Mission of the Centre for Basic Research

To generate and disseminate knowledge by conducting basic and applied research of social, economic and political significance to Uganda in particular and Africa in general, so as to influence policy, raise consciousness and improve quality of life.

Lessons of Constitution-Making in Uganda

Samson Opolot and
Crispin Kintu Nyago

Workshop Report No.10/1996

Table of Contents

Opening of the Workshop …….. **1**

Remarks by the Chairperson, CBR General Meeting …… **1**

Presentation:
The Making of Uganda's 1995 Constitution: Achieving Consensus by Law?
by Jean John Barya …… 2

Presentation:
Governance, State Structures and Constitutionalism in Contemporary Uganda *by Joe Oloka-Onyango* …….. 7

Presentation:
"Reconstituting Ugandan Citizenship under the 1995 Constitution:
A Conflict of Nationalism, Chauvinism and Ethnicity
by Dr. Jean John Barya …… 11

Presentation:
The Federo (Federalism) Debate in Uganda by *Sallie Simba Kayunga*,…….. 19

Presentation:
NRM Politics, Political Parties and the Demobilisation of Organised Political Forces *by John Ssenkumba* ……..... 24

Presentation:
Anti-Corruption Struggles and External Debt Management: Reinforcing Institutions of Public Accountability in the 1995 Uganda Constitution
by Winnie Bikaako…….. 28

Closing Ceremony ……... 32

List of Participants…… 41

Lessons of Constitution-Making in Uganda

Opening of the Workshop

The Workshop was opened by the Executive Director, Centre for Basic Research (CBR), Dr. John Jean Barya, who pointed out that it had been called after four years of research, and had focused on the following five topics:

a) The Making of Uganda's 1995 Constitution;
b) The Federo Debate in Uganda;
c) Governance, State Structures and Constitutionalism in Uganda;
d) NRM Politics and the Demobilization of Organized Political Forces; and
e) Anti-Corruption Struggles and External Debt Management in Uganda.

This research project on Constitutionalism had followed a national survey that involved the carrying out of fieldwork in the districts of Luweero, Apac, Mbarara and Tororo. The fieldwork was carried out in a selected sub-county in each of these districts, where a representative sample of people in each of these areas was selected.[1] The participants for this seminar were invited from the same four districts, again with one sub-county being chosen and five people from each sub-county. These included: one youth, one girl, and three Local Councillors from Local Council II and III levels - at least one of the three being a woman. Also invited were civil society organisation representatives, NRM (Movement), political parties, religious groups, MPs and media representatives. Dr. Barya argued that the aim of these invitations was to ensure that the practical day-to-day realities of society were captured in both the research findings and the Workshop deliberations.

Remarks by the Chairperson, CBR General Meeting

The Chairperson of the CBR General Meeting, Dr. Joe Oloka-Onyango, observed that constitutionalism has to be a living, dynamic feature of life. He further argued that because the 1995 Constitution had launched a new phase of constitutionalism in Uganda, this CBR Workshop was about to discuss a relevant contemporary experience. In this regard, he cited the censure motion as it related to the Brigadier Jim Muhweezi case. Here Oloka-Onyango argued, that while this was a good constitutional provision, it had a fundamental weakness of over-empowering the President, who was the one responsible to ensure that the objectives of the provision were successfully realised.

He observed that the participatory approach adopted in selecting those to invite for the Workshop was based on CBR's policy of seeking to ensure that their research findings were not merely for academic purposes.

---

[1] The Report of the Survey was discussed in a seminar held at Colline Hotel, Mukono, from 29-30 January 1996.

Another shortcoming of the 1995 Constitution that Dr. Oloka-Onyango pointed out related to the apparent lack of political will within the Ugandan establishment to create the constitutionally required Equal Opportunities Commission, whose aim was to ensure equal access and opportunity for the country's disadvantaged social groups.

He further pointed out that the strength of any constitution in any society ultimately depended on its people who, he said, were supposed to be the bedrock of its constitutionalism. He, therefore, urged Ugandans to avoid abdicating this responsibility.

Chairperson: Dr. Oloka-Onyango

"The Making of Uganda's 1995 Constitution: Achieving Consensus by Law?" *by Dr. Jean John Barya,*

In this paper, Dr. Barya set out to analyze Uganda's 1995 constitution-making process, in order to establish whether the resultant document was legitimate. According to the presenter, the 1995 Constitution was qualitatively better than its predecessors in the sense that it empowered both the country's legislature and minorities in a manner that had not existed before. Having said this, however, he went on to argue that in his opinion this document essentially reflected the interests of the National Resistance Movement (NRM). Based on this opinion he went on to observe that, as a result, this document was not likely to promote sustained social cohesion.

The presenter discussed the 1995 constitution-making process from both the internal and external dimensions, focusing on Uganda's internal historical realities and the politics of the Cold War that existed before 1989. He elaborated that the internal dimension that contributed to the unfolding of this constitutional-making process had been shaped by the then Ugandan political realities that had eventually culminated into the early to mid-1980s civil war that mainly took place in the Luweero Triangle.

Dr. Barya observed that the external dimension had resulted from the loss of legitimacy for dictators worldwide. In his analysis, this had occurred with the demise of the former Soviet Bloc countries, after the ending of the Cold War in 1989. Henceforth he argued, Western donors included political conditionalities which demanded for the introduction of good governance in general, and more especially so the adoption of liberal democracy in Sub-Saharan Africa.

He went on to argue that after their assumption of state power in 1986, the NRM had effectively used the subsequently initiated constitutional-making process to both legitimize their hold on power, while concurrently delegitimising their political opponents in general, and especially so, the Uganda Peoples Congress (UPC). It was the UPC that had masterminded the imposition on the country of the 1967 Constitution, in addition to ruling Uganda in a dictatorial fashion for close to thirteen years.

Having mentioned this, Dr. Barya went on to state that he was of the opinion that the 1995 Constitution had failed to obtain its intended objective of securing a national consensus, amongst the broad spectrum of Uganda's political actors. He substantiated this

opinion by pointing out that, for instance, this constitution-making process had occurred in an environment where political parties had been subscribed.

Furthermore, in the opinion of the presenter, the war in Northern Uganda served an important function for the NRM government, as it legitimized it in the southern parts of the country. In addition, Dr. Barya also linked Uganda's adoption of a far-reaching decentralization programme, to the struggle that occurred in the Constituent Assembly (CA) that made the 1995 Constitution, between the NRM and the Buganda caucus in general, and with the Mengo establishment in particular, over the issue of federalism (Federo).

Sectional Document

Dr. Barya further noted that though the NRM did not capture state power with a ready-made constitution, it had a constitution agenda that eventually culminated into the constitution-making process that resulted into Uganda's 1995 Constitution. The presenter further argued that the Constitutional Commission which was henceforth constituted failed to widely consult, and that it moreover based its findings on guided questions which it issued out to its respondents. He also observed that the composition of the CA and its resultant committees was overwhelmingly dominated by the NRM. And it was this that, according to him, rendered the 1995 Constitution to eventually emerge as a sectional document!

According to the presenter the major achievements that emerged from the 1995 Constitution were:

a) The provisions regarding human rights, and
b) The powers that it gave to the legislature.

He, however, identified the major unresolved issues as being:

a) The form of governance system that Uganda should have i.e. either a Movement political system or liberal political pluralism?
b) The Federo issue; and
c) The land question.

Discussant: Dr. James Rwanyarare

The discussant was Dr. James Rwanyarare, Chairperson of the UPC Presidential Commission. He broadly agreed with the main presentation; though he went on to argue that the NRM-led constitution-making process lacked the political will to obtain the required national consensus. Dr. Rwanyarare added that the 1995 Constitution had much in common with the UPC's 1967 Constitution, and that it differed with the latter only in those provisions that were aimed at entrenching the NRM in power.

The discussant went on to disagree with Dr. Barya's assertion that the 1995 Constitution protected the Human Rights of the Ugandan people far better than its 1962 and 1967 counterparts. In the opinion of Dr. Rwanyarare, it was the 1967 Constitution that better protected these rights! He argued that under the 1967 Constitution no person could be deprived of his rights, except with his consent. He likened the 1967 provisions on human rights to those of the American Constitution.

He further criticized the NRM for not liberalizing the political space in the country - a situation, he noted, that had been entrenched in the 1995 Constitution. He further added that the Movement leadership was keen to always adopt a tactical if not opportunistic approach in dealing with major national issues, so long as the outcome entrenched them in power! To substantiate his view, he cited the launching of the armed struggle against the UPC regime in the 1980s, in addition to how it handled the issue of the restoration of the monarchy in Buganda. The discussant further pointed out that it should not surprise anybody if President Museveni managed to resolve the land debate in a manner that would elongate his prospects to maintain state power!

Dr. Rwanyarare concluded his discussion by observing that Dr. Barya's paper was a good basis for starting the debate on Uganda's constitution-making process and constitutionalism.

General Discussion

Hon. Sam Njuba, a Member of Parliament (MP) representing Kyadondo East Constituency, Mpigi District, initiated the general discussion. He pointed out that his contribution had been triggered off by the fact that he had been the Minister of Constitutional Affairs during the constitution-making process that had led to the establishing of the 1995 Constitution. Hon. Njuba disagreed with the views that were presented by both Dr. Barya and Dr. Rwanyarare that had suggested that the 1995 Constitution was a sectional NRM document. He argued that the constitution-making process that culminated into the promulgation of the 1995 Constitution had been done under a broad-based government which at that time incorporated nearly all the legitimate political tendencies in Uganda.

According to Hon. Njuba, the only areas in the 1995 Constitution on which consensus was not found related to the following:

a) The Federo issue in Buganda,
b) The issue of what governance system Uganda was to adopt i.e. was it to be based on the movement political system, or multipartyism? and;
c) The issue of land tenure system to be adopted in Uganda.

Hon. Njuba further noted that though the NRM had a constitution-making agenda when it assumed political power in 1986, it had to start from somewhere. This was a point that would be better appreciated if one bore in mind the political vacuum and illegitimate political structures that it inherited.

It was this, according to Hon. Njuba, that led to the NRM's establishing of the Ministry of Constitutional Affairs, entrusted with the responsibility of organizing Uganda's constitution-making process that eventually culminated into the 1995 Constitution.

Hon. Njuba then argued that it was erroneous to suggest that NRM supporters overwhelmingly dominated such crucial structures. He went on to substantiate his argument by citing the example of the Democratic Party (DP) which forwarded fifteen of its supporters to be nominated for membership on the Constitutional Commission.

Hon. Njuba went on to exemplify his objection to the view that the NRM had a hidden constitutional agenda. He observed that then, as the influential Minister of Constitutional Affairs and a leading NRM member, he rejected the establishment of the National Council of State, an idea that had been floated by very powerful NRM members!

On his part Hon. Omara Atubo, a multipartyist MP from Apac district, Northern Uganda, observed that the NRM had used the long period of constitution-making to justify its stay in power. He further observed that it was paradoxical that it was during the period of about eight years, before the making of the 1995 Constitution, that the NRM obtained most of its achievements, under the 1967 Constitution that it aspired to remove. Hon. Atubo further pointed out that the NRM also constitutionalised itself through the 1995 Constitution, which according to him enhanced their prospects to win the 1996 elections.

Frederick Jjuuko, an Associate Professor at the Faculty of Law, Makerere University, was of the opinion that the 1995 Constitution was sectional and that it had also been a package deal aimed at serving the interests of the NRM. He substantiated this by observing that up to now the Constitution was ineffectual, if one bore in mind the war that was taking place in Northern Uganda. According to him, it was not contracting but rather expanding!

On the other hand the Mayor of Busia Town, Eastern Uganda, Mr. Mukiibi provided the following comments:

a) That the flaws in the 1995 Constitution should not be put on the President, but rather on the CA delegates who made the 1995 Constitution.
b) Mayor Mukiibi also disagreed with Dr. Rwanyarare's criticism that the 1995 Constitution was a sectional document. For from his Busia experience, all interested people had been consulted during the making of this document.
c) He also criticized the view that the CA was an NRM organ, and exemplified his view by noting that though he supports the NRM, he voted for Aggrey Awori, a leading multipartyist, to represent him in the CA, as he recognized his competence in this regard!
d) He also argued against Dr. Barya's opinion that the war inNnorthern Uganda helped to legitimize the NRM hold of power in the southern regions. In his opinion, there was no way that President Museveni could connive with the Lord's Resistance Army (LRA) of Joseph Kony, to prolong this war.

