

THE REFERENDUM WORKSHOP

THEME: "THE REFERENDUM: WHICH WAY FORWARD
FOR A SYSTEM OF GOOD GOVERNANCE"

HELD ON: 28 MAY, 1999

VENUE: INTERNATIONAL CONFERENCE CENTRE
COMMITTEE ROOM B

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**ADDRESS BY HON. LADY JUSTICE SOLOMY B. BOSSA, CHAIRPERSON
KITUO CHA KATIBA TO A SEMINAR ON THE REFERENDUM: WHICH
WAY FORWARD FOR A SYSTEM OF GOOD GOVERNANCE HELD AT THE
INTERNATIONAL CONFERENCE CENTRE ON 28 MAY 1999.**

Distinguished guests, participants, ladies and gentlemen. There has been much debate on the above subject and whether or not Uganda should legitimize the holding of the referendum as laid down in the 1995 Constitution. The debate has so far centered on politicians and this has limited and narrowed its focus.

The East African region is now vibrant with regional cooperation as the keyword. 'Kituo cha Katiba' thought it necessary to give a comparative approach to the referendum debate; hence this workshop.

Giving a brief background to the organization Kituo Cha Katiba is an East African Non-Governmental Organization established in 1997 with the assistance of FORD FOUNDATION. It is intended to achieve the following:

- To advance the process of Constitution making in East Africa.
- To promote the roles of constitutionalism, gender equity and equality.
- To eliminate the disadvantaged situation of social, cultural, economic and political groups in East Africa (including minorities, refugees and persons with disabilities).
- To commission state of art studies on various dimensions of constitution making, constitutionalism and democratic governance.
- To compile testimonies of prominent East Africans intensively involved in the process of constitution evolution and development.
- To facilitate the reformulation of school and university curricula to incorporate aspects of constitution making and democratic governance.
- To act as a regional watchdog for the protection, promotion and enhancement of constitution making, constitutionalism and democratic governance.

The debate on the proposed referendum in Uganda is no doubt an aspect of constitutional evolution and development in Uganda. It should be taken seriously and debated openly and widely. On it hinges the future of this country that inevitably impacts on the East African Region at large. Lessons from our neighbors in Kenya and Tanzania should enable participants to put the said debate in perspective.

Please allow me to express our gratitude to the speakers from all over East Africa who have spared time from their busy schedules to contribute and enrich this important debate.

Our gratitude also extends to the FORD FOUNDATION without whose support this debate and work of Kituo Cha Katiba would not have been possible.

I would also like to thank the Board of Kituo Cha Katiba and the Secretariat for their contribution in staging this workshop.

I wish you fruitful deliberations and a successful workshop.

Thank you.

The Referendum – Which Way Uganda?

By Frederick W. Jjuko, Associate Professor, Faculty of Law, Makerere University

1. Introduction

The Ben Kiwanuka Memorial Lecture is indeed an appropriate occasion to address the subject of the referendum on political systems.

More than 40 years ago when colonialists, (by definition colonialism negates not only freedom and democracy but the very humanity of the colonized) reluctantly conceded to a restive people the right to associate and organize politically. Then we see people like Kiwanuka come to the political scene. The question of whether Ugandans should be free to associate and organize politically is being posed anew in a remarkable commentary on the amount of social, economic and political regression this country has undergone.

Kiwanuka's contributions to the struggle for human freedom and ultimately his fate demonstrated when contrasted with others like Kabalega, Daudi Chwa, Musazi, Ramogi, Semakula Mulumba, Lule, Kununka, Kayira et cetera the diverse ideas and ways in which Ugandans contribute to the cause of their emancipation.

There is no single individual or group that can claim exclusive tenancy in the gallery of our heroes.

Likewise, there is no single political group that can claim a single correct political line in our contemporary life. Ugandans in their diversity have a lot to contribute to this nation.

This paper is addressing the question of the referendum on political systems in Uganda as provided in the constitution.

2. The Constitution and the Referendum

(a) The Provisions of the referendum

Article 69 (1) provides that “the people of Uganda shall have the right to choose and adopt a political system of their choice through free and fair elections or referenda” The political systems are spelt out in article 69(2) as the movement political system; the multiparty political system; and any other democratic and representative political systems.

The constitution also provides for how the political system may be changed with or without a referendum. Article 74 provides that a referendum shall be held for purposes of changing a political system:

- a) If requested by a resolution supported by more than half of all members of parliament,
Or
- b) If requested by a resolution supported by the majority of the total membership of each of at least one half of all district councils;
Or
- c) If requested by petition to the Electoral Commission by at least one tenth of the registered voters of each of at least two-thirds of constituencies with directly elected representatives. (That is county/geographical constituencies, not the special interest group)

Yet another method of changing a political system is by 2/3 of members of parliament, making a resolution in parliament, on a petition to parliament by not less than 2/3 of the total membership of each of at least half of all district councils. (Art 74(2))

The petitions and resolutions on political systems as spelt out in Art. 74 can be taken only in the fourth year of any parliament. It should also be underlined that such petitions or resolutions are neither compulsory nor automatic.

