



**THE CASE FOR FEDERALISM IN THE 21ST
CENTURY: A
STRATEGIC REVIEW OF AND NEW MANIFESTO TO
GUIDE THE STRUGGLE FOR FEDERALISM IN
UGANDA¹**

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1.0 INTRODUCTION

- 1.1 This paper is prepared pursuant to the Second Tenet of the Kingdom's Five Core Tenets (*Ensonga Ssemasonga Ettaano*) and the Buganda Kingdom's Strategic Plan (*Enteekateeka Nnamutaayiika*) 2018 -2023. The Second Tenet speaks to Buganda's aspiration to a fair, equitable, transparent and sustainable division of power using a federal system of government.
- 1.2 This paper examines a brief history of federalism in Uganda and its failure. It examines the struggle restoration of federalism; its achievements and limitations. It is our central argument that whereas federalism can be restored to Uganda, there is an urgent need for a change of strategy on the part of the proponents of federalism. Advocates for federalism have concentrated on calling upon the Central Government to commence (or re-engage in) negotiations for the "restoration" of a federal government. Preparation for federalism on the part of the Buganda Kingdom has largely taken the form of debating, drafting and refining negotiation positions. This has lent itself to the mis-conceptualisation of the problem and also engendered a misrepresentation of the Kingdom's aspiration as a reactionary yearning for past glory or a return of feudalism. **We have come to perceive the quest for federalism largely as a legal/legislative pursuit rather than as the complex political effort that it truly is.** It is our contention that the fast changing political, demographic and economic factors are rendering the present strategy impractical and ineffective.
- 1.3 This paper advocates for the creation of a new alliance and new messaging. We advocate for the engagement in the creation of a new grassroots efforts across the country to win over a new generation to the idea of federalism as a guarantee for lasting peace, happiness, prosperity and stability in Uganda and elsewhere in Africa. We also advocate for the use of local, regional and international levers to achieve the long-standing goal of a federated Uganda. **Our aim should be to drive a new commitment to the federalism ideal and to put it at the heart of a new political consensus for Uganda. We need to develop and fine tune the message in language that speaks to the diverse (in terms of ethnicity, gender, socio-economic class etc.) generations of today and tomorrow. The case for federalism must be couched in terms of internationally recognised democratic rights. It must be progressive and inclusive. Federalism should come to be understood by the majority of the population as an essential guarantee of freedom, happiness and prosperity. Above all, the quest for federalism should be made practical; it should descend from the realm of ideas into simple practical steps that need to be taken.**
- 1.4 For the purposes of this paper we have adopted a simple definition of federalism. Federalism is a system of government, based on a written constitution, in which the same territory is controlled by two levels of government. Power is divided between a federal government and

smaller political units sometimes called states or provinces. Whilst both the federal government and the smaller political units have the powers to make and enforce laws, federalism is distinguished by the fact that the states or smaller political units are not units of the larger federal government and nor do they act merely as representatives of the federal government exercising devolved power. Rather, the states in a federal system of government are autonomous, amongst themselves and vis-à-vis the federal government, and exercise their powers subject to a constitution which guarantees considerable local autonomy (on matters of taxation and other issues of local concern) and devolves larger cross cutting or national issues (such as defence, foreign affairs, policing, international trade, macro-economic planning, and infrastructure) to the federal government.

- 1.5 Just to be clear, it is important to note that in practice federalism is not a neat and tidy concept. It is never perfect and some systems that describe themselves as being federal are mere examples of an advanced level of decentralisation whilst others that do not label themselves as such are in fact federal in all but name.
- 1.6 This paper is divided into the following sections:
 - 1.6.1 Historical background (including a brief examination of the present situation);
 - 1.6.2 Analysis; and
 - 1.6.3 Practical Recommendations.

2.0 HISTORICAL BACKGROUND

- 2.1 Uganda is a creation of British imperialism. It was established as a “protectorate” by an admixture of “treaty” and conquest in the late 1880’s through to 1926. Uganda enclosed the territories of many native communities including the Kingdom of Buganda, from which the colonial state’s name was derived. When Uganda was granted self-rule, also known as “independence” in 1962, sovereignty and power was not restored to the native communities from where it had been taken in the first place. Rather sovereignty and power were granted to the new entity that the British had created and imposed on the natives. In considering “*the future form of government best suited to Uganda and the question of the relationship between the Central government and the other authorities in Uganda*”² the Uganda Relationships Commission (“The Munster Commission”) recommended a federal form of government. Couched in thinly veiled racist language, the Munster Commission summarised Buganda’s position thus:

