

**BUGANDA'S QUEST FOR *FEDERO* AND THE RIGHT TO
SELF-DETERMINATION: A REASSESSMENT**

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LIST OF ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
CA	Constituent Assembly
CP	Conservative Party
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
KY	Kabaka Yekka
NCD	National Caucus for Democracy
NPC	National Political Commissar
NRA	National Resistance Army
NRC	National Resistance Council
NRM	National Resistance Movement
RCs	Resistance Councils
UDHR	Universal Declaration of Human Rights
ULS	Uganda Law Society
UN	United Nations
UPC	Uganda Peoples' Congress

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This is HURIPEC's third working paper under the *Rights & Democratic Governance* Project. The project aims at stimulating intellectual debate and promoting constructive dialogue on contemporary governance issues with the ultimate goal of promoting good governance and increased respect for human rights. The paper is the result of several contributions from different people who selflessly shared their ideas on the *Federo* question. We are grateful to everyone who made a contribution to producing this paper, in particular Associate Prof. Frederick W. Jjuuko, Dr. Sallie Simba Kayunga and Dr. Henry Onoria. Gratitude is also extended to the Norwegian Agency for Development (NORAD), which through its support to Makerere University in general and HURIPEC in particular provided the necessary resources for this publication.

SUMMARY OF THE REPORT

Buganda has been unrelenting in its quest for *federo*, which essentially amounts to a demand for greater autonomy in order to run its own affairs, freed from the over-burdening control of central government. Although some regimes have tended to suffocate this demand, it has persistently resurfaced. Against this background, this Working Paper analyses the right to self-determination in contemporary Uganda within the context of Buganda's demand for *federo*.

While distinguishing *federo* from federalism, the paper notes that the former is essentially a *Bugandanised* concept which connotes a fusion of federalism and monarchism. The concept is also inextricably linked to Buganda's demand for 9,000 square miles that it claims from the central government and recognition that Kampala—the capital city of Uganda—belongs to Buganda.

The paper retraces the history and evolution of the *federo* question back to British colonial rule, which placed Buganda in a special and dominant status *vis-à-vis* the rest of the protectorate. That position was entrenched in the 1962 Independence Constitution. Buganda enjoyed this position until the 1966 crisis which led to the invasion by central government forces of *Kabaka* Sir Edward Mutesa's palace and his flight into exile. A critical analysis of all succeeding regimes after Milton Obote's overthrow in 1971 indicates that their engagement with Buganda and their other actions and omissions have been mainly for the purposes of securing the latter's political support, rather than addressing the *federo* question in any substantive manner.

The paper relates the *federo* question to the concept of Self-determination, which generally postulates the right of a people to determine their collective political, economic, social and cultural destiny in a democratic fashion. While the concept is often invoked as the legal basis of Buganda's demand for *federo*, it is observed that there has been very little debate with regard to the nature, scope, and intended beneficiaries of that concept.

While self-determination was traditionally limited to peoples in territorial entities under colonialism or international trusteeship, the right has evolved over the years to the extent that indigenous groups—including minorities in some circumstances—are now generally accepted as legitimate beneficiaries of the right. Federalism, which constitutes a major part of Buganda's *federo* demands, is only one way of exercising the right to self-determination.

Whilst concluding that Buganda has a legal and legitimate right to self-determination, it is emphasized that the right is subject to important limitations, most important of which is the need to uphold Uganda's territorial integrity and sovereignty, and the respect for other peoples' rights. Furthermore, there is a need to underscore the democratic content of the recognition of this right.

By way of conclusion and offering a way forward, the paper makes five points:

- Buganda clearly has a legal and legitimate right to demand *federo*. This right is however subject to the need to uphold Uganda's sovereignty and integrity, and to the respect for other peoples' rights.
- President Museveni's recent expression of willingness to discuss the *federo* question further with *Kabaka* Mutebi, though suspect, is a positive gesture. However, the time is ripe for the discussion of the Question of Buganda to move away from State House and the Mengo government alone, and into a more democratic and participatory framework.
- There is a great need for further debate and dialogue on the *federo* issue, which extends to cover the national question as a whole. Such discussion should be open and informed and must involve all major stakeholders, including political parties, cultural and traditional leaders, civic organizations—both local and national—and ordinary citizens. In sum, we are calling for a National Round-table dialogue on the *Federo* question.
- The above debate should be guided by and based on democratic principles and norms of fairness, openness, honesty, cooperation and compromise.
- Following the debate, it is necessary to involve Parliament in taking forward the conclusions thereof, and to promote the design of a sustainable and well-rounded framework for the accommodation of all the varied interests, in order to enhance accountability and to ensure that any settlement that may be reached over the matter can be sustained beyond the individuals who negotiate it.

I. INTRODUCTION

Buganda's demand for *federo* is deeply rooted in Uganda's colonial history and in the politics of state formation in the country. From the very beginning of Uganda as a sovereign state, Buganda enjoyed a special status *vis-à-vis* the other kingdom areas and districts. It was self-governing in many aspects until 1966 when the central government forces invaded *Kabaka* Edward Mutesa II's palace and forced him to flee to exile. The 1967 Constitution officially abolished Buganda's privileged status, and also did away with kingdoms and institutions of cultural and traditional leaders. With the rise to power of the National Resistance Movement (NRM) government led by President Yoweri Kaguta Museveni in 1986, demands for the restoration of the Buganda kingdom and the institution of *Kabakaship* were stepped up.

This demand has troubled all succeeding regimes in Uganda including the Amin, Lule, and Obote II regimes. But it has been with the NRM government that the insistence on the restoration of *federo* has been strongest, and most consistent. It is said that the return of a *federo* system of governance in Buganda was one of the major reasons Buganda heavily supported President Museveni's guerilla war against the Obote II regime.¹ In fact, it is alleged that during one of his speeches in the bush, President Museveni actually agreed to restore the Buganda monarchy.² Consequently, when the NRM took over power and allowed the return of traditional rulers in 1993, the establishment at Mengo saw it as just one step in the direction of finally giving back Buganda the *federo* it had enjoyed before the 1966 crisis.³

Among the five major proposals Buganda submitted to the Constitutional Review Commission (popularly known as the Ssempebwa Commission, after its Chairperson) in 2001, it was the stipulation that a return to *federo* was one of the most (if not the most) important thing Baganda wanted out of the review process.⁴ According to the Commission report, this position is supported by a majority of the people in Buganda. Although other kingdom areas also joined in the quest for federalism, they were not as strong, assertive and passionate as Buganda.⁵ Buganda's strong position on the *federo* question was in no unclear terms expressed when the Buganda Government (headed by the then *Katikkiro* Dan Muliika), unanimously rejected the compromise arrangement for the Regional Tier System to be adopted for districts that wanted to form a regional government instead

¹ Jahannessen, 2006.

² Id.

³ Mengo is the main administrative centre (capital) of Buganda Kingdom.

⁴ GoU, 2003.

⁵ Acholi, Busoga, Rwenzururu, and Toro among others.

of a full *federo* arrangement.⁶ Before this, Buganda rejected the Buganda Charter that had also been agreed as a compromise during the 1995 Constitution making process. During the 2006 Presidential and Parliamentary elections, *federo* was a big campaigning issue in Buganda, with candidates compelled to identify with this issue in order to win votes. In fact, there was a call in the region not to vote for people who did not identify with the *federo* cause.⁷

Buganda's strong stance on *federo* has raised a lot of suspicion and confusion with a cross section of the public thinking that Buganda's uncompromising position on this issue could be an expression of the desire to secede from the rest of the country.⁸ It has also caused a lot of tension and continues to strain Buganda's relationship with the central Government. The political, social and economic implications of granting Buganda's *federo* demands also remain far from clear. What exactly Buganda wants from its *federo* demands is also still obscure not only to many Buganda but a majority of Ugandans including policy makers.

It is in this context that this paper provides some reflections on Buganda's struggle for *federo*, within the framework of a general appraisal of the right to self-determination. The paper distinguishes *federo* from the federal system of governance as understood in political science, and discusses the nature and scope of the concept of Self-determination as understood both in International Law and in the African context. The paper then traces the historical evolution of the system that has come to be described as *federo*. It analyses the legal basis of Buganda's demand for *federo* and makes some observations on the way forward regarding the *federo* question, as well as for the country as a whole. The paper concludes with a call for a national consensus on Buganda's quest for *federo* in the interest of peace, stability and national development.

II. DISTINGUISHING *FEDERO* FROM FEDERALISM

The words *federo* and federalism are not synonymous. Federalism as understood in political science is a system of governance in which power and responsibilities are divided between the central government and the various regional governments that comprise the sovereign state.⁹ Under this system of governance, the regional governments are not merely regional representatives of the federal government, but they exercise independent

⁶ See, Mercy Nalugo, 'Buganda throws tier back at central gov't.' *Sunday Monitor*, February 12, 2006, at p. 23.

⁷ *Id.*

⁸ See, The Monitor, 'Buganda wont Secede when given Federo,' *The Monitor*, August 4, 2004, at p.15.

⁹ Federalism is a concept derived from a Latin word *foedus* meaning 'pact', 'covenant' or 'agreement.'

powers and responsibilities. The distribution of power and roles is such that matters of national importance are kept under the control of the central government, while those of regional importance are placed under the control of the regional governments.¹⁰

There are four essential features of a federal system of governance. First, there must be a written constitution that clearly defines the powers and functions of the central government on the one hand, and the regional governments on the other. Secondly, the division of powers and functions should not be unilaterally amended or altered without consent of either party. This is in contrast to the unitary system of governance where the powers to local governments are granted to them by the center, which can curtail or withdraw them as it pleases, because this is essentially delegated power. Thirdly, there must be an impartial dispute resolution mechanism to settle disputes that may arise between the central Government and the regional governments in the federal arrangement. Finally, the central Government and the regional governments should both have access and control over funds necessary for execution of their mandates.

It is important to emphasize that the federal states are not the subjects of and have no standing in International Law. They are not recognized as sovereign entities. This therefore means that they do not have the same capacities as international legal persons. As such, they do not enjoy rights, privileges and immunities that accrue to sovereign states and other international legal persons. The federal states are also barred from pursuing their own independent foreign policies and from maintaining their individual armed forces. They are however free to have independent policies in fields such as trade, commerce and industry, health, education, environment, agriculture, mining, fishing, forestry etc. The degree of independence allowed differs from one country to another.

There are two ways in which federations come into existence. First of all, they can evolve out of a devolution process whereby the Central Government of a sovereign state cedes political and financial power to an extent that result in autonomous local units.¹¹ Secondly, the hitherto independent and sovereign states can form a federation by voluntary agreement whereby they transfer certain powers of common concern and interest to the newly created central government, while retaining the rest of the powers to themselves and preserving their independent existence.¹² This is what happened with Buganda at Uganda's independence.

¹⁰ Kayunga, 2000.

¹¹ Id.

¹² Id.