It is only the referendum that is specifically provided for in Article 271(2) that is, Two years before the expiry of the first term of parliament (1996-2001), any person will be

free to canvass for public support for a political system of his or her choice for purposes of a referendum. And during the last month of the fourth year of the term of parliament, that is June 2000, a referendum must be held to determine the political system the people of Uganda wish to adopt (Art 271 (3)).

Art.74 is one of those entrenched articles whose amendment requires a referendum.

(b) Provisions on freedom of association

A part from the above constitutional provisions, there are other provisions relating to the question on political association.

Article 75 provides that parliament shall have no power to enact a law establishing a one party state.

Article 29 also provides for “freedom of association which shall include the freedom to form and join associations or unions, including trade unions and political and other civic organizations.”

Art. 20 of the constitution provides that the fundamental rights and freedoms are inherent and not granted by the State.

All the above constitutional provisions have direct bearing on the issue of the referendum on political systems. Indeed the arguments on both sides of the divide et cetera those for the referendum and those advocating for its boycott mainly hinge their arguments on some of these provisions.

3. Referendum Practice

A referendum submits a question directly to the entire electorate without any mediation by representatives. A question may be referred to a referendum of the electorate.

Such a direct vote has been held in many countries for a variety of purposes. In Uganda the only referendum so far held was not held over a national issue but on the question of the “lost counties”. In that referendum the people of the counties of Buyaga and Bugangaizi decided, two years after independence, whether to remain in Buganda or revert to Bunyoro.

In different European Union Countries referenda have been held on the question whether or not their respective countries should join the EU.

In May 1988 a referendum was held in the Republic of Ireland and in Northern Ireland on the all-party peace agreement.

On the question similar to the problem in Uganda there are experiences of Tanzania and Malawi.

In Tanzania the transition from one party state to multi-parties was not effected through a referendum. Instead a Commission chaired by the Chief Justice was set up by the government to collect the views of the people countrywide and advise on constitutional reform.

It found that 77.2% of those who gave views preferred one party rule, but 56.6% wanted substantial changes within the single party.

The Commission, however, was of the view that the desired change within the party was not feasible without a framework of a multiparty system. So it recommended the introduction of multiparty politics, which was accordingly effected. It has only been in Malawi in 1993 that a referendum similar to what is proposed here was conducted.

The multipartists won with 62% in spite of the odds against them during the campaigns.

Typically, with the exception of Kamuzu Banda's Malawi case referenda are not conducted over fundamental human rights and freedoms, and in particular the freedom to associate or assemble. In many cases the referendum affected the peoples' rights to belong to a particular country or area and their participation in an international organization.

4. The Historical Case for the Referendum

Movementists have put forward a number of arguments to subject the country to a referendum. The 'historical' reasons are as follows:

- That Uganda has not developed classes and therefore proper political parties based on economic and social interests cannot emerge. The parties that have existed are based on narrow divisive considerations such as ethnicity, religion and other sectarian considerations. Until such class differentiation occurs the very idea of multi-partism, and not just the specific parties in existence, is not possible.
- That it is the multiparty system that has created the crises in this country including the atrocities and gross abuse of human rights in the country.

- That Uganda needs an interim healing period following its turbulent history. The movementists have certainly swayed between a short-term interim justification and a long-term basis for it: the lack of social classes that must await modernization-which might be a matter of decades, or centuries before classes emerge and multi-partism can flourish.

Both justifications are flawed. Murkherjee's writing as early as 1956 elaborately expounds on the existence of classes and class interests in Uganda. Other writers that take a class analysis approach have since elaborated on this further.

But if one were to buy the movement argument that all there is to social and political organizations in the country is ethnicity, religion and sectarianism, what is the social basis of the movement and the ethnicity of those who control the army?

Or, does the movement surpass the social and material basis on which it is built that is Ugandan society: Does practice bear this out? Indeed are there not justifiable accusations that the Movement is the most sectarian political organization and government in the annals of Uganda?

As to the argument that it is multipartism that has been responsible for what has gone wrong in Uganda it is clearly the case that such an idea is based on very selective memory. It is a fact that the multiparty system has existed for only a brief time in Uganda that is, the first five years of independence. Since then every dictator and fascist in the country has had to get rid of the parties in order to unleash repression on the country.

This began with the undermining of political parties as early as 1964; then the proscription of the existing parties in 1969 with the exception of the Uganda Peoples Congress and the incarceration of their leaders; the total banning of political parties by Amin in 1971; and the undermining of political parties in the 1980s and 1990s.

The most repressive rule in this country has occurred at times when the multi-party system has not been in operation.

While political parties, just like any other institution in Uganda, have had problems and shortcomings, it is fallacious to assign blame on multipartism. Indeed, political parties have made significant contributions to the cause of democracy and freedom not only during the colonial period, but also in the post-colonial period. They contributed to the resistance to repression and helped limit the extent of that repression in our History.

What the history of Uganda consistently demonstrates as real problems in the country, running through all forms of government, civilian and military alike, is of two interrelated factors:

- a) Dictatorship and the desire to cling to power.
- b) The use of militaristic leadership to achieve the first objective, and to resolve differences.

The problems of Uganda can be attributed to these factors without any contradiction. These elements are incompatible with an operative multi-party system.