Samuel Bbale, a Local Councillor representing the Youth of Nakasongola in Central Uganda, citing the Brigadier Jim Muhweezi case, observed that the constitutional censure provision had been rendered toothless under the arrangement that offered the President overwhelming powers in this regard.

A Councillor from Apac District was of the opinion that:

a) Dr. Rwanyarare's view that the constitution-making process had not involved adequate consultations was erroneous. From what he had experienced, the required consultation had taken place in Apac district.
b) He also criticized those who were advocating for political pluralism, and noted that for him and many other people in Uganda, the Movement political system was the most ideally suited for the governance of Uganda.

In response to concerns that had been raised by both Dr. Barya and Dr. Rwanyarare, Councillor Rukundo from Mbarara District observed that the people in Mbarara district had been adequately consulted during the constitution-making process. He further argued, on the other hand, that the 1967 Constitution had been made by one man, the then President Milton Obote, who in turn had imposed it on the rest of the population. In his opinion, the 1995 Constitution had provided Uganda with a viable base.

Councillor Samanya, a women's representative for Busia Town Council, also pointed out that the grassroots communities, including the women, had been adequately consulted during the constitution-making process.

On her part, Ms. A. Okille from ACFODE, citing the stalled Domestic Relations Bill, voiced her concern as regards the Constitution's protection of the rights of women on the one hand, and the lack of political will to turn these into actual laws on the other.

Response to the General Discussion

Dr. Barya began his response by observing that he had benefited tremendously from the contributions that he had received from the floor, many of which he intended to incorporate into his paper. He, however, clarified by observing that:

a) What he had meant concerning the NRM's benefiting from the war in the North, related to a broader pattern based on the legitimacy of the regime, that in Southern Uganda may have reflected the contrary.
b) He also pointed out that his research paper had been investigating whether the constitution-making process that culminated into the promulgation of the 1995 Constitution would usher in a sustainable democratic process in Uganda. He said that according to his findings, this was not the situation that was likely to emerge.

On his part, Dr. Rwanyarare emphasized his view that the 1995 Constitution was a sectional document. He went on to further argue that whatever consultation may have taken place during the constitution-making process had been carried out in a sectional manner that did not augur well for prospects for national harmony. In his opinion, what was required was the introduction of political liberalism, in addition to the consulting of all the existing political actors!

Presentation Two

"Governance, State Structures and Constitutionalism in Contemporary Uganda"
by Dr. Joe Oloka-Onyango

Dr. Oloka-Onyango began his presentation by defining the main terminologies in his paper. Governance was defined as being the process of the management of state affairs, based on the executive, legislative and judicial functions. He added that his paper focused mainly on the executive and judicial functions of government.

The first part of this paper focused on the military, which the presenter observed had played a disproportionate role in Uganda's governance experience. This, he noted, was still highlighted by the fact that President Museveni still dominated the process of making crucial decisions in the military, based on his holding onto both the rank of a serving military officer, in addition to being Uganda's effective Minister of Defence.

He also added that the military was being reviewed because the NRM had claimed to have established new civilian-military relations, since they assumed state power in 1986. He further observed that, in post-colonial times, the military had been a major hindrance in the effecting of constitutional rule in Uganda.

Dr. Oloka-Onyango went on to cite the case of Major General David Tinyefuza as illustrating that Uganda People's Defence Force (UPDF) was an authoritarian structure that did not tolerate democratic dissent. This was a factor, in his opinion, that presented ominous implications for the future of constitutional rule in Uganda. The presenter further noted that the state's response to Tinyefunza's testimony to a Parliamentary Committee did not augur well for the future of democratic dissent in Uganda.

Dr. Oloka-Onyango further argued that to compound this situation, the impartiality of the judiciary in its adjudication of cases in which the state is a concerned party was suspect! To substantiate this point, he cited the cases of Ex parte Matovu Vs. The Attorney General of Uganda, and that of Major General Tinyefunza Vs. The Attorney General of Uganda, all of which had controversial rulings that favoured the state.

On the militarisation of society, Dr. Oloka-Onyango raised concern at the failure to legalize the pervasive system of the Local Defense Units (LDUs). This had become more serious given the fact that President Museveni's son Muhoozi, who claimed to be a Local Defence Unit member, had recruited people into the army, in this capacity. According to the presenter, this also presented additional problems related to succession, and the issue of powerful political actors deliberately operating outside the constitutional framework with impunity.

In addition, Dr. Oloka Onyango questioned the overwhelming powers that President Museveni seemed to enjoy. In his opinion, this was a dilemma that was not resolved by the 1995 Constitution in that it failed to tame the presidency.

The presenter also voiced his concern over the concept of the Movement system and its claim of advocating for candidates to stand on individual merit. For, in his opinion, the reverse was actually the case. He observed that the NRM always identified and also sponsored its candidates in a similar manner to that of political parties. In addition, Oloka-Onyango pointed out his reservations in relation to the NRM's championing of the issue of the emancipation of women. For, according to him, the NRM had in essence hijacked this struggle. He observed that the NRM was an unreliable ally on gender issues, and that in essence it was against the interest of the women's emancipation programme since it only concerned itself marginally with their agenda.

He further argued that the NRM had exposed a history of attempting to monopolize political power - a situation it attempts to achieve either through co-opting or worse still the destruction of its opponents. Oloka Onyango was of the opinion that the enacting of the Movement Political System Bill was in essence to return Uganda into a One-Party State situation!

He, however, cautioned that space had to be created to enable organizations of varying political tendencies from the NRM to operate. In his opinion, though desirable on the NRM's part, it was not possible for it to bury all its opponents from the political scene!

Discussant: Hon. Sam Njuba

The discussion by Hon. Sam Njuba, MP Kyadondo East, Mpigi District, a former Minister of Constitutional Affairs, and a leading NRM member, focused on several issues. He said the NRM was a political party in all but name. In his opinion, they were either shy to declare themselves a political party, or deliberately did not refer to themselves as such, as a ploy to suppress the freedom of association of other political actors!

He also pointed to the centrality of the military in what he termed "African politics," whereby politicians could not effectively maintain political power without the support of the military.

He advised the NRM to use the current popularity it enjoys to transform itself into a political party. He said if it missed the boat, it risked being pushed away by the political whirlwind!

He went on to argue that freedom of association should be granted to all political actors in the country, to enable them to associate freely.

The discussant, however, refuted the view that the Parliament that had been established under the 1995 Constitution was ineffective. He argued that it was performing well especially if one looked at its track record relating to the handling of issues related to corruption. Njuba further observed that the current Parliament was also not as polarized as its predecessor - the National Resistance Council (NRC) was. This could be proved by evidence that although it was dominated by NRM supporters, it had managed to censure leading Movement members such as Ministers Jim Muhweezi and Kirunda Kivejinja.

He further argued that the logic of the Constitution had not been to tame the Presidency, but to establish a healthy system of checks and balances, between the executive, judiciary and the legislature.

Hon. Njuba, also pointed out that Dr. Oloka-Onyango should have been more objective when dealing with matters that related to the impartiality of the judiciary, when adjudicating over matters in which the state was an interested party. In this regard, the discussant argued that Oloka-Onyango should also have cited the political case of *Andrew Kayiira vs. Attorney General* of Uganda, whose ruling favoured the litigant and not the state.

Hon. Njuba also observed that Dr. Oloka-Onyango should have acknowledged that the NRM's established Army, the UPDF, formerly the National Resistance Army (NRA) was qualitatively different from past Ugandan armies. He, however, did concede that despite these changes, the UPDF was still overwhelmingly influential in matters related to the country's political process. He used the issue of the role of the Army Council in the process of the re-instatement of the Kabaka to substantiate this point. Hon. Njuba did agree that this did spell ominous implication's for the viability of the country's democratic process.

He concluded that:

a) The NRM's revolution had been hijacked.
b) It was not necessary to create a new NRM structure as the new Movement Bill suggested.
c) He also argued that a political opposition was healthy so long as it was not destructive.

General Discussion

Sabiiti Makara, a lecturer at Makerere University's Political Science Department, initiated the general discussion by observing that for all intent and purposes the NRM was a political party. For it had a secretariat, a caucus, and supported its candidates like all political parties did.

He went on to criticise the Movement for having triggered off the Ntungamo crisis during and after the 1998 Local Council IV elections, when it supported a candidate in a tightly contested race. This factor was compounded by some of the remarks made by leading NRM operatives such as Minister of State for Security, Hon. Muruli Mukasa, who was quoted for having stated that the NRM candidate "would rule you (the people of Ntungamo) until Jesus comes back". Sabiiti further criticized President Museveni for personalizing his animosity towards political parties. He observed that since Museveni was a national leader, such a position contributed to the creation of negative perceptions amongst the less sophisticated section of Uganda's population which, moreover, constituted the majority.

On his part, the Youth Councillor from Nakasongola, Samuel Bbale, pointed out that the NRM intended to govern Uganda perpetually, and that in part it was doing this by suffocating political parties.

The Mayor of Busia, Mr. Moses Mukiibi, commented on the issue of the need to legalize Local Defence Units (LDUs). He said that most Local Authorities were faced with a dilemma in relation to this issue. He illustrated this by saying that while the District Police Commander armed LDUs, if they committed offences it was the Local Councils that bore the responsibility. Moreover, it was the Local Councils that were conditioned to pay them. He said all this necessitated that LDUs be legalised.

Mukiibi also observed with concern that the proposed Movement Bill that intended to create an elaborate nation-wide Movement structure emanating from the grassroots, parallel to the Local Council structures, was likely to create a conflict between these two structures.

Patrick Owiny, a Councillor from Apac District, pointed out that one of the main problems Uganda was faced with related to its not having a culture of upholding Constitutionalism. He was also of the view that Uganda did not need to introduce political liberalism. In his opinion, it had the option of exploring the numerous potentialities that are integral to the Movement system, and in this way turn into Africa's political laboratory.

Josephine Ahikire, a CBR researcher, was of the opinion that:

a) The NRM had introduced a qualitative change in Uganda's politics.
b) She was, however, concerned that President Museveni seemed to have cultivated a personality cult which, to her, was likely to emerge as a time bomb.
c) She disagreed with the view that the NRM had hijacked the Ugandan Women's Movement. On the contrary, she noted, though problems did exist, it was the NRM that had made women issues visible.

Response to Comments

Dr. Oloka-Onyango began his response by appreciating Hon. Njuba's comments. He went on, however, to make the following contributions:

a) That the NRM had to remove its mask and compete with other political groups.
b) He further questioned the Uganda Parliament's ability to perform effectively based on its organizing principle of individual merit.
c) He also emphasized the need to tame the Presidency in Uganda for, in his opinion, this institution had historically been wild.
d) He supported his stand of not having cited the case of Kayiira *Vs. the Attorney General of Uganda*, on the basis that the rulings by the judiciary over the state were too mild, and ineffectual.

e) He also emphasized his view that militarism had highly informed Uganda's politics.
f) He stated that the proposed Movement Act intended to create a state founded on a one-party state system.
g) He agreed that Uganda did not have a culture of constitutionalism.
h) In his opinion, there was no viable Women's Movement in Uganda. He argued that the state had dominated most of the Women's Movement structures. He cited the example that most of the leading women activists such as Winnie Byanyima or Miria Matembe were state functionaries.

On his part, Hon. Njuba responded to the general discussion as follows:

a) He restated his position that the NRM government should allow political parties space to operate.
b) He called for the army to have a less prominent political role - an aspect which, in his opinion, could be achieved through political education.
c) He described the 1995 Constitution as a marriage between the Parliamentary and Presidential systems.
d) He was also against the Members of Parliament serving in cabinet as the two roles could conflict.

