

CONSTITUTIONAL PROPOSALS OF THE UGANDA ASSOCIATION OF WOMEN
LAWYERS FIDA(U) TO THE UGANDA CONSTITUTIONAL COMMISSION.

FIDA (U) held two one day seminars on the 15th of June, 1991 and the 22nd of June, 1991 both starting at 1.30 p.m. at the Law Development Centre, Makerere and at the end of the seminars the following proposals were resolved upon.

(1) THE NEED FOR A NEW NATIONAL CONSTITUTION FOR UGANDA.

The Association agrees that there is indeed a need for a New Constitution for the Republic of Uganda based on the political consensus of all Ugandans and not just the interest of a minority that happens to be in power, as has been the case hitherto. Everyone should be allowed to freely express their ideas in the formulation of this New Constitution.

(3) THE NATION - BUILDING PROCESS IN UGANDA INCLUDING
NATIONAL LANGUAGE AND CULTURAL VALUES.

English should remain the official language. As for the National Language, choices like Luganda would create tribal conflicts while the use of Kiswahili is not so widespread. The Association is of the view that we do not need a National Language.

(4) CITIZENSHIP

In order to clear all uncertainties and streamline the issue of passports, the following is proposed:-

- (a) A citizen of Uganda should be an indigenous Ugandan i.e with both parents belonging to an indigenous tribe of Uganda.
- (b) Any person is eligible for registration as a citizen of Uganda if he/she has lived continuously in Uganda for a period of at least ten (10) years, and should and should not be persona non grata.

- (c) Dual citizenship should not be permitted since such a person cannot be consistent yet our extradition laws are not very effective. A person wishing to acquire Ugandan citizenship should renounce all other citizenships.
- (d) Parliament should make provisions for depriving undesirable persons of citizenship or other suitable punishment.
- (e) Refugees should be allowed to mix freely, but after undergoing a screening exercise.
- (f) The issue of passports should be decentralised on District levels and should be as of right in practice, and in each particular district there should be one office to issue passports and screen applicants.
- (g) There is no need for a special immigration court.

(5) FUNDAMENTAL RIGHTS AND FREEDOMS OF INDIVIDUALS AND GROUPS.

WOMEN

It was noted that women in Uganda are disadvantaged in various ways and the following is proposed to alleviate their plight:-

- (a) Under the current constitution discrimination of all kinds except on grounds of sex is outlawed therefore this provision should be amended to include sex as one of the grounds. Positive discrimination in favour of women should be encouraged eg. a provision for Parliamentary Representation for women in each district.
- (b) Provision should be made for disadvantaged group like women, children and the disabled by amending the following laws:-
 - (i) Marriage
 - (ii) Divorce
 - (iii) Succession
 - (iv) Affiliation
 - (v) Passport Regulations
 - (vi) Employment.

Cultures and customs which are injurious to health and discriminate against women and children generally e.g. female circumcision, widow inheritance, bride price and discrimination in inheritance rights should be outlawed.

In view of the above, Article 20 (4) (d) of the Constitution should be scrapped altogether and the above suggestion be included in Article 12 as inhuman treatment.

Bride Price and such other obnoxious and repugnant customs should go.

Women's rights should be protected by law enforcement agencies like the Police forces, courts of law, prosecutors and Parliament by promoting a specific representation of Women therein and also in Cabinet. Women's Organisations like FIDA, Action for Development (ACFODE), National Council of Women (NCW), The Ministry of Women in Development, Culture and Sports could also help.

FAMILY

-) Family Courts should be established and allowed to sit in camera.
-) Juvenile district courts should also be established to ensure justice for juveniles.
- c) It was suggested that property acquired during the subsistence of a marriage should be regarded as matrimonial property for the family, where family means the husband, wife and their children.

Institutions like the law enforcement agencies, women organisations and family courts proposed above could promote and protect such rights.

