

The Legal Control of Tertiary Institutions in East Africa: The Case of Makerere University

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Résumé: Partout sur le continent africain, des protestations, grèves et marches ont fait irruption dans les institutions d'enseignement supérieur. Fermetures, expulsions, emprisonnements et même utilisation de la force physique brutale sont la réponse des gouvernements africains. Même si ces turbulences ne peuvent pas être séparées d'une quête plus générale pour plus de liberté et de démocratie de la part de l'institution qui gouverne actuellement la société civile, elles sont également le reflet de la crise qui affecte l'enseignement supérieur en Afrique. Quelle est la nature du contrôle juridique effectuée sur les institutions tertiaires en Afrique? Quel est l'impact de tels contrôles sur l'évolution et les caractéristiques de l'enseignement supérieur? Le cas de l'Université Makerere depuis sa création est un exemple d'un contrôle excessif sur les institutions d'enseignement supérieur même si ce contrôle n'a pas pu étouffer complètement les organisations estudiantines ou mettre fin à des débats critiques. Dans le contexte de la crise économique et politique, le contrôle de l'Etat sur l'enseignement supérieur a toujours eu tendance à limiter largement la liberté académique et les modes d'opération démocratique. La soumission de l'université peut-elle être une solution à la crise africaine?

Since the beginning of the year (1989) students in Africa are everywhere in ferment. Protests, demonstrations and riots have resulted in injuries, lockouts, even deaths. The virus of discontent has spread to Zaire, Congo, Cameroon, Nigeria, Benin, Senegal, Sudan and Zimbabwe. Underlying the upsurge of protest is not simply high spirits and political posturing but a fundamental revolt against bad teaching, poor conditions, unpaid scholarships, rising prices, lack of concern by those in charge and general deterioration of educational conditions (New African: May, 1989).

Introduction: The Virus of Discontent

Throughout the African continent post-secondary educational institutions are erupting in protests, strikes and demonstrations. African governments retaliate with closures, expulsions, imprisonments and even brutal physical force. (*Amnesty International*, 1989; *Africa Watch*, 1990). While these eruptions cannot be divorced from the wider movement of social forces in Africa today, they also quite specifically reflect the peculiar crisis of our

systems of education. In this context, it becomes extremely important to pause and critically consider the nature of the legal controls exercised over tertiary institutions in Africa. This is particularly essential because the law governing tertiary institutions has been so poorly investigated, whether from a purely legal angle, or from a sociological or political science perspective. Within the context of Uganda, such an inquiry is of particular importance given the recent student struggles that have twice in as many years rocked Makerere University, the last such time culminating in the brutal murder of two students on December 10, 1990, which, ironically, was international Human Rights Day.

Our primary concern in this paper is twofold. First, it is to consider the nature of the legal mechanisms in place at Makerere today and the impact such controls have had on the evolution and character of university education as disseminated by Makerere at the same time, we do not seek to merely make a dry rendition of those legislative controls. Our intention is to subject them to critical inquiry against the background of the historical evolution of tertiary education at Makerere and the concrete political, social and economic conditions that have hitherto prevailed in Uganda and continued up to the present time. Such an examination is crucial to our analysis of the subject if only because the law does not provide, to cite a recent example, for the invasion of the campus by Armored Personnel Carriers (APCs); troops armed with guns, live ammunition, batons and tear-gas canisters and the false imprisonment (without food) of students. In fact, it does not even make provision for the arbitrary closure of the university. In a nutshell, the paper provides a pathology of the "virus of discontent" that afflicts one African University today (*New African*, 1989: 9).

To this end, the paper is divided into three parts. Part I provides an illustrative history of the evolution of the legal mechanisms governing tertiary education, commencing with the establishment of Makerere in 1922, up to the dissolution of the University of East Africa in 1970. It is hoped that this will illuminate the broader context for the legal controls eventually codified in the 1970 Makerere University Act - the legal instrument that currently governs the institution. Part II examines in detail the provisions of the 1970 Act, the 1975 Decree (amending the 1970 Act) and the related mechanism of control exercised in the 1970s and 1980s.

The last section reviews the position of the present National Resistance Movement (NRM) government under Yoweri Museveni, drawing both from contemporary policy papers on tertiary education, the view-points of government officials and from the public domain. In conclusion, we consider what governmental control over tertiary education in its present form actually entails for both staff and student academic freedom in Uganda and how it affects the evolution of a system of university education that serves the twin goals of socioeconomic development and heightened democracy.

Colonialism and the Control of Tertiary Education

To fully appreciate the role of "education" within the context of a colonial situation, one must possess a firm understanding of the nature of the state, in existence, as well as of the social and economic conditions upon which it is constructed. In the words of E.A. Brett:

Colonialism is a system of rule which assumes the right of a people to impose their will upon another. This must inevitably lead to a situation of dominance and dependency which will systematically subordinate those governed by its imposed culture in social, economic and political life (Brett, 1973: Introduction).