Presentation Three

"Reconstituting Ugandan Citizenship under the 1995 Constitution: A Conflict of Nationalism, Chauvinism and Ethnicity" *by Dr. Jean John Barya*

Dr. J. J. Barya began his presentation by highlighting the importance of the issue of citizenship to any given individual. He elaborated by pointing out how this issue in most instances shaped the nature of livelihood of the concerned individuals and communities.

He went on to argue that citizenship was both a political and sociological category, and clarified that his paper intended to focus on the genesis, character and socio-political implications of citizenship as they were provided for in Uganda's 1995 Constitution.

This paper was divided into four main parts as follows:

a) The first focused on the concept of citizenship and the context in which citizenship should be analyzed in light of the struggles that shaped the 1995 constitution-making process.

b) The second part was concerned with the history of citizenship in Uganda, and in particular how colonial rule and laws were to determine the major issues that were to arise in this regard. Furthermore, this section dealt with the questions of the early post-colonial constitutional experiences in dealing with this question -

Section three was concerned with the struggles that shaped the 1995 constitution-making from 1988. Its main issues were:

i) The fundamental question as to who was or should be regarded as a citizen and why;
ii) The question of tying citizenship by birth to membership of, or belonging to an indigenous community or nationality as by 1926;
iii) The granting of citizenship to foreigners and refugees *vis-a-vis* the status of aliens; and
iv) The issue of dual citizenship.

c) The final section contained the conclusion and recommendations.

a) Part One

Dr. Barya argued that though the concept of citizenship was essentially legal in its meaning, it had usually been confused with that of nationality. He argued that though in British legal and political terminology, which formed the basis of governing pre-independence Uganda, nationality meant the same thing as citizenship, yet sociologically, nationality did not mean the same thing as citizenship.

He went on to clarify that in popular Ugandan terms; the issue of one's nationality was usually directly related to his/her being 'a child of the soil'. He further pointed out that this concept of citizenship had a lot to do with citizenship by birth - a concept that became controversial in the 1995 constitution-making process.

He pointed out that the importance of the concept of citizenship lay in its being that major link between the individual and the state. It empowered the citizens to demand from the state both protection and promotion of any given individual's rights. Furthermore, it involved rights and corresponding duties on both the individual and the state (Laws of Uganda, 1964, Cap. 1).

The presenter went on to point out that during the 1995 Constituent Assembly (CA) debate, it became apparent that the most fundamental question on the issue of citizenship was one of who was to be deemed to be a Ugandan citizen by birth. Which related to the issue of the desirability or otherwise of registering as citizens, refugees and alien migrants who had lived in Uganda for a long time.

This led to the CA Delegates (CADs) of different ethnic groups to try and have their ethnic groups recorded in the Third Schedule to the Constitution as "indigenous communities existing and residing within the borders of Uganda" at the relevant cut-off date.

Dr. Barya further stated that related to the `citizenship by birth' concept, was the idea of collective rights of communities that regarded themselves as distinct ethnic

groups. Special reference here was being made on the Baganda, with their demand for federal status (Federo). This, according to him, was based on the idea of collective rights of citizens who are aggregated as a community.

Dr. Barya further argued that the crucial variable of ethnic consciousness in Uganda had to be appreciated from the reality that surrounded its colonial imposition. He explained that this imposition was artificial and according to the above experience was laid over disparate groups of peoples and nationalities. Barya continued to observe that the removal of this artificial colonial state at independence revealed the fragility of the institutions of state that were left behind. This, according to him, explained the relevance of the nation-building project that emerged at that stage. He, however, went on to argue that unlike in Europe where the state was controlled by the dominant classes, in Uganda, no such situation existed. In fact, it was this state that was used for capital accumulation by those that controlled it, which in turn led to its being competed for fiercely - a process that in turn fuelled ethnic consciousness.

The presenter, however, noted that ethnicity could be used to mobilise for a legitimate cause. In this regared he cited the cause of the Rwenzururu Secessionist Movement. He noted that the concept of citizenship by birth in the 1995 Constitution was predicated upon a membership of an indigenous community as set out in the Third Schedule. To him, this translated into the fact that it was these acknowledged groups whose individual's rights became protected in the primary law of the land. As a result, he continued, it was because only citizens by birth could enjoy certain rights that had led to the issue of what constituted an ethnic group becoming critical.

b) Part Two

Dr. Barya pointed out that because Uganda had been a colony, citizenship only became an issue in the legal sense at the time of its independence - for, as he put it, colonized peoples were people without rights! He elaborated by pointing out that colonized people were merely seen as subjects, dependents, native Africans or protected persons by the colonial power.

He noted that during the first decade of Uganda's independence, the central constitutional question that related to citizenship revolved around the issue of the status of the Asians. This was so, because, indigenous Ugandan Africans had acquired citizenship automatically by a constitutional provision; and was a right, whose extension to the Asian community, the political parties that formed the ruling UPC-KY coalition had rejected.

Dr. Barya further observed that unlike its 1962 and 1966 predecessors, the 1967 Constitution did make some significant changes relating to the citizenship rights of the Asians and the former monarchies. He pointed out that the then Prime Minister, Milton Obote, refused to offer preference to the processing of the long overdue applications for citizenship of over 14,000 Asians, on grounds, *inter alia*, that he was opposed to the Indian identity that the Asians wanted to maintain.

According to the presenter, the above was an argument that was opposed to:

a) Dual citizenship
b) Cultural diversity; and
c) The right to separate cultural identity for foreign communities.

He also pointed out that, the second point raised in the 1967 Republican Constitution related to the issue that was concerned with the privileges that were enjoyed by some citizens. This Constitution ensured that no Ugandan citizen was to enjoy any special privilege, status or title by virtue of his/her birth, descent or heredity. At the same time, no law was to confer any special privilege, status or title upon any citizen of Uganda on the grounds of his birth, descent or heredity.

Dr. Barya observed that both the mood of the period surrounding the 1967 Constitution regarding citizenship, and that of the 1994-1995 period were influenced by the then existing political contexts. He noted that, in the 1967 period, there was a strong, xenophobic anti-Asian feeling in the country. Many Ugandans felt that the Asians were exploiters who had refused to identify themselves fully with the African population. At that stage, he continued, there was no debate about which Ugandans could or could not become citizens.

He went on to point out that the above-mentioned situation differed markedly from that which characterized the 1994-1995 constitution-making process. In the 1994-95 process, the question of non-African foreigners did not feature prominently. The main issues of concern then focused on the status of African immigrants and refugees. Particular attention here was placed on the Rwandese refugees. The reason for this, he reasoned, was because the government was seen to favour them in terms of being granted citizenship rights. Such citizenship grant was based, *inter alia*, on their participation in the 1981-1986 NRM-led struggle, notwithstanding the fact that many of these people had returned to Rwanda after the Rwandese Patriotic Front (RPF) captured state power in that country in 1994.

Dr. Barya noted that the government's opponents, and especially the UPC, were strongly opposed to its stand on the issue of granting Ugandan citizenship to the Banyarwanda. Basing on these and the earlier debates, the presenter observed that the issue of citizenship was ultimately a political one, and was defined at any particular moment in favour of those social groups that were in control of state power. And, in his opinion, the 1995 constitution-making debate on citizenship was charged, emotional and partisan.

c) Part Three

Dr. Barya began this section by pointing out the four ways through which a person can become a Ugandan citizen. These being:

a) For all people, who on the commencement of the 1995 Constitution had acquired Ugandan citizenship under the old constitutions.

b) Any person who was born in Uganda or one of whose parents or grandparents were a member of the indigenous communities, listed in Schedule three, existing and residing within the borders of Uganda as of 1 February 1926, became a citizen by birth.
c) Several people are entitled to become citizens by registration after they have applied to the National Citizenship and Immigration Board.
d) Citizenship by naturalization as provided for by Parliament.
e) By adoption, for children, under the age of 18, or for children of not more than 5 years, whose parents are not known, who are found in Uganda. The latter category can be presumed to be citizens of Uganda.

Dr. Barya went on to argue that there was no controversy over the question of recognizing citizens, who at the time of the commencement of the 1995 Constitution were already citizens under the old constitutions, because, the provisions in the older constitutions themselves had not been controversial in the past. In his opinion, it was the new categories of people who were perceived to be foreigners and yet sought by the political authorities to be granted citizenship during the CA debate that aroused and created great controversy.

According to the presenter, a lot of heat was generated by the provision relating to the issue of citizenship by birth for two main reasons. These being:

a) Only citizens by birth are entitled to certain rights in the Constitution. These include the right to become the President and Vice President of Uganda.

b) The second point related to the controversial role that foreign migrants have played in Uganda's post-colonial history. With many of them being, for instance, used by the Amin regime in its security agencies, this in addition to the role of the Banyarwanda in the NRM armed struggle.

He went on to point out that the arguments as to who should be a citizen by birth centred on two issues: the first one relating to the relevant cut-off date, and the second one relating to which communities deserved recognition as distinct ethnic groups and, consequently, where to include them in the Third Schedule.

The debate on the issue of the cut-off date was focused on either one's acceptance of the government's position of it being l926, or that of the opposition that favoured it to be 1962. He argued that behind this question of a cut-off date was the fear by the people mainly opposed to the government that the NRM was trying to grant citizenship to Rwandese refugees, based on its support for the 1926 cut-off date.

He clarified that the NRM had chosen the 1926 cut-off date for basically two reasons. The first one was to enable more individuals and communities to become Ugandan citizens. The second reason for sticking to 1926 was calculated to thwart those tendencies offering any legitimacy to the 1962 and 1967 Constitutions. If not taken, this decision would have offered credence to the opposition's stance that it was not necessary,

after all, to make a new constitution, and that all that was required was the amending of sections of the 1967 Constitution.

Dr. Barya argued that after the cut-off date had been decided upon, there was no scientific method for determining which ethnic groups existed in Uganda prior to 1926. He added that while the Constitutional Commission had, for instance, identified only 48 indigenous communities, the Select Committee dealing with this matter raised this number to 56, having included, amongst others, the: Bafumbira, Basongora, Banyabindi, Baruli, Bagungu, Batagwenda, Bagwisi, Banyara and Bakusu.

Dr. Barya further observed that the issue of the inclusion or exclusion of certain groups or communities had resulted from the political pressure for or against this inclusion during the CA debate. He went on to make specific reference to the cases of the Bahima and Bafumbira. A section of Bahima under Colonel Pecos Kutesa, CAD for Kabula, had wanted to be recognized as a separate ethnic group from the Banyankole. Dr. Barya, however, observed that this was not to be due to overwhelming political forces and manipulation (of the CA Chairman and higher authorities) that had opted to maintain a united Banyankole ethnic group.

On the issue of dual citizenship, the presenter noted that both the Constitutions of 1962 and 1967 had prohibited the existence of this status. It had been provided that, "a Ugandan citizen was not to hold the citizenship of another country concurrently with his or her Uganda citizenship". Dr. Barya continued by observing that though the 1962 and 1967 Constitutions had summarily dismissed this status; this was not the case with the 1995 constitution-making process. He added that this issue proved to be more interesting than other questions on citizenship during this process because it did not polarize the CADs along groups based on political affiliations. For the divide in this case cut across such a line, as this issue was debated from the point of view of the actual interests of individual CADs as well as the groups they represented.

After a heated debate, and the consultation of the findings of the Constitutional Commission, the granting of dual citizenship under the 1995 Constitution was rejected on the basis of political and security considerations.

Conclusion

In conclusion, Dr. Barya recommended the following five points:

a) The need to revise the issue of dual citizenship if it concerns one obtaining the citizenship of developed countries. For, in his opinion, most neighbouring countries, as of now, are either too unstable, poor or both, for Uganda to mutually benefit from this arrangement.

b) That the question of the rights of citizens by birth should be further reviewed with the view of giving more protection to them, especially in relation to the issue of the ownership of land. Also, that certain other rights should be restricted to citizens and not necessarily granted to all persons - for instance, the right to education.

c) The decision as to which community or nationality should be regarded as an indigenous one should be open and clear, as well as scientific criteria be established that is to be followed by any community that wants to be scheduled.

d) That the citizenship granted to refugees and illegal immigrants who had lived in Uganda for twenty years by 9 October 1995, be carefully handled by the legislature, when it enacts a new citizenship statute. As many of these refugees have since returned to their countries of origin.

e) That people be educated about their rights and duties as citizens of Uganda. For the constitutional rights of citizens will only remain on paper if Ugandans are not aware of the privileges and advantages that their citizenship confers on them.