CHILDREN

In order to protect the rights of children and promote their welfare, the following could be done:-

- (a) Education upto at least P.7 (Primary Seven) level should be compulsory but not free in view of the current economic conditions.

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- (b) Government should make a definite commitment for the welfare of destitute street children and here the proposed restructuring of the education system is applauded.
- (c) Child - parent rights and duties should be strengthened and increased to curb the rate of juvenile delinquency.
- (d) Emphasis should be placed on institutions for juvenile delinquents e.g remand homes and juvenile courts.
- (e) Homes for victims of child abuse should be established with well trained and supervised personnel.
- (f) Children below 15 years old should not be employed as maids or servants. The Statutory age should be raised to 15 years under the existing employment laws like the Employment Decree.
- (g) Orphanages should be established for orphans and the present ones maintained by Government and it should not be left to foreign donors as is the case currently.
- (h) Maternity leave should be increased to (3) months for the benefit of the baby.

As far as economic rights are concerned, everybody should have a right to obtain credit facilities with no conditions attached in respect of a particular group, that is all applications should be treated on an equal basis, for instance rural credit schemes where women are required to show their husbands consent before being considered for any grant of a loan.

Otherwise all other fundamental freedoms contained in Chapter III of the Constitution should be retained.

(6) PARTICIPATORY DEMOCRACY

The Association observed that currently participatory Democracy is not seen to be done. Decisions are made by the NRC/Parliament and then communicated downwards. We should either revert to our former Gombolola and Muluka Chiefs and or the R.C. system should be greatly improved and called by another name for example local councils so that it is not peculiar or limited to a particular government but for perpetual and continual application.

The R.C. Court system has problems of duplicity and inefficiency. There are loopholes in the law establishing these courts. The officials are ignorant of the law and training would be expensive since their term of office is short. It was proposed that these courts should be done away with. They are not always judicial, they are sometimes political.

(7) POLITICAL SYSTEMS AND POLITICAL PARTIES.

The majority of members advocated for a multiparty system but with improvements and sensitisation of the people.

It was noted that ideally there was a broadbased system but but in reality there is none. Some disadvantages of this system are:-

- (i) It is expensive to run.
- (ii) It encourages disunity because each one looks after the interestss of the group he represents thus the attitude of acquire - and - vanish.

The multi - party system promotes unity because people have a chance to adopt the most popular choice.

It was proposed that in order to limit dictatorship, people should have power to impeach the President and Cabinet.

About the conduct of Political Leaders, the existing Leadership Code of conduct should be rigourously enforced. Members expressed disappointment that some members of Parliament were opposed to the passing of this Bill. Leaders should be of good moral and social standing and should not be corrupt.

(8) TRADITIONAL RULERS.

The Association is of the view that these rulers should serve or lead only those concerned and should be purely traditional and not interfere with the Political system. Ressurecting traditional rulers is a step backwards in development and promotes disunity and tribalism. They should be chosen by the people concerned, who should also decide their powers and cater for the cost of their maintenance.

(9) FORMS OF GOVERNMENT.

It was generally agreed that a federal form of government would be appropriate and this does not mean traditional or cultural rulers or demarcations. It means the sharing of power between the central and local governments. It was noted that this would be the most suitable government as far as offering service to the people and development of the nation is concerned.

(10) LOCAL GOVERNMENT.

- a) Members proposed the division of the country into about (10) ten administrative divisions or local governments by whatever name called because districts as they are now are too many and too expensive to maintain. Some of the duties would be tax collection and town planning for urban authorities under them and generally for the implementation of policies from the central government and any other services that would be developmental in the area.
- b) For more effectiveness the local governments should manage their own finances to avoid long delays currently caused by bureaucracy.
- c) Local Government representatives in the central government should be elected through local councils and they should have a good working relationship with appointed officials and respect one another.
- d) As an incentive to local governments, more funds should in practice be decentralised.
- e) Priority areas should be identified so that revenue received by the central government is allocated there so as to bring about equality in development between the various local governments.
- f) In order to limit powers of local governments, institutions like the Supreme Court should remain central to all and the local government should be accountable to the central government for the use of their funds.

