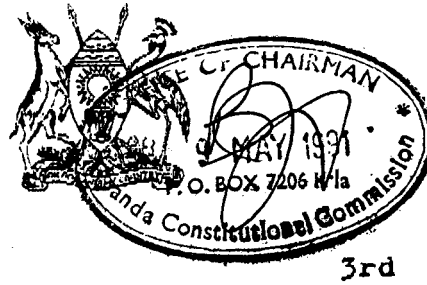


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EMBASSY OF THE
REPUBLIC OF UGANDA
, P. O. 80x 5644.
ADDIS ABABA.
ETHIOPIA.

Our Ref. XC/A.EJ/22/1

May 1991

URGENT- PLEASE PASS ON IMMEDIATELY TO THE ADDRESS

The Chairman
National Constitutional Commission
Kampala.

UFs. Ambassador Swaib Musoke
Uganda Embassy
Addis Ababa..

[Handwritten signature]
3/5/91

Dear Sir

MEMORANDUM ON PROPOSED NEW CONSTITUTION

I am forwarding to you herewith the Memorandum of the Uganda Community Association in Ethiopia on the proposed new Constitution for Uganda to your Commission's consideration.

On behalf of the Association, I take this opportunity to acknowledge the valuable Work being undertaken **by** the Constitutional Commission. we wish you every success in your endeavor.

Yours Sincerely
George Oluit (Dr.)
Chairman of the Uganda Community
Association in Ethiopia

PROPOSED NEW CONSTITUTION FOR UGANDA

MEMORANDUM OF THE UGANDA COMMUNITY ASSOCIATION IN ETHIOPIA
TO THE NATIONAL CONSTITUTIONAL COMMISSION

ADDIS ABABA 28

APRIL 1991

PROPOSED NEW CONSTITUTION FOR UGANDA

MEMORANDUM OF THE UGANDA COMMUNITY ASSOCIATION IN ETHIOPIA TO
THE NATIONAL CONSTITUTIONAL COMMISSION

I. INTROOUCTION

1.1. Following the establishment of the National Constitutional Commission in Uganda, and in tanden with the national debate at several levels on a new Constitution for the country, the Uganda Community Association in Ethiopia (UCA) appointed a Constitution Committee which formulated a Constitutional Questionnaire eliciting the views of its Membership on various vital issues. On 8 December 1990, the Association convened in a Special Session devoted to in-depth debate on those constitutional issues.

I.2. The present Memorandum represents a collation of the views of members of the UCA on the proposed new Constitution for Uganda. It is the ardent hope of the Association that the National Constitutional Commission will accord due consideration to them alongside those furnished by Ugandans within and elsewhere outside the country.

II. PROPOSALS FOR A CONSTITUTION

A. GENERAL VIEWS: NEED FOR A NEW CONSTITUTION

II.1. Members of the UCA addressed the basic question as to whether there is a need for a new national Constitution. The vast majority agreed that a new Constitution is a necessity for our country. They emphasized that in respect of each of the 1962, 1966 and 1967 Constitutions, the general populace had been excluded from the process of constitution-making. A rare and valuable opportunity has for the first time been availed to all Ugandans to participate in the making of their Fundamental Law. Thus the people of Uganda will more resolutely rally to the defence of a Constitution they themselves have Shaped.

RECOMMENDATION 1: The UCA recommends that a new Constitution, based on the national consensus arising out of the nation-wide debate, be adopted for Uganda.

B. SPECIFIC VIEWS ON ASPECTS OF THE CONSTITUTION

(a) BILL OF RIGHTS

II. 2. Members of the UCA were near unanimous in support of a written Bill of Rights being entrenched in the Constitution. Such a Bill should be as extensive and comprehensive as possible in

guaranteeing the protection of human rights and fundamental freedoms. Any provisions circumscribing the exercise of human rights and fundamental freedoms in times of war or public emergency should incorporate all safeguards against arbitrary proclamation of states of emergency.

RECOMMENDATION 2: The UCA recommends that a comprehensive Bill of Rights be enshrined in the new Uganda Constitution.