However, if one assumed that the movement arguments about classes et cetera were correct, does the referendum address these issues? Clearly it does not.

The reason for this is that although Article 69 of the Constitution refers to political systems, the matter addressed is not on political systems. It simply addresses systems of representation and election. The political system is already implied in the configuration of the various arms of government and the way they are constituted. These are not determined by the referendum under the constitution.

Article 69 therefore confines itself to election systems including the single-party the multi-party and any other democratic system.

Election systems would certainly not be able to address a profound problem such as the absence of classes that the movement identifies. This is not remedied by the omnibus alternative of “any other” system because this one too, simply refers to a system of representation or election.

If Uganda were to genuinely explore the possibilities of political systems with their appropriate ideologies, it would certainly look at traditional political systems; those systems that our people had evolved before colonialism and the modern state, and which would correspond to that stage of socio-economic development that movementists identify as classless.

Instead the movementists evidently restrict the matter to systems of representation and the single/multiparty versions; there is no serious consideration of “any other system” for obvious reasons.

5. The Constitutional Case for the Referendum

Many movementists have argued that the referendum must be held in line with the constitution.

This argument involves a number of options. Some have pleaded helplessness before the constitution with the implication that even if the multipartists had a case their hands are tied by the constitution. Others have expressed this idea in more, emphatic terms: the referendum is non-negotiable

Those who advocate for the boycott of the referendum are treading the unconstitutional path. A variation on this is that it is a “young” constitution and should be given a chance in order to foster the spirit of constitutionalism. They cite the long process of consulting the people by the constitutional commission and regard the present constitution as a result of that process.

The proposition that human rights, including the right to freedom of association are not absolute and can therefore be legitimately curtailed. All these arguments are evasive, and diversionary; they fail to appreciate the contradictory nature of the constitution. The arguments also attempt to intimidate.

The 1995 Constitution provides for a referendum on political systems. The same provides for freedom of association; and outlaws the one party system.

Those who argue for the referendum will cite the transitional Article 271 and those who advocate for the boycott also cite *the same constitution* and invoke the more basic Articles 20 and 29. To try and create a dichotomy and label those crusading against the referendum as unconstitutional misses the point and does not appreciate the deep contradictions embedded there in.

These contradictions are not accidental. They stem from the fact that the present constitution is a partisan constitution an NRM constitution in conception, in the making and in its eventual content. The content is two-faced for this very reason.

The NRM had always considered the making of the constitution as a partisan enterprise. Originally it had provided in the law that the Army Council together with the NRC would debate and enact the new constitution.

Partly as a result of popular pressure and of NRM’s populism, coupled with its desire for an extended interim period, the NRM created The Constitutional Commission and provided for a Constituent Assembly of a different mould.

The Constitutional Commission was created in a unilateral manner without consulting all interested groups, including particularly the political parties.

This partisan character of constitution making was further entrenched by the prevention of other political platforms, apart from the NRM and in the process of electing the Constituent Assembly. Political parties were given a token of two seats each.

The Constituent assembly was not only a false start but also a missed opportunity. Hence the constitution making process aimed at preserving the NRM but with a semblance of democracy. The debates of the CA were very partisan and riven by caucuses.

It is this contradiction that pervades the product of the process-the 1995 Constitution.

It is true that the constitution is young. This however should not mean that it cannot be changed or that amending it would undermine constitutionalism.

The ideas and principles it embodies are quite old and familiar and many have been tested by practice in Uganda and elsewhere.

The idea on the one party state is neither new nor does it have to be experimented again. Nor need the denial of fundamental rights. The consequences of these practices are well known to many Africans and Ugandans in particular, who have lived the experiences.

Constitutional reform, which the constitution itself provides for is part and parcel of a very important part of constitutionalism.

Indeed, it is for this reason-the reason of constitutionalism and the avoidance of militarism which is the trademark of the Uganda political process, that those opposed to the referendum cling to a constitution, that is clearly against democracy and still invoke it for constitutional reform not militarism. The idea of helplessness before the constitution is clearly a subterfuge. As many people have pointed out, it is not meant to enslave the people but to free them. It is not the people who are there for the constitution but the constitution is there for the people.

Given political will, there cannot be insurmountable technical or other grounds to prevent Ugandans from constitutionally realizing a desired goal, and in respect of the referendum this will be shortly demonstrated.

However these pleas of helplessness allude to many movementists who have a mechanic view of the constitution. Quite a number of them believe that the constitution can be a substitute for applying thoughtful and innovative ways of addressing the problems of Uganda.

Thus for instance The Free Movement invited the National Political Commissar and prominent movement MPs to a seminar on the theme “Towards A Democratic Future”. The seminar addressed itself to issues of the movement, political parties, elections et cetera while a number of movement MPs turned up the NPC and some other MPs declined to turn up mechanically citing the constitution as preventing them from discussing such matters before the year 1999. This petty and mechanic view of the constitution requires little comment apart from mentioning that it demonstrates intolerance of opposition groups.

The movement should know that Ugandans in general and multipartists in particular are not claiming abstract rights or asserting rights granted or even fought for by the NRM.

