

Obstacles to Federalism in Africa The Case of Uganda

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1. Introduction

There are many people in Africa, and probably almost certainly elsewhere in the world, too, who are not aware that they have a right to federalism. The right to federalism is embodied within the rights of a people to their culture and self-determination guaranteed by international law. The existence of these rights to a great extent guarantees certain fundamental human rights and, as a result, politically insulates the people from arbitrary governmental administrative and political actions that conflict with or contravene the human rights guaranteed by international law. Unfortunately, many people in Africa believe that federalism is an alien right which can only be enjoyed when it is granted to them by the supreme political regime in power. The people, in otherwise, do not realize that the protection of the rights to culture and self-determination are not derived from a specific leader, regime type or its discretion.

Ironically, as the political history of Uganda clearly illustrates, a political regime in power which is repressive cannot grant federalism to the people because by doing so the oppressive regime would be committing political suicide since not only would the oppressive powers of the repressive regime be drastically diminished and democratically restricted by the democratic principles inherent in federalism the oppressive regime would also automatically be subjected to the inherent power of the sovereignty of the people which is implicit in the concept of self-determination. Moreover, sovereignty of the people is the ultimate source of legitimate political power in a democratic political system. In a democratic system the political regime is inherently and automatically subjected to democratic principles which govern the distribution of political power in the state and thereby regulate and control the legitimate use and application of political power under federalism or any other democratic political regime where the people are sovereign.

The attitude of the people in Africa, and all other repressed societies referred to above is, obviously, not founded on the fact that protection of liberty and all fundamental human rights is enshrined in and protected by the universal basic principles of international law. The preamble to the United Nations Charter declares that protection of human rights is founded on “faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.” The United Nations charter further declares that the establishment of “conditions under which justice and the respect for the obligations arising from treaties and other sources of international law can be maintained.” The right to federalism is derived from international law and is essential for the universal protection of human rights everywhere in the world.

The Universal Declaration of Human Rights provides that “the inherent dignity and of the equal and the inalienable rights of all members of the human family is the foundation of freedom,

justice and peace in the world.” For that reason, logically, the Universal Declaration of Human Rights makes it clear that “if man is not to be compelled to have recourse, as a last resort to rebellion against tyranny and oppression” liberty must be guaranteed by the law of every country. Article 1 the International Covenant on Economic, Social and Cultural Rights provides that “All peoples have the right of self-determination. By virtue of the right they freely determine their political status and freely determine their political status and freely pursue their economic, social and culture development.” Article 1 of the International Covenant on Civil and Political Rights has exactly the same provision spelled out in article 1 of the International Covenant on Economic, Social and Cultural Rights.

The provisions of the two Contentions protecting the right of the people to a culture and self-determination are the sources of the right to federalism. Since the right to a culture is not derived from a political regime but instead people are born into a culture and can only protect their culture through self-determination the people have a right to a federal system if they so choose. It is therefore reasonable to conclude that the people of Uganda have a right to federalism. Moreover, Uganda is officially a party and signatory to the two international conventions.¹

In view of the preamble of the UN Charter and the clear provisions of articles 1 of the Convention on Civil and Political Rights and the Convention on Social, Economic and Cultural Rights which guarantee the rights to culture and self-determination the right to federalism is firmly rooted in international law. However, since sovereignty of the people was first institutionalized in the independence constitutions it is important to begin this analysis with the independence constitutions. Unfortunately the independence constitutions in Africa fell far short of guaranteeing federalism except in Nigeria.

2. The African Independence Constitutions

Only the Nigerian independence constitution, 1960, established a federal political system. However, the Nigerian federal independence constitution was structurally defective because it established only three federal units: the Northern region, the Western region and the Eastern region. Those regions were very far from expressions of cultural self-determination. Therefore the three regions of the original federation of Nigeria fell far short of the important element of cultural self-determination spelt out in articles 1 of the International Covenant on Civil and Political Rights and the International Covenant on Social, Economic and Cultural Rights. Even an amendment to the Nigerian federal constitution in 1963 to establish the mid-west federal region did not resolve the structural defect. It is therefore not surprising that in an apparent attempt to fix the structural defect the military regime in 1970 increased the federal units to 12 states. It was not until the 1999 constitution was enacted by increasing the number of federal states was increased to 36 that a serious reform was institutionalized Which reflected some element of cultural self-determination.