“Buganda has always regarded herself as a distinct country, having made agreements only with Britain and not with any other African tribes. She regards her neighbours as linked with her merely for administrative reasons devised by Britain and carried into force without her being consulted....In its simplest form Buganda’s argument is that, having placed herself under British protection in 1894, she expects to regain her integrity if this protection is now to cease. She therefore asks for her independence to be returned to her. She denies that

² Terms of Reference, Report of the Uganda Relationships Commission, 1961 under the Chairmanship of the Right Honourable The Earl of Munster, P.C. K.B.E. (hereinafter referred to as “***The Munster Report***”)

*Britain has the right to deliver her over to other peoples with whom she feels no unity. This is an issue between Africans and Africans: there is no serious racial trouble.”*³

- 2.2 The Earl of Munster and his fellow commissioners recommended that Uganda should be governed on a federal basis and Section 2(1) of the 1962 Independence Constitution provided that Uganda consists of “***Federal States, Districts and the territory of Mbale.***” The Kingdom of Buganda was a federal state with its own constitution set out in a separate schedule⁴. The Independence Constitution was abrogated in early 1966, and the political crisis which surrounded that abrogation was settled violently, when the Central Government led by Apollo Milton Obote ordered troops to attack and overrun the Lubiri in Mengo and oust Ssekabaka Edward Frederick William David Walugembe Mutebi Luwangula Mutesa II. This violent episode combined several matters which have now become intertwined like the Gordian Knot. In one fell swoop: (i) the Buganda monarchy, a dynasty which had an unbroken line of kings stretching back into the 12th Century BCE, was abolished; (ii) the Buganda Kingdom’s properties and land holdings were expropriated; (iii) the federal system of government was abolished – for all federal states – and Uganda became a unitary state under a single Central Government and with power devolved to local units, districts, of its own creation.
- 2.3 What followed 1966 was a period of what the Framers of the 1995 Constitution characterised as “*political and constitutional instability*”⁵. There was initially a period of rule by Apollo Milton Obote and the UPC, under which Buganda was in a State of Emergency. This lasted from 1966 through to January 1971 (popularly referred to as “***Obote I***”. There was the “reign of terror” under Field Marshall Al-Hajji Dr. Idi Amin Dada from January 1971 through to April 1979. Amin was succeeded by the UNLF transitional period, which saw Uganda led by Yusuf K. Lule, Godfrey Lukongwa Binaisa and the Military Commission under Paulo Muwanga. The UNLF transitional period ended in December 1980, when flawed elections returned Apollo Milton Obote to power. Obote was in power from December 1980 through to July 1985 (a period popularly known as “***Obote II***”) when he was overthrown by his military again, this time led by General Tito Okello Lutwa. Obote II was characterised by civil war in Buganda, principally waged by the National Resistance Army, led by General Yoweri Museveni.
- 2.4 Ssekabaka Mutesa II died in exile in November 1969 and was succeeded (***okubikka akabugo***) by his son Kabaka Ronald Muwenda Mutebi II. However, the full coronation rituals and recognition of Mutesa II’s heir as Kabaka of Buganda were not to come for another 24 years. The 5 year long civil war was largely waged in Buganda and capitalised on the Baganda’s deep seated opposition to Obote and his regime stemming from bitterness at the violent abolition of the Kingdom of Buganda. Buganda solidly threw its support behind the NRA, which came to power in January 1986, with a 10 Point Program promised to “***[redress historical] errors that have resulted in the dislocation of the population***”⁶. Buganda was confident that this meant that time was ripe for: (i) restoration of the monarchy; (ii) restitution of Buganda’s expropriated property; and (iii) restoration of the federal system of governance.
- 2.4 In the period between 1985 (immediately prior to the fall of Kampala in January 1986) to 1993, the Kingdom of Buganda, through the Ssabataka (as Kabaka Mutebi II was then known) the Abataka Ab’Obusolya and eminent Baganda (also known as the Ssabataka Supreme Council),

³ The Munster Report, page 38

⁴ See Sections 2(2), 4(1) and Schedule 2 of the 1962 Independence Constitution.

⁵ Preamble, Constitution of the Republic of Uganda, 8th October 1995 (hereinafter referred to as “**the 1995 Constitution**”)

⁶ Point No. 8 of the NRM Ten Point Program

actively lobbied for all three goals (which came to be known as “*Ebyaffe*”). General Museveni, then new in power with a broad-based coalition of military and political actors acted on items (i) and partially on item (ii). Against very long odds, the Kabakaship was restored in advance of the making of the 1995 Constitution and some expropriated properties (largely property that was attached to the office of Kabaka and Namasole) were restored to the Kingdom⁷.

