Uganda: the Making of a Constitution

by Charles Cullimore, Bidborough, Kent, formerly British High Commissioner in Uganda, 1989–93

The Government of Uganda headed by President Yoweri Museveni, which came to power in January 1986, has made impressive progress since then in bringing about peace and national reconciliation, and in restoring the rule of law. It has turned the economy round from what might be described as ‘free fall’ to steady growth, albeit still heavily dependent on foreign aid. It has returned expropriated properties to their Asian owners, and has begun to attract foreign investment. Above all it has restored hope and given Ugandans back their pride. These are no means achievements, and place the country firmly among the few in Africa in recent years which have managed to bring about a real improvement in the overall quality of life for their citizens, albeit from a very low base. This would in itself be sufficient reason for looking more closely at what has been happening there. But, after all the disappointments of the past, it is also legitimate to ask whether these dramatic improvements are likely to be sustainable.

One of the most interesting features of Uganda’s renaissance since 1986 has been the creation of a tiered system of local government, with Resistance Councils (RCs) being set up at each of five levels: village, parish, sub-county, county, and district.1 This has undoubtedly helped to give back to ordinary Ugandans a say in local decision-making. In addition, an ambitious attempt has been made to involve as many people as possible in the making of a new constitution, using the RC system to provide a structure within which meaningful consultation could take place. If the outcome is a workable system of democratic government that survives, it will both reinforce peace and stability in Uganda and provide a political framework for future economic development. Beyond that it could also set an example for other African countries to follow.

The experiment derives from lessons learned the hard way in Uganda’s recent past. The 1962 independence constitution, though well intentioned, was a compromise measure. It attempted to square the circle between the competing claims to political primacy of the Kabaka and the then Prime Minister, Milton Obote, whose revised constitution in 1967 created the office of executive President and abolished the ancient kingdoms. However this constitution was never fully accepted, especially in Buganda and the other kingdoms, not least because of the way it was rail-roaded through the National Assembly. Its credibility was further undermined when General Idi Amin carried out his coup d’état in 1971 and declared himself President.

With these unhappy precedents in mind, Museveni made it clear from the

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beginning that he intended to hold the ring while a new constitution reflecting the wishes of the people was worked out. Such good intentions had of course often been expressed before, especially by military leaders in Africa, and then not fulfilled. It is hardly surprising therefore that Museveni’s declaration of intent was received with some scepticism at first both in Uganda and by the international community.

However, in 1989 the President set up a Constitutional Commission under a Supreme Court judge, Justice Ben Odoki, which was authorised to consult the people of Uganda about a new constitution, and to produce a draft that would then be considered by a specially elected Constituent Assembly. After any agreed amendments the new constitution was to be promulgated and fresh elections held under it for both Parliament and the Presidency. (If the members of the Constituent Assembly were unable to agree on a matter of national importance, then a national referendum would be held on that issue.) The whole process was due to be completed by January 1995 when the extended mandate of the National Assembly expires – an ambitious programme for any country in the world to undertake, let alone one so recently sunk in the depths of civil strife and economic chaos.

After a slow start, the Constitutional Commission, comprising 20 prominent people from various walks of life, including academics, lawyers, and army officers, visited every parish in Uganda. After explaining the meaning of a constitution and the nature of the consultation process, the Commission proceeded to collect the views of individuals, local councils, schools, trade unions, and other organisations. The response was overwhelming; indeed, over 20,000 memoranda were received from all over the country.

Apart from the linked and vexed issues of federalism versus centralism and the revival of the monarchies, the key question was whether or not the new constitution should provide for multi-party democracy or continue the existing so-called ‘movement’ or no-party system, whereby the old political parties are allowed to exist although not permitted to set up branches or to campaign. Meanwhile the governing National Resistance Movement (NRM) seeks to reconcile the views and interests of the different ethnic, religious, and other groups in Uganda within its membership.

President Museveni argues that the NRM differs from a one-party system in that any citizen is free to participate in it without having to join formally, and that no-one can be expelled – and hence disenfranchised – whatever his/her views. He further maintains that multi-party democracy, though desirable in principle, is not well-suited to a pre-industrial society such as Uganda because there are no common, nation-wide interest groups. Accordingly parties appeal to tribal or sectarian concerns to attract support, thereby accentuating ethnic and religious divisions in a country where they run deep. Museveni is convinced that Uganda’s history since independence illustrates the truth of this thesis. The parties on the other hand – still mainly, as before, the Uganda People’s Congress (UPC) and the Democratic Party (DP) – argue that freedom to belong to a political organisation of their choice should be a basic human right of all citizens, and they deny that Uganda’s tragic record since 1962 can be blamed on the multi-party system. Museveni has made it clear that he will accept the verdict of the people on this issue, if necessary by means of a referendum.
The Constitutional Commission was originally due to finish its work by the end of 1991, but its mandate was extended for a further year so that it could fully collate and assess all the views that had been expressed. It duly completed its report on 31 December 1992, together with a comprehensive draft constitution (running to 314 clauses) which provides for a unitary state with an elected executive President who has the power to appoint Ministers from the members of the single-chamber legislature or from those qualified to be so elected.²

More unusually the draft constitution provides for a National Council of State with the task of promoting good relations between the executive and the legislature, and between central and local government. Provision is made for traditional leaders, but with the proviso that they are not to ‘join or participate in politics’. They cannot be supported financially by central government, and are not given any executive, fiscal, or judicial powers of their own. Although all four of Uganda’s traditional monarchies have been restored in symbolic form over the past year or so, it remains to be seen whether this bold gesture by Museveni will satisfy the aspirations of the Bantu tribes concerned, notably the Baganda, and whether it will resurrect the fears and suspicions of other Ugandans.