Following this perspective, it is not surprising that the educational system that evolved in Uganda aped in large measure, that of the colonial power - Britain. It also explains why education commences with the "kindergarten" and culminates in the "university" and furthermore why law as the subject-matter of an educational process is first confronted at the tertiary level.

Education in a colonial context comprises part of the broader infrastructure of underdevelopment (roads and railways; hospitals and military forces) designed to service the channeling of the resources of the colonized territory to the metropolitan state. Thus, the first tertiary institution in the whole of East Africa was set up nearly 30 years after colonial rule. Clearly, "education", then, as it is today, was not a priority in the view of the colonial masters.

The lack of attention accorded to education in Uganda is a point that has been made by numerous historians and sociologists - Ramkrishna Mukherjee being the most critical among them. (Mukherjee, 1985: 161-166, esp. 164). More important however, was the nature of colonial education and in particular, that which was disseminated by tertiary institutions like Makerere. Furthermore, the historical origins and subsequent development of the university under colonial conditions, were critical factors in shaping the character of education disseminated by the institution.

Established in 1922, Makerere was originally a technical school, although as noted by Lugumba and Ssekamwa, "... it had in a fairly short time embarked with considerable success on courses in Medicine, Agriculture, Elementary Engineering, Surveying and Teacher education". (Lugumba and Ssekamwa, 1973: 201). There was no legal instrument which specifically set up Makerere as the "highest institution" of learning in East Africa, a position it enjoyed in its early phase (Macpherson, M, 1964). This does not mean that Makerere evolved "naturally" or autonomously of the existing colonial educational programme. As a technical school it drew its resources primarily from the colonial government and conducted courses that bore the

Administration's stamp of approval. Indeed, the emphasis on technical subjects illustrates the colonial bias against the more "esoteric" subjects such as law, philosophy or sociology.

However, even by the early 1930s, the government had not formulated a distinct policy on tertiary education as such, neither did it see the need to make statutory provision for the functioning of the college. This is illustrated in part by the provisions of the Education ordinance of 1935. That law provided for the formation of an Education Advisory Council (section 4-12), District Boards of Education (sections 13-16) and Provincial Councils of Education (sections 32-36). It also made provision for the registration of schools (sections 32-36), the control of employment (sections 37-39) and the regulation of the pay of teachers (sections 40-42). Finally, it covered Indian Education (sections 44-49), Grants (sections 52-54) and the inspection and closure of schools (sections 55-57). Nowhere in the Ordinance is there any reference to higher or tertiary education.

That omission is easily explicable in that higher education at Makerere and elsewhere in East Africa was yet still in its formative stages of development. However it also tallied with colonial policy of the time, a policy that discouraged the indigenous populace from pursuing activities that did not directly correspond to the designated scheme of production and appropriation. (Jjuuko, 1990, Jorgensen, 1981: 135). Therefore, while primary and secondary education necessitated the formation of a concise system of administration and control, it was not crucial that the same be done for the form of higher education in existence at the time.

Traces of a movement towards a more direct administrative control of higher education can in fact be found in 1929, when in March of that year, the Directors of Education of the three East African territories unanimously agreed that Makerere should be the centre for higher education in the region. (Lugumba and Ssekamwa, *op. cit.*, 201-202). The subsequent appointment in 1935 of a Commission to examine and report on higher education in East Africa, gave further substance to this resolution. The Commission was chaired by the Right Hon. Earl de la Warr, who was assisted by eight other men and one woman. None of the commissioners was of African origin.

In its far-reaching study, the Commission examined the organization and operation of Makerere College, institutions or other agencies for vocational training connected with the college and the system of education from which students at the college were drawn. Recommendations were made on the development and administration of the college in the light of "... the general interests and needs of the communities from which future students might be drawn and the education needs of the women" (*Ibid.*, 202). Obviously, "the general interests and needs of the communities" were really concerned with how best education at Makerere could serve the colonial economy, seeing that no representatives of those "communities" sat on the Commission. Fur-

thermore, the purported attention to "the needs of women" was a thinly-veiled shroud over the otherwise explicit chauvinism of the Commission. This was illustrated, in part, by the emphasis placed on its recommendations on the training of women for "home making" (Ibid.). Educating women at the tertiary level within the colonial scheme principally meant the development of their skills in the kitchen and the home!

The Commission made several other recommendations concerning education in general and Makerere College in particular. Among the more important for the purposes of our analysis were that:

- i) all post-secondary courses at the college and its associated institutions should form the "Higher College of East Africa";
- ii) the Higher college should have an autonomous governing body;
- iii) the Principal and staff of the college be of "university type" and "university status";
- iv) Professional courses in Teacher education, Medicine, Agriculture and Veterinary Science continue and,
- v) the College be developed as a centre for research.

Soon after the Commission's recommendations, an Ordinance was passed by the Governor to regulate the operation and development of the College. As the first legal instrument promulgated with respect to the institution, it deserves special treatment.