- 2.5 Despite strong lobbying and advocacy, the Central Government is yet to restore the federal system of government. In 2005, there was a move to amend the 1995 Constitution to lift presidential limits. In that time there was a negotiation process between the Central Government and the Kingdom of Buganda, in which the latter argued for the restoration of the federal system of government. Buganda was not able to get Government to assent to the restoration of the federal system of government but rather Article 178 was inserted, under the express terms of which “*Two or more districts may cooperate to form a regional government*” and “*Subject to [Article 178(1)] and the provisions of [this] Constitution, the districts of the regions of Buganda, Bunyoro, Busoga, Acholi and Lango specified in the First Schedule of this Constitution shall be deemed to have agreed to form regional governments for the purposes of [Article 178].*”⁸
- 2.6 Article 178 of the 1995 Constitution remains largely unimplemented and the Regional Governments have not taken off in Buganda or in any of the other regions in which it was deemed that districts have already agreed to form a Regional Government. Further, no districts outside the regions of deemed cooperation have passed the necessary resolution to create a Regional Government. Parliament has not yet passed enabling legislation so; the Regional Government is presently a dead letter. This is largely a result of the rejection of the Regional Government compromise by Buganda. The reasons for this will be examined in the analysis section of this paper.
- 2.7 Finally, in August 2013, the Kabaka of Buganda and the President of the Republic of Uganda signed an Agreement, which largely dealt with the matters relating to the political relationship between the Central Government and the Kingdom of Buganda (which had reached a nadir in the lead up to and following the Kayunga Riots of 2009) and the restitution of expropriated property outstanding under the Traditional Rulers (Restitution of Assets and Properties) Act. The Agreement left the matter of the federal system of governance unresolved and Buganda’s quest for a federal system of government continues.

3.0 ANALYSIS

- 3.1 Achievement of a federal system of governance in Uganda remains one of the Kingdom of Buganda’s principal goals and it is now enshrined as the Second Tenet in Buganda’s Five Core Tenets (*Ensonga Semasonga Ettano*) as articulated and popularised by the Katikkiro, Oweek. Charles Peter Mayiga. Failure of progress on this front has become a political hot potato. The quest for federalism has metastasized into a controversial and divisive issue. We do not wish to expound on the division or controversies here, save to say that it appears to us that what is being argued are different sides of the same coin. Guided by Kwame Nkrumah, who observed that “*Action without thought is empty [and] thought without action is blind*”, the aim of this paper is to marry both sides of the argument and harness them to the objective of achieving a

⁷ See Article 246 of the 1995 Constitution and the Traditional Rulers (Restitution of Assets and Properties) Act Cap. 247

⁸ Article 178(1) and (3) of the 1995 Constitution.

federal system of government. We aim to provide new thinking on the subject of how a federal system of government can be achieved together with a nascent action plan.

- 3.2 The failure to achieve the restoration of the federal system of government in Uganda is not surprising and should not be blamed on any leaders of the Kingdom of Buganda. Without suggesting that the restoration of the Kabakaship in 1993; the restitution of some of the expropriated properties; and/or the consolidation of the Kabaka's position on Namulondo were easy tasks, **achieving the restoration of a federal system of government is a very difficult task because it entails the holders of power in Central Government ceding a significant portion of their power.** Such concessions are not usually made by strong and stable governments.

- 3.3 It is also easily forgotten that although the conditions which we suggest lend themselves to the establishment of a federal government in Uganda exist in many African states, there are only three (3) established federal political systems amongst the fifty-four (54) states in Africa: Nigeria, Ethiopia and South Africa. The predominant trend is for a unitary system of government. It was not always thus. Federalism was more popular in the 1950s and 1960s. The late Professor Michael Burgess observed that:

“In the early 1960’s federalism had a growing appeal as a kind of middle-of-the-road approach between the perceived extremities of a unitary centralism and outright session, but by the end of the decade this optimism had turned to pessimism as many African federations collapsed.”⁹

The federations collapsed for different reasons, Burgess identified nine different factors which, in differing combinations, played a key role in the failure of federations in Africa. Many of those factors existed in Uganda in 1966 and still exist today, making the conditions extremely unfavourable for the **re-establishment and sustaining** of a true federal system of government.