In the face of severe restrictions Ugandans began asserting their human rights but particularly the freedom to associate as soon as the colonialists took away their self-determination.

Thus the more or less spontaneous Bataka uprisings began in 1912. In the early 1930s this assertion of rights took the form of such organizations as the Young Basoga Association, Young Bagishu Association, Young Baganda Association.

More radical and diversified organizations were to emerge in the late 1930s and 1940s: Bana Ba Kintu, Uganda Motor Drivers Association, the Bataka Party et cetera.

These organizations were not only asserting their freedom of association but also laid claim to civil and economic rights by demanding representation, election of their chiefs, ginning their own cotton and marketing their own crops.

When the reformist Governor Cohen finally provided the law allowing the formation of political parties, he was not doing Ugandans a favor, or charitable act: he was bowing to the inevitable: he was recognizing the struggles and successes of Ugandans.

Ugandans were asserting and advancing their rights not by militaristic means but by organization and against a formidable adversary.

It is these achievements in the assertion of these rights that the bill of rights in the 1962 constitution was represented.

It is these rights that every other constitution has included in the bill of rights, and which even Amin dared not delete from the constitution.

Ugandans have reasserted and struggled for these rights, particularly the freedom of association, in multifarious fashions. In spite of the ruthlessness of the dictators that have characterized the Ugandan political scene from the mid 1960s up to today.

It is these rights and the history and not abstract rights, or a gratuitous grant by the NRM—that Ugandans are reclaiming. These rights were claimed long before any constitution or state recognized them, and by less sophisticated people.

It is this history that puts the freedom to associate beyond votes and beyond majorities. To claim that a referendum is the highest form of democracy in such a case misses the point altogether and is in this case counter-historical.

6. The Movement's Electoral Record

As important to the question of the referendum is the issue whether a free and fair vote is possible under the movement.

It is a fact that the movement has never held a single free and fair election in its entire history.

Apart from overreaching practices such as the incumbent campaigns under various disguises while others are barred. The misuse of state funds and resources also heavy use of money and bribery of voters, other rigging practices, all mentioned in various reports, or elections have seen the prohibition of other platforms apart from the movement platform.

Given the extent of corruption revealed within the movement system, it is fair to infer that such a corrupt system is inherently incapable of organizing a free and fair election.

While the multipartists may expect lose of any national election conducted while the movement is in power, even if such other platforms were freed. Such loss, unlike the loss in the proposed referendum, would leave political organizations as viable organizations with the possibility of heightening the level of political mobilization in the country to bring about change. Loss in a referendum would create a political vacuum and leave only the option of militarism.

7. The Way Forward

a) The implications of the referendum

- ☞ A referendum on the freedom to associate would turn that right into a privilege of the movementists. Uganda's history is replete with experiences of

the various dictators that have done this with the disastrous results that have ensued.

- ☞ The referendum would destroy political organizations. This will leave in place a statist single party dictatorship. It would depoliticise the population and leave militarism as the only method of political rule and change in this country.

And if one wants to see what militarism can do one should visit Luweero, Mukura, Gulu, Kitgum, Rwanda, Congo or vote in the referendum.

This is because the referendum in question represents the negative aspects of the 1995 constitution. These negative aspects have already sufficiently manifested themselves to the people of Uganda, through the crises in the country like war, civil strife, militarism, treason cases, corruption. Torture chambers and safe houses have intensified since the launching of a new constitution in 1995 and the holding of general elections in 1996, which in theory were supposed to be answers to these problems.

3. Above all Ugandans need to realize that such a referendum would be the first and last referendum on political systems. It will entrench the movement organizations for all time.

This is so because the 2000 referendum is the only “automatic referendum”. There is no other such referendum that must take place as a matter of course.

Article 74 puts in place very onerous procedures for initiating a referendum on political systems through resolutions and petitions by parliament, district councils and certain levels of voters in 2/3 geographical constituencies.

The only free organization the movement would not be interested in initiating such process. Those who would be interested would have been long hamstrung by the 2000 referendum. That much is clear from the present movementists’ expression of helplessness before constitutional provisions.

The 2000 referendum is indeed of millennial proportions. Like Hitler’s Third Reich, the movement system is intended to last thousands of years-until Uganda is modernized and had developed classes. Indeed Basoga Nsadh, Member of Parliament Busiki County said as such when he reported that the Busiki had sent him to say that they wanted the movement to last at least one thousand years.

(b) The Task Ahead

The first step in handling the present impasse is negotiation leading to political agreement amongst the various political and other significant forces in the country. Any such agreement must be based on freedom not compulsion or suppression.

Once the political will exists there are many possible solutions that do not entail such a polarizing referendum. Then the various parties can agree, if they so wish, on such matters as government of national unity, proportional representation or even a truly interim arrangement.

On the technical level the referendum can eliminate parliament repealing Article 271 in the normal constitution amendment procedure, requiring 2/3 majority in accordance with Art.261 since Art.271 is not an entrenched article.

Then parliament would adopt a resolution to change the political system on a petition from at least 1/2 of the District Councils in accordance with Art. 74(2).

All these would be easy technical procedures once the political consensus exists.

Nobody's hands are tied.