In Uganda the 1962 independence constitution established a semi-federal constitution. Under the independence constitution while Buganda enjoyed a full federal relationship with the central

¹ Uganda ratified the International Covenant on Social, Economic and Cultural Rights on January 21, 1987, and the International Covenant on Civil and Political Rights on June 21, 1995. Both conventions were ratified by the NRM regime headed by Yoweri Kaguta Museveni. Museveni cannot object, although he may resist, when the people of Uganda demand a federal system.

government the kingdoms of Ankole, Toro, Bunyoro and Busoga were given a semi-federal status in their relationship with the central government. The other districts had a unitary relationship with the central government. In other words, the Uganda independence constitution fell short of recognizing universal cultural self-determination of all Ugandans. Moreover, as we shall explain below Obote's repressive politics was given a chance to thrive. Obote sang the political song of national unity to dismantle the independence constitution. Obote's constitutional reforms were not only repressive and anti-democratic but driven by the founding fathers' repressive concept of national unity.

The independence constitutions of Ghana, 1957, Kenya, 1963, and Tanzania, 1961 (then known as Tanganyika which united with Zanzibar in 1964 and became Tanzania) established autonomous regions. In fact, the regions, nicknamed (*Magimbo*) under the independence constitution of Kenya were so autonomous that a bicameral national legislature was established in the independence constitution whereby the regions had their own legislatures. It is clear, however, that the regions in the independence suffered seriously from structural defects but the defects were incurable without dispensing the medicine of cultural self-determination to cure the disease.

Unfortunately, the autonomous regions which conflicted with the cultural right to self-determination did not cure the structural defects that violating cultural self-determination. In fact, unfortunately, the structural defects of the independence constitution gave the founding fathers an excuse to amend the independence constitution in the dubious name of Africanizing it and making it autochthonous. In fact, the African founding fathers in Tanzania (1965), Ghana (1960) and Kenya (1966) carried out structural reforms that abolished the autonomous components supposedly to promote national unity. In addition, the so-called Africanization constitutional reforms were declared in the name of socialism which was used to legitimate and declare a one-party political system that was incompatible with democratic principles protecting freedom of speech, assembly and association. This raises the question: What exactly were the founding fathers up to?

3. The African Founding Fathers and Rights to Culture, Self-determination and Federalism

The major constitutional reforms carried out by the founding fathers: Kwame Nkrumah of Ghana (1960), Julius Nyerere of Tanzania (1965, 1967), Jomo Kenyatta of Kenya (1966 and 1969) and Milton Obote of Uganda (1966 and 1967) were designed to dismantle the decentralized, autonomous constitutional structures of the independence constitution which were viewed by the founding fathers as "obstacles" to "national unity." The major political theme, primary objective and justification of the post-independence constitutional reforms by the founding fathers was supposedly to promote "national unity" and supposedly "decolonize" the African independence constitution. The argument common in all constitutional reforms was that national unity of the postcolonial African state, especially in Uganda in case of Obote, required the dismantling of the decentralized or autonomous administrative structures in the independence constitutions and, in Uganda, the abolition of federalism which was viewed as an enemy of national unity.

What the founding fathers pronounced and what they actually did were two different things. In reality objectives of the constitutional reforms were, however, clearly manifested in the laws

that were enacted supposedly to promote national unity. In Uganda soon after the enactment of the 1967 constitution which established a highly centralized unitary administrative structure Obote enacted the Public Order and Security Act under which the President had absolute power after the autonomous regions were abolished to detain members of the opposition indefinitely. A similar law was enacted by Kenyatta in 1966 and was ruthlessly used to detain the former Vice President, Oginga Odinga. In Kenya multi-parties were banned in 1969 and were not restored until 2002, long after Jomo Kenyatta, the founding father was long gone from the political scene. In Uganda Obote had introduced the “move the left” in imitation of Nyerere’s Arusha Declaration of 1967 which declared Ujamaa socialist policy on the false premise that Ujamaa was the embodiment of African democracy which new no political parties. The theme of socialism was also introduced in Kenya by Kenyatta by the publication of Session Paper No. 10 which, supposedly, made African socialism the official ideology of Kenya. Kwame Nkrumah had declared socialism official policy of Ghana when he enacted the Republican constitution of 1960 which gave the President unlimited presidential powers to detain members of the opposition.

