

CHAPTER 01: HUMAN RIGHTS AND CONSTITUTIONAL EDUCATION

1.0 Introduction

The 1995 Constitution of Uganda mandates the Commission to promote and protect human rights. Thus human rights promotion is one of the major obligations that the Commission has. It is the proactive strategy aimed at ensuring that the people of Uganda know and appreciate human rights and respect them.

In 2004, the Commission continued to spearhead the creation of awareness among the people of Uganda for the protection and promotion of human rights, civic obligations and constitutionalism. This was mainly done through education and training, media programmes, research, and documentation as a major strategy to promote awareness and respect for human rights.

1.1 Education and training

The Commission held sensitisation and training workshops; organized media programmes; joined the rest of the world to commemorate the International Human Rights Day; and published human rights materials.

1.2 Workshops

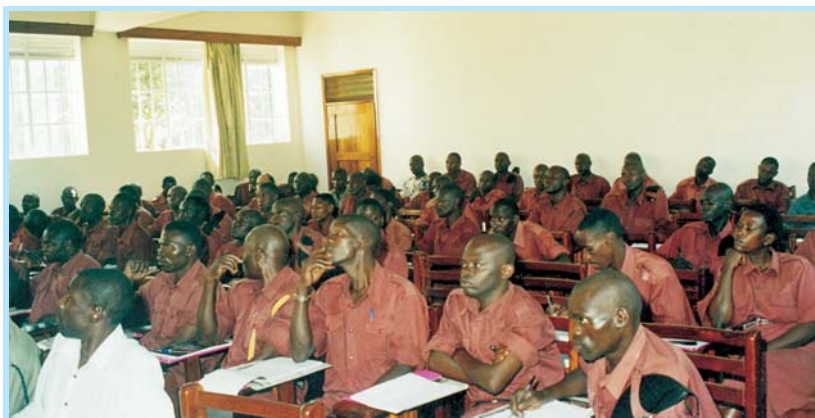
In 2004, the Commission held a total of 29 education and training workshops for security agencies, local council leaders, teachers, youths and students. A total of 2490 people were sensitised during the said workshops.

Table 1.1 Number of people at the workshops in 2004

No.	Target group	No. Sensitised
1.	UPDF	440
2.	Intelligence officers	100
3.	Special Police Constables and Police Constables	374
4.	Local Council leaders	1119
5.	Youth leaders	70
6.	Secondary School teachers	230
7.	Civil servants, private sector, youth	157
Total		2490

During previous human rights sensitisation workshops, it had emerged from concerns and recommendations of participants that the lack of human rights awareness among security agencies was partly responsible for the continued violation of human rights. It was expected that respect for human rights would be enhanced if members of the police force, the UPDF and operatives of intelligence agencies were sensitised in order for them to appreciate the importance of respecting human rights in ensuring security in the country.

The Special Police Constables (SPCS) were particularly targeted because they enforce the law alongside police and they mostly deal with people at the grassroots within the local communities where they operate. Besides, information was also received from Police headquarters that by the nature of their appointment (contractual), SPCs do not get exposed to adequate training and more so in the area of human rights. Consequently many of them unknowingly engage in acts that violate human rights. The training workshops for SPCs were intended to improve their bad human rights record.



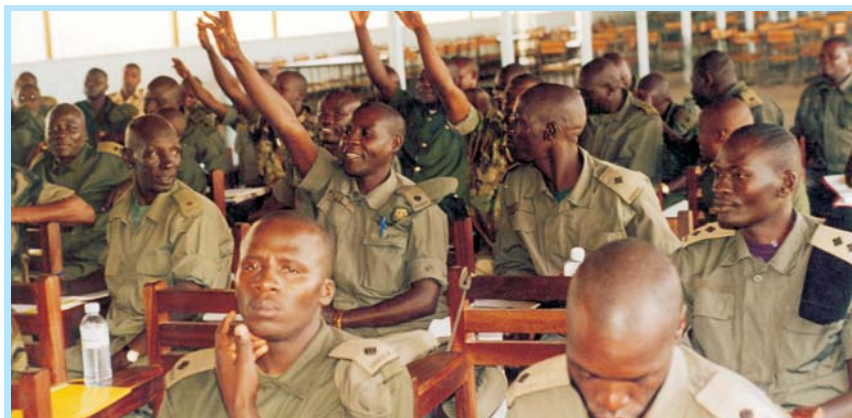
Special Police Constables attending a human rights sensitization workshop organized by UHRC at Cardinal Nsubuga Leadership Centre in Kampala in January 2004.



The Director of Education Research and Training, Mrs. Dorah Kabuye hands over copies of the 1995 Constitution to Mr. John Kamywa of the Uganda Police Force during a sensitization workshop for Special Police Constables from Kampala Extra Region in January 2004.

The workshop for *operatives of intelligence organs* was crucial because they are among the top respondents in complaints filed at the Commission against human rights violations. It was also necessary to make the members of these intelligence organs aware of the important role they have in the promotion and protection of human rights. It was the second workshop in four years that the Commission was holding exclusively for intelligence organs in Uganda, the first one having been held in 2000.

The UPDF as the national army has a constitutional mandate to defend the sovereignty and territorial integrity of Uganda. Inevitably the national army becomes involved as a party when there is armed conflict. The armed conflict in some parts of the country has put many human rights at stake. The Constitutional mandate also requires that the UPDF respects and upholds human rights. UPDF as a player where there is armed conflict, as a unit that dispenses justice and sometimes gets involved in law enforcement



UPDF officers during a plenary discussion at a human rights sensitization workshop organized by UHRC for the UPDF at Kabamba military training school in June 2004.



Major Charles Wacha, the OC UPDF Human Rights Desk addressing participants during the human rights sensitization workshop organized by UHRC for the UPDF at Kabamba military training school in June 2004. On the right is Mrs. Dorah Kabuye (UHRC), and on the left is Rose Mary Kemigisha (UHRC), Joan Mulindwa (UHRC) and Major John Paul Ssonko (UPDF human rights desk)

needed to be sensitised about human rights.

Local Council leaders play a very important role in the promotion and protection of human rights and therefore need to know human rights to be able to protect them. The Local Council leaders

are in constant contact with members of society especially those at the grassroots and they have the responsibility to lead, guide and protect them. It was vital that Local Council leaders be sensitised on their role in human rights protection and promotion.



Mr. Charles Muwunga, Regional Senior Human Rights Officer, Jinja Regional Office addressing Local Council leaders in Ntenjeru Mukono South constituency on the rights of the vulnerable people in April 2004.

Teachers were specially targeted owing to their role in imparting knowledge, guiding, counseling and grooming children, who are the future generation. It was expected that teachers would automatically pass on the knowledge and information on human rights acquired from the workshops to their students. This way a culture of human rights can be nurtured in young people.

1.2.1 Education materials

During the workshops, the Commission made presentations, which were multiplied and distributed to the participants for their human rights information package. At some of the workshops the Commission was able to distribute copies of the Uganda Constitution. Thus in 2004, a total of 546 copies of the Constitution were given out by the Commission during the education and sensitisation workshops.

Among the topics presented and discussed during the workshops were:

1. The concept of human rights and the role of the Uganda Human Rights Commission
2. Torture as a human rights issue
3. The rights of suspects before and after arrest and their demands on the police
4. Proper use of force and firearms
5. The disciplinary code of conduct for law enforcement officers
6. Human rights and vulnerable groups
7. The right to life and the obligations it places on the national army.
8. Understanding the law governing the UPDF with particular emphasis on international law, the Constitution and the UPDF Act, Cap 307 (formerly the NRA Statute).
9. The Army Code of Conduct and Ethics.
10. The Convention on the Rights of the Child and its demands on the army.
11. The Land Act
12. The Domestic Relations Bill
13. The Constitution and Constitutionalism
14. Poverty Eradication and human rights

Table 1.2 Summary of the workshops held

S/N	Date	Place /Venue	No. of Participants	Nature of participants	Theme and major Goal
SECURITY AGENCIES					
1.	27-28 January 2004	Cardinal Nsubuga Leadership Centre Nsambya	109 (3 females)	SPCs from Katwe & Wandegaya Police Stations	Theme: Enhancing human rights in law enforcement Goal: To sensitise Special Police Constables in human rights, the human rights standards required in the performance of their official duties and to ensure the respect for human rights and law enforcement.
2.	29-30 January 2004	“	97 (11 females)	SPCs from Katwe & Wandegaya Police Stations	
3.	15-16 March 2004	“	76 (4 females)	SPCs from Old Kampala & Central Police Stations	
4.	18-19 March 2004	“	92 (6 females)	SPCs from Old Kampala & Central Police Stations	
5.	21-22 June	Kabamba Military Training School	215	UPDF officers on a political and leadership course	Theme: Enhancing human rights observance by the national army.
6.	1-2 July	3 rd Division Headquarters, Mbale	145	UPDF political commissars	
7.	4 – 5 May 2004	The International Conference Centre Kampala	100	Members of ESO, ISO and CMI	Theme: Enhancing Human Rights Observance by Security and Intelligence Organs. Goal: To empower the members of security and intelligence organs with human rights knowledge and skills to enhance respect for human rights and motivate them to promote and protect human rights.

9.	27 – 28 April	Kakatwi Lukiiko Hall	40	UPDF, Arrow Boys, Police and Prisons commanders	Theme: The role of security organs in the promotion and protection of human rights
10.	25 – 26 May	Kaberamaido District Hall	40	UPDF, Arrow Boys, Police and Prisons commanders	
LOCAL COUNCIL LEADERS					
11	26 -27 April	Bugolombe Primary School for Ntenjeru sub county	182 (54 female & 128 male)	LC1,2,&3 officials & Opinion leaders from Mukono South Constituency	Theme: Promotion and Protection of Human Rights: A duty for local leaders. Goal: To sensitise local leaders on human rights, and their duty of protecting and promoting human rights standards
12	29 -30 April	Nakisunga Primary School for Nakisunga sub county	155 (44 female & 111 male)	LC1,2,&3 officials & Opinion leaders from Mukono South Constituency	
13	27-28 May	Koome Church of Uganda Primary School for Koome Islands	105 (39 female & 66 male)	LC1,2,&3 officials & opinion leaders from Mukono South Constituency	
14	25-26 November	Tip Top Rest House, Kamuli Town	102	Local councillors	Goal: To sensitise local councillors on human rights and their role in protection and promotion of human rights
15	2 December	NARO, Mayuge	90	Local councillors	
16	25 -26 June	Apac District Council Hall	80	LC5 councillors	Goal: Equip the councillors with the basic knowledge of human rights and how they can relate them to their daily work as representatives of theirpeople and policy makers.
17	2 -3 December	Arua District Council Hall	80	LC5 Councillors	
18	5 – 6 April	Bunyaruguru County, Bushenyi District	50	LC2 Chairpersons, Secretary for Women’s Affairs	Goal: To sensitise local leaders on human rights issues, their role in protecting the rights of the disadvantaged and the functions of UHRC.
19	27 – 29 June	Ndorwa County, Kabale District	48	LC2 Officials	Goal: To sensitise local leaders on human rights issues, their role in protecting the rights of the disadvantaged and the functions of UHRC.

20	28 – 30 November	Ibanda Sub-District, Mbarara District	80	LC2 officials	Goal: To sensitise local leaders on human rights issues, their role in protecting the rights of the disadvantaged and the functions of UHRC
21	29-30 November	Kibaale Hotel, Fort Portal	74 (39 female)	Parish councillors and leaders	Theme: The role of local leaders in the promotion and protection of human rights Goal: To sensitise the grass roots leaders on their roles in promotion and protection of human rights and their civic obligations as citizens
22	8-9 December	Town Council Hall, Kiboga	73 (22 female)	Parish councillors and leaders	
23	16 – 17 November	Kumi Social Centre	70	Youth leaders in Kumi	Theme: Human rights and the youth in Teso
SECONDARY SCHOOL TEACHERS					
24	14 – 15 December	Mbale Sports Club Hall	50	Secondary School teachers	Theme: The role of teachers in the promotion and protection of human rights.
25	7 May	Victory Bijja Hotel, Masindi	134 (42 female)	Secondary school teachers	Theme: The role of teachers in the promotion and protection of human rights Goal: To increase awareness of human rights among the teachers as a gate-way to their students.
26	22 June	Impression One Hotel Kyenjojo	46 (16 female)	Secondary school teachers	

1.2.2 Recommendations made by participants during the workshops

More sensitisation and civic education

In all the workshops held, participants expressed desire for more sensitisation on human rights and increased civic education. It was clear that the workshops were only a drop in the ocean which only left them yearning for more information.

Translation of the Constitution

The participants asked the Commission to translate and simplify the Constitution of Uganda so that it can be made more accessible to many people. They also asked the Commission to translate its human

rights information and training materials in local languages for the majority of the population.

Training trainers

It was appreciated that the Commission's capacity to reach every Ugandan was limited and therefore the general feeling was that the Commission trains trainers who would in turn sensitise other people whom the Commission would otherwise not have reached.

Human rights curriculum

The participants recommended that human rights should be incorporated in the training curriculum of security agencies so that all members appreciate human rights by the time they qualify to serve in those agencies.

Human rights desks

It was recommended that human rights desks be established in those agencies where they are not. It was also recommended that the Commission facilitates existing human rights desks to carry out human rights sensitisation.

Expansion of the Commission

The participants appreciated the Commission's effort to open regional offices in the few regions but recommended that the Commission should extend to at least each district. They also recommended that government releases adequate funding for the Commission to be able to extend human rights sensitisation and civic education to all people in the country. They asked the Commission to organise more workshops for all categories of people at different levels in society.

Outreach to grassroots populations

Concern were raised that the people at the grassroots were not benefiting from the Commission's human rights sensitisation programmes. Participants were concerned that the people at the grassroots were the least aware of their human rights and therefore human rights

violations were prevalent at that level. They recommended that the Commission does whatever is possible to create awareness of human rights and civic obligations at that level.

Sensitisation for other groups

In all workshops the participants of each target group recommended that the Commission sensitises their partners and stakeholders in that field. For instance in police workshops, they recommended sensitisation for members of the private security companies, other law enforcement officers especially in local administrations and government.

Law reform

Participants recommended to the Commission to ask Parliament to review existing laws to repeal outdated ones and enact others. Specifically they recommended review of the law on drugs and substance abuse to make it more stringent and the law on defilement to ensure protection of the boys' rights. They called for a new law to compel parents to take their children to school and prosecute those who do not.

Administration of justice

Participants recommended to government to increase the number of officers in the justice system particularly judicial officers to ensure speedy delivery of justice

Remuneration and welfare

All the groups sensitised complained about their inadequate remuneration and poor conditions of service. They acknowledged the difficulty in enforcing human rights standards of others when one's own rights and welfare were grossly violated. In particular, the Special Police Constables complained that the terms of their employment, which is contractual, were very unfair as they are employed on six-month contracts, which have been renewed over again for the last 3 years. They

said they have no job security as renewal of their contracts depended entirely on the District Police Commander of their area.

1.2.3 Recommendations specific to Local Councils

1. Government should strengthen and facilitate adequately the Local Council Courts from LC I to LC III, through building the capacity of the LCs to manage them better. The participants wanted the LC judicial power statute amended so that the pecuniary jurisdiction of LC courts is increased to take into account the prevailing economic circumstances. The prescribed awards and fines in the statute are meaningless.

2. Government should avail all LCs Courts with the LC Judicial Powers Statute and the Constitution so that they are conversant with the provisions that govern the operation of these courts.

1.2.4 Lessons learnt

There is a widespread lack of awareness on human rights and civic obligations, which was apparent during the workshops. The discussions at the beginning of the workshops indicated a lack of appreciation of human rights and at the extreme, some resistance towards the principles of human rights. Of particular concern were the exceptional reactions towards the requirements of respect for freedom from torture, cruel, inhuman, degrading treatment or punishment. It was apparent that the preferred practice among intelligence operatives for extraction of information was through torture. To some others, there was no other option of extracting information from suspects other than methods that qualify as torture.

However, by the end of the workshops the tone of discussions had completely changed positively as participants began appreciating the importance of

respecting human rights and the implications of not respecting them. The realization and appreciation of the high cost of violating human rights on them as individuals, on their organisations, and on the State became evident. They also appreciated that even they as members of security agencies also have human rights which must be respected. They realized the importance of respecting other people's rights even where they are for example combatants on the enemy side; or suspects in their custody. It was quite clear that many of those sensitized had been erring because they lacked awareness of human rights.

During the workshops, the local leaders exhibited a high level of desire for information on human rights. Unfortunately they were limited by the information materials available most of which were in English, whereas only a handful of them were comfortable with it.

Most of the participants yearned for more knowledge, information materials on human rights and expressed the wish to be supplied with Commission information materials.

1.3 Media Programmes

Through programmes on radio and television, the Commission was able to reach some sections of the public. In all, the Commission had 45 radio talk show programmes, 206 spot messages and 12 television programmes. The Commission, in conjunction with the Legal Aid Project, organised talk shows on Radio one, Power FM, Dembe FM, Radio Uganda, CBS, KFM, Radio Simba and Radio Sapientia, to sensitise the public on the Domestic Relations Bill, domestic violence, torture, and children's rights. Special programmes were also held in commemoration of International Human Rights Day.

Table 1. 3. Media programmes held in 2004

Date/Month	Media station	Coverage area	Programme & Language	Salient issues discussed
Nov –Dec	Continental FM	Kumi, Soroti, Katakwi, Pallisa, Mbale & Sironko	Ateso English	-UHRC establishment,
September-December	Voice of Teso	Soroti, Kumi, Kaberamaido, Katakwi, Kapchorwa, Pallisa, Nakapiripirit, Moroto, parts of Lira, Kayunga, Kamuli, Mbale, Sironko, Apac, Tororo	Ateso English Kumam	functions, powers and activities -The right to food and its challenges
September-December	Kyoga Veritus FM	Soroti, Kumi, Kaberamaido, Katakwi, Kapchorwa, Pallisa, Nakapiripirit, Moroto, parts of Lira, Kayunga, Kamuli, Mbale, Sironko, Apac, Tororo	Ateso English Kumam	-Human Rights and prisons -Rights of women -Right to education -The role of security organs in the protection and promotion of human rights -The IDP policy -The challenges of HIV/AIDS to the human rights campaign
24 September	All Karamoja FM	Moroto, Kotido, Nakapiripirit, parts of Kapchorwa and Lira Districts	Program: UHRC's powers and functions, and the opening of Moroto Regional office. Language: English, Ngakarimojong	- The intended coverage of the regional office - Why the office was being opened at such a time -Sensitisation of the people on their rights Mandate, Functions and Powers of UHRC
6 May	Bunyoro Broadcasting Services	Masindi, Hoima, Nakasongola, Kiboga, Kibaale, Nebbi, Gulu, Apac	Program: "Know your rights" Language: English, Rutoro-Runyoro, Luganda	
18 November	Western Broadcasting Services	Kamwenge, Kabarole, Bundibugyo, Kasese, Kyenjojo, Kibaale, Mubende, Mbarara, Bushenyi	Program: "Heated Debate" Language: English, Rutoro-Runyankole, Luganda	-Mandate, Functions and powers of UHRC. -The complaint handling process

28 November	Radio Kagadi	Kibaale, Mubende, Masindi, Kiboga, Mubende	Program: Things you ought to know as a citizen Language: English, Runyoro-Rutoro-Runyankole, Rikiga, Luganda	-Mandate, Functions and powers of UHRC. -The complaint handling process
17 March-23 June -13 October	Voice of Tooro	Kabarole, Bundibugyo, Kasese, Kyenjojo, kibaale, Kamwenge, Mubende, masaka Mbarara, Bushenyi	Program: “ Know Your Rights” Language: English, Rutoro-Runyankole, Lunganda.	-Your property Rights: Land Rights and Land Tribunals vis- a-vis ordinary courts of law. - Rights Of children - Right to liberty -Judicial powers of Local Council courts - Police and the right to bail

1.4 Commemoration of the International Human Rights Day

The Commission joined the rest of the world to commemorate the International Human Rights Day on 10th December. Since its inception in 1997, the Uganda Human Rights Commission has been commemorating the International Human Rights Day through different activities like publishing

newspaper supplements, participating in community events like charity walks and organizing radio and television talk shows. The Commission has also previously commemorated the day by carrying out joint activities with stakeholders in the Human Rights fraternity.



UHRC marking the UN Human Rights Day, 10th December 2004 at the Centenary Park. R-L: Honourable Mike Mukula (Guest of Honour), Commissioner Veronica Bichetero, UHRC and Sarah Kitonsa, Director Complaints and Investigations Directorate, UHRC

In 2004, the Commission marked the day with an Open Day event held at the Centenary Park, Kampala where an exhibition of human rights work was jointly held with the Police, Prisons Services and the Army.

The Day provided a forum to disseminate information on human rights, the functions and activities of the Commission. The event also provided an opportunity for a one-on-one encounter with the various publics in which the Commission was able to make on-the-spot clarification/explanation of any contentious human rights issue(s) or queries.

1.5 Human Rights Publications

Your Rights Magazine

One of the ways in which the Commission disseminates human rights information is through a publication: *Your Rights Magazine*. For every issue, 4000 copies of the magazine are produced. In the period under consideration, 3 issues of *Your Rights* magazine were produced covering the following major themes: Prisoners' rights; Constitutionalism; peace and human rights.

Human rights Brochures

The Commission developed two informative human rights brochures in Runyakitara for public use. The Commission published a guide titled "Arrested: Your Rights and Obligations". A brochure on bail application process was also published.

1.6 Human Rights Training Manual

A project to produce a human rights training manual for the UPDF started in July 2004. A total of seven units were developed. Accordingly, a draft manual was produced and pre-tested to a group of 84 training officers and men at Jinja Military Academy from 20th–22nd December 2004. In Jinja Military Academy three units of the manual were pre-tested while four were pre-tested in Oliver

Tambo Leadership School in Kaweweta, Luwero district from 17th–20th January 2005 where 28 participants attended. The pre-testing continued and the final manual was expected to be out in 2005.

