no person or authority shall interfere with the courts or judicial officers in the exercise of their judicial functions and that all organs and agencies of the state shall accord to the courts such assistance as may be required to ensure the effectiveness of the courts. It also provides that a person exercising judicial power shall not be liable to any action or suit for any act or omission by that person in the exercise of judicial power and that sufficient financing for facilitating and sustaining the judiciary and judicial officers shall be provided for directly from the consolidated fund.<sup>82</sup>

To some members of Executive and of Parliament, independence of the Judiciary means nothing more than having a separate judicial building from those of other arms of government or just being a separate state agency from the army and the police. The more enlightened members of society might allude to the independence as perceived under the doctrine of separation of powers. However, independence of the Judiciary means more that this simplified version of understanding.<sup>83</sup>

Underscoring the principle of Judicial independence at an international conference of refugee law judges held in Ottawa, Canada, that country's Chief Justice asserted thus:

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80 E.g The Uganda Constitution, Article 128.

81 Monitor NewsPaper 17 April 2004.

82 Notwithstanding this constitutional provision, the Ugandan Judiciary's budget has ever hardly been met by the government partly because of the poor resources of the Nation.

83 For a comprehensive Review: See: Linda De Vijver (ed.). *The Judicial Institution in Southern Africa*: Siber Inkcc, Cape Town, 2006.

“the basic theme which is basic for the protection of all human rights in the law is the independence of the Judiciary which, in Canada is underscored both by the provisions of the Constitution and respect for human rights of the citizens”.<sup>84</sup>

The learned Chief Justice then spelt out the tenements of an independent Judiciary in three distinct concepts each of which must exist and be practised for any Judiciary to be constitutionally and organically independent. He said that in Canada, the first two concepts are formalized and secured by the provisions of the Constitution. The two are the security of tenure and financial security of both judicial officers and the institution of the Judiciary. The third concept which he called institutional independence is not written down in any law. It concerns the relationship between the Judiciary, other arms of government and the public. This third element of the independence of the Judiciary in Canada and other major democracies of the world is not founded or prescribed by formal provisions of the Constitution or of any written law. It is founded in the minds and beliefs of the people. It is based on the culture of the people and their successive governments over centuries and years.<sup>85</sup>

In my opinion, it is in countries where such a culture is firmly held in the minds, acts and behaviour of the people and their governments that the true meaning of Judicial Independence is discernible.<sup>86</sup> It is in these same countries that people's liberties, rights and freedoms exist in reality, implementation and enforcement. It is this same culture that is conspicuously absent in most African state practices. Sadly, in the absence of this culture, protection of the same rights is, at best, haphazard or non-existent and, at worst, human rights abuses and violations do not evoke any emotion, one way or the other, except may be, amongst the victims and those closest to them.<sup>87</sup> It is the absence of this culture that is the subject of our next discussion.<sup>88</sup>

### 13.7 EXECUTIVE, POLITICAL AND MILITARY ASSAULT ON THE JUDICIARY

In Ghana and recently in Pakistan, the Courts and the whole legal fraternity have been the subject of attack mainly by agents of the other arm of government, the Executive.

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84 Keynote Address at the IARLJ held in Ottawa.

85 *Ibid.*

86 A good example is the UK Judiciary.

87 Generally see: McClymont Mary and Golub Stephen, (eds): Many Roads to Justice, The Ford Foundation, USA, 2000.

88 *Supra.*

Last year, it was widely reported in the Uganda local newspapers that the Judicial Service Commission had expressed grave concern that anyone was contemplating setting up court martial tribunals which did not comply with the Constitution and Laws of Uganda and which were intended to by-pass the ordinary courts of the land. The then Commission's Deputy Chairperson, who was acting as Chairperson, and one other member are Justices of the Court of Appeal and Supreme Court, respectively. Despite this warning, government insisted on persuading Parliament to enact a law that empowered and strengthened General Courts Martial to try anyone including civilians who may be suspected of committing terrorist and other related activities.<sup>89</sup>

In 2005, the Commission's fears were realized when one Dr Kizza Besigye, an aspirant Presidential candidate was arrested and charged with treason and rape before the High Court and in the same period taken to a General Court Martial and charged there with terrorism and illegal possession of guns. In the High Court, Dr Besigye applied for and was granted bail. On release, he was rearrested and taken to the General Court Martial where he was facing the latter charges and had refused to recognize that court's jurisdiction to try him. The General Court Martial denied him bail and he was returned to jail. Besigye's lawyers challenged the power and jurisdiction of the military general court martial over Besigye, a retired army officer, now a civilian. The lawyers pointed out the consequential double jeopardy of his trial in both the High Court and the military tribunal if he were to be tried more or less at the same time. The issue of whether the High Court and the General Court Martial had equal or concurrent jurisdictions was referred to the Constitutional Court. The Constitutional Court held that the General Court Martial is subordinate to the High Court. It further held that the General Court Martial had no jurisdiction to hear the charges of terrorism against Dr Besigye and twenty two other suspects and that the purported trial in the General Court Martial was illegal.<sup>90</sup>

The reactions of some of the army operatives like that of General David Tinnyefuza, the Coordinator of Security Services were reminiscent of Aminism. The General accused the Ugandan judges of always siding with offenders. Appearing on television with an angered and frightening face typical of a feared terrorist, General Tinnyefuza charged; *"Who are these fellows (judges)? The judges have no power to order the army. The army will not accept this business of being ordered by the judges."*<sup>91</sup> Referring to the learned Principal Judge, Hon. James Ogoola who

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89 The East African Weekly, 4 December 2005.

90 Const. Petition number 12 of 2006.

91 See: Daily Monitor, 18 November 2005.

typified the feelings of most Ugandan judges and members of the legal fraternity when he reacted sharply against the military assault on the High Court building in which Dr Besigye and the other suspects were being tried, the General who appears to have had some legal training, further charged; *“who appointed him? Did he go through a ballot? Did he come there by accident? We have given them power but they should not order us about.” These are neo-colonial systems. If you look at the neo-colonies and the legal regimes in them, they are absolutely confused.*<sup>92</sup>

It is noteworthy that Dr Besigye has strenuously denied that he has ever been involved in subversive or terrorist activities and that he is completely innocent of the criminal charges levelled against him. On the charge of rape, the assessors advised the trial judge to acquit Dr Kiiza Besigye and declare him completely innocent of the charge. The Uganda Constitution like all the others of modern and civilized states provides *“that every person who is charged with a criminal offense shall be presumed to be innocent until proved guilty or until that person has pleaded guilty.”*<sup>93</sup> General Tinyefuza’s irrational statement presumes the contrary that is, that Dr Besigye is actually guilty of the offences with which he is charged. This may not be surprising since the General appears to be reechoing the words of the Uganda Commander-in-Chief who earlier had stated publicly, that the state has done its duty and brought Dr Besigye to court and it is now for Dr Besigye to prove his innocence. No judicial officer or court in Uganda would, under the present Constitutional and legal arrangements, accept the beliefs which seem to be inherent in the statements of both the General and the President.<sup>94</sup>

Another General, General Elly Tumwine, an artist and current head of the General Court Martial exhibiting the same sentiments, also rejected the courts’ judgment and actually proceeded to summon the terrorism suspects to appear before his court again for fixing the date of hearing their case. The Executive appears to condone the latest developments on the violation of the independence of the Judiciary.<sup>95</sup>

Earlier, when Dr Besigye and his co-accused appeared before the High Court for trial, the High Court was besieged by armed personnel who are members of the Uganda Peoples Defence Forces. They dressed in black and are known as the *Black Mambas*. They caused fear amongst judicial officers, staff, civilians and lawyers. Both the Chief Justice and the Principal Judge reacted angrily against the siege. In

92 Daily Monitor Newspaper, 18 November 2005.

93 Article 28(3).

94 This is the reverse of Article 28(3) of the Uganda Constitution.

95 See: Article 128(3).



his statement of disapproval, the learned Principal Judge declared that the day the *Black Mambas* besieged the High Court building will always be recalled in the country's history as a day of infamy. The learned Principal Judge regarded the siege as the rape and defilement of the temple of justice.<sup>96</sup>

At their appearing in court before three trial judges, consecutively, the judges each released the suspects on bail as permitted by the Constitution and laws of Uganda but each time they were rearrested and detained on the orders of the General Court Martial. In the confrontation between the Judiciary and the Army, the Prisons' Commissioner ignored the orders of the Courts and obeyed those of the military forces notwithstanding that the Constitution clearly provides that courts martial are subordinate to the High Court and that the Uganda Peoples Defence Forces should be non-partisan, national in character, patriotic, professional, disciplined, products and subordinate to the civilian authority as established under the Constitution.<sup>97</sup>

It may be recalled that in the case of *General Tinyefuza v Attorney General*, (*supra*), David Tinyefuza petitioned that he no longer wishes to stay in the army which he despised and the reasons given both in the petition and in the evidence given on his behalf show that the General was not only defying Parliament, the President and the Army but was hoping that the court would use its power to protect his rights against those institutions and direct them to respect and protect the rights of the General.

When Dr Besigye next appeared before the High Court, Justice Katutsi, J ordered the Commissioner of Prisons to produce the accused, Dr Besigye and give reasons why he was still detained in prison notwithstanding the earlier High Court order granting him bail. This order was made following Dr Besigye's lawyers' application for the writ of *Habeas Corpus Subjiciendum*. Amidst the drama of heavy police presence in and around the High Court building and the open secret in government circles that Dr Besigye should remain on remand in the maxim Luzira Prison, the learned trial judge declared the continued detention of Dr Besigye unlawful and ordered his release forthwith. In his illuminating ruling on Besigye's detention, the learned judge said, *inter alia*;

"From the 2 December 2005 when the order of Kasule, Ag. Judge was signed, the General Court Martial ceased to have anything to do with the applicant. That being the view I take of the law, from the 25 November 2005, the applicant has been in illegal detention. If sanity is to be regained, the applicant must be given his freedom to be on

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96 In a statement to the Press.

97 Constitution.

bail as granted by the Principal Judge. The total sum of the detention of the applicant at Luzira is illegal and unlawful. He should be released forthwith unless held on other lawful orders. The applicant will get the costs of this application. I order accordingly.”<sup>98</sup>

It is therefore with confidence that it must be declared publicly and proudly that judicial responses to violation of human rights in Uganda, both actual and potential, are decisively positive even in cases where the judges face danger.

### 13.8 JUDICIAL BALANCING ACT

In criminal justice, experience reveals many facets of attempts by the Judiciary to balance two sets of values. The first is the preservation of the rights and freedoms of the individual while the second is the maintenance of law and order, the successful prosecution of criminals and protection of property. With regard to the first, presumptions of innocence and the necessity to prove crimes beyond reasonable doubt can only be for the general welfare of society as a whole.