Discussant: Hon. Onyango Kakoba

Hon. Onyango Kakoba, MP for Buikwe in Mukono District stated that he broadly agreed with the views Dr. Barya had presented in his paper. He went on to observe that he did not support the idea of introducing dual citizenship in Uganda because, in his opinion, this was likely to lead to the conflict of interests of those concerned.

The discussant, however, qualified his position by noting that in case the issue of dual citizenship was to be considered, he recommended for its being done with only those countries that neighbour Uganda. He based this opinion on the fact that people from these places share a lot in common with the Ugandan people. And hence, this would inevitably foster cultural and economic linkages with Uganda. Onyango Kakoba also supported the constitutional provision that ensured that only those Ugandans who had obtained their citizenship by birth should qualify to become the country's President and Vice President.

On the touchy issue of the proposed Land Bill, the discussant observed that this Bill had been introduced in isolation without its being linked to any major development programme. He observed that the issue should be not one of land ownership, but rather one of turning this land into a productive entity. Kakoba, however, questioned the timing of the introduction of the Land Bill, for in his opinion it was bound to lead to the MPs losing popularity amongst their voters, and as a result, their ending up being sacrificed. He concluded by calling for the postponement of the Land Bill.

General Discussion

Frederick Jjuuko, Interim Chair, The Free Movement (TFM) and Associate Professor, Faculty of Law, Makerere University, raised two main issues as follows:

a) He was against the existence of a Schedule in Uganda's Constitution, that discriminated some citizens of their rights, while also having others being subsumed into larger ethnic groups;
b) That the issue of contention concerning dual citizenship was not the loyalty of those concerned towards Uganda, but rather the high-profile roles that many non-Ugandans had occupied in the past.

In his opinion, it was this factor that led to Ugandans being weary of the introduction of dual citizenship by the country's 1995 Constitution.

Dr. Oka Omathi, a Food and Agriculture Organisation (FAO) official, observed that the issue of the Third Schedule, which stressed the existence of indigenous Ugandans, was highly controversial. He argued that in reality, all Ugandans apart from the pygmies had migrated at some historical point in time into this country. And, in his opinion, there was no need to over-emphasize the aspect of one being an indigenous Ugandan.

Mr. Moses Mukiibi, Mayor of Busia Town Council, argued against the offering of dual citizenship to people from neighboring countries. He said this was bound to create numerous administrative and other problems in border regions such as Busia.

Mr. Emmanuel Baingana, of Trade Union Movement, also queried the issue of denying people who had settled in Uganda sometime ago, citizenship. In this regard, he wondered as to what would be the status of these people, especially as many of them had married or got married to Ugandans.

Response to Comments

In response, Dr. Barya expressed his appreciation for the views that were presented by both the discussant and the other participants. He went on to point out that he examined the aspect of the Legislature reconsidering the issue of dual citizenship, especially in relation to enabling many Ugandans who are living in the Western countries to obtain this status.

He further suggested that it should only be Ugandan citizens by birth that should be given the right to own land under freehold status. He observed that others should only access land through leasehold tenure. He also observed that the Third Schedule that identified Uganda's `indigenous' ethnic groups had been politically constructed and that more scientifically acceptable criteria for scheduling ought to be found.

On his part, Onyango Kakoba, restricted his response only to the issue of dual citizenship. In this regard, he observed that in principle, he was opposed to dual citizenship. He, however, qualified this by adding that if need be, he would support the introduction of dual citizenship if it be effected with those countries that neighbour Uganda.

Chairperson: Mr. Lawyer Kafureka

"The Federo (Federalism) Debate in Uganda" *by Sallie Simba Kayunga*,

Introduction

The aim of the research was to establish the nature of the federalism debate as it unfolded during the constitution-making process in Uganda. The key issues covered were: who the actors were, their strategies/actions in influencing the debate, and an analysis of their arguments so as to throw light on why federalism, at least, as demanded by some of the actors were defeated. Kayunga's paper dealt with the dynamics of the federal debate in cognizance of Uganda's economic, social, political and historical context.

The authour's analysis proceeded with the discussion of the actors, followed by issues debated, then why federalism (as demanded by the Mengo Government), and concluded with what he construed as the negative and positive consequences of the `federo' debate.

Actors in the Federalism Debate

According to Kayunga, the following were the major actors in the federalism debate in Uganda:

1. The Lukiiko/Mengo group.
2. Popular opinion within the National Resistance Movement (NRM) Government advocated for decentralisation.
3. Advocates for a return to multiparty politics in Uganda.

Kayunga noted that each of these actors articulated different interests with regard to federalism. The Mengo group called for 'federo' which linked together federalism, land and the monarch - which the author dubs the `federo trinity'. Kayunga argues that this trinity made the federalism demanded by the Mengo group congested, while it also appeared as a hidden agenda for Buganda to secede from the rest of Uganda.

On its part, the NRM government considered decentralisation based on a populist political ideology, that sought to empower people through the local political organs called Local Councils, the best form of devolution. According to the author, the decentralization policy pursued by the NRM since it came to power in 1986 had sought to unleash local initiative and invigorate the local democratic process, which together would sustain development and enhance local capabilities for self-government and delivery of services. The NRM was, therefore, not prepared to have political monarchs, but cultural ones, and was also opposed to the idea of linking federalism to land.

The multipartyists, on the other hand, were striving to fight the movement system of government in Uganda. While the NRM had emphasised the benefit of vertical pluralism, multipartyists were clamouring for a return to horizontal (political party)

pluralism. In order to obtain their objective, multipartyists formed the National Caucus for Democracy (NCD) that allied with the Mengo/Buganda Lukiiko to demand for the `federo' trinity. According to Kayunga, the advantage of the alliance was that it broadened the national outlook of what was otherwise Buganda's demand for federalism. Due to this alliance, federalism was projected as an issue with support from the whole country. However, the alliance created some problems that weakened Buganda's demand for federalism. Notable was the fact that the multiparty side of the alliance was composed of several members of the Uganda People's Congress (UPC), a party which while in power, is credited for abolishing federalism and the monarchy in 1967. This historical legacy and the brutal way the monarch was removed were still fresh in the minds of several delegates within the Constituency Assembly.

Issues in the Federalism Debate

According to Kayunga, the bone of contention within the federalism debate concerned what power mechanisms, to whom, and the unit of power deregulation in question. One of the main axes of discord between the Mengo/multiparty federalists' camp and the NRM decentralization camp concerned the economic viability of the unit to be empowered.

According to the National Resistance Movement government, decentralisation in Uganda was designed to achieve transfer of "real" power to the districts and thus reduce the workload on remote and under-resourced officials at the centre among other things. Secondly, another objective was to bring political and administrative services to the point where they were actually delivered, thereby improving accountability and effectiveness. Thirdly, it was to promote people's feeling of ownership of programmes and projects executed in their districts. This was to be facilitated by Local Councils at village, parish, sub-county, county and district levels.

However, the federalists argued that the local governments as perceived by the NRM government are not economically viable. They further argued that they lacked a "cultural" content and, therefore, underlined the need for devolution to create economically viable units. According to the federalists, small territorial units (districts), though ideal for popular participation, were not economically viable. Apart from Kampala, most districts in the country exhibited very poor economic bases. According to the federalists, therefore, giving power to people who were economically powerless was self-defeating.

Apart from the economic viability argument, the federalists argued that local governments should be based on some form of identity common to a particular locality irrespective of territory and population size. According to Kayunga, the federalists argued that people who enjoy linguistic or any other form of ethnic commonality should be organised into a single local government within a federal (federo) arrangement.

Whereas NRM's radical populists were thinking of `apolitical' traditional rulers, the federalists were advocating for a "non-partisan" monarch. They also argued that with regard to descending powers, though the NRM sought to give "power to the people", the

devolution was in descending pattern. The higher the hierarchy of local government, the more powers it had over its subordinate units.

On financial devolution, the federalists were of the view that central government could use its discretion to influence allocation. For example, it could use its discretion to determine allowances of local government officials to buy their support or to punish them in case they became disobedient. With the financial powers reserved to central government, loyalty of local council officials would be tilted towards the central government and not the people who elected them. In essence, therefore, the conclusion the federalists popularised was that the NRM government was in effect executing state penetration as opposed to `power to the people'.

The federalist's views, however, varied between their constituents and in particular, between members of the Conservative Party (CP) and the Buganda Lulkiiko. However, as for the NRM, politics and culture could be separated. On top of this, culture was dynamic so Baganda could not claim for the colonial status quo that was long defeated.

Why Federo Failed

Kayunga raised several reasons for federo's failure. One of them was what he termed Buganda's historical dilemma. He noted that much as Buganda dominates Uganda's socio-economic and political developments, it only represents 16.2 per cent of the entire national population, hence becoming a small portion of national debate. For the NRM government, therefore, Buganda's claims could be sacrificed if at all to obtain national unity.

Secondly, Buganda's claims were anchored in the history of their cultural as well as economic viability as an ethnic group. However, this was not replicable among the remaining federal units, thus rendering their conception of federalism unsuitable.

Thirdly, according to Kayunga, the federal trinity claimed by Buganda; federo the father (Buganda); federo the son (Kabaka) and federo the spirit (Land) made their claim unacceptable. How to merge this trinity was problematic, just as separating them, at least from Buganda's standpoint, would only deliver *Byoya bya Nswa*.

The fourth problem concerned the notion of Buganda's Glory - *Ekitibwa Kya Buganda*. According to Kayunga, the British orchestrated Buganda's glory in the early stages of colonialism through political, military and migrant labour policies that favoured Buganda. In the early years, Uganda's army was dominated by the Baganda, but from the 1940s onwards, the colonial government began weeding the Baganda out of the army, preferring to recruit soldiers from the Northern, Eastern and Western regions in that preferential order. At the same time, the migrant labourers in Buganda were growing both in numbers and economic and political significance. This process included their acquisition of land and other resources in Buganda. All these factors combined have over time eroded Ekitibwa Kya Buganda.

Kayunga also argued that the Baganda/multipartyists federalism alliance was made of two dominant groups with different interests. Within the alliance, particularly in

order to gain a national outlook, multipartyists took an upper hand, and yet the NRM government had to defeat this political group. Among the Baganda themselves, different and contradictory opinions were evident both within and outside the Lukiiko. For example, there was talk of federal claims from the so-called Baganda "concentrated" (Baganda Waawu) as opposed to the rest of the Baganda. This internal weakness too undermined the federo claim to success.

Against the backdrop of these negative elements in the federal debate, Kayunga notes the following positive elements:

1. The debate on federalism enhanced the decentralisation policy of the NRM from mere deconcentration, to devolution; and
2. The federalism debate removed the myth that the NRM government enjoyed the overwhelming monopoly of solutions to Uganda's problems.

General Discussion

Dr. James Rwanyarare, the Chairman of the Presidential Policy Commission (PPC) of the Uganda People's Congress (UPC), noted that one of the pitfalls of the federal debate in Uganda had been to make it a Buganda affair. According to him, it had always been UPC's intention to implement federalism as a form of decentralisation of political power. However, in UPC terms, federated units would have to be economically viable, socially expedient and politically and culturally agreeable to those concerned. He disagreed with the author's likening federalism as a form of governance to federo, Buganda's claims for cultural autonomy.

Mr. Emmanuel Baingana questioned the use of the description 'conservative' when referring to the Lukiiko of Buganda. According to him, all interest groups in the federo debate had radical and conservative elements. He wondered where the Kabaka of Buganda's interests were situated in the federo debate. Were the interests in the people or the land of Buganda? If it was the people of Buganda, then the Lukiiko's position should have cut across nationalities, for Buganda is presently multi-ethnically composed. Besides, he did not agree with the notion that the non-Baganda in Buganda were all offsprings of migrant labourers. He urged his audience to remember that in the heydays of Buganda's conquests, many a people of Uganda ended up in what is now widely termed Buganda. He mentioned the Bunyoro lost counties, and Kabula counties of Mawogola and Sembabule as examples.