THE REFERENDUM AND THE RIGHT OF ASSOCIATION: WHAT DOES THE PROCESS MEAN FOR ORDINARY UGANDANS

By: Fr. John Mary Waliggo

Introduction

I am happy to be part of this workshop on a very timely topic. As one of the ordinary Ugandans eager to learn and share about what the referendum process means. I do not belong to any camp in this vibrant debate. The Catholic leadership I belong to made its decision clear to take an impartial stand on the debate, taking no sides. The Uganda Human Rights Commission that I serve is mandated by the Constitution to 'create and sustain within society the awareness of the provisions of this Constitution as the fundamental law of the people of Uganda' (Article 52(1) (e)).

I hope that this workshop assist the ordinary people, to have a clear mind on what the process of the referendum implies as well as its likely effects.

The Scope

As the topic assigned to me, there are three parts to it: the referendum, the right of association and the meaning of the referendum process to ordinary Ugandans. I shall try

to deal with each and the challenges therein and finally give my final reflections on conflict prevention and the need for principled compromise for the emerging democracies in Africa.

The Referendum in the 1995 Constitution.

There are basically five clear provisions in the 1995 constitution concerning the referendum.

1. **Article 1(4)** provides that ‘The people shall express their will and consent on who shall govern them and how they should be governed, through regular, free and fair elections of their representatives or through referenda’.

In this Article a referendum is given as one of the ways the people of Uganda can express their sovereignty.

2. **Article 255** states that. Parliament may by law make provision for the right of citizens to demand the holding by the Electoral Commission of a referendum whether national or in any particular part of Uganda, on any issue.
3. **Article 259** enumerates provisions of the Constitution that can only be amended by not less than two thirds of all members of Parliament and referred to a decision of the people and approved by them in a referendum. These provisions are ten in number and include Articles one and two on the sovereignty of the people and the supremacy of the Constitution. On the non-derogable rights even during a state of emergency as stated under Article 44; and many other provisions, of great importance.
4. **Article 271** refers to the first referendum to be held during the last month of the fourth year of the term of parliament, which is July 2000. This is the central issue of discussion in this workshop.
5. **Article 74** refers to the referendum that may be held periodically for the purpose of changing the political system. It is not an automatic referendum but tied to several conditions. This Article is also central to our discussion today.

Observations.

It is clear that we should examine the issue of the referendum within the Constitution in holistic way in order to offer informed and wise comments on each aspect of the

referendum because in my view not all of them are intimately tied with the right of association.

The second issue is the fact that some aspects of the referendum were hotly debated on in the Constituent Assembly and were passed by the required majority. While some other aspects were not divisive in the CA discussions.

The third observation that I have extensively analyzed elsewhere concerns the procedures for amending the Constitution as clearly spelt out in chapter 18 of the Constitution. Article 271 of the coming referendum and Article 255 on the right of citizens to demand a referendum on a particular issue can be amended by two-thirds of all the members of parliament. The Last observations are on the constitutional court in the Constitution. Article 137 states:

- 1) Any question as to the interpretation of this Constitution shall be determined by the Court of Appeal sitting as the Constitutional Court.
- 2) When sitting as a Constitutional Court, the Court of Appeal shall consist of a bench of five members of that Court.

As to whether any of the provisions referred to above concerning the referendum should or should not be in the Constitution, is an issue to raise with the 284 CA delegates who on behalf of the people of Uganda discussed and passed those provisions.

THE RIGHT OF ASSOCIATION IN RELATION TO THE COMING REFERENDUM

Freedom of association is well elaborated in the UN Convention on Civil and Political Rights (1966), the optional protocol to the International Covenant on Civil and Political Rights, 1966 that Uganda ratified in 1995. Several well known scholars have called it the 'cornerstone' of democracy, yet others do not subscribe to that assertion. Among the essential characteristics of genuine democracy that most people include is political pluralism.

The debate of this workshop on whether or not there is a contradiction in the new Uganda Constitution which under Article 29(1) (e) guarantees the right of freedom of association which shall include the freedom to form and join associations or unions, including trade unions and political systems in the Constitution. Trade unions are free to operate. Civic organizations are also free to operate and as a result, Uganda has a very strong

independent and autonomous civil society. Women, youth, professionals, persons with disability have been able to fully exercise their freedom of assembly and association. The big question comes on the freedom of political parties to operate freely when Article 269 in the transitional provisions chapter is in place.

For purposes of clarity it may be necessary to recall two basic facts. First that the majority of Ugandans who submitted their views during the long constitution-making process and the majority of delegates they elected to the CA had misgivings on the political parties they had known and therefore wished to try the new Movement system.

Second, it is important to note that people's views and priorities change very fast, especially in Africa. What was the majority view a few years ago may become the minority view. That is why flexibility is needed if democracy is to work in Africa, Uganda in particular.

Central issues in the debate.

There were five pertinent issues in respect of the referendum. 1) An explanation on how the issue of a referendum came into the draft Constitution and in the Constitution itself. It was not 'smuggled in' as some personalities have alleged. It was meant to resolve a tension and division among Ugandans. It was based on the understanding that within five or four years of the people's preferred movement operation people would be in position to decide on their preferred political operation. It was also based on the cordial principle of democracy, the views of the majority, and the sovereignty of the people to determine how they want to be governed. The rights of the minorities as viewed in a genuine democracy should be examined.