1.7 Constitutionalism and Democracy

1.7.1 Constitution Day conference October 2004

The Commission participated in commemorating the 9th anniversary of the promulgation of the 1995 Constitution of Uganda. Every year since 1997, the Commission commemorates this day with a two-day national conference held under a specific theme.

To commemorate the 9th anniversary of the promulgation of the 1995 Uganda Constitution, the Commission held a two-day conference on 6th and 7th October 2004, on the theme: ***Upholding Democratic Principles for a Peaceful Political Transition***. The Commission identified this theme based on the developments in the political environment with implications to advancing constitutionalism in the country; specifically, the likelihood of change of political systems from Movement to Multiparty.

The Conference held at Hotel Africana in Kampala was attended by 91 participants comprising of politicians, diplomats, members of parliament, human rights activists, students representatives from higher institutions of learning, Civil Society Organisations, religious and cultural leaders, members of the security forces, journalists and researchers. It was funded by Friedrich Ebert Stiftung (FES). At the end of the conference participants drew up the Kampala Declaration 2004, which constitutes the recommendations and resolutions of the participants. (See Appendix A)

1.7.2 Sensitisation workshops on the Rights-based Approach

The Commission is spearheading the implementation of the Rights Based Approach to Development. For this reason the Commission targeted specific stakeholders especially policy makers to introduce the RBAD, its meaning, advantages and to allow discussion about its disadvantages to policy-makers in the local councils under the decentralization structure. The Commission also sought to help the local council officials understand and appreciate their role and that of UHRC in the implementation of the HRBAD; to enlist support and partnership for eventual introduction of HRBAD and lay a

strategy for the way forward for the introduction and implementation of the rights-based approach in planning and implementation of local council activities.

The Commission held RBA workshops with Government Ministries and Departments, Policy-makers, Local Government Officials, Parliamentarians, Civil Society Organizations, lawyers and the media. These RBA workshops were held in *Mbarara, Kabarole* and *Kampala* for 157 participants while several presentations on RBA were presented at workshops in Lira, Tororo, Mbale, Kabale, Mbarara, Arua, Masaka and Kasese for 242 participants

Table 1. 4. Summary of RBA workshops held

No.	Date	Place /Venue	No. of Participants	Nature of participants	Presentations made
1	3 March	Ankole Riverline Hotel Mbarara	57	District local council leaders, civil servants	1) The Human Rights Based Approach to Development: Linking Human Rights to Development.
2	5 March	School of clinical officers Kabarole	40	District Officials, Youth, Press	2) Integrating Human Rights Based Approach In Policy making: A case of the local Councils 3) Key Players in Applying the Human
3	17 March	Sheraton Hotel, Kampala	60	Private Sector	Rights Based Approach and the Role of the Uganda Human Rights Commission. 4) The Rights-Based Approach: Towards Best Practices in Uganda – Ministry of Local Government.
TOTAL			157		

Other workshops where RBA presentation was made					
No.	Dates	Place/Venue	No, of Participant s	Nature of Participants	Presentations made
1	15 -19 June	Lira	30	- Local Government Officials, NGOs, Workers on advocacy for workers rights.	- The Human Rights Based Approach to Development: Linking Human Rights to Development.
2	29 June- 2 July	Mbale	34		
3	8 -11 July	Kabale	30		
4	15 -18 July	Mbarara	36		
5	4 -7 October	Kasese	37		
6	25 -28 October	Arua	30		
7	8 -11 Novembe r	Tororo	23		
8	22-25 Novembe r	Masaka	22		
Total no. of Participants			242		

Other Workshops held by the Commission

No.	Date	Venue	No. of Participants	Nature Of Participants	Theme
1	18 June	Hotel Equatoria	63	NGOs, Religious Leaders, Gov. Ministers, Cultural Leaders	Contentious issues in the DRB
2	5 October	International Conference Centre	80	MPs Government Departments, NGOs, Victims	Implications of the ICC investigations on Human rights and the peace process
3	13 November	Hotel Africana	52	Government, MPs, NGOs, CSOs, Lawyers Media	Implications of the White Paper and recommendations of Constitutionalism

1.7.3 Recommendations made by participants

The participants committed themselves to promoting the rights based approach at their various institutions and as an indication of this commitment made the following recommendations;

1. UHRC should examine the policy guidelines of Local governments and make proposals to ensure that they are rights-based
2. UHRC should sensitise Local governments on the human rights tools that can be used to ensure development for the people.
3. UHRC should assist all the key players in the rights based approach to development in local governments to know their roles.
4. Government should review and evaluate the decentralisation programme that has been implemented now for 10 years to see its successes and failures so that it can be improved.
5. Local government leaders should have a minimum level of education so that they can appreciate the value of education and make it a priority in planning.
6. Local governments should seriously take up their mandate of making by-laws and ordinances and ensure that they are lawful and rights-based to facilitate the enjoyment of human rights.
7. The Local government councils should be vigilant on their social responsibility and set standards, to ensure that people are not exploited or their human rights abused in the era of privatisation and profit-motivated service delivery.
8. Local governments should institute safeguards and monitoring mechanisms to make duty bearers fulfil their duties.
9. Local governments should make work plans that take care of the concerns of the disadvantaged and allocate budgets bearing in mind the implications or the need to ensure that programmes comply with human rights requirements.
10. Plans and programmes of local governments should give special attention to marginalised groups so as to equalise their opportunities.
11. The Local governments should empower marginalised groups like the youth and women,

the poorest of the poor to claim their rightful share of the district revenue.

12. Participants committed themselves in their respective capacities to adopt the rights based approach whenever they are planning and implementing local government programmes.

1.8 Conference on the International Criminal Court Bill 2004

On January 29th 2004, the Chief prosecutor of the International Criminal Court (ICC), in a joint press conference with the President of Uganda, announced that ICC would initiate investigations into the situation in Northern Uganda for the purposes of prosecuting those responsible for the crimes committed during the Lord's Resistance Army 18-year insurgency. However, some concerns were raised about the possible negative impact of these investigations on the prospect of peace and dialogue in Northern Uganda, facilitated by the Amnesty Act. Government also came up with a Bill - The International Criminal Court Bill, 2004, to legalise the ICC operations in Uganda. Uganda is a party to the Rome Statute, which establishes the ICC. The Commission consequently organised a one-day conference under the theme: *The Implications of the International Criminal Court investigations on Human Rights and the Peace Process in Uganda*, to encourage debate and make recommendations to Parliament.

The conference was attended by 80 participants drawn from NGOs, religious leaders, government ministries, cultural leaders.

The recommendations from the conference were forwarded to Parliament for action and the report was shared with the ICC team.

1.9 Workshop on the Government White Paper

The Commission organised a workshop to deliberate on the issues highlighted in the Government White paper. The workshop held on 13th November at Hotel Africana was attended by 52 participants comprising lawyers, representatives of CSOs, academicians and Members of Parliament.

The workshop was aimed at understanding the *White Paper* content and the human rights implications thereof; facilitating civil society discussion and presentation of views on the White Paper; and making appropriate recommendations to Parliament. Specifically the meeting discussed and assessed the implications of the White Paper recommendations on constitutionalism, the rule of law and human rights in Uganda. Presentations on *Constitutionalism and the Rule of Law: A case of the White paper*; and the human rights implications of the White Paper were made. A report was produced and disseminated to various stake-holders.

1.10 Stakeholders' workshop

On 12th October 2004, the Commission held a stakeholders workshop for institutions involved in the criminal justice system.

The objectives of the stakeholders' workshop were:

- To create awareness of the role and functions of UHRC.
- To define and analyse the various roles and responsibilities of the various stakeholders.
- To expose participants to the need to improve upon the operation of the existing criminal justice system

1.11 United Nations Volunteer Programme: Credible partner in the Promotion and Protection of Human Rights in Uganda

The collaborative partnership between the Uganda Human Rights Commission and the United Nations Volunteers Programme on the promotion and protection of human rights at the community level has progressed well since its inception in 2003.

Premised on the universal understanding and recognition about the importance of good governance in development, the United Nations Volunteers Project has made substantive contributions towards the work of the Commission in the districts of Kabarole, Kasese, Mbale, Soroti, Gulu and Bundibugyo through outreach activities in rural communities especially the usually hard to reach sections of the population.

In addition, the project has designed and carried out training sessions on human rights for different groups at the district and sub county level and this has greatly enhanced the beneficiaries to implement the good governance agenda and human rights standards in a mutually reinforcing way.

Apart from the Uganda Human Rights Commission, the UNV supported project is also working with two other strategic partners namely the Uganda Amnesty Commission in the dissemination of the Amnesty law as a genuine piece of legislation for peace and reconciliation designed to end insurgencies in the country. While with the Ministry of Local Government, the project is involved in the training of local council court officials of which to date more than 1000 members have been trained in the systematic administration of justice at the local level.

During the period under review, 26 groups of community based voluntary action groups were identified and empowered with skills on the promotion and protection of human rights. Following are some of the project's milestones to date.

1-Voluntary Action Groups

Twenty-six community based voluntary action groups were identified and their members trained in human rights as part of the project's exit strategy. These have been identified in Kasese, Kabarole and Bundibugyo districts while in Soroti, Mbale and Gulu plans are underway to do the same. The voluntary action groups, popularly known as VAGs will facilitate access to justice to the general public through the formation and training of local voluntary groups, create a link between the community, legal and human rights bodies, enhance human rights awareness and the spirit of volunteerism among the local population, strengthen the capacity of Uganda Human Rights Commission to reach out and effectively interact and dialogue with the local communities.

2-LC I and II Training

In western Uganda, United Nations Volunteers under the project trained over 1000 members of the local council court in the districts of Kasese, Kabarole and Bundibugyo especially in the sub counties of Maliba, Bugoya, Lake Katwe, Muhokya, Kyarumba, Kyondo, Bwera and Nyakiyumbu, Kicwamba, Bukuku, Kisomoro, Mugusu and Bubukwanga. During these trainings

emphasis was put on four values namely; Human Rights, Ethical Conduct, Natural Justice and Gender Sensitivity (HENGs), which are the main pillars in the administration of justice.

3-The Human Rights Desk

The Project initiated and in some cases resuscitated the establishment of a human rights desk at the district level for purposes of mainstreaming human rights issues in the development planning process and also acting as flashpoints for human rights issues. All the districts where the project is operational welcomed the concept and currently efforts are underway to identify mechanisms to upload this initiative as a mainstream activity in local council administration. The districts of Kabarole, Kasese, Bundibugyo and Mukono have already expressed interest to set up the desk as soon as possible.

4-International Volunteers Day 2004

The commitment by serving United Nations Volunteers is demonstrated through humanitarian and sometimes, philanthropic practices. To this extent, the UNV Project has since 2003 used the International Volunteers' Day as an opportunity to extend a hand of services to needy and vulnerable communities. In commemorating the International Volunteers Day 2004, UNVs under the project mobilized local communities and joined hands in the rehabilitation of Angai Primary School in Soroti district. The school was destroyed in 2003 at the height of insurgency activities in the Teso region.



From L-R; Patricia Achan (UHRC), Paulo Matogo (UNV PO Uganda, Robert Palmer (Program specialist UNV HQ) and Tapiwa Kamuruko (UNV Programme Manager) during the ground breaking ceremony for the rehabilitation of Angai primary School in Soroti District

5-Collectiveness and synergy

Like any other human rights initiative, the UNV Support to the Promotion of Human Rights in Uganda Project, is a participatory undertaking that requires dedication, transparent and functional arrangements where all harness their efforts and streamline their collective strength and individual strategic significance and comparative advantages. Promoting human rights and volunteerism in Uganda is more viable and rewarding through good networking and building/ developing collective capacity than acting independently. This could best be served by creating and sustaining relevant and operational networking among all concerned partners such as civil society organizations, NGOs and community based organizations. The UN Project has facilitated

vibrant networking among these organizations and further highlighted the strength of volunteerism as an asset and abundant capital for development.

1.12 The Library and Documentation Centre (LDC)

The Library and Documentation Centre is the information unit of the Commission which is charged with making human rights related information available to target users. The LDC is where information is collected, processed, stored and made accessible to users.

During the period January – December 2004, the LDC situated at headquarters registered 1,624 users. Their categories are shown in the table below:

Table 1.5 Categories of Library and Documentation Centre users

Month	Students	Independent Researchers	Lawyers	Journalists
Jan.	125	24	6	2
Feb.	136	23	10	1
March	123	44	12	3
April	118	39	8	1
May	121	41	5	-
June	99	29	6	1
July	72	36	5	2
August	42	28	6	-
September	65	27	4	3
October	96	30	9	-
Nov.	102	31	11	4
Dec.	90	28	6	3
Total	1,136	380	88	20

1.13 Materials received

The LDC received a total of 749 titles in the categories indicated below:

Table 1.6 Types of documents received in the LDC

Type of Document	Text books	Reports	Journals /Newsletters	Bills	Acts
Number of titles	540	55	130	20	4

The Commission continued to stock the libraries at the regional offices with relevant materials including a number of books, magazines, journals and periodicals.

1.14 Commission website

The Commission's website: www.uhrc.org was very active during the period under review. A total of 83 items were posted on the website as indicated below:

Table 1.7 Type of information posted on the Commission's website

Type of information	Position papers	Tribunal decisions	Press releases	Cause lists	News items	Publications	Prison Visit reports
Number	18	30	5	12	10	4	4

1.15 Developments:

- The Library and Documentation Centre paid for Institutional Membership to the American Information Centre. The membership linkage is an effort to share information on human rights related subjects with the American Information Centre. Under this arrangement, the Commission is entitled to the following services:

- Receive all electrical journals on subjects of interest
- Receive article alerts
- Borrow a shelf of books on topics of interest
- Books and periodical donations
- Assistance in research by staff
- Printed copies of journal articles

1.16 Challenges

1. High cost of the Constitution.

At 6500/= the cost of a copy of the Constitution is prohibitive to the majority of the beneficiaries of the Commission's activities. The Commission tried to donate some copies of the Constitution to participants but they were never enough to go round. Yet it was quite evident that the people desired copies. In our opinion a copy of the Constitution should be as accessible as possible to every Ugandan.

2. Lack of simplified versions or translated copies of the Constitution

A critical obstacle to the Commission's work is that the Constitution is in English and therefore cannot be read and understood by the majority of the people of Uganda. It is an observation that came up in many of the workshops the Commission conducted. The implication is that

there is a critical need to subsidize mass production of the Constitution; to simplify and also translate it into local languages.

1.17 Recommendations

- Parliament should urge government to avail resources to UHRC to undertake to translate and simplify the Constitution to make it more accessible to the majority of Ugandans
- Government should endeavour to avail more copies of the Constitution to all Ugandans
There should be more dialogue and cooperation between the Uganda Human Rights Commission and all security organs particularly the intelligence organs with a view of streamlining and better coordination in resolving complaints against intelligence and security organs.

CHAPTER 03

MONITORING POLICIES OF GOVERNMENT AND BILLS OF PARLIAMENT

3.1 Introduction

The Commission is responsible for monitoring government's policies, plans and programs as well as laws/bills of Parliament to assess the extent to which they are human rights compliant. In the overall guiding framework in monitoring policies and Bills the Commission is guided by principles of a human rights-based approach. In this approach it is expected that government programmes have the objective of achieving human rights and therefore should be guided by the commitment of government to respect, protect and fulfil its human rights obligations. Such an approach would call for the process where policies and programmes are designed with the participation of the affected people. It is important that the process and implementation bear in mind the human rights principles of equality and non discrimination and that problems of the vulnerable are given specific attention and treatment.

3.1.1 Assessing human rights compliance of Government policies

For any action, program, policy or plan it would be useful to subject it to the following questions to be able to assess its human rights compliance. These questions could include (but not limited) to the following:

1. What is the purpose of the policy, plan, program or action?
2. What is the likely policy effectiveness?
3. Does it directly or indirectly violate human rights?
4. Isn't there an alternative approach that has

less human rights burdens?

5. Does it have clear targets and benchmarks for the assessment of success or failure?

3.1.2 Clarity of purpose of the policy, plan, program or action -

It is important that the purpose of every action by the State or non-state actor is clear and if is not clear, clarification should be made. Clarification of purpose can be achieved through public debates in the media, radios and workshops, meetings so that prejudice, stereotypes and irrational fear is eliminated and public understanding and appreciation is enhanced and if not convinced people reject it. For any government policy or bill, the Commission is always interested in how much public debate has gone into it. Further the Commission assesses whether the purpose achieves human rights objectives.

3.1.3 Evaluation of Effectiveness of Policy/Plan, Program or Action:

The policy effectiveness has to be evaluated so that it is established whether the means to achieve that policy/program are reasonably likely to achieve the objectives without violating human rights. This requires a rigorous and honest investigation with probably expert opinion as well as wide consultations over the policy. The Commission would have loved some kind of a human rights impact assessment of every policy/plan/programme of government. Unfortunately it has not been possible to do this but plans are in the offing to have the capacity to do this.

Having a human rights impact assessment of government policies and programs would help expose the success or failure of government policies and programs in human development, in social protection of the vulnerable. It would go beyond measuring the economic success of such policies/programs.

3.1.4 The targeted group/people: –

This can be seen at two levels: First is whether or not the policy has targeted those who are in need (the vulnerable). Second, even if those in need were targeted are they likely to all benefit or did they benefit. In this case it is important that the real vulnerable groups for which policies are intended are clearly identified and targeted for assistance. Most programs/plans tend to overlook this important aspect or fail to properly identify specific groups including groups within groups for direct targeting of their problems.

3.1.5 Assessing the possible human rights burdens -

It is important to assess the human rights impact of each government policy/plan/program. This is because even well intentioned policies or programs of the community might have negative human rights burdens that outweigh the benefits of the policy. Policies and programmes must recognize that there are some absolute rights and core minimum obligations of government that must not be violated and that must be implemented. For example food and water are basic rights that must not be violated and should always be the target of government programs.

If these burdens are found then the next question to ask is whether or not there is no alternative approach that has less human rights burdens? There can be justifiable reasons to violate some rights in

order to promote a public good. The acceptable justifications rotate around public order, public security, public morality and public health. Accordingly even alternatives must be subjected to these tests.

3.1.5 Clear targets and benchmarks

Monitoring and evaluation of policies and programs is essential in a rights-based approach. The Commission therefore assesses whether there are clear benchmarks with time bound targets for achievement.

3.2 Government Policies reviewed in 2004

There were three major policies that the UHRC participated in. The year 2004 saw either their publication (e.g. the IDP policy and PEAP) or the start of their consolidation for example the Uganda Food and Nutrition Policy (UFNP). These are:

- (i) The Uganda Food and Nutrition Policy (July 2003)
- (ii) The Internally Displaced Persons Policy (August 2004)
- (iii) The Poverty Eradication Action Plan (PEAP) (December 2004)

The Commission was fairly satisfied with the process and framework of action in all the three but with a few reservations. With the exception of the PEAP, the first two policies recognize the importance of the principles of a rights-based approach and specifically state in their preamble the human rights obligations (treaties, conventions and laws) guiding the policy. The process leading to them was consultative and the outcome reflected the inputs of different stakeholders garnered during the consultation processes.

(i) The Food and Nutrition Policy:

The Commission was involved in the drafting and reviewing of the food and nutrition policy. The Investment Plan that is supposed to operationalise the policy is also being implemented with the Commission's involvement. The Commission also participated in the negotiation and finalization of the Voluntary Guidelines on the Implementation of the Right to Adequate Food. Currently the PMA together with FAO and the Commission are developing a monitoring tool for the right to food.

(ii) The Internally Displaced Persons (IDP) Policy:

This policy took a lot of time during the preparations and discussions with the stakeholders. In the previous reports the Commission called upon government to release it. The process had taken so long that the Commission together with the other stakeholders had started rolling it out in its draft form. The draft was itself conforming to the human rights based principles. The office of the Prime Minister eventually released the report in August 2004. In this policy the Commission has been given responsibilities as shown below:

Role of UHRC in IDP policy

No.	Role given to the UHRC	Action being /to be Taken
1.	UHRC is a member of the Inter-Agency Technical Committee- charged with planning and coordinating activities of the sectoral ministries, government departments, the private sector, the UN, International Organizations, and NGOs.	The first meeting of the interagency group took place on 28 th June 2005 at the OPM Board Room.
2.	The District Disaster Management Committees collaborate with UHRC to form District Human Rights Protections subcommittee (HRPP), in monitoring protection of human rights of IDPs	The committees are in existence. They are to be sensitized on the IDP Policy
3.	UHRC a Member of the District human Rights Promotion and Protection sub-committee for IDPs (DHRPP), resident in each district.	The Regional Human Rights Officer chairs the district meetings
4.	To advise the DHRPP, and District Disaster Management Committee on how to respond to end human rights violations. Actively ensure respect for Human Rights of Individual human rights of each IDP after consultation with DHRPP	The Chairperson (UHRC) is the Chair of the National human rights Committee for the IDP Policy
5.	Together with DDPR, and Humanitarian and development agencies, UHRC shall sensitize the police and armed forces on the provisions of the policy, child rights, regional and international human rights laws and international humanitarian law.	Program of sensitization is yet to be undertaken

(iii) **The Poverty Eradication Action Plan (PEAP) 2004/5-2007/8:**

The Commission monitored the process of development of the PEAP. The Ministry of Finance Planning and Economic Development consulted a number of Stakeholders namely Central and local Government, Parliament, Donors and the civil society. Unlike the previous PEAP which had four pillars the current PEAP has five pillars namely:

- (i) Economic Management
- (ii) Production, Competitiveness and incomes
- (iii) Security, Conflict resolution and disaster management
- (iv) Good Governance and
- (v) Human development

3.2.1 Brief Assessment of PEAP and its human rights compliance:

The Commission participated in the process of consultations leading up to the new PEAP. The Commission also working together with the UNDP and the Ministry of Finance, Planning and Economic Development hired a consultant, to do two major things namely (a) Identify, if any, the issues in PEAP and Sectoral Papers that are not human rights compliant and also (b) provide guidelines for sectoral planning/ programming. At the time of writing this report the Consultant's report was still being debated and not published. The following however are some of the glaring gaps in the current **PEAP** observed from a human rights perspective

3.2.2 Some Identified Gaps

(i) Human rights views expressed during the consultation were ignored:

It is stated in the PEAP that the document "has been prepared through a consultative process involving central and local Government, Parliament, Donors and Civil society"¹. While these consultations took place, a number of concerns expressed during it have been ignored. The final document is still dominated by economic imperatives. The demand that programs should target human rights objectives have completely been ignored and instead human rights was relegated to the good governance component which is talking mainly of civil and political rights. The PEAP fails to recognize that human rights is crosscutting and should have been built in all the sectoral programmes. The draft PEAP had committed government to a rights-based approach, which however disappeared from the final document. The value-added of a rights-based approach has been explained to officials in the Ministry of Finance, Planning and Economic Development and therefore the Commission hopes that when the guidelines it is preparing is finally ready, they will be seriously utilized in future program design.