- 3.4 The “compromise” of Regional Governments is a facile one and it was difficult for the Kingdom of Buganda to accept since it was perceived to be a poisoned chalice. Regional Governments are a form or decentralised or devolved system of government in which the smaller unit (in this case the regional Government) is a creation and [a mere] representative of the Central Government. Article 178 expressly states that Regional Governments are to be comprised of two or more districts. The Kingdom of Buganda rejected the Regional Government compromise because of concerns about the following¹⁰:

- 3.4.2 A Katikiro elected through universal adult suffrage in elections conducted by the Electoral Commission could undermine the position of the Kabaka as well go against Buganda's cultural heritage (*He or she has to be a citizen of Uganda by birth and one whose parents or grandparents is or was resident in the region and a member of the indigenous communities existing and residing within the borders of the region as at the first day of February, 1926*);

- 3.4.2 The Kingdom of Buganda not having control of land use and administration in Buganda but instead the power remaining with the District Land Boards and the Uganda Land Commission notwithstanding the option to create a Regional Land Board. The issue of

⁹ “Federalism in Africa: An Essay on the Impacts of Cultural Diversity, Development and Democracy”, by Michael Burgess, Director and Professor of Federal Studies in the University of Kent

¹⁰ These reasons were enumerated in the research of the Cabinet Sub-Committee on the Federal Question set up in 2016 and cited in the draft report.

Buganda's expropriated communal land, the so-called "9000 Square Miles" or whatever is left of it, falls squarely here;

- 3.4.3 Lack of clarity in the 1995 Constitution about the finances (their raising, revenue sharing formula, types of grants etc.) to support the Regional Government;
 - 3.4.4 The lower District units under the Regional Government reporting directly to the Central Government instead, as is normally in most federal dispensations, reporting to the Regional Government (*receiving copies of financial accountability of districts to the Central to enable the regional government monitor and supervise the implementation of government programmes*);
 - 3.4.5 The perceived ease of take-over of the governance of a Regional Government by the President in case of the eventualities provided; and
 - 3.4.6 Declaration by legislation nationalizing the Kingdom's cultural heritage sites and thus wresting them from the ownership and control by the Kingdom.
- 3.5 The concerns about the Regional Government all largely echo the power asymmetry and distrust between the Central Government and the Kingdom of Buganda. Put simply there is a worry that if the Regional Government compromise were to be accepted, then the Kingdom of Buganda can be broken up using legal instruments rather than just brute force as Obote did. The quasi-legal legitimacy that the law may vest in the Central Government may make that process harder to undo than was the case of brute force, which was met initially with civil resistance and then eventually with support and active participation in revolutionary armed struggle. It was therefore thought not be politically expedient or advisable to take up the Regional Government as a half way house between the unitary system of government and the federal system of government that the Kingdom of Buganda aspires to, since the acceptance of that compromise may make the achievement of the ultimate goal so much harder.
- 3.6 If it is inadvisable to take up the Regional Government compromise then the Kingdom must consider how to go about achieving its aim for a federal system of government.

4.0 What is Deficient?

- 4.1 The past and present leadership Kingdom of Buganda has made it patently clear that the Kingdom aspires to a federal system of government. At every opportunity, such as in representations to the Odoki Constitutional Commission and to the Ssempebwa Constitutional Review Commission, the aspiration has been set out in long documents which make clear exactly what Buganda is looking for. The aspiration has also been the subject of many speeches, letters as well as formal and informal representations to the Central Government. Therefore, the failure to achieve a federal system cannot be blamed on a neglect or failure to advocate for federalism.
- 4.2 It appears to us that the failure to achieve the restoration of a federal system of government can be put down to the following:
- 4.2.1 A mis-conceptualisation of the issue and framing thereof as a matter of legal/legislative drafting rather than a matter of politics;
 - 4.2.2 A failure to frame the issue in a way that broadens its appeal to the masses in their everyday lives;