2) Whether all fundamental rights are absolute by nature and therefore allowing no restrictions whatsoever on them. This debate was launched in January this year. Guided by the international Human Rights Instruments they argued that most fundamental rights are not absolute. They may be subject to certain restrictions acceptable in a democratic society.

At least four principles should govern putting any restrictions on any human right. These are: legality, legitimacy, proportionality and democratic necessity. A restriction should be made by the legitimate law-making body and should be enacted into law.

It should be proportionate to the good it aims at achieving and should be acceptable in a democratic society. If these principles can be accepted as general guidelines, then we can seriously debate on whether the required referendum meets those conditions. As the center of this debate is the feeling that despite the constitutional provisions defining the

Movement political system and the Movement Act of 1997, the Movement appears to be nothing other than another political party. If this were to be proved, then the debate would substantially change and there would be need to test the issue in the constitutional court.

- 3) The other factor much related to the issue of the referendum has been on the provisions that relate to amending the Constitution. While some people have been arguing that the constitution is not amendable, others have tried to show that, like any other human rights document, the Constitution in chapter 18 clearly shows how it can be amended.

Article 271, which refers to the coming referendum, can be amended by two-thirds of all the members of parliament. Since its promulgation on 8th October 1995, the Constitution has not been amended in any of its sections. This is understandable since the main duty of the first parliament was to make the organic laws that directly flow from the Constitution. The next Parliament is likely to spend more time on amending sections of the Constitution, which a practice of five years has shown clearly that they should be amended.

- 4) The most important factor is the promotion of a culture of consensus and principled compromises in our political life. The Western concept and practice on majority decision when pushed too far in Africa produces deadly tensions, unhealthy divisions and possibilities of insecurity and instability. Whatever can be discussed in order to reach a consensus should be encouraged. The controversy between Movement and political parties has been rife from 1986, through out the constitution making process and after the promulgation of the Constitution.

This debate has dominated all other issues in Uganda's politics. Even after the referendum, it will continue to dominate political discussion in Uganda. Several compromise formulae have been advanced on this issue, but they have not been very attentively listened to.

First is the call on Parliament to amend the Constitution and remove the referendum.

Second has been a call by some members of Parliament to allow the Movement to continue without a referendum for the next five years and after that to resume the multi-parties rule.

The third has been a proposal by a Member of Parliament to amend the Constitution and decide the political system that Ugandans prefer through the general elections of 2001.

One academician proposed a hybrid political system that neatly combines the best from both the Movement and political parties system.

The point I am making here is that, people can think and offer principled compromises. Each suggested compromise should be studied with the aim of achieving a possible consensus.

WHICH WAY THE REFERENDUM QUESTION:

WHICH WAY UGANDA?

BY KIVUTHA KIBWANA, ASSOCIATE PROFESSOR

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Whether we are Christians, Moslems, humanists or followers of other faiths, we have no doubt heard the story of the two women who before King Solomon each claimed the same child as her own. The King sent for a sword, and when it was brought, he said, cut the living child in two and give each woman half of it. The real mother, her heart full of

love for her son, said to the king, Please, your majesty, don't kill the child! Give it to her!

Movement supporters, multipartyists and if they exist adherents of other democratic and representative political systems are mothers, while Uganda even at 37 is the disputed baby.

Two clear sides exist in the referendum debate. One side argues the right to belong to political parties or broadly the freedom of association is a fundamental God given right which should not be subjected to voting in a referendum. The 1995 Constitution should therefore simply be amended to provide for multipartyism in advance of the 2001 general elections. If the NRM government insists on the referendum to determine the political system the people of Uganda wish to adopt, some multipartyists recommend a boycott.

The other side replies: the Ugandan people have the freedom to choose what system of government they want. In any case the referendum is a constitutional *fait accompli* since the people of Uganda through Article 271 (3) of the Constitution promulgated: During the last month of the fourth year of term of Parliament referred to in clause (2) of this article, a referendum shall be held to determine the political system the people of Uganda wish to adapt.

I do not know whether a consequential third side exists or could emerge which for example favors a constitutional monarchy and describes such as a democratic and representative political system. This could further complicate the unfolding epic political drama.

My reading of Uganda's constitution suggests that the country can only constitutionally bypass the referendum if Article 271 is amended to provide for multipartyism before the next general elections. Articles 69 and 74 would still have to be left intact because if they are to be changed decisively in favor of multipartyism, then a referendum would still be necessary according to Article 259 (1) and (2).

Although the referendum debate has been raging since Cardinal Emmanuel Wamala fired a critical opening salvo, I am sure it will be vigorously revisited in the coming months and years. The country must determine clearly why political activity should either be restricted or enhanced? Do both sides believe they will keep or capture political power depending on whether their position carries the day? Is there a position, which objectively guarantees Uganda's stability and prosperity as well as democracy?