A - The Makerere College Ordinance, 1930

The first legal instrument passed to regulate the operation of Makerere was designed to "... make provision for the control, administration and working of Makerere College", clearly illustrating that tertiary education was henceforth to be closely monitored and developed by the state. The Ordinance set up an Assembly for the College with a Chairman appointed by the conference of East African Governors (section 4). Other members included the Principal of the College, one appointee of the Native Government of Buganda, another from the Makerere College Union Society and two from the Academic Board. The remainder of the Assembly was to comprise appointees of the Governors of the three territories and the British Resident of Zanzibar (section 4.1). The principle duty of the Assembly was to "receive and consider the annual report and accounts of the Council and advise the Council on questions of general policy in regard to the conduct of the College" (section 6).

The actual control over the administration and operation of the College was vested in a Council that was established as a body corporate with perpetual succession and a common seal (section 9). The chairman was to be appointed by the Secretary of State, upon the recommendation of the Governor, following consultation with the conference of East African governors of

each territory and the Academic Board. Section 13 of the Ordinance laid out the main duties of the council which were *inter alia* to:

... have the management and control of the affairs, concerns and property of the college and shall undertake that management and exercise that control in accordance with the provisions of this ordinance and the directions of the Governor, acting on behalf of the conference of East African Governors; and in all cases, in the absence of any express provision or direction, shall act at all times in such manner as appears to it to be best calculated to promote the interests of the college.

A duty was imposed on the Council to consider any advice tendered to it by the College Assembly, and in the instance where such advice was not accepted, to report the matter to the Assembly and to the Governor. Specific duties included *inter alia* the consideration and submission for approval to the Governor of the annual estimates of revenue and expenditure; fixing the scale of fees and boarding charges; regulations regarding the terms of service, duties and discipline of the staff and the establishment of an Academic Board and Boards of Studies. All members of staff were to be subject to the general authority of the Council and of the Principal, although officers seconded from the Government were to be disciplined by the Governor. The Principal was to be appointed by the Secretary of State on such terms and conditions to be fixed in consultation with the Governor and the council.

Quite a few observations can be made of this Ordinance and of the fashion that legislative control over Makerere was to be executed. First is the omnipresence of the colonial and metropolitan state in the organization and control of the College. The appointment of the Principal of the College was vested in the Secretary of State, as did the appointment of the Chairman of the Council. Throughout the ordinance, reference is made to the Governor and the Conference of East African Governors (who appointed the Chairman of the College Assembly). Most of the duties of the Council were overseen by the Governor, particularly as regards the revenue and expenditure of the College, the terms of service, duties and discipline of the staff and the establishment of the Academic Board and Boards of Studies. Finally, in the constitution of the respective organs of the university, government-appointees predominated.

Such extensive control over the College by the colonial administration was not accidental. Neither is it surprising that the office of the Secretary of State for Colonies controlled the appointment of the College Principal and the Council Chairman. It was not merely that Makerere was to develop as an institution that served the interests of the colonial political economy. Rather, the administrative officials, the staff and the kind of students admitted by the

college were to be selected in accordance with the policy that Makerere was first and foremost a state institution.

This point is better illustrated by examining the amendment to the 1938 ordinance passed three years later. The 1941 Makerere College (Amendment) Ordinance incorporated the office of the Secretary of State in the formulation of the terms of service, appointment and dismissal of members of the college staff (section 2). It also made provision for the Secretary of State to remove the college principal, albeit on the recommendation of the Council and the Governor (section 5). One would have thought that as the college began to develop, measures would have been taken to permit it to function more autonomously of the state. The reverse is true, especially since agitation for freedom from colonial rule was on the rise and the source of discontent can be retraced to the growing awareness and agitation of the indigenous population - a phenomenon which captured Makerere also. A firm hand was necessitated at the college to deal with such "indiscipline" and the colonial state (crystallized in the office of the Secretary of State) moved in directly and decisively to ensure that such control could be easily imposed.

It is important also to note that neither the 1938 Ordinance nor the 1941 Amendment made any provision for students' welfare or organization. Presumably this was to be under the control of the Principal and furthermore illustrates that the state did not consider that students were deserving of any rights that could be codified in a legal instrument. Although the institution was ostensibly set up to serve students, they were allowed no independent voice in the determination of their welfare. Indeed, the only mention made of them in the governing statute was in relation to the fixing of fees and the determination of boarding charges! (section 13.3 (c)).

This, then, was the substance of the origins of legislative control over Makerere in the colonial era. Aside from the Academic Board of Studies, the governing body and the main elements in the administration were directly linked to the colonial state. The representation of persons drawn from within the College was minimal, ensuring that state policy could on the whole, be fully implemented in the operations of the institution. The financial and accounting control exercised by the government meant that the college would be wholly dependent on the State for its well-being, a fact which critically impacted on the development of the institution particularly in periods of economic strife. Legislative developments which followed the 1938 ordinance and the 1941 Amendment, concretized this situation.