- (g) District service committees should be wiped out because they are not necessary.
- (h) The position head of the local government should be an administrative and not a political post.
- (i) The head of the district should be appointed by the central government from a number of nominees of the local governments.

(11) THE ELECTORAL SYSTEM.

At grassroot level i.e village to county/urban authority. Representatives should be elected by popular vote, that is lining up behind the desired candidate. At district and parliamentary levels, election should be one man one vote through secret ballot. Campaigning at all levels should be permitted but without malpractices and not on the election day.

- (b) The President should be elected by referendum then screened, for example by the specific number of votes in each district depending on the number of voters in a particular district. He should have at least a simple majority.
- (c) It was generally agreed that representation in parliament should be by proportional representation as opposed to the single constituency method.
- (d) Members proposed that the electoral commission should comprise a representative of each candidate ie. each candidate has a representative of their own choice to supervise the election. As soon as the election is over, the commissioners should sit and write a report and then the commission be dissolved. Representatives for candidates in each district can choose from among themselves a representative to the overall co-ordinating body.
- (e) Election complaints at the lower levels i.e village to county, could be heard in the Chief Magistrate's Courts and at higher levels in the High Court as is the case now.

(12) LEGISLATURE.

The Association noted that the Legislature is a very important body that makes laws for the country and therefore members should be chosen very carefully in view of their heavy responsibility.

- a) First of all it was agreed that one house of parliament would suffice.
- b) Qualifications of members of the Legislature - one has to be a Ugandan i.e both parents indigenous Ugandans, of 30 years of age and above; of at least S.6 (Advanced level) education or its equivalent; a high degree of honesty and integrity; no criminal record; not a bankrupt not mentally sick and not a pauper i.e reasonable financial standing. The marital status is not relevant.
- c) Composition of Parliament. The number of members should be fixed by political divisions depending on the number of People/Population of each political division.
- d) Specially nominated members - it was generally agreed that there should be no special representation for security forces in Parliament.
- e) Interest groups for example women should be represented in Parliament from each district and should altogether hold at least 25% representation in Parliament.
- f) Recalling of members of Parliament - People should have the right to recall their member of Parliament and hold fresh elections on the following grounds:-
 - (i) Dormancy in Parliament and at home;
 - (ii) Absentism both at home and in the house with no sound reason;
 - (iii) Criminal tendencies/malpractices;
 - (iv) Moral turpitude;
 - (v) Arbitrary representation or failure to consult the people one is supposed to represent;

- (vi) Making no communal developments at home;
- (vii) Crossing the floor incase of multipartism and he/she should in that case vacate the party's seat in parliament and seek his new party's ticket.
- g) Powers of the legislature. The powers already given in the Constitution should be adopted plus the power to approve the appointment of Chief Justice in consultation with the Law Council. i.e The President should appoint and then Parliament approves this appointment.
- h) Limitations on Parliament - The principle of the separation of powers should apply as follows:-
 - (i) A member of Parliament should not be on the executive or judiciary and for example, the President should relinquish his seat in Parliament on being declared President. Therefore A member of Parliament should be a full-time employee in Parliament and surrender all other engagements.
 - (ii) The Speaker should be elected from members of Parliament.
- i) Dissolution of Parliament - occurs in the event of the following:-
 - (i) Expiration of the recommended term of 4 years.
 - (ii) The President could have consultation with the people i.e call a referendum and get their views on the declaration of a State of Emergency.
 - (iii) If the President declares a State of Emergency he should resign together with Parliament for it would be indicative of his having become unpopular and lost the people's confidence.
- j) Parliamentary immunity - it should be upheld and protected because members of Parliament should not be intimidated but should be able to speak freely on all issues in Parliament.
- k) Committees within Parliament should be left up to the members.