If I were a multipartyist, I would ask movement supporters the following questions:

- ☞ Are you against full-scale liberalization of politics because you fear loss of power in elections where political parties freely canvass for office?
- ☞ Isn't the movement system a disguised one party system which cannot pragmatically be all inclusive given that existing political parties do not share its radical ideology?
- ☞ If NRM has over the years done a good job, hasn't the religious and ethnic sectarianism of old been reduced so that it cannot now become arcebated within a multiparty framework?
- ☞ Hasn't the NRM so far supported the necessary civic education to make Ugandans shun sectarian politics?
- ☞ Suppose only a minority wanted multipartyism, should the country concede the political system, which guarantees the right to protect such minority?
- ☞ Wouldn't multipartism have a role in resolving armed conflicts if those challenging the government had the possibility of engaging in peaceful political competition?
- ☞ Is the increase in corruption today the result of the current governors not having a serious political opposition?
- ☞ The constitution seems to have a bias for the movement system. Why doesn't it define the multiparty system?
- ☞ If the previous sectarianism was built on religion and tribe, has this been further complicated by an additional element of the no party system? Is sectarianism less or more today? Does a referendum have the potential to divide people further?
- ☞ Can the NRM be a side within a referendum, when it has accommodated everyone and has been recognized by the constitution as non-partisan?
- ☞ How will society manage potential conflict emanating from the results of the referendum?
- ☞ What has NRM done to help parties to strengthen them in preparation for eventual restoration of multipartism?
- ☞ Would Uganda recommend that similarly suited countries politics are largely organized on the basis of tribe adopt a no party system?
- ☞ How would a country objectively determine that sectarian differences cannot cause her problems any more and therefore multiparty politics are not divisive.

- ☞ Suppose a referendum is inconclusive in that, the level of participation in it is low and the verdict is not accepted widely in the country?

Ugandans have asked more questions than the above and so will they continue to?

If I were a movement person, I would ask multipartyists the following questions:

Why do you assume that the movement side will win in the referendum? If your position or side is popular, won't you win in the referendum?

- ☞ Are you sure that sectarianism is not a threat necessitating the continuation of what is designed as a government of national unity?
- ☞ If there is more openness in the Uganda state then even other multiparty states in Africa, what does that say for Uganda's political system?
- ☞ Why not exercise the automatic right for citizens to prefer a political system in 2001 or any other time.
- ☞ Can't Africa develop its own political institutions on the basis of its history and condition, which do not mirror European institutions?

Perhaps this debate will have no clear intellectual victors but it will passionately rage on. It is not easy to find a middle ground in this issue. The movement supporters will stand their ground, the multipartyists too.

I now wish to discuss the Referendum and Other Provisions, bill 1999. If this bill is passed in such a form that it can, together with constitutional and other legal provisions, guarantee a free and fair referendum, then the people of Uganda will thereby be enabled to vote without restraint and can protect the decision and political system they choose.

I will raise a few questions in relation to the Bill. These are:

- ☞ Should another body supervise the referendum in which multiparty politicians and multiparty citizens have some clear representation? Or should the electoral commission for purposes of the referendum be expanded?
- ☞ The referendum questions should be framed within the Bill since significant controversy can arise if there is perception that they are framed to favor one side. Even if the question is phrased as below i.e. WHICH POLITICAL SYSTEM DO YOU WISH FOR YOUR COUNTRY? (A) The movement system (B) the

multiparty system (C) another system (describe)&. It could still be argued that the people may choose the first option, whatever it is. (It is to be noted the answers (A) and (B) are rendered in alphabetical order).

- ☞ The Bill does not specify how a referendum would be held during election time.
- ☞ It is not proper for a Minister and Cabinet to reverse parliamentary rejection of her/his/its proposed holding of a referendum.
- ☞ Section 8 requires more thought so that it is clear the extent to which other laws are to be read together with the Referendum Bill.
- ☞ Referenda for parts of a country on specific issues of interest are allowed but the referendum on political system must be countrywide. Can one part of Uganda request a referendum to discuss its own political system e.g. constitutional monarchy?
- ☞ Suppose under 18 olds want a referendum for matters that are relevant to them? Shouldn't they legally be permitted to hold such referendum?
- ☞ Canvassing activities should not be authorized by the security. Mere reporting of the activity should be enough. Only prior reporting of canvassing by another party in the same place and time, should bar the second side from simultaneous canvassing.
- ☞ Criminal sanctions in the Bill should be minimized or eliminated.
- ☞ Parliament should not give a different date for when the referendum decision takes effect; it must not override the people.
- ☞ Monitoring the referendum should be clearly provided for.
- ☞ What about other changes in the constitution and ordinary law to accommodate a new political system if the referendum introduces such a system? When do preparations start for these since the referendum could go either way?

I have largely avoided taking sides because this is in the first instance a question for Ugandans but one in which East Africans, Africans and others have a keen interest. I must admit I have been associated with Uganda and Tanzania so closely that I feel a son of these two countries. I have personally more than a keen interest in how they fare.

As Ugandans debate, no action should be suggested or approved which undermines the country's nationhood, current level of peace and security. The people must always improve on these positive developments. Ugandans must always remember and be reminded where they are coming from. Citizens must never take the present efforts at

self-improvement as a country for granted. These words are not written because I must endeavor to preach reconciliation. Ugandans have reached a certain level in the building of prosperity, peace and constitutional culture. The challenge is for all parties and sectors in the country to multiply these gains.