B - Subsequent Legislative Developments (1941-1963)

Following the Second world War, Makerere began to be actively steered in the direction of university college for the three East African Colonies. In 1945, the Asquith Commission on Higher Education in the colonies visited the College. The Commission commended the steps taken by Makerere

(towards becoming a university) since the visit of the 1937 de la Warr Commission (Lugumba and Ssekamwa, op. cit., 203-204). Thus, in February 1949, the East African High Commission (comprising the three Governors) assented to the Makerere College Act.

Two important developments are signified by the passing of the 1949 Act. First, it made provision for "... the Government, Control and Administration of Makerere College" - a distinction from the 1938 ordinance as we shall see, that was not merely semantic (Preamble to Act No. 2 of 1949). The College was styled the "Higher College for East Africa at Kampala, Uganda, known as Makerere College". Its functions were explicitly laid down as being directed towards providing in East Africa:

- a) facilities for higher education;
- b) facilities for professional training; and
- c) facilities for research.

In many respects, the 1949 Act paralleled the previous legislation governing the college. In addition though, it abolished the College Assembly and made provision for the appointment of a Visitor by the Secretary of State. (section 5.2). The Visitor was vested with the powers to revoke or amend section 7 of the Act (relating to the membership of the College Council) after consultation with the Council and subject to the Secretary's prior approval. (section 7.8). It also gave him general advisory powers.

The Act made the College Council the principal governing body of the institution, with only the Governor as the remaining supervisory office. A conspicuous change introduced by the 1949 Act in comparison to the earlier laws, was the marked reduction in references to the Governor, the East African High Commission (formerly the Conference of Governors) and the Secretary of State. Also, although the Secretary of State retained the sole power to appoint the Principal of the college, this was to be done following consultation with the visitor and the College Council. The Secretary also retained the power to remove him, although this could only be "... for good cause..." and on the recommendation of the visitor and the Council (section 15). The Governor no longer featured in this action.

Unlike the previous laws which simply vested the Council with the power to create an Academic Board and Boards of Studies, the 1949 Act explicitly set up the Board, making it "... responsible to the College Council for the academic management of the College in accordance with Council policy" (section 9.1 and 9.2). The duties of the Board were also laid out, as was its membership with the Principal as Chairman. It comprised the Head of each school, every Professor, Reader or Senior Lecturer in the various faculties, the Librarian and two members selected by the staff (section 10).

At first glance, it would appear that the 1949 Act considerably relaxed state control over Makerere. A number of factors explain this facile impres-

sion. First was the general relaxation in the controls exercised by the colonial government over political and social life in the colonies in the post-war epoch. Parallel developments were discernable in relation to trade unions, political parties, the local press and farmers' cooperative unions, some of which were legally permitted to function for the first time in this era of colonial rule. A quick glance at the legislations governing the operation of these institutions exhibit a relatively loosened degree of control by the state. In terms of the political economy of Uganda at this time, these legal developments coincided with the heightened agitation for liberation and self-government commenced in the 1940s and epitomized by the Bataka Uprisings of 1945 and 1949 (Uganda Protectorate, 1949, Nabudere, 1980). Hence, it was essential for the colonial state to adopt more 'liberalized' attitudes to social and political life in the colonies if its essential objectives were to be realized. This was the epoch of the so-called "human face" of colonialism (Apter, 1973: 234 ff.).

Needless to say, the essential features of the colonial system were preserved intact and the 1949 Act clearly demonstrated this. This was especially the case in so far as government appointees still predominated on the Council, the activities of the staff were strictly monitored and no mention was made of the welfare of students. Furthermore, the purported liberalized attitude of the state towards institutional life was belied by the fact that no African was appointed to the council established under the 1949 Act, even though, as Lugumba and Ssekamwa point out, there were a number who were eligible (op. cit., 204). Education at the tertiary level, even within the so-called liberal atmosphere of the era remained a matter to be determined by the colonial state and its agents, to the exclusion of the indigenous populace.

In 1950, following quickly on the heels of the 1949 Act, Makerere College students began to read for external degrees of the University of London. Legally and in substance, Makerere thus became a University College of London, which explains why those who studied there at that time, append the word "London" in parentheses following their qualifications even though they never actually studied at the British institution. At the administrative level, the 1949 Act was still in operation and there is no legal instrument that outlines the nature of the relationship between the two institutions. We need only note that the new affiliation merely confirmed the socioeconomic and political reality of the age. Makerere had long been structured and designed as an institution to provide tertiary education closely patterned on that of the metropolitan state. Its existence and operation were linked to an external polity, as was the manner in which it gained maturity. The formal link with London signified the attainment of that maturity.