Mistaken identity of suspects, malicious entrapment by investigating agencies, false confessions and errors in presenting or assessing evidence may lead to some innocent persons having to pay heavily for crimes they may have not committed or participated in. On the other hand, public sympathy must be expressed and sustained in favour of state agencies and personnel whose duty it is to prevent, fight and prosecute crime. Misunderstanding of how modern criminal justice operates in society may lead to hostility and indifference on the part of the population and this may result in low returns of fully investigations and convictions of crime. It is therefore necessary to strike a balance between the two sets of aims in society. This balance is to be found somewhere between the words of Professor Dworkin and those of Mwalimu Nyerere. The former states that;

“Someone has a right when he is entitled to insist on doing something done even though the general welfare of everyone else is harmed thereby.”<sup>99</sup>

On the other extreme, Mwalimu J. Nyerere once remarked:

“I agree that in the idealist sense of the word, it is better that 99 guilty men should go free than that one innocent man should be punished. But in the circumstances of a nation like ours, other factors may well arise in which it is better that 99 innocent people should suffer temporary detention than that one possible traitor should wreck the nation. It certainly would be complete madness to let 99 guilty men escape in order to avoid the risk of punishing one innocent person. Our ideals should guide and not blind us”<sup>100</sup>

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98 Katutsi, J.

99 Dworkin Ronald: *Taking Rights Seriously* (1978), 1-28.

100 Review of Contemporary Law II (1964) University of Dar es Salaam.

Nyerere's views are a reflection of most Africa to-day and contrasts sharply with the Western concept of individual liberty which is often enjoyed and exercised at the expense of the community at large. The balance between the two extremes will always be aimed at if the debate about it is continuously and transparently held from generation to generation in a democratic fashion. To advance one side and accept it at the expense of or suppression of the other may be regarded as political arrogance. Such arrogance encourages intolerance in turn. Either way, it could end in anarchy or authoritarianism,<sup>101</sup> neither of which is a panacea for constitutionalism.

In developing countries, the overwhelming majority of citizens who seek justice in courts of law are poor. The common law idea that a judge who presides over a trial is an impartial arbitrator is meaningless to many of such litigants especially when they are legally unrepresented. Consequently, it should be permissible for a presiding judge or judicial officer to temper justice with compassion. In a case where the state is adequately represented by a lawyer and the other party is a poor litigant who is unrepresented, it should be possible for a merciful judge to intervene at appropriate stages of the hearing to protect the constitutional and legal right of all parties in the trial.<sup>102</sup>

Accused persons who are not legally represented are often caught out in legal and procedural arguments which they do not always apprehend. It should be possible for a judge or presiding officer to explain, in simple terms, to the person who is not represented in court that that person is entitled to and can apply for bail instead of letting the person who is legally represented to be the ones to take advantage of this rule. In Common Law countries of Africa, persons accused of grave offences such as treason, murder, aggravated robbery and rape, are in the happy position of being legally represented while persons accused of less seriously offences have to endure criminal allegations made against them without representation.<sup>103</sup>

In the making, implementation and application of laws, the Executive arm of Government possesses greater weapons of persuasion and decision than Parliament and the Judiciary in that it has the purse, the police, the army and all the other

101 For a general discussion See: Carney Paul: Modern Developments in the Judicial balancing of the Right to Reputation Against the Right to Free Expression in a Democracy. In Binchy William and Finnegan Catherine (eds.) Human Rights Constitutionalism and the Judiciary's Tanzania and Irish perspectives.

102 For a parallel USA experience, See: white, G. Edward: The American Judicial Tradition, OUP, New York: 1976, pages 346-375. Also See: Hiller JA: The Law Creative role of Appellate Courts in Third World in Essays on Third World Perspective in Jurisprudence, Malay PTY, 1978, page167.

103 Article 28(2) of the Constitution.

national security forces. Indeed, as Professor Nsibambi once remarked, the Executive arm of Government has the sword. In our opinion that sword was handed to the Executive for the protection of the people and it should be the people and not the Executive or any other organ of state to determine and declare what interests are to be protected by the sword. In any event, the sword must be used constitutionally and should be subject to both political and judicial restraint. Nsibambi further observed that;

“In their operational relationship, each of the three arms of the state impact on each other’s (sc) performance in such a way that none can achieve or fulfil its functions without the support of the others”.<sup>104</sup>

We must agree with the Premier that the three arms of Government can only be effective if they respect one another and act harmoniously in a spirit of mutual respect and the principle of give and take. Lately, the Executive and the UPDF have each behaved as if the others are essentially subordinate and subservient and un beholden to the other two. This is a dangerous development which should be discouraged at once. We need to rededicate ourselves to the ideals of the 1995 Constitution as the Supreme Law of the Land.<sup>105</sup>

After the second High court siege in Kampala, the President, Yoweri Kaguta Museveni invited Uganda judges for exchange of views. At the meeting, the President was kind enough to cite from my judgment in *Tinyefuza v AG (supra)* as firmly establishing the relationship between the Executive and the Judiciary. At that meeting, my theory on the doctrine of separation of powers was also mentioned. During my lectures in universities in constitutional law, I used to illustrate the doctrine of separation of powers and their relations to my theory which is that a state may be likened to a long lasting and sturdy tree of the forest. The branches, roots, bark, leaves and flowers of the tree co-exist and respect and co-operate with one another for the benefit of the tree as a whole and of one another. None is more important or less functional than the others. The roots cannot come up and blame the leaves and start collecting carbon dioxide nor can the leaves and branches descend into the ground and collect the water which is essential for the survival and sustenance of all of them. Likewise, Parliament, the Executive and the Judiciary should each do their own work and recognize the role of one another without competition or jealousies. One of society’s devices for reminding each arm of government to perform its functions well and mind its own business while effectively assisting the other two is civil society.<sup>106</sup>

104 In a mimeo published by MISR, Makerere University.

105 *Supra*.

106 The Uganda Constitution.

### 13.9 ACCOUNTABILITY IN THE JUDICIARY

If the Judiciary is to earn the culture of respect, it must appear to be functional and transparent. In my opinion, accountability as used in reference to the judiciary implies two concepts, namely, the manner in which those who exercise judicial functions do so and, secondly, accountability for the way resources allocated for the administration of justice are utilised.

Judges and officials who exercise judicial or quasi-judicial functions must act and behave impartially and with dignity and in accordance with the rules of the legal profession as buttressed by the judicial oath. Those who do not must be identified and asked to account for their deviance and if needs be, they have to be dealt with severely in accordance with the law.

Currently, there is an outcry in Uganda against alleged corruption in the judiciary. If there be judicial officers who indulge in this illegality, it is incumbent upon the accusers to name them so that the relevant authorities can suspend, discipline and may be ultimately remove them from their posts as persons who are unfit to hold judicial or other public office. Any acts or incidents of behaviour which are alleged to be incompatible with their office must be enquired into immediately and not simply be discussed generally as a matter of gossip and speculation. If persons who abuse the legal process are outside the Judiciary there are other laws and procedures, which adequately deal with culprits.<sup>107</sup>

Just as it is very necessary that officials in the judiciary who are corrupt, incompetent or otherwise unfit to hold office, should be identified, investigated and dealt with in accordance with the law, those persons who indulge in the exercise of undermining the Judiciary by making unsubstantiated accusations against it should be restrained. Those who claim that they know there is corruption and abuse of office in the Judiciary should be made to reveal all they know or keep silent when they do not have credible proof for the accusations they parade publicly. This however is not to say that the allegations of corruption in the Judiciary are totally groundless. Cases of corruption involving judicial officers in magisterial areas and those involving officials who work as support staff in the courts of judicature have been amply documented and proved and disciplinary action including dismissal have been taken against some of the culprits.<sup>108</sup>

107 There are penal provisions both in the Rules of the Courts and the criminal code to cater for such situations.

108 Annual Reports of the Courts of Judicature and the Proceedings of the Judicial Service Commission from year to year.

With regard to accountability for the property, resources and equipment of the Judiciary, each judge as every judicial officer has a very important part to play in their custody, proper use and utilisation.

Admittedly, the Uganda Constitution entrusts the primary responsibility with the honourable Lord Chief Justice as head of the judiciary who also has responsibility for the administration and supervision of the courts of Uganda. Nevertheless, each judge and judicial officer in their respective positions and office, assists in the fulfilment of these obligations.

Chief magistrates, registrars and clerks in one way or another, have custody of judicial property of some sort for which they are all accountable. As judicial officers, we all have access to and utilise resources and equipment provided at the expense of the taxpayer and for which we are all accountable. Some of the judges, magistrates and other officers in the Judiciary are actually accounting officers for the moneys and property in their custody and under their control. In this regard, they are all as accountable as any other public officers. Consequently, the Judiciary is required not only to undertake responsibility for internal discipline or self-criticism but also accountability within its internal operations.<sup>109</sup>

### 13.10 THE CHALLENGES OF CIVIL SOCIETY

In my opinion, the first and most important challenge for any civil society activist is to find and sustain the courage to come out openly and seriously fight against injustice, deprivation or maladministration, regardless of consequences.<sup>110</sup> Once an activist starts thinking about his or her own life and is motivated by fear rather than courage, they might as well give up and let others do the job. Courage goes hand in hand with commitment. In fact, the two are so closely intertwined that commitment is the genus of which courage is a species. The commitment meant in this context is for principles and causes. It is objective and impersonal except in relation to the victims who may be actual or potential. It must not be for personal gain whether material, financial or spiritual or by way of reputation. It is not suggested that any of these attributes are unimportant or irrelevant. If they exist or come, they are also welcome but they should be mere consequences of commitment, courage and activism and not the primary objectives. It is for these

109 It attempts to achieve this objective through internal committees, such as the Inspectorate of Courts, Committee on Ethics and Integrity and Supervision.