(b) THE POLITICAL SYSTEM

11.3. A preponderance of members of the UCA expressed preference for a multiparty political system. Accordingly, the right to **form and belong to a political organization of ones Choice is consonant with the freedom of conscience, freedom of assembly and association, and freedom of expression. However, a substantial portion of this majority felt that in view of Uganda's under-development and history of parochial tendencies, two limitations are fully justified, namely:**

(i) confining the number of political parties to no more than four (4);

(ii) **imposing the requirement that all political parties** have a national and not sectarian character.

II.4. A strong minority of members of the UCA favoured a mass movement democracy as now consists in the National Resistance Movement (NRM). This group emphasizes the need to take cognisance of Uganda's post-independence history during which multi-partyism became synonymous with ethnic and religious parochialism.

RECOMMENDATION 3: The majority of members of the UCA recommends that the new Uganda Constitution provides for **competitive multi-party democracy subject to the limitations i: paragraph 11.3 above.**

(c) THE EXECUTIVE

(i) THE PRESIDENCY

11.5. Members of the UCA considered the issue of an executive,

presidency as against a titular presidency. An overwhelming majority favoured an executive presidency such as currently exists

II. 6. A large majority of the UCA favoured direct election of the President by universal adult suffrage.

11.7. Members of the UCA were unanimous that the president be term with eligibility for re-election. The presidential tenure should in any case not exceed two terms.

11.8. The vast majority of the UCA favoured a minimum age of 40 years for eligibility for election to the Presidency.

11.9. Members of the UCA unanimously agreed that the President should be a Ugandan citizen by birth.

11.10. In view of Uganda's past experience, members of the UCA unanimously agreed that persons contesting the Presidency must have attained a minimum of three (3) years post-secondary education or training.

11.11. Members of the UCA unanimously supported the guarantee of decent retirement benefits for the president both as a measure of acknowledgement of contribution to the nation and as an anti-corruption incentive.

RECOMMENDATION 4: The UCA recommends that the new Uganda Constitution provides that;

-the president shall be the Executive Head of State, Head of Government and Commander-in-Chief of the Armed Forces;

-the President shall be directly elected by universal adult suffrage:

-the President shall be elected for a term of 5 years and shall be eligible for re-election for a further a single term of 5 years:

-that the president shall be of a minimum age of 40 years; the President shall be a Ugandan citizen by birth;

-the President shall have a minimum of three years' post-secondary education or training:

-the President shall be entitled to such decent retirement benefits, to be financed out of the Consolidated fund, as Parliament may from time to time determine.

(ii) THE VICE-PRESIDENCY

11.12. Members of the UCA debated the merits and demerits of Vice-presidency. The majority supported provision for the single vice-President who should be a running mate of Presidential candidate at the time of elections. The Vice-President should have the same qualifications as the President since in eventuality of death or incapacity of the President the executive powers would devolve to him/her. It was further agreed that the Vice-President be entitled to a befitting retirement benefit on the basis of the same rationale advanced for the Presidency.

RECOMMENDATION 5. The majority of the UCA recommends the new Uganda Constitution provides for the appointment by President, from among elected Members of parliament of a vice President. Such Vice-President shall otherwise satisfy all requirements for eligibility for the Presidency. He shall be entitled to such befitting retirement benefits as Parliament shall determine.

(iii) THE CABINET

11.13. Members of the UCA considered the desirability of the Office of Prime Minister. The vast majority agreed that to alleviate the onerous duties and responsibilities of an Executive Presidency the Office of a Prime Minister charged with the leadership of Government Business and supervision of Cabinet is a necessity. It was further agreed that to avoid the convolution of the Cabinet no more than one senior Minister should be appointed to the post of Deputy Prime Minister.

11.14. With regard to the rest of the Cabinet, members of UCA were unanimous that it be appointed by the President with regard to professional competence, equitable distribution at the highest standards of integrity. A substantial majority favour the introduction of a system whereby Parliament would vet Presidential nominees to Cabinet posts prior to their approval.

11.15. To assure that the interests of national unity remain paramount at all times; the Constitution Committee of the adopted the position that the Cabinet of Uganda should always be a multi-party organ of the Executive. At all times nomination or appointments to the Cabinet should be founded on a pro-rata allocation based on each political party's show of strength in the general Parliamentary elections.