Busia Town Mayor, Mr. Moses Mukiibi, observed that what actually happened during the colonial times could have only succeeded in that trajectory. Federalism, he argued, could possibly have worked at that time when the population of Uganda was very low and easy to govern as compared to a population of 20 million at the moment. He noted that the federalists were proposing a merger of Bugisu and Sebei into one federal state, which is impossible. However, he thought decentralisation as a policy was fine.

Hon. Sam Njuba pointed out that federo reduced federalism to Buganda's claims, which was erroneous. Federo, he argued, was not about feudalism but cultural

homogeneity. According to him, even Buganda had as early as the 1960s outgrown feudalism and Kabakaship for that matter. The Kabaka of Buganda has since been merely an honorary figure.

Mr. Charles Siyondo noted that federalism is not an issue for debate as long as it threatens to divide the nation. According to him, federalism cannot enhance economic development given the land conflicts and the majority of sparsely populated tribes.

On his part, Mr. Mwambutsya Ndebesa was of the view that federo and federalism are different issues. To him, federo was a Buganda party the NRM contended with during the debate on federalism. The Buganda Lukiiko used the Federo Organisation to fight for Buganda's local, as opposed to national, federal interests. For example, he argued, Buganda while pretending to call for federalism would not allow one of its districts to align with non-Buganda ones to form federal states!

Mr. Sabiiti Makara noted that disunity among Baganda because of petty considerations of "real" Baganda as opposed to 'inferior' Baganda dealt the biggest blow to the federal debate in Buganda. It not only disintegrated the local population but also created tensions between them and the Buganda Parliament (Lukiiko). Furthermore, he was of the view that the Lukiiko's views should not be equated with those of the Kabaka. To him the two can have separate viewpoints on Buganda. He said he disagreed with Dr. Rwanyarare over the view that the Uganda People's Congress (UPC) was pro-federalism in Uganda. Not even the Democratic Party (DP) was.

On his part, Mr. Martin Wandera was of the view that the devolution of power from the central to the local levels was important for Uganda's development. However, the negative side of decentralization had to be tackled. For example, he noted, decentralization was leading to nepotism. Some local governments assumed they had been empowered to include only local job seekers on their payrolls. He recommended a return to the rotational system for public servants as a way safeguarding against nepotism and revitalising nationalism.

Other discussants like Kafureeka Lawyer noted that besides the social costs, decentralisation had also led to more administrative costs, which economic burden fell upon the taxpayer.

Response to Comments

Mr. Kayunga in his response was grateful for the points raised on his paper. He pointed out that, in his view, federalism was superior as a form of devolution because it offered political units greater financial and local administrative autonomy. However, with regard to Uganda, Buganda's overriding claims for autonomy from central government dislocated the federal debate. He noted that it had always been the so-called well-off regions which favoured federalism and cited the case of Bugisu, another wealthy region of Uganda, as having supported federalism in the past. However, in the contemporary context, the federal debate was largely used by the multiparyists in an attempt to alienate the NRM in Buganda and elsewhere.

Chairperson: Ms. Zam Zam Nagujja

"NRM Politics, Political Parties and the Demobilisation of Organised Political Forces"
by John Ssenkumba

Introduction

The paper focuses on the relationship between the National Resistance Movement (NRM) government's movement politics and how this has affected advocates of alternative political systems for Uganda and the developments thereof. Mr. Ssenkumba is particularly concerned about the specific aspect of NRM politics and the demobilisation of organised political forces in Uganda.

In his presentation, the author noted that originally, the movement system of government was conceived as a transitional mode of government, whereby, the NRM government should have been a temporary issue at the expiry of the initial interlude from multiparty politics till 1994. However, the opposite happened instead; and within the period of transition, the NRM consolidated itself as a political organisation and hegemonised itself across Ugandan politics.

Secondly, Mr. Ssenkumba focused on NRM politics during the Constituent Assembly process and the politics of constitution-making in Uganda. He noted that what happened in this period side-stepped the wider political interests of the country, especially within dissenting circles right from the consultations for constitutional views stage.

Thirdly, he considered the elections of 1996 - both the presidential and parliamentary - in the light of the contemporary history of Uganda. Ssenkumba noted that there were conservative forces embedded in the NRM government's politics. One of the manifestations of this, he said, was the recycling of NRM personalities in the new government excluding once again other political representations. Instead, those dissenting political forces were either marginalised or co-opted in the NRM system.

Ssenkumba argued, therefore, that the real victory of the NRM government over its malcontents occurred before the 1996 polls, by co-opting dissenting political views into the NRM agenda. This was done by the NRM in order to bias the political forces to its own advantage. According to the author, the NRM government rigged the constitution-making process through the following activities:

1. The NRM ensured that the Constituent Assembly that handled the constitution-making process was dominated by its supporters, notably, representatives of Women and Youth.
2. The NRM government heavily supported movement candidates logistically and financially.
3. Critics of the NRM government, including those sympathetic to the NRM itself, were silenced.

4. During the constitution-making process, the NRM government ensured it monopolised the media so as to deny dissenting political forces - multipartyists and federalists - avenues for articulating their own vision and interests.

Hence, according to Ssenkumba, although the 1995 Constitution deviates from the `pigeon hole' one of 1967, the former is not very much different in as far as it excluded the views of the opposition.

Provisional Balance Sheet: Gains and Losses

In this section of his paper, Ssenkumba summarised his opinions about the gains and losses of the NRM's relationship with the malcontents of the movement system of government being entrenched in Uganda.

He observed that, whatever fundamental changes politicians would proclaim to have taken place in Uganda, we were very far from a time when anyone could become president without an army behind, beside or in front of him. And that was whether he became president through a coup, guerrilla war or election. Ssenkumba pointed out that Ugandans had learnt the hard way that even political choices people make in elections need to be protected. He castigated the NRM for its failure and refusal to resolve the question of power and the arena through which it is contested. Instead, the NRM had sought to perpetuate herself at the cost of other contending political forces in the country. Given this context, the author argued that no one could pretend (even in NRM itself) that Uganda had changed from a transitional-type government to a constitutionally-entrenched democratic regime.

From a more critical standpoint, however, Ssenkumba noted that representative democracy, focusing on competitive elections, was an important component, but not the totality of democracy. In fact, it sharply contrasted with participatory democracy, which emphasised input into decision-making by the majority, as a critique of democracy in strictly electoral and representational terms. According to the author, therefore, the critical issue to address was whether in real terms a movement and a multiparty form of government were mutually exclusive. Both sides, he noted, had good points but it was rather practically difficult to accommodate both interests. Nonetheless, within the movement system, contenders could be allowed more campaigning on issues so that the people got a sense of the different policy positions candidates represented.

Ssenkumba concluded that the above scenario created by the NRM government left Uganda with many unresolved issues, both of principle and practice. Foremost, he argued, was the question of what form or forms the struggle for democracy must take. Second was the question of how the needs of the majority should be reconciled with the demands of the propertied classes (particularly on the issue of land)? Third was the issue of how, and with what degree of autonomy, mass organisations would develop as vehicles of popular participation and decision- making? What role would they play in counter-balancing the parties that espoused the interests of the bourgeoisie and middle class? Were there any plans for genuine power-sharing among the political groups in

Uganda? These were the real challenges facing Uganda and not the dread of NRM degenerating into a single-party institution, which only simplified the complex national dilemma to the advantage of those seeking to oust it from power.

Discussant: Mr. Emmanuel Baingana

Mr. Baingana thanked the presenter for his informative analysis of the political climate in Uganda. He noted, however, that the paper seemed to put the NRM government on the cross, the other political parties in the dock, but also as witnesses. He observed that the strength of the paper was in its analysis of the demobilisation of the opposition by the National Resistance Movement government. He was at the same time of the view that certain salient actors in Uganda's political development had not been highlighted in the study.

These included, first and foremost, the potential wielders of power in Uganda today. These included among others, the Trade Unions, Women Organisations, Peasant Associations and Civil Society at large. Secondly, there was undue concern with personalities in the author's analysis. Mr. Baingana questioned the relevance of personality cults i.e., the Obotes, Semwogereres, Musevenis, etc. in the analysis of Uganda's political development. In his opinion, the state was bureaucratic and this was in historical terms more important than any role played by personalities and, therefore, more analysis of the state machinery was necessary in order to tease out the complex forces at play in the demobilisation of the opposition in Uganda. Thirdly, on the section on the balance sheet where the author presented the losses and gains of the NRM/opposition contestations, Mr. Baingana argued that while the author portrayed the NRM as the `gainer' and the political parties `losers', both the movement and political parties had lost in one way or the other. Besides, in his view, the losses in the multiparty camp should also be blamed on their internal weaknesses and their failure to mobilise politically. In his opinion, Uganda's opposition lacked political consistency.

Mr. Baingana further questioned the mentality among the elite to only judge the organs of the state viz. the military, the legislature and the executive without practically doing anything about the negative developments within them. What were we as civil society doing about the above wings of the state? Had we exploited the space provided by the Constitution to change Uganda's politics for the better? How far was our own participation in politics? What was the agenda of civil society in Uganda? Mr. Baingana noted that these and other questions were all issues that needed to be analysed in order for one to arrive at a balance sheet of politics in Uganda today. The roles of researchers, academicians, political scientists and civil society in general, he noted, were integral to the political dynamics of Uganda.

General Discussion

Mr. Sabiiti Makara pointed out that the multipartyists had themselves to blame for allowing the NRM the monopoly of politics in the country. He noted, for example, that

the opposition failed to organise a strong coalition to defeat the movement in the 1996 national elections. He further noted that the NRM in its present form had weakened considerably as a result of internal intrigue and ethnocentrism necessitating political change. In his view, the NRM was driving towards military presence as opposed to political legitimacy. The NRM had become a state-party and continued through extra-judicial means, to intimidate other political actors.

Mr. Samuel Bbale on his part reiterated Mr. Baingana's view that one should not equate multiparty or the crusade for political pluralism with Semwogerere and Obote. This only distorts what a wider movement is attempting to do, in order to open up the politics of the country.

Mr. Edward Rubanga opposed those who insinuated that the NRM was a political party. In his view, the NRM was an umbrella of diverse political interests in the country; and as such he preferred to perceive of it as the mother of all parties. Furthermore, in his opinion, it was the political parties which in the past disorganised the NRM, contrary to claims that NRM had disorganised political parties. Rather, in his view, the NRM had awakened political parties. He, therefore, commended movement politics for setting the stage for political pluralism, even if the NRM had not yet specified the time when it would allow political parties to contest for power.

Mr. Mwambutsya Ndebesa observed that there had been an unnecessary stand-off between the NRM government and the advocates for political parties. In his opinion, the solution to the bad politics of past political parties was not to proscribe political pluralism, but rather, to even legitimize more political competition. Elsewhere, he noted, instead of dissolving competition, politics had been redressed by putting in place principles to guide such competition. Therefore, what was needed in Uganda was to develop such guiding principles that could build and sustain political pluralism.

Ms. Teopista Samanya observed that the elite in Uganda did not vote and, therefore, criticised without participating in the political processes of the country. In her view, the very reason the NRM government won the 1996 elections symbolised the mandate the movement has with the popular masses, especially the peasants.

Hon. Omara Atubo, MP Otuke County, had several recommendations to make. One, he urged that political parties be conceived as forms of freedom of association. Secondly, political parties were fora for competing for interests including gaining power from the status quo. He noted that in the past, there had been alliances between the NRM and political parties such as the Democratic Party (DP) for historical reasons, thus isolating others like the Uganda People's Congress (UPC). However, while in the early days most political parties joined the NRM in the understanding that the movement politics would last the interim phase of four years only, and thereafter return to a multiparty order, the NRM had instead entrenched itself and marginalised the parties altogether.

