

THE ON-GOING CONSTITUTION-MAKING PROCESS IN UGANDA
BY THE HON. MR. JUSTICE B. J. ODOKI
CHAIRMAN, UGANDA CONSTITUTIONAL COMMISSION

1 ESTABLISHMENT OF THE COMMISSION

As you are no doubt aware, it is the declared policy of the NRM Government to allow the people to freely choose their government and to determine the manner of that government. Since a Constitution is the basic decision of a people as to how they wish to be governed, it is the view of the Government that the people themselves must be involved in the formulation and promulgation of the Constitution. This policy was clearly stated in a booklet entitled, Towards Free and Democratic Uganda: The Basic Principles and Policies of the National Resistance Movement (NRM. which states,

"The NRM believes that it is the inalienable right of all peoples to freely choose their Government, and to determine the manner of that government. Rigged or manipulated elections are an insult to the people and a sure recipe for instability, conflict and upheavals. Constitutions imposed on the people by guise, wile or force cannot be the basis of stable and peaceful governance of men."

Accordingly, in order to give the people of Uganda an adequate opportunity to participate in the determination of the new Constitution, the Government created a Ministry of Constitutional Affairs, followed by the establishment of the Uganda Constitutional Commission. The Commission was established in December 1988 by an Act of parliament (Statute NO.5 of 1988) after serious debate in the NRC.

The Commission consists of twenty one (21) members appointed by the President, on the basis of their personal integrity, professional experience or special skills or expertise. The members of the Commission were appointed in February 1989. The Commission reflects the national diversity of Uganda and many disciplines like Law, Political Science, Economics, History and Medicine are represented on it. The Commission is both in law and in fact an independent body required to discharge its functions impartially.

2. FUNCTIONS OF THE COMMISSION

The major functions of the Commission are first to make proposals for a new Constitution and secondly to formulate a Draft Constitution. In order to carry-out these tasks, the Commission is required to collect the views of the people of Uganda by holding seminars, public debates and workshops, and through any other means including the receipt of memoranda and oral views from the people, individually or collectively.

The Commission was required to complete its work and submit its report to the Minister within two (2) years of its inception. However, it is now clear that the original period of two years given to the Commission was unrealistic and that more time will be required to enable the Commission to do a good job once and for all. Indeed the need to give the Commission more time to complete its work, was one of the major reasons for extending the NRM interim period of administration.

Whatever more time is needed will be determined by the NRC in due course. It is anticipated that after the Commission has submitted its Report the Government will allow public discussion and debate of the draft Constitution leading to its discussion and adoption by a Constituent Assembly. After the Constitution has been adopted it may be subjected to approval by referendum in whole or on certain controversial issues. Thereafter the democratic process that would be laid down in the Constitution will be put in motion leading to democratic elections both at national and local levels, thus completing the process of transformation from the present administration to a Government elected according to the New Constitution.

3. AIMS AND OBJECTIVES OF THE NEW CONSTITUTION

In framing the new Constitution the Government has given certain broad guidelines which form fundamental principles and objectives of the new Constitution. These are contained in section 4 of the Uganda Constitutional Commission Statute. The first objective is that the Constitution must guarantee the national independence and territorial integrity and sovereignty of Uganda. Although at independence we may have acquired only flag independence, nevertheless we did acquire the right to self-determination which is highly cherished. The right of Uganda to exist as a nation state capable of deciding on its own affairs without interference and direction from outside must be carefully guarded.

Secondly there is the need to keep Uganda as one peaceful and united territorial entity and not to allow it to disintegrate or any of it to be annexed by a foreign power.

This Constitutional goal raises a number of issues. The question of national unity is perhaps one of the important problems facing Uganda today. How do we translate the current desire of unity in diversity into real terms? How can we evolve new politics which avoid divisions based on ethnic and religious differences? How can we tackle the question of gross inequality in distribution of resources leading to economic imbalance between social classes, groups and regions? This is the problem of establishing social justices in our society. How can we promote our cultural values without conflicting with modern political realities. Can we evolve a national language which can promote our unity? Perhaps we have to identify our common interests that bind us together as Ugandans, build a new national ethic and vision, and agree on a new social compact based on principled compromises and genuine interests.

