

9th August, 1989.

The Secretary,  
Uganda Constitutional Commission,  
P.O. Box 7272,  
KAMPALA.

FUTURE CONSTITUTIONAL PROVISIONS ON  
THE PUBLIC SERVICE.

1. Definition of the term "Public Service".

Whilst checking on the succeeding provisions in the above respect, I was intrigued by the definition of the term "Public Service" appearing under Clause 106 of the Second Schedule to the Uganda (Independence) Order-in-Council of 1st March 1962 which states as follows:-

" 'the public service' means.....the service of the Crown in a civil capacity in respect of the government of Uganda".

The above definition was retained under Clause 131 of the Uganda Constitution, which ushered in Independence on 9th October, 1962, and appeared as the Schedule to the Uganda (Independence) Order-in-Councils, 1962 (Statutory Instrument 1962 No. 2175).

2. The definition was amended under the Constitution of Uganda (First Amendment) Act No. 61 of 1963 as follows:-

" 'the public service' means .....the service of the Government of Uganda in a Civil capacity".

3. Under the 1967 Constitution it reads as follows:

" 'public service' means.....service in any civil capacity of the Government of Uganda, any District Administration or Urban Authority,"

and is construed as extending to "teachers in the Public service." In the latter respect perhaps an attempt was made to answer the long outstanding question as to whom was the employer of teachers.

4. Whereas the earliest definition revolved around "service of the Crown in a civil capacity" the current definition, borrowing from the 1962 Constitutional of Uganda (First Amendment) Act of 1963, revolves around "service of the Government of Uganda in a civil capacity." As a layman I cannot answer for myself the question whether the Crown can be said to have been entirely superseded by the Government of Uganda. My problem here is that I tend to personally equate the Government of Uganda to Her Majesty's Government where Her Majesty, the Queen symbolises the British Crown more or less in a situation paralleling the one where in our case we had constitutional non-executive Head of State up to 1966.

5. In the circumstances, I strongly recommend to the Commission to seriously consider the definition of the term "Public Service" with a view to coming up with a more suitable revised definition. What should be avoided at all costs is to continue having the existing provision which directly or indirectly encourages the government of the "day" to manipulate the civil service in the mistaken belief that the public service owes its existence to that government rather than the State of which the government of the day is merely a part albeit an important one. On the other hand public officers should be made to acknowledge that their first duty is to the country as a whole and that, therefore, they are obliged to respect the government of the day only so long as the latter is de facto if not de jure representative of the entire people of Uganda and should act as the eyes and ears of the country as a whole in guarding the public interest.

6. With regard to the UN staff, Article 100 states in part "The Secretariat shall comprise a Secretary General and such staff as the Organisation may require ..... "leaving no room for doubt as to where the staff owes its allegiance. The State of Connecticut (U.S.A.) Personnel Act says "State service means occupancy of any office or position or employment in the service of the state.....for which compensation (salary) is paid". Thus the employees of the State of Connecticut are left in no doubt at all in this matter. I wish I had more documentation on this aspect; unfortunately this is all I have but it is very revealing indeed.

## II. SCOPE OF THE PUBLIC SERVICE.

7. As can be gathered from the quotes at the beginning of this paper, the scope of the public service from the Colonial times up to 1966 corresponded to what we continue to popularly refer to as the traditional civil service meaning the normal Ministries and Departments constituting the basic executive arm of the government, of course minus the political appointees.

8. During that time even the teachers in what would have passed as state schools were excluded from the service not to speak of staffs of local authorities; District Administrations and Urban Authorities.

9. I do not know why the scope of the public service was extended so drastically under the 1967 Constitution to take in the sections referred to in the preceding paragraph. My guess is that, for teachers, it was meant to reflect the newly propounded policy of direct involvement by the government in the running of all schools at the expense of the missionary bodies which, traditionally, had been responsible for founding and even running the various schools in the country since the Colonial days.

10. As for the Local Authorities, this I think was to be expected. All of sudden a strongly unitary mode of government had replaced the hitherto federalist mode of government.

11. Perhaps largely because of our past history in the intervening period, the resultant over-centralisation has largely underscored the negative aspects such as gross lack of coordination, intensified incidences of corruption, inefficiency and, in many instances, retrogression in terms of non-viable units e.g. by way of prematurely created educational institutions at different levels, district administration entities and the like imposed from the top.

12. The experiment has not been seen to have worked. There is, therefore, possibly a case for at least leaving the service as it was before the 1966/1967 political debacle i.e. to, at least, leave the Local Authorities to be run outside the public service proper.

13. As far as I am concerned any suggestion to extend the service to the parastatal sector is no more than idle talk. This is a complete non-starter as that kind of additional centralisation of powers would just help to clog further the already straggling administrative machinery in the running of individual parastatal bodies. The tendency to confuse the scope of the public service by extending it to the parastatal bodies became much more intensified during the 1970's when an attempt was even made, unsuccessfully fortunately, to subject parastatal bodies as well as other government companies to a uniform salary structure and other terms and conditions of service together with the public service. I have never seen a more complete exercise in futility. I wish your Commission to go into this matter and assist the Government in finding better constitutional and/or legal frameworks within which this type of ventures should be run but completely outside the public service and its attendant bureaucratic structures.