(ii) No recognition of government human rights obligations that should guide development.

The PEAP pillars and sectoral programs fail to acknowledge and detail government human rights obligations that should be the basis of planning and programming. International and regional human rights instruments, which prescribe these obligations, were not cited. Not even the Constitution, which spells out what should be the

¹See Poverty Eradication Action Plan 2004/5-2007/8 page xv

basis of planning in Uganda, was not cited. For example, under the National Objectives and Directive Principles of State Policy No. XIV the State is obliged to ensure that all development processes are respectful of all human rights and fundamental freedoms, and help in the realization of rights for all. Failure to observe rights constitutes an obstacle to development. The development process should promote social justice including the fair distribution of benefits of development. This omission does not give the readership the ultimate understanding of the PEAP from a human rights perspective.

(iii) **Poor targeting of the vulnerable:**

Issues regarding the vulnerable is placed in the PEAP section entitled “Human Development” and under the subsection “Social Protection for Vulnerable Groups”. This section has a very limited understanding of vulnerability in terms of social protection. Vulnerable groups are identified only as “orphans and other vulnerable children”, “the elderly” and persons with disabilities. Promised priority actions for the vulnerable is therefore confined to these groups. Even in these cases it is not clear what nature of community response will be put in place to socially protect these identified groups.

In terms of a rights-based approach and in social reality vulnerable persons are not limited to the above named classified groups. For planning purposes the PEAP ought to have a more generic definition of vulnerability in order to capture and plan for all that are vulnerable. In the absence of a proper definition the PEAP has left a substantial number of vulnerable people without targeting their specific poverty issues. For example PILLAR 2 Enhancing Productivity, Competitiveness and Incomes promotes Programme for Modernization of Agriculture (PMA) whose main objective is

poverty reduction through agricultural transformation and targets subsistence farmers. It is however a fact that PMA is relevant to the economically active and has no strategy for the abject poor thus useless to this vulnerable group.

(iv) **Priorities not marched with Resource allocation:**

Agriculture is identified as central in the eradication of poverty in Uganda because the majority of Ugandans depend on it. However the amount of resources allocated to it in the PEAP does not correspond to its importance.

(v) **Contradictory policies:**

It is agreed as specified under “Environment and Natural Resources Use management”² Uganda’s economy is still largely agricultural, a more equitable land distribution policy would increase productivity and household incomes thereby reducing poverty levels among the poor who cannot access land. It is however a contradiction that the Ministry of Lands, Water and Environment would uproot thousands of people in places they have known as theirs and do not provide them with alternative land to continue producing. Instead they are made landless and destitutes.

3.3 **MONITORING BILLS OF PARLIAMENT:**

The Commission monitors all the bills of Parliament but prioritize on the basis of its manpower and financial capacity on which ones should be given more attention and subjected to scrutiny. During the year under review, the Commission scrutinized the Domestic Relations Bill, the International Criminal Court Bill (2004) and the Constitutional Amendment Bill (2004). In

²See pillar II

this chapter, the Commission highlights the Comments it made to the later Bill.

THE CONSTITUTIONAL AMENDMENT BILL (2004):

In the Annual Report 2003, the Commission made observations on the Constitutional Review Process. Whatever views one may have about that review process which led to the proposals for the amendment of the Constitution, that process has to be regarded as important in the political development of Uganda. The Commission therefore took keen interest in the process and the proposals for the amendments, which came to be discussed in the year 2005 by Parliament. Accordingly the Commission considered the proposed amendments from a human rights perspective and made submissions to the Legal and Parliamentary Affairs Committee of Parliament. For the record the Commission here discusses those submissions.

3.3.1 Uganda Human Rights Commission views on clauses of the Constitutional Amendment Bill 2004

The comments that were made to the Parliamentary Committee regarded clauses the Commission felt had negative human rights implications. It also regarded clauses where the Commission felt needed some improvements. Where the Commission found no negative human rights implications, no comments were made. For example the Commission made no comments on the famous clause 105 (2) on the removal of Presidential term limits because it has no direct effect on human rights. Other than being a controversial political issue generating a robust debate, the removal of Presidential term limits has

no direct violation of any human right principle, convention, covenant or treaty.

The following are the clauses of the Constitutional Amendment Bill 2004, which the Commission wanted, deleted or improved. The yardstick used is human rights standards accepted as applicable in Uganda.

3.3.2 Promotion of public awareness of the Constitution (Clause 5 of the Bill)

The Bill sought to amend Article 4 of the Constitution which places on government the obligation to promote awareness of the Constitution by translating the Constitution into local Ugandan languages and ensuring that the Constitution is taught in schools, armed forces training institutions, and through programmes in the media. The proposed amendment weakens the government obligation by removing the manner in which government should undertake the public awareness. The amendment creates lesser responsibility of government. The Constitution contains basic human rights and therefore the State ought to have clear guidelines in the Constitution on how to create awareness of the Constitution.

3.3.3 Binding effect of the result of a referendum (Clause 4 of the Bill)

Clause 4 of the Constitution amendment Bill sought to have the results of a referendum on any issue binding on all organs, agencies of the State and on all persons and organisations. Article 1 of the Constitution would therefore be amended to include ousting powers of the Constitutional Court to inquire into whether a matter should have been subjected to a referendum or whether a referendum was properly held. The clause only protected “vested interests” from being affected by the

results of a referendum. The Commission pointed out to Parliament that not even the people in a referendum should be allowed to violate basic human rights. Human rights can only be derogated from subject to basic standards. A derogation is only allowed if it is necessary to protect public interest, public morality, public health, public order, public safety or freedom of others. The courts should have the power to inquire into whether a referendum or its results violates human rights or any other right protected under the Constitution.

3.3.4 Protection of personal liberty (Clause 12)

Clause 12 of the Constitutional Amendment Bill sought to amend Article 23 (6) (c) of the Constitution by reducing the number of days a person can be kept on remand from 120 days to 60 days in case of offences triable by the High Court and subordinate courts and from 365 days to 180 days for offences triable only by the High Court. The Commission supported this proposal because our prisons are actually filled up with persons remanded for excessively long periods. However, the proposal fell short of solving one critical problem causing long remands. The majority of prisoners on remand are persons who have been committed for trial in the High Court. These spend long periods in jail without bail waiting for trial. The Commission therefore recommended to Parliament that the amendment proposed should be improved by fixing a minimum period within which a trial must commence and end. This would conform with the right to a fair and speedy trial, which is recognised by the Constitution but is not being respected in most cases.

3.3.5 Right to remain silent at a criminal trial (Clause 13 amending Article 28 (3) of the Constitution)

Clause 13 of the Constitutional Amendment Bill introduces the right of an accused person to remain silent at a criminal trial but then adds that if an accused person decides to remain silent, that fact may be used as a corroboration of any other evidence against the accused. The right to remain silent at a trial is part and parcel of the human right to be presumed innocent until proved guilty which is protected under Article 28 (3) (a) of the Constitution. Anyone who makes an accusation ought to prove it. The proposal to use an accused person's silence against him contradicts the presumption of innocence. The authority to determine the evidential value in a trial should be left to the court to determine.

3.3.6 Right of the family (clause 14 and 15 of the CAB to amend Articles 31 and 33 of the Constitution).

These proposed clauses if passed by parliament has the effect of strengthening equality of rights at, during and at dissolution of marriage. Read together with the provision that any cultures, customs and traditions that undermine the welfare of women are null and void; it would strengthen the law in protecting married women from abuse. The provision on marriage however fails to outlaw polygamy, which negates equality in marriage and lowers the dignity of women in such unions. The Constitution cannot purport to give equal rights at marriage, in marriage and during marriage when a man is allowed more than one wife. Practices that undermine the dignity and welfare of women such as polygamy should be outlawed.

3.3.7 Enforcement of rights and freedoms by Courts (clause 17 of the CAB amending Article 50 (3) of the Constitution)

Article 50 of the Constitution grants rights of going to court by any person when human rights guaranteed under the Constitution is violated. Article 53 (2) gives a right of appeal to any person aggrieved by a decision of a lower court on an issue of human right. Clause 17 of the CAB introduced an amendment to the effect that when an appeal is pending the judgement appealed from shall not be carried out. Although this on the face of it looks logical, it can be seriously abused. There are many instances where people lodge appeals simply to frustrate the successful party. Further, certain remedies granted by a court loses meaning if their execution is delayed. The proposed amendment affects only human rights cases where victims mostly consist of the poor and the vulnerable. For example it would be most unjust if a person illegally held continues to be jailed just because there is an appeal from a court decision, which found clearly that the detention is illegal. The Commission therefore proposed that Article 50 (3) should not be amended and that the present practice where discretion is left to the courts should be maintained.

3.3.8 Uganda Human Rights Commission (Clause 18 amending Article 51 (2) of the Constitution)

Clause 18 sought to amend Article 51 (2) of the Constitution regarding the composition of the Uganda Human Rights Commission. It provides for the position of a Deputy Chairperson, which the Commission supported but removes the requirement that there should be a minimum of 3 members. The Commission recommended to Parliament that there should be a minimum number

of members of the Commission at any one time and this should be specified in the law. Further, a maximum should also be stipulated to avoid a Commission, which is top heavy and therefore has difficulty reaching decisions.

3.3.9 Removal from office of members of the UHRC (clause 20 amending Article 56)

Article 56 of the Constitution provides that members of the UHRC can be removed from office but the procedure for removal is the same as the procedure for removing a High Court Judge although with necessary modifications. The effect of the Article is that it is not easy for the Executive to remove a member of the Commission from office. This protects the independence of members of the Commission. Clause 20 as proposed weakens this provision and makes it easy for the Executive to remove a Commissioner. Security of tenure for Commissioners is important and therefore the current constitutional provision is preferable. Weakening this provision would go contrary to the Paris Principles on National Human Rights Institutions and could therefore affect the accreditation of the Commission to the International Co-ordinating Committee of National Human Rights Institutions, a body that monitors national human rights institutions on behalf of the UN.

3.3.10 Removal from office of members of the Electoral Commission (clause 22 amending Article 60 (8))

Current Article 60 (8) of the Constitution prescribes the grounds upon which the President may remove from office a member of the Electoral Commission. The amendment that was proposed further weakens the security of tenure of the members of the Commission. Power to remove the members should not be vested in the Executive.

This was the strong recommendation made to Parliament. The need for the Electoral Commission to be independent in order to ensure a free and fair election need not be over emphasized.

3.3.11 Voting at elections and referenda (clause 25 amending Article 68)

The current Article 68 provides that voting at public elections and referenda shall be by secret ballot. Secret ballot is meant to encourage voting according to the wishes or judgement of the voter free from coercion, fear or intimidation. It is a requirement in the exercise of democratic rights. Clause 25 however, sought to empower Parliament to decide whether or not an election/referendum should be by secret ballot. The effect of the amendment is that Parliament could abolish or keep secret balloting as a method even for a general election. Such an amendment would not guarantee the free expression of the will of the electors as required under Article 25 (b) of the International Covenant on Civil and Political Rights, 1966 which provides that “*Every citizen shall have the right and the opportunity, without any reason of the distinction mentioned in Article 2 and without unreasonable restrictions to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.*” Uganda is a party to this Covenant and is bound not to legislate in contravention of its provisions.

3.3.12 Political Systems and Regulation of Political Organisations (clause 26-28 and clause 31 of the CAB amending Articles 69-74 of the Constitution)

Articles 69 to 74 of the Constitution have been very controversial and have generated very fierce debates ever since they were enacted. The Articles

introduce the idea of political systems and that the people of Uganda shall have the right to adopt a political system of their choice and that systems can periodically be changed through election or referendum. Logically the Constitution in Article 74 provides that when one system is in operation the others can be subjected to restrictions, which are necessary to allow the chosen system to operate. The problem with these provisions is that while they recognise freedom of association, the laws operationalising the Movement System (The Movement Act Cap 261 of 1997 and the Political Parties and other Organizations Act, 2002) all limited the operations of Political Parties such that the Parties were unable to vie for power or even run their affairs e.g. holding delegates conferences and forming branches. Such limitations violated freedom of association in that parties were not allowed in law to fulfil the objectives for which they were formed.

3.3.13 It is difficult to foresee how these Articles will operate in the light of the Constitutional Court decisions that the Movement as a system was actually a political party and also in the light of the Constitutional Court decision scraping sections of the Political Parties and other Organizations Act, 2002 which’ limited activities of parties when the Movement system was supposed to be in operation.

3.3.14 The challenge is how to ensure that if any form of democracy introduced by the new clauses is in operation, the members who subscribe to the other forms would continue to enjoy their rights. If for example the movement form of democracy is in force, how do you ensure that parties enjoy their freedom of association and assembly in its fullest sense? These are difficult human rights questions. A satisfactory answer can only be found in deleting the Articles of the Constitution to allow for pluralism because in effect it is not feasible for everyone to belong to one organisation.

3.3.15 Members of Parliament losing seats upon expulsion from membership of a Political Party (clause 36 amending Article 83 of the Constitution)

Clause 36 of the Constitutional Amendment Bill sought to add additional ground to Article 83, which provides for circumstances under which a member of Parliament shall vacate his/her seat. The new ground proposed is that when a Member of Parliament is expelled from his/her party he/she shall vacate the seat in Parliament. This provision is troubling. Disagreements within a political party are inevitable and minority views of members of Parliament of a party could be suppressed by threat of losing a seat or expulsion. The proposal is also a serious threat to the freedom of opinion and expression by members of Parliament who could find themselves forced to go along with issues they do not believe in or support.

3.3.16 Right to recall (clause 37 amending Article 84 of the Constitution)

The right to recall a Member of Parliament is provided under Article 84 of the Constitution. The amendment proposed by clause 37 is to restrict the right to members elected under the multiparty form of democracy. If it is a right given voters than the right of recall should apply to all systems. Political accountability is essential in all forms of democracy.

3.3.17 Removal from office of the Director of Public Prosecutions (clause 55 amending Article 120 (7))

The Director of Public Prosecutions (DPP) directs and controls prosecution of criminals. It is a vital constitutional office. The Constitution (Article 120

(6) is clear that the DPP should carry out the responsibility of that office without the direction or control of any person or authority. The terms and conditions of service of the DPP is the same as that of a Judge of the High Court. Clauses 55 of the CAB however, sought to weaken the position of the DPP by amending Article 120 (7), which equates the DPP's condition of service to that of a judge of the High Court. The amendment would give the Executive powers to remove the DPP, powers which would weaken the independence and security of tenure of the DPP. The Commission recommended to Parliament that existing provisions of the Constitution should be maintained.

3.3.18 Special Courts to try persons charged with terrorism (Clause 92 amending Article 222 A)

Clause 92 of the CAB proposed the establishment of special courts to try offences of terrorism and other offences that may threaten national security. There is no plausible justification for the special courts. The existing courts of law are well suited to handle any matters that would have been placed before these special courts.

3.3.19 Legal proceedings against Government (clause 106 amending Article 250 of the Constitution)

Article 250 of the Constitution allows any person with a claim against the government to file a claim in court to enforce that claim as a right. The proposed clause 106 of the CAB is to stop courts or any tribunal from granting injunctions, orders of eviction, attachment, orders of specific performance against a government department, local government or any other body in which government has a controlling interest. In other words the amendment would insulate government,

governmental department/agency, local governments against actions for enforcing a judgement granted against them. The amendment would undermine the effect of judgement or rulings made by the courts and other tribunals such as that of the UHRC. A cardinal principle in human rights law is that a remedy for violation of human rights should not only be adequate but effective. The principle of effective remedy requires that remedies granted must be fulfilled and it cannot be fulfilled satisfactorily unless its fulfilment is not delayed. Leaving the fulfilment of remedies granted by courts to the good - will of government or its agencies is to render useless remedies granted.

Taking into account concerns that judgements could paralyse or interfere with the running of government affairs, and taking into account the need to respect the rights of judgement debtors to effective remedy the following recommendations were made to Parliament.

The Constitution should provide the following:-

- The Secretary to the Treasury satisfies a judgement given against government within a reasonable time. This would give courts discretion to decide whether or not reasonable time had elapsed without payment and therefore issue appropriate orders.
- Where a judgement is against government, local government or a body where government has controlling interest, the Secretary to the Treasury should give directions to that Local Authority or body to satisfy the judgement debt within a reasonable time and that the directive shall be complied with.

- Where a judgement debt is not satisfied within a reasonable time, a judgement creditor should be entitled to a writ of *mandamus* or an equivalent order to enforce satisfaction of the judgement.

The Commission strongly recommended that the proposed amendment should be discarded as it could encourage impunity by government or its departments or local governments because there would be virtually no other means of enforcing judgements against them.

3.3.20 Rights contained in the National Objectives and Directive Principles of State Policy

The National Objectives and Directive Principles of State Policy are contained in the part of the Constitution that is not legally binding or at least there is disagreement as to whether they are enforceable in Courts. Yet these rights are very important for human development and the attainment of adequate standard of living. Rights such as the right to health, the right to adequate food, the right to equitable development are left hidden in this part of the Constitution. The Commission recommended to Parliament that these rights should form part of Chapter 4 of the Constitution, which lists fundamental human rights and freedoms. These economic, social and cultural rights should be given the serious legal recognition that they demand.

3.3. 21 Equality and freedom from discrimination

Article 21 (1) of the Constitution grants equality of rights and freedoms and in Article 21 (2) discrimination on the basis of sex, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion or disability is outlawed. The outlawed grounds are

limited in the opinion of the Commission and therefore leave out potential grounds for discrimination. For example persons discriminated because of a disease such as leprosy or HIV/AIDS cannot claim relief under this present Article. The Commission therefore recommended that the words “*or any other status*” should be added at

the end of Article 21 (2) so as to take care of all other grounds for unfair discrimination. This is the case in the non discrimination Articles of the Universal Declaration of Human Rights, 1948 and the International Covenant on Civil and Political Rights, 1966.

CHAPTER 04

FINANCE AND ADMINISTRATION

4.1 Introduction

The Commission is a self - accounting institution and all its administrative expenses are charged on the consolidated fund. The Government of Uganda contributes to the entire Commission staff wage bill and 8.6% of the non-wage bill. However there are a variety of activities that the Commission has to execute as required by Article 52 of the Constitution. These activities include; inspection of prisons and any other places of detention, conducting awareness and research programmes, monitoring the state of human rights in the country and conducting tribunal hearings into human rights violations. Though all these activities should be funded by the GoU, some are funded by the donor community.

The Government of Uganda has made budgetary allocations to the Commission for each financial year, but this has consistently been inadequate to cater for all the Commission activities. For example in the financial year 2003-2004, the Commission's budget estimates presented to Government amounted to Ug. Shs 10,077,349,666 though the actual release was Ug. Shs. 2,630,869,000, reflecting a deficit of Ug. Shs. 7,446,480,666. The scenario did not change in the financial year 2004-2005. The Commission's budget estimates were Ug. Shs. 3,491,038,856 but the actual release was Ug. Shs 2,524,465,944/= reflecting a deficit of Ug. Shs. 966,572,912/=.

Table 4.1 SUMMARY OF THE COMMISSION FUNDING FOR THE FINANCIAL YEARS 2003-2004 AND 2004-2005

Fiscal Year	Commission's budget Ug. Shs	Gov't Release Ug. Shs.	Deficit Ug. Shs.
F/Y 2003/4	10,077,349,666	2,630,869,000	7,446,480,666
F/Y 2004/5	3,491,038,856	2,524,465,944	966,572,912

4.2 Membership To The Justice Law And Order Sector

Since 2002, the Commission was under the Justice Law and Order Sector and not the Public Administration Sector. The Commission was therefore entitled to a 5% annual automatic increment in its budgetary allocations. However, the above was reversed thereby negatively affecting the Commission's activities since it can no longer qualify for the automatic increment in its budget.

4.3 Capital Expenditure

This is the account on which the Commission makes procurements on capital items such as motor vehicles, computers and other accessories necessary for the implementation of the Commission's activities. In its 6th Annual Report to Parliament the Commission indicated the continuous under funding on this account. In the financial year 2003-2004 the Commission requested for Ug. Shs. 757,130,920 in order to carry out capital purchases such as motor vehicles

(to undertake its activities) however, only Ug. Shs 40,000,000 was provided. The financial year 2004-2005 was not any different because the amount requested for as capital expenditure amounted to Ug. Shs 760,001,960 while the actual release amounted to only Ug. Shs 43,300,000.

The persistent under funding therefore makes it impossible for the Commission to execute its functions. Though the donor community attempts to avail additional funds, under taking some field activities is not possible because there are no vehicles to transport staff to different locations. As a matter of fact the Commissions transport problem is acute having to do with seven - year old vehicles, which are constantly in the garage and thus costing much money.