Advocates of federalism cite many advantages of this system of governance. It is asserted that it checks the growth of tyranny and promotes unity in diversity. Another important point to note about federalism as a good system of governance is that it keeps government closer to the people. Local control over local matters encourages participation, which in turn creates a sense of attachment and belonging. Local issues can be attended quickly under federalism. The proponents for the federal system of governance further argue that it encourages development of the nation in a decentralized and regional manner and allows for unique and innovative methods for tackling social, economic and political problems as and when they arise.

Seven Key Guiding Principles for a Successful Federal Arrangement

- Under a federal system, the central government has some exclusive powers enshrined in the national constitution. Likewise the federal state has some exclusive powers recognized and entrenched in the national constitution, the federal state also enjoys some powers not mentioned in the national constitution;
- Each federal state usually has its own written constitution, which, however must not contradict or water down the provisions of the national constitution;
- Each federal state has a fully fledged government, after the model of the central government, with its own leader of government, ministers, courts and state legislature;
- Each federal state raises taxes both for its own finances and for the services of the central government. A rich federal state in human and natural resources is likely to advance more than a poor one but more provision can be made for the under privileged federal states;
- To amend the national constitution there is a clearly defined procedure requiring approval of the suggested amendment by either two thirds of the federal states and/or the approval of any federal state being directly affected by the proposed amendment,
- The Supreme Court or the Constitutional Court set up under the national constitution is usually vested with the power of final decision in settling constitutional disputes between the central government and the federal states, and
- The national capital is clearly defined in the national constitution and administered by the central government according to special constitutional provisions.

Source: Report of the Uganda Constitutional Commission, 1993.

Federo on the other hand is a 'Bugandanised' concept that connotes a fusion of federalism and monarchism.¹³ It is a hybrid form of federalism and effectively a home grown system of governance. It aims to achieve self-governance in Buganda with recognition and respect to the traditional and cultural heritage of the Baganda with an influential and constitutional *Kabaka*.¹⁴ Godfrey Lule—former Attorney General of Buganda—clarifies that by the term *federo*,

Buganda is essentially demanding a system of governance, which allocates to the government of a region, province or state the following:

1. *Definitive authority and supervisory responsibilities over the entire Buganda region, including over all lower governments of the region in respect of all functions specified and entrenched in the Constitution, as left to the region, and to the lower local regions to perform;*
2. *Sources of revenue are clearly allocated and guaranteed in the constitution; and*
3. *The political structure provided for in the Constitution takes into account, and permits, the incorporation of the cultural values, traditions and practices cherished by the indigenous people of that region, where such cultural values, traditions and practices do not undermine the security of the state or prejudice the stability of other regions or districts in their preferred set up.*¹⁵

It is therefore clear from the preceding discussion that *federo* is not one and the same thing as federalism. By its demand for *federo*, Buganda aims to achieve two major things i.e. the attainment of federal status, and the restoration of the Buganda monarchy headed by a king with political (not merely cultural) power. The *federo* demand is also inseparably linked to the quest for a return of the 9000 square miles of land (mailo *akenda*) held by the central government.¹⁶ It is also now linked to the recognition that Kampala—the capital city of Uganda is part and parcel of Buganda.

¹³ Makubuya, 2006.

¹⁴ Id.

¹⁵ Lule, 2006.

¹⁶ The 9000 Square miles is Buganda land that was taken over and vested in central government after the abolition of kingdoms and institutions of traditional and cultural leaders in 1967. For an in-depth analysis of this issue, see Kayunga, 2000.

Any discussion or negotiation that confines itself to federalism as traditionally defined and understood, would therefore not address Buganda's central demands. It is important that any future discussions on the issue try to address the above underlying demands for Buganda's quest for *federo*. Before turning to analyse the history and evolution of the *federo* question, it is necessary to revisit the general issue of the right to self-determination.

III. REVISITING THE CONCEPT OF SELF-DETERMINATION

The right to self-determination is fronted as one of the bases for Buganda's *federo* demands.¹⁷ However, the nature and scope of this right and its beneficiaries is hardly discussed in the *federo* debate. It is important that this paper highlights some of the conceptual and philosophical underpinnings of the right to self-determination.

The concept of self-determination generally postulates the right and freedom of a people to determine their collective political, economic, social and cultural destiny in a democratic fashion. Until the adoption of the United Nations (UN) Charter in 1945, self-determination was not considered a legal right.¹⁸ Thus in the Aaland Islands Controversy where representatives of the islands requested to be annexed to Sweden as an exercise of their right to self-determination, a specially appointed International Commission of Jurists in its advisory opinion to the League of Nations, stated that although self-determination was important in modern political thought, it was not incorporated into the Covenant of the League of Nations, and, therefore was not a part of positive international law.¹⁹

The first time that an international legal instrument explicitly recognized the right to self-determination was in 1945 with the adoption of the UN Charter. Article 1 thereof clearly provides that one of the principle purposes of the UN is to develop friendly relations among nations based on respect for the principle of equal rights and self-determination.²⁰ In 1960, the General Assembly proclaimed that 'all peoples have the right to self-determination; by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development.'²¹

¹⁷ For an examination of the legal basis of Buganda's demand for *federo*, see section V of this paper.

¹⁸ Oloka-Onyango, 1999.

¹⁹ Id.

²⁰ Reference to self-determination is also made in Article 55 and implicitly under Chapters XI, XII and XIII.

²¹ See, the Declaration on Granting of Independence to Colonial Countries and Peoples. General Assembly Resolution 1514 of 1960.

The right to self-determination was consequently guaranteed as a human right under subsequent UN human rights instruments.²² Thus Article 1—common to both the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR)—provides that,

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development... The States Parties to the present Covenant ... shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

In the context of Buganda's demand for *federo*, it is argued that being party to the above instruments, Uganda should respect, uphold and facilitate the enjoyment of the right to self-determination. However, the nature and scope of the right to self-determination remains a matter of great uncertainty and controversy. This uncertainty has led to significant debate over the last two and a half decades.²³ The main controversy over self-determination revolves around the definition of the *self* i.e. the people enjoined to exercise it, and the manner and degree to which it is to be exercised.²⁴ Uncertainty flows from the fact that both the content of the right to self-determination as well as the entity, which can assert it, have been evolving and continue to evolve with the times.

The *self* is easier to define when dealing with individuals.²⁵ But the right to self-determination is a right that belongs to collectives known as 'peoples,' and not to individuals.²⁶ It is a collective right of peoples i.e. only *a people* as opposed to an individual, can exercise it. Thus, the Human Rights Committee has consistently made it clear that claims that the right to self-determination has been violated cannot be raised under the First Optional Protocol, which applies only to individuals.²⁷

²² The right to Self-determination as provided for in the African Charter on Human and Peoples Rights is discussed under section V of this paper.

²³ The debates largely flow from the fact that none of the above-mentioned instruments that provide for the right to self-determination defines its nature and extent.

²⁴ Onoria, 2001.

²⁵ Id.

²⁶ Hannum, 1998.

²⁷ Id. See also Oloka-Onyango, 1999.

Traditionally, and especially within the context of the UN Charter, self-determination as a concept and right was given a very restrictive interpretation, and confined only to people in territorial entities under colonialism or international trusteeship that wished to become independent states.²⁸ It was understood as freedom from colonial domination and at least when the domination was of a people of color in their homeland by racial groups.²⁹ It did not include the right of minorities or indigenous peoples within states.³⁰

More recently, it has been postulated that the right to self-determination can be exercised internally as well.³¹ Internal self-determination is exercised when a group of people which does not desire to become a state, demand the recognition and protection of given collective rights.³² In exercising the right to internal self-determination, peoples do not question the fact that they belong to a given sovereign state, but demand special protection by way of seeking greater autonomy in managing their own affairs *vis a vis* the central government.

Internal self-determination is founded on the premise that peoples themselves are the holders of given rights. As Richard Falk rightly observes, this notion of peoples' rights is necessarily in tension with sovereign states.³³ The notion postulates that peoples have a voice and representation in world political life in parallel with their voice and representation as subjects or citizens of a particular state.³⁴ Internal self-determination is thus intrinsically linked to the emerging right to democratic governance.³⁵ It allows a people broader control over their political, economic, social and cultural development, while stopping short of secession or a declaration of independence. As opposed to external self-determination, internal self-determination is largely a question of public law. It is an important concept in managing communities with sharply different cultural traditions and values.³⁶

²⁸ Self-determination exercised in this form is what is known as external self-determination. The factors that give rise to possession of the right to external self-determination generally include: a history of independence or self-rule in an identifiable territory, a distinct culture and will and capability to regain self-governance.

²⁹ Kirgis, 1994.

³⁰ Oloka-Onyango, 1999.

³¹ Onoria, 2001, Hannum, 1998 and Archibugi, 2002.

³² Archibugi, 2002.

³³ Id.

³⁴ Id.

³⁵ See Onoria, 2001.

³⁶ Archibugi, 2002.

Internal self-determination has given rise to a new conception of 'peoples.' In this context, the definition of peoples is not limited to the population of a fixed territorial entity. Rather, it encompasses indigenous groups, and potentially some minorities. In demanding *federo*, it is clear that Buganda is seeking to exercise its right to internal self-determination. It does not seek to break away from Uganda,³⁷ but as a people, it demands greater autonomy in managing its own affairs *vis á vis* the central government.

IV. THE HISTORY AND EVOLUTION OF THE *FEDERO* QUESTION

It is difficult to talk about any form of federal arrangement before 1894 largely because at that time, each Kingdom area in Uganda was in essence a State in its own right, independent of the other Kingdoms. Federalism in Uganda largely stemmed from the colonial policy of indirect rule. Through this policy, British used local Buganda chiefs in particular, and Buganda kingdom in general to extend its rule in the protectorate. Indirect rule was used because it was cheap, safe and effective given that Buganda was a fairly cohesive state with a very strong organizational structure. In return for the collaboration with the imperial power and for service in fighting for and extending British rule in the protectorate, Britain rewarded Buganda handsomely. In recognition of its role, Buganda was allowed to retain a significant degree of self-governance.³⁸ This is evident from the 1900 Uganda Agreement.

Under the terms of the Agreement, as long as the *Kabaka* and His chiefs remained faithful and loyal to Her Majesty's Government, He was recognized as the ruler of Buganda. His council of chiefs, the *Lukiiko*, was also given statutory recognition. The *Kabaka* was allowed to appoint three native officers to help him in the government of His People- a prime minister (*Katikkiro*), a chief justice, and a treasurer/controller of the *Kabaka's* revenue. The *Kabaka's* native court was also given statutory recognition. The *Kabaka* had power to select chiefs to rule over the 20 Buganda administrative counties. These chiefs were accountable to the *Kabaka's* native ministers from whom they would receive instructions. The chiefs were charged with the duty of administering justice among the natives dwelling in their jurisdiction, the assessment and collection of taxes and general supervision of native affairs.

³⁷ See, The Monitor, 'Buganda won't Secede when given Federo', *The Monitor*, August 4, 2004, at p. 15.

³⁸ GoU, 2003.