14. To conclude this aspect of the matter, I would wish to make the following firm recommendations:-

- (a) restrict the scope of the public service to
  - (i) the traditional civil service, and
  - (ii) the Unified Teaching Service excluding Primary Teachers;
- (b) provide for a Unified Local Service, to encompass all District Administrations and Urban Authorities, to be run parallel with the re-defined public service. The Unified Local Service to also absorb all primary teachers. (The latter step would assume the decentralisation of the responsibility for the direct running of primary schools to local authorities);
- (c) maintain the existing policy of keeping parastatal bodies and other government companies outside the ambit of the public service.

III. The powers to hire and fire within the public Service.

15. Under the Colonial administration public officers were appointed, disciplined and removed from office at the pleasure of the Crown. Thus although the public Service Commission had been established in 1957, its role was to advise the Governor, in all related matters. As the chief representative of the British Crown.

16. Both under the Constitutions of Uganda which ushered in Internal Self-government and the one under which the country became independent, the Public Service Commission had been made fully executive.

17. However under the Constitution of Uganda (First Amendment) Act of 1963, the powers were vested in the President acting on the advice of the Prime Minister. Thus the Public Service Commission became advisory to the then Prime Minister as provided for in Section 4 of the Public Service Act (Cap. 277). In Section 12 of the same Act there was provision for the President to delegate the exercise of some of his powers in these respects and in fact he had done so under Statutory Instruments 277-3 and 277-4 under which the Public Service Commission got back the bulk but not all of its original responsibilities.

18. The 1967 Constitution perpetrated the trend outlined immediately above i.e. the President had all the powers whereas the Public Service Commission is advisory except when some powers have been delegated to it by the President. The current delegations appear Legal Notice /in No. 2 of 1988.

19. As pointed out in passing in para.3 above an executive President is far from being the same as a non-executive Head of State and cannot, therefore, be equated to the British Crown. In the matter of having the powers of appointment to the public service vested in the President this is another experiment that has not worked in the best interests of the nation as a whole. The provision has been abused very considerably especially under Military and Party political governments. Since the area of the service not delegated consists of the most senior levels of the service, at its worst this has meant that for one to hold or continue to hold such senior level positions one had to be clearly identified with the regime in power. This had had the effect of "politicising" positions such as those of Permanent Secretaries, Head of Departments, Heads of Missions abroad and the like. A change of regime had always meant the automatic fall from grace of an entire generation of senior civil servants especially in the positions highlighted above. The evidence for the outcome of this phenomenon is not far to find - a completely demoralised, disorientated, decimated, unstable, corrupt, ineffective and inefficient public service.

20. In my view, as already hinted at in para. 4 above, all that should be required from a public officer is unalloyed allegiance to the State. This had nothing to do with putting up with partisan or other sectarian considerations. Beyond a public officer's loyalty and allegiance to the nation, it should be his qualifications, over-all suitability and merit which should determine whether he should continue holding a particular job or even be considered for a higher one.

21. Your Commission is enjoined to find the best alternative possible. My personal feeling which I am sure may be shared by numerous past and present civil servants is that the Public Service Commission as an institution has managed to stand up to the test of time and lived up to the expectations of both the Government on the one hand and the public service on the other. Too much centralisation has, however, adversely affected its effectiveness. Another problem affecting the Public Service Commission has been its rather orthodox methods of operation: I am very uncomfortable with its recruitment and selection procedures. However, these are basically matters of detail rather than principle.

22. In conclusion of this submission I recommend the following measures:-

- (a) the powers of firing and hiring be vested in an executive Public Service Commission except for the very top positions in the service e.g. Permanent Secretary but even then it should be mandatory for the President to seek the advice of the Commission before acting in a given case (in other words the President should always act on the advice of the Commission;
- (b) some of the powers of the Public Service Commission should be exercised by Ministerial/Departmental Appointments and Disciplinary Boards to be set up for the first time to handle all cases of officers in their respective jurisdictions up to, say, salary scale U.6.
- (c) in recognition of the fact that the area of the service traditionally handled by the Public Service Commission constitutes a major aspect of public service personnel management, it should be mandatory for the Commission's procedures and practices to be under constant review and reform to ensure that they are as up-to-date as possible in order to ensure the availability to the country of a dedicated, efficient, effective, well-motivated and loyal public service at all times.

#### IV. Over-all responsibility for the Public Service.

23. Possibly because of the way the Colonial Administration operated, it is difficult for one to lay one's hands on documentation setting out clearly how the policy responsibilities over the public service (or the Colonial Service to be exact) were shared among the main actors of the time. Suffice it to say that, judging from the 1953 Edition of Standing Orders, the Governor (acting on the directions of the British Crown through the Secretary of State for the Colonies) had sweeping powers over the service.