- 4.2.3 A failure to frame the issue in a manner that takes into account Uganda's position in the East African Community and the interests of Uganda's regional and international trade, economic and strategic partners; and
- 4.2.4 A failure to lead by example in the interface between the Kingdom's officials and employees, on the one hand, and the general public on the other.
- 4.4 A federal system of government touches and fundamentally alters or re-wires the structure of sovereignty and power in a state. Sovereignty and power are not concepts that are to be considered lightly and conceded because of songs or discussions in closed door meetings. They are concerned with the very essence of what makes a state – what Max Weber called “*the monopoly of the legitimate use of physical force.*” The advocacy for a federal system of government therefore essentially concerns the power to legitimately force people to act or desist from acting in a certain way. Therefore even though all federal systems of government are founded in written constitutions, federalism, is first and foremost, a political issue.
- 4.5 When we understand the federalism question to be a political issue about the division of power, the futility of “asking” (*okusaba*) any Government which is vested with all power under a unitary system of government becomes quite apparent. The establishment or restoration of a federal system of Uganda would require the Central Government – and all three arms thereof for that matter – to irreversibly cede power to the federal states. It would require the Central Government, which is the holder of all power and thus the master of all under a unitary system of government, to cede its dominant status and concede that it is essentially a tool or servant of the federal states. As we know from Frederick Douglass, “***Power concedes nothing without a demand. It never did and never will.***” Those who aspire to a federal system of government will not achieve it unless and until it is not only fashioned into but actually becomes a mass political demand across Uganda and in all key social and economic demographics.
- 4.6 The need to make federalism a mass political demand means that the communication and narrative framing of the issue also has to change significantly. Advocacy for federal system of government must be progressive and inclusive. It should be premised and couched in terms of internationally recognised rights to democratic self-governance and not as an aspiration to patriarchal and/or feudal ethnic self-rule. The aspiration to a federal system of government must be expressed in terms that address the sustainable and inter-generationally equitable delivery of: public goods and services; freedom; peace¹¹; happiness; prosperity; and stability. A well founded federal system of government should come to be seen as the new paradigm; the key to ending poverty, disease, ignorance and war. Since it is a political issue and politics is a game of numbers, the advocates for a federal system of government should make sure that it has a very wide appeal across all key demographics in Uganda. Absent this, the quest for a federal system of government is bound to fail or be interminably delayed.
- 4.7 Buganda is not a special or exceptional region or native nationality within Uganda it is and has always been inextricably linked to other regions and native nationalities in the Great Lakes Region. We are bound by history, geography, culture, trade, inter-marriage, friendships and our basic humanity (*Obuntu*). We all live in a globalised world. The advocates for a federal system of government in Uganda must address this and bring out the fact that whilst the trend in Africa is to centralised unitary states, the circumstances which suggest the federal compromise in Uganda actually pertain in many other states across Africa. The case of a federal state must not be couched in terms of Buganda exceptionalism or indeed be treated as a matter that is only of relevance to Uganda. Advocacy must be framed in terms that take into account the interests of our regional and international economic and strategic partners. It must become clear to regional

¹¹ In the full meaning of that word – not just the absence of war.

and international partners that a federal system of government in Uganda will be a guarantee of peace, prosperity and stability in Uganda and the region rather than a spark for war and instability, secessionism and/or irredentism in the region.

- 4.8 Federalism is founded upon action and only enshrined in a written constitution. We have already discussed the fact that the aspiration for a federal system of government is essentially a political aspiration and that politics is a game of numbers. It follows from the foregoing that the advocates for a federal system of government MUST not only talk the talk but they must also walk it! As the saying goes, actions speak louder than words. Those who seek a federal system of government must demonstrate the value of a federal system of government in their actions – most especially in their interaction with the masses. This means that each and every person in the Kingdom of Buganda, but most especially the Kingdom's officials and employees, must be fair, upright, transparent and non-sectarian in their dealings with the masses. For most Ugandans their interaction with a Kingdom official or employee is the closest that they will get to a message about the value of a federal system of government. Their experience must be tangibly different from that which they get in their interface with Central Government bureaucrats.
- 4.9 To avoid unnecessary and undesirable tensions with the proponents of a unitary state, the quest for a federal system of government must be translated into small practical actions across a very wide front. These actions will create a de facto federal situation and also prepare and build capacity for the future when there is a de jure federal system of government. There is no permission required to engage positively and proactively in hard work in the various sectors of the economy (agriculture, trade, construction etc.). Education and training for awareness and vigilance across all key demographics in Uganda can start and progress without a federal system of government being established. We should promote native culture and seek for ways to modify them so as to further support, accommodate and offer hope to vulnerable and historically disadvantaged communities.

5.0 CONCLUSION

- 5.1 The 21st Century calls for a new paradigm in the quest for a federal system of government in Uganda. This new paradigm must be founded in a renewed and better understanding of the concept of federalism itself and a broad, essentially political, consensus across the country, in the region and internationally. This broad consensus must be founded on new alliances bringing together native communities, academia, the business community, political parties and partisan political actors, civil society etc. The call for a federal system of government must be progressive, inclusive and essentially Pan African. The Kingdom of Buganda is going to embark on a practical exercise of researching public opinion and crafting new messaging across several fronts to foster a broad conversation that will bring about the broad consensus necessary to bring about the change that it wishes to see. The Kingdom is also going to embark on awareness and vigilance training across all officials and employees to ensure that they not only talk but also walk the talk in their daily interaction with members of the public. This way the aspiration for a federal system of government will be achieved. We do not promise that it will be easy, but it will certainly be easier than continuing along the well-trodden but clearly unsuccessful path that we have been on before.

END

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