4.4 Wage Bill

Since 2001 the Commission has attempted to expand and take services nearer to the people through opening six regional offices in Fort Portal, Mbarara, Jinja, Soroti, Moroto and Gulu. This expansion called for an increase in the recruitment of staff. However, attempts to have GoU increase the wage bill have not been successful thereby diverting funds meant for the non-wage activities to cater for the deficit in the wage bill. For example in the financial year 2003-2004 the Commission's

request for the wage bill amounted to Shs 1,599,879,972 against what then government released of Ug Shs.1,298,610,456. In year 2004-2005 the Commission's request for the wage bill amounted to Ug Shs. 1,376,536,896, though the actual release amounted to Ug Shs.1, 308,317,485. The effect of such under funding on the wage bill led to the diversion of funds meant for other activities to pay salaries or wages.

4.5 Staff Gratuity

In the financial year 1999-2000 the Commission decided to employ its workers on a five-year contractual basis and this meant that members of staff were to be paid gratuity after every five years which is 30% of their total earnings. Since the introduction of this policy, many members of staff have completed their five-year contracts and have not been paid their gratuity. The Commission has been holding discussions with the Ministry of Finance, Planning and Economic Development to settle the issue. As a result of these discussions, the Ministry agreed on a figure of Ug. Shs. 894,595,194 as money owed as staff gratuity and subsequently released Ug Shs. 350,000,000 million to settle part of the gratuity, leaving the balance as owing. The staff are claiming this balance particularly those who have left the services of the Commission.

4.5.1 MTEF ALLOCATIONS, BUDGET AND GAP ANALYSIS FOR FY 2004/2005

BUDGET ITEMS	UHRC BUDGET PER MTEF CEILINGS (shs)	UHRC BUDGET AS IN THE CORPORATE PLAN (shs)	ACTUAL RELEASE FROM TREASURY (shs)	FUNDING GAP		FUNDING GAP	
				MTEF Vs. BUDGET		MTEF Vs. ACTUALS	
				Amount (shs)	Equivalent %	Amount (shs)	Eqv %
WAGE	1,320,000,000	1,376,536,896	1,308,317,485	56,536,896	4	11,682,515	1
NON-WAGE	1,260,000,000	1,354,500,000	1,172,848,459	94,500,000	8	87,151,541	-7
DOMESTIC CAPITAL/ CAPITAL DEV'T	40,000,000	760,001,960	43,300,000	720,001,960	1,800	3,300,000	8
DONOR CONTRIBUTION	4,310,000,000	1,612,123,453	1,835,898,809	2,697,876,547	63	1,864,101,191	-50
TOTAL EXCLUDING DONOR CONTRIBUTION	2,620,000,000	3,491,038,856	2,524,465,944	40,465,944	2	95,534,056	4
TOTAL INCLUDING DONOR CONTRIBUTION	6,930,000,000	5,103,162,309	4,360,364,753	3,677,161,936	53	2,061,769,303	30

4.6 Donor Support To The Commission

There have been interventions by the Donor community in supporting the Commission to undertake some of its activities. However this intervention is not sustainable in the long run because donor support is meant to supplement on those areas where Government has not been able to fill the entire gap within the Budget requests. Secondly, it should be understood that donor funding is never permanent and therefore cannot be relied upon at all times.

There has also been a misconception raised in some GoU circles especially the Ministry of

Finance, Planning and Economic Development to indicate that the Donor community was over-funding the Commission with figures reflecting Shs 8 billion as of the financial year 2003-2004. This was never correct and has been clarified by the donor support group to indicate that the figure of Ug. Shs 8 billion was a mere projection of total funds that would be allocated to the entire/overall human rights and good governance sector for the entire country. Thus the Ug shs 8 billion was meant to be allocated to the various players involved in the human rights and good governance agenda such as civil society organisations, the Uganda Human Rights Commission and other players.

**4.6.1 DONOR SUPPORT TO THE UHRC DURING THE FINANCIAL YEARS
2003 - 2004 and 2004-2005**

COUNTRY	AREA OF ASSISTANCE	FY 2003-2004 Ug. shillings	FY 2004-2005 Ug. shillings
Austria	Financial assistance to publication of a monthly human rights magazine "Your rights"	3,693,240	NIL
Denmark	Human Rights and Democratisation Project (HRDP)	1,000,000,000	1,000,000,000
Ireland	Contribution to a basket fund support to UHRC	NIL	295,000,000
Sweden	Renovation of UHRC premises	103,300,000	NIL
Sweden	Contribution to a basket fund support to UHRC	NIL	410,000
UNDP	Capacity building (CCF II-Country Cooperation Framework)	95,130,213	87,500,000
UNDP	Promoting a Rights based approach to Development (RBA)	NIL	43,398,809
TOTAL AMOUNT IN FUNDING		1,202,123,453	1,835,898,809

4.7 IMPLICATIONS OF UNDER-FUNDING TO THE UHRC CORPORATE PLAN

In June 2004 the Commission launched a five year corporate plan (2004-2009) wherein it indicates the direction the Commission intends to take in the five year period with clear priorities and strategic objectives and how the Commission intends to achieve and realise them. This was done after evaluating the previous Corporate Plan (2000-2003) to assess the achievements, challenges and set backs, encountered in implementing it. The following salient issues were realised as weaknesses in the previous corporate plan; lack of performance measures for achieving the strategic objectives therein, lack of the

necessary human and financial resources to implement the plan.

Thus the corporate plan (2004-2009) identified the following as its priorities:-

- 4.7.1 To eliminate the backlog of cases referred to the tribunal during the first year of implementation of the corporate plan.
- 4.7.2 To develop a system and procedures to prevent the accumulation of cases leading to a backlog in the future.
- 4.7.3 To review the system of handling individual complaints to ensure their timely and fair resolution through a review of the present system.
- 4.7.4 To coordinate the national civic education programme during the first three years of the plan and to prepare for its integration within the Commission in the fourth year of the plan.
- 4.7.5 To provide human rights education, as a service provider under the national civic education programme and from its regular budget, in the following priority areas; policing, state security, national defence, prison system, constitutional/ legislative review and education.
- 4.7.6 To implement, during the first two years of the plan, a system to ensure access to information from Government and civil society to facilitate the timely review of compliance with international, regional and national instruments.
- 4.7.7 To plan and conduct current monitoring activities on Governments compliance and to report on the results annually.
- 4.7.8 To review legislation tabled in Parliament.
- 4.7.9 To facilitate the Commission's ability to respond to emergency human rights issues, particularly in conflict areas in

order to contribute to peace building.

- 4.7.10 To further develop the Commission's Rights Based Approach on the eradication of poverty and to promote the approach in the development of policies and establishment of programmes by Government at all levels.
- 4.7.11 To develop the research capacity of the Commission in order to support policy decisions and to provide the Commission members and staff with the best possible available research to facilitate the conduct of activities and programmes.
- 4.6.12 To report to the Government and to the general population, on the status of human rights in Uganda through the publication of the Commission's Annual Report and by the application of timely adhoc reports on issues that affect human rights in the country.

The continuous inadequate funding to the Commission will certainly affect its programmes as prioritised in the corporate plan; a situation that was envisaged in the first corporate plan (2000-2003).

4.8 PREVIOUS RECOMMENDATIONS BY PARLIAMENT TOWARDS UHRC BUDGET

In presenting the Commission's budget for the financial year 2004-2005 to the Legal and Parliamentary affairs Committee, a number of recommendations were made by the committee addressed to the Ministry of Finance, Planning and Economic Development.

These recommendations have not been implemented to date and are hereby presented as made by the committee:

- 4.8.1 The UHRC should be placed under the Justice Law and Order Sector as it had previously been irrespective of the argument made in shifting it to Public Administration sector.
- 4.8.2 Government should start honouring its obligations in as far payment of Judgement awards resulting from the Commission's tribunal decisions.
- 4.8.3 In order to execute its mandate the Commission requires vehicles and therefore its budget on capital expenditure should be increased to allow it procure vehicles for its activities.
- 4.8.4 The Commission's 2004-2005 budget was greatly affected by the expenditures

from the non-wage component. In order to pay salaries to the newly recruited staff as a result of its expansion, the Commission with prior permission from the Ministry of public service was forced to draw from the non-wage bill to meet the present salary bill thus undermining the operations of other activities. There is need to increase on the wage budget so as to allow the Commission carry out its activities that are funded under the non-wage bill.

4.9 STAFFING

Commission members and staff have grown from 101 in 2003 to 154 members in 2004. The current growth of human resource at UHRC is illustrated below:

TABLE 4.9.1 UHRC GENERAL ESTABLISHMENT AS OF FINANCIAL YEAR 2004-2005

Staff Category	Titles	No.
Commission	Chairperson	1
	Commissioners	6
	Secretary	1
Senior Staff	Directors	5
	Accountant	1
	Planner	1
	Public Relations Officer	1
	Personnel Officer	1
	Senior Human Rights Officer	1
	Human Rights Officers	9
	Personal Assistant to the Chairperson	1
	Assistant Public Relations Officer	1
	Investigation officers	9
	Research Assistants	15
	Assistant Librarian	1
	Library Assistant	1
	Systems Administrator	1

Intermediate Staff	Senior Personal Secretary	1
	Personal Secretaries	7
	Senior Accounts Assistant G1	1
	Senior Accounts Assistant G11	2
	Stenographer Secretaries	7
	Office Superintendent	1
	Office Assistants	6
	Store Keeper	1
	Assistant Records Officer	1
	Records Assistant G.1	1
	Receptionist	1
	Court Clerk	1
	Volunteers	29
Support Staff	Senior Office Attendant	1
	Senior Driver	1
	Drivers	20
	Office Attendants	9
	Process Server	1
	Cateress	1
	Kitchen Staff	2
	Gate Keeper	1
Total		154

As shown in the table above, there has been a significant increase in the staffing of the Commission. This has been due to the increase of the Commission's activities. As earlier noted, the Commission's activities have expanded to include six regional offices. It should however be noted that even with the recruitment of the new staff, there is still a need for more personnel. Nevertheless due to the inadequate funding, the Commission is unable to adhere to this predicament.

4.10 UHRC RECOMMENDATIONS

4.10.1 The UHRC ought to remain under the Justice, Law and Order sector. It is understood that the recommendations by

The parliamentary committee in this regard have been accepted and the UHRC hopes that it is implemented.

4.10.2 The awards from the UHRC tribunal to victims of human rights abuses must be respected and honoured by the Government.

4.10.3 The Commission needs to be facilitated to acquire new vehicles.

The Commission is funded from the consolidated fund, which is administered by the Ministry of Finance, Planning and Economic Development. It is understood that the Legal and Parliamentary Affairs Committee's proposals of the Commission's financial requirements presented to

the Ministry should be forwarded to Parliament without any reductions. However, observation indicates that the Ministry presents reduced provisions, and Parliament has no power to increase the budget.

4.11 ACTIVITIES IN THE OFFICE OF THE CHAIRPERSON The 60th Session of the UN Committee on Human Rights

The Uganda Human Rights Commission sent three participants to the 60th Session of the UN Committee on Human Rights namely the Chairperson, Mrs. Margaret Sekaggya, Commissioner Adrian M.Sibo and Ms. Roselyn Karugonjo. The participants attended the 60th Session of the UN Committee on Human Rights and presentations were made under agenda item 18 (b) on **Effective functioning of human rights mechanisms: National Institutions and regional arrangements**. For the first time, National Human Rights Institutions were given seven minutes to present unlike the previous session where they were given only three minutes.

Various representatives of National Human Rights Institutions, both accredited and non-accredited, made their statements to the Committee. The Chairperson, Mrs. Margaret Sekaggya presented the Statement from the Coordinating Committee of the African National Human Rights Institutions of which she is currently the Chair while Commissioner Sibbo presented the Statement from the Uganda Human Rights Commission.

There was an election of a new President of the International Coordinating Committee of National Institutions. Mr. Morten Kjaerum, Director General of the Danish Institute for Human Rights was elected as the President. He took over from

Mr. Omar Azziman, President of the Consuls Consultatif des Droit de l'Homme du Maroc of Morocco.

The NHRI Conference in Korea

The Chairperson of the Uganda Human Rights Commission, Mrs. Margaret Sekaggya went to Seoul, Korea in September to attend the 7th International Conference for National Human Rights Institutions. The Theme of the Conference was **'Upholding Human Rights during Conflict Situations and while Countering Terrorism.'** The Korean National Human Rights Commission hosted the Conference, which was attended by various National Human Rights Institutions all over the world. At the Conference it was observed that most National Human Rights Institutions had been shying away from involving themselves in conflict management and resolution despite the nexus between human rights and conflict management and resolution.

Mrs. Sekaggya presented two papers, one on **'The role of National Human Rights Institutions in Conflict Situations'** in her capacity as the Chairperson of the Uganda Human Rights Commission in which she shared the experience of the Uganda Human Rights Commission in the promotion and protection of human rights in conflict situations and its role in conflict management and resolution. She also made a presentation on behalf of the Coordinating Committee of African National Human Rights Institutions, which she currently chairs, entitled **'Case Presentations: the African Perspective'** in which she shared the experiences by African National Human Rights Institutions in protecting human rights while countering terrorism.



*Chairperson,
Mrs. Margaret Sekaggya
at the National Human Rights
Institutions conference in Seoul
Korea*

The AU Conference for National Human Rights Institutions in Addis Ababa

From 18 - 21 October the Chairperson, Mrs. Margaret Sekaggya, the Acting Secretary Mr. Hudson R. Anika and the Institutional Advisor, Mr. Remy Beauregard attended the first African Union Conference for African National Human Rights institutions in Addis Ababa, Ethiopia. The Conference was organised by the African Union in collaboration with the United Nations High Commissioner for Human Rights and the Coordinating Committee of African National Human Rights Institutions whose aim is to promote the creation and reinforcement of independent national human rights institutions on the African continent.

The Chairperson made welcome remarks at the conference while Mr. Hudson Anika presented a paper on **‘Meeting Expectations: “There is so much to do for a National Human Rights Institution and not enough time and resources”’**. Mr. Remy Beauregard presented a paper on **‘The challenges of creating a professional and competent workforce to manage a National Institution’**

NHRI Conference in Arusha

The Chairperson, Mrs. Margaret Sekaggya, Commissioners J.M Aliro Omara and Mariam F. Wangadya and the Acting Secretary, Mr. Hudson R. Anika attended a regional workshop on **Human Rights Commissions and Accountability in East Africa** in Arusha, Tanzania from 12 –13 November. The workshop was organized by Kituo Cha Katiba: East African Centre for Constitutional Development with the support of the Ford Foundation. The workshop was also attended by representatives from the Kenyan, Tanzanian and Rwandan Human Rights Commissions. Members from the Uganda Human Rights Commission presented a paper on **Human Rights Commission Processes**.

Visits to UHRC Regional Offices

The Chairperson, Mrs. Margaret Sekaggya visited the regional offices in August and October. In August, she visited Soroti and Jinja Regional offices and in October she visited Mbarara and Fort Portal Regional Offices. The purpose of her visits was to meet and talk to members of staff of the regional offices, the various stakeholders in the promotion and protection of human rights and

to evaluate the impact of the regional offices in their respective regions.

Despite being spread out thin on the ground, the regional offices with the help of United Nations Volunteers (where they exist) and the UHRC volunteers have had a measure of impact in their areas of operation but more still has to be done in order to reach the grass roots.

4.12 ACHIEVEMENTS BY THE UHRC DURING THE YEAR 2004-2005

4.12.1 Extended its services to the people of *Karamoja* region by opening a regional office and participating in the disarmament programme through promotion of civil military operations.

4.12.2 Increased manpower by recruiting professional staff in the positions of Human Rights Officers, Accountants, stenographers/Secretaries, and Drivers.

4.12.3 Increased public awareness about human rights and fundamental freedoms through media campaigns.

4.12.4 Organised and conducted human rights workshops/seminars for security agencies such as the Police and Army.

4.12.5 Organised and held workshops to empower the citizens on human rights and the Constitution.

4.12.6 Through Donor support the Commission procured capital equipment to facilitate the Commission in executing its mandate. Equipment purchased included three motor vehicles for regional offices and some office equipment (computers).

The Commission continued to monitor and report on the state of human rights in the country.

CHAPTER 07 CONDITIONS OF INTERNALLY DISPLACED PERSONS AND REFUGEES

7.0 Introduction

Internally Displaced Persons and Refugees are a common feature in Uganda. Their numbers in Uganda continue vacillating between 1.4 million to 2 million for IDPs and 250,000 for refugees. In their respective conditions, they face a number of related but also diverse socio-political, legal, policies, institutional and economic challenges some of which this chapter will highlight.

Table I: The IDP Camps population statistics in Northern Region - 2004

District	No. Of Camps	House holds	Total Population
Gulu	33	105,283	437,695
Lira	55	73,169	372,989
Kitgum	18	58,630	267,078
Pader	22	117,569	239,927
Apac	6	-	84,114
Total			1,401,803

Source: Camp Officials

7.1 IDPs in Uganda

The IDPs in Uganda are largely conflict induced IDPs who have been displaced by the conflict between the government (UPDF) and the LRA/M on one hand and also by the Karimojong warriors on the other. This displacement is largely in the North and North Eastern Uganda. The displacement in Western Uganda, which has since stopped was caused by the conflict between UPDF and the ADF rebels. Furthermore, in recent times there have also been internal displacements caused by the development-induced programmes. This manifests itself in form of forced evictions of people by Government from what had been gazetted as forest reserves as well as evictions by investors and wealthy citizens who buy off presumed squatters and throw them out to the streets as they proceed to fence off their land from any trespassers. This type of evictions has taken place in Kamuli District (Eastern) Adjumani, Moyo, Yumbe, (Northern) Mubende district (Central), Kibale District (Western) and Nagulu in Nakawa Division (Kampala).

7.1.1 General problems of all IDPs

Whatever the reasons for the displacements the general denominator is that their conditions in displacements are usually bad. These bad conditions are compounded by lack of an elaborate legal and policy regime at both the international and national levels to provide for the basics of health, food, security, education, water and sanitation, shelter and economic activity during and after displacement.

7.1.2 IDPs Displaced by insurgency in Northern Uganda

Close to 80% of the population in Northern Uganda continued to live in Camps in different parts of North and North Eastern Uganda. IDPs continue to be subjected to the cruellest forms of torture, including cutting off women breasts, male private parts, etc. Acts of mutilation by rebels resumed during early months of the year 2004 but later subsided. For instance, on 21 February 2004, LRA rebels overpowered a UPDF detach and massacred over 200 IDPs, and abducted others in

Barlonyo IDP camp. On 5 February 2004 over 47 civilians were reportedly killed at Abia IDP Camp in Lira, Moroto County 25 Kms North of Lira Town.

Evidently, the LRA continues to target the IDP camps and it was necessary that the government reinforces the security of the IDP camps. When the Commission did on spot visits of the IDP camps at the end of 2004, there were signs of heavy presence of UPDF protecting the camp. People in the camps also confessed that security had improved in the camps, especially in the last half of 2004.

While the attacks on camps might have reduced, it did not mean total protection of IDPs at all times. Those who felt relatively safe outside the camps

and went back to their villages still could not be safe at night in their villages. This resulted in a phenomenon of night commuters (people, especially children who go to sleep in town for fear of being abducted in the villages) who were on the increase throughout the year 2004, especially in Gulu and Kitgum towns. According to the UHRC Gulu Regional Office, Gulu has ten (10) Night Commuter Centres with about 14,250 commuters, and Kitgum has fourteen (14) official centres with about 19,979 night commuters. This number fluctuates depending on the security situation. While the Commission commends the UPDF for the great work done to protect the population there is still need for commitment on the part of, especially, field commanders to avoid laxity resulting from negligence on duty.

Table II: Statistics of night Commuters in Kitgum Town Council ñ 2004

No.	Location	Children	Adults	Total
1	Kitgum Government Hospital	2,289	1,039	3,328
2	Gulio Pastore	1,479	477	1,956
3	Uganda Martyrs	384	204	588
4	Town Verandah and Bus Park	1,442	481	1,923
5	Works Department	523	131	654
6	Kitgum Public School	1,161	198	1,459
7	Town parish	284	148	432
8	Kitgum Prison	297	150	447
9	Water department	247	70	317
10	St Josephs Hospital	5,508	1,940	7,448
11	Kitgum Boys P.7 School	237	196	433
12	Kitgum Girls P7 School	146	107	253
13	Catechist Centre	236	125	361
14	Comboni Centre	220	160	380
	Grand Total	14,453	5,526	19,979

Source: Gulu Regional Human Rights Office, UHRC.

7.2 Some areas of Humanitarian concern in IDP Camps

The Commission has continued to prioritise IDPs in its monitoring functions. The common areas, which the Commission monitors concern and revolve around the access to food, shelter, water, clean and healthy environment and health.

Food:

Although the food needs in long established camps and those created this year varied, the outcry at food insufficiency in camps visited is an undeniable fact. This indicated that little implementation, if any of the Commission's recommendation last year as regards the provision of food to the IDP, even with last year's budgetary allocation to care for IDPs, were never

implemented in 2004. The result of this can clearly be seen from the malnourished children and emaciated adults in IDP camps. Insufficient food supply will continue to have long lasting negative impact on the health of especially children and ultimately their academic performance for those who go to school. The supply of foodstuffs in the camps in Lira Municipality for example was phased out in September 2004 and provision of foodstuffs only remained in rural camps. The Commission was told that this was intended to decongest the camps in the Lira Municipality since most villages in Lira district were considered to be safe.