Towards independence, Buganda sought to retain its privileged federal status *vis á vis* the central Government and in relation to the other kingdom areas. In fact, during this period, as the rest of the country was preparing for independence, Buganda was making arrangements to secede from Uganda. Towards the end of 1960, members of the *Lukiiko* are reported to have declared Buganda an independent sovereign state, a decision that was to take effect on January 1, 1961.³⁹

As the *Lukiiko* was making its final plans for secession, the Secretary of State set up a Relationships Committee (popularly known as the Munster Commission) on December 15, 1960.⁴⁰ The Committee was to consider the form of government best suited to Uganda, while bearing in mind the desire of the people to preserve their existing institutions and customs and the status and dignity of their leaders.⁴¹ At the heart of the Commission, was the question of the relationship between the central government and the established kingdoms in Uganda, particularly Buganda.⁴² In its report, the Commission acknowledged Buganda to be "...a native state of exceptional strength and cohesion... and a state enjoying a considerable degree of independence and protected by treaty."⁴³ It recommended a federal system of governance for Buganda and a semi-federal status for the three kingdom areas of Ankole, Bunyoro and Toro.⁴⁴ These kingdom areas were to have substantial elements of federalism for their own internal purposes, but in relation to the central Government, they would be roughly in the same position as the other districts, which were managed centrally.⁴⁵

4.1. The 1962 Federal Constitution

The 1962 Independence Constitution (also known as the 1962 federal constitution) was thus constructed along a semi-federal system of governance as recommended by the Munster Commission. Under this arrangement, Buganda was the only federal kingdom. Other kingdom areas and the territory of Busoga were granted a semi-federal status.⁴⁶ In recognition of its federal status, the Constitution devolved certain powers to Buganda. Buganda was allowed to raise its own tax revenues, pass laws on specified

³⁹ Dinwiddy, 1981. Prior to this move, on hearing of the prospect that the Kabaka might be made head of State upon the termination of British rule in Uganda, Toro District Council published a threat to secede and join their kinsmen in Congo. Id.

⁴⁰ Id.

⁴¹ Id.

⁴² Kayunga, 2000.

⁴³ Munster Commission, 1961.

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ See, Article 2 of the 1962 Constitution.

subjects, enjoy entrenched protection for land tenure and its local courts, and even control through its local legislature the election of the kingdom's representatives to the national parliament. Article 4 recognized the *Kabaka's* Council of Ministers who were, "...charged with the conduct of *Kabaka's* Government..."⁴⁷ Buganda government for that reason had power over its internal management in relation to the central government.⁴⁸ It had powers akin to a state within a state.⁴⁹

However, the 1962 Constitution did not particularly mention the respective matters over which the other semi-federal governments would have exclusive jurisdiction, as had been the case for Buganda. In effect—as Mahmood Mamdani has noted, "...though the Constitution was called federal, only one region— Buganda—was given separate and substantial powers independent of the center."⁵⁰

It is also important to highlight the point that although the 1962 Constitution granted a federal and semi-federal arrangement for Buganda and the other kingdom areas respectively, it maintained a unitary arrangement with the other parts of Uganda including Acholi, Lango, Teso, Karamoja and West Nile regions. As a result, the government directly ran such places in a unitary arrangement.

4.2. The 1966 Crisis

Even though the federal arrangement was generally agreed to before the 1962 Constitution was adopted, the *Kabaka* of Buganda was not insulated from the politics prevailing at the time because he was later to become the President of Uganda, a position that brought his interests as *Kabaka* into continuous conflict with his position as President and head of state of Uganda.⁵¹ The issue relating to the so-called 'lost counties' amply demonstrated this tension.

In consideration of its assistance towards the defeat of Bunyoro Kingdom, Buganda was rewarded with the two Bunyoro kingdom counties of Buyaga and Bugaigaizi. The Banyoro within and outside these counties continuously agitated for the return of the two counties to their Kingdom, an idea resisted by Buganda. The *Omukama* (King) of Bunyoro is reported to have

⁴⁷ See, Article 5 (1) of the Constitution of Buganda, Schedule 1 to the 1962 Constitution.

⁴⁸ Schedule 7 to the 1962 Constitution for instance stated such aspects as the public service, taxation, and public debt as areas over which the Lukiiko had exclusive power to make law.

⁴⁹ Othman & Nassali, 2002.

⁵⁰ Mamdani, 1976.

⁵¹ See the Constitutional Amendment to the 1962 Constitution (1963).

petitioned the Secretary of State over the issue at least five times.⁵² In 1961, the *Katikkiro* (Prime minister) of Bunyoro presented a Memorandum on the subject to the Constitutional Conference in London.⁵³

This led to the setting up of the Molson Commission in December 1961 which recommended that a referendum be held over the matter.⁵⁴ Thus, the 1962 Independence Constitution provided that a referendum would be held in the lost counties after two years in order to determine whether the people wanted to remain as part of Buganda, return to Bunyoro kingdom or become autonomous. When the Bill for the referendum was passed by Parliament, the then *Kabaka* of Buganda, Sir Edward Mutesa (popularly known as King Freddie), refused to assent to it, and it entered into law after the lapse of the stipulated period of time.

The referendum was held in 1964. Despite *Kabaka* Mutesa II's intervention of settling a number of non- Banyoro in the said counties to vote in the exercise, and personally campaigning against the return of the counties to Bunyoro, the counties voted in favor of a return to Bunyoro.⁵⁵ From this point on, the relationship between King Freddie and Obote turned sour, with King Freddie wanting to avenge the loss of the counties. Kanyeihamba notes that "King Mutesa...began to persuade others from the Central Government, Parliament and the opposition groups to join them in the mission of overthrowing the Obote government."⁵⁶

The events that followed witnessed the unilateral abrogation of the 1962 Constitution and the adoption of the 1966 interim Constitution. The interim Constitution was a major attack on federalism and monarchism. It introduced changes that weakened the powers of the *Kabaka* and the Buganda Government.⁵⁷ As a reaction to the new Constitution, the Buganda Lukiiko decided to pass a resolution requesting the Central Government to be relocated from Buganda soil.⁵⁸ Kanyeihamba quotes some of the debate that took place during the Lukiiko meeting that passed the outspoken resolution as follows:

⁵² Dinwiddy, 1981.

⁵³ Id.

⁵⁴ Id.

⁵⁵ See, Mwambutsya Ndebesa, 'How Uganda Can Side-Step Referendum, Plus the Bitterness'. *The East African*, February 15-21, 1999, at p.6.

⁵⁶ Kanyeihamba, 2002.

⁵⁷ Johannessen, 2006.

⁵⁸ Id. Dinwiddy rightly observes that this decision was on par with that taken in 1960 to secede on January 1, 1961. See, Dinwiddy, 1981.

Gentlemen, the time has come to carry out our plans...The essence of this motion may be analogically explained in terms of ants. Red ants live in their ant-hill and are divided in two: The Queen who is only one and many, many soldiers whose task is to see that none touch the Queen at all. Should any try to do so the alarm is raised, war begins and the soldiers fight to the death before the Queen can be harmed. Thus Obote's Constitution is a move to harm the Queen, Kabaka Mutesa II. We have now raised an alarm by calling this Lukiiko. Let the fight begin at once, let all die to save the Queen...⁵⁹

Buganda's demand for Obote to remove the central Government from its soil, consequently led to the direct assault on the *Kabaka's* residence in Mengo on May 24, 1966, and eventually led to the *Kabaka's* flight into exile.⁶⁰ Following the conversion of Parliament into a Constituent Assembly, the 1967 Republican Constitution was passed to replace the 1966 interim Constitution. Article 2 (1) thereof stated that Uganda was a Republic, to be headed by a President elected by the members of the National Assembly.⁶¹ Article 118 abolished monarchism and the institutions of traditional and cultural leaders. For Buganda Kingdom, it is instructive to note that the abolition was made retrospective to May 24, 1966. Buganda Kingdom was divided into four districts i.e. East Mengo, Masaka, Mubende and West Mengo.

The net effect of the 1967 Constitution was to bring federalism in Uganda to a complete halt. However, although the 1967 Constitution abolished federalism for Buganda and the institutions of traditional and cultural leaders, it is important to highlight the point that because of its assiduous organization, Buganda Kingdom was not vanquished. The spirit of *federo* never died out, but instead developed stronger, albeit in a muted fashion. Indeed it is said that even after Mutesa's flight to exile in 1966, the *bataka* continued to meet secretly to discuss issues pertaining to the kingdom, and would send Him minutes of the meetings in London.

Commenting on the events that led to the 1966 crisis and the 1967 Constitution, Oloka-Onyango rightly observes that they provided only part of the grand plan by Milton Obote to secure autocratic governance in Uganda.⁶² By introducing the 1967 Constitution, Obote attempted to

⁵⁹ Kanyeihamba, 1975.

⁶⁰ Oloka-Onyango, 1997.

⁶¹ See, Articles 24 and 26 of the 1967 Constitution.

⁶² Oloka-Onyango, 1997.

consolidate his position in power. The Constitution conferred wide-ranging powers on the central government and greatly enhanced the executive and legislative powers of the presidency at the expense of the cabinet, the judiciary and the legislature.⁶³



File Photo of Dr. Apollo Milton Obote (left) and the Kabaka of Buganda, Sir Edward Mutesa (right) when they were still on good terms.

⁶³ Johannessen, 2006.

It is however important to also conceptualize the events leading to the 1966 crisis and the 1967 Constitution within the context of the ideology of 'developmentalism' and 'nation- building' which was a major characteristic of African states and their leadership at the time. Ethnicity was considered not only to be a breeding ground for tribalism, sectarianism and subversion, but also as a major source of disunity. It was considered backward, anti-developmental and a major obstacle to nation building, a task which the African independence leaders were ostensibly most concerned about.

Thus according to Dr. Milton Obote, ethnic identities were inherently negative and obstructive to successful nation-building and development.⁶⁴ Even before the 1966 Crisis, he had long shown his aversion to ethnicity. For example in 1963, he stated:

*The Tribe has served our people as a basic political unit very well in the past. But now the problem of people putting the tribe above national consciousness is a problem we must face, and an issue we must destroy.*⁶⁵

In his 'Footsteps of the Ugandan Revolution,' he argued that;

*Districts, and particularly the federal states, regarded the central governments as representatives of their respective tribes, whose function was to safeguard and plead tribal interests in matters of appointments, distribution of development projects and social services....The 1966 revolution that led to the abolition of federalism in Uganda was a revolution of the masses against the forces of feudalism and tribalism, whose design was to divide Uganda into personal domains with the aid of imperialist forces outside Uganda.*⁶⁶

Accordingly, Obote set out to establish Uganda as a unitary state with the overall goal of 'one country-one people' as he stated in the Common Man's

⁶⁴ Okuku, 2002.

⁶⁵ Id.

⁶⁶ Obote, 1968. See also Kayunga, 2000.

Charter of 1968. He sought to build the Republic of Uganda as one country with one people, one parliament and one Government.⁶⁷ His treatment of Buganda between 1966 and 1971 however lent little credibility to his declared intentions of reducing the significance of the ethnic factor in Ugandan politics and establishing a single people.⁶⁸ In fact, Obote's actions and omissions enhanced rather than deconstructed ethnic consciousness. This has been a major weakness of all succeeding regimes in Uganda.⁶⁹

⁶⁷ Dinwiddy, 1981.