I can see a clear advantage if President Yoweri K. Museveni's NRM government initiates multipartyism during his stewardship. He is the leader who has the stature and legitimacy to guide the country through the difficult political journey that the country will travel with the reintroduction of contested multipartyism. NRM leadership needs to consider this point from a national and not sectarian point of view.

Let me think and state what is currently unthinkable. Could NRM concede to a yes position in the referendum vote? If not, could the constitution be changed so that political parties canvass for political office and are free to act as political parties in 2001 and afterwards even if under the Movement umbrella with an understanding that by 2006, the country will automatically become a multiparty state?

It is important, in my view, that old and new political parties be allowed space so that they can develop on ideological lines. This is the only way to ultimately vanquish sectarian politics. The country should concentrate on developing other ways of resolving the question of sectarianism not associated with limiting space for political parties. Moreover another side of sectarianism is diversity, which is a positive attribute or a resource in a country.

All sides in the coming months must exhibit responsibility as you engage the referendum question. The country should perhaps revisit a discussion of the structure of the Movement to determine how inclusiveness can be enhanced even before the referendum vote or whether this is impossible. The impending referendum must be consciously organized in a free and fair manner. So the referendum law must be right. Influential leaders including religious leaders must ensure that their followers act responsibly in the interests of Uganda. Nothing should be allowed to jeopardize Uganda's painful reconstruction of a constitutional culture. Critically Uganda must endeavor to solve the internal conflicts. A formula must be found to speak with those who do not feel to be part of Uganda. The Movement should also revitalize itself so that transparency and accountability that it has championed in the past continue to define its operations. It is not proper to become lax.

Let the baby Uganda survive and not be cut into two or more parts; it continues to be one of the growing babies in Africa.

PROTOCOL;

I would like to thank the organizers of this workshop for scheduling it at a crucial period in the political history of Uganda. In a few weeks time, Ugandans will be entering a period of canvassing for a political system of their choice, as provided for in the Constitution.

It is therefore important that legal practitioners, academicians, members of the civic society and NGO's go out to educate the people so that they can be able to make an informed decisions at the time of the referendum.

The Movement Secretariat recently hosted the National Executive Committee (NEC). This Committee resolved that the Movement Government should go ahead and hold the referendum. They regarded any compromising position as a violation of the constitutional sovereignty of the people of Uganda, which empowers them to choose a political system under which they should be governed.

The Article (1) of the constitution provides that," all power belongs to the people who shall exercise their sovereignty in accordance with this constitution."

It further says in Article 69(1) that:" The people of Uganda shall have the right to choose and adopt a political system of their choice through free and fair elections."

The Movement system is convinced that the people should be given a chance to freely choose the system of governance they want. This is more so as this is a constitutional requirement and we are committed to giving a chance to build a culture of constitutionalism in Uganda.

The Movement government is committed to ensuring that we not only build democratic institutions in the country but also adhere to the principles of constitutionalism so that we have peace and security, which are essential for the development of our country.

Our main aim as Ugandans now is to ensure that a free and fair referendum is held. This necessitates taking the following action:

- 1. A legal framework should be put into place to ensure that all actors know and appreciate their rights, which are clearly defined and they should know of their roles and responsibilities. This can be done through the Referendum and Other*

Provisions bill. We should therefore revisit the bill to ensure that the end product gives that framework.

- 2. We should ensure electoral competitiveness and suppression. Both sides in the referendum should be given a chance to convince the population. This inevitably means equal access to resources, the official media and addressing the masses. Organizational activities should be designed to avoid unequal power relations.*
- 3. The different sides in the debate should adopt a code of honesty. The current debate has shown lack of this in some aspects. In one debate recently, an honorable member is reported to have told the people that voting in the referendum will make Museveni the king of Buganda. Some given that the right of Association is absolute and voting in the referendum is voting on the right to associate. But we all know that in any democratic state, if we are to maintain law and order adhering to the decisions made by the majority of the people is one way of doing this.*
- 4. Civic education should be widespread so that the ordinary citizen knows what is at stake and can then be able to make an informed choice. Many non-partisan organizations should be allowed to participate in civic education.*
- 5. The resources necessary to facilitate the process should be available in time and in all the necessary places. The electoral body should act in a transparent and participatory manner.*

Many people have fears about the results of the referendum. But once the ground is leveled, the end result would be the choice of the people.

Citing a number of countries that have had elections and referenda with one side as the sitting government, results have not been in favor of the government or party in power. For example Malawi went to a referendum to decide whether to have a multiparty system or not. The government at that time was a one party', but the people retained overwhelming majority' against the government. Similar results have been reported in Canada, Zambia, and France and recently in Israel.

Whatever the results of the referendum, we in the Movement are ready to respect the people's choice. This will include putting an appropriate interpretation on the results in the event that no clean consensus is apparent.

Those who are lobbying for a boycott of the referendum should first convince the people about the need to take action, which is contrary to the constitution in order to reach a position, which is convenient to them.