RECOMMENDATION 6: The UCA recommends that the new Uganda Constitution provides for the following:

a Prime Minister to perform the functions of Lead of Government Business and supervision of Cabinet

- not more 'than one post of Deputy prime Minister;
- a Cabinet nominated by the President and approved by Parliament or a Select Committee thereof;
- a Cabinet of national unity appointed on a multi-party pro-rata basis.

(d) THE LEGISLATURE

11.16. Consequent upon its recommendation of direct election for the presidency, members of the UCA agreed that the President should transcend party-politics. He should thus not be a Member of Parliament. the Parliament should be constituted by Members elected on the basis of judiciously and equitably demarcated constituencies as well as those specially nominated by the President on meritorious grounds.

11.17. The Constitution Committee of the UCA adopted the position that in nominating Members of Parliament the President should ensure the representation of all major sections of society, including youth, women, press, trade unionists, and security personnel. This would assure the operation of checks-and-balances within the legislature itself.

RECOMMENDATION 7: The UCA recommends that the new Uganda Constitution provides for:

- a parliament of Uganda of which the President is not a Member;
- election of Members of Parliament on the basis of judicious and equitable delineation of constituencies by a truly independent Electoral Commission;
- special nomination by the President of Members of Parliament, not exceeding one-tenth of the total elected membership, on the basis of special merit and assurances of representation of all major sections of society.

(e) THE JUDICIARY

11.18. Members of the UCA were unanimous that all safeguards for the independence of the judiciary be assured in the new Constitution. In particular, appointments to the office of **Judge** of the High Court of Uganda and Justice of **the** Supreme Court of Uganda should be subject to ratification by Parliament.

RECOMMENDATION 8: The UCA recommends that the new Uganda Constitution provides, inter-alia:

- for the ratification by Parliament or a Select Committee thereof, of all appointments to the Offices of Chief

Justice, Justice of the Supreme Court and Judge of the High Court of Uganda;

-for the inviolability of the independence of the judiciary including guarantees against political action by the presidency or other executive organs aimed at undermining judicial verdicts or jeopardizing the career or persons of judges.

(f) THE PUBLIC SERVICE OF UGANDA ~

11.19. Members of the UCA devoted special attention to the current state of Uganda's Public Service and the need to make it once again effective and devoid of corruption. They unanimously endorsed the institutionalization of the Office of the Inspector-General of Government as an independent supervisor of adherence to the conventional civil service code of conduct as well as statutory rules and regulations. Members were also unanimous that in view of the important responsibilities Permanent Secretaries bear in respect of public finance and general departmental accountability, appointments to the Office of the Permanent Secretary should be subject to Parliamentary ratification. Further they shared the view that the independence and advisory role of all Service Commissions be guaranteed.

RECOMMENDATION 9; The UCA recommends that the new Constitution of Uganda provides for the following:

-the institutionalization of the Office of Inspector General of Government,

-ratification by Parliament or a Select Committee thereof of all appointments to the Office of Permanent Secretary;

-guaranteeing of the independence and advisory role of all Service Commissions.

(9) UGANDA'S ARMED FORCES AND SECURITY SERVICES

11.20. Members of the UCA were unanimous that the Armed Forces and Security Services of Uganda must be geared toward total defence of the national Constitution and the human rights and fundamental freedoms entrenched therein. Under no circumstances should the people of Uganda, by commission or omission, develop Armed Forces and Security Organs that are either insensitive, indifferent or potentially hostile to the Fundamental Law of the country. To these ends, they agreed that recruitment into the Armed Forces and Security Services should proceed on the basis of equitable geographical distribution: conscious politicisation and a modicum of enlightenment. Members of the Association further agreed that

a national service regime should be incorporated in the Constitution to afford to all able-bodied Ugandan military training for the defence of the Constitution.

RECOMMENDATION 10: The UCA recommends that the new Uganda. Constitution provides for the following:

-the requirement of Ugandan citizenship for recruitment into the Uganda Armed Forces;

-the requirement of a minimum of secondary education or equivalent for service in the Armed Forces.

-the politicisation of all persons in the security services;

military national service for all able-bodied to the age of 45 years.

(h) SYSTEM OF STATE ORGANIZATION

II.21. A preponderance of members of the UCA favoured a unitary system of State or Government. According to this group, neither the size (geographic and demographic) nor the historical experience of Uganda warrants a return to federalism.