All the camps complained of poor access to sufficient food. The known food source was WFP, which distributes its food through the Christian Children Fund (CCF). WFP distributed food on a monthly basis and each member of the family gets 7.5 kg of posho and 1.5 Kg of beans. In order to arrive at this WFP uses a scientific calculation to determine body requirements of food calorie. The Commission assessment however, was that food shortage was a major problem. In the absence of known verifiable coping mechanisms it was obvious that food needs of the IDPs require proper assessment with a view to finding a solution. The Commission team noted that several children living in IDP camps were malnourished and that of these only a few were being given special feeding.

In the Lira municipality, food was distributed once every month under the social support programme. Most Counties in Lira municipality received food once every month representing 25% of their food requirements, and sub counties received food twice a month, which constituted 50% of their food requirements. At Apala and Gombolola Lira camps, the Commission was informed that five and eight elderly people respectively died due to starvation. Olaka IDP camp reported the highest

number of deaths at 52 since the camp opened in June 2003. This number however does not include those killed by rebels either in the field or during attacks.

It was reported that a family with 5 children would receive only 3 approved rations, depending on the Memorandum of Understanding, which determined specific age groups. Food rations were evidently not sufficient. Furthermore, the volunteers on the ground were reportedly insensitive to the IDPs.

At the time the Commission visited Ajuii Camp, Apac district, it found when 200 bags of maize and 65 bags of beans had just been supplied to cater for 1,165 households. Malnutrition was evident among children.

Whereas in some districts there were no complaints of food, in most others there were complaints. In IDP Camps in Kitgum district, especially in Amida IDP Camp, the World Food Programme (WFP) provides family size food, enough to cover the food requirements of the IDPs. 1 bag of 50 kg maize flour, 1 litre of cooking oil, 15 mugs of beans (approximately 7.5 kg) are provided to each person in the register per month. According to the local leaders, this has been consistent in the year under review. The same applied to another Camp, Labongo Layamo in Kitgum where 70% of the dietary needs were provided by WFP. The ratio comprised of 50 kg of maize flour, 13 kg of beans and half litre of cooking oil for a family of 6-7 people are provided per month.

However the IDPs in Apac district had acute problems of food shortage since there were no humanitarian agencies providing food to the IDPs. The reason given was that district authorities had claimed to humanitarian agencies that there are no IDPs in Apac and therefore humanitarian agencies never developed interest in Apac. The people in these camps survived on food from their

gardens near the camps, and in a few cases, food rations from the office of the Prime Minister. Aleka IDP camp nevertheless has more acute problems; it neither gets food rations from humanitarian agencies nor from government. At

the time the Commission visited the camp, the problem of lack of food had gone beyond proportions in the camp that people were surviving on mangoes as it was the ripening season. Prior to this, IDPs depended on red ants for food.

Table III Population statistics in the IDP camps visited.

S/No.	Camp	Population	Date of establishment.
1	Amida (Kitgum)	23,000	2003.
2	Akwang Sub County IDP Camp (Kitgum)	Not known	June 2003.
3	Labongo – Layamo Sub County IDP Camp (Kitgum)	14,000	August 2003
4	Ojuii IDP Camp (Apac)	7,235 (with 1,100 house holds).	15 th August 2003 (but was officially recognized in 2004)
5	Aleka IDP Camp (Apac)	3,225	March 2004.
6	Otwal Sub County IDP Camp (Apac)	Not known	

Water:

All the camps located in urban areas had on average sufficient supply of water. However the situation in rural camps was different as there was limited access to water supply and the IDPs could not risk going to the wells and springs for fear of either being killed or abducted by rebels who often hide around there. Still little, if anything, was done in regard to last year's recommendation in the Commission's Annual Report in line with the provisions of water in IDP Camps in Northern Uganda. When the Commission visited one of the Camps, Amida IDP camp (Kitgum District) with 23,000 inhabitants, it established that in 2004 there was no single water source within the whole camp. By early 2005, only one borehole had been drilled, 1 km away from the Camp. The IDPs have to trek miles away from the camp to fetch water from the two available boreholes.

Ajuui IDP camp does not have any protected water source and Boke IDP camp does not have a single

borehole, apart from one spring, which serves the whole camp. Thus, some IDPs fetch water far away from the camps, risking attacks by rebels.

In other instances, bore holes had broken down, posing threat to the IDPs as they have no secure source of water at such moment. For example, Aleka IDP Camp in Apac District had 3 bore holes, but at the time of the Commission's visit all of them had broken down for over a week, and only one had been repaired. Yet alternative sources of water were 1 km away. In Otwal Sub-County IDP Camp in Apac, bore holes had broken down and had not been repaired since the Sub-County Council had "not collected taxes for the last two years".

However, in other camps such as Akwang sub-County IDP Camp, the problem was not severe as there were seven water sources for a population of 14,000 people, reflecting a ration of one water source to 2000 people. Ajuui IDP Camp has three (3) bore holes in place to cater for the population

of 7,235 people with about 1,100 households in addition to another borehole, which was being constructed by the District Administration. Springs were being used as water sources in the camp, though they were not protected, a health risk as observed by the camp commandant especially in the situation where health facilities were almost non-existent.

Poor shelter.

Although shelters in the long established camps were fairly satisfactory, the newly created camps both in town and rural areas lack proper shelter. Some IDPs sleep under the shop verandas, tree shades, and or poorly grass thatched huts. Some international agencies like UNICEF, Red Cross and MSF gave some tarpaulins for roofing but were very few compared to the needs of the IDPs.

The problem of poor and inadequate shelter in the IDP Camps thus remained in the year 2004 exposing especially the vulnerable, including women, children, the elderly and the increasing number of the disabled in the war torn part of the Country to the worst forms of deprivation.

Virtually all the houses in the camp are grass thatched, and leak during rainy seasons. Huts for residence are compacted to one another, and in case of a fire outbreak, it would easily spread and the whole camp can easily get burnt in such an instance. In addition, houses compacted to each other pose health threats and reflect a slummy condition as understood in our urban settings. All the camps visited had this common problem. The Commission continues to reiterate its earlier appeal to the State to address this problem urgently.



Part of Pabbo IDP camp, Gulu district. Poor shelter conditions is a major characteristic of most IDP camps

Part of Pabbo IDP camp, Gulu district. Poor shelter conditions is a major characteristic of most IDP camps

Sanitation and hygiene:

While most of the camps located in urban areas were trying to observe a high level of hygiene and cleanliness, many rural camps had a poor level of hygiene. They lacked enough pit latrines and the environment was dirty and stinking. There is need to supply many mobile toilets in most of the camps. In Amida (Kitgum) IDP camp for example the

Commission established that mobile toilets were distributed to each Parish. However, these were not adequate to cater for the high population needs. In some parishes, one toilet was shared by 7000 IDPs. The Commission also established that people tried to keep their camps clean and also constructed their own shallow latrines. However, since these latrines constructed by the community were shallow, they tended to fill fast and pose a risk of cholera outbreak and quick spread of communicable diseases under such conditions.

Health and medical facilities:

The general health conditions in most IDP camps were in a poor state. Whereas health and medical facilities are located far away from some camps, in other camps there are inadequate numbers of health units, lack of drugs, overwhelmed personnel, and high incidences of diseases arising out of poor sanitation, inadequate and congested housing facilities, and unprotected water sources. For example, Amida IDP Camp has one health unit with two enrolled nurses, serving a population of 23,000 people.

Other camps do not even have a single health centre inside. For example, in Ajui IDP camp in Apac, medical facilities could only be accessed from Apac District Administration, which is far away from the camp. Another health centre is stationed at Otwal Sub-County headquarters, 10 kms away along an insecure and poorly maintained road. As a result drug rations are provided by the area MP, Hon. Ben Wacha, who reportedly mobilises for drugs from donor friends and his other connections. The Camp Commandant administers these drugs, with the help of retired nurses in the camp. Aleka IDP camp in Apac does not have a single health centre inside, and the nearby one is located 11 kms away at Atwalo Sub-County.

Lira Municipality initially had a mobile clinic, but it was scrapped off on the basis that the district authorities claimed that there were hospitals in the Municipality. However, IDPs, from the country side are not acquainted with the urban areas in the Municipality. Moreover, drugs were reportedly lacking in hospitals in the Municipality. The scrapping the mobile clinic in the Municipality however did not help transfer the medical services to the rural areas where hospitals are lacking.

Generally, the major diseases sighted in Lira IDP Camps were Malaria, Diarrhoea, cough,

tuberculosis, Epilepsy and Syphilis. AIDs and malaria were prevalent in Amida IDP Camp while Malaria, Cough, Dysentery, Ring worms and AIDS were the major illnesses reported in Labongo-Layamo Sub County IDP Camp, though the last camp has an AIDS sensitisation campaign going on.

Furthermore, Northern Uganda continues to have the highest HIV/AIDS prevalence rates in the country, ranging from 9.3% in Kitgum to more than 13 % in Gulu, compared to the national average of 6%. This is attributed to the break down of family values, morals and the difficulty of exercising control in crowded camp atmosphere. The high rates of sexual abuse and other abuse is a direct result of the break down of traditional family structures and other support systems. High levels of poverty coupled with lack of alternative means of survival force the girl child to prostitution thus exacerbating the AIDS pandemic situation. The lucky camps have one-health units with two enrolled nurses. In such conditions, the incidence of Malaria and HIV/AIDS prevalence is high and as a result a number of deaths have occurred.

The camps located in urban areas are being catered for through the mobile clinic, which visits them almost daily. However, the rural camps lack health workers and sufficient drugs to treat their sick. During the course of the year 2004, Medicines San Frontier was beginning to go around treating especially the children and the elderly.

While the Commission commends the improved provision of medical facilities in the urban camps, it calls on Government through the Ministries of Disaster Preparedness and Health, and other stakeholders to ensure adequate health facilities in rural IDP camps in Northern Uganda.

Furthermore, even for IDP in the urban centres it is not correct to assume that the presence of hospitals in urban centres can play the role of

mobile clinics for the IDPs. In one of the Commission's visit to Lira Municipality IDP camps it was established that some mothers could not go to the hospital clinics to deliver and preferred to deliver from the very cold and unhygienic camps just because they feared to appear in hospitals in tattered clothes in which they were dressed. In such cases mobile clinics, which find them in camps, would serve them better than asking them to go to hospitals.

Education:

Problems sighted in all the IDP Camps were the high pupil to teacher ratios, pupil to classroom ratios, inaccessibility to schools due to long distances, the general lack of scholastic materials, high drop out rates, and late reporting by teachers who stay out of camps as a security precaution in Primary Schools.

For example, at Amida Camp, no formal Primary School exists for the young children at the Camp. These facilities are in town, four and a half kilometres away from the camp; distance young children cannot cover on foot. In Labongo-Layamo sub-County Camp, there were high drop out rates. Camp leaders attribute this to absence of parental guidance due to poverty that force parents to go far away from their children in search of water, food, fire wood and other survival means. In all the camps, the general poverty situation would evidently not permit the purchase of scholastic materials, and other basic needs like food, which supplements education.

Besides, Government Policy of paying part of the fees for children in Camps applies to Government schools, and those studying in Private schools are left out. Yet 70% of children in IDP camps go to Private schools, and experience shows that Private schools perform better than Government schools. Poverty was biting harder in the camp, and limiting education.

Geographical inaccessibility to secondary schools were evident in Oyam North Constituency in Apac district where the only nearby secondary school Otwal SSS was transferred to Ayer Sub County, 20 miles away from Ujuli IDP Camp for instance, and further away from other camps visited in the Constituency. Besides, it is a Boarding school with high school charges, making the poor IDPs unable to meet such high school costs for fees.

The Commission notes that though there have been efforts to create learning centres in the camps, the general lack of enough facilities and teachers negatively affected the quality of education being imparted. Even then camps in rural areas were marginalized compared to the urban-based camps. The Commission commends UNICEF that has been on the forefront in helping set the learning centres to absorb the displaced children. For example whereas the monitoring team witnessed Adult Education Programmes being conducted under mango tree shades in some camps, no formal primary school exists for the children in others. For example Kitgum Town Council, which is responsible for the provision of education facilities, provides these facilities only in Kitgum town, four and a half kilometres away from some camps; thus not accessible by young children.

The Government policy on cost sharing for secondary school IDP children has not been implemented. The monitoring team established that the Government of Uganda committed Ug. Shs.7000, as part payment for secondary school education for each IDP student.

Security:

Insecurity of people in displaced camps was always a major concern of the IDPs. A field visit to some of the camps in Gulu, Kitgum and Apac revealed that there was a general improvement in the security of IDP camps since the Barlonyo incident in February 2004 when the LRA killed over 200 people.

All the camps visited and leaders interviewed indicated a tremendous improvement of the security situation in and around the camps. They indicated that even where the rebels attempted to attack, they were repulsed by UPDF. An example was given of Labongo Layomo IDP camp where an attempted attack on the camp by rebels had been prevented by the Army. In retaliation the rebels killed six fishermen on their way back. In Ajuii IDP camp, rebels tried to attack the camp several times, but were repulsed by the army, making it impossible for any abduction to succeed. Since 2004, rebels tried four attacks at Ajuii IDP Camp but were repulsed by the UPDF. The last such attack was on October 2004 at 6.30 p.m. when rebels engaged the Army, killed three soldiers and abducted civilians. Lucky enough, the three people abducted were back by the time of Commission's visit. It was reported by the Camp leader that rebels continued trying even by the time of the visit, to abduct people who go out to the fields looking for fire wood and water. For instance, in April 2005, at a village called Otara near this camp, rebels abducted two people from the camp (adults), but the Army rescued them. At the time of the visit, people in the camp still were in fear believing rebels were still around in the nearby, though a UPDF detach had been established adjacent to the camp. In the past, rebels succeeded in abducting civilians, who up to now have never resurfaced.

The only major challenges noticed related to insufficient UPDF personnel protecting the Camps and also late release of salaries for the LDUs. In the case of personnel, Gulu for example has 53 IDP camps, with big numbers of residents such as Pabbo IDP camp, which has 63,180 people, but protected by one Brigade. Even where militias supplement the UPDF, the late release of their wages payment and coming irregularly tend to demoralize them. This, it is said, at times forces them to engage in petty theft of food staffs and related indiscipline. It was also revealed that the

problem of welfare for the Local Militias in the war torn areas in the North has deteriorated to the level that part of the UPDF rations of food and other supplies is shared with them. Terms and conditions of service of the Militia is not so clearly spelt out in the UPDF Act, which in a way reflect a form of discrimination since they do the same work in the army.

Another major challenge to security is how to ensure that the people keep limited to the their movements. While IDPs were relatively secure in and around the camp, it was a condition to inform the Army in advance before one goes out to the fields to collect water, food and fire woods. The problem with this is that there is a limitation for one not to go beyond a certain set radius from the camp, for example in Amida IDP Camp, the limit is 3 km, and for Labongo Layomo IDP camp, 2 km. Yet, these basic items are depleted over time requiring constant replenishment from a considerable distance outside the camp. In addition, in Amida IDP Camp, those who come in late were being barred from entering the camp, and in Akwang IDP Camp, they were being arrested and detained for a night or two for coming in the camp late at night.

Army-Civilian relationship has improved:

There was general feeling that the army-civilian relationship has improved. The improved relationship between the army and the civilians has largely attributed to improved and open communication channels at all levels, through elected leaders, Human Rights Organisations and Electronic communication. All the camps visited concurred to this effect. In Labongo Layamu sub-County IDP camp for example, there is a security meeting at least every month, chaired by the LCIII chairman and attended by representatives of the Army.

However, some soldiers were fond of unbecoming practices. For example it was alleged that in Amida

IDP Camp, soldiers at times indulged themselves in sexual relationships with schoolgirls especially in holidays. They further observed that when they take up the matter as leaders parents end up siding with defilers. In Aleka IDP Camp in Apac cases of defilement were reported. Local leaders informed the Commanding Officer of the Army detach, who in turn ordered young girls never to enter the military detach henceforth. Although it was reported that girls were not taken by force,

but went out of their free will and consent some of these girls in question were actually below 10 years.

In Ajuui IDP Camp, Apac district in the past, around 2003/2004, soldiers used to loot, and would occasionally remove peoples' roofs and poles to use as fire wood, a fact which was reported to the commanding Officers and disciplinary action taken against these soldiers. These acts were no more by the time of the monitoring visits.



L-R Clock-wise; Commissioner Aliro-Omara (UHRC) lighter yellow shirt, Francis Ogwal (Regional Human Rights Officer, Gulu regional office, UHRC, Tom Kibukutu and Wilfred Asimwe of the Monitoring and Treaties Directorate, Mr. Obalim Lazalo, Local Council III Chairman- Amida sub-county, Kitgum District and Mr. C. Lolam, Camp Commandant Amida Camp.

Human rights abuse:

The camps have become fertile grounds for human rights abuses. Under a situation of poverty and helplessness, children have suffered neglect and harassment by adults. The girls and women have been raped, defiled and sexually exploited by soldiers, their male counterparts, and those who have money. Generally speaking, IDPs continue to live under fear for their lives and property; they are insecure and have to rely on food rations provided by humanitarian organisations. They continue to be uncertain about their future.

GENERAL OBSERVATIONS ON THE SITUATION OF IDPs

The general conditions in all the IDP camps are

unsatisfactory. The needs of the IDPs remained at levels requiring emergency during the period under review because they were not in position of meeting their own livelihood to acceptable standards. There was evident malnutrition of children in some of the camps. The humanitarian agencies were finding difficulties accessing some of the camps in Acholi and Lango because of unending insecurity. Intermittent attacks by the LRA meant that the security situation was still volatile for civilians.

Sanitation in the camps remained a problem because of the overcrowding in all the camps. One way of dealing with this situation is to decongest the camps by spreading them out over a wider area.

Water shortage although addressed, remained acute in some camps because the water supply was not enough to meet the recommended 15 litres per day per person.

Serious action requires to be undertaken to address the HIV/AIDS situation in Northern Uganda. The situation as reported by humanitarian agencies is that the HIV/AIDS pandemic in Northern Uganda has reached emergency proportions particularly in the camps. The detection and prevention of infection has been very low yet conditions in which IDPs have lived have exposed them to high risks. Accordingly there is urgent need for an emergency plan of action covering HIV/AIDS sensitization, testing, counseling and treatment.

There were noticeable improvements in the protection of the IDP camps from LRA attacks following the sad experiences of Barlonyo and Abia in Lira district. It should however be pointed out that the protection of the IDPs should not be limited only to providing security within the camps. Protection should mean protection the rights of these people in all aspects. Their social, economic and cultural rights should be adequately protected to the acceptable minimum standards. Access to justice for the resolution of conflicts within the camps is one important aspect. Although Local Council systems are operational within the camps, the army and the militia dominate policy and other arrangements within the camps. The Police for example have hardly any presence within the camps to receive and investigate complaints of criminal offences.

One commendable development was the adoption of the IDP policy by government. It is a good document that articulates the rights of IDPs and how they should be protected. It is a good protection document that should be implemented.

THE STATE OF REFUGEES

Proliferation of civil wars and bloody conflicts has spilled over the borders of nation-states, particularly in the Great lakes Region. As a result of conflict, there are displaced persons and host countries resettle the displaced persons in refugee settlements.

The Commission monitored refugee settlements in some parts of Uganda in order to; assess the human rights situation in the camps of asylum seekers and refugees, to establish the conditions and observance of human rights in the settlements and to ascertain complaints of refugees and make recommendations to the relevant authorities. The refugee camps visited include; Kyaka II, Nakivale, Ntoroko, Ikafé and Kyangwali.

7.3 Demographic issues

Kyaka II Refugee Settlement

The Commission's visit to Kyaka II refugee settlement camp in 2003 revealed that there were 5,116 refugees from the Democratic Republic of Congo, Rwanda and Kenya. However at the time of reporting, the population stood at 12,541 refugees. The Camp capacity is 13,000. Nationalities include; Rwandese, Congolese, Kenyans, Sudanese, Somalis, Burundians, Central African Republic, Malawians.

As shown in the tables IV and V below, Congolese refugees shot up from 2,708 in 2003 to 5389 in the year 2004 and 10,827 by May 2005, this is attributed to the renewed fighting in DRC and the fact that Kyaka I was rendered inactive, thereby moving refugees that had been residing at Kyaka I to Kyaka II. Rwandese refugees reduced from 2,397 in 2003 to 2,206 in May 2004 and further reduced to 1,607 in May 2005. This decline in the number of Rwandese refugees was a result of voluntary repatriation efforts. The number of Kenyan refugees remained stable for both 2003 and 2004.

Table IV Refugee Population in Kyaka II in 2003

Age	0-4		5-17		18-59		60+		Total
Sex	M	F	M	F	M	F	M	F	
Nationality									
Congolese	336	269	439	422	575	571	41	30	2708
Rwandese	367	394	360	338	452	450	22	14	2397
Kenyans	02	-	-	-	08	01	-	-	11
Total	705	688	799	760	1035	1022	63	44	5116

Source: Camp officials

Table V Refugee Population in Kyaka 11 as at 31st May 2004

Nationality	AGE DISTRIBUTION								
	0-4		5-17		18-59		60+		Total
	M	F	M	F	M	F	M	F	
Congolese	641	628	1019	986	927	1024	85	79	5389
Rwandese	345	380	322	307	412	411	18	11	2206
Kenyans	02	00	00	00	08	01	00	00	11
Burundians	03	00	01	02	01	02	00	00	09
Total	991	1008	1342	1295	1348	1438	103	90	7615

Source: Camp officials

Kyaka II refugee Settlement Population Statistics as of May 2005

At the time of the visit, there were 12,541 refugees in Kyaka II refugee settlement. The table below shows the breakdown in terms of nationality and age.