110 In the case of Uganda NGOs such as Foundation for Human Rights Initiative, FIDA, DENIVA as well as governmental institutions such as the Human Rights Commission and the Inspector General of Government have over the years done commendable work in this field as shown by their annual reports.

reasons that the question, what is in it for me? is the most inappropriate question in civil society operations. It is because this question is prevalent in many civil society and non-governmental organizations, that their original intentions, if ever there were some, have been diverted and corrupted. As both Arnold and Barbara Harrold-Bond have correctly observed in relation to World Aid, these civil society activities have become big business for many individual officials who control or work in them. This is a sad commentary on what the world of today has become, for nowadays, it is not difficult to find that the beneficiaries of aid are not the disadvantaged groups for which it is ended but the officials both in the group controlling it and those in the receiving state.<sup>111</sup>

There is also the challenge faced by civil society in relation to slate and partisan politics. If a civil society organization is to survive and prosper, it is absolutely essential to insulate it from partisan politics. This does not mean that civil society should not be concerned with the politics of governance. In my view, every human right is soon or later adversely affected by political decisions and activities. These may be of the state organs or of political parties and movements. In so far as civil society bodies exist to defend and protect the rights of the people, it is not practical or realistic to expect those bodies to remain silent when those rights are adversely affected. Political activities which impinge on individual or community rights and interests must be opposed vigorously and openly by civil society but such criticisms should be made in such a way as not to appear to be partisan. I am aware that this is a very difficult and delicate area on which to give advice. Whenever say a government proposes or does an act which is wrong or in conflict with any given right or freedom, political parties or groups which are not part of the government come out and oppose. Thereafter, it becomes easy and almost inevitable for the government to criticise anyone including members of civil society groups who also come out and oppose those acts or wrongs as being political and partisan. However, one can be partisan and belong to a political party while at the same time, the same one is a strong civil society activist on a non-partisan basis. I mentioned the Uganda Group For Human Rights which I led for some ten years in U.K. Our membership of refugees included active members of the Movement, U.P.C., D.P. and the Conservative Party of Uganda, but as officials and members of the Uganda Group for Human Rights, whenever we met, made decisions or acted for the group, we were always scrupulously non-partisan and careful not to mix the interest of the partisan political party we may have belonged to with those of the Uganda Group for Human Rights. When many of us returned to Uganda after both Idi Amin and Obote II, the UPC/DP members captured the leadership

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See: Harrell-Bond Barbra: Imposing aid, OUP ?

of the group and used it in a partisan way to oppose the government. Thereafter, the group collapsed and was heard of no more.<sup>112</sup>

It is very important that in publications and public statements, civil society groups should always carefully check their facts, figures and circumstances. They must not misquote or exaggerate stories. To do so is to undermine the credibility of the group. Unless one knows accurately the number and names of the people killed or affected in an incident on which one is writing, it is advisable not to mention them. Supposing that it is reported that 100 people were killed and you enumerate their names as (a), (b), (c), (d), (e), etc, and then a different source publishes accurately that only 98 were killed and in any event, persons (a), (b) and (f) are alive. A government or body intent on discrediting the civil society group will produce (a), (b), (f) and parade them in public or on TV and say that the group was lying because their statement that 100 people died in the incident is very wrong. The civil society group concerned will have very little ammunition with which to fight back. Had the statement said that many people were killed and named just a few of which it was absolutely certain, the story would be very hard to refute.

As can be seen, civil society operates in an environment in which other institutions and bodies have authority and power to direct and effect events far beyond the capability of civil society. Civil society needs to know and appreciate the powers and *modus operandi* of these institutions and bodies if it is to have an effective watching brief.

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112 The then existing membership of the group regrouped into national political and other organisations or dispersed into their previous individual existence.





## CHAPTER FOURTEEN

### ELECTION LAWS AND ELECTORAL MALPRACTICES IN UGANDA

#### 14.1 INTRODUCTION

Ugandans are an interesting people when it comes to their governance. An analysis of the Uganda public laws reveals a nation with capacity and desire to formulate and enact laws for its welfare, good governance and meaningful development in every way. Since the 1990s, the people of Uganda and its government have spent a great deal of effort, money and time to enact a Constitution, which on the whole, has been claimed to be one of the best drafted in the world. Indeed, the period in which it was conceived, debated and adopted has led a commentator to observe that the period constituted the finest hour in the history of the National Resistance Movement which inspired and presided over the making of that Constitution.<sup>1</sup>

Following the promulgation of the 1995 Constitution, good and workable laws were saved, made or adopted under the authority and provisions of the same Constitution.<sup>2</sup> Many of these laws have since been revised and published in a series of volumes known as the Laws of Uganda, 2000. There is a separate volume containing all the electoral laws of Uganda under the title “*Compendium of Electoral Laws as 15 February 2006*.” The latter volume contains the Constitution, the Electoral Commission Act, Political Parties and Organisations Act, Presidential Elections Act, Parliamentary Elections Act, Local Government Act, National Women’s Council Act, National Youth Council Act, and the Referendum and other Provisions Act. It also contains subsidiary legislation preserved so far made and published under the Constitution and the various electoral Laws.<sup>3</sup> Despite accidental and occasional deliberate insertions or omissions, the purpose and content of these laws are well meaning and adequately drafted and if enforced would importantly yield the desired results.

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1 Article 274 and subsequent enactments. Dr Katalikawe, JW Dr in *Kanyeihamba’s Constitutional and Political History*, op.cit. infra.

2 Oloka Onyango, J Dr “*Constitutional Change and Political Transition in Contemporary Uganda: A Socio-Legal Analysis*,” British Department of International Development (DFID), March, 2004.

3 See *Compendium of Electoral Laws*, as at 15 February 2006, Republic of Uganda. Government Printer, Entebbe, 15 February 2006.

## 14.2 DELIBERATE AVOIDANCE AND BREACHES OF ELECTORAL LAWS IN UGANDA

The Presidential Elections and Petitions of 2001 and 2006 in Uganda present glaring examples of breaches and infringement of the Constitution and laws of the country.

Article 104 of the Uganda Constitution which is prefaced with the words “*Challenging A Presidential Election*” provides as follows:

- (1) Subject to the provisions of this article, any aggrieved candidate may petition the Supreme Court for an order that a candidate declared by the Electoral Commission elected as President was not validly elected.
- (2) A petition under Clause (1) of this article shall be lodged in the Supreme Court registry within ten days after the declaration of the election results.
- (3) The Supreme Court shall inquire into and determine the petition expeditiously and shall declare its findings not later than thirty days from the date the petition is filed.
- (4) Where no petition is filed within the time prescribed under clause (2) of this article, or where a petition having been filed, is dismissed by the Supreme Court, the candidate declared elected shall conclusively be taken to have been fully elected President
- (5) After due inquiry under Clause (3) of this article, the Supreme Court may:
  - (a) Dismiss the petition;
  - (b) Declare which candidate was validly elected; or
  - (c) Nullify the election.
- (6) Where an election is annulled, a fresh election shall be held within twenty days from the date of the annulment.
- (7) If after a fresh election held under Clause (2) of this article, there is another petition which succeeds, then the Presidential election shall be postponed, and upon the expiry of the term of the incumbent.
- (8) For the purposes of this article, the provisions of article 98(4) of the Constitution shall not apply.
- (9) Parliament shall make such laws as may be necessary for the purposes of this article, including laws for grounds of annulment and rules of procedure.<sup>4</sup>

From the way these clauses are worded, it is clear that the only respective purposes of articles 103(9) and 104(9) are to empower Parliament to make laws and rules of

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4 It can be argued that Parliament exceeded its powers under this provision.

procedure for the election and assumption of office of the President and the grounds for upholding or annulment of such an election. Parliament is not empowered to convert the said inquiry into a trial or limit the powers of the Supreme Court from considering and taking into account any evidence touching on the election of the President that may assist the Court to come to the right decision.<sup>5</sup> Nor was it empowered to provide a weighing scale for annulment or upholding of an election. Thus, in the South African case of *Ferreira v Levin* number (1) (1996) (SA) 984 (SC), the court invited written submissions from professional bodies whose work could aid the court's decision<sup>6</sup>

It is our view therefore, that the Supreme Court's duty is to conduct an inquiry into the allegations contained in the petition and, after due consideration, declare its findings, give reasons thereof and make appropriate orders. There is no provision in the Constitution for a trial and judgment by the Supreme Court. The inquiry meant in the Constitution is radically different from an ordinary trial whether of a criminal, civil or administrative nature.<sup>7</sup>

The implications of article 104 are easily discernible. An inquiry into a Presidential election must be conducted, concluded and its findings and reasons given within the period prescribed by the Constitution. The idea that the Supreme Court can summarise its findings and give a decision and then give reasons outside the period fixed by the Constitution is indefensible. It could not have been the intention of the makers of the Constitution that if an election is annulled, a fresh one could follow immediately without regard to the reasons that may be given by all or any of the judges on the panel that nullified the earlier election. To suggest that the Electoral Commission and the parties concerned could meaningfully carry out or participate in a fresh election, following the annulment of an earlier one by the Supreme Court and before the reasons for the decision of that Court are known is to indulge in speculation.<sup>8</sup>

It is only logical to expect the Electoral Commission and other actors in a Presidential election to act correctly and legally after reasons for the upholding or annulment of an earlier Presidential election are known and publicized. To do otherwise would be putting the cart before the horse. It is imperative that reasons why one election is upheld and another nullified should be clearly spelt out and known before a fresh and new election is held or indeed, a President under the

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5 Not necessarily that tendered by the parties or in the petition.

6 *Ibid.*

7 In our view Parliament was obliged to enact a separate law exclusively governing the Presidential Petition's Inquiry and findings.

8 It can also be argued that it is at variance with the requirements of the Constitution.

disputed election is sworn in.<sup>9</sup> Only this way can the mistakes made in the previous election be known and avoided subsequently.

The other reason why a Presidential election should be inquired into and not regarded as a trial is to avoid delay. In fact, the reading of the provisions of article 104 shows that not only must an inquiry into a Presidential election be conducted and concluded expeditiously but should the proceedings suggest further delays, the Constitution provides the answer in Clause 7 of the same article which avoids further delays and complications in the ascertainment of a President, by providing that the Speaker shall perform the functions of the President.

Thus it is very clear that the Constitution deliberately created a procedure for determining a Presidential election petition which is different from those designed to cater for trials. Nothing could be clearer than article 104(3) which for, emphasis is repeated here, *“the Supreme Court shall inquire into and determine the petition expeditiously and shall declare its findings not later than thirty days from the date the petition is filed.”* No trial or judgment are intended or could be implied or perceived as constitutional.