⁶⁸ It is said that many royalists were arrested and imprisoned without trial. A state of emergency was also declared in Buganda in 1966 and remained in force until the overthrow of the Obote I regime in 1971.

⁶⁹ For a detailed analysis of the role of ethnicity in Uganda politics, see Okuku, 2002.

4.3. Amin and the *Federo* Question



File Photo of former President of the Republic of Uganda, Field Marshal Idi Amin Dada.

On January 25, 1971, Dr. Apollo Milton Obote was overthrown in a coup d'état led by Major General Idi Amin Dada. Although many in Buganda were happy with the coup, they were suspicious of Amin, given his central role in the 1966 attack on the *Kabaka's* palace.⁷⁰ Amin was not oblivious of this fact, and accordingly set out to befriend Buganda in order to consolidate his rule in the region.

At his first press conference on January 26, 1971, he announced that he would allow the return of *Kabaka* Mutesa II's body from England.⁷¹ This move significantly endeared him to many Baganda, who started to believe that the restoration of their kingdom and the installation of the new *Kabaka* was imminent.

But to their disappointment, in a statement of February 21, 1971, the soldiers announced that 'there would be no return to feudal kings and kingdoms because Uganda was moving forward and not backwards.'⁷² Nonetheless, in a shrewd move, Amin allowed the installation of Sir Edward Mutesa's 16-year old son, Prince Ronald Mutebi as *Ssabataka* (Chief of all Buganda clan heads), and not as *Kabaka*.⁷³

Shortly after the installation, Prince Mutebi went back to school in England. When he returned for his summer holidays, he received a big welcome from Buganda. It is reported that over 30,000 Baganda gathered at the

⁷⁰ As Army Commander, Amin personally led the soldiers that attacked the palace.

⁷¹ Short, 1971.

⁷² Id.

⁷³ Oloka-Onyango, 1997.

airport and lined the route along which he passed.⁷⁴ This move sent strong signals to Government about Buganda's desire for the return of their institution of *Kabakaship*. Three days later, Amin met Baganda elders at a conference in Kampala.⁷⁵ They bluntly told him that they wanted their kingdom back.⁷⁶ Amin first brushed aside their demands by arguing that there were more pressing problems for government to deal with at the time. He however invited them to submit a memorandum on the subject, which he said would be considered by his Cabinet and the Defence Council.⁷⁷ In a tactical way, he later argued that the question was too important to be decided by the President alone, and that a conference of delegates from all districts would be called to discuss it.⁷⁸ By so doing, as Short observes, Amin reopened a matter which (officially at least) had been closed, something which until then he had been careful to avoid.⁷⁹ With the increased dictatorship of Amin's regime, it seems that Buganda never engaged him any further on the question of *Kabakaship* in particular and on the issue of *federo* in general. The regime maintained the proscription of kingdoms as provided under the 1967 constitution until it was overthrown in 1979.

When the 1979 Liberation war that led to the overthrow of Amin's regime came, many Baganda believed that it would bring back the *Kabakaship* with it.⁸⁰ Indeed much of the support that Professor Yusuf Kironde Lule got in Buganda was based on the belief that being a Muganda, he would not fail to do something about the kingdom.⁸¹ Unfortunately for Buganda, Professor Lule's regime was too short lived to address the Buganda question.⁸²

After Professor Lule's exit, Buganda's *federo* demands were shortly resurrected during the 1980 general elections, with the establishment of the Conservative Party (CP) led by former *Katikkiro* Jehoash Mayanja Nkanji. CP began fronting the restoration of federalism and institutions of traditional leaders as its main agenda if voted into power. The party however failed to secure a single seat in Parliament probably indicating, as Kayunga has observed, that the issue of *federo* was not popular in Uganda at the time.⁸³ With Obote's return to power after winning the

⁷⁴ Short, 1971.

⁷⁵ Id.

⁷⁶ Id.

⁷⁷ Id.

⁷⁸ Id.

⁷⁹ Id.

⁸⁰ Kawanga, 1994.

⁸¹ Id.

⁸² Professor Lule ruled the country for barely three months i.e. April 13, 1979 = June 20, 1979.

⁸³ Kayunga, 2000.

controversial 1980 elections, Buganda's demand for *federo* went back into limbo up to the time President Yoweri Museveni launched the guerilla warfare that over threw the Obote II regime.

4.4.0. NRM and the *Federo* Question

The engagement of Buganda with the regime that came to be known as the NRM on the *federo* question seems to have started before President Museveni declared his five-year guerilla war against the Obote II regime. Museveni took advantage of the intense dislike of Obote in Buganda to launch his war in Buganda.⁸⁴ The strong ethnic anti-Obote sentiments in Buganda, where bad memories of Obote's first government remained entrenched, ensured great support for the National Resistance Army (NRA) in the region.⁸⁵ Buganda support assumed many forms. Most significant was the acceptance of many Baganda youth to be recruited into the NRA, providing food supplies and support as informants and spies. Perhaps the most important role Buganda played—as Catherine Johannessen has observed—was the contribution of *Kabaka* Ronald Muwenda Mutebi.⁸⁶ Towards the end of the war, *Kabaka* Mutebi came to Uganda and visited the liberated areas in Buganda region. This move is said to have strengthened the NRA's support in Buganda and boosted the morale of the soldiers at the time when the NRA was in a quite desperate situation.⁸⁷

It is said that in return for the support of Buganda, President Museveni agreed to restore the Buganda monarchy if he won the war.⁸⁸ NRA won the war and NRM Government came to power on January 26, 1986 promising 'a fundamental change and not a mere change of guards.' Given that the 'fundamental change had *inter-alia* been directed against the past regimes including the Obote I government, which had abolished federalism and the *Kabakaship*, Buganda was rather up-beat about its *federo* demands. Baganda loyalists started to demand that the NRM fulfill the bush war promises and restore their kingdom and the institution of *Kabakaship*. The NRM asserted that it had not fought the bush war in order to restore the monarchy.⁸⁹ During the first 3 to 4 years of NRM rule, it did not

⁸⁴ Okuku, 2002.

⁸⁵ Id.

⁸⁶ Johannessen, 2006.

⁸⁷ Id.

⁸⁸ President Museveni has consistently denied ever having promised *federo* during the guerilla war. For instance, in his 2004 statement on the question of *federo*, he stated: "I have heard some lies that we promised *federo* and the restoration of the kings when we were in the bush. We never did such a thing. All our documents are available for any body to read... what we promised was democracy, national unity (anti-sectarianism), security of the person and property, modernizing our society etc." See, President Yoweri Museveni, "Museveni's statement on Buganda's demand for *federo*," *Sunday Monitor*, September 12, 2004, at p. 18.

⁸⁹ Id.

therefore do anything significant to address the *federo* demand.

Towards the end of 1988, the NRM embarked on the constitution-making process to replace the 1967 Constitution. The major reasons for embarking on this exercise were to right the wrongs that had taken place under past governments and to return the country to a constitutional and democratic path in line with the peoples' aspirations.⁹⁰

4.4.1. The Odoki Commission

In order to successfully accomplish the task of coming up with a new constitution, as a first necessary step, the Government established the Uganda Constitutional Commission (popularly known as the "Odoki Commission") to gather peoples' views that would be the basis of the new constitutional order.⁹¹ The Commission was also tasked to come up with a draft constitution based on peoples' views to be debated by the Constituent Assembly (CA).

One of the most controversial issues on which the Commission had to seek views was the appropriate system of governance to be adopted for the country. There were three major systems of governance that the Commission sought peoples' views about i.e. federalism and a unitary system, monarchy and republicanism, and decentralization and devolution.⁹² The main findings of the Commission were that the first two levels of Resistance Council (RCs) and the individual and group memos preferred the federal form of Government.⁹³ The majority of these were from Buganda. RCs 3, 4 and 5 preferred a unitary form. The majority of those who preferred a unitary system of Government were from Eastern, Northern and Western Uganda. Based on these findings, the Constitutional Commission recommended that the new Constitution should be based on the principle of decentralization and the devolution of power and should allow unity in diversity.⁹⁴

The constitution, composition and workings of the Commission have been the subject of several critiques by a number of scholars. Oloka-Onyango notes that the Commission comprised strong adherents of the Movement System, incorporating both the National Political Commissar (NPC) of the NRM as well as his counterpart in NRA.⁹⁵

⁹⁰ See, Preamble to the 1995 Constitution of the Republic of Uganda.

⁹¹ See, Uganda Constitutional Commission Act, 1998.

⁹² GoU, 1993.

⁹³ Id.

⁹⁴ Id.

⁹⁵ Oloka-Onyango, 2000.

In view of the Government's declared intention to involve the people in the making of their Constitution, Furley and Katalikawe have argued that it is rather strange that the NRM found it necessary to have peoples' views vetted by NRM cadres.⁹⁶ Juma Okuku points out that another major limitation of the Commission was the fact that it was merely advisory.⁹⁷ Its findings were not binding on the Constituent Assembly. It is also important to highlight the point that the Commission worked under set guidelines.

At the end of the exercise, Sam Kalega Njuba—the Minister of Constitutional Affairs during the Constitution making process—accused the Commission of doctoring the draft which it handed over to the President. He claimed that eight 'wise men' had smuggled into the draft, proposals that were not contained in the peoples' memoranda and had also left out others.⁹⁸ In the context of the *federo* issue, this revelation raises a number of questions: Who were these 'wise men?' What issues in the draft report were doctored? To what extent were they doctored? What issues were left out of the report that were contained in peoples' memorandum? Could the actions of the 'wise men' have substantially altered the position on the *federo* question? At the end of it all, while the draft constitution submitted to the President was generally reflective of the peoples' views, it left several questions unanswered.

4.4.2. The Restoration of the Buganda Monarchy

During the run-up to elections for the Constituent Assembly (CA)—a body set up to debate the findings of the Odoki Commission and come up with a new constitution—a number of politicians urged a boycott of the exercise.⁹⁹ This sentiment was particularly prominent in the multi-party camp and among politicians from Buganda.¹⁰⁰ For the multi-partyists, their main concern was one of a level playing field. The Constituent Assembly Election Act, 1993 had provided an opportunity for the NRM to translate its administrative ban on political party activity into a legal ban.¹⁰¹ The election rules provided that candidates would stand and be voted for on personal merit. Any candidate who used or attempted to use any political party, tribal or other sectarian affiliations would be disqualified from the race. This provision did not however apply to the NRM and its candidates. As regards the politicians from Buganda (majority of whom were also

⁹⁶ Furley and Katalikawe, 1997.

⁹⁷ Id.

⁹⁸ Okuku, 2002.

⁹⁹ Id.

¹⁰⁰ Id.

¹⁰¹ Id.

monarchists), in addition to the above concern, their call for a boycott of the exercise seems to have been a tactful way of bargaining for the restoration of the Buganda Kingdom.