With the dawning of independence, political considerations deemed a termination of the Makerere/London relationship imperative. Thus, in 1961

the institution became Makerere University college. Soon after, in 1963, the University of East Africa was set up, with Makerere, the University College of Nairobi and Dar es Salaam forming its three constituent colleges. The 1962 University of East Africa Act vested the institution with the responsibility for University education within East Africa and required it to:

cooperate with governments or other appropriate bodied in the planned development of higher education, and, in particular, to examine and approve proposals for new facilities, new departments, new degree courses or new subjects of study submitted to it by the constituent colleges (Preamble 1962 Act).

The dissolution of the university as a regional institution is intricately linked to the growing political and economic crisis that engulfed the three East African countries almost from independence. Suffice it to say that even preceding the actual dismantling of the University of East Africa, steps were already underway to give Makerere complete autonomy and firmly establish it as an independent institution, wholly accountable to the Government of Uganda.

Following this background, we can now turn to an examination of this process and to a critical appraisal of the Makerere University Act as well as the 1975 decree which amended it.

The Post colonial Legal Control of Makerere University

Efforts directed towards making Makerere an autonomous institution, independent of the other two East African Colleges, commenced soon after the achievement of independence. (Dinwiddy and Twaddle, 1988). Throughout the existence of the University of East Africa, there was an uneasy tension between the three member states which saw, by 1964, the exchange of heated words over deviations in the planning and funding for higher education in each country. Duplicate faculties, formerly agreed to be reserved to particular colleges within the University began to be established in each college.

On 12 January 1970, Ugandan President, Milton Obote, set up a Visitation Committee to report and make recommendations on the status and direction of the education offered by Makerere at the time. However, before the completions of the visitation report, Parliament assented to the Makerere University (interim Provisions) Act on June 29, 1970. The preamble to this act is of some interest and we quote it here in full:

... until the submission of the visitation Committee report (it is) advisable that the law of Makerere University be delayed but interim provision should be made to establish Makerere University to enable it to carry on its educational and other functions in the interim period.

Of interest is the fact that when the Makerere University, Kampala Act was eventually assented to by Parliament (5 October 1970), it paralleled in many ways the provisions of the earlier interim Act. This leads to the conclusion that the Visitation Committee was in fact set up primarily as a cosmetic measure and that the Government had already decided on the type of institution it wanted to create, as well as the measure of control to be exercised over it.

A - The Makerere University, Kampala Act, 1970

The most striking feature of the 1970 Act was the reintroduction of extensive state control over the institution - an echo of the very first colonial statute which governed Makerere. The Act made the President of the Republic automatic Chancellor of the University (section 6), with exclusive powers of appointment of the Vice-Chancellor, his Deputy (section 7.2) and the chairman of the University Council (section 9.4). Extensive reference was made to the Minister (of Education), with respect to the establishment of constituent colleges (section 5), the appointment of the Secretary and Registrar (section 8.2), the appointment of Faculty Deans (section 12.1), professors and Institute Directors (section 12.2) as well as the approval of any statutes made by council for the "... government, control and administration of the University" (section 3.2).

Finally, the Minister could, "... if in his opinion it is in the public interest to do so..." direct any University Authority to exercise or perform any of the powers conferred by the Act, and such authority had to comply with those directions. Such power in fact vested the Minister with almost exclusive control over the functioning and the direction of development of the University. With the President as Chancellor, the manifestly political nature of his other office signified the absence of any independence between state and university.

Viewed against the background of political and social conditions prevailing in Uganda at the time, the return to extensive state control over Makerere represented by the 1970 Act is not surprising. First and foremost is the extensive rise in dictatorial tendencies in the Obote Administration commencing from the mid-1960s. This tendency obviously found expression in the legislation of the time and is epitomized most starkly in the Ministerial "powers of directions" - powers which gave Cabinet Ministers virtually total control over Parastatal Organizations (from insurance companies to hotels), and extended into educational institutions. Makerere - representing the pinnacle of the country's educational system and thus the focal point for research, critical debate and organized and articulate youth movements - had to be brought firmly under the yoke of governmental control. This last fact (i.e the increasing importance of students and youth) explains the inclusion

for the first time in a law governing the institution, of two student representatives in the University Council.

Needless to say, such student representation was not intended to provide the student body with any real voice in the management of the affairs of the University or more specifically in the actual decision-making process that affected the student's general welfare. Rather, it was inserted for cosmetic value - "this government also listens to students and takes them as equals". This point is well demonstrated by the fact that under the Act, no reference is made to student's participating in decision-making, or that consultations will precede any decisions affecting their autonomy or welfare. Furthermore, under section 21 of the 1970 Act, the students' association must be constituted in accordance with statutes made for that purpose by the University council, which may also, "... prescribe the constitution, functions, privileges and other matters relating to the students' Associations".

The ultimate conclusion of all the foregoing is that the Act did not permit students' autonomy over the organization of their affairs. This tallied with the overall position of the government regarding other civic associations such as trade unions (Baryahawego, 1990). Concerning students and the youth specifically, parallel mechanisms of control had already been instituted on a national scale, with the establishment of the National Union of Youth organizations (NUYO) and the National Union of Students of Uganda (NUSU) - state-sponsored organizations designed to undermine the autonomy of the students' movement.