Under Uganda laws and practice, a trial which is necessarily followed by a judgment is differently conceived and structured.<sup>10</sup> A trial must be followed not only by the evaluation of facts, evidence and the applicable laws, but also by a judgment which must contain reasons for the decisions therein. In the majority of cases; whether of a civil or criminal nature, judgments are given on notice and may sometimes stretch to two months or more. Moreover, the pleadings, arguments and submissions tend to be confined to the evidence and facts presented by the parties or their counsel. The Oxford Standard Dictionary defines the word to inquire as *“to find out through information or to investigate.”* HWR Wade and CF Forsyth, the learned authors of the (8 ed) of *Administrative Law* published by Oxford University Press describe an inquiry as intended *“to investigate into an objection by a citizen or a number of them and give that objection the fairest possible consideration.”*<sup>11</sup> So, just as those authors speak of statutory inquiries in the context of administrative actions, one may speak of a constitutional inquiry into a Petition presented under article 104 of the Uganda Constitution. Under Uganda laws, there is the Commissions of Inquiry Act, which the concept and purpose of an inquiry are clearly stated with emphasis placed upon the reasons leading to the findings and conclusions of such an inquiry<sup>11</sup>

9. See also the provisions of article 58 of the Constitution.

10. See the provisions of both Criminal and Civil Procedure Acts, Chapters 6 and 4 Law of Uganda.

11. The Commissions of Inquiry Act, Chapter 165.

It follows that reasons for the decisions in an inquiry are integral parts of the findings and conclusions of the tribunal. One may not act on findings alone without knowing the reasons and rationale for such findings.<sup>12</sup>

In our opinion, the delay to give reasons for the findings of the Supreme Court was never contemplated by the makers of the 1995 Uganda Constitution. Such delay is democratically and constitutionally unacceptable. In my view, it is imperative that the nation should be informed expeditiously of the reasons why any disputed Presidential election was upheld or nullified by the Supreme Court and this can only be discerned from the reasons given by the court. Trials of civil or criminal or other types are by nature subject to long and drawn out procedures. In many instances, such procedures and delays are determined or caused by the parties themselves or their counsel sometimes with protracted negotiations outside the influence of court and with possible indefinite adjournments. It is not unknown for cases to drag on for years, sometimes stretching to several or more years. This is not certainly what is intended or meant in article 104 of the Constitution.<sup>13</sup>

On 7 March 2006, a full bench of the Supreme Court heard Petition number 1 of 2006 between Rt. Col. Kiiza Besigye, the Electoral Commission and President Yoweri Kaguta Museveni. On the 6 April 2006, the court announced the decision dismissing the petition by a majority of four to three justices. The court promised that each member of the court would give his detailed individual findings and reasons thereof at a later date. The court did not release its reasons until the 31 January 2007. I dissented and gave my reasons on the day we gave our findings.<sup>14</sup>

Some of my colleagues were contented to describe the procedure and the consequences of our hearing as a trial and judgment. I described what we actually did as an enquiry and my decision and reasons as findings in accordance with the exact words contained in the Constitution. Under the common law rules of interpretation when clear and unambiguous words are used in a legal document, they must be given their natural and ordinary meaning.<sup>15</sup> Few Ugandans have discussed the significance of my dissent even though it speaks volumes.

On 2 July 2009, a young political activist had a letter published under her name in the “*Observer*” newspaper criticizing my edited interview remarks published in earlier editions of the “*Monitor*” newspaper as an attack on the

12. Indeed, even in the case of ordinary criminal and civil proceedings- judgment is decision plus reasons.

13. Eg. *Robert Coussens v AG* Civil Appeal number 8 of 1999.

14. *Monitor* newspaper, 2 February 2007.

15. Canons of interpretation under the Common Law System.

Judiciary.<sup>16</sup> Obviously, she expressed her remarks without having read and internalized the substance of the interview. It was also clear from her remarks that she was not aware of the findings of the Supreme Court in both the 2001 and 2006 Presidential Election Petitions. She reckoned that the findings were merely of minor irregularities in the conduct of those elections. Her untutored and uninformed enthusiasm may be sharply contrasted with the substantial faulting of the two elections by the Supreme Court and its grave findings and recommendations on our electoral law and its enforcement in both petitions. The Chief Justice's summary of the court's findings from the 2006 represent the collective opinion of the full bench of seven Justices and it reads:

*"It has been agreed that I indicate how each member of the court decided on each issue framed. The first issue was whether there was non-compliance with the provisions of the Constitution, Presidential Elections Act and the Electoral Commission Act.*

*By unanimous decision, the court answered the issue in the affirmative. The second issue was whether the said election was not conducted in accordance with principles laid down in the Constitution, Presidential Elections Act and the Electoral Commission Act. By unanimous decision, the court answered the issue in the affirmative. The third issue was whether if either issues 1 and 2 or both are answered in the affirmative, such non-compliance with the said laws and principles affected the results of the election in a substantial manner. By a majority decision of four to three, the issue was answered in the negative. The Honourable Chief Justice, Honourable Justice Mulenga, Honourable Justice Karokora and Honourable Justice Katureebe, answered the issue in the negative. The late Justice Oder, Honourable Justice Tsekooko and Honourable Justice Kanyeihamba answered the issue in the affirmative."*<sup>17</sup> (emphasis added)

When in the interview which was edited and published by the "*Observer*" I repeated accurately what the learned Lord Chief Justice read in an open court, I was criticized by the lady activist referred to earlier and by some of the ruling party activists as having betrayed the secrets of and as attacking the Judiciary. It sometimes appears that many Ugandans have not only short memories but choose to wear blinkers when it comes to their welfare and governance and the truth of what occurs.<sup>18</sup>

On 31 January 2007, when the learned Chief Justice summarized the court's judgment, I chose to read my own findings and reasons. I began my findings on the petition with a reminder that the overriding constitutional dogma in Uganda is that the rule of law, constitutionalism and the Constitution of Uganda are the Alpha and Omega of everything that is orderly, legitimate, legal and descent. Anything else that pretends to be higher in this land must be shot down at once by the

16 A regular columnist of the paper.

17 The summary was read in open court and in the presence of members of the Press.

18 The Monitor, 17 March 2003.

Supreme Court using the most powerful legal missiles at its disposal. The Constitution of Uganda is a binding contract between the people of Uganda and their successive governments. It was made by the people after some six years of protracted negotiations throughout the country under the auspices of the Constitutional Commission and Constituent Assembly<sup>19</sup> The Supreme Court is the last sanctuary for all the people in Uganda who are challenging any violations of the Constitution or breach of any law. The petition had to be considered and resolved with the people's Constitution guiding the court.<sup>20</sup>

Later in my reasons, I said:

"In my opinion, having answered both the first and second issues framed by the court in the affirmative, it became imperative for me to answer issue number 3 in the affirmative also. To decide otherwise would, in my opinion, manifestly conflict with the unanimous findings of the court on issues numbers 1 and 2. Once a court finds that the Constitution, the supreme law of the land and other country's laws have been flouted, that court must do its bounden duty and grant the remedy sought. In my view therefore, I could not see any rational or defensive alternative to answering issue number 3 other than in the affirmative. I am fortified in my resolve by a decision of the Supreme Court of South Africa in the case of *Speaker of the National Assembly v De Luke*, which emphatically declared, that the Constitution is the ultimate source of all lawful authority in the country. No Parliament however *bona fide* or eminent its membership, no President, however formidable be his reputation or scholarship and no official, however efficient or well meaning, can make any law or perform any act which is not sanctioned by the Constitution. Any citizen affected by any decree, order or action of any official or body, which is not properly authorized by the Constitution is entitled to the protection of the law".<sup>21</sup>

Many self-acclaimed patriots abhor the truth about the manner and style in which Uganda has been governed since independence. They loathe and attack every true patriot who longs for good governance of the country. Any exposure of unconstitutional acts, illegalities, and malpractices in governance and elections are ignored or condoned amid jubilations of electoral victories effected by bribery, intimidation, fear and rigging. Their kind never stops to think that one day and sooner rather than they imagine, this country may be governed differently and possibly by different people in which event they and those they praise and follow blindly now will be judged directly by Ugandans who may have not shared their follies and misdeeds in governance.<sup>22</sup>

19 See Constitutional Commission Report, Government Archives. Entebbe.

20 *Ibid.*

21 (1999) 4 SA 863. (SCA).

22 There are several political parties in Uganda opposed to the current brand of Governance in the Country.



Numskulls do not give credit where it is due. They criticize logic, rationality and truth because these qualities stand in their way of being recognized and rewarded as blind fanatical followers or being replaced by more worthy citizens.

For instance, the same kind of people will ignore the positive comments we made in 2006 and dwell on everything else that will parade them to be perceived as loyal and devotees of the establishment.

In my findings and reasons, I exonerated the second respondent, Yoweri Kaguta Museveni as not having personally committed any criminal acts in the elections. I also found that the petitioner had not convinced me that he or anyone else had legitimately and constitutionally won the 2006 Presidential election. I also condemned the petitioner's agents and counsel who committed electoral offences or suggested that a petitioner cannot be blamed for committing electoral offences because he or she lost in the election.

However, in order to condemn me wholesale, some of my armchair critics continue to shout falsely that the Justices who held that the elections were flawed and ought to be repeated were motivated by the desire to see opposition candidates elected. To warn a friend who is going to a wedding that his or her buttons are undone and they should be done before proceeding to the function is not to stop that friend going to the wedding altogether. For judges to advise that elections should be in conformity with the provisions of the Constitution and laws of the country in order to constitutionalise, legitimize and popularise a duly elected President is a matter to be applauded, not condemned.

The Supreme Court found that in the Presidential Election Petition of 2006:

1. There was non-compliance with the Constitution and election laws.
2. The principles of free and fair elections was compromised by bribery, intimidation and violence.
3. The principles of equal suffrage, transparency and secrecy were infringed by multiple voting, vote stuffing and incorrect methods of ascertaining the results.

Are Courts supposed to congratulate those who were responsible for these acts of electoral malpractices to enable some candidates of their choice to gain votes unfairly while those Ugandans who fought the same malpractices in 1981 and at other times, having been provoked to the extent of going to war, welcome and swallow those same malpractices now? They were there in the struggle. They participated in the liberation war, in the evolution of the present constitutional

order and the good governance Ugandans have enjoyed for years. Where were these come lately critics? History will judge us all.<sup>23</sup>

Parliamentary and local government elections fare worse in Uganda for lack of effective and transparent methods of conduct and supervision. On the other hand, High Court Judges have shown much more inclination to scrutinize and make sound judgments on petitions brought before them. Uganda Law Reports both published and unpublished are littered with numerous cases of successes and failures of petitions that vindicate the courage and professionalism of many of these learned judges. Sadly, subsequent bye-elections where culprits in elections are permitted to participate again and often win using more or less the same illegal methods undermine the work of the Judiciary are a mockery of Uganda Laws and justice.<sup>24</sup>

### **14.3 REFORM OR APPLICATION AND ENFORCEMENT OF THE ELECTORAL LAWS?**

A great deal of talk and writing have been done on the desirability to reform Uganda election laws. Admittedly, certain sections of some laws need to be reviewed, tightened and made more operational. Judges of the Courts of Judicature of all the divisions have heard petitions and delivered findings and recommendations. One needs to analyze the findings of every justice who has participated in the hearing and determination of the Presidential elections petitions of 2001 and 2006 and parliamentary elections petition before then and since, to know the defects in our present law and how they can be cured.<sup>25</sup>

The seriousness of the electoral law enforcement mechanism, are such that people and leaders of Uganda ought to study them and find solution to enable the country choose its leaders freely, democratically and fairly.