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(13) PRESIDENCY.

(a) Qualifications.

- (i) The candidate should be an indigenous Ugandan with both parents belonging to indigenous tribes of Uganda and he/she should be screened to establish the above.
 - (ii) The age limit is 35 years and above.
 - (iii) He/She must possess a University Degree or its equivalent.
 - (iv) He/She should be properly married under the forms marriage recognised by our laws;
 - (v) He/She must have political experience and should be a member of Parliament.
 - (vi) He/She should have a clean record with no criminal history.
 - (vii) He/She should be financially sound i.e not a bankrupt and possess an estate with immovable property in Uganda.
- (b) The term of office proposed is four (4) years renewable only once i.e a maximum of eight years only and the maximum age in office should be seventy (70) years old.
- (c) Presidential powers of appointment should be limited to the following:-
- (i) The Prime Minister. Members generally agreed that there is no need for both a Prime Minister and a Vice President because the former could act for the President in his absence.

- (ii) Top officials in the security forces like the Army Commander and the Inspector General of Police but they should be indigenous Ugandans. The Commander in Chief of the Armed Forces should not be the President as is the case now. He should be recommended by the various security forces' councils and then be approved by the President. Powers to hire and fire should also be on their recommendation.
- (iii) Cabinet Members.
- (iv) Ambassadors who should be appointed on merit and should be career diplomats.

Appointments which need the approval of the legislature are:-

- (i) The Attorney General who should be a practising advocate appointed on merit and should not be the Minister of Justice which is a political appointment;
 - (ii) Judges of the High Court and Supreme Court;
 - (iii) The Director of Public Prosecutions;
 - (iv) The Chief Justice who should be appointed by the President and approved by Parliament in consultation with the Law Council.
- (d) Removal of the President should be on grounds of insanity, criminal tendencies or records, dictatorial tendencies and tampering with the national constitution.
 - (e) Parliament should have the power to impeach the President.
 - (f) Treatment of former Presidents - It was proposed that they be entitled to all the necessities of a President e.g shelter, security and a car; that they be given a befitting job e.g in the civil service but they should not be above the jurisdiction of courts of law for both past and future crimes.

(14) THE EXECUTIVE.

In order to increase the efficiency of the Cabinet the following is proposed:-

- (a) The Prime Minister need not have three deputies as is the case now; one is enough.
- (b) Deputy Ministers and Ministers of State should be done away with to reduce the size of the Cabinet.
- (c) The Ministry of Women in Development and the Ministry of Justice should be full-sledged ministries and as such the Association welcomes the recent changes in the Cabinet as far as the Ministry of Women in Development is concerned
- (d) Fringe benefits of Ministers should be reduced to suit our economy's ability to maintain them.
- (e) Ministers should be knowledgeable persons of good standing and they should be morally sound.
- (f) They should as much as possible relate to their Ministries e.g. a Lawyer for the Ministry of Justice.
- (g) There should be separation of powers whereby Parliament does not have a say in Cabinet affairs except when there is something going very wrong in a Ministry, then in such a case the relevant Minister could be summoned to explain.
- (h) A member of Parliament should vacate his seat in Parliament on his/her appointment as Minister.
- (i) The functions of a Vice President, if at all, should be to act whenever the President is not present as an image of the President.
- (j) The Prime Minister should be the head of government business. He/She should be a seasoned and experienced civil servant and should be appointed by the President.
- (k) Permanent secretaries should not be political appointees.
- (l) Civil servants should not be partisan in their work. They do not belong to any faction as far as their office is concerned.

(15) THE ARMY.