Elaborate provision has been made for the protection of human rights and for transparency of government. A Human Rights Commission will be given powers both to investigate complaints from individuals and to initiate investigations on its own account. Parliament will establish a Leadership Code of Conduct under which politicians and specified public officials would be required to declare their income and assets on a regular basis. This is to be backed up by an Inspectorate of Government with sweeping powers to hear and determine cases of corruption or the abuse of power, and to carry out inspections of government departments or agencies.

Clause 59(1)(e) of the draft constitution enshrines the right of freedom of association, including freedom to form and join political organisations, although with the important qualification that ‘the enjoyment of the rights under this article shall be subject to any laws made by Parliament in the public interest to the extent acceptable in a free and democratic society’. Clauses 94 to 98 provide that in the fifth year after the election of a President and Parliament under the new constitution (and every five years thereafter), there should be a referendum to decide whether the movement system should continue or be replaced by a multi-party system. While the movement system was operating, the right to form political parties would nevertheless be guaranteed, and they would be free ‘to participate in shaping the political will of the people, to disseminate information on political ideas, social and economic programmes of a national character’. They would not, however, be allowed to put up, or to campaign for, candidates in public elections. The enactment of legislation to establish a one-party state is expressly prohibited.

The Constitutional Commission’s report makes it clear that the great majority of views expressed to it during the consultation stage were in favour of maintaining the movement system, at any rate for some time. This reflected

a widespread reluctance to risk a return to multi-partyism which was seen, rightly or wrongly, to have served the country badly in the past.

Following publication of the draft constitution, attention turned to the legislation needed for its implementation. Amid considerable controversy, the National Assembly passed in March 1993 the Constituent Assembly Bill, which provided for 214 members to be elected through secret ballot based on universal adult suffrage, and a further 26 to be chosen by special interest groups, including the army, the trade unions and, ironically, the political parties. In addition, 38 places were reserved for women (one from each district), and the President was given the right to nominate ten members whose background and experience would fit them to make a particularly useful contribution to the work of the Constituent Assembly. An office of Election Commissioner was created with authority to demarcate the constituency boundaries, train the needed staff, and generally supervise the election.

The most controversial feature of the Bill was its provision, mirroring that in the draft constitution, that the political parties should neither nominate nor campaign for candidates. The Government’s rationale for this limitation was that to have allowed the parties to campaign would have been tantamount to a de facto pre-emption of the question whether or not Uganda should return to multi-party politics. The parties were however given an opportunity to state the case for multi-party democracy in the run-up to the election campaign. Individual candidates were able to explain where they stood on the main features of the draft constitution. Thus the electorate, which had long heard NRM arguments against multi-partyism, was able to hear the case in favour before deciding who to elect to the Constituent Assembly.

After a number of delays, the election was eventually held on 28 March 1994. In all there were some 1,122 candidates, an average of over five per constituency. Although they could not stand under a party political banner, in practice the electors in each constituency knew perfectly well from which ‘stable’ each candidate came. There was a turn-out of between 70 and 80 per cent, and voting was entirely peaceful. The international observers found that the election was well conducted, and that there was ‘no evidence of systematic attempts to influence the outcome or alter the results’. The process of counting was conducted in full view of the public, and the declaration of result forms were countersigned by the candidates’ agents. The report of the observers concluded that ‘the results can be considered to reflect the political choice and aspiration of the people of Uganda’.

It is estimated that about 75 per cent of those elected favour a continuation of the movement system for the immediate future. However the North, traditionally a stronghold of the UPC, elected many members in favour of an immediate return to full multi-party democracy. A number of Government Ministers failed to get themselves elected to the Constituent Assembly, though they remain members of the National Assembly and continue in office for the time being.

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Given the composition of the Constituent Assembly, it seems likely that it will endorse the provisions in the draft constitution for the movement system to continue for another five years (though in the absence of a two-thirds majority in favour there might still have to be a national referendum to settle the issue). Such an outcome might look self-serving since it would enable the NRM to remain in power for years to come. Partly for this reason there is now growing support in the Constituent Assembly for the proposition that the movement system should automatically be replaced by multi-partyism after five years. Many observers think this would be a sensible compromise. On the one hand, Uganda needs a further period of the stable, non-confrontational type of régime provided by the NRM which has helped it to recover from the ravages of civil war. On the other hand, the major defect of the movement system is that, even if less authoritarian than a one-party state, it cannot by definition offer the people a choice of which party should govern them, and consequently has no mechanism which would enable them to change their government peacefully, though of course individual members can be voted out. Whatever the outcome, it will undeniably have been arrived at through a lengthy and generally transparent democratic process.

Arguably no other country, whether in Africa or elsewhere, has ever made such an ambitious attempt to consult its people about the form which their constitution should take. Against the odds the process is still on track though, not surprisingly, the crucial task of finalising the constitution is taking the Constituent Assembly longer than originally envisaged. Consequently its life has been extended until May 1995, and the constitution is due to be promulgated on 9 June. This means that the ensuing all-important elections should be held in the second half of 1995.

Given the way that the new constitution has been determined, there is reason to hope that it will command the respect of the great majority of Ugandans, even if they do not agree with all of its provisions. Their country has always been well endowed with a benign climate, abundant rainfall, cheap energy, and above all fertile soil. Nor is it as yet over-populated. In short, with the right policies and with the help of appropriate investment from overseas, Uganda has the resources to create a prosperous and self-sustaining economy. The unique constitution-making experiment briefly described here is likely to be a major milestone along the way.
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