The Supreme Court should return to the actual meaning of article 104(3) which obliges it to enquire into and determine Presidential Election Petitions expeditiously and to declare its findings not later than thirty days from the date each petition is filed,<sup>26</sup> even though we are also of the view that both the periods in which to collect evidence by the petitioners and the court to consider and give its findings need to be extended.

In my findings in the 2006 petition, I opined that the Supreme Court should be pleased to revisit its majority opinions given in both the 2001 and 2006

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23 The Defender, Volume 8, number 1.

24 See Tibatemwa - Ekirikubinza Lillian: in EAJPHR.

25 High Court, Court of Appeal and Supreme Court decisions (UR), from 1997 – 2009.

26 *Supra*.

Presidential Election Petitions on this matter in compliance with Article 132(4) of the Constitution which provides that:

“The Supreme Court may, while treating its own previous decisions as normally binding, depart from a previous decision when it appears right to do so.”

The second area of concern is section 59(6)(a) of the Presidential Elections Act which appears to conflict with article 104(1) of the Constitution. At the time of writing, the section was the subject of petition in the Constitutional Court. The country is still waiting for judicial opinion on the matter.<sup>27</sup>

The third area of concern is the situation where an opponent successfully challenges the winner in a Parliamentary election on grounds that the latter committed electoral offences. When the Electoral Commission calls for a bye-election in the constituency, the culprit is allowed to compete again for the seat. In our view, this is iniquitous. Such an offender should not only be disqualified from standing in the subsequent bye-election but in any other elections for a period of not less than five or six years as the court may deem necessary.

The fourth area of concern is the appointment and status of members of the Electoral Commission. In our view, the Electoral Commission and the way its members are selected need a radical surgery. Political party leaders have raised reform proposals in this area and their views ought to be accommodated so that the nation has an Electoral Commission which is truly independent and impartial and is trusted and respected by all sections of the community.<sup>28</sup> Article 12 of the Universal Declaration on Human Rights on Democracy is fairly clean. It provides that the key element in the exercise of democracy is the holding of free and fair elections at regular intervals enabling the people's will to be expressed. That will cannot be freely expressed if the elections are presided over and conducted by a partisan electoral commission. Persons who are not properly trained or who are easily intimidated to comply with the ruling party should never be employed in this role.

In the Republic of Tanzania, the chairperson of the Electoral Commission must be a Judge of the High court or of the Court of Appeal. In Namibia, members of the Electoral Commission must be approved by parliament and the chairperson must be a judge or former judge of the Supreme Court or the High court. In Mozambique, the Electoral Commission is truly democratic national and its impartiality transparent. The commission consists of twenty one members whose professional and personal qualities afford guarantees of balance, objectivity and independence in relation to all political parties participating in an election.

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27. The petition was filed in the Uganda Constitutional Court in 2009.

28. Compiled in a monograph.

A team reviewing the electoral law in Tanzania recently made a number of recommendations. These include one that advocates that members of the Electoral commission should be private men and women who are not members of political parties and whose professional and personal qualities guarantee balance, objectivity and independence. Nomination for appointment to the Electoral Commission should be proposed by political parties, civil organizations and professional associations. Before being appointed, each nominated candidate must first be vetted by a screening board to test their impartiality and transparency. The Board is to consist of the Chief Justice of Tanzania as chairperson. The Speaker of the National Assembly, The leader of the Opposition in the National Assembly, The President of Tanganyika Law Society, A nominee of the Committee of Vice Chancellors of Tanzania, Universities and the Chairperson of the Tanzania Permanent Commission of Inquiry, as members.

The screening board shall be free to publish the names of candidates and invite comments from members of the public.

It was also recommended that as in Ghana, Zambia and Zimbabwe, the right of a citizen to stand as an independent candidate should be recognized, respected and guaranteed by law. This conforms to the reality that a majority of citizens in any state do not subscribe to the philosophy let alone belong to political parties.

Secondly, it is blatantly undemocratic and authoritarian to deny the electorate the benefit of the wisdom and views of independent candidates.

Another area of concern is the preference given in almost all aspects of public life to the party of the incumbent administration. There is need to reform the rules and regulations governing this aspect of electoral law to ensure parity, fairness and level ground for all political party candidates in an election.

One of the handicaps against democracy and the freedom to vote for anyone capable is the monetization of elections. There must be a law against lavish spending by candidates and their supporters as if this country is available and only to governable by the rich people only.<sup>29</sup>

Similarly, sections 23 and 24 of the Presidential Elections Act need to be reviewed as they appear contradictory.

For instance, in section 23, it is provided that subject to the Constitution and any other law, every candidate shall enjoy complete and unhindered freedom of

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29 The East African Newspaper, 20–26 October 2003.

expression and access to information in the exercise of the right to campaign under this Act. However, aspects of section 24(5) contradict this provision.

The periods in which petitioners and respondents are given to collect evidence in support of their respective sides are too short to enable them gather all necessary evidence. The same applies to the time allowed to the courts to decide Election Petitions. The principle of enquiring into petitions by affidavits should be liberalized so that the court's discretion which is implicit in article 104 of the Constitution is not hampered.<sup>30</sup> Currently the system is restrictive and subject to abuse.

There should be a law that candidates and agents who commit electoral offences should be prosecuted and punished in accordance with laws of the land and in any event, the presiding judge in an election petition should have concurrent jurisdiction on the same found facts and evidence, to disqualify the guilty candidate and any one else who committed or was a party to electoral offences.<sup>31</sup> The right of recall of a Member of Parliament or local government councillor should continue to be suerated and constitutionally exercised.

#### **14.4 LACK OF LAW ENFORCEMENT**

The greatest obstacle to free and fair elections in Uganda is the failure by candidates, their agents and electoral officials to comply with the law. What is worse however, is that many of those same people deliberately manipulate, break or infringe electoral laws or cheat in the voting process in order to win seats or favour particular candidates for whatever elective post happens to be up for grabs. The saddest episodes are those where these electoral criminals are also rewarded with posts, promotion, bribes and praise.<sup>32</sup>

The findings and decisions of Ugandan courts and independent observers litter pages of history with examples of illegalities and malpractices in election and indicate quite convincingly that the problem in Uganda is not lack of adequate evidence that a host of presiding officers and their teams were biased in favour of incumbencies, for were incompetent and unqualified to fulfil their duties..<sup>33</sup>

We have stated elsewhere that Uganda has adequate laws on corruption, on abuse of office, on discipline of security forces, on intimidation, on vote rigging

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30 See the dissenting findings in both the 2001 and 2006 Presidential Election Petition.

31 See comparable Laws of the UK and India.

32 Examination of the Uganda Cabinets since 2001 reveal this phenomenon.

33 See Electoral Reforms in Uganda, 2008, Report for the Period of July-December, 2008, FHRI. Kampala.

and on vote stuffing but state organs and authorities have failed or unwilling to enforce these laws.<sup>34</sup> It is simply diversionary that every time we fail in the endeavour to enforce the existing laws, we invoke the red herring and somehow cry out that those laws need to be amended or reformed. The truth of the matter is that we all know where the faults lie but many of us are afraid to say so let alone come in the open and oppose or fight the failures and deliberate sabotage of our Constitution and laws.

In mythology, it is reported that all the mice and rats of the world held an important conference in which the grave matter of how to prevent the members of the mice and rat races being devoured at will be the mighty cat. On a brilliant proposal, it was resolved unanimously, that the cat should be belled so that whenever it is passing the noise of the bell will warn the mice and rats to go into hiding. There was great applause and jubilation at this revolutionary proposal. As the delegates happily begun to leave the conference hall for home they were rudely interrupted by a voice from one delegate who shouted that one matter had not been raised on resolved, namely who was to place the bell on the cat. "There was deafening silence. No one said anything. No one volunteered to bell the cat. The cat has remained unbelled since that great day. It continues to devour and maim mice and rats at will."<sup>35</sup>

In our opinion therefore, barazas, assemblies, rallies conferences and seminars are desirable and most welcome to examine and come up with resolutions about why governments in Africa have failed miserably to implement and enforce their good and adequate constitutions and laws enacted or made to protect and sustain free and fair elections to allow democracy, the rule of law, human rights and constitutionalism to work and flourish on the continent. The NRM government of Uganda came into power under a wave of popularity ushered in by the principles and ideas of the Ten Points Programme. To day, it appears to be an embarrassment to many NRM leaders and supporters of the political parties that are operating in Uganda to mention those Ten Points.<sup>36</sup>

Most leaderships of political parties of all shades and opinions in Africa have let down the people by wallowing in the glories and deeds of the distant past,<sup>37</sup> and forgetting or neglecting the dire needs of the present.

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34 *Supra.*

35 In myths and methology anony.

36 Compare current statements of the leaders with what they said in the 1980s.

37 In 2010, they appear more divided than the ruling party: New Vision., 11 January 2010.

They have not proved to their respective electorates that they are serious contenders for the office of government. Many of their statements are not about a new order to replace the incumbent government parties but lamentations about how long the latter have deliberately kept them out in the cold. History is not on their side. No government surrenders its power. It is wrestled from it by legitimate and attractive opposition both from within and outside it in such a way that the nation is attracted to switch its support and allegiance to other political parties or forces which have clear and well defined philosophies. It has to be a philosophy that satisfies the people's hunger for change and for better management of their affairs. In Uganda, the NRM and FDC which have proved to have considerably more support in the country than any others have not, in our view, effectively projected a desire to change their long serving leaderships or methods of work with all the consequential handicaps. The other parties appear to be led by men and women and motivated by the ideals of the last century. It is high time Africans woke up to these realities.<sup>38</sup>

In any event, what we need in Uganda now is not new laws but the implementation and enforcement of the existing ones. We should concentrate more on why and how we can enforce our existing laws and not on how to multiply them.<sup>39</sup>

#### **14.5 REFORMS ARE ONLY SECONDARY**

Reports from observer groups have highlighted the challenges in the Uganda electoral law and made recommendations to review them as to suit a multiparty system. Against the background that government had failed to amend the electoral laws, the opposition parties (FDC, UPC, JEMMA and CP (why not DP?) formed an inter-party co-operation to present a shared voice on many issues in preparation for the 2011 elections.<sup>40</sup> One of the outcomes of the inter-party cooperation has been the presentation of the proposed electoral reforms to the Speaker of Parliament. It is not only the inter-party group that has felt that there is need for electoral reforms in Uganda. Others have done so. NGOs, international observers and political activists have echoed and reechoed the same cry that the Uganda electoral laws need reform.<sup>41</sup>

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38 Most of the men and women at the top of political party leaderships in East Africa are those who participated in the independence struggle in the 1950s and 1960s.