24. However from personal memory of what went on at the time, up till Internal Self-Government, the public service was the direct responsibility of the then Chief

On Internal Self-Government the responsibility went to the Chief Minister and at Independence to the executive Prime Minister. In fact the 1963 Public Service Act vested powers of administering the service and ordering terms and conditions of service of public officers in the Permanent Secretary to the Prime Minister, (and who virtually became the Head of the Civil Service in independent Uganda although documentation on the latter is difficult to come by).

25. The 1969 Public Service Act which reflected the changed Constitutional position finally established the Minister of Public Service as the one responsible for the administration of the public service and the ordering of terms and conditions of service. Under his own hand the then Minister of Public Service and Cabinet Affairs delegated the exercise of his functions in relation to the Public Service to his Permanent Secretary using the preogative given to him under the Act in question.

26. It would appear that the establishment of a full fledged Ministry responsible for the public service to administer the Public Service Act completed the evolutionary process under which responsibility for the public service policy shifted from the then Governor, then in between the executive Prime Minister and finally to the Minister responsible for the Public Service. In the process the role of Head of the Civil Service became more and more symbolic since it was the Permanent Secretary, Ministry of Public Service and Cabinet Affairs, who had the legal mandate over the public service through his Minister and in turn through the Public Service Act and other Service Regulations.

27. It was with the above in view that after intensive consultations the following definition of Head of the Civil Service was hammered out for inclusion in the New Edition of Standing Orders being prepared presently:-

'For the purposes of Standing Orders and unless the context otherwise requires:-

"Head of the Civil Service" means a public officer who, besides being the Permanent Secretary, Office of the President,

- (a) is the foremost public officer who takes precedence in matters of protocol over any other public officer other than the Chief Justice;
- (b) is the intermediary between public officers and the Government;

- (c) is, subject to any established law, the final court of appeal in the public service grievance procedure as laid down in the public Service Standing Orders;
- (d) is the representative of the public service in the Cabinet in which he sits as an observer;
- (e) except where a public officer has committed a disciplinary or criminal offence for which his case has been referred either to the Public Service Commission or court of law, advises the President in the exercise of his disciplinary powers under Article 104 of the Constitution in relation to that public officer.'

I happen to be the one re-writing the Standing Orders but try as I could I failed completely to locate any authoritative written document spelling out the role of Head of the Civil Service. Thus the suggested definition for the purposes of Standing Orders was drawn more definitely from what we see or expect of the role in actual practice perhaps cast against the background of past related experiences.

28. In my view tempered by long association and observation of the system, it would be disastrous to go back to the former times when responsibility for the public service was exercised at too high a level to permit of really professional and detailed handling. The end result of such a situation was for public service issues to become unnecessarily politicised in the negative sense. On the contrary what is required is for the role of the Ministry of Public Service and Cabinet Affairs to be clarified still further and in so doing for a firm foundation for the Ministry to handle the service as professionally and scientifically as the situation may warrant, not such encumbered by too many hierarchical and political overlords to be laid.

29. In any case one of the major inputs in the public service policy formulation process which has been lacking for a long time has been the involvement of representatives of staff, through their associations in such matters. A way has to be found for more tangible recognition of staff representation then is at the moment evident.

30. I conclude this section of the memo by making the following recommendations:-

- (a) first of all, the Constitution should positively create the public service, rather than merely assume its existence as has been the position so far;

- (b) the question of who is finally responsible for the public service generally speaking should be catered for constitutionally leaving the Statutes and subsidiary legislation to merely go into more detail using the foundation laid in the Constitution;
- (c) in pursuance of (b) above, a choice should be made between the role of the Minister of Public Service and Cabinet Affairs, which is normally played by his Permanent Secretary on a day-to-day basis, and that of the Head of the Civil Service, as separate entities, or at least a constitutional accommodation of the dichotomy of roles should be catered for;
- (d) the bi-lateral stake in public service matters between representatives of the Government as the Employer on the one hand and representatives of staff associations as Employees on the other has to be recognised constitutionally to pave the way for provisions to be made for the application of the principle in various situations under the relevant Statutes and subsidiary legislation.

V. Conclusion.

31. I have tried to cover as many aspects of the public service as I could clearly identify with the exercise of drafting a future Constitution. I could not help being apparently long-winded for which I apologise. I have in good faith made attempts to assist the Commission in untavelling some of the mysteries regarding the public service. I hope I have not instead ended up confusing issues. Whatever the case I stand ready to clarify or provide more information on any issue of immediate relevance to the subject-matter of this Memorandum.

S.L.N. SERWANJA.  
PERMANENT SECRETARY/SPECIAL DUTIES.

NOTE: The view expressed in this Memorandum are entirely personal to this writer rather than stating the official stand of the Ministry of Public Service and Cabinet Affairs.