At Makerere, student politics were infiltrated from the start by the governing party - the Uganda People's Congress (UPC). Although the era when Guild elections were openly campaigned for on a party ticket was yet to come, the 1960s and 1970s were not free from the intrigue, chicanery and turbulence that was to surround student politics in the 1980s. Such control did not, needless to say, wholly emasculate student organizations or stifle critical debate among them. The point is however, that the powers reserved to the university council could be utilized to achieve precisely that objective should the need arise. And of course, as social, political and economic strife has intensified, the government has not hesitated to employ such powers, even while making bold claims that it supports the movement and independence of students.

Perhaps the most striking reflection of dictatorial power embodied in the 1970 Act, is the provision that made the President of the Republic, automatic Chancellor of the University. The position is not merely ceremonial, even though one of the main functions of the office is to confer degrees, at which point, the opportunity is taken to espouse on government achievements *vis a vis* higher education in general and the university in particular. It also explains why and how the conferment of honorary degrees otherwise an academic function - can assume manifestly political overtones. But most im-

portantly, it marks out the university as a subsidiary of the government (*de facto* and *de jure*) and places a check on the freedom of expression of both staff and students not to mention the control of the Administration. This fact is best illustrated by the intervention of the Chancellor in virtually every major crisis that affects the university. Despite protestations to the contrary, it is in the role of Head of State that the Chancellor reaches any major decision over the university.

Further demonstration of this point is found in section 78 of the 1970 Act, which governs the appointment of the Vice-Chancellor and his/her Deputy. Under the section, the VC is appointed by the President (not the Chancellor) "on such terms and conditions and for such period as the President (once again) may determine". This was no draftsman mistake. The VC is appointed by the President qua President, and not as Chancellor of the University. Thus an office which should be primarily academic and professional, is made highly political. Once again the political nexus between state and university is manifest. This link is demonstrated in several other forms. First, the VC has no fixed tenure of office, neither is there provision made for his/her removal other than by the President. This has led to a situation where Vice Chancellors have been shy to adopt positions that may not sit well with the government, and to wait in trepidation whenever a crisis erupts on campus. At the same time, within the context of the campus itself, the VC is a power unto him/herself and there exist virtually no checks and balances to curtail the possible abuse of power. All in all, the situation fostered by the 1970 Act is far from being satisfactory. Before considering the contemporary situation, it is necessary to look at the 1975 decree which amended the 1970 Act.

B. The Makerere University, Kampala Act (Amendment) Decree, 1975

From a legal perspective, the decree which amended the 1970 Act is an interesting and informative example of the fascist ideology of law that governed Ugandan legislation during the period of military rule (Ghai, 1986). Thus, while it appeared to lessen the direct control of the state over the institution, in one and the same motion, it curtailed student and staff organization and representation. This phenomenon can be described as the "Jekyll and Hyde" syndrome which found expression in many of the autocratic decrees of the era (Oloka-Onyango, 1988: at 99-101 and 115-123).

The apparent lessening in state control was manifest in the amendments the decree made to the powers of the Minister. In section 5, concerning the establishment of constituent colleges, this had to be done "after consultation with the Council and the Senate". Section 7.4 provided for consultation with the chairman of the Council in the making of recommendations to the President on the appointment of a member of staff to act as Vice Chancellor. The

amended section 8.2 still provided for the appointment of the Secretary and Registrar by the Minister, but "acting on the advice of the Appointments Board on such terms and conditions as the Minister may determine". Similar amendments were made to sections 12.1 (concerning the appointment of Faculty Deans) and 12.2 (relating to the appointment of Professors and Directors).

The Jekyll and Hyde syndrome is manifest in the amendment to Section 22 concerning the constitution and powers of the Appointments Board. The new section vested the Board with the responsibility "... except as otherwise provided... for the appointment, promotion, removal from service and discipline of all officers of the University". Here, the exception in fact defeated the rule as the power over appointments and dismissals of senior academic and administrative staff remained vested either in the President, the Chancellor or the Minister. Furthermore, the nine members of the Board were still to be appointed by the Chancellor, with no representation coming from within the university.

The overtly fascist ideology of the Amin regime inevitably found its way into the decree. First, it deleted reference in section 9 of the Act (concerning membership of Council) to "two members of the academic staff (elected by the Academic Staff Association)" and substituted instead "two members of staff elected from amongst themselves jointly by the academic staff and the senior administrative staff." The effect of this amendment was twofold. It made legal the previous outlawing of the Academic Staff Association, on the grounds that the Association was engaged in politically divisive activities. Furthermore, it combined the representation of the academic staff with that of the senior administrative staff, thereby reducing such representation to an even more miniscule figure than before. In essence, the decree confirmed the prevailing government attitude that academic freedom was a privilege and not a right. The same perspective was also apparent in the amendment to section 16 (concerning the membership of the Senate) which deleted reference to student representatives and further deleted the word "association" from the provision governing the two members elected by academic staff.