It became clear early in the debate, that the NRM would not risk opposing the restoration of Prince Mutebi as *Kabaka*, and thereby lose support from within Buganda. Hence, a number of Baganda key actors in the NRM began organizing the coronation of *Kabaka* Mutebi and even set a date for the function. Despite resistance against the coronation from the legal fraternity, preparations for the function received the blessings and a go ahead from the highest political offices, including that of the President and Vice-President. Abu Mayanja (the Attorney General and Minister of Justice and Constitutional Affairs at the time) proclaimed that there was no legal obstacle to the coronation.¹⁰² A suit was later filed seeking an injunction to stop the coronation, arguing that it would be tantamount to a violation of the provisions of the 1967 Constitution that had banned kingdoms and monarchs.¹⁰³ The Uganda Law Society (ULS) subsequently also wrote to the Attorney General and the Minister of Justice and Constitutional Affairs arguing that the coronation was unconstitutional unless an amendment was effected to the existing (1967) constitution which had outlawed kings and monarchies.¹⁰⁴ The ULS also argued that only the CA could amend the Constitution, and that the coronation should be postponed until the CA had debated the issue and a new constitution had been passed.¹⁰⁵ The basic thrust of the ULS argument was that the National Resistance Council (NRC) had ceded its powers of constitutional amendment after passing the CA law, which specified that any power to alter or amend the constitution of Uganda would vest in that body.¹⁰⁶

Government's immediate response to the above legal challenge—at least as expressed by the Attorney General and Minister of Justice and Constitutional Affairs—was to brand the ULS' executive as an anti-NRM group of people who had supported Obote's destruction of the monarchies and the usurpation of their properties.¹⁰⁷ It took President Museveni's intervention to bring the legal battle to an end. He insisted that he would request the NRC to amend the Constitution in order to allow the coronation to take place without legal hindrance arguing that it was impermissible

¹⁰² Oloka-Onyango, 1997.

¹⁰³ *Id.*

¹⁰⁴ Jahannessen, 2006.

¹⁰⁵ Oloka-Onyango, 1997.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

to retain a constitutional provision that denied people their cultural rights.¹⁰⁸

The coronation finally took place on July 31, 1993, and Prince Ronald Muwenda Mutebi II was crowned as 36th *Kabaka* of Buganda. From what transpired later, it became clear that Government's haste in having Mutebi crowned amidst challenges to the legality of the coronation was a calculated move to gain the support of Buganda in the CA especially against political parties, rather than addressing Buganda's quest for *federo*. Indeed, it is rather noticeable that very little mention was made about the exact nature of the regime or system that the restored *Kabaka* was to operate and that it was not clear how the monarch would fit into the overall operation and governance of the country, raise funds to support itself (for example through taxation), or what the geographical parameters of the restored kingdom were.¹⁰⁹ Even the idea of a 'cultural' monarch was not very clearly articulated, although the government was adamant that the *Kabaka* would not be involved in politics.

Nonetheless, although the coronation was more of NRM's political game to win Buganda support than to address Buganda's *federo* demands, it constituted an important step in Buganda's struggle for *federo*. The successful restoration implied that Buganda now had the organizational basis necessary to demand for the restoration of the federal system of governance in the region.

¹⁰⁸ Oloka-Onyango, 1995.

¹⁰⁹ Oloka-Onyango, 1997.



Kabaka Ronald Muwenda Mutebi II (right) shaking hands with President Yoweri Museveni at the coronation

4.4.3. The Constituent Assembly Elections and Debates

When the CA elections took place, it was not surprising that the majority of delegates (especially from Central Uganda) were NRM adherents and Buganda monarchists. This is largely attributed to the popularity that the restoration of the *Kabaka* institution had brought about. To that extent, the alliance between NRM and Buganda had worked well.

When the question of traditional leaders came up for debate in the CA, the Buganda loyalists argued that it was only a federal system of governance that could accommodate the restored traditional leaders. They demanded for a federal system of government with a *Kabaka* exercising political rather than merely cultural powers. John Kawanga, CA delegate for Masaka Municipality argued that,

The Baganda now want Buganda to be restored in its original geographical form as it was in 1966 before Obote destroyed the kingdom. They want the Kabaka to be the titular head of a government of Buganda with a Lukiiko headed by the Katikkiro. The Kabaka, they argue, is always the Kabaka of

*Buganda and it is only then that he becomes the Kabaka of Baganda. Indeed to the Baganda the cultural Kabaka must have a Katikkiro and a Lukiiko which institutions help him govern his people in his name. This is what the Baganda want, and perhaps for lack of a better word or way to describe it, they have simply called it "federo"...*¹¹⁰

Many CA delegates however thought that they had been presented with a *fait accompli* with regard to Buganda's demands for *federo*. This was especially so because in a bid to secure Buganda's alliance in the CA, NRM had reinstated the Kabakaship ahead of the CA debates. Winnie Byanyima, the CA delegate for Mbarara Municipality argued that her people,

*... do not understand why this Assembly was preempted by the NRC to restore traditional leaders. Our people were not consulted before this very important constitutional amendment was made. Now some of the leaders are sitting on thrones, another one is still trying to sit on his and we are being asked to say whether we want them or not. We have been presented with a *fait accompli* by the NRC. This is not fair on the people... it is embarrassing to ask some one who is already seated to vacate the chair. Parliament had no business to change the Constitution just before the CA.*¹¹¹

A new twist into the *federo* debate came when the National Caucus for Democracy (NCD)—a group of CA delegates mainly composed of multi-partyists—joined the Buganda loyalists in their demand for federalism. They agreed to Buganda's demands on condition that federalism would to be discussed on a country wide basis.¹¹² Buganda was in turn to support the multi-party cause against the NRM. Together they made two demands; a return to political pluralism and the establishment of a system of federalism.¹¹³ Certainly these demands posed a serious threat to the NRM's secure hold on the country and to its future plans for governance. The multi-partyists and the NRM therefore started to fight for Buganda's support and alliance in the CA.

¹¹⁰ Kawanga, 1994.

¹¹¹ Oloka-Onyango, 1997.

¹¹² Dani. W. Nabudere, 'The five manipulations that silenced Bidandi.' *Sunday Monitor*, April 6, 2003, at p. 9.

¹¹³ Kayunga, 2000.

The NRM schemed for Buganda's support for the continued ban on political party activities and its continuance in power for another five years. In return it promised to grant Buganda's *federo* wishes. The federalists believed NRM's promises. They saw it as a golden opportunity to achieve their long held dream of regaining federal status with an empowered *Kabaka*. They finally decided to ally with the NRM against the multipartyists. After securing the continued ban on political party activities and the extension of NRM rule for another five years, the NRM reneged on its *federo* promise. Instead, it started campaigning for a unitary system of governance with decentralization as a preferred mechanism for distributing power.

Other Reasons for the Defeat of the *Federo* Motion in the CA

- Failure to construct federal units which are both economically viable and enjoy a high degree of cultural homogeneity
- Limited support for federalism in other monarchial areas
- Federo Trinity i.e. federalism, land and Kabakaship made federalism a congested demand
- The initial alliance between federalists and multi-partists relegated the federo question to a secondary position
- Intolerance and undemocratic tendencies in the fight for federo

Source: Kayunga Simba Sallie, 2000

The highest point of debate on the draft constitution with regard to the *federo* issue was reached with Prince Besweri Mulondo's shift of position on the issue. All along, Mulondo—Ssabalangira (Chief Prince) of Buganda and CA delegate for Mityana South— had been at the forefront and one of the main flag bearers of Buganda's quest for *federo*. In fact he had sworn to die for *federo* in the CA.¹¹⁴ But at the last moment when the issue was nearing being put to vote, Mulondo stunned the assembly when he denounced *federo* and blamed Baganda CA delegates for working with "snakes," a thinly-veiled reference to the UPC.¹¹⁵ He put it as follows:

...We have the pot there and the snake is in the pot, so you had better be careful with how you look at things. This is a pot of clay and you have the stick there and you must kill that snake but you should not break the pot because you

¹¹⁴ Oloka-Onyango, 1997.

¹¹⁵ Dani. W. Nabudere, "The five manipulations that silenced Bidandi" *Sunday Monitor*, April 6, 2003, at p. 9.

still want to eat, so I think you better understand. Now, here we are and I braved my ways. For your information, I wanted to examine the details because I am a pro-federo and whoever talks about it, has my support but then I have to look at the reality of the thing... I want to say that in view of what I have said, if the movers (of federo motion) were very near me, I would have appealed to them, for the benefit of all of us and for the peace that all have and which we should not disturb, withdraw this one.¹¹⁶

Immediately after Mulondo's submission, the matter was put to a vote, and the *federo* supporters lost the motion.

4.4.4. The 1995 Constitution

Following the debates in the CA, Uganda adopted decentralization coupled with a no-party arrangement as the system of governance. Thus Objective II (iii) of the National Objectives and Directive Principles of State Policy provides that the state shall be guided by the principle of decentralization and devolution of governmental functions and powers to the people at appropriate levels where they can best manage and direct their own affairs. The system is based on the district as a unit under which there are lower local governments and administrative units.¹¹⁷

The constitution provides for the institution of traditional and cultural leaders and states that they exist in any area of Uganda in accordance with the culture, customs and traditions or wishes and aspirations of the people to whom it applies.¹¹⁸ Article 246 (5) provides that for the avoidance of doubt, the institution of traditional or cultural leader existing immediately before the coming into force of the constitution shall be taken to exist in accordance with the constitution. This particular clause was included for the benefit of Buganda since it was Buganda where the institution of cultural leader and *Kabakaship* had been reinstated before the enactment of the 1995 Constitution.

As a compromise for Buganda's demand for *federo*, Article 178 was included to cater for some of the *federo* related demands. The Article permits two or more districts by way of a Charter to cooperate in the areas of culture and development. The specific areas of cooperation include: culture,

¹¹⁶ Ryle Evans, "Who supported, opposed federo?" *The Weekly Observer*, July 22, 2004, at p. 32-33.

¹¹⁷ Article 176.

¹¹⁸ Article 246 (1).

cultural and traditional lands; promotion of local languages, crafts and antiquities; education; health; inter and intra-districts roads and development projects.¹¹⁹ For purposes of the cooperation, the cooperating districts were given the powers to form and support councils, trust funds or secretariats. These councils, trust funds or secretariats were given the power to make rules, regulations and bye laws in relation to the functions assigned to them, provided that the same were consistent with the constitution and were ratified by the district councils of the co-operating districts.¹²⁰

Since Article 178 was included as a compromise for *federo* and for the major benefit of Buganda, it was provided that the districts of Buganda as specified in the Constitution were deemed to have agreed to cooperate on the coming into force of the constitution. This led to the proclamation of the Buganda Charter.¹²¹ Under the Charter, the districts within Buganda had the opportunity to meet several of their *federo*-related aspirations within the new constitutional framework. In particular, as Kayunga points out, the Charter went a long way in meeting Buganda's demand to be administered as a single unit.¹²² It also enabled the cooperating districts to work out a durable method of maintaining the *Kabaka* and the *Kabakaship* and managing local matters. Despite this, the Charter was rejected by Buganda.