The role of the army in maintaining the territorial integrity is well recognised especially against external aggression. But the army has played and continues to play crucial roles in the politics of Africa. The type of army we should have and the role it should play in the future politics of Uganda is one of the Constitutional issues to be determined.

The second objective is that the Constitution should establish a free and democratic system of government that will guarantee the fundamental rights and freedoms of the people of Uganda. In Constitutional theory democracy goes hand in hand with human rights. Democracy is basically rule by consent. It is a philosophy of political organisation. In terms of Uganda what type of democracy should be established? Is it Parliamentary or representative democracy

or is it participatory or popular democracy or is it both? It is well known that in Western liberal democracies emphasis is placed on representative democracy. In Uganda there is a young and thriving popular system of participatory democracy through the RC System. What is the future of this type of democracy and how will it relate to political parties if they form part of future political organisation in the country? The current debate on the future of political parties is healthy because it is the people themselves who must decide their forms of political organisation.

Democracy is one of the most important constitutional issues facing Uganda. As it has been said democracy is a frequent bed fellow of constitutionalism, if not a lawful spouse. Constitutionalism is a theory concerned with limited government and individual rights, both of which are attributes of a democratic government. Other elements of constitutionalism include accountability of government through periodic elections, rule of law, separation of powers, and an independent judiciary~

The challenge of Ugandans is to find a formula which will return power to the people to choose and participate in government, in order to forestall dictatorship and violation of their human rights.

Ugandans have in the recent past experienced some of the grossest violations of human rights in Africa. This is not because basic rights and fundamental freedoms were not recognised in the Constitution but because the ruling regimes at the time did nothing to safeguard and protect them. How should the new Constitution address this issue? How should the basic rights be protected and enforced? What institutions should be established for this purpose? Do we need a permanent Human Rights Commission, or a Human Rights Court or a Constitutional Court? What about the content of rights? Do we need to include special rights for women, children and other disadvantaged groups?

The third objective is to create viable institutions which will ensure maximum consensus and orderly succession of Government. This is a very important goal. There is a need for political institutions which are democratically elected and that are accountable to the people. These institutions must be capable of representing the views of the people effectively. They must provide a forum and opportunity for discussion debate and allow market place of ideas to flourish. They must mirror the peoples views on given issues at given times. Indeed the Constitution is also required to develop a system which will ensure peoples participation in the governance of their country.

Consensus is the idea that society's widely shared views should give content to the Constitution. It means widely shared fundamental values or common interests. Consensus is a theory of democratic process. It is a reference to the people. One of the reasons why Uganda has not had political stability has been the failure to obtain consensus from the people on how to resolve the perennial social conflicts which in most cases have been resolved by resort to violence. It is therefore a great challenge to the people of Uganda to devise political institutions which can provide a peaceful medium of solving these conflicts through consensus. The political institutions the people of Uganda agree on must be capable of ensuring peaceful change of government.

Violent changes of government have been yet another cause of political instability in Uganda. This virus started in 1966 when the military was used to intervene decisively in politics leading to the unilateral abrogation of the 1962 Constitution with dire consequences. Since then the virus has infected many leaders in Uganda. Fortunately it is not a cancer and it is both preventable and curable. There is great concern about the need for army to appreciate its role in society. Many people are also concerned about democratising the instruments of coercion so that the people can defend their institutions against usurpers and tyrants. Therefore, how the Constitution is to be safeguarded is one of the critical issues the people of Uganda are discussing because the answer lies with them.

This leads me to the next basic goal which is to develop a democratic free and fair electoral system that will ensure true peoples representation in the legislature and at other levels. Fair and free elections is one of the fundamental instruments of guaranteeing democracy and peaceful change of government. Claims about rigging of elections account for a high percentage of military coup detats and civil-wars in Africa. The people of Uganda must address this issue to evolve a genuine democratic system which can ensure orderly succession to government.