To cap it all, the Minister's general powers of direction were greatly strengthened by the amended section 35, which now specifies that the Minister may ".... give directions *on any matter* to a University authority as to the exercise of any powers and the performance of *any* functions under this Act, and the authority *shall* comply with such directions" (emphasis added).

The crucial point to appreciate from all foregoing, is the nature of socioeconomic and political conditions prevailing in Uganda at the time. Politically, it was impossible to challenge the authority of the state and one did so at his own peril. Secondly, formal structures of student and staff organizations were outlawed leaving no avenue for the articulation or communication of any grievances that would arise. The 1976 charge on the cam-

pus by Armored troops made this point abundantly clear (Mamdani, 1982). Finally, even though the power of the state had been greatly strengthened under the law, scant attention was paid by the state to legal niceties - total power devolved from the State, epitomized in Idi Amin and his Lieutenants. This then was the fascist ideology of law, which produced a deep-rooted disdain for the law, a disdain which unfortunately prevailed up to the present time.

We now proceed to the conclusion of our discussion with an overview of the current situation regarding the legal control of Makerere.

The Legal Control of Makerere Today: Drawn Swords and Democratic Struggles

We need not recount the circumstances under which the National Resistance Movement (NRM) came to power or indeed the social and economic conditions that it inherited (Oloka-Onyango, 1989). All of these, including the prevailing political atmosphere, greatly impacted on the crisis that engulfs Makerere today. Seen in purely legal terms, the struggle is one for law reform - a reform that is both comprehensive and extensive. In a wider social context, the struggle between the state and Makerere represents part of a movement for a greater and more democratic freedom for the institutions that govern civil life in Uganda (Mamdani, 1989). In particular, it represents the quest for a solid guarantee of the protection of social, economic and political freedoms and rights. Thus an examination of the legal control of Makerere today must consider both the purely legal issues that arise, and the wider context within which they operate.

It is important to note from the outset that despite the fact that the NRM government has made no legislative reform of the law governing Makerere, its actions and policies have produced the most engaging debate over the issue: who is to control Makerere, and *how* is that control to be exercised? To its credit, the NRM initially turned a blind eye to the more outrageous controls introduced by the 1975 decree, including the banning of the Staff Association - Makerere University Staff Association (MUASA), and the issue of student representation on the University Council. A number of senior academic posts (such as Deans and Heads of Departments) are now elective, following reforms introduced within the university. That non-chalance nevertheless ceased when staff and students challenged the Government on fundamental issues relating to governance and the economy. This concluding note expounds on the trends this debate has taken so far and articulates a number of conclusions about its possible future direction.

A. The NRM Policy on Higher Education

The NRM/Makerere confrontation over the control of the institution though of fairly recent vintage, has its roots in the global economic and political crisis that afflicts third world countries as a whole, and the issue of tertiary

education in particular (cf. Bako, 1990). The situation that exists in underdeveloped countries is best articulated by the 1981 World Bank report on the crisis in sub-Saharan Africa (IBRD, 1981). The other leg of the confrontation can be found in the structural adjustment programs that are everywhere being implemented with scant regard to the socially adverse ramifications that will obviously ensue (Onimode, B, 1989). Specifically in relation to tertiary education, the World Bank report adopts the position that this is a luxury that countries like Uganda can ill afford: attention must be paid elsewhere, such as to crop production and the boost of exports. Tertiary education, to borrow a phrase, is not a priority (IBRD, 1981: 82 ff.).

This is an old World Bank theme that has found ramification throughout its various activities. Indeed, in a specific report on Education in sub-Saharan Africa, the Bank says:

The conclusion is harsh and inescapable: to meet minimally acceptable targets for coverage and quality of lower levels of education in most [African] countries, the share of stagnant public expenditures devoted to tertiary education cannot expand further and in some cases may have to contract. Savings must be sought at this level from improvements in efficiency, increase in private contributions, and constraints on the growth of output (IBRD, 1988: 69).

Within the context of Uganda, this position can be found in numerous policy statements and especially, in the Report of the Education Policy Review Commission, published in January, 1989. While the report gives fairly comprehensive and reasonable directions about the restructuring of tertiary education along lines that do not necessarily tally with those stipulated by the World Bank, the one recommendation that has fueled the present crisis relates to the issue of "cost-sharing". In the words of the Report:

Students and their parents should assume full responsibility for meeting all noninstructional expenses such as the cost of transportation to and from their homes, pocket moneys, feeding and dependent allowance. (Education Review Commission, 1989: 23).

Seen in isolation, this recommendation may not, at first glance, appear deleterious. It is the government's response to it that brings into bold relief the subject matter of this paper: *the legal control of Makerere and the implications of that control in terms of academic freedom and democratic modes of operation*. Indeed, it is a mark of the disdain for law, which we referred to earlier, that the Report makes absolutely no mention of the law or of legal issues.