39 Direct answers to this question appear to be rare either because of fear or self – incrimination.

40 Reaction to this co-operation has been mixed. See Monitor 31 January 2010.

41 Especially foreign envoys. New vision 3 February 2010.

While we agree that certain aspects of the electoral laws need reform, we fundamentally disagree with most people who think that our electoral laws need overhaul or drastic reform. As already observed, an analysis of our basic law, the Constitution of Uganda and all the electoral laws that are subordinate to it appear to us and any other keen observer who cares to read and internalize them, to be more than adequate to sustain an impartial, transparent, fair and democratic electoral process that can produce and ensure election results which reflect the will of the people.<sup>42</sup>

We are fortified in this belief by all the judicial inquiries and pronouncements that have been held and published from election to election since elections became one of the ways and the most popular for change of government.<sup>43</sup> In every judgment, in every opinion on Election Petitions, the unanimous decisions of the courts and impartial reports of observers give the coordinated choruses of violations, infringements, non-enforcement of and blatant failures to implement and enforce the laws. The Constitution and the electoral laws of Uganda provide for an impartial, transparent and fair electoral process.<sup>44</sup> Yet, the implementers and enforcers of the Constitution and these laws, their rules and procedures have persistently failed to live up to the expectations and observance of the law.<sup>45</sup>

Partisanship of those who organize, oversee and supervise elections has distorted both the letter and spirit of the law. Personalised governance, corruption, bribery and the desire to retain personal office, fortunes and favour at the expense of national interest have been the prime movers of electoral malpractices, intimidation, corruption, bribery and robbery of votes.<sup>46</sup>

In our opinion, the cries for electoral reforms are misplaced and constitute a red herring. The real issue should be the consideration of why our Constitution and electoral laws are flouted frequently and sometimes with impunity. However, instead of facing these dilemmas directly, we parade electoral reforms. Admittedly, some of the issues identified by reformists are legitimate, but in our view, they are not the most fundamental in evolving a fair electoral process. Electoral cases have been lost not because there are gaps in the law, but because the actors in the

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42 Interestingly in many Parliament Constituencies, the majority of results are accepted as having been fair.

43 Stretching back to the Ancient Greeks.

44 Eg. section 41 of the Presidential Elections Act.

45 See the scathing criticism by the justices of the Supreme Court in Presidential Elections Petitions of 2001 and 2006.

46 *Ibid.*



electoral processes violate the law. It is not that there was no law at all. It is because the existing laws were ignored or violated.<sup>47</sup>

#### **14.6 WOMEN FAIR WORSE UNDER ELECTION LAWS**

The theme of debates these days, “The current political environment and women’s participation in politics” is an ideal and correct subject for discussion. Since the NRM government came into power, Uganda has been sensitized and reminded to give women the voice and the right to fully participate in the governance of the country. Women tend to outnumber men in most countries and Uganda is not an exception. The question that arises is why have the women continued to lag behind men in their quest to participate in governance. The answer is partly because of the culture and traditions which generally impede women’s roles in society and the inherent nature of woman *verses* woman.<sup>48</sup>

Many women fail to distinguish between support for national issues and personal interests of political leaders they happen to support even if these women have some opinions of their own. Many women simply support the incumbent leader of the nation, or the political party of their choice without expressing and sticking to contrary views which may be superior in advancing their interests or those of the nation. It should also be noted that not all male politicians or leaders originate and pursue gender and desirable national policies, yet much of the electorate which includes women continue singing loudly the songs of those politicians and leaders whether right or wrong without any critical analysis of those leaders’ propensities.<sup>49</sup>

In a forthcoming book “*Defying the Odds*” this author has observed: “I have known and worked under politics since my school days to be able to state that players in the game of politics come in all shapes, sizes and characters. They can be anything from honest and principled, to selfish, tricksters, weird, shifters, treacherous, procrastinators and, if need be, killers without any humanity or remorse in them.”<sup>50</sup>

For a few extra dollars, a friend of a life time will be betrayed. For less, the interest of the nation and the welfare of fellow citizens will be compromised or

47 See Matembe Miria: RK: Gender, Politics and Constitutional Making in Uganda. Fountain Publishers Ltd 2002, Kampala. Ch 9.

48 Speeches of the NRM party women members of the 8th parliament as reported in Hansard, 2001–2008, also see Matembe, op. cit. page 207.

49 Generally see Ngozi Beatrice in Constitutionalism in East Africa pages 30–65, Fountain Publishers, Kampala.

50 New Vision 11 December 2003.

surrendered. In each instance, those in the know will either congratulate or applaud the culprit for such wonderful personal fortunes gotten out of treachery or will keep conspiratory silence. This is Africa where generally speaking, the typical politician, bureaucrat or public servant, tends to act and behave, not according to what is lawful, right and fair but to what are personal interests or are conceived to be the interests of the ruling oligarchy.<sup>51</sup>

Should a conflict arise between the interests of the nation and the wishes of the ruling party or its leaders, the latter must prevail at all costs. The apparent contradiction and distortion of priorities, is not of patriotism or misconceived public duty but a deep-rooted and compelling urge to survive and prosper personally, retain or better one's public position or accumulate property often at the expense of others. National laws and principled policies are ignored or infringed with impunity in the visible quest to please and serve one's masters who happen to wield the whip of political power at any given time.<sup>52</sup>

The divergence from what is right and legitimate to exhibition of loyalty beyond the call of duty has in Africa led to what can nowadays be called personalised government.<sup>53</sup> The new philosophy in governance which has slowly but steadily gained credence is the assumed duty to serve one's leader and not one's country. The preferable Idea that a true leader serves the nation first, his constituency, family, party and self last, has in Africa been turned into reverse.<sup>54</sup>

Indeed, it is not an exaggeration to suggest that whatever is designed or perceived by supporters as interests of the leader invariably becomes and is adopted as the interest and country's policies. Any public official or citizen who dares question the principle of placing the leader's wishes second to some other national preferred priorities however vital they may be, immediately incurs the wrath of both the leaders and their supporters.<sup>55</sup>

Thinkers, compatriots and nationalists who dare believe that national interests are also important are labelled rebels, traitors, if not subversive.<sup>56</sup> They stand the

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51 Monitor 23 March 2003.

52 See New Vision newspaper: 7 February 2006.

53 See the Debate between the author and President Yoweri Museveni reported in the media, 2006 Parliamentary Retreat, at Africana Hotel, Kampala.

54 See: Kanyeihamba, GW: *Commentaries*, et. page 150.

55 Kanyeihamba GW and Dr J, Oloka Onyango, having addressed a Parliament session on the duties of an MP to the Nation were branded by the agents ruling leaderships of disorientation.

56 This has occurred in Uganda, Kenya and Zimbabwe on more than one occasion in each country: See: Committee of Experts on Constitutional Law in Kenya, 2009. See proceedings of a Workshop entitled Preventing a "Kenya" from happening in Uganda, HRPC Makerere University, Kampala 18 February 2010.

risk of ridicule and become liable to be disciplined or expelled from the royal palaces of the rulers. Nowadays, it is an accepted reality in Africa that whatever is designed or perceived to please the leadership of the country and supporters is quickly translated into national policies of survival which must be implemented at once. This may partly explain why in Africa, constitutions which had been adopted after long and painful exercises, are easily abrogated or amended when they are perceived to be obstacles to the realization of new personal interests of the ruling oligarchy.<sup>57</sup>

Political leaders who had been well known for fighting hard to establish free and democratic governments for their people start indulging in threats and boasts that only God can now remove them from political power<sup>58</sup>. Should free and fair elections for which they fought and saw comrades die, favour their political rivals by the dictates of the constitution and choice of the electorate, they will not accept political defeat, but will immediately recommence armed conflicts and civil wars simply to regain or retain power. Not only do constitutions change beyond what amending provisions had permitted, but ruling political parties dramatically change beyond the pale of human intelligence in pursuit of personal wealth, political power and comfort.<sup>59</sup>

It is only when women have reached a stage of political maturity to classify the rulers and politicians of this world for what they are rather than what they say, and work with the honest and principled of them and others that women's participation in politics and governance will be meaningful and a reality.

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57 Review: in Kenya: 17 November 2009, the Uganda Constitution (Amendment) Act 2005.

58 Robert Mugabe of Zimbabwe 2008. Election and appointments on merit which were the cardinal principles of governance under President Yoweri Kaguta Museveni became obsolete by 2006.

59 Proceedings of the CA 1994 and 1995 and of Parliament, 2006–2009.

## CHAPTER FIFTEEN

### A GAZE IN THE FUTURE

In this concluding Chapter of the book, the author wishes to share with the reader his passion for Uganda, his motherland and some home truths about its future.<sup>1</sup>

In human history, it is always the past and the present which shape and are the determinants of the future. In political history, every government whatever its classification and motivation, destroys itself within by the misdeeds of its leaders and supporters. It is a truism of human governance that no organization party or its leaders last forever in government. Soon or later, they are extinguished leaving behind them successors, descendants and loved ones, who must soon, and not later, have to answer and suffer or, as a rare occurrence, benefit from the legacies of their predecessors and ancestors. It is a cliché, universally acknowledged that power corrupts and absolute power corrupts absolutely. It is a factor of power that those who have or exercise it and those who support them are often blinded from the truth and fail to contemplate that one day that power will be lost to them and expose them to the unacceptable consequences of their policies and decisions.<sup>2</sup>

One of the most revealing books about Africa's past, present and future is "*The Shackled Continent*" by Robert Guest, which should be made compulsory reading for every African child, adult, student, politician, scholar and leader. In the book, Guest makes some interesting but vital statements for the true understanding of Africa's under development.<sup>3</sup> He states:

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- 1        The author has been in the struggle for the liberation of his country and establishment of good governance since the early 1970. See: his first book: *Constitutional Law and Government in Uganda*, op.cit, earlier edition of this book, 2004 was a participant with President Yoweri Kaguta Museveni in the Lusaka Uganda Liberation meeting, 1978, in the Nairobi Consultancy Conference, 1978-1979, Moshi Conference 1979, has been Minister of Justice and Attorney General twice, 1979, and 1989-1991, Senior Presidential Advisor, 1991-1997, Justice of the Supreme Court since 1997, amongst other services has written & spoke on the subject on many occasions.
  - 2        Mamdani Mahmood: *State and Civil Society in contemporary Africa: Reconceptualising the Birth of state Nationalism and the Defeat of popular movements*, in *Africa Development*, Dakar, 1990, pages 47-70.
  - 3        Published by: Pan. Also See: *Mission to Freedom, Uganda Resistance News 1981-1985*, NRA Publication, Kampala, 1990.