All these policies were repressive and undemocratic. They were designed to suppress political liberty by the founding fathers under the guise of promoting national unity. They were in fact the justification and political rationalization for a one-party state which was inconsistent with cultural autonomy and self-determination of the people. It is not surprising that under a one-party regime federalism is meaningless because cultural self-determination is impossible. Similarly, federalism is meaningless under a military regime due to the repressive policies which deny the people a right to effectively participate in government. In Nigeria, for example, federalism introduced by the 1999 constitution established 36 states.² The substantial increase in the number of federal states from the original three regions under the 1960 constitution or the four regions of 1963 clearly introduced an element of self-determination for the people of Nigeria in the federal government. The military regime which took over power in 1966 maintained the federal structure of government. Federalism under a military regime is meaningless because all political power is concentrated in the military regime under which the idea of self-determination is reduced to a political nullity.

Having outlined the structural defects of federalism and how they failed to promote democracy and cultural self-determination we now look at the way forward in order to effectively democratize Uganda. The first step is to fight for a federal system of government.

4. Uganda Federal Union

The Uganda Federal Union was formed by Ugandans in United States in 2021. It is non-profit organization whose objectives include to

² Article 3 of federation enumerates the federal states. “There shall be 36 states in Nigeria, that is to say, Abia, Adamawa, Akwa Ibom, Anambra, Bauchi, Bayelsa, Benue, Borno, Cross River, Delta, Ebonyi, Edo, Ekiti, Enugu, Gombe, Imo, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Lagos, Nasarawa, Niger, Ogun, Ondo, Osun, Oyo, Plateau, Rivers, Sokoto, Taraba, Yobe and Zamfara.”

- (a) educate the people about their rights and how to protect and enforce them through free discussion, debate and effective participation in the political process;
- (b) engage in research and dissemination of information for the purpose of exposing hypocrisy, the dangers of dogmatic political doctrines and the causes of corruption in our society and government;
- (c) advocate and promote protection of fundamental human rights and good governance in Uganda as a means to foster harmony, peace and progress in society;
- (d) condemn and rectify pervasive injustice in society and all national institutions;
- (e) explain the causes of and find effective solutions to injustice, insecurity, poverty and the lack of development in our society.
- (f) promote peace in, and create awareness of, Africa by encouraging cooperation amongst Africans, involving friends of Africa, harnessing public and private support and resources, and
- (g) engage in such other charitable activities that fall within the meaning of Section 501(c)3 of the Internal Revenue Code of United States.

The Uganda Federal Union is planning to start a campaign to explain the concept of federalism to Ugandans. In order to understand the concept of federalism we need to look at the history of Africa and Uganda in particular. Why, for example, have dictators in Uganda been hostile to federalism? We need to understand, for example, why dictators deliberately shy away from and in fact are hostile to introducing a federal system. The brief history of federalism in Africa illustrates how the task of educating the people about federalism is extremely complicated but important. Just as the founding fathers in Africa risked their security and freedom in order to advocate for and demand independence and/or democracy we must understand that federalism will not be granted by dictators on a silver platter because federalism is antithetical to their political interests of monopolizing political power. A political movement is necessary before federalism is achieved.

It is ironical the founding fathers briefly mentioned above were actually imprisoned by the colonial regimes when they demanded “freedom now” but in the end the founding fathers, except Nelson Mandela, turned out to be incorrigible dictators. In 1952, for example, Kwame Nkrumah was sent to jail on conviction of the crime of sedition when he criticised colonial policies. Similarly, Jomo Kenyatta was arrested in 1952 and charged with the crime of being a leader of Mau Mau rebellion which had been declared an unlawful organization because it demanded an end to colonialism and restoration of land taken from the natives in the Kenyan highlands. Julius Nyerere and Milton Obote were never arrested by the colonial regimes in Tanganyika and Uganda, respectively, because they were viewed as “quiet” civil servants by the colonial regimes.