There are a number of reasons why Buganda rejected the Charter. These have been well summarized by Kayunga.¹²³ First, the Charter denied the Union Council the power to levy taxes. Secondly, whereas the Lukiiko and local councils in Buganda traditionally derive their powers from Mengo, according to the Charter, the powers of Mengo were to be derived from district Local Councils in Buganda. According to Buganda, this was unthinkable and unimaginable. Thirdly, the Charter required that power should be devolved only to people who were democratically elected. However, the Lukiiko wanted power to determine who would be officials of the Union, despite the fact that most of its members were not democratically elected. Finally, the Charter allowed any district dissatisfied with the union to opt out of it.¹²⁴ The Lukiiko on the other hand demanded that no district in Buganda should be allowed to opt out of the Union.

¹¹⁹ Schedule Five, 1995 Constitution of Uganda.

¹²⁰ See Article 178 (1)(d).

¹²¹ Article 178 (3).

¹²² Kayunga 2000.

¹²³ *Id.*

¹²⁴ See, Article 178 (4).

In the eyes of many Ugandans, the rejection of the Charter made Buganda appear to be an uncompromising region that had become dogmatic in their quest for *federo*. However, in analyzing some of the reasons for the rejection, they go to the root and foundation of Buganda as a kingdom and of the *Kabakaship* as an institution. For instance the fact that the *Kabaka* appoints his *Katikiiro* (Prime Minister), is a cherished power, which has enabled the institution of *Kabakaship* to remain in charge and control of the kingdom. From that perspective, some of the reasons could be justified. However it would have been important for Buganda to reject the Charter's proposals right from the point at which they were brought up in the CA, rather than to wait for the adoption of the constitution and then reject some of the provisions.

4.4.5. The Constitutional Review (Ssempebwa) Commission

The Ssempebwa Commission was established on February 9, 2001 by Legal Notice No.1 of 2001 under the Commission of Inquiry Act. It was mandated to review certain specific areas of the 1995 Constitution relating to civil and political rights; socio-economic rights; the relationship between the three arms of government; and democracy and good governance.

The setting up of the Commission was mired in controversy. According to the government, it was necessary because experience had shown that from the point in time of the implementation of the Constitution in 1995, there were several areas of inadequacy which needed to be addressed in the interests of the proper administration of the country. However, there were several facts that seem not to give credence to this claim. In the first instance, the Commission was established in the heat of the election campaigns. Secondly, President Museveni's chief rival in that battle—Rtd. Col. Kizza Besigye—had stated that one of his first goals would be to undertake a review of the Constitution in order to address the many issues that had not been comprehensively dealt with by the CA, including the form of government, and the issue of *federo*. Lastly, the Constitution was barely five years old, and a comprehensive review of the instrument so early in its life was of questionable intent. Needless, to say, it was not until well after the election that the Commission actually took off, and even then, it progressed in fits and starts.

Under paragraph 4 (c) of Legal Notice No. 1 of 2001, the Commission was specifically mandated to review the decentralization system as provided for in the 1995 Constitution, and to consider whether federalism should be introduced, where required. In its submission to the Commission, Buganda argued that the system of decentralization as entrenched in the 1995 Constitution only enabled the Central Government to delegate powers to

the districts which power could be undelegated at any time.¹²⁵ Buganda demanded for full federalism, where power and responsibilities would be shared between the Central Government and the requisite federal states. Under such a proposal, both governments would have to agree on the respective areas of sharing power and responsibilities, after which each party would execute their obligations in compliance with the agreement. This agreement could only be revoked mutually, which was different from the policy of decentralization where the Central Government could unilaterally revoke any powers granted to a particular district.

The underlying argument to the demand by Buganda was that a particular people within an area were the best suited to make their development plans. With shared powers and responsibilities, the federal states would have the obligation of ensuring the effective realization of their set targets and goals through a vigorous mode of participation. It was demonstrated that district entities would not act as viable alternatives to *federo* due to their limited resources, which apparently could be availed by the region.¹²⁶

Buganda further demanded that the "federal system of government should divide the country into regions, with the division taking into account the principle that people of the same or similar traditions, cultures, languages and ways of life are put together to take into account and take advantage of their traditional systems of leadership, mobilization and way of life for development. In the case of the people of Buganda, the districts of Buganda would form the federal Kingdom of Buganda under a non-political *Kabaka*."¹²⁷

Furthermore, the Buganda government noted that it objected to the Charter arrangement outlined in the 1995 Constitution because it was an extension of the "ineffective decentralized system." The rejection may have been on the basis that decentralization did not give Buganda the exact nature of power and independence it desired in relation to the central Government.

The above arguments notwithstanding, Articles 178 (1) and (3) of the 1995 Constitution would ensure that the districts which came together under the Charter would spell out the areas on which they would cooperate in order to ensure further development within the Buganda region. For example, the districts within the Buganda region would cooperate to ensure that a well-facilitated regional hospital was constructed. They would also cooperate to put up properly facilitated primary, secondary and tertiary

¹²⁵ Buganda Kingdom, 2003.

¹²⁶ Id.

¹²⁷ Id.

institutions. The Constitution provided that such cooperating districts would further agree on any other matters as they would resolve in conformity with the Constitution.¹²⁸ Therefore, if one of the main driving forces behind the quest for *federo* was development, this had been granted under the aforementioned provisions. Though the Charter was not the exact nature of federal government desired, it ensured a greater provision of services, participation by the members of the respective districts in their own affairs, and finally it would lead to the development of the region, as well as to overall cultural preservation.

4.4.6. Regional Tier as a Compromise to Federo

In its report to the Minister, the Ssempebwa Commission stated that according to the views collected, "the responses in favor of a federal system of Government were in the region of thirty percent (30 %)."¹²⁹ It is instructive to observe that this is a rather small percentage and differs significantly from the findings of the Odoki Commission, which indicated generally that federalism was very popular. The findings probably point to one major conclusion i.e. that federalism as a system of governance has been losing popularity among Ugandans over the years. This is however only true among the non-Baganda, otherwise Buganda would not still be passionately demanding for *federo*. It is however important to emphasise the fact that while the Odoki report indicated that support for federalism mainly came from the lower RCs, the Ssempebwa findings do not clearly indicate the categorization of people (in terms of RCs/Local Councils) who support and those who do not support federalism. It is likely that given the limited time and resources at their disposal, they did not reach the majority at the grassroots as the Odoki Commission did.

The report of the inquiry also highlighted the following issues; that people had embraced the local governance system which ensured that services were taken closer to the people; that the devolution of power had to be matched with the requisite resources and that some services could better be offered at a level that minimized the replication of services, enhanced opportunities to tap more resources and facilitated an inter-district approach.¹³⁰ It is these considerations that supported the idea of the "regionalization of services."

The Ssempebwa Commission report argued that, "the proposal is about a more effective system of local governance. At the same time it will serve

¹²⁸ Fifth Schedule to the 1995 Constitution.

¹²⁹ GoU, 2003 at 118.

¹³⁰ Id., at 120.

the interests of the people of some districts who already aspire for local governments in which they want to maintain a historical identity..."¹³¹ The Commission hence recommended that a regional tier system should be adopted with a few modifications.¹³² The recommendations of the inquiry had largely been covered by the 1995 Constitution. The inquiry only went into further detail suggesting areas where Article 178 of the Constitution had to be supplemented.

Since the central Government had already agreed to increase the areas of cooperation mentioned under the 5th Schedule, this would have necessitated an amendment to the Constitution to clearly define the confines of the regional governments. However, an Act of Parliament could have dealt with the detail of how such governments would be run. In view of the fact that the recommendation had already been covered by the 1995 Constitution, the government's response to the inquiry—enshrined in the White Paper of October 2004—was not surprising. The government noted that it accepted the "principle of regional governments" as long as they were managed democratically.¹³³ It further stated that in the case of regional governments with cultural leaders, there should be political and administrative councils on the one hand and cultural councils on the other to "handle purely cultural/traditional matters relating to heirs and succession and any other cultural/traditional matters." ¹³⁴

After the government's response, it moved to amend the Constitution (1995) largely adopting its position as outlined in the White Paper. Among other changes, the amendment to the Constitution revised the 5th Schedule and made it more detailed. The 5th Schedule to the 1995 Constitution only contained a list of areas of cooperation amongst the districts.¹³⁵ The amendment made the following changes to further facilitate the formation of regional governments:

- ◆ it allowed for the adoption of a regional name;
- ◆ it provided for the composition of the regional assembly;
- ◆ it made provision for a regional government;
- ◆ it outlined the role of traditional leaders;
- ◆ it stipulated the functions of the regional governments on issues of land, finances, and heritage sites, and
- ◆ it dealt with the issue of the take over of the regional government by the President.

¹³¹ Id., at 121.

¹³² Id., at 123.

¹³³ GoU, 2005 at 48.

¹³⁴ Id., at 50.

¹³⁵ The areas of cooperation included; culture, education, intra and inter district roads etc.

In effect, the amendment granted regional governments the leverage to make a determination on various issues. As already stated, the regional governments got the opportunity to bring together persons of the same culture for the promotion of such cultures. Thus, all the "...districts of Buganda, Bunyoro, Busoga, Acholi and Lango..." were deemed to have "agreed to form regional governments..."¹³⁶ The people within Buganda i.e. the Baganda presumably with a common culture, language and tradition could henceforth devise solutions to their problems within the framework of the regional government. Within this provision, the amendment had further ensured that those regional governments with cultural leaders (Kings) would also recognize them as titular heads with the obligation of opening and closing the sessions of the regional assembly.¹³⁷ The provisions had ensured that the various cultures were brought within one government, combining the need to further development but at the same time recognizing the people's respective rights to their cultures. Therefore, this limb of the demands as forwarded from the kingdoms was met to a reasonable extent by the amendment.

The argument that the regional governments would be better placed to promote their own development as a result of sharing duties between the regional governments and the central government was also dealt with by the amendment.¹³⁸ The amendment made provision for the functions of the regional governments to include; secondary and tertiary institutions, regional roads, regional referral hospitals, agriculture, forests, water, sanitation, culture, and land.¹³⁹ On the other hand, the central government had the following responsibilities; arms, defense, banks, minerals, foreign relations, national elections, energy policy, transport and communication, the judiciary, industrial policy etc.¹⁴⁰ The responsibilities of either governments had hence been clearly demarcated and each one of them immediately had the mandate in such areas to improve the lives of the various peoples within and outside the regional government. Although the regional or central government may desire to either make additions of responsibilities on the one hand or reduce on such responsibilities, this is an area that could be further negotiated between the two parties. In its submission, the Kingdom of Buganda had stated that "regional governments take care of regional matters in the particular regions like schools, health services, feeder roads, culture, land, local amenities, local government, local development plans, local economic policy..."¹⁴¹

¹³⁶ Article 178 (3) of the Constitution of the Republic of Uganda (As at 15th February 2006).

¹³⁷ Id., Clause 8 of the 5th Schedule.

¹³⁸ Kingdom of Buganda, 2005 at 2, 3 and 11.

¹³⁹ Clause 9 and 10 of the 5th Schedule.

¹⁴⁰ See 6th Schedule.