II. 22. Others felt that a federal, decentralised system of State would best foster peace, security and development in Uganda. According to the proponents, rigid centralisation had stifled developmental programmes as well as the provision of social service in most of rural Uganda.

II.23. Extremely few members of the Association supported reinstatement of federal monarchism along the lines Constitution

II.24. There was strong support for strengthened local government

RECOMMENDATION 11: The majority of the UCA recommend that the new Uganda Constitution provides for:

-a unitary system of State or Government;

-strengthened local administrations;

-devolution to local authorities of responsibilities and obligations.

(i) RELATIONS BETWEEN RELIGION AND STATE

II.25. The vast majority of the UCA members supported the adopt of constitutional provisions on the separation of religion State with the attendant guarantee of freedom of worship. It popularly observed that in Uganda's experience, religion has of been exploited to foster disunity with detrimental consequences.

RECOMMENDATION 12: The UCA recommends that the new Uganda Constitution expressly provides for the separation of powers of religious institutions and the State.

(f) CULTURAL INSTITUTIONS AND THE STATE

11.26. A preponderance of members of the UCA favoured the restoration of traditional institutions without comparable political power. This school of thought maintained that traditional chief and kings are an integral part of Ugandan's historic heritage upon such chiefs and kings should be bestowed the administration of customary law and limited local administrative powers. Traditional institutions could also be instruments for rehabilitating and maintaining historical relics as well as social and economic development.

11.27. A significant minority of UCA members maintained that the restoration of traditional institutions would be retrogressive in terms of both the political and socio-economic development of the country. Far from being symbols of a historical heritage traditional institutions could once again be instrumental in accentuating ethnic and tribal divisions. They could also revive oppressive systems of tutelage and serfdom.

RECOMMENDATION 13: The majority of the UCA recommend that the new Uganda Constitution provides for the following:

- re-legalization of traditional/hereditary with the circumscription that they do not the political affairs of the State:

- bestowing of limited powers on traditional institution for the administration of non-adversarial customary laws

- vesting in the traditional institutions responsibility for the preservation of historical relics and fostering socio-economic development.

(k) CITIZENSHIP OF UGANDA

II. 28. The vast majority of members of UCA favoured the system of single citizenship now in force in Uganda as well as measure for the stringent enforcement and observance of the country citizenship and immigration laws. It was felt that the registration of all Ugandans and the issuance of national identity cards all citizens would obviate problems relating to unauthorized immigration into the country. Most members observed that single citizenship ensures loyalty to the nation. With regard to refugees they felt that those who have lived in the country for a prolonged period of time and are deserving should be afforded generous.

naturalisation at the date of adoption of the new Constitution . Thereafter, the citizenship laws should be applied to the letter and spirit.

RECOMMENDATION 14: The UCA recommends that the new Uganda Constitution:

maintains single citizenship for all Ugandans;

provides for the naturalization of deserving long-term refugees at date of adoption.

III. OPTION OF THE NEW CONSTITUTION

III.1. A preponderance of members of the UCA favour the election. of a Constitutional Assembly to finally debate and adopt the proposed new Constitution. According to this group, the current National Resistance Council has been inextricably linked to the preliminary constitution-shaping process. Consequently, it may later be seen to sacrifice Objectivity in favour of what it has helped fashion.

III. 2. A significant minority of the UCA favour adoption of the Constitution by the Current National Resistance council. Accordingly to the proponents, the NRC has acquired deep insight into the vital constitutional issues under consideration and would be better equipped to pronounce on them. Further, they maintain that the economic situation of the country dictates against the election of a Constitutional Assembly for the sole purpose of adopting a new Constitution.

RECOMMENDATION 15: The majority of the UCA recommends that the Draft Constitution to be submitted by the National Constitutional Commission be comprehensively debated ab initio and adopted by an elected Constitutional Assembly. --

IV. CONCLUSION

VI.1. The Uganda Community association in Ethiopia has formulated this Memorandum on the basis of macro-consideration. It has not attempted to indulge in the exercise of professional constitution drafting. The Association nevertheless hopes that its views and recommendations will constitute the kind of contribution expected by the National Constitutional Commission.

IV.2. The Uganda Community Association is deeply grateful to the Government and people of Uganda, the National Constitutional Commission, and to its own Membership for the opportunity to express itself on national issues of such moment and magnitude.