“The median African Country has a gross domestic product (GDP) of only £2 million, roughly the output of a small town in Europe. Not even Africans want to invest in Africa – about 40 percent of Africa’s privately held wealth is held offshore.”

A more likely link between climate and poverty is that hot countries are home to all manner of diseases that affect people and their livestock. Africa has the worst of them: malaria, yellow fever, rare but deadly viruses such as Ebola and a host of energy-sapping parasites. Another popular culprit for Africa’s ills is history. Many Africans argue that the continents’ current problems spring largely from the traumas that Europeans visited on Africa such as slavery. Slavery was not introduced to Africa by Europeans. Arab slavers arrived earlier than Portuguese, British and French and Africans were enslaving each other centuries before even the Arabs arrived. In fact, slavery was common in most parts of the world before the British started to it, and Africa was no exception. By one estimate, between 30 and 60 percent of Africans were slaves before Europeans arrived. The shipping of slaves to America could be seen as an extension of Africa’s internal market. Many African chiefs saw no wrong in selling slaves to European traders and some even protested when the trade was banned. Of course, slavery is evil, but it is implausible to blame it for all African’s modern problems. Korea for example, was annexed by Japan in 1910 and freed only when America dropped atomic bombs on Hiroshima and Nagasaki. While they ruled Korea, the Japanese colonialists tried to destroy the local culture and to cow the population into servitude. They banned the Korean language, barred Koreans from universities and systematically desecrated the country’s most sacred hilltop shrines. They shipped young Korean men to Japan to provide forced labour in mines and munitions factories.

They drafted more than 100,000 Korean women, some as young as twelve, to serve as sex slaves in military brothels and the ordeal did not end with liberation. Soon after the colonialists left, Korea was plunged into a civil war that cost a million lives and split the country into two. With such a traumatic history, Korea would have every excuse for failure. But the southern capitalist part which was as poor as Ghana in 1953 is now twenty times richer. Taiwan, Hong Kong, Malaysia and Singapore – all ex-colonies, are all now affluent and peaceful. So are Ireland, Australia and Massachusetts, Africa’s colonial legacy, though influential, cannot explain all that is awry to-day. Grieving for past wrongs is natural and human, but it can also provide an excuse for despair. Put differently, countries that prosper tend to do so by their own efforts, but by and large, the route to prosperity is through thrift, hardwork and finding out what other people want in order to sell it to them.”<sup>4</sup> Later the author observes:

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4 *Ibid.*

“The impression I have gained from talking to combatants is that a lot of wars are about economics. Poverty seems to breed war, especially civil war. Rich democracies occasionally use force to settle foreign disputes, but they almost never suffer armed conflict at home. Poverty and low growth are often symptoms of corrupt, incompetent governments. Not only does poverty breed war, but war exacerbates poverty too. So Africans will have to solve their own problems. To stay peaceful in the long term, countries need governments that serve their citizens instead of robbing them and which can be removed without violence. In 2001, some 18,000 delegates gathered to trumpet their grievances and demand remedial measures at a UN World Conference Against Racism in Durban. The (conference) highlighted two big problems. First, the tendency of African elites to spend other people’s money on themselves – and, second, their tendency to believe that Africa’s problems are someone else’s fault.”<sup>5</sup>

The constitutional and political events discussed in this book and the manner and style in which the discussions have been conducted were intended to guide and not blind or enrage Ugandans and their leaders in facing future events as they embark upon their destiny and governance in the third millennium.

The Banyankore-Bakiga have a saying that “*okukunda niwe akuhana*” or in English, it is he or she who loves you that shows anxiety about your work and has the confidence to criticize you in the belief that you will listen to and internalize that criticism in the hope that you will do things differently and better. As I listen to critics of the National Resistance Movement government from both within and outside its ranks, with little if any knowledge of that criticism finding its way to the top leadership of the Movement I recall another saying in the same culture. That other saying is to the effect that “*Entumwa teitwa*” or in English a conveyer of bad news should not be killed since it is not he or she who is the maker of that bad news. Having perilously traveled through the afore mentioned two sayings, I have so far refrained from indulging in the antics of yet a third saying of the Banyankole-Bakiga, which is that, “*Kwohana owanyu yayanga, neiwe oza omubasheki osheka*” or in English, after you have cautioned a relative against indiscretion and that relative persistently ignores you, you are at liberty to join the rest of the world who are laughing at him or her for that indiscretion, and also laugh.

When I met President Yoweri Kaguta Museveni in 1986, just before he appointed me Minister, I presented him with a gift. The gift was a piece of paper on which I had written the following words: “*experience shows that great and most successful world leaders are those who surround themselves with and consult constructive critics and not merely surround themselves with fanatical supporters.*” It is not often appreciated that critics and supporters of a leader can both be that leader’s admirers. The President promised that he would keep that present amongst his treasured

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5 Conference Resolutions.

possessions. It can be said that to some extent, that part of the time, the NRM Administration has epitomized the message in the gift I gave the President.<sup>6</sup>

At the same time, it is a fact of leadership that the longer in office a leader stays, the more he or she forgets these common clichés and courtesies. In tiredness, most leaders find it easy to accept unqualified praise on which nothing needs to be done than criticism upon which some remedial action is expected. The acceptance of criticism becomes problematic when senior officials and cadres who have direct access to or who interact with those leaders more intimately perceive constructive criticism as hostility to themselves or their performance as a result of which they endeavour to exclude criticism from the ears of the leaders and instead feed them on lies and deception while paying them false homage.<sup>7</sup> One observer of the political scene in Africa has astutely put it thus: “Leaders become a liability when they grow old. Ten years in power, you are a veteran. Fifteen, you are an elder, Twenty you are nearly extinct, and twenty plus, you become a liability”.

In order to understand and appreciate the politics, laws and practices observed in Uganda for the recognition and protection of democracy, freedom and human rights, it was necessary to examine the social, political and constitutional development of the country from the colonial to the present times.<sup>8</sup> Most countries fall into the definition of a state with a civil society that prides itself in constitutionalism. A civil society in the context of constitutionalism is of a given state’s independence to determine its own governance, policies and destiny without an overriding exertion of influence from either intrinsic or extrinsic forces, whether military, religious, monetary or foreign. It is a society that has, as far as possible and practical, minimum conscience of national ethos and patriotism and with a people who share a destiny and common goals.<sup>9</sup>

That such a society hardly ever existed in Uganda could not have come as a surprise to many people. As already noted, Uganda, like so many other states of Africa, is a creation of the colonial and imperial past.<sup>10</sup> Previously composed of autonomous and semi-autonomous communities of kingdoms, tribes and clans, Uganda came to be incorporated and placed under one single administration by an

6 It is generally observed that the NRM government has shown greater tolerance of its critics than any previous government in Uganda. See: scathingly critical articles in the Monitor News paper since its inception.

7 Sunday Vision, 30 March 2003.

8 Martin, Phyllis M and O’Meare, eds. Africa: (3 ed). pages 364–390.9 Professor J Oloka Onyango reported in New Vision of 20 June 2006.

9 Curry James: the Search for Africa: A History in the Making, London, opcit. page 20.

10 See: Korn David A: *Exodus within Borders*. Brookings Institute Press, Washington DC, 1999, pages 8–10.

imperial edict of the British Empire. Thereafter, it came to be regarded, for all intents and purposes as one unitary state recognized as such by the international community and having one sovereign government.<sup>11</sup>

Amid a great deal of confusion, African culture and traditions including the best among them were abandoned or despised in favour of the new imported ones. The transformation of the Ugandan society that emerged came with such misconceptions, defects and scars that were to lead to traumatic experience in political and constitutional history. Whereas the colonialists had themselves developed to a stage of governance which admitted and glorified the concepts of freedom, democracy, right to self-determination, the sanctity of life and belief in human rights, these were seen as luxuries to the colonial peoples and they were therefore denied of them.<sup>12</sup> Thus, when Uganda was first declared a Protectorate, its colonial rulers imposed the system of indirect rule with the overriding consideration of serving the British Empire as a whole. They did not encourage the people of Uganda to respect the basic rights and fundamental freedoms of the individual or the notions of democratic governance. Instead they insisted upon the observance and reverence of the English culture, ideology and mannerisms. They taught the English language to civil servants, leaders and chiefs with whom the colonial masters were in regular contact. The rest of the masses were left to their respective areas and indigenous customs. The traditional rituals and customs continued unabated except where they were occasionally detected and declared to be repugnant to Christianity and natural justice as perceived by the colonialists.

The chiefs who were given authority to govern the masses were not in the old mould of the African chief and his culture and traditions. Whether born or appointed, these new native rulers came to be shaped in the images conceived, sometimes wrongly, by their colonial masters as necessary and when left alone to rule the people, some of these chiefs did so with burdensome indulgence and cruelty.<sup>13</sup> Thus, up till the advent of independence, the notions of freedom, democracy and the rule of law were rudimentary and hardly known by most Ugandans. With independence won and received, some of the new Ugandan leaders took advantage of the peoples' ignorance and utilized their new political power unscrupulously to divide the people on tribal, religious and other sectarian grounds. Tribal, religious and sectarian sentiments are like gunpowder. While unarmful by themselves, if mixed with some other catalyst like politics, they can

11 See: Kanyeihamba GW: *Constitutional obligation in Developing Countries*, op.cit. pages 59-63.

12 Bennett, TW: *Human Rights and African Customary Law*, Juta and Co. Ltd. 1995.

13 Bennett: *Human Rights*, etc. op.cit. *ibid*.



cause political explosions and lead to untold harm and misery. That is what happened in Uganda.<sup>14</sup>

The conflicts which have been described were often fuelled by military misadventures, leading to the slaughter of innocent citizens and everyone else caught in the crossfire that ensued. Thousands of citizens were forced into exile. Innocent social, political and economic activities were driven underground. Persistent mis-governance of the country, coupled with the resulting acute poverty of the population led to the undermining, if not the destruction of the moral fabric of the nation and to the undermining of the national institutions such as the army, the police, the judiciary, religion and parliament.<sup>15</sup> Corruption, deception, decay, neglect of the national infrastructures and institutions, the embezzlement of funds and looting, wanton damage and destruction of public property became accepted as normal.<sup>16</sup> Looming large on the horizon of every step of a walker or traveler in Uganda, in an office or home, was always the frightening personal and political fear that the next step or breath would be one's last.<sup>17</sup>

The misuse of political and military power led to expulsion of some non-citizens and self imposed exile of many citizens, taking with them some of the most capable and educated people who would have served Uganda best as far as its governance, economy and the well being of its people, were concerned. Thereafter, a reign of terror and trickeries for survival came into force. For most Ugandans, survival depended on the tricks and manipulations of the system of government and those who controlled it and exercised authority.<sup>18</sup> It is against this background that President Museveni and the National Resistance Movement government came into power and succeeded in restoring normalcy and establishing new dimensions of hope, respect for the person and individual liberty and unity in most of the country.<sup>19</sup>

With the work of the Constitutional Commission and the Constituent Assembly, buttressed by ideas and decisions proposed, debated and made by national and local legislators and councilors, the 1995 Constitution, inspired by President Museveni, and supported by the Uganda People's Defence Forces, and

14 Generally, See: Mutiibwa, P: *Uganda since Independence: A story of unfulfilled Hopes*; Fountain Publishers, Ltd. Kampala, 1992.