Dr. John-Jean Barya noted that the fallacy held by the NRM that, for as long as some freedoms like freedom of the press and movement existed, democracy also existed, was wrong. To him, a free civil society was not a replacement of political organisation

and freedom of association aimed at capturing state power. It was, therefore, imperative that political parties be liberalized.

Response to Comments

n his response to the above discussion, Mr. Ssenkumba noted that the NRM had not banned political parties out rightly, but suspended their rights of competing for power. This had enabled the NRM to retain political limelight without grossly damaging its image. He, however, thanked all discussants for their varied and insightful contributions to the issues raised in his paper.

Chairperson: Mr. F.W. Jjuko

"Anti-Corruption Struggles and External Debt Management: Reinforcing Institutions of Public Accountability in the 1995 Uganda Constitution" *by Winnie Bikaako*

s. Bikaako's presentation discussed the role of the 1995 Uganda Constitution in strengthening public accountability in Uganda. She noted that political institutional reforms were necessary for African development. These reforms could be made either by revolutions or democratisation processes spearheaded by domestic social forces with vested interests in the new order. However, neopatrimonial (African) governance undermined such reform, often leading to unconstitutional forms of government characterised by the absence of public accountability, be it political, social or economic. Therefore, the author argued, public accountability was a pre-requisite for constitutional rule and entailed strengthening institutions of public accountability in Uganda.

Bikaako's analysis sought to answer the question as to whether the constitutionalisation of specific institutions of public accountability in the 1995 Uganda Constitution, such as, the Inspectorate of Government (IG), Leadership Code of Conduct (LCC), the Auditor General (AG), among others, pointed towards realising a significant impact on public accountability and the development of the Ugandan economy.

Her findings suggested that the 1995 Constitution of Uganda merely strengthened institutions of public accountability by lending them a high profile and seeking to forge their independence through control of the executive and provision of independent resources. However, the outcome was not obvious. She noted that while parliament was at the centre of the effectiveness of the new strategies and institutions of public accountability enshrined in the Constitution, its success would depend on the extent that it ceased to function in a perfunctory manner when dealing with public finances. A lot would also depend on the extent it represented the interests of its citizens.

However, Bikaako argued that the emphasis on "formal" institutions as the only (constitutional) means to win the anti-corruption struggle in Uganda and effectively manage the public debt, underplayed the significant role of other stakeholders. Specifically, she argued, the 1995 Constitution tended to obscure the significant influence that civil society might have on the anti-corruption struggles. Furthermore, the author

noted, administrative accountability was ultimately a hoax in the absence of political accountability. The successful operation of the above organs of administrative accountability was only possible in the context of political accountability, lest they live in the shadow of manipulation, persecution and victimization.

The author concluded that the strength of the 1995 Constitution in Uganda had been viewed as another opportunity to re-orient development strategies and build institutions that fostered economic growth and development. The strength of these "formal" institutions, she argued, lay in their ability to control practices that tended to divert resources away from productive activities to those that strengthened the bargaining position of the self-interest group of elites to maintain their power bases. However, this would depend on how well-organised the domestic social groupings were; their interest being to improve their livelihoods, through increased productivity and greater control over their productive activities and outcomes, in order to effectively influence the entire development process.

Discussant: Ms. Zam Zam Nagujja

Ms. Zam Zam Nagujja thanked the author for her presentation. She observed that the presenter correctly pointed out in her presentation that while institutional mechanisms to combat corruption had been put in place through the Uganda Constitution of 1995, corruption went on unabated. The question to ask oneself was: what could be done by the Inspector General of Government (IGG) and other stakeholders to stem corruption? She noted that with decentralization, accountability had been devolved to councillors at Local Council II and III levels, but wondered how sensitized these local leaders were to be able to combat corruption. Ms. Nagujja wondered how beneficiaries of resources could themselves be included in struggles to demand for proper public accountability.

She came up with the following suggestions:

1. Corruption should be conceptualised as an abuse of the social and economic rights of society. Therefore, perpetrators should be punished as such and members of society should be sensitised to demand their rights of redress against the corrupt.

2. Non-governmental organisations should actively concern themselves with public accountability and fight corruption.

3. Democratization should involve empowering local and national, individual and group action to combat corruption. So far, central government seems to monopolize the information and authority to demand and enforce accountability. Other institutions at lower levels, while in existence, are largely powerless which should not be the case.

4. For that matter, Uganda's external debt and other facets of national resources should be publicised in order to raise the consciousness of society about national accounts and the utilization of public resources as a way to empower public demand for accountability.

General Discussion

Mr. Mukiibi opened the plenary discussion with the observation that, before seeking solutions to corruption, we all needed to address its underlying causes. He mentioned the problems of high unemployment, poor pay, poverty, poor culture of accountability, which afflicted Ugandan society including the very organs meant to arrest corruption and other vices - such as the judiciary and the police. Without addressing these problems, he argued, corruption would continue unabated even in Local Councils and other organs of local government.

Dr. Mwesigye was in agreement with the above observation noting that, as a result, corruption had penetrated even the Auditor General's office, non-governmental organisations, institutions of higher learning and research, the Uganda Revenue Authority, Uganda Investment Authority, the judiciary and the legislature. He suggested that among the necessary counter-actions needed, was to ensure that severe punishment was meted out on those found guilty of corrupt behaviour. Also, properties accumulated out of graft should be auctioned and the resources culled back into the relevant coffers.

Mr. Kayunga wondered whether the NRM government was seriously tackling corruption or merely engaging in anti-corruption rhetoric. He questioned the relevance of the argument that Uganda's external debt resulted from corruption, and whether the external debt necessarily increased dependency. He also wondered as to how to assess a situation where money got through corruption was deployed for popular projects.

Mr. Sabiiti Makara wondered what could be done in order to avoid decentralising corruption to the grassroots.

Mr. Kibikyo suggested that, on the issue of Uganda's unmanageable external debt, policy should be made limiting the extent of national borrowing at any one time. Parliament had to ensure that borrowing was limited and borrowed money properly accounted for. As it was, however, decentralisation had only shifted corruption downwards. Even the so-called local level accounts committees; say at district levels, were appointed by the very central government they should be holding accountable. He suggested that it was high time all aspiring public leaders declared their wealth for vetting.

Mr. Mwambutsya asked for not only the proliferation of anti-corruption institutions, but also a growing political will to fight corruption. To him, the NRM government was paying lip-service since government was itself corrupt. Otherwise, he pointed out, people did not even have faith in the so-called anti-corruption institutions put in place, which included the Public Accounts Committee, the Inspector General of Government, and the Auditor General. He further observed that the political dimension

of corruption was evidenced by the fact that it was mainly Ugandans from a specific group of the south-western origin who dominated the above institutions.

Mr. Fred Jjuuko wondered what the implications of the individual merit political system had on corruption. He called for strong mechanisms to control corruption of resources in big organizations.

Mr. Baingana pointed out that corruption was also entrenched by the kind of values the people of Uganda developed as a result of institutional decay during the 1970s. He was of the view that when talking about accountability, it was necessary to define what form of accountability was in question: was it political, social or economic accountability? On the other hand, who questioned about accountability or when did they do this and with what resources? He wondered whether dismantling the public sector through privatisation did not only compound the problem.

Mr. Bbale emphasised the need to address the root causes of corruption. As a solution, people needed to be empowered to eradicate corruption, and resources accumulated through corruption needed to be retrieved. He observed that buying voters was one of the manifestations of corruption in the country that needed to be addressed by parliament.

Mr. Kafureeka Lawyer noted that government had to ensure it put in place very punitive sanctions for corrupt behaviour. On the moral side, he argued that our society tended to glorify corruption and ill-gotten wealth instead of questioning it. Legally, he recommended that culprits should be arrested and bail made very expensive as a deterrent. Presently, bail was cheap and ineffective, and corrupt officials continued to hold public office in the course of investigations.

Response to Comments

In her response, Winnie Bikaako said she appreciated the issues raised during the discussion. She observed that corruption could only be fought collectively by all stakeholders. She also called upon parliament to be at the vanguard of curbing corruption and external debt in Uganda.

Ms. Nagujja, in conclusion, noted that in spite of the immediate shortfalls in the crusade against corruption in Uganda, there was still room for improvement in public accountability. However, she observed that there was need to re-orient the moral fabric of the Ugandan society against corruption. Culprits needed very punitive measures and also needed to be properly rehabilitated when serving their prison sentences. On top of this, mechanisms for decentralising public accountability to local levels should be developed among civil society and non-governmental organisations.

Closing Ceremony, Chairperson (Dr. J. J. Barya)

Dr. Barya introduced the Guest of Honour, Hon. Justice J. H. Ntabgoba, The Principal Judge. He briefly went over the objectives of the workshop. He particularly informed his Lordship Justice Ntabgoba that, while the formal constitution-making process had ended in 1995, it was the philosophy of the Centre for Basic Research that constitution-making was a living experience. Therefore, the papers that had been presented in the course of the workshop were a follow-up of earlier researches conducted by CBR on local views for inclusion in the Constitution.

Thereafter, Dr. Barya called upon the Workshop organiser, Mr. John Ssenkumba, to present his concluding remarks and summarise the resolutions of the Workshop before his Lordship Justice Ntabgoba's closing speech.

Workshop Organiser's Concluding Remarks (J. Ssenkumba)

Mr. Ssenkumba mentioned that the main objective of the Workshop was to review the developments in constitutionalism in Uganda since the 1995 Uganda Constitution came into force. He observed that issues of constitutionalism were political with losses and gains in the process. And because it was a political process, the constitutionalism process was contentious, some consensual issues notwithstanding. With this in mind, Centre for Basic Research commissioned research on "Lessons of Constitution-making in Uganda" to discern the mood of different sections of society on the 1995 Uganda Constitution.

Mr. Ssenkumba then proceeded to read the following resolutions and recommendations that emerged from the presentations and discussions during the course of the Workshop.

Workshop Resolutions

It was agreed that Constitutional issues are living and dynamic. For that matter, it was resolved that issues of constitutionalism should inform continuous debates in Ugandan society.

It was resolved, that an Equal Opportunities Commission be established as soon as possible.

That parliament should harmonise and legalise the Local Defense Units (LDUs.)
The Legislature must safeguard against illegal appointments by the Executive.

Political space in Uganda should be de-monopolised by amending the constitution to allow multiparty political activity.

There is need for rigorous education of the masses in constitutionalism and anti-corruption.

The government should encourage debate on both the consensual and contentious political issues in vogue.

Women and youth should have a right to own land.

The National Electoral Commission should be much more independent than it presently is from the Executive.

Civil society organisations should be broadly included in debates on the form of political developments in Uganda; therefore.

Civil society should not only judge but participate constructively in shaping the political future of the country.

Because political parties offer the best form of freedom of association and possibilities of galvanizing different interests in articulating their politics the NRM government must, as soon as possible, open up for competitive politics in Uganda.

However, to guard against destructive competitive pluralism, objective guidelines should be developed and debated with the aim of guiding the return to political pluralism.

Federalism as a form of decentralisation is not bad in itself. However, in present Uganda it is not feasible considering some deep-seated social, economic and political disparities at the regional level.

Appendix I

Guest of Honour's Speech

A Speech by Hon. Justice J. H. Ntabgoba, The Principal Judge, Delivered at the Closing of the Seminar

Mr. Chairman,

Distinguished Participants, Ladies and Gentlemen in your respective capacities.

It gives me honour and pleasure to have been invited to officiate at the closing of this Workshop of the Centre for Basic Research on Constitutionalism. I have read some of the papers and I have found them of high standard and educative. I am informed that their presentation was excellent and that they generated a great deal of interest. I congratulate the presenters, all of those who made contributions, thereby making the Workshop lively, as well as, all of you whose presence rendered a boost to the occasion. It is discussions like today's that will inculcate in our people a spirit and culture of Constitutionalism.

I consider Bureaucratic Power of Inertia an impediment to the implementation of the 1995 Constitution with regard to the independence of the Judiciary. When I was invited to come and close this very important seminar on Constitutionalism in Uganda, the topic that immediately came to my mind for discussion with you is "Bureaucratic Power of Inertia as an Impediment to the Implementation of the 1995 Constitution". My discussion can by no means be all-embracing nor can it be exhaustively restrictive.