Table VI Population Breakdown by Age, Sex, and nationality

	0-4yrs		5-17yrs		18-59yr		60+		Sub Total
Nationality	M	F	M	F	M	F	M	F	
Congolese	881	1151	2025	1770	2448	2319	119	114	10827
Rwandese	138	169	298	262	359	343	21	17	1607
Burundian	06	09	16	13	16	19	02	01	82
Kenyans	03	00	00	00	08	01	00	00	12
Sudanese	00	00	00	00	02	00	00	00	02
Somalis	00	00	00	01	02	01	00	00	04
Malawian	00	00	00	00	01	00	00	00	01
C.A.R	00	01	02	01	01	01	00	00	06
	1028	1330	2341	2837	2837	2684	142	132	12541

Source: Camp Officials

Table VII Kyaka II - Population variation

	Open Popn.	New Arrivals	BOK Referral ²	Birth	Death	Closing Population
Congolese	10454	249	121	06	03	10827
Rwandese	1606	00	00	01	00	1607
Burundians	82	00	00	00	00	82
Kenyans	12	00	00	00	00	12
Sudanese	02	00	00	00	00	02
CAR ³	00	00	00	00	00	06
Malawian	01	00	00	00	00	01
Somalis	04	00	00	00	00	04

Source: Camp Officials

¹ Mr. Simon Mutachuka, Ag. Settlement Commandant KyakaII refugee settlement and Mr. Godfrey Byaruhanga, Office of the Prime Minister

² Branch office referral

³ Central African Republic

Kyangwali Refugee Settlement⁴

Kyangwali Refugee Settlement is located in Hoima District in Western Uganda on 91 square kilometres of land, approximately 80 kilometres from the town of Hoima.

At the time of reporting, the population in the refugee settlement stood at 18,471. Nationalities include; Congolese, Kenyans, Burundians, Sudanese, Ethiopians, Somalis and Eritreans.

Table VIII
Refugee Population in Kyangwali Resettlement as at 31st May 2004:

	AGE DISTRIBUTION								
Nationality	0-4		5-17		18-59		60+		Total
	M	F	M	F	M	F	M	F	
Congolese	913	930	1053	970	1164	1037	75	69	6211
Rwandans	07	08	05	12	63	18	00	00	113
Ethiopians	00	00	00	03	00	00	00	00	03
Burundians	01	01	01	01	06	01	00	00	11
Eritreans	00	00	00	00	00	01	00	00	01
Sudanese	1656	1545	2169	1670	1950	1978	92	178	11238
Total									17577

Source: Camp Officials

Table IX Camp population by sex & nationality as of June 2005

Nationality	Male	Female	Total	% age
Sudanese	6191	5638	11829	64.04
Congolese	3327	3159	6485	35.11
Rwandans	75	38	113	0.61
Burundians	08	03	11	0.05
Ethiopians	03	00	03	0.01
Somalis	14	14	28	0.15
Eritreans	00	01	01	0.01
GRAND TOTAL	9618	8853	18471	100

Source: Camp Officials

Nakivale Refugee settlement

In this refugee settlement the Commission was interested in finding out the progress on the “voluntary” repatriation programme of Rwandese refugees. The Commission team interviewed Mr

Mugenyi David who is the Camp Commandant of Nakivale Refugee settlement and was informed that as of January 2005 there were 15,917 refugees in the settlement. He attributed the reduction in the number of refugees to repatriation, resettlement

⁴ Information received in an interview with Mr. Emmanuel Turyagyenda, Office of the Prime Minister Hoima satellite Station

and death.⁵ The Commission team was informed that a verification exercise was carried out which put the feeding population at 12,336 refugees. This number excludes those who were in prison and in hospitals or were out of the camp and did not come for the verification exercise. As of 28th February 2005 the number of families were 3294 and the number of individuals was 12238.

Table X Nakivale Verification Exercise

Nationality	O/R	NR	REG	PERC.REG
Rwandan	12628	9990	2638	21
Somali	942	688	254	27
Congolese	1300	873	427	33
Burundian	615	564	51	8.2
Sudanese	94	69	25	26.5
Ethiopian	94	54	40	12.5
Total	15673	12238	3435	22

Source: Camp Officials

Table XI Nakivale Age Group Statistics as of 28th February 2005

Age Group	Female	Male	Total
0-4	1604	1535	3139
5-17	1937	1783	3720
18-59	2595	2629	5224
60 and above	70	85	155
Total	6206	6032	12238

Source: Camp Officials

7.4 The problem of Asylum Seekers

When the Commission was monitoring the state of refugees in the country during the year under review, it came to terms with a growing problem – the problem of asylum seekers. This problem was reported in Nakivale settlement camp and Ntoroko county. In Nakivale settlement camp the Rwandese refugees are the major victims. At the time of the Commission's visit to the camp, it was reported that there were over 6000 Rwandan refugees in Nakivale who had not been granted refugee status. The implication of this is that they cannot access services from any organization. These asylum seekers are within the camp settlement in a village called *Kibate*.

The Commission was further informed of the problem of discrimination in granting asylum.

There were reports of discrimination in granting asylum status in a sense that the Barundi and Congolese asylum seekers were easily granted asylum while Rwandese were not. It was reported that as of February 2005, there were 47 households for Barundi and 149 individuals. By February 2005 Congolese asylum seekers were 12 household and 31 individuals in the camp. This problem needs immediate attention, as the conditions they are living in are quite unbearable.

Categories of Rwandese Asylum seekers

The Commission documented the deplorable conditions asylum seekers live in and calls on organizations responsible for their welfare to get to their rescue. The Nakivale refugee camp commandant told the Commission team that the figure of 6000 was just an estimate because when he tried to register them he was misunderstood

⁵ Mr Mugenyi however observed that people do not want to report death because when that is done it has a negative effect on their food ration.

because registration would mean assistance to them and their recognition as asylum seekers. He explained that the Rwandese were in three categories: The group that had been expelled from Tanzania and had stayed in the camp for about three years; the group that came in since March 2005 freeing *Gacaca*; the group of those that had formally been “voluntarily” repatriated but decided to come back. Some of the asylum seekers had documents while others never had any document at all. The team was shown bundles of category with documents explaining that their case was awaiting verification because they show that they came from Rwanda and that they had actually voted in the previous elections.

The asylum seekers find it difficult to survive because they have no institutional/government assistance. The asylum seekers work for food in neighbouring host communities; others take to begging food from their friends while others do petty trading like selling salt and other food stuffs. The settlement commandant revealed that the asylum seekers were actually a potential security problem in the area given the fact that they were in real need yet they were no survival mechanisms put in place for them.

Another serious problem of asylum seekers was cited in Ntoroko County in the trading centre of Karugutu and Ntoroko landing site in Bundibugyo district. These were Congolese asylum seekers. Our findings reveal that they are camped in five places of Itojo and Karugutu trading centers, Ntoroko, Butungama (Rwebisengo) and Kanara landing sites. There are no proper or formal refugee status determination procedures in these areas, and thus no proper records of the numbers of incoming, settling or voluntarily returning refugees. However, our findings reveal that the number is estimated at 7600 at all inlets. An estimated 1000

Congolese are expected to have been repatriated during the period under review. It is also estimated that at Ntoroko landing site only, 90% of the population are Congolese refugees. The majority are Hema and Lendu minority who live peacefully.

7.5 The Commission’s major findings

Security:

At the time of reporting, the security situation in most of the refugee settlements was generally calm. There were some reports by some refugees, that their lives were being threatened, however the Commission established that these were attempts made to claim persecution in a bid to seek resettlement in another country. Other few incidences relate to simple cases of crime such as theft. For example in Kyaka II refugee settlement there was an isolated incident in September 2004, where a refugee was shot dead by armed robbers, and two million shillings stolen. Some suspects were later arrested and charged.

There is however a growing concern about the high rate of sexual gender based violence in most settlements visited. This has been attributed to a number of factors, such as, alcoholism, idleness and unequal power relations. There are Refugee Welfare Councils in almost all the refugee settlements visited, which have been helpful in arbitrating in most refugees’ disputes.

In the Commission’s assessment the security situation in refugee settlements was okay for the year under review, save for some few refugee camps in Adjumani district that faced threats of attacks by the Lords Resistance Army rebels

Education:

The refugees' right to education is highly respected in Uganda. In almost all the refugee camps visited, the refugee children in school enjoy free education from primary level to tertiary level. There are a number of organisations both local and international that extend scholarships to refugee children in school. Other refugee children are in UPE schools. For example Kyaka II has three primary schools, with an average of 200 students in each class, and between 1500-2000 students, per school. The Hugh Pilkington Charity, the implementing partner of UNHCR, sponsors post primary school education on scholarship basis in Kyaka II. There are also adult literacy programmes conducted in most refugee camps.

For the case of Kyangwali refugee camp, there are five Primary and two secondary schools in the settlement area. Primary education is catered for by UNHCR, but in addition to that the refugees are entitled to education under UPE. In 2004, the Finnish Refugee Council (FRC) began offering its services in Kyangwali camp, in the form of education to refugees. FRC offers non-formal education and training for refugees coming from neighbouring countries, this has enabled the refugees to raise their self-esteem and their quality of life. The main emphasis was on teaching refugees to read and write, and training was also given in vocational subjects and in developing small businesses. The refugees are taught functional literacy skills as well as English.

However some few problems were recorded in Ntoroko primary school, which hosts asylum seekers. The available schools are understaffed and the students lack scholastic materials. During the period under review, findings revealed that Ntoroko Primary School has a population of 777 pupils but with only two teachers (the Headmistress and her deputy) to provide

education. Pupils engage in play the whole day.

Health:

Refugees had adequate access to health services for the year under review. They had well stocked dispensaries in their settlement camps. The Commission also established that in case of complicated ailments, refugees were referred to other hospitals with transport and medical bills fully paid for. For example Kyaka II has a well-established newly renovated health unit, with a capacity of 30 in patients, and serves about 200 out patients. The staff consists of 1 doctor, 3 clinical officers and 10 nurses. In an effort to decentralise services, a satellite health centre has also been established in the settlement. Drugs are available and accessible at the health centre. The centre also has an ambulance and in addition to that, the community services officer inspects the settlement regularly. Kyangwali refugee settlement has four health centres that serve the settlement and refugees receive free health care. Refugees in Ruteete refugee settlement access medical care from Rugashari and Mpeefu Health units. For those in Ntoroko, refugees access health services in the traditional health centres e.g. *Ntoroko*, *Karugutu* and *Rwebisengo* Health Centres.

However there were a few cases of malnutrition witnessed by the Commission Team in some camps. For example in Kyaka II, there was evidence of kwashiorkor among the children in the camp.

Generally as compared to 2003, there has been a reduction in the admission of the Sexually Transmitted diseases and diarrhoea patients for most refugee camps. This may be as a result of the increased sensitisation on these diseases and improved health services. Furthermore almost all the camps visited by the Commission have running HIV/AIDS awareness programmes.

Food:

On average, refugees in the camps visited have adequate access to food especially provided by the World Food Programme. Also under the self-reliance strategy, refugees produce their own food. For instance in Kyaka II, new entrants in the camp are provided with a piece of land 50x100m, per family for agricultural use, high quality seeds, plastic sheeting and food rations, however for those who have been in the camp for more than 2 years, their food portions are continuously reduced, and eventually none given, this is under the self reliance programme, under which the refugees are expected to grow their own food on the land provided and eventually become self reliant. Children from 0-4 years are provided with

therapeutic nutrition at the health centre; however, there were few evident signs of Kwashiorkor in the settlement.

Refugees living in Kyangwali settlement are among the most self sufficient of Uganda's settlement refugees. However, on arrival, refugees are given a package of non-food items, including farming and cooking equipment, as well as a tarp and blankets. In addition to receiving a plot of land and seeds to plant, the new arrivals receive from two to four seasons of food rations. This provision of food rations is done for a period of about two and a half years. After seven harvests they are expected to become self reliant as their portions are steadily reduced, in line with the self-reliance policy

Table XII Food assistance duration

Group	Percentage of relief distributed
New arrivals up to 2 harvests	100%
From 3 rd to 4 th harvest	60%
From 5 th to 6 th harvest	30%
7 th harvest onwards	00% (assistance ceases)

Source: Camp Officials

Table XIII Relief distribution in Kyangwali settlement camp:

Group	Percentage of relief distributed
New arrivals up to 2 harvests	100%
From 3 rd to 4 th harvest	60%
From 5 th to 6 th harvest	30%
7 th harvest onwards	00% (assistance ceases)

Source: Camp Officials

There is however little support to the asylum seekers in terms of food supply. The living conditions of most asylum seekers in Ntoroko County are extremely worrying and call for urgent response. The refugees/asylum seekers are coping

with an acute shortage of food. By the time of the Commission's visit to Ntoroko County, 51 families were homeless spending nights in church buildings.

Water and Sanitation

During the year under review, most refugee settlements generally had adequate supply of water. There were adequate boreholes in the camps visited implying general improvement in the water situation. Some new bore holes have been drilled, a number of old non - functional boreholes have been fixed, and a number of new drilling sites identified. Most settlements have water tanks provided at various points of these settlements. Ntoroko also has operational boreholes constructed by HEWASA and funded by Catholic Relief Services. OXFAM provided tanks for water storage. In all there are ten boreholes in Ntoroko alone spread around different parts of the settlement, however considering the number of refugees in the camp, they are not sufficient to cater for the population needs.

Although sanitation has improved it is still below standard in most camps. Some camp management have put in place strict measures to ensure high levels of sanitation. For example in Ikafe camp, families are forced to dig up pit latrines. There are also disciplinary measures in place for those who refuse to abide. Toilets facilities in Ntoroko Camp are lacking save for Ntoroko trading centre where UNICEF has provided mobile toilets to the refugees through the World Vision.

7.7 The progress of the voluntary repatriation exercise:

The Rwandese government sent a Rwanda Repatriation Commission to sensitise and encourage refugees to return home. By December 2004, 82 Rwandese were voluntarily repatriated to Rwanda. These were from the refugee settlements of Nakivale and Kyaka I. However, since then, most of them have returned to Uganda, complaining of insecurity in Rwanda. There are

also claims of lack of land in Rwanda on which to cultivate and live. Others feared that they would be subjected to the *Gacaca* courts.

Despite the regression of conflict in the DRC, a number of refugees however still feel that the conditions are not safe for them to return to the DRC. This feeling was reinforced by reports of continued fighting in the Congo, as well a return of some of the refugees to Uganda who had voluntarily left for the DRC.

By the time of writing this report, Sudanese refugees who have been living in most parts of West Nile region were preparing to go back to Southern Sudan after the signing of the Naivasha Peace Accord between the Khartoum Government and the rebels of Sudan Peoples' Liberation Army (SPLA). In fact some refugees hailing from the Western Equatorial Province had started trekking back given the calm security situation prevailing in the Province. However refugees from the Eastern Equatorial Province were pessimistic about the voluntary repatriation exercise given the fact that LRA rebels were still very active in that province.

7.8 The state of other refugee rights:

- Refugees' right to freedom of movement is to a great extent respected. The refugees are required to have movement permits or Identity Cards in order for them to facilitate their movement.
- Freedom of religion is respected and refugees are free to pray in their denominations.
- There are also capacity building programmes such as gender-based and children rights initiatives, conducted in most refugee camps.

7.9 General Refugee issues in Uganda

The Refugee Bill 2003

The Commission reiterates its earlier call on government in the UHRC Annual Report 2003, to enact the refugee bill, 2003. However there is need to address the loopholes that exist in the Bill as were highlighted in the Commission's Annual Report 2003.

Access to Justice

Refugees like any other human being have a right of access to justice. The Commission however noted some constraints that hindered refugees' access to justice during the year under review, which include poverty, policy and other procedural obstacles. There is a need to overcome these obstacles so as to increase refugees' access to justice. On the Policy level, the requirement that the refugees should obtain permission from camp commandants before moving outside the camps is an infringement on their freedom of movement. This is contrary to international human rights law. While restrictions have been justified by the need to physically protect the refugees, the Commission received information that it is sometimes intricate to secure such permission from the camp commandants.

7.10 Recommendations

- Parliament should with amendments, pass into law the Refugee Bill, 2003 to accord refugees the full enjoyment of their rights.
- There is need to strengthen the capacity of police to monitor the situation of human rights in the camps, in particular those of women and children and Sexual Gender Based Violence;

- There is need to conduct psycho-social counselling in the camps to curb on the problem of smoking of opium and chewing "*mairungi*" resulting into many assault cases in the refugee camps.

- Different stakeholders are urged to respond to the deteriorating humanitarian conditions of the refugees/ asylum seekers in the county living outside camps. The government and the UNHCR may need to reconsider helping refugees outside resettlements or force them into the settlements.

- The situation calls for OPM to immediately establish a refugee determination procedure on some border points to help identify refugees. In terms of security, Ministry of Internal Affairs should establish an immigration office to know who is who. Such formal procedure would also facilitate the delivery of humanitarian assistance to the refugees, while ensuring security. And moreover, it is a potential source of revenue in terms of visas and movement permits.

In Conclusion, while the Commission commends the efforts exhibited by government and humanitarian agencies in upholding the rights of refugees, the Commission advocates for greater protection for refugees and IDPs and for an end to the abuses they suffer when they reach supposed safety. Efforts should be made to protect vulnerable people in the camps. Government must address the protection gap for victims of domestic violence and urgently introduce policy guidelines on how to prevent and respond to the problem of sexual gender based violence. The Commission calls on the United Nations and on government to uphold their obligations to protect refugees and their rights.

CHAPTER 08

XENOPHOBIA IN UGANDA

8.0 Introduction

This chapter discusses some aspects of human rights issues relating to freedom from discrimination based on one's nationality, tribe or ethnic origin. Throughout the reporting period the Commission investigated cases of discriminatory nature based on one's ethnicity or tribe. The Commission's findings revealed that there were some xenophobic tendencies that were exhibited by some sections of the Ugandan society.

Xenophobia implies intolerance/hatred of people from different countries, ethnic groups, geographical locations, tribes, religion, and racial intolerance. Xenophobia breeds ethnic conflicts. The previous UHRC reports recorded prevalence of xenophobia particularly in Kibaale district and Teso sub region. A world conference on racism, racial discrimination and xenophobia and related intolerance that took place in Durban, South Africa in 2001 decided *inter alia*, that political leaders and parties can and ought to play a key role in combating xenophobia, racism, racial discrimination and other related intolerance. The Commission strongly believes that harmonious living between the various ethnic groups is a gateway to peace and development.

8.1 Xenophobia in Hoima and Masindi Districts

8.1.1 Background

The districts of Bundibugyo, Kibaale, Kyenjonjo, Hoima, Masindi share a boarder with Lake Albert that borders directly with the Democratic Republic of Congo. As a result of absence of immigration checkpoints along the border, there were continued illegal migrations into the country across the lake.

These migrations are attributed to the continued conflicts in DRC. Some of these immigrants have relatives living in Uganda, hence they find it easy to settle and integrate themselves among the indigenous people.

This uncontrolled influx into the country caused some discomfort among the local authorities and population. Drawing from the experience of rebel activities of the Allied Democratic Forces that occurred in Buseruka in Hoima, the local leaders decided that all immigrants should be registered. Towards the end of August 2004, the local leaders of Masindi and Hoima districts launched a campaign to register the immigrants who had settled in the region. After registration, the immigrants who satisfy the refugee definition would be moved to gazetted refugee settlements. There were allegations made that there were attempts by the *Banyoro* of *Masindi* and *Hoima* to evict the *Alur* of Uganda from *Bunyoro*.

The local media portrayed the matter as an emerging case of ethnic conflict resulting from xenophobia between the indigenous people and immigrants. The UHRC, responding to the media reports visited the areas to establish the facts on the ground. The Commission team visited the Sub-counties of *Bugambe*, *Kyangwali* and *Kigorobya* in *Hoima* district, *Biiso* and *Bullisa* in *Masindi* district.

8.1.2 The registration exercise

The exercise, as explained by the local leaders in the two districts, was not meant to expel immigrants but to register and resettle them in refugee camps. According to the local leaders the exercise was also meant to benefit immigrants

because once allocated to refugee camps, they would be supplied with basic necessities. The registration preparations began with security meetings (from January to March 2004) to harmonize the stakeholders' points of view and opinions so as to have district resolutions. From the period of April to August 2004, sensitization through village meetings, press releases and radio announcements was conducted. A task force comprising of several parties including UNHCR, the Refugee Desk Officer of the Office of the Prime Minister, DISO, DPC, O.C CID and LCs was put in place to carry out sensitization in all parishes. The period of September to December 2004 was the implementation of the exercise.

8.1.3 A Summary of reasons put forward by local leaders to register the immigrants

The local leaders claimed that the exercise was conducted for security reasons as there were reports of the Allied Democratic Front (ADF) and the Peoples Redemption Army (PRA) rebels grouping and regrouping in the DRC across lake Albert. To the contrary, the Commission findings revealed that Congolese nationals were implicated in numerous land wrangles in Bullisa and Biiso Sub-counties. According to district officials, the Congolese nationals were degrading the environment, cutting forests on the outskirts of the main Budongo forest to acquire virgin land for agriculture and settlement. Congolese nationals were also using illegal fishing gear and illegally ferrying fish to DRC, and were not paying taxes to the fisheries department. More so the Congolese children had enrolled in schools and were the majority beneficiaries of the UPE program. Other bonafide refugees had taken advantage of the confusion to escape from resettlement camps, which is contrary to the law. The Commission team was also informed that the exercise was conducted

to verify the status of immigrants in Hoima because there were Alur from Congo who purported to be Alur from Uganda.

The Commission critically analyzed the reasons put forward by the district officials of the two districts to register the Congolese nationals and formed an opinion that much as the reasons are convincing, they do not explain the whole truth. The UHRC team established that many Congolese and other refugees who escaped from refugee camps occupy elective offices in the district. It was noted that there was an influx of Congolese immigrants into Hoima because Congolese nationals manned the Immigration Department. The Commission believes that it is the above reasons than the security claims that raised xenophobic tendencies amongst the locals. The Commission calls on government and its officials to follow the laid down immigration procedures when dealing with the question of illegal immigrants, lest the local leaders can exploit the loopholes to unleash their xenophobic tendencies. The Commission is aware of an elaborate legal framework to handle cases of illegal immigrants. It is important that deserving and genuine cases of asylum seekers are given due protection and assistance as required by international human rights instruments.