Over history, the image of the army of Uganda has been tarnished and there is a great need to improve its quality and properly define its functions. In view of the above the following is resolved:-

- a) The Army should be small in size but well-trained and disciplined.
- b) Soldiers should have attained at least ordinary (0) level education; while rank holders should be professionals; indigenous Ugandans must be dedicated.
- c) Soldiers should remain in their barracks when not on duty and engage in productive work like agricultural projects. Their role is to defend and uphold the territorial integrity of the country and they should not interfere with Police or civilian work.
- d) There should be a reserve army for all those qualified as above and they should have compulsory military training of at least one year and should be able to be called upon at any time for re-training and then deployment.
- e) Promotion and appointment should be as that of civil servants i.e on merit and approval by the Army Council.
- f) Soldiers should also be subscribers to the National social security fund.
- g) The Army should have no role whatsoever in politics.
- h) A code of conduct for the Army should be decided upon by the Army Council and the Association is in favour of the existing one in an improved form. The court martial should remain in force but be polished for example in areas like the right of appeal by offenders in their own courts and the metting out of reasonable punishments. Officials in a court martial should undergo some kind of training so that they are guided on court procedure and what punishments are permissible. Civilians should not be tried in these courts.

(16) THE POLICE

In order to streamline the work of the Police in maintaining law and order in the country, the following proposals are made:-

- (a) The Police should be bigger than the Army.
- (b) The minimum educational qualifications for a Policeman should be ordinary level (O) or its equivalent.
- (c) The Police should be independent in their work, free from interference by the Army or executive etc.
- (d) There should be specialisation in the Police or streamlining the existing organs like the criminal investigations Department (CID), Traffic, Riot Police etc for particular situations only for officers specifically trained for that.
- (e) For internal organisation and discipline, it is proposed that Police officers be stationed at each Police Post and in specific crime areas i.e those reknown for rape, murder and assault and also in government departments like the Administrator General's which are sometimes in need of the services of security officers. Further, the existing orderly rules for the Police should be rigourously enforced and corrupt officers subjected to due process of the law.
- (f) Conditions of service for Policemen should be like those of any other civil servant.
- (g) The Inspector General of Police should be appointed by the President and he should be an indigenous Ugandan.
- (h) Appointment, promotion and demotion of officers should be done by a Police Council designed like the Army Council is to the Army.
- (i) A code of conduct should be established as a Police Council deems fit. Police standing orders are commendable as they are and should remain but they should also be enforced rigourously.

- (j) The Police should receive proper training in order to properly investigate crime and interrogate suspects and criminals. People in Police custody should not be subjected to torture.
- (k) It was observed that there is a need to sensitize both the Police and the Public about handling of particular crimes eg. rape, defilement, domestic violence etc hence the need for seminars, training and other courses.

(17) THE PRISON SERVICES.

To ensure humane conditions and treatment of inmates, prisons should have specialised personnel and facilities e.g. social workers, counsellors, psychiatrists and facilities for social activities. Prisoners should not just be bundled together but should be grouped according to sex age i.e juvenile separate from adult inmates.

The issue of children is a very important one thus the following is proposed for the handling of juvenile delinquents.:-

- a) There should be an institution for juvenile delinquents which should be both for rehabilitation and educational purposes, manned by social workers.
- b) Juvenile suspects should be for instance in a closed school and not a common prison, to be administered by Prisons Officers experienced in juvenile matters. Such a school could be established and attached to already existing Prisons or alternatively, due to economic and financial constraints, already existing structures could be improved and converted into such institutions with a particular officer responsible for the children's wing.
- c) Juveniles should be kept busy for example with some form of vocational training.
- d) Girls and boys should be separated with women warders in charge of girls to avoid sexual abuse.
- e) There should be a visiting team to visit regularly these institutions to assess the progress or find out the problems of these institutions because the existing machinery eg. Magistrate's and Probation Officers are not doing their work.

State Attorneys could, for example, be sent to do this work plus any other interested groups which should be granted free access. However, for security reasons, the interested groups should first present their credentials to the commissioner of Prisons.

(18) INTELLIGENCE ORGANISATIONS.

It was agreed that these are necessary for purposes of investigating internal and external security problems. However, people should not be detained in unauthorised places like military barracks and Police denied access to investigate their cases. intelligence personnel should not have the power to arrest and punish.