What I can be sure of is that the subjects under my discussion are unassailable as they are practical examples of the bottlenecks I have personally encountered in a bid to implement the provisions of the Constitution, with regard to the traditionally cherished rule of law, separation of powers and independence of the Judiciary. The value of the doctrine of separation of powers, as we all know, lies in the emphasis placed upon checks and balances which are essential to prevent an abuse of the enormous powers which are in the hands of rulers. Separation of powers, therefore, augurs well for the rule of law. To ensure total rule of law, there must be an independent Judiciary.

The concept of the rule of law means that law shall condition the exercise of powers of government, and that the citizen shall not be exposed to the arbitrary will of Government. In this way, the rule of law has come to be identified with the concept of the rights of man. It is an independent Judiciary, which ensures that those rights are not violated. In fact the rule of law, as presently understood, does not restrict justice only to those who may be injured by the rulers. It regulates harmony between opposing notions of individual liberty and public order, but also ensures that no individual or group of individuals may violate the rights of another individual or group of individuals. The concepts of separation of powers, the rule of law and independence of the judiciary are universally concepts of the Constitution and, indeed, our 1995 Constitution has them

articulated beautifully. It apportions separate and different roles of governance to the people, thereby ensuring the doctrine of separation of powers as a reality. The Judiciary is accorded unadulterated independence by Article 128. In fact, Article 128(l) specifically and unequivocally states that, "In the exercise of judicial power, the Courts shall be independent and shall not be subject to the control of, or direction of any person or authority."

Conceptually, therefore, the Uganda Judiciary is independent. However, it is practical reality of that independence that has prompted the text of my discourse with you this afternoon, namely, "Bureaucracy, Power of Inertia and Impediments to the Implementation of the 1995 Constitution". The truth of this assertion is not far to find. You only need to examine the provisions of Article 128 of the Constitution, which follow after paragraph (1) of that Article, and to analyse their practical application on the ground.

Paragraph 2:

> "No person or authority shall interfere with the Courts or judicial officers in the exercise of their judicial functions."

Even if we took the expression "interfere" by its direct meaning we are not short of those individuals or authorities that interfere with our Magistrates in the exercise of judicial functions. Cases of Resident District Commissioners (RDCs) threatening to punish Magistrates for the decisions they make in their judicial capacities abound. How about political leaders who are often heard threatening to hold demonstrations before the Courts about matters pending therein? But the worst instances are the press speculations and discussions of matters pending in Courts! So much for direct interferences. The indirect interferences are more grave and inhibitive. Take a case in which a government authority that is charged with providing Judges and Magistrates with the tools of their trade e.g. transport, accommodation, books and a living wage. To deny them such tools is the most interference of all interferences because, without them, they cannot discharge their judicial functions. There are others who either by design or simply capriciously want to frustrate judicial officers. As a result of such frustrations the officers cannot perform their functions efficiently and willingly. Instances of this nature lie in the refusal of those concerned to pay allowances and salaries of judicial officers promptly.

Paragraph 3:

> "All organs and agencies of State shall accord to the Courts such assistance as may be required to ensure the effectiveness of the Courts."

I have yet to see such organ or agency of the State in Uganda which accords to the Courts assistance! Instead judges and magistrates are branded corrupt and use is made of such other disparaging remarks as can only cause despondency to those officers. It is disheartening to hear such remarks as "the Courts are corrupt", or "the Courts release on remand thieves who have stolen millions". At times I am taken aback when top

government officials criticize Courts for releasing on bail, persons who have stolen millions! At times I wonder whether such people are not aware of the constitutional provision that every person is presumed innocent until he or she is proved guilty before a Court or competent jurisdiction or until he or she has pleaded guilty! Surely such authorities or individuals should also know that bail is a constitutional right of any suspect detained. Bail is not a release nor is the bail money a fine.

An accused person is admitted to bail when he is released from custody of officers of the law (i.e. prisons officers) and is entrusted to the custody of persons known as his or her sureties. These are bound to produce him or her to answer, at a specific time and place, the charge against him or her, and who, in default of so doing, are liable to forfeit such sum as is specified when bail is granted. Bail are sureties of the accused who enter into recognizances for his appearances, he also enters into a similar recognisance.

It is in the discretion of the Court to admit to bail, except that the law apportions jurisdiction to entertain bail in accordance with the gravity of the offence the suspect is charged with. Is it then not an interference with the Judge or Magistrate's work if he is harassed daily for having exercised his discretion to grant bail? Because top government officials have unceasingly harassed our lower grade magistrates, some of them fear to grant bail and thereby the suspect or accused's right to bail has been denied. If courts become party to the denial of personal rights to an accused, then the objective of the Constitution is dented to that extent.

Paragraph 4:

> "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."

It is of common occurrence for the members of LC courts to be intimidated with a court action, either by the Police or the ordinary persons who appear before them, and lose as litigants. In the spirit of paragraph 3 above, the LC courts should be given some lectures regarding their duties as Courts.

Paragraph 5:

> "The administrative expenses of the judiciary including all salaries, allowances, gratuities and pensions payable to or in respect of persons serving in the judiciary, shall be charged on the Consolidated Fund."

Whereas this paragraph has been adhered to with regard to judicial officers, the same is not the case with other persons serving in the Judiciary. The fact is that, despite this provision, the Ministry will continue to cling to employees of the judiciary in matters regarding their emoluments, recruitment and disciplining. It never occurs to Public Service that it amounts to interference with the Judiciary if persons serving in it are retrenched or transferred without the concurrence of the Judiciary. I hope that sooner than later, Public Service will completely de-link from employees of the Judiciary and that

the Judicial Service Commission will take over its legitimate role of recruiting and disciplining of all the persons serving in the Judiciary.

Paragraph 6:

> "The Judiciary shall be self-accounting and may deal directly with the Ministry responsible for finance in relation to its finances."

The Ministries that have hitherto dealt financially on behalf of the Judiciary still find it very difficult to release their patronage. This is why until very recently; the Ministry of Public Service has been posing as if they were budgeting for the transport of the Judiciary only to end up giving no vehicle to the Judiciary. It is in the same grain that the same Ministry continues to cling to the provision of housing accommodation to the officials of the Judiciary, more especially the Judges. And it is in the same manner that the President's Office has been responsible for the provision of Court halls to the Judiciary. The Chief Registrar must be assertive enough to ensure that the Judiciary is completely self-accounting and that every planning for the Judiciary is left in the hands of the Planning and Development Committee of the Judiciary.

Paragraph 7:

> "The salary, allowances, privileges and retirement benefits and other conditions of service of a Judicial Officer or other persons exercising judicial power, shall not be varied to his or her disadvantage".

Every Ministry that has been responsible for voting for or providing the above benefits has almost found it unimaginable. Allowances that were enjoyed by Judges were at one time threatened with whittling away. Had it not been for the tough stand of Judges, with the support of the Attorney General and the Chairman of the Parliamentary Committee responsible for legal affairs, Judges' salaries and allowances were threatened with reduction, paragraph 7 of Article 128 of the Constitution notwithstanding.

With the above brief analysis of the provision of Article 128 of the Constitution *vis-a-vis* its practical application on the ground today, it will be fitting to mention some of the specific interferences being perpetrated against the independence of the Judiciary, mainly by the government personalities and institutions which should be otherwise in the forefront in according assistance to the Courts to ensure their effectiveness.

I will start with the hostile attitude held by some of the top leaders in the country. It is not uncommon for some of the top leaders in this country while addressing some political, cultural and social gatherings to descend into unwarranted and uncalled for diatribes against the Judiciary. Some have alleged corruption without singling out a single case. Some have lambasted the Courts for granting bail, which, as I have already said, is a constitutional right of the people. Others have attacked the Judiciary on no specific ground, save, I think, that they have to say something and they have nothing useful to say. Only on 1 May 1998, some top government leaders were reported in the Monitor newspaper: one as having accused the High Court of violating human rights by

dismissing election petitions, and another as having accused the Judiciary of being corrupt. The two compared it with the LC Courts, which are more accessible for better justice.

Whereas I do not wish to believe that those two leaders would descend so low as attacking Courts on unsubstantiated accusations, I fail to see why in the first place a Judge or Court should be attacked about his or its judicial decision at fora outside Court proceedings when the fora of appeals and reviews have been provided for in the law and the Constitution. After all, judicial officers are human beings. To err is human. It is in realisation of the human susceptibility to make mistakes that our judicial system created a hierarchy of appeals; and even if one happens to be a member of the highest Court from which no appeal lies, that does not mean that one does not make mistakes in one's judgments or judicial decisions. As for the issue on corruption, there is machinery for investigating the corrupt and bringing him or her to book. The institution of the Inspectorate of Government is one of the institutions, which are mandated to deal with corruption of every person in Uganda.

The Judicial Service Commission's role includes taking disciplinary actions against judicial officers. What then would have necessitated the disparaging and derogatory remarks that were attributed by the Monitor newspaper to the two high-ranking lawyers? I have travelled far and wide; I have never witnessed any top government officers making denigrating remarks against their judiciaries. Even when newspapers attack ineptitudes or errors of judicial officers, they do so on specified and substantiated wrongs. The critics who complain against judicial officers should attack the individual officers and should desist from attacking the Judiciary collectively because of wrongs committed by its individual. It is illogical and primitive to attack an institution as such because some of its members happen to have committed a wrong. I would not expect a lawyer who should know the principles of logic to attack an institution like the Judiciary for the wrongs of a particular member of such institution.

A second example of indirect but far-reaching interference in the Judiciary lies in the failure to give it the necessary tools of its trade. If I may single out failure to fill vacant posts in the Judiciary, thereby interfering with its capacity to perform its functions. For several years now, the High Court has had to operate under capacity because of the so-called embargo on recruitment. It is disheartening that those who are supposed to recruit for the Judiciary have always made ridiculous justifications that embargo on recruitment includes embargo on replacement. Consequently, the Judicial Staff has been so depleted that it is no longer possible to operate. How can a Judge, for instance, do his or her work without a secretary, without a court clerk or interpreter and without a driver? A number of Judges do not have these support staff members and yet blames for delays in trials have become a litany, not only on the lips of members of the litigating public, but also of those who have denied the Judiciary the necessary employees to do the work! If I may specifically give figures with specific reference to the High Court and Magistrates' Courts, the High Court which is supposed to have 30 Judges can now make do with only 17 Judges. The 12 to 13 Judges cannot be recruited to make the full complement, thanks to the embargo on recruitment and replacement.

The following datum with regard to the Magistrates' Courts can speak for itself - for the Chief Magistrates with 29 established posts, only 21 posts are filled. For the Magistrates Grade I with 62 established posts, only 48 posts are filled and for the Magistrates Grade II with 367 approved posts, only 276 posts are filled. Thus we are expected to be effective in the performance of our judicial work with a shortage of 13 Judges, 8 Chief Magistrates, 14 Magistrates Grade I and 91 Magistrates Grade II!

We are told that it is a conditionality of our donors that a recruitment and replacement embargo be clamped even on the government institutions rendering such essential services like the administration of justice. Yet in the same breath we are told that it is a conditionality of the donors that the Courts must remove the backlog in trials and that they must decongest the prisons by trying the inmates on remand. Surely, either the donors or those in government charged with enabling and facilitating the Judiciary or both are not serious. In my view, even embargoes on recruitment should have exceptions and the powers that negotiate the aid should not accept such conditionalities from donors, which have the effect of placing our policies on essential services into straitjackets, if not stranglehold.

The third example of interference in the independence of our Judiciary lies in the manner Public Service retrenches the staff of the Judiciary, without warning or discussion with those who administer the institution. It is that kind of interference that has caused shortages in the Judiciary for, as I have already alluded, you can trim staff to the minimum but to leave a Judge with neither a secretary, a court clerk, an interpreter, an orderly or an office messenger is to leave him or her with less than the bare minimum. To fail to provide stationery to courts is to disable them in the same manner as it is to deny Judges and Magistrates law textbooks and law reports or the means to produce such reports. To deny a Judicial Officer transport or a decent accommodation from where he or she can gain easy access to the place of work is to cripple him and ultimately to deny justice to those who naturally require his or her vital services.