The Commission Team was informed that on 28 September 2004, Congolese returnees clashed with *Bahiima* cattle keepers who grazed their cattle in Congolese plantations at Kapapi Village, Kigoroby Sub-county. During the clash, several huts that belonged to the herdsmen were set a blaze, about 39 cattle killed and others injured. The indigenous people alleged that local politicians partly contributed to the conflict situation as they found the presence of non-nationals an advantageous source of votes and their departure was viewed as a loss of support.

8.2 Ethnic Conflicts between the Bagungu and the Alur

Following the registration exercise, there were allegations that the Banyoro were taking advantage of the operation to expel the Ugandan Alur. Reacting to reports to our office regarding a potentially explosive ethnic conflict between the indigenous *Bagungu* and the migrant Alur in Kigorobya Sub-county of Hoima and Butiaba landing site of Masindi, UHRC visited these areas to assess the situation.

The Commission was able to establish that the *Bagungu* were the original inhabitants of the area who settled well before 1960, followed by the Alur. The feeling among the indigenous Banyoro communities was that the Alur should vacate the land. On the other hand the Alur who are the majority argued that the land was communal land and it belonged to all of them. The land in conflict is located in Kigorobya, about 20km from Lake Albert. Being a border area, Alur immigrants from DRC and the Sudan as well as neighboring Nebbi District come and settle at will.

The Commission took note of the discordant behavior that exists between the two communities with accusations and counter accusations of sorcery and other anti-social behavior. The problem of sorcery has sparked off wrangles, especially in 3 parishes of Bwikya, Kiganja and Kapaapi along the shores of Lake Albert.

The Commission also established that there are wrangles that exist between cultivators and cattle keepers. The wrangles are a result of the distinct activities the two ethnic groups engage in. There are claims by the farmers that animals destroy their crops and the affected group has raised the concerns with the authorities. The conflict is between the Alur who crossed to Uganda to grow cotton in the land, which was originally vacant,

and the *Bagungu* herdsmen who came along to graze in the same land. The Commission calls on the parties concerned, together with the authorities to handle cautiously as this has the potential of exploding into a serious ethnic conflict. In *Biiso* Sub-county, *Ngwendo* Village, over 20 Congolese men and five *Bagungu* women were severely injured during the clashes. Security was tightened at the shores of Lake Albert especially in *Biiso* and *Buliisa* Sub-counties to control the clashes between the *Bagungu* and the Congolese *Alur*.

In conclusion, on the whole, much as it was an important exercise to register immigrants and since the exercise did not unfairly target only Congolese nationals but all immigrants, the purpose of the exercise should have been properly explained to the affected groups. It is important for the district leadership to conduct more mediation meetings to gradually remedy the situation other wise the xenophobic tendencies that were detected in the area could in future erupt into an ethnic conflict.

8.2.2 Recommendations

- There is a need for more concerted efforts on the part of the central government to put in place mechanisms that ensure law and order both for citizens and non- citizens. The immigration laws should be enforced by the respective agencies of the state. This however should not be done at the expense of genuine asylum seekers who cross the border for their security.
- Authorities should ensure that Ugandan immigration personnel are deployed at all entry/ exit points. This omission has the potential to compromise National security and also lead to loss of revenue.
- While the Uganda Human Rights Commission does not take issue with the requirement *per se* of registering immigrants with

temporary visas, it is concerned that immigration laws should not be applied in a manner that violates fundamental protections against discrimination under international law. The UHRC also calls upon the Government of Uganda to ensure that persons apprehended as a result of special registration who fear return to their home countries be given opportunity for full and fair hearings on their claims for protection.

- The Commission calls on responsible government ministries such as the Office of the Prime Minister and the Ministry of Internal Affairs to provide immigrants with information on their legal status and to guide them on the need for adherence to national laws on their point of entry. This will go a long way in ensuring the safety of the interests of the nationals.

- The Commission also wishes to remind political leaders that it is incumbent upon them to implement the outcomes of the 3rd World Conference on Racism, Racial Discrimination and Xenophobia and related intolerance that took place in Durban, South Africa in 2001 that decided, *inter alia*, that political leaders and parties can and ought to play a key role in combating xenophobia, racism, racial discrimination and other related intolerance.

8.3 XENOPHOBIA IN TESO – AN ANALYSIS OF THE TESO – BALAALO Conflict

8.3.1 Introduction

On 28 September 2004, eviction of *Balaalo*/pastoralists from the wetland in Teso started, spearheaded by local leaders, the NEMA and security agencies. Prior to the operation, an ultimatum had been issued on 6 September 2004 to vacate wetlands by 27 September 2004. In the eviction process, over 200 huts were set ablaze by

the local people however most pastoralists in Agu, Kumi district, had adhered to the deadline and vacated the wetlands. Pastoralists were reportedly allowed to carry their property including their animals and household items.

The Commission established that there were several categories of pastoralists who settled in the wetlands in Teso region. These included; the original *Banyankole* pastoralists who came to the region as herdsmen to look after cattle of some *Itesot*; the other group was of the recent influx of *Banyankole* pastoralists who were attracted by the expansive grazing land in Teso, with nutritious pastures; and other tribes from other parts of North Eastern Uganda such as the *Sabiny* who were forced out of their habitual land into wetlands of Teso because of the *Karamoja* raids.

After the war, pastoralist tribes began returning to Teso areas with their cattle and families. Initially, this did not raise any alarm from the local people and the returnees lived in harmony with the inhabitants of the area. However, over the years there was an influx of herdsmen from other areas (*Ankole, Sebei, Masindi, Nakasongola*) began congesting the wetlands, in search of water and grass. Sentiments were built amongst the inhabitants of the area as they feared for competition over grazing land, and other amenities like food, water, and space among others and this led to the murder of several pastoralists and forced others out of Teso in search for refuge elsewhere.

None-the-less, there was evidence that some members at Local Councils I-III had extorted money from pastoralists. The National Environment Management Authority (NEMA) intervened on the basis that pastoralists were settled in wetland, hence exposing the environment to dangers of degradation and this led to their forceful eviction. It is against this background that

UHRC intervened to assess the eviction of the *Balaalo* from the wetlands. The monitoring team from UHRC visited, interviewed and made independent observations regarding the conflict resulting from the eviction of pastoralists/*Balaalo* from the wetlands.

The eviction exercise in the wetlands in Teso Region affected; Kodike Parish/village in Kobuin Sub – County, Kumi District, Agu Parish in Ngora Sub – County, Kumi District and Abuketi and Omugenya Odela village, Soroti District.

8.3.2 The eviction of the *Balaalo* from wetlands

8.3.3 Findings of the UHRC team:

- After interviews with the LCs, the affected *Balaalo* and residents of Omugenya Odela Village in Gweri Sub-county, Soroti district, UHRC established that the crisis and the demand for eviction begun due to overgrazing and depletion of pasture resulting from overstocking.
- The Commission gathered information to the effect that certain district officials carried xenophobic tendencies that catalyzed the conflict and consequently the eviction of the *Balaalo*.
- There was forceful eviction of the *Balaalo* herdsmen, which particularly affected women, children and the elderly. Under such circumstances, they hardly got food, shelter, education, or medical care among others. The exercise was poorly handled as exhibited in Gweri Sub-county where two houses that was located outside the boundaries of the wetland were burnt.
- Some *Balaalo* migrants in the area largely ignored efforts to register with the authorities, and therefore could not clearly make claims on the number of cattle and property also this would lead to easy transfer of cattle diseases to another area

and environmental degradation.

- Locals also compromised with the pastoralists as they covered up pastoralists and their animals by providing them shelter during and after the eviction.

- In some wetlands where some Pastoralists had settled, the conditions were visibly catastrophic to human beings, especially in terms of health and sanitation.

- *Karimojong* raids were also contributory factor to the departure of herdsmen into Teso region. The issue of the *Karimojong* raids featured prominently as neighbouring tribes were forced out of their habitual lands into the wetlands in Teso because of continuous raids from the *Karimojong* raids. The *Sabiny* were particularly forced out of their land into Teso wetlands.

- On the issue of resettlement of the evicted pastoralists as provided for under the current draft Internally Displaced People (IDP) Policy, these efforts are likely to be hindered by the xenophobic tendencies of the local residents and the district officials. The District Disaster Management Committees provided no assistance to the pastoralists.

- It was clear that the eviction by the authorities was eviction from the wetlands and not Teso region. Pastoralists were informed in clear terms that the exercise was intended to evict them from the wetlands. Relatedly, NEMA Officials clarified to wetland intruders that they were only being barred from settlement/residing in wetlands, but that they were free to graze their animals in the wetlands.

- The right to property and the right to a fair hearing of the Pastoralists was not adequately protected during the eviction exercise. Many of their cattle were lost during the eviction exercise; other pastoralists sold their cattle at give away

prices. Besides, some individuals forced others who had houses out of wetlands to demolish them on the pretext that they were harbouring *Balaalo*, and therefore presumed to be in wetlands.

- Assessing the applicable law, although article 29(2)(a) of the Constitution provides that every Ugandan shall have the right to move freely throughout Uganda and to reside and settle in any part of Uganda, other national laws also protect areas such as wetlands from intrusion and individuals are expected to abide by the laws in place. It is plausible to note that rights work best in conformity with the law. According to Section 37 Clause (b) and (f) of the 1995 National Environment Statute, no one shall among others erect, construct, place, disturb, or introduce a plant or animal in a *wetland* that has or is likely to have an adverse effect on a *wetland*. The 2000 National

Environment Regulations state in part, that any decision to use wetlands must consider the requirements of all other users in the Community. All these laws seem to protect wetlands, and are against infiltrators. The NEMA Declaration of 2002 demanded herdsmen to quit Teso wetlands. Chapter fifteen of the Constitution provides for land and environment aspects in Uganda. Art. 237(b) of the 1995 Constitution provides, that the Government or a local Government as determined by Parliament by law, shall hold in trust for the people and protect, natural lakes, rivers, *wetlands*, forest reserves, national parks, and any land to be reserved for ecological and touristic purposes for the common good of all citizens. *However what is in dispute is the manner in which the exercise was conducted, which violates human rights and human dignity and not in conformity with the law.*



Mr. Robert Omoding, LC 1 Chairman, (brown shirt) Omugenya Odela village, Soroti District briefing UHRC staff on the Teso-Imulaalo conflict in Soroti region in November 2004.



UHRC staff; Nathan Byamukama, Director, Monitoring and Treaties Directorate, Isaac Bakayana and Tom Kibukutu of the Monitoring and Treaties Directorate interviewing the Imulaalo (Pastorolists) over the Teso-Imulaalo conflict in Soroti District in November 2004.



An Imulaalo Old lady pondering her next move after the eviction

8.3.4 Recommendations

Taking into accounts the results of the investigation and the obligations of the individuals and State undertaken through the International Covenants on Human Rights, UHRC makes the following recommendations relating to the eviction exercise.

- Law enforcement officials should apply minimum force as a preventative measure against

such affected groups.

- The district officials together with NEMA when undertaking such exercises should ensure sensitization of the affected persons on the eviction exercise and the implications of encroaching on wetlands.
- Government should set up an investigation team to establish those responsible for forceful

eviction and crimes committed against affected groups and punish those responsible in accordance with the law, which guarantees fairness in the application of justice.

- The National Environmental Management Authority should publicize the gazetted wetlands so that whoever encroaches on them does it at his or her own risk but not out of ignorance. All attempts should be made to prevent such settlements rather than acting after the fact. In some instances encroachers are left to settle for years before they are ordered out with no- where to go. It is more economical and human rights friendly to inform people about the location of the gazetted wetlands than evicting them after encroachment.

8.4 Conclusion

Today there is greater awareness within the international community regarding fundamental, inalienable rights that belong to all human beings, regardless of color, creed, income or citizenship. Political leaders and society at large can and ought to play a key role in combating xenophobia, racism, racial discrimination and other related intolerance.

Xenophobia gathers steam and transforms into ethnic conflicts. Ethnic conflicts are not conducive for rights protection and affect effective development. There is need for tolerance and greater coordination on human rights protection among institutions active in the regions. There is also need for institutional and policy linkages. Individuals should become increasingly cognizant of the role of governance and rule of law in fostering effective development and also as a way to stem the growing tide of anti-foreigner sentiment and violence.



UHRC staff of the Monitoring and Treaties Directorate interviewing the Imulaalo (Pastoralists) over the Teso-Imulaalo conflict in Soroti District in November 2004.

CHAPTER 09

THE RIGHT TO EDUCATION

9.1 Introduction

The enjoyment of the right to education is instrumental to the enjoyment of many other rights, such as the right to work, health, food, voting etc. Lack of education as manifested by high illiteracy rates and low school enrolment ratios itself constitutes a dimension of poverty. The relevance to poverty of the right to education is underlined by the fact that Universal Primary Education (UPE) is a Millennium Development Goal (MDGs) to be achieved World wide by 2015. Thus, all poverty reduction strategies should give close attention to progressive realisation of the right to education and ensure that the poor are the first to benefit from improved access to education.

9.2 The scope of the right to education

The right to education implies the following;

- Free and compulsory primary education for all children,
- Progressive introduction of free secondary education (including vocational training) for all. Efforts should be made for all to access secondary education.
- Equal access to free higher education on the basis of academic capacity.
- Intensification of fundamental (basic) education, leading to the elimination of illiteracy for adults who have not satisfied their basic learning needs.
- Prioritisation of equal access of education for the girl child particularly vulnerable groups such as children with disabilities, minorities and refugee children. This is important to ensure equality and non-discrimination in the education sector.

9.3 Sources of the right to education in Uganda

Article 30 of the Ugandan Constitution (1995) provides that every Ugandan has the right to education. Article 34(2), further provides that a child is entitled to basic education, which shall be the responsibility of the state and parents of the child. More still the Children Act provides that every child has the right to education and guidance. This right is also provided for in the International Conventions such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the rights of the Child, African Charter on the Rights and Welfare of the Child and the Millennium Development Goals (MDGs).

9.4 Obligations of the Government

States can provide for the right to education in the context of both private and public educational institutions. Since private schools usually do not guarantee education for all children, States are under an obligation to establish a 'sufficient' number of public schools, hire the required number of qualified teachers and provide for the quality of education as laid down in international human rights law.

Government is obliged to ensure that education in all its forms and at all levels shall exhibit the following interrelated and essential features.

Availability - functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party. What they require to function depends upon numerous factors, including the developmental

context within which they operate; for example, all institutions and programmes require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and among others; still some institutions will also require facilities such as a library, computer facilities and information technology;

Accessibility - educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party. Accessibility has three elements:

(i) Non-discrimination - education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds;

(ii) Physical accessibility - education has to be within safe physical reach for all, at some reasonably convenient geographic location.

(iii) Economic accessibility - education has to be affordable to all. This dimension of accessibility is subject to the level of development and priorities of each State. According to article 13 (2) of the ICESCR, whereas, primary education shall be available “free to all”, States parties are required to progressively introduce free secondary and higher education;

Acceptability - the form and substance of education, including curricular and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents. This however, is subject to the educational objectives and minimum educational standards as may be approved by the State;

Adaptability - education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.

9.5 Uganda Human Rights Commission (UHRC) recommendations presented in the previous Annual reports

The Uganda Human Rights Commission has since its initial Annual Report in 1997 been making recommendations to Parliament on the measures Government should take to realize the right to education. Here below are some of them;

1997

- Achieve and realize the right to education by providing free and compulsory primary education for all. p.43
- Making generally available secondary education, including technical and vocational and improving the conditions of teachers p.43

1999

- UPE should cater for the special needs of children with disabilities particularly those with visual, audio, physical and mental impairment p. 37
- UPE should provide specialized teachers, appropriate teaching aids, hearing aids, Braille facilities and other devices that are vital to the educational needs of children with disabilities p. 37
- Ensure that secondary schools, private and Government owned conform to the required educational standards p. 37

9.6 Steps Taken By Government towards the realization of the right to Education

Government has taken several measures to provide for the right to education in Uganda. Some of these measures include:

1. The right to education is provided for under Chapter 4 (Bill of rights), article 30 of the 1995 Ugandan Constitution.

2. Uganda has ratified international instruments relating to the right to education: These include;

- International Covenant on Economic Social and Cultural Rights (ICESCR,) 1966. The relevant provision there under is article 13.
- International covenant on the Elimination of All Forms of Racial and Discrimination 1965. The relevant provision there under is article 5 (e)(v)
- Convention on Elimination of Discrimination against Women (CEDAW), 1979. The relevant provision there under is article 10.
- Convention on the Rights of the Child, 1989. The relevant provisions there under are articles 28 and 29.
- Convention relating to Status of Refugees 1951. The relevant provisions there under are articles 19 and 22.
- Convention against discrimination in education
- African Charter on Human and People's Rights, 1981. The relevant provision there under is article 17(1).

3. Government enacted the following acts;

- The Children's Act, 1997. This purpose was to reform and consolidate the law relating to children.

- The University and other Tertiary Institutions Act, 2001. The purpose was to give a legal framework for management and Administration of Higher Educations Institutions in the country and to give legal back up to the expansion of Higher Education. The National Council for Higher Education has also been established as provided for by the Act. The Council is responsible for Licensing Private Universities and it sets Academic and Management Standards.

4. Introduction and implementation of Universal Primary Education (UPE) under which; enrolment of all children of school going age of 6 years +, waiving of tuition fees and development charges, construction of school buildings and provision of required infrastructure, supply of text books, and other instructional materials, capacity building and mobilization of all stakeholders and targeting partnership with funding agencies, NGO's and the private sector to facilitate resource mobilization, and technical assistance. Primary education will now be free for four children per family.

5. Expansion and diversification of the post - primary education and training (PPET):

- Government has in response to the increased social demand for post primary training and education, designed and launched the PPET. It has included the following components;
 - Renovation and expansion of the existing traditional secondary schools so that more students can be admitted.
 - Construction of libraries and laboratories to expand the teaching and learning process in schools and to improve on the school curriculum.
 - Construction of "seed" schools where there are none (These are o-level secondary schools

located in rural areas to give primary school leavers access to secondary school education)

- Grant aiding community schools by availing them with capitation and development grants to improve on school /programme management and school infrastructure.

- Construction of school polytechnic to rural areas to provide opportunities for skills training to the young leavers and drop - outs to make them economically active.

- Rehabilitation and expansion of existing farm schools, which offer market-oriented skills for rural development in response to current employment demands.

- Promotion of apprenticeship schemes by the private sector for hands-on training.

- Review of the skills training curricula to make it make it employment demand driven and flexible in content and structure.

- Support the private BTVET institutions by development partners for example GTZ

6. Quality control and education assessment in education:

- Quality Control measures have been instituted involving a wide range of institutional restructuring where various stakeholders play major roles and carry out strategic responsibilities. The emphasis has of late shifted from the inputs column to the outcome column. The emphasis on basic minimum performance and outcomes and learning competencies followed the earlier emphasis on mere enrollment numbers of children who access school.

- The traditional school inspectorate has been reformed and restructured to form a new Agency whose function is to inspect schools to assess levels of the teaching and learning processes and activities, as these relate to the education curricular goals and objectives. The Education

Standards Agency (ESA) is a fully - fledged Directorate in the Ministry of Education and Sports. Steps are being taken to legalize the status of the Agency so that it assumes more responsibility in education quality control.

- Assessment of academic achievements is currently done by the statutory Uganda National Examinations Board (UNEB). The Board sets standards of academic performance in public examinations and determines graded achievements, which guide placement of students and their final qualifications.

7. Formulating the Poverty Eradication Action Plan (PEAP): A policy intended to expand access to all levels of education.

8. Increased girls access to basic education: Two of the four free education places per family are intended for girls, and disabled children of both sexes receive priority. The percentage of girls enrolled in schools is now 47% in rural schools and 49-50% in urban schools.

9. As a measure to enhance quality in the delivery of basic education services, including UPE, Government adopted a holistic approach;

- Enrollment of school going children of 6 years +

- Waiving of tuition fees and development charges

- Training, recruiting and paying of teachers salaries. During the period under review, there were 126,000 trained teachers at primary level. A project known as the Teacher Development and Management Systems (TDMS) has provided a network at grassroots levels where classroom teachers receive professional support on regular basis.

- More core learning materials: In 2003, the ratio of pupils to textbooks was 3:1 for Primary 3 and 4 pupils in the core subjects. The recent sector policy reform is that where textbooks are issued to pupils for reference in school and while at home.
- Higher enrolment of children with special needs: Children with special needs were included in normal schools through an “inclusion” sector policy, which has seen a steady but low increase of enrollment and quality of instruction to children with special needs. The Macro policy on social integration and on human rights, children with disabilities are encouraged to access education.
- Expansion of non-formal education: Non-formal programmes like; Complementary Opportunities for Primary Education (COPE), Basic education for the Urban poor areas (BEUPA), Alternative Basic Education for Karamoja (ABEK), Child Centred Alternative Non – Formal Community Basic Education (CHANCE) cater for about 200,000 children in non-formal education.

10. Strong and active advocacy against HIV/AIDS: The advocacy programmes include school health programmes and sensitization of children and youth on HIV/AIDS.

9.7 Some Challenges to address

The Commission still observes that even with the above measures in place, very many children and adults in Uganda still find it difficult to get access to educational facilities. Furthermore dropout levels are high and completion rates are still low. A lot more needs to be done so as to address a number of serious factors such as;

- Imbalance in gender and inadequate opportunities for the poor and persons with disabilities. This is particularly so at the secondary

sub sector. The main concerns would be to build awareness of gender and its impact on the education process and outcomes, and provide teachers with the knowledge and skills required to adopt and promote gender sensitive approaches in all institutional activities. This will go a long way to retain girls in schools.