The question for us to answer is: why did the founding fathers, with the exception of Mandela, turn out to be vicious dictators? Part of the explanation lies in the fact that when the founding fathers took overpower they destroyed the opposition whom they indefinitely detained and in the absence of the opposition the regimes presided over by the founding fathers became corrupt and, consequently, politically unaccountable. In Kenya, for example, Kenyatta’s regime was implicated in the assassinations of Gama Pinto in 1965, Tom Moya in 1969, and Josiah Mwangi Kairuki in 1975. Arap Moi who succeeded Kenyatta murdered the Foreign Minister Dr. Ouko and many others who stood in his way. In Uganda although Yoweri Kaguta Museveni is not a founding father but he is implicated in the assassination of many opposition leaders including Dr, Lutaakome Kayiira.

Members of UFU believe that federalism is a very important component of the democratization process. It facilitates self-determination of the people by allowing them to enjoy their cultures. Milton Obote in his misconception of human rights and democracy believed that democracy was equated with republicanism, that is, a government not based on hereditary principles which was designed to abolish the existence of monarchies or hereditary institutions. Obviously Obote was not aware that democracy in United Kingdom and Japan were not inconsistent with hereditary cultural institutions.

The fourth component of UPC's political philosophy was "republicanism." This component of UPC political philosophy divided the country into two hostile segments. Republicanism stood for the abolition of the cultural monarchies and, as a result, was bitterly opposed by those who preferred to preserve their cultural institutions, which, incidentally, were protected under international law.³ Republicanism was interpreted by Obote to deal with local Ugandan political problems. The philosophical premise of republicanism featured widely in the Common Man's Charter. It constituted the core of UPC ambiguous political philosophy.

Republicanism in Uganda, just like the political Independence of Uganda, is now a reality, but the demand and struggle for Uhuru has no end. This is part of life and part of the inalienable right of man. It is also the cornerstone of progress and of the liberty of the individual, the basis of his prosperity and the hallmark of his full and effective participation in the affairs of his country. October 9th, 1962, therefore was the beginning of a much greater struggle of many dimensions along the road to the goal of full Uhuru. ...

The Republican status, therefore, has taken Uganda further towards the goal of full Uhuru. It must not be accepted, however, that our new status by itself is sufficient, or that it has removed exploitation and has brought full Uhuru. We realize that it is, an advance towards the goal of full Uhuru, but because we are also convinced that more has to be done, this Charter has been adopted, and its Strategy is in our view, a logical development from the fact that we have been moving away from the hold of feudal power since 1966. For so long as that feudal power was a factor in the politics and the economy of Uganda, it could not be disregarded. Thus the reason for this Charter. ... With the removal of the feudal factor from our political and economic life, we need to do two things. First, we must not allow the previous position of the feudalists to be filled by the neo-feudalists. Secondly, we must move away from circumstances which may give birth to neo-feudalism or generate feudalistic mentality.

The Move to the Left is the creation of a new political culture and a new way of life, whereby the people of Uganda as a whole—their welfare and their voice in the National Government and in other local authorities are paramount. It is, therefore, both anti-feudalism and anti-capitalism.⁴

³ See Article 1 of the International Covenant on Economic, Social and Cultural Rights and Article 1 of the International Covenant on Civil and Political Rights provide that "All peoples have the right of self-determination. By virtue of the right they freely determine their political status and freely pursue their economic, social and cultural development."

⁴ Sections 7, 10 and 11 of the Charter.

Some commentators on these issues, such as Yoga Adhola,⁵ regard republicanism as articulated in the Charter as a part of the process of democratization. We reject this view. You can have democratic systems under monarchical political systems such as in Japan and United Kingdom. What is important for a democracy to exist is the protection of individual liberty and political freedom which are the ultimate expressions of self-determination and individual liberty.

⁵ See his essay “Marxism and the Uganda Peoples’ Congress,” http://www.upcparty.net/history/marxism_and_UPC.htm