¹⁴¹ Kingdom of Buganda, 2003 at 3.

To ensure that the regional governments were actually able to implement the above obligations, the amendment provided that the central government would "...work out a formula of granting unconditional grants to the regional government having regard to the seventh schedule..."¹⁴² As already noted above, the regional governments' obligations under the amendment are diverse. To ensure that these obligations are met, the regional governments must be funded either from within or outside themselves. From within, this would necessitate that the regional governments had the power to tax their occupants. Though the internal mechanism of collecting taxes promotes self-sustenance, it would create a lot of difficulty for those regional governments that have smaller revenue sources. For example while Kampala, Masaka and Wakiso may have various sources of income, this may not be the case for the Acholi regional government whose districts have for the last 20 years been embroiled in a conflict which has greatly impoverished its inhabitants.¹⁴³

The alternative to this would be that some regional governments set aside particular portions of their income and transmit it to the resource-constrained regional governments, in addition to the central government contributions to those unprivileged areas. However such a mechanism is not without problems. The areas of taxation for the regional governments must be defined. Would it on the one hand include income taxes (individuals, partnerships, companies, rent), property rates, value added tax, excise etc? Or would the central government further agree to split these sources with the regional governments, on the other? Would the inhabitants of one regional government working within another transmit their various taxes to their "home governments"?¹⁴⁴ Furthermore, what would happen to the revenue sources of the central government in relation to its other obligations?

It is in the context of the above and of several other considerations that the amendment made provision for unconditional grants from the central government to the regional governments.¹⁴⁵ The constitutional amendment went further and provided greater detail than had originally been the case with the 1995 Constitution. This ensured that the greatest demands for *federo* governance had been provided for under the title of regional government? The above notwithstanding, Mengo Government rejected the regional tier system. It is necessary to turn to a consideration of the reasons why the Mengo Government rejected the regional tier system.

¹⁴² Clause 11 of the 5th Schedule.

¹⁴³ See the Poverty Eradication Action Plan (2004/5-2007/8) particularly Pillars 1 and 3.

¹⁴⁴ A proposal that would be particularly difficult to implement for taxes levied on consumption e.g. VAT.

¹⁴⁵ Clause 11, 5th Schedule to the Constitution.

4.4.7. Rejection of the Regional Tier

As demonstrated above, the amendment made some attempts to ensure that the demands of kingdoms, in particular those of the Buganda Kingdom were met. However, after the adoption of the amendment to provide for the regional tier system, the Mengo-Government rejected the regional tier system arguing that it was different from what was being demanded for. It was reported that the tier was mainly rejected because of the requirement to elect the *Katikkiro* (Prime Minister) and on account of the exclusion of the city of Kampala from the area and jurisdiction of Buganda.¹⁴⁶

Regarding the former, it is important to highlight the fact that the Prime Minister has the duty of ensuring the smooth running of the Kingdom. As such, the Prime Minister has both administrative and political functions. However, the constitutional amendment made provision for both a regional assembly and a regional government.¹⁴⁷ Even though the Kingdom of Buganda did not have problems with the assembly, it had several questions with regard to the idea of a regional government. Under clause 4, the regional government would be led by a regional chairperson who would be "...elected by universal adult suffrage at an election conducted by the Electoral Commission."¹⁴⁸ Upon election, the chairperson would be given the instruments of office by the traditional leader and would then become the political head of the regional government.¹⁴⁹ The amendment hence sought to change the cultural practices within the Kingdom of Buganda regarding the appointment of the Prime Minister by the *Kabaka*, a culture that the Kingdom is apparently unwilling to see changed.

It was argued that having an elected *Katikkiro* is abominable and goes against the culture, norms and tradition of Buganda to the effect that the *Kabaka* appoints and fires His Prime Minister at His discretion. Nsubuga Nsambu a senior advocate and President of CP stated as follows;

*There is no single day the Baganda will accept any body to elect the Katikkiro for them. It is only Sabasajja Kabaka who appoints the Katikkiro. There are cultural and historical attachments related to the Katikkiroship.*¹⁵⁰

¹⁴⁶ See, Mercy Nalugo, 'Buganda throws tier back at central gov't.' *Sunday Monitor*, February 12, 2006, at p. 23.

¹⁴⁷ Clauses 2, 4, and 5 of the Fifth Schedule to the Constitution.

¹⁴⁸ See clause 4 (3) (a) of the Fifth Schedule to the Constitution.

¹⁴⁹ *Id.*

¹⁵⁰ See, Nsubuga Nsambu, 'Baganda don't want E. African Federation.' *The New Vision*, September 17, 2004, at p. 11.

Joseph Balikuddembe another senior lawyer and member of the Lukiiko argued thus:

It is poisonous to have an elected Katikkiro and accepting a regional tier is suicidal. People may be elected with questionable agendas and given today's rigging, it might be worse. Non-Buganda can be elected leading to the kingdom's extinction. It is important to highlight that it is a long time tradition of Buganda that the Kabaka of Buganda appoints and disappoints the Katikkiro at His discretion.¹⁵¹

The above notwithstanding, it is important to underscore the fact that although the tradition of the *Kabaka* appointing his *Katikkiro* can be accepted as a custom of Buganda, it is not an unbroken practice. For instance, under the 1955 Buganda Agreement (also known as the Namirembe Agreement) between the Buganda Government and the Protectorate Government, *Katikkiro*ship was an elective office. Names of candidates for the office would be forwarded to the Great Lukiiko by a given date for screening. Thereafter, the Lukiiko would elect the *Katikkiro* through secret ballot.¹⁵² Among the *Katikkiros* elected under this system were Michael Kintu and Joash Mayanja Nkangi.¹⁵³ The difference with what was provided for under the regional tier system is that the *Katikkiro* under the regional tier would be directly elected by universal adult suffrage.¹⁵⁴

Godfrey Lule-Attorney General and Minister of Justice & Constitutional Affairs in the Buganda Government at the time until he recently resigned the post—clarified further on some of the other reasons why Buganda rejected the regional tier system. 'First of all, a close look at the constitutional provisions for the regional tier system indicates that the regional governments do not have authority over any territory.¹⁵⁵ It is only districts that have territories over which they perform functions.' On this basis, he argues that there cannot be a real earthly political kingdom without a territory attached to it. Secondly, he argues that under a proper federal arrangement, no district can be allowed to by-pass the regional government and report directly to the central government, nor can the central government reach the district governments by-passing the regional government.¹⁵⁶ And yet, this was something that the regional tier

¹⁵¹ See, Mercy Nalugo, 'Buganda throws tier back at central gov't.' *Sunday Monitor*, February 12, 2006 at p. 23.

¹⁵² Article 13.

¹⁵³ See, Joshua Kato, 'Mengo should check self,' *The New Vision*, January 3, 2006, at p. 12.

¹⁵⁴ Clause 4(3)a of the Fifth Schedule to the constitution.

¹⁵⁵ Lule, 2006.

¹⁵⁶ *Id.*

constitutional provisions allowed.¹⁵⁷

After Buganda's rejection, the regional tier system that was scheduled to commence on the 1st July 2006, was halted because, according to one observation, "...the Mengo Government that asked for it gave it up long ago..."¹⁵⁸ Here again, it can be argued that Buganda missed an important opportunity it could have used as a climbing stone to achieving full *federo*. Compared to the Buganda Charter, the regional tier system catered for most of the *federo* demands, albeit in different form. In the spirit of compromise and making progress on its demands, it would have been important for Buganda to accept the regional tier system. After all, a bird in the hand, is worth more than a thousand in the air.

It is also essential to stress that there were other regions that also asked for federalism and which were ready to adopt the compromise of the Regional Tier system e.g. the Kingdom of Bunyoro-Kitara and Obwa Kyabazinga of Busoga.¹⁵⁹ However when the Kingdom of Buganda rejected the provision for the regional tier, the whole system was brought to halt without taking into account the other Kingdom areas. Impliedly, the provision for the regional tier was proposed largely to satisfy one region in Uganda. Thus, the other regions' demands could only be met within the demands of the Kingdom of Buganda. It is within this context that the Minister for Information and National Guidance, Hon. Ali Kirunda Kivejinja stated that the "We have decided to put it on hold because those who were agitating for it, have abandoned the issue. The Mengo Government that asked for it, gave it up long ago".¹⁶⁰

This was an unfortunate reaction by Government. By arguing the way it did, it means that the Government takes Buganda to be superior to the other kingdoms and non-kingdom areas. This is one of the reasons why many people in other regions were reluctant to support Buganda's cause.¹⁶¹ It was indeed a big insult to the other areas that wanted the regional tier. Buganda as a region of Uganda should and must be treated as other regions of the country, history, size and population notwithstanding.¹⁶² For the regional tier arrangement to be stopped without consulting other regions that had also asked for it simply because Buganda did not want it, implied that the debate for federalism/ regionalization as a system of governance

¹⁵⁷ Id.

¹⁵⁸ Hillary Kiirya, 'Regional tier system halted,' accessed at: <http://www.newvision.co.ug>

¹⁵⁹ GoU, 2003.

¹⁶⁰ Hillary Kiirya, 'Regional tier system halted,' accessed at: <http://www.newvision.co.ug>

¹⁶¹ GoU, 2003.

¹⁶² Leo Ssebweze, 'Buganda failed by her officials,' *Uganda Review*, Vol. 16, No.1.

had only two parties i.e. the Buganda kingdom on the one hand, and the central government on the other. Other regions matter less.

V. THE LEGAL BASIS OF BUGANDA'S DEMAND FOR FEDERO

Although Buganda has never come out to explicitly delineate the legal basis of its demand for *federo*, it can generally be accepted that its quest for *federo* is based on three major legal arguments. First, there was the unilateral abrogation of the 1962 Constitution. Second, there is Buganda's right to self-determination as guaranteed by many international and regional instruments to which Uganda is party. Finally and related to the above, Article 1 (4) of the 1995 Constitution provides that the people shall be governed through their will and consent. It is necessary to critically examine each of these claims in turn.

5.1 The Unilateral Abrogation of the 1962 Constitution

As earlier pointed out, Buganda's status both under the 1900 Uganda Agreement and the 1962 Constitution was of a federal nature. The 1962 Constitution guaranteed Buganda's position as a federal state with cultural attributes while the rest of the kingdom areas were to operate under a quasi-federal arrangement. With the 1966 crisis when central government forces invaded *Kabaka's* palace and the *Kabaka* was forced to flee, Buganda's federal status was unilaterally abolished in contravention of the 1962 Constitution. In 1967, a new Constitution was put in place. This Constitution officially abolished the federal arrangement all over Uganda. The Constitution also unilaterally abolished the institutions of traditional and cultural leaders. Buganda therefore argues that the government should make good the breach that was committed in 1966 by Obote when he unilaterally abolished *federo*. Apollo Makubuya (the current Attorney General and Minister of Justice and Constitutional Affairs in the Buganda Government) has stated as follows:

*Buganda is aggrieved by the unilateral actions of Obote's government in abrogating the 1962 Constitution and the abolition of Kingdoms and federalism. It believes that it was short-changed by the current Government that restored traditional leaders in 1993 without a constitutional basis as to how they are to govern their subjects. Also the Odoki and Ssempebwa recommendations on the issues of federalism have not been accorded serious consideration by the Government.*¹⁶³

¹⁶³ Makubuya, 2006.