The new Constitution should also recognise and demarcate . the division of responsibility among state organs of the executive, the legislature and the judiciary, and to create checks and balances between them. This objective accepts the doctrine of separation of powers which originally propounded by Montesquie, as a means of avoiding tyranny. It was feared, as it is still today, that if power was concentrated in one organ or individual, they would have absolute power which would corrupt them absolutely thus resulting into dictatorship. The checks and balances are there to ensure that each branch ls kept within its powers and is accountable for its actions. In most political systems the executive is a very powerful branch and tends to acquire more powers with time.

There is therefore a need to tame the executive so that it does not become despotic and oppressive. But how is the executive to be tamed in the new Constitution?

However, the notion of separation of powers and checks and balances also depends on what system or form of government is established in the Constitution. The system may be unitary, federal or based on devolution of powers. The form of government is a major question that the people of Uganda have to agree upon in order to consolidate our national unity while at the same time allowing the various areas and regions of some freedom or autonomy to develop themselves as best as they can through local initiatives.

The new Constitution must address is the principle of accountability of public officers and politicians. This issue relates mainly to the Leadership Code, as well as to the need for leaders to be accountable to the people for their conduct and actions. There must be public institutions to enforce discipline, respectable conduct and to watch over the official activities of the various leaders. Uganda has suffered in the past from bad leadership which mismanaged and plundered the economy through corruption and abuse of office. This objective is intended to introduce into the constitution measures designed to promote clean and honest leadership in the country. At present there are a number of such measures to deal with this problem e.g. the Office of the Inspector General of Government (IGG) , the Public Accounts Committee (PAC), and the Leadership Code Bill. Ugandans will have to decide whether these measures are adequate or if they should be incorporated in the new Constitution.

Lastly, but no means least, is the requirement that the new Constitution should guarantee the independence of the judiciary. Independence of the Judiciary is a cornerstone of any democratic government. without it there is no rule of law and without the rule of law basic rights cannot be enforced .. The independence of the Judiciary also enables meaningful judicial review to take place, that is the power of the courts to rule on the Constitutionality of laws and government actions. The Commission will be anxious to receive views on what measures should be incorporated in the Constitution to ensure that the judiciary remains independent and administers justice impartially to all Ugandans without fear or favour.

4. THE PROGRAMME OF THE COMMISSION

As soon as the Commission was appointed it prepared a Programme and timetable which was to guide its work. The Programme consisted of six stages which were:-

- (1) Preparation, Familiarisation and ,publicity.
- (2) Seminars and Debates for Districts, Institutions of higher learning, and special groups.
- (3) Internal Tours to Sub-counties.
- (4) Data Analysis.
- (5) Comparative Study of Constitutions.
- (6) Discussion and Preparation of Report and Draft Constitution.

The first stage involved the preparation of the Programme and Timetable of the Commission, the acquisition of basic infrastructure and logistics including transport, office equipment and materials, recruitment of staff for the Secretariat both research and secretarial cadres, making publicity campaign to announce and explain the work of the Commission, and familiarisation by the Commissioners of their work through study discussions and internal seminars. The Commission also established Committees to handle various programmes. In other words the Commission was engaged in a process of preparing for take off, and it did succeed in taking off within a few months.

The second stage which was in fact the first substantive Programme of the Commission. There were the various seminars conducted throughout the country. These seminars were organised in fulfillment of the Commissions Statutory obligations to seek the views of the general public through the holding of public meetings, debates, seminars, workshops and to stimulate public discussions and awareness of Constitutional issues. It was considered that in order to encourage wide participation .
in the Constitution making exercise, and in order to enable the masses to contribute positively they must be properly and adequately prepared. It was of uttermost importance that the people knew what a national Constitution was, what it contained, and what was its importance. It is only then that the process of consultation as to what form of Constitution was best suited to Uganda, could be carried out meaningfully amongst the masses of our people.