(19) THE CIVIL SERVICE.

In view of the gradual deterioration of civil service performance the Association proposes the following:-

- (a) Anyone above the age of 16 years should be eligible to join the civil service and the retirement age should be 60 years old.
- (b) Appointment to the civil service should depend on academic qualifications and should be done by the Ministry concerned. Each Ministry should be able to do this without waiting for or consulting the Public service commission. The commission should only exist as a co-ordinating body between the various Ministries.
- (c) Conditions of service could be improved as follows:-
 - (i) Civil servants should be paid a living wage i.e housing, transport and lunch allowances;
 - (ii) They should be permanent and pensionable;
 - (iii) Promotions should be on merit;
 - (iv) Mileage allowance should not be limited to officers with vehicles: Government should make it possible for all civil servants to possess vehicles or abolish it altogether;
 - (v) There should be real medical facilities for civil servants and their immediate families;
 - (vi) There should be in service training i.e seminars,

workshops and conferences should be encouraged;

- (vii) Civil servants working on government projects should be paid their allowances;
- (viii) There should be induction courses for civil servants both at the beginning of service and at every stage of promotion.
- d) A married woman should be able to register a civil service house in her own names and not in her husband's names i.e she should retain her right to a house as a civil servant in the same way as her husband. If she chooses to waive that right that is upto her.
- e) The civil service should be made a career.

(20) THE JUDICIARY.

- a) The presumption of innocence principle should be maintained.
- b) Appointment of judges and the Chief Justice should be by the President or approval of Parliament in consultation with the Law Council.
- c) Magistrates grades II and III should be done away with because of their ignorance of the law or be given legal training because as they are now they have outlived their usefulness.
- d) There should be more government support for the Ministry of Justice and the judiciary as a whole.

(21) PUBLIC FINANCE - MANAGEMENT AND CONTROL.

The following are proposed:-

- (a) Chief Accountants should have induction courses to sensitize them on problems and needs in every Ministry such that they can be able to budget in a realistic manner.
- (b) Income from taxes should be properly supervised and collected e.g. with the use of tax enforcement officers. There is need for an autonomous body - the proposed Revenue Tax Authority is very welcome.

The taxing system too should be reviewed and people should be sensitized on taxation issues.

(c) Causing loss of public funds presently attracts a sentence of 14 years imprisonment. It was proposed that in addition to this, properties or assets of the culprit should be confiscated by government.

(d) Civil servants and prosecutors should be given an incentive to encourage them to continue with the investigation and prosecution of such cases.

(22) LEADERSHIP CODE OF CONDUCT.

The existing code should be rigourously enforced for there is already embezzlement by leaders which is not being curbed. As already stated, members noted with disappointment that some members of Parliament were opposing the bill for this code.

(23) INSPECTOR GENERAL OF GOVERNMENT.

The IGG'S Office's work should be improved or abolished altogether since the office is limited in its work while there are other organs like the Criminal Investigations Department (CID) already dealing with their work and it is very expensive to maintain. Even in the few areas where there is no limit e.g. in children's homes and corruption not has been done.

(26) LAND

The land tenure should remain as it is because it is difficult to have a uniform one as things are now. Non-Africans should not acquire land without the Minister's consent.

(27) ENVIRONMENTAL PROTECTION.

Laws relating to this should be strictly enforced and emphasized. Trees should not be cut down.

(28) FOREIGN RELATIONS AND INTERNATIONAL CO-OPERATION.

Government is duty bound to protect its citizens and should be able to intervene in issues which affect its citizens involving foreigners at all levels whether local or International.

C O N S I D E R E D and A P P R O V E D by the
Uganda Association of Women Lawyers this 31st.....
day of JULY, Nineteen hundred and Ninety One.

..Sbayalaatino.....
C H A I R P E R S O N .

.....Dureme.....
S E C R E T A R Y .