The remedy that Buganda seeks for the 1962 breach is the restoration of Buganda's status as a federal state within Uganda. This argument raises novel issues in constitutional law. Indeed it would be interesting to see how a court of law would resolve it if Buganda chose to institute a suit based on this ground. Some of the interesting issues the argument raises include:

- (i) To what extent can subsequent Governments be held liable for the breaches of constitutional provisions committed by previous Governments?
- (ii) What remedies accrue from the breach of constitutional provisions of the nature that Buganda bases its claims on?
- (iii) Would not such a claim be barred by the doctrine of laches, i.e. the lapse of time?, and finally,
- (iv) To what extent can Buganda maintain a suit based on the above ground?

Buganda's argument based on the breach of the 1962 Constitution also seems to ignore the fact that while it is important that constitutions should not be changed except when it is absolutely necessary and in accordance with its democratic provisions, constitutions are dynamic instruments. They are never intended to be static. They should adapt to and reflect the prevailing social, economic, cultural and political realities of the time. It is unimaginable that even if Obote had not unilaterally abrogated the 1962 Constitution, it would still be the prevailing constitutional order of our times. In advancing the above legal argument, it is therefore important to put into consideration the above perspective. Buganda's argument also seems to give little attention or accept the fact that there have been several important political processes in the country that have attempted to right the wrongs that were committed especially during the Amin and Obote eras. It is instructive to note that delegations representing Buganda's interests have actively participated in these processes. Most important of these processes are; the restoration of institutions of traditional and cultural leaders, the making of the 1995 Constitution, and the passing of its subsequent amendments. While these processes have had several loopholes and limitations, their outcome is generally accepted as consensus on the different issues including the *federo* question.

5.2. The Right to Self-Determination

Perhaps, Buganda's strongest legal basis of its demand for *federo* lies in its right to internal self-determination.¹⁶⁴ Major regional and international instruments to which Uganda is party guarantee this right. Most relevant in Buganda's case, is the African Charter on Human and Peoples' Rights (the Banjul Charter). As such, Uganda is obliged to respect, uphold and facilitate the enjoyment of this right by its beneficiaries.

Article 20 (1) of the Banjul Charter provides that:

All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.

It is important to underscore the point at this stage that in Buganda's case, its assertion of the right to self-determination is inherently linked to the right to culture, which is guaranteed by the Constitution.¹⁶⁵ In the words of John Kawanga:

...A question had been asked, what if Buganda wants a federal system of government and the rest of Uganda do not want it, how can Buganda have it? In other words, who will Buganda federate with? It will be noted that federalism is some times a way of preserving cultural and historic diversity and individuality within the framework of a greater national entity. In fact this is the most compelling aspect for the Baganda in this regard. They have a monarchy, which is inextricably interwoven with their cultural heritage, which they hold so dear and want to preserve... It is necessary for other Ugandans to appreciate that the Kabaka, to the Baganda is not just a traditional ruler. He is an institution, which has evolved over a period of 500 years and more.¹⁶⁶

¹⁶⁴ For a discussion of the meaning of internal self-determination, see section III of this paper.

¹⁶⁵ See Article 37. The essence of this right is that every person has a right to belong to, enjoy, practice, profess, maintain and promote any culture and tradition.

¹⁶⁶ Kawanga, 1994.

In the same vein, while clarifying on Buganda's *federo* demands, Godfrey Lule argues that:

*...Buganda is essentially demanding a system of governance, which allocates to the government of a region, province or state a political structure... which takes into account, and permits, the incorporation of the cultural values, traditions and practices cherished by the indigenous people of that region...*¹⁶⁷

Although the right to self-determination was traditionally only interpreted within the context of the decolonization process, developments in legal theory and the doctrine have given way to new forms and degrees of its exercise.¹⁶⁸ Thus in *Katangese Peoples' Congress v. Zaire: Judicial determination of Claims to Self-determination*,¹⁶⁹ the African Commission on Human and Peoples' Rights (ACHPR) had an opportunity to expound on the right to self-determination as it should be understood within the context of the Banjul Charter. The Commission stated that:

The Commission believes that self-determination may be exercised in any of the following ways: independence, self-government, local government, federalism, confederalism, unitarism or any other form of relations that accords with the people fully cognizant of other recognized principles such as sovereignty and territorial integrity.

The above decision makes clear the point that federalism is one legitimate way of exercising the right to self-determination. The factors that give rise to possession of the right to self-determination generally include: a history of independence or self-rule in an identifiable territory, a distinct culture, and will and capability to regain self-governance.¹⁷⁰ Buganda meets all the above factors. Its demand for *federo* can therefore be legally justified on the basis of its right to self-determination.

In this regard, it is critical to emphasize that Article 20 (1) of the Banjul Charter relates the right to self-determination to the right to existence. Henry Onoria has concluded that in effect, the conduct of a state that

¹⁶⁷ Lule, 2006.

¹⁶⁸ Onoria, 2001.

¹⁶⁹ *Katangese Peoples' Congress v. Zaire*, ACHPR Commn. No. 75/92.

¹⁷⁰ Although these factors apply generally to the right to self-determination in the context of secession especially in decolonization, they can generally be said to apply to federalism as well.

undermines the very existence of an ethnic group or part of its people would be in violation of the right to existence.¹⁷¹ The right to existence and the preservation of the cultural and traditional beliefs of Buganda as a kingdom has always been at the centre of its advocacy for a federal system of governance.

In exercising its right to self-determination, Buganda should however be aware of the limits to this right. As enshrined in the Banjul Charter, the right to self-determination is subject to the need to uphold the territorial integrity and sovereignty of the particular state.¹⁷² In determining the Katangese claim to self-determination, the ACPHR emphasized that it had an obligation to 'uphold the sovereignty and territorial integrity of Zaire, as a member of the OAU and a party to the African Charter on Human and Peoples' Rights.'¹⁷³ The Commission therefore held that '...Katanga is obliged to exercise a *variant* of self-determination that is compatible with the sovereignty and territorial integrity of Zaire.'¹⁷⁴

5.3. Article I of the 1995 Constitution

Closely linked to the right to self-determination, is Article 1 of the Constitution, which proclaims that all authority emanates from the people of Uganda and that the people shall be governed through their will and consent. Article 21 (3) of the Universal Declaration on Human Rights (UDHR) is also to the same effect. Although the Banjul Charter makes no reference to the will of the people as the basis of government, the ACHPR has interpreted Article 13 thereof to enjoin the presence (or non-negation) of the will of the people.¹⁷⁵

The essence of these provisions is that the will of the people should be the basis of Government. These provisions require that governments derive their just powers from the consent of the governed. This is a democratic entitlement of all citizens of any state. Government is therefore obliged to govern the people of Uganda and specifically Buganda in this case according to their will. Buganda's will is to be governed under a *federo* arrangement.

As long as Buganda's *federo* demands do not infringe other peoples' rights, their demands should be granted. In this case, given the findings of the Ssempebwa Commission which seem to indicate that federalism as a

¹⁷¹ Onoria, 2001.

¹⁷² *Id.*

¹⁷³ *Katangese Peoples' Congress v. Zaire*, ACHPR Commn. No. 75/92.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* See also argument made by Onoria, 2001.

system of Government has been losing popularity over the years, it is important that the *federo* demands are truly reflective of the will of the people of Buganda and not just sections of Buganda who could be suppressing any opposing views.

VI. SOME REFLECTIONS ON THE WAY FORWARD

President Museveni has once again expressed a willingness to discuss the *federo* issue, but this time, only with the *Kabaka*.¹⁷⁶ This willingness although suspect, is a positive gesture on the part of the President in so far it indicates a willingness to further discuss the issue. At the same time, it is important to recall that virtually all of the discussions about the status of Buganda have taken the form of a 'deal' between a handful of central government politicians and an equally small number of Baganda politicians. This was the case in the run-up to independence in 1962, and led to the infamous marriage of convenience between Milton Obote's UPC and what came to be known as Kabaka Yekka (KY), representing the interests of the Baganda elite. The 1966 crisis was the outcome of that 'deal.'

The restoration of the *Kabakaship* in 1993 assumed the same form, with a negotiation between key Baganda within the NRM and President Museveni (even if the Army Council was ostensibly consulted over the matter). The manner in which the restoration was negotiated has clearly led to the subsequent problems that surfaced after the enactment of the 1995 Constitution. Likewise, negotiations that resulted in the Regional Tier were held behind closed doors, and its fate was sealed even before the ink had dried on the agreement.

Given the above, it is fundamentally important to underscore the point that the President is not the giver or guarantor of peoples' rights, including the right to self-determination. The President is just one of the main actors in the above regard. It is therefore important that the *federo* question be discussed and negotiated with all major stakeholders in the country, and most especially with the Parliament of Uganda. *Federo* for Buganda is such an important and vital national issue that it should not be confined to a discussion between President Museveni and Mengo alone, or in the worst case scenario, between the President and the *Kabaka* alone, as the former wants it to be. In fact the earlier that Mengo engages and involves Parliament and other major stakeholders in a discussion of the

¹⁷⁶ Robert Mwanje and Al-Mahid Ssenkibirwa, 'No Museveni, Kabaka Talks on federo-Lukiiko,' *The Daily Monitor*, May 23, 2007 at p. 13.

issue, the better its chances of persuading Parliament to ratify or agree to whatever "deal" may be struck with the President. More importantly, it is time that the question of Buganda not be the subject of a "deal." That is not sustainable.

There is also a need to recognize that federalism as a system of governance from which Buganda's *federo* demands spring, is always a negotiated outcome that involves a lot of compromise on the part of the various stakeholders involved. Thus, the stakeholders in the *federo* debate should be flexible and willing to compromise on their demands. Any compromise reached must however address the social, economic, political and cultural dynamics not only in Buganda but also Uganda as a whole.

The need for further research on how federal arrangements work cannot be over-emphasized. There is a lot to learn from experience of successful federations in the world. Further research will be critical in informing any further debate, negotiations and decision-making on the *federo* question.

VII. CONCLUSION

Buganda's demand for *federo* cannot be pushed aside and/or suppressed any further. Buganda has a legal and legitimate right to self-determination, and the right to existence as a people. It also has a democratic right to be governed according to the system it likes, as long as all the above does not infringe the rights and freedoms of other people and it ensures the sovereignty and integrity of Uganda as a nation.

Since Buganda is still part of Uganda and its *federo* demands if granted would affect the entire country, the *federo* question must be discussed and negotiated with all major stakeholders. The discussions and negotiations must be guided and based on democratic principles, and norms of fairness, openness, honesty, and cooperation. For the sake of peace, stability, unity and national development, all the stakeholders in the *federo* debate must be ready and willing to compromise on their demands. Once a negotiated settlement is agreed upon, all stakeholders must respect and uphold it. The time is now to have a national consensus on Buganda's quest for *federo*.

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