15 Kasozi ABK. *The Social Origins of Violence in Uganda*, op.cit. pages 17-25.

16 Kasozi, HBK; op.cit. pages 20-22.

17 New Vision, 2000.

18 Mutiibwa P: *Uganda Since Independence: A Story of the Unfulfilled Hopes*, op.cit.ch.4.

19 Oloka-Onyango Joe and Tindifa Sam, *Constitutionalism in Uganda: Report on a Survey and Workshop of Organised Groups*: CBA, Working Papers, Kampala.

democratic institutions and forces in the country, became a new landmark in the liberation of the country from the shackles of mis-governance.

It was the view of the government at the time that until peace in the country was fully restored and there was the rule of law, political stability and respect for human rights, it would have been meaning-less to discuss democracy and the contents of a national constitution. That the 1995 Constitution was effectively discussed throughout the length and breadth of the country and eventually adopted and promulgated by a largely directly and freely elected Constituent Assembly is a great credit to the leadership of President Museveni and the work of the National Resistance Movement.<sup>20</sup>

The National Objective and Directive Principles of State Policy which underscore the themes of the justiciable clauses of the 1995 Constitution, provide that the state shall be based on democratic principles, which empower and encourage the active participation of all citizens at all levels in their governance.<sup>21</sup> Moreover, all the people of Uganda shall have access to leadership positions at all levels in accordance with the provisions of the Constitution.<sup>22</sup> These are some of the objectives and principles which are intended to guide all organs and agencies of the state, all citizens, organizations and other bodies and persons in applying or interpreting the Constitution and laws of Uganda and its policies and in establishing and promoting a just, free and democratic society. The Constitution further provides that all public offices shall be held in trust for the people. All persons placed in positions of leadership and responsibility shall, in their work, be answerable to the people. Lastly, the Constitution provides that all lawful measures shall be taken to expose, combat and eradicate corruption, abuse or misuse of power by those holding political and other public offices.<sup>23</sup>

These should now be permanent features of constitutionalism for which President Museveni and the NRM must be given credit. That credit is not limited to historical perspectives of the Constitution. The Constitution is an ambulatory instrument which moves with the country's growth and development. Criticisms which are levelled at lack of implementation or misapplication of some of the principles ought to be welcomed by everyone who believes in democracy, human rights and the rule of law. One of the major reasons for making and having a

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20 Except in the Northern Region of Uganda, (specially Gulu and Kitgum), where instability and violence have remained intermittent since the coming into power of the NRM, Periodical breakdown of Law and Order and insurgencies have occurred in the Karamoja-Teso region and Western Uganda.

21 Political Objective II(i).

22 Political Objective II(ii).

23 Accountability XXVI(iii).

constitution is to ensure that principles and practices of freedom and democracy are entrenched in an ordained instrument because freedom and democracy are concepts, which are very important for the welfare and governance of the people. Democracy encourages the evolution of a government by the people in whom the supreme power is vested and that power is exercised either directly by them or their elected representatives, under a free and regular electoral system.<sup>24</sup> Further, the Constitution provides for legitimate and effective government, which operates within the limits of that same Constitution. After its promulgation in 1995, the Uganda Constitution became a peace treaty intended to unite the population, which had hitherto been divided by conflict. The same Constitution acts as a compromise between conflicting demands and interests in Uganda and endeavours to accommodate ideas and concepts from different sections of the country.

The Constitution involves a spirit of give and take, with the idea of encouraging the majority to listen to minority views and if need be to accommodate or cater for those views. The Uganda Constitution enables every part of the country to participate in government. By accommodating and providing for all the matters aforesaid, the Uganda Constitution becomes a social contract with the purpose of creating a united and cohesive nation. It is worth noting that beliefs of the dominant political forces of the day are always crucial in shaping the manner in which the Constitution is framed and implemented.<sup>25</sup>

Emphasis has been placed on the political forces of today because tomorrow's forces are unknown. Presently, some research findings suggest that if there were to be an election now, the National Resistance Movement and its allies would easily obtain a large majority.<sup>26</sup> The movements' supporters may conclude from this that they therefore need not worry about the rights and fortunes of the multipartysts. Such an attitude would constitute a grave error. For today's minority may become tomorrow's majority. No one political organization or one set of leaders can remain in power or office forever. In 1980, a handful of brave Ugandan nationalists led by Yoweri Kaguta Museveni committed themselves to fighting against misrule by force of arms the Obote II government which had come to power under disputed elections was the target. By the time the civil war ended, Museveni and the NRM had been joined by hundreds of thousands of other fighters and today they are claimed and supported by millions of Ugandans. There is an advertisement in one of the offices at the Kampala International Conference Centre with the

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24 Article 1(4).

25 Generally, See: Ibingira G: *the Forging of an African Nation. The Political and Constitutional Evolution of Uganda From Colonial Rule to Independence, 1894-1962.*

26 *The Monitor Newspaper* of 6 June 2002.

caption that if one thinks that one is too small to make a difference, one should stay in a closed room a night with a tiny single mosquito.<sup>27</sup>

For many African countries, the period between the grant or acquisition of independence by the colonial powers and the struggle to establish some kind of national ethos and democracy, there accumulated such hatreds, suspicions and mistrust between the peoples inhabiting those countries that the problems which arise from such feelings are not always solved by the dictates of democracy alone. A great deal of compromise and co-operation amongst opposing political forces may require special consideration. President Yoweri Museveni and the NRM recognized this necessity and catered for it in the broadbasedness of his early governments and in the balancing acts of accommodation and representation. As this necessity began to lose meaning and practicability, national peace and stability became shaky. To say that such a development does not augere well for the healthy growth of Uganda is not to err, but to open a useful debate as to what Ugandans should do next.

In the developing countries of the world, the distribution of and access to national wealth and resources are as important as the maintenance of law and order and the political reality on the ground is as important as legalism and constitutionality.<sup>28</sup> Consequently, the concentration of power which allows access to that wealth and those resources in the same people for a long time eventually means that it is those people, their relatives and friends who benefit to the exclusion of others. This is likely to be a source of resentment and possible future conflict in society.

In the developed countries, constitutional and political conflicts of the nature examined in this book are easily absorbed without seriously damaging the equilibrium existing between the organs and institutions of government.<sup>29</sup> In the developing states such conflicts degenerate into clashes amongst those organs and institutions. In the political, economic and social crises, which tend to characterize the developing world, there can be little doubt that problems of constitutional stability and development will increasingly bring pressure to bear upon the communities and governments concerned.

In Uganda, it has been quite obvious, that despite criticisms here and there, a monolithic organization starting off by accommodating most Ugandans and

27 In the City Centre Business Bureau, Serena Hotel, Kampala.

28 See: Kanyeihamba GW: *Constitutional Obligations in Developing Countries*, op.cit. page 65.

29 cf. *Madzimbamuto v Lardner-Burke*, [1969] IAC 645 with *Burmah Oil Co. v Lord Advocate and the War Act*, 1965, op.cit.

political activists in a broadbased administration can work. In other countries, governments may be by delegations from all sections of the country to cater for the fears and aspirations of everyone.<sup>30</sup> The idea of winner takes all or of holding provocative political rallies and feasts in areas where there were closely contested or rigged elections should be discouraged or tinged with moderation. In cases of sharp differences of political opinions, predetermined rules of constitutionalism should be entertained with restraint, justice and transparency.

There is need to cultivate a new culture of understanding in governance, that no one group of leaders, let alone one leader, has the monopoly of wisdom or intelligence or knowledge to originate, sustain and accept electoral, judicial and political defeats and loss of office and power as proper attributes of democracy and constitutionalism. The system of public administration needs to guarantee the lives and happiness and reorganise the contribution of previous leaders in such manner as will discourage those leaders from clinging to power as the only means of protecting themselves, their families and supporters from persecution and possible elimination, should they be replaced by others.<sup>31</sup>

The solutions to some of the problems discussed in this book will consist, in part a culture of tolerance on the part of the ruling groups, opposition parties, and the governed, alike and a constant review of the constitutionality of government actions and decisions whether they are of Parliament, the Executive or the Judiciary. The knowledge that these phenomena have characterized much of governance in Uganda since 1986, is to a large measure a success that must be attributed to President Yoweri Kaguta Museveni and the National Resistance Movement.

In the early 2000s, the NRM leadership reluctantly agreed to accept multipartism in the country and after a number of issues had been litigated upon, Presidential, Parliamentary and Local Government elections were held under multipartism as conceived and permitted by the NRM leadership. The organization and conduct of those elections were as controversial as could be imagined. In the concluding part of this chapter, we shall discuss the consequences through a dialogue in writing between, President Yower Museveni, this author and others.<sup>34</sup>

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30 See: Mamdani M: *Uganda in Transition: Two years of NRM/NRA: Third World Quarterly*, Volume 10 number 3.

31 Kanyeihamba GW: *Constitutional Law and Government in Uganda*, op.cit.

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# CONSTITUTIONAL AND POLITICAL HISTORY OF UGANDA

FROM 1894 TO PRESENT

G.W. KANYEIHAMBA

In May, 2002, the government and the Chief Justice of Kenya, the Kenya section of the International commission of Jurists and the Kenya constitutional Review commission invited **Hon. Justice Dr. G.W. Kanyeihamba** to head a Panel of Eminent commonwealth Judicial Experts to investigate, review and recommend measures for restructuring and improving the Kenya Judiciary. The Panel finished its work and reported in record time. After receiving and internalising the report of the Panel, the Panels' Kenya hosts wrote on 3rd June, 2002, a letter of gratitude to Justice Kanyeihamba and his colleagues, thus, "On behalf of the International commission of Jurists (Kenya Section) and indeed the legal profession and people of Kenya, let me register our profound gratitude for the remarkable task that you undertook for this country. You adopted the very tedious schedule we had proposed for you and carried it out with diligence. And you produced a comprehensive and concise report which has catalysed immense positive debate in the country but also moved our reform agenda forward by several steps.

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