In an over-zealous effort to do the master's bidding, the government issued a statement eliminating virtually all students' allowances, most prominent among them being that relating to books and stationery. In its

stead, the government promised a "book-bank" which would operate in the form of a library - books being lent out at the beginning of the year and returned at the end. It is the failure to satisfactorily implement the bank or to restore the allowances which led to the strike that culminated in the closure of the university on November 20, 1989.

A number of observations can be made on the foregoing, especially in terms of the issue of legal control. First is the fact that no consultations preceded the government directive, either with the academic or administrative staff, or more importantly, with the students. Second, the crisis ran the gamut of hierarchical control - commencing at the V C and moving up, through the Ministers of Education, to the President/Chancellor himself. All of this, one may argue, is in accordance with the law as it exists. There are no provisions in the law governing Makerere that provide for consultations. However, neither does the law provide for the arbitrary and unilateral closure of the university - the final action of the government. Most interesting of all is the action which followed the closure, both in terms of the legal issues raised and the wider political and social context.

First was the inevitable threats and reprimands of the students for being "arrogant and unreasonable". Second was the declaration of the intent to restructure the whole administration of the university. But, most important was the action taken by the University Council concerning the strike. In a meeting which barred student representatives from participation, the Council established an ad hoc committee to consider what measures needed to be taken to address the problem of the strike. The reason given for the exclusion of students was that the university was closed. Students thus had no *locus standi*. While that action was quite legal, it was manifestly undemocratic.

The formation and constitution of the *Ad hoc* committee illustrated the disciplinary and dictatorial mood that surrounded Council deliberations on the issue. Even though the legal advisor to the students' guild sat on the committee, this cannot be considered to be an adequate or full representation of the students in deliberations that would affect them most deeply. It was a classic case of condemning the accused without giving him/her the opportunity to be heard! The recommendations of the *ad hoc* committee were draconian, to say the least. Among them were included measures to ensure the more effective enforcement of the code of conduct governing students: increased control over the student guild by the university administration, and the promulgation of a host of conditions for re-admission to be signed by the student, his/her parent or guardian and the local chairman of the Resistance (Village) Committee (Level 1). The *ad hoc* committee also suspended the guild constitution and imposed a new constitution (dubbed the "Pigeonhole" constitution by students), that severely curtailed the students' rights of assembly and expression.

These measures temporarily abated the crisis. However, almost from the start of the new academic year in October, 1990, the tension resurfaced. The Student' Guild rejected the new constitution imposed by the University Council and were further chagrined by a government declaration that the withdrawal of allowances was not debatable. In response, a boycott of classes was declared and a call made for a democratic discussion of all issues affecting the university. Ten days later, the government despatched 200 troops from the Mobile Police Patrol Unit (MPPU) - a paramilitary wing of the Police force. In the attempt to disperse a student assembly, two students were shot dead in cold blood.

Conclusion: The Postmortem

The preceding examination enables us to return to a number of questions raised by the phenomenon of legal control as it has been played out in the Makerere setting, particularly in the 1980s and 1990s. First, why the necessity for legal control? Second, why the autocratic and often draconian character of those controls? Finally, do such controls work?

At a symposium on Academic Freedom held in Kampala in November 1990, many of these questions seriously taxed the delegates. The overwhelming conclusion was that to the extent that such controls must exist, they must be premised on the basis of dialogue and democratic practice. The removal of rights of association and assembly to students and staff, the dictatorial control exercised by the University Council and the inordinate emphasis on "discipline" serve to heighten the undemocratic nature of the legal controls in existence. Of particular concern was the deployment of Armed Personnel on university campuses - the consequences of which were so disastrous at Makerere (CODESRIA, 1991, especially The Kampala Declaration).

The above notwithstanding, legal controls exist in order that the state can ensure that tertiary education remains true to the task of supplying academic and practical direction and appropriate research for the "developmental" needs of the nation. The draconian aspect of such laws enter the picture in the wake of political and social crises and where the university assumes the posture of predominant critic of the state. This was true of the colonial era, and is all the more so in the era of neocolonialism. Unfortunately, such a perception of the university and the consequent measures imposed to ensure that it is controlled, can only have a diverse effect. This is because the most fundamental of the aspects of university activity is academic freedom and autonomy. The legal controls in place at institutions like Makerere are an attempt by the state to both have the cake and to eat it, simply because, since the state "pays the piper", the piper must play the tune of the state.

The ultimate conclusion is that the draconian laws in place at tertiary institutions cannot work, if the objective is to secure the acquiescence of the

university in the operation of the neocolonial state. Nothing short of the transformation of the character of the neocolonial state will lead to the positive transformation of the society over which it governs. Until African states realize that the solution to the African crisis lies in *collective* and *democratic* methods of collaboration, legal controls, especially draconian ones, can never solve the crisis.

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