For those who were enlightened the seminars and debates enabled them to discuss Constitutional issues.

This Programme which is now almost completed was a tremendous success. The Commission managed to visit all the 34 Districts and to hold seminars there for one to two days in which we interacted sensitized and discussed constitutional issues with an average of 400 participants from RC 3, RC 5, Government official, elders, religious leaders and other opinion leaders in the districts. It was expected that these leaders would go back to their areas and sensitize the people at the grassroots level. This has achieved varying success in the districts, and the process is still continuing. Indeed members of the Commission have been invited to address many of these seminars organised by local leaders as low as at Parish level. We are entirely at the disposal for the people. They only need to invite us and we shall be there.

We have also conducted successfully seminars, debates and workshops in all institutions of higher learning including Universities, National Teachers Colleges, Major Seminaries and Theological Colleges, Uganda Colleges of Commerce, Uganda Technical Colleges and some other schools and colleges. So far we have held over 30 such seminars. We have also attended or facilitated over 30 seminars organised privately either by institutions or by groups or RCs. The Commission has in addition organised an essay competition for schools and colleges and institutions of higher learning to give an additional channel of participation to the youth.

The Commission has also organised seminars and debates for special groups including the professional bodies, Workers, Security and the Youth. The Commission will soon organise similar seminars for the women, civil servants and the army.

It is planned that all these discussions and debates will be crowned by a National Seminar held in Kampala to bring together participants from allover Uganda to discuss major constitutional issues so far identified. The details for this important seminar are being worked out.

As it can be seen this has been a key stage in our work and it is hoped that after it is completed Ugandans will be better prepared to contribute their concrete views about the new Constitution. This is one of the reasons why we have not received many memoranda yet because people are expecting us to go and listen to them and collect their views either through oral presentation or by memoranda. But we have so far received about 200 memoranda both from the elite and the wananchi, and from both urban and rural areas. Public response has been extremely encouraging.

The third stage of our programme namely. the internal tours to the sub-counties is the most important stage of our work. This is the time the Commission will concentrate on collecting the views of the people.

The Commission is committed to reaching every sub-county and there are little over 700 such units. Arrangements for such tours are at an advanced stage. Necessary transport and field equipment is being acquired. Publicity and information materials like guidelines on the Constitution and questionnaires are being prepared for distribution before we commence the actual tours. In order to complete the work within the planned period the Commission will divide itself into six groups which will handle a specified number of Districts or counties. This programme is to commence not later than October this year, but inspection tours by Commissioners will commence next month. This process is intended to last about ten months.

After the collection of views from the sub-counties, the data gathered throughout the work of the Commission will be analysed and classified. Word Processors will be used to expedite the work. This will be followed by a comparative study of our past and present Constitutions, and some constitutions of other countries which may be relevant to our work. Thereafter the stage will be set for the last hardle, the discussion of the views received, the drawing up proposals for the new Constitution, and the preparation of the final report and draft Constitution. This exercise may take about one year to complete.

While these programmes are going on Commissioners will be visiting certain countries where they can derive benefit by studying their Constitutional Systems.

The Commissioners have so far visited countries like West Germany, United States, United Kingdom India and Scandinavia, and arrangements are being made for them to visit some African countries.

5. CONCLUSION

As it can be seen, the process of formulating a new Constitution will be long and arduous. It cannot be anything less if Ugandans are to make a popular Constitution which can stand the test of time. This is not a process which should be hurried because it is an opportunity of a life time which Ugandans have been accorded. Ugandans cannot afford to take this exercise lightly because it is upon it that the future stability and progress of their country depends.

Let me end by an appeal to all Ugandans using the words of the Munster Report 1961 which made proposals for the 1962 Independence Constitution.

"A workable solution will only be forthcoming if there is a spirit of give and take and the determination to arrive at a solution. The new Constitution must be one which the inhabitants of Uganda themselves decide upon and are willing to work."