To expose the Judiciary to ridicule and contempt is to do great disservice to the administration of justice. I have in mind our situation, whereby Judges are using vehicles that are more than a decade old, whereby such vehicles break down in awkward places along the journey to up-country Courts where Judges conduct monthly Criminal Sessions. I have in mind the usual situation where Judges' cars are shuttled among local garages in the city trying to locate a garage where the Judiciary is not indebted. I have in mind the situation where Courts are rented private buildings and from which they are often evicted for failure to pay rents! I am thinking of another department of government undertaking the responsibility of handling the affairs of the Judiciary such as accommodation and transport; where, because those departments have their own affairs to run, often fail in the provision of services to the Judiciary. Examples do abound where a Ministry's budget was approved including a provision for purchase of Judges' vehicles, and ultimately no vehicles were purchased for Judges.

Another example which smacks of sabotage is where a donor has had to put on the hold the building of three courts for the Judiciary which would cost the donor a sum of Uganda Shs. 2b/=. The reason for this suspension of aid is that Government has declined

to recruit an Estates Manager who would care for the Judiciary estate, including the buildings already provided by the donor. What is the problem? The Government Ministry responsible for authorizing the post of Estates Manager cannot give its authority because the donors have decided that there must be a freeze on recruitment! Surely, it is known that the donors, including the World Bank, the IMF and individual governments can agree on some exceptions to their conditionalities. If a donor dedicated to spending a sum of Shs. 2b/= demands that a post be established and appointment be made to fill such a post in the interests of keeping the structures donated in good tenantable repair, I fail to see how the embargo on recruitment cannot be waived in respect therewith. The problem is, of course, the government authorities concerned. For them what the World Bank says or the IMF should not be questioned even if it makes inroads in the policy planning process. This is what I call lack of political will. Secondly, of course, our implementing authorities lack the capacity to decide. Thirdly, some of them suffer from jealousy and finally, all such indecision, jealousies, lack of political will is what I have referred to as the Bureaucratic Power of Inertia.

Examples cannot be exhausted where the Judiciary continues to be interfered with, thereby being denied the independence and financial autonomy, which are the expected fruits of Article 12 of the 1995 Constitution. The irony of this state of affairs is that under the doctrine of separation of powers, the Judiciary is one of the 3 major arms of government, the other two being the Executive and the Legislature. Yet the departments which continue to handle some administrative role of the Judiciary with the attendant interferences are departments of one of the three arms. It is high time that, to check on the apparent bureaucratic caprice, the relevant powers in the Judiciary and Judicial Service Commission asserted our Judiciary independence and de-linked the Judiciary and its staff from mainstream government Public Service.

In conclusion, I am of the same views as I started with that, independence of the Judiciary in this country is theoretically real under the Constitution, but practically illusory because bureaucracy and conservatism transcend the spirit of the Constitution. One hopes that the power of inertia will sooner rather than later extinguish so that the Judiciary can play its independent role and administer justice to all manner of people without fear or favour.

Mr. Chairman, Constitutionalism, as I understand it, embraces general awareness about the need for a Constitution, the essential elements of the Constitution, human rights under it and the practical application of the Constitution in the process of good governance. In the spirit of Constitutionalism, therefore, the governors must create a constitutional culture whereunder everybody is made aware of those constitutional provisions that govern his or her relationship with his or her fellow persons on the one hand, and with the government on the other. Everybody affected by the Constitution must endeavour to abide by the provisions; and anyone who fails to so abide should be aware of the consequences of his or her failure. May God bless you.

List of Participants

A. Centre for Basic Research

1. Dr. John-Jean Barya
   P. O. Box 9863
   Kampala
   Tel: 342987/231228

2. Nakirunda Mbaalu-Mukasa Maureen
   P.O. Box 9863
   Kampala
   Tel: 342987/231228

3. Kibikyo David Lameck
   P. 0 Box 9863
   Kampala
   Tel: 342987/231228

4. Kyomugisha Charity
   P. O. Box 9863
   Kampala
   Tel: 342987/231228

5. Opolot Samson
   P. O. Box 9863
   Kampala
   Tel: 342987/231228

6. Kafureeka Lawyer
   P. O. Box 9863
   Kampala
   Tel: 342987/231228

7. Rubanga Edward
   Uganda Railways Workers Union
   C/o P. O. Box 9863
   Kampala Tel: 342987/231228

8. Byaruhanga Rukooko
   P. O. Box 9863
   Kampala
   Tel: 342987/231228

9. Muhereza Frank
P. O. Box 9863
Kampala
Tel: 342987/231228

10. Mwambutsya Ndebesa
P. O. Box 9863
Kampala
Tel: 342987/231228

11. Dr. Joe Oloka-Onyango
P. O. Box 9863
Kampala
Tel: 342987/231228

12. Bikaako Winnie
P. O. Box 9863
Kampala
Tel: 342987/231228

13. Kayunga Sallie Simba
P. O. Box 9863
Kampala
Tel: 342987/231228

14. Turiho-Habwe G.P.
P. O. Box 9863
Kampala
Tel: 342987/231228

15. Kintu Nyago
P. O. Box 9863
Kampala
Tel: 342987/231228

16. Ahikire Josephine
P. O. Box 9863
Kampala
Tel: 342987/231228

17. Ssenkumba John
P. O. Box 9863
Kampala
Tel: 342987/231228

B. Media

18. Lubwama Siraje
Njuba Times
P. O. Box 7356
Kampala
Tel. 241697/258222

19. Ojirot Patrick
Radio Uganda
P.O.Box 2058
Kampala

20. Kaggwa Robinah
Uganda Television
P. O. Box 4260
Kampala
Tel: 346063

21. Mukasa Stanley
Uganda Television
Kampala

22. Nakajugo Annet
Capital Radio
Kampala
Tel: 235005

23. Baguma Henry
Radio Uganda
Fax.257254
Kampala

24. Ochieng, L.
The New Vision
P. O. Box 9815, Kampala

25. Ndawula Charles
Radio Uganda
P. O. Box 2038
Kampala
Tel: 257256/7

26. Mugisa A. Anne
The New Vision Newspaper
P. O. Box 9815
Kampala

C. Mbarara

27. Kagwisagye Innocent
Rubindi Parish
C/o P.O. Box 150
Mbarara

28. Muhumuza Gladys (Mrs.)
Rubindi Sub-county
P. O. Box 150
Mbarara

29. Katushabe Jenipher
Rubindi Sub-county
P. O. Box 150
Mbarara

30. Zikaire Baheebwa Timothy
Rubindi Secondary School (Louis's Office)
c/o P. O. Box 150
Mbarara

31. Rukundo Joseph
c/o Rubindi Sub-county
Mbarara

D. Busia

32. Samanya Teopista
P. O. Box 177
Tel: 43076
Busia

33. Mukiibi Moses
P. O. Box 177
Tel: 43076
Busia

34. Siwundu Charles
c/o Busia Town Council
P. O. Box 117
Busia

35. Okumu Mary
c/o Busia Town Council
P. O. Box 323
Busia

36. Nandera Grace
c/o Busia Town Council
P. O. Box 117
Busia

E. Nakasongola

37. Baale Samuel
c/o Kakooge S.S
P. O. Box 1
Nakasongola or
Makerere University,
Mitchell Hall Rm. C. 34, No. 16005
Kampala

38. Bongole Robert
c/o Kakooge S. S
P. O. Box 1
Nakasongola

39. Kitaakule Sekyanzi David
c/o Kakooge
Nakasongola

40. Sentongo Edith
Women Chairperson
c/o Kakooge
Nakasongola

41. Nabadda Hadijah
Student Affairs Rep.
Kakooge
Nakasongola

F. Apac District

42. Olwo-Acot
Apach Sub-County
Maruzi County
Apac District

43. Etum Dickens
Apac Sub-County
Maruzi
Apac District

44. Owinyi Patrick
Apac Sub-County
Maruzi
Apac District

45. Ayo Janet
Apac Sub-County
Maruzi
Apac District

G. Members of Parliament

46. Dr. Omara Atubo, MP
O. Box 1017
Lira

47. Njuba Sam, K., MP
P. O. Box 1824 Kampala
Tel: 345528

48. Kajoba Onyango MP
Buikwe Lugazi

H. Agencies

49. Per Karlsson
SIDA
c/o Swedish Embassy
Kampala. Tel: 236636

50. Ewa Westman
SIDA
c/o Swedish Embassy
Kampala
Tel: 236636

51. Dr. Okai Matthew
FAO Representative
P. O. Box 521
Kampala

I. Political Parties & Civic Organisations

52. Dr. James Rwanyarare
Chairman,
Presidential Policy Council,
UPC Secretariat
P. O. Box 162
Kampala
Tel: 256874/5

53. Jjuko F. W
The Free Movement
Kampala

54. Okille Pamela
ACFODE,
Kampala

55. Tolit, O. A.
Research & Monitoring Unit
Kampala

56. Kyemba Patrick
Uganda Catholic Secretariat
P. O. Box 311
Jinja

57. Dr. Mwesigye Frank
Uganda Medical Association
P. O. Box 7051
Kampala

58. Sabiiti Makara
Makerere University
P. O. Box 7062
Kampala
Tel: 531499

59. Okiswa Geofrey
Administrative Secretary
Uganda National Student's Association
P. O. Box 9502
Kampala, Crested Towers (Short Tower)
Tel: 345342

60. Nagujja Zam Zam
FIDA
Kampala

J. Workers Unions

61. Baingana Emmanuel

62. Lwanga James
National Organization of Trade Unions (NOTU)
P.O. Box 2150 Kampala
Tel: 256295

63. Wandera Martin
Uganda Hotels Food & Allied Workers Union
P. O. Box 3299
Kampala
Tel: 230311

CBR WORKSHOP REPORTS

1. **Pastoralism, Crisis and Transformation in Karamoja**; Report of a Workshop Organised by CBR and held at the Faculty of Science Makerere University, August 14 - 15, 1992, by Joe Oloka-Onyango, Zie Gariyo and Frank Muhereza; 26p.
2. **Women and Work: Historical Trends**; Report of a Workshop Organised by CBR, and held at the Faculty of Science, Makerere University, September 7-10, 1992, by Expedit Ddungu, James Opyene and Sallie Kayunga; 61p.
3. **Workers' Education;** Report of a CBR Workshop held at the Faculty of Veterinary Medicine, Makerere University, March 19-20, 1993, John Jean Barya, Sallie Simba Kayunga and Ernest Okello-Ogwang; 47p.
4. **Pastoralism and Crisis in Karamoja;** Report of the Second CBR Pastoralism Workshop held at St. Phillips community Centre, Moroto, January 28-29 1994, by Frank Emmanuel Muhereza and Charles Emunyu Ocan; 19p.
5. **Regional, Workshop on Public Interest Environment Law and Community-Based Initiatives for Sustainable Natural Resources Management in East** Africa held at Colline Hotel Mukono, in August, 1996 by Samson Opolot and James Opyene; 37p.
6. Report of a Workshop Organised by CBR on "**A Dialogue on Gender Dimensions of Agricultural Policy in Uganda** held at Fairway Hotel Kampala, May 3-4, 1996, by Samson James Opolot and John Ssenkumba; 58p.
7. **Report on the Proceedings of the NOTU/CBR Seminar: Worker' Social Conditions in Uganda Today** held at held at Pope Paul VI Memorial Community Centre on 22-23 July 1997, by John Ssenkumba and Crispin Kintu; 27p.
8. **Report of the ENRECCA Workshop on "Modernity, Development and Institutional Change: A Dialogue Towards the Next Millennium**" held at Lake View Hotel Mbarara, 21 – 28 February 1998, Charity Kyomugisha; 38p.
9. Report o**f the Workshop on the Survey: "Constitutionalism Project Phase Three**" held at Colline Hotel Mukono, 29-30 January 1996, by John Ssenkumba; 22p.
10. **Lessons of Constitution-Making in Uganda** by Samson James Opolot and Chrispin Kintu Nyago; 29-30 January 1996. 52p.