- The need to cope with large numbers at all levels. Large numbers are a challenge to teachers and have a bearing on the quality of education.
- The need to provide sufficient facilities to provide education for disadvantaged communities including those affected by conflict.
- The fact that the education system is not entirely free and compulsory especially at the primary sub sector.
- Un affordability of education by many who qualify for secondary and higher education.

In all, the education system needs to be geared towards the realization of national, regional and international instruments relating to the right to education.

9.8 Provision of free and compulsory primary education for all children

9.8.1 Universal Primary Education (UPE)

According to the Millennium Development Goals (MDGs) No.2, Governments have to plan to achieve Universal Primary Education. In this way all UN member states have to ensure that all boys and girls complete a full course of primary schooling.

As one of the key strategies for poverty eradication in the country, government has since the early 1990s pursued policies intended to expand access

to all levels of education with a special emphasis placed on primary education. In line with this, in 1997, Universal Primary Education (UPE) was launched and has been implemented since then. Its main objectives are to address inequality in the country and improve on the quality of life of its beneficiaries (Special Report, 2005)¹. This policy has seen a tremendous increase in the number of children enrolling for primary education. It jumped to 70 percent in just the year after the policy was introduced, from 3.1 million in 1996 to 5.1 million in 1997. Though the total enrolment has been increasing since 1997, the drop out rates have also increased due to a variety of factors, most importantly, the fact that primary education is not compulsory.

The table shows the growth in the primary sub-sector 1996-2004 as a consequence of UPE

	1996	1997	1998	1999	2000	2001	2002	2003	2004
Male enrolment in all primary schools	1,647,742	2,832,472	3,061	3,301,888	3,395,554	3,528,035	3,721,135	3,721,587	3,721,911
Female enrolments in all primary schools	1,420,883	2,471,092	2,744,633	2,986,351	3,163,459	3,372,801	3,633,015	3,760,725	3,632,838
Total enrolment in all primary schools	3,068,625	5,303,564	5,506,355	6,288,355	6,559,813	7,304,153	7,304,153	7,633,314	7,354,749
Primary schools	8,531	8,600	9,916	10,597	11,578	13,332	13,332	13,353	13,239
Number of teachers	81,564	59,247	99,237	109,733	110,366	127,035	139,404	145,587	145,819
Number of trained teachers	59,747	62,574	80,953		86,238	97,722	102,009	109,536	
Number of untrained teachers	21,817	26,673	18,284		24,128	29,306	32,475	28,825	
Number of Classrooms	25,676	25,427	28,350	43,174	50,370	60,199	69,900	73,104	79,132
Core textbooks procured	783,556	2,112,104	1,492,186	1,331,710	1,171,235	2,086,132	3,426,000	3,467,266	2,825,324
Teachers guides Procured	236,816	485,195	549,150	593,480	637,811	673,511	686,297	118,123	254,904

Source: Education Planning Department (EPD), Annual school census, 2004

Table below shows primary school enrolment by class from 1997 –2003

Classes	1997	1998	1999	2000	2001	2002	2003
1	2,159,850	1,655,126	1,610,008	1,637,651	1,704,766	1,847,180	1,914,893
2	820,545	1,312,593	1,205,347	1,157,547	1,157,982	1,203,933	1,244,801
3	725,786	863,148	1,128,216	1,125,285	1,128,770	1,159,871	1,178,890
4	565,238	704,163	813,320	962,052	1,019,362	1,070,119	1,089,884
5	449,281	545,151	654,951	723,132	832,855	910,690	958,458
6	340,048	425,564	514,556	568,943	627,177	702,201	760,689
7	242,564	297,641	361,841	384,403	428,004	460,109	485,703
Total	5,303,564	5,806,305	6,288,239	6,559,013	6,900,916	7,354,153	7,633,288

Source: EPD, Annual school census, 2004.

Table below shows primary schools dropouts by class from 1997 – 2002

Classes	1997	%	1998	%	1999	%	2000	%	2001	%	2002	%
1	97,100		94,352	4	88,734	5	88,734	5	88,352	5	86,417	5
2	36,362		60,852	7	54,290	4	47,728	4	52,679	5	50,299	4
3	30,142		42,119	6	41,784	5	41,448	4	43,220	4	41,680	4
4	24,817		35,691	6	35,555	5	35,418	4	39,243	4	39,056	4
5	21,644		30,949	7	31,899	6	32,845	5	36,089	5	38,252	5
6	18,245		27,274	8	29,718	7	32,162	6	36,501	6	38,872	6
7	13,680		22,716	9	23,763	8	24,809	7	29,834	8	30,531	7
Total	241,990		313,953	6	305,743	5	297,529	5	325,918	5	325,107	5

Source: EPD, Annual school census, 2004

¹ A Special report on the Educational Sector, Reprinted in the Monitor Newspaper January 2005

A number of issues arise out of this surge in the size of the national student body. It creates difficulties in recruiting, proper training and payment for teachers. Building enough classrooms is also yet to be attained. Indications now are that while enrolment in schools has risen, so have the drop out rates.

The Commission observes that unless the causes of dropouts are tackled, it will still remain difficult to attain expected standards from the UPE programme. Further, the level of student performance in public schools in the Primary Leaving Examinations as compared to the private primary schools is still relatively poor.

It is therefore, the Commission's recommendation that the following issues identified from some stakeholders² should be attended to:

- Long distance between home and school mean children suffer through long days and cannot easily get home for lunch when they are in school.
- While fees have been abolished, there are still charges for uniforms, books, lunch fees, building fees and other financial obligations that some parents cannot afford.
- There seem to be negative parental attitudes towards education due to illiteracy, over drinking and preoccupation with domestic chores/ livelihood activities and this ought to be addressed

There is therefore need for continuous / comprehensive capacity building and mobilization of all stake holders in support of the UPE programme to ensure accountability and efficiency in school management and resource utilization. Furthermore, the following need to be addressed;

- Early pregnancy and /or marriage
- Peer pressure from dropouts
- Seasonal and geographical barriers such as flooding, drought, and excessive heat. A leaf

can be borrowed from existing programmes such as Mubende's community dialogue programme supported by United Nations Children Fund (UNICEF).

- The need for children to work in fields or elsewhere for money or to care for other siblings or elderly relatives.
- Some parts of the country have been engrossed in war for the last 18 years. There is need to look at affirmative action for such children especially in examination assessment and evaluation.
- Teachers' remuneration is not sufficient to meet the conditions of living.
- Scholastic materials such as textbooks need further input.

Though the Universal Primary Education programme should be commended, there is need to create continuity of this programme by putting in place a Universal Secondary Education programme as well.

9.9 Progressive Introduction of Free Secondary Education (including Vocational Training) for All

9.9.1 Secondary Education

According to article 13 (2) (b) of the ESCR, secondary education shall be made *generally available* and accessible to all by *every appropriate means*, and in particular by the progressive introduction of free education. In this case, '*generally available*' signifies, that secondary education is not dependent on student's apparent capacity or ability and, secondly, that secondary education will be distributed throughout the state in such a way that it's available on the same basis to all.

² During the process of compiling this chapter, UHRC visited the districts of Bundibugyo, Moroto, Apac and Mubende.

Table below shows the highlights of secondary sub-sector in Uganda

Year	1996	1997	1998	1999	2000	2001	2002	2003	2004
Male enrolment	154,026	242,654	157,962	151,249	290,176	301,814	319,494	374,659	351,487
Female enrolment	102,705	103,022	107,714	107,014	228,755	237,972	296,457	308,950	312,138
Total Enrolment	256,731	445,676	265,676	258,263	518,931	539,786	655,951	683,609	693,625
Secondary schools	619	621	837	1,633	1,892	2,400	2,198	2,863	3,082
Number of Teachers	15,783	15,995	16,206	23,295	30,384	30,425	37,227	38,549	37,111

Source, EPD, Annual school census, 2004

A comparison between the primary school and secondary enrolment demonstrates that there are several children who after the primary level never get to the secondary level. For instance, out of over 400,000 pupils who graduated from UPE in 2003, only 50% joined Post Primary education institutions. The scenario also applies to levels beyond post primary. Only 10% of the children who enrol in primary transit to university levels. However, in 1996 there were only 256,731 seeking admission to secondary education, this number has increased to 693,625, in 2004, a 170.2% increase in less than a decade.

According to the MOE&S government has realised an increased social demand for post primary education and training in Uganda. This is attributed to increased numbers of young children graduating from UPE programme. Government has in response designed and launched a Post Primary Education and Training Policy (PPET).

Looking at the components of PPET, the Commission would like to observe the commendable progress towards realisation of secondary education. These components include³;

- Renovation and expansion of the existing traditional secondary schools so that more students can be admitted.
- Construction of libraries and laboratories to enhance the teaching and learning process in schools and to improve on the school curriculum.

- Construction of 'seed'⁴ schools where there are none.
- Grant aiding to community schools by availing them with capitation and development grants to improve on school programme management and school infrastructure.
- Above all, government policy that fully encourages partnership between government and the private sector. It would have been rather difficult for government to accommodate this escalating demand for secondary schools.

Looking at sub-sector financial allocations, at the post primary level, one would observe that, the budget shares are low: 14.9% for FY 2003/2004 and 16.7% for FY 04/05. This seems to undermine Government's commitment to meet its obligation under ESCR & Article 30 of the Uganda 1995 Constitution.

It is therefore, a general recommendation to the government to ensure equal access for all to secondary education, in this case the following indicators should be ensured;

- Ratio of girls to boys in secondary schools needs to be attended to. The table above shows that it stands at 45% to the disfavour of girls.
- Share of public expenditure on secondary education should be increased. It now stands as low as 16.7% (FY 2004/2005).
- Net enrolment ratio in secondary education, disaggregated for poor and non-poor. Currently it

³ Extracted from The National Report on the Development of Education in Uganda: To the 47th Session of the International Conference on Education, Geneva Switzerland. September 2004. (Available on MOE&S website)

⁴ These are ordinary level secondary schools located in remote rural areas to give primary school leavers access to secondary education.

is in favour of the non-poor and urban dwellers

- Drop out and attendance rates in secondary schools should be given priority. Only 50% of UPE products of 2003 found admission to Post Primary. A lesser number may proceed to sit S.4. The special education report puts S.4 completion rate at 25% general and 22% for girls. This is still low and needs to be attended to.
- Proportion of children with disabilities attending secondary education. Little is talked about this subject in the reports from the ministry but the commission still observes that it is important for such vulnerable groups to realise their rights.

For government to improve the quality of primary and secondary education, the following indicators should be guaranteed;

- Pupil – teacher ratio. Currently government seems to be put emphasis on the primary sub sector. But Government ought to know that these sub sectors must be seen to develop

together other wise we shall have generations lost before the secondary sub sector is attended to. Teacher – classroom ratio should also be given ample consideration.

- Proportion of primary /secondary school pupils receiving textbooks. It is important that government should endeavour to provide the students with scholastic materials as it is in the primary sub sector.

9.9.2 Business, Technical, Vocational Education and Training (BTJET)

According to a special report (January, 2005) on the education sector, BTJET total enrolment has steadily grown from 14,077 students in 2000 to 25,192 students in 2004 representing on 79% increase in total enrolment over a four-year period. The report further contends that government has also registered success in narrowing the gender enrolment gap in BTJET institutions with an increase in female enrolment share from 10.4% in 2000 to 30.6% in 2004.

Table below shows enrolment in BTJET institutions between 2000 and 2004

Year	2000	2001	2002	2003	2004
Technical farm schools	8,028	7,119	7047	6,975	7,119
Community polytechnics	N/A	N/A	N/A	1,300	2,590
Technical institutions	5,163	6,097	6,709	7,321	4,384
Uganda Tec hnical Colleges	812	1,752	985	1,498	1,228
Uganda College of Commerce	3,110	3,753	3,319	4,108	2,871
Special Institutions	5,300	5,750	5,900	6,100	7,000

Source: Business, Technical, Vocational Education Training (BTJET) 2004

N/A: Not applicable because CPs were introduced in 2003

Available data herewith indicates that, there has been a decline in enrolment in technical schools over the past five years period from 8,028 to 7,119. In Technical Institutes, enrolment increased between 2000 and 2003 from 5,163 to 7,321 and thereafter declined between 2003 and 2004 to 4,384.

Enrolment in specialised institutions has increased from 5,300 in 2000 to 7,000 in 2004. Uganda Colleges of Commerce and Uganda Technical Colleges have experienced fluctuations in enrolment levels over the five-year period.

Teaching staff in BTVET Institutions (2000 – 2004)

Year	2000	2001	2002	2003	2004
Technical farm schools	298	423	441	458	265
Community polytechnics	N/A	N/A	N/A	98	115
Technical institutions	450	605	422	266	287
Uganda Technical Colleges	182				47
Uganda College of Commerce	122				
Special Institutions	460	475	480	512	515

Source: *Business, Technical, Vocational Education Training (BTVET)*

N/A: Not applicable because CPs started in 2003

The number of teachers in BTVET institutions has generally declined except in community polytechnics where they increased from 98 in 2003 to 115 in 2004. The highest decline in number of teachers was experienced in UTCs with a 74.2% decline. Likewise, the number of teachers in technical institutions declined by 36.2% from 450 to 287 teachers. This is due to the fact that many teachers have not been appointed.

The Commission commends government under the PPET for targeting to⁵;

- Construct community polytechnics in rural areas to provide opportunities for skills training to the young school leavers and dropouts to make them economically productive.
- Rehabilitate and expand existing farm schools, which offer market oriented skills for rural development in response to current employment demands.
- Promote apprenticeship schemes by the private sector for hands on training.
- Review of the skills training curricular to make employment demand driven and flexible in content and structure.
- Support to private BTVET institutions by development partners.

The Commission however, observes that the financial allocations to the BTVET sub-sector are

still low. In the financial years 2003/2004 and FY 2004/2005 the sub-sector received 3.8% and 3.7% respectively of the national budget shares.

The Commission further recommends that Government expedites the process of construction of community polytechnics in the rural areas. This will go along way in realizing government's obligation under ESCR article 13 (2) (b).

9.9.3 Higher and University Education

Article 13 (2) (c) of the ESCR states that higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.

According to the special report on the education sector, higher education is one of the fastest growing sub-sectors in the country in terms of numbers of institutions and enrolment.

The Commission commends the process by the ministry to have in place a strategic investment plan for higher education soon to be completed whose major thrusts would be;

- To reform higher education curriculum to address national and international needs

⁵ Extracted from the National Report on the Development of Education in Uganda: To the 47th Session of the International Conference on Education, Geneva Switzerland, September 2004. (Available on MOE&S website).

- To maintain and sustain the quality of education at that level
- To improve management of higher education in the country

The Commission however, recommends that the National Council for higher education should ensure that the mushrooming private institutions should not compromise the education standards.

Table showing enrolment in Higher Education

Year	1996	1997	1998	1999	2000	2001	2002	2003	2004
Male	20,381	22,124	25,169	29,765	34,360	40,366	49,179	53,932	63,581
Female	9,897	11,147	11,405	15,704	20,003	23,850	30,678	34,990	44,714
Total	30,275	33,271	36,574	45,469	54,363	64,216	79,857	88,922	108,295

Source: EPD Annual school census abstracts, (1996 – 2004)

The Commission observes that higher education is not without challenges that government ought to take on with an aim of finding solutions.

Higher education is inequitable both in terms of the distribution of institutions and gender. Males dominate this level of education while the concentration of most of these institutions is in the central region of the country. This issue has been explained by poverty incidences. Institutions of higher learning especially private ones tend to be concentrated where income levels are relatively higher. In addition, higher education is very expensive. A special report on the education sector observes that, the current unit cost per student is three times more than the average Ugandan's income per capita of between US\$250-300. This makes higher education out of reach to most citizens. Available information indicates that a typical Ugandan university student pays an average of Eight hundred eighteen thousand one hundred nine Uganda shillings (818,109=) per semester in tuition fees only. These costs accentuate the inequality in the sub sector.

The Commission commends the government's affirmative action aimed at stepping up the girl to boy ratio. The cause for this imbalance may be explained by cultural attitudes biased in favour of

boy child, early marriages, poverty all of which require government intervention.

Student/lecturer ratio is high at 1:23⁶. There is a dire need for highly qualified academics to lower the ratio to acceptable levels of 1:15. Private universities in particular acutely lack qualified staff⁷. It is the duty of government to attract qualified staff requires and this calls on government to make the terms and conditions of service of personnel more attractive. Improving the conditions of service is not only an obligation to the government from the International Labour Organization (ILO) standards but also a prerequisite for better standards in education.

In the same way, the Commission observes that the infrastructure, materials and equipment are poor and grossly inadequate. These include classrooms, laboratories, libraries, theatres, books and computers. Even those available are not connected to any website or e-mail addresses. Available information further indicates that the computer student ratio is alarmingly high at 1:50 compared to the recommended number of 1:5. The current growth in the sub sector mainly fuelled by private sector is unplanned. As a result most facilities in private institutions are below international and even national minimum standards. The biggest challenge of government

⁶ From the special report on the Education sector

⁷ Ibid 6

is to reform this sub sector so that it regains its ability to offer quality higher education.

9.9.4 Enrolment of children with special needs

The report from the Ministry of Education and Sports (MOE&S) indicates that before UPE was introduced, the few schools for children with disabilities were over stretched to meet their needs. Thus most children of this category were kept out of school. The report further notes that today the situation has changed. Special needs schools benefit from UPE funds. Even more significantly, the report says, children with disabilities are being integrated into other schools through an 'inclusion' sector policy. In the post primary sub sector, there is slower but steady increase in enrolment and quality of instruction to students with special needs. The report further observes that under the macro policy on social integration and on human rights children with disabilities are encouraged to access education and special measures are in place to address their learning needs.

The commission recognizes the commendable work being done by government, but observes that, there is need to increase the facilities for students with disabilities in all institutions of learning. As earlier noted such facilities still lacking include facilities for those with visual, audio, physical and mental impairments.

9.10 Non - Formal Education

Despite the success of UPE, some children still do not access education for various social, economic and environmental reasons. These include over age children, children in pastoral areas and fishing villages and those in labour who feel too old to return to school and children engaged in work like pastoralism. These are provided for

in non-formal settings according to the report from the MOE&S. None formal programmes like COPE⁸, BEUPA⁹, ABEK¹⁰, CHANCE¹¹, cater for about 200,000 children in non- formal education. About 67,500 receive UPE capitation grants. At post primary levels modular courses are being prepared which are more flexible and relevant the report further says. According to the report, in the case of those who can not afford non – formal education especially the youth and young adults, the Functional Adult Literacy (FAL) programme addresses their learning needs, covering literacy, numeracy and life skills.

While the commission commends government for this continued provision of facilitation for the realization of the right to education, we also observe that most of these programs unlike FAL are not regionally distributed. FAL itself does not cover all the intended beneficiaries. ABEK, which is good for all Karamojong children just, covers few sub counties in Karamoja and this leaves out many disadvantaged children in Karamoja. Some programs are not even tailored to the needs and time schedules of the beneficiaries. This raises a question of indirect discrimination which is a violation of human rights. The commission recommends that more of these programmes should be extended to rural areas because the bulk of the disadvantaged groups live in rural areas. The government should realize that much as these programmes exist, there is still need to introduce more quality education to these vulnerable groups so as to improve their chances of competing with other people in more advantaged environment in the country.

9.11 The Right to Education and the fight against HIV/AIDS

The Commission commends the Uganda education sector for taking the lead to address the need for

⁸ Complementary Opportunities for Primary Education, COPE

⁹ Basic education for the Urban poor areas, BEUPA

¹⁰ Alternative Basic Education for Karamoja, ABEK

¹¹ Child Centred Alternative Non – Formal Community Basic Education, CHANCE

students and pupils to learn about HIV/AIDS as part of the school curriculum. The advocacy programmes which include school health programmes and sensitisation of children and youth on HIV/AIDS are a very good indicator of the commitment to create awareness. An education sector policy on HIV/AIDS, which is being prepared to formally integrate HIV/AIDS in education curricular and school systems at all levels, is also a good step towards the prevention of the scourge. Retraining/ retooling school authorities and teachers to handle the subject is a welcome move and it should be consolidated to reach all the sub sectors of the education system. All this will go along way as strategic mechanisms to address the trauma and stigma associated with the deadly disease, which would rather affect the learning programmes and deny all us of potential citizens thereby affecting the attainment of the right to education.

Gaps in the national legislation

Though there is provision for the right to education in the Constitution and the Children Act these do not make provision for what the right entails.

Though UPE is free, it is not compulsory thereby contributing to the number of children dropping out of school or not going to school at all.

Secondary education is available but not accessible to all.

Though there is recognition of the rights of children with disabilities, the implementation of these rights is not effective thereby denying most children with disabilities the right to education.

There is limited regulatory framework to monitor

schools and procedures adopted by schools.

Legislation leaves primary responsibility of ensuring that children go to school to parents/ guardians.

9.12 Conclusion

Uganda is faced with major challenges of providing relevant, quality education for its peoples, an education that will equip them to live harmoniously among themselves and with the rest of the society. Education while addressing local concerns must also be regional and international in outlook. The educational reforms should aim at addressing these and the critical issues of quality and access, especially in respect to gender. Government should also concern itself with issues of human rights so that both young and old, men and women, benefit from the quality education geared towards increased production, sustainable development and improved quality of life of the people.

The Government can borrow a leaf from sister countries such as Kenya and Tanzania as the East African community takes shape. In these countries deserving students are provided with loan facilities to meet their education obligations and these loans are repaid over a period of time after the beneficiaries are in recognized employment positions. The great advantage of this scheme is that it opens chances for all people of all categories including the vulnerable without any form of discrimination. It is indeed a rights based scheme that the Government of Uganda should consider to adopt as we strive to realise the right to education.

CHAPTER 10 THE GAPS IN THE PROTECTION OF CHILDREN

10.1 Introduction

A Child is defined under the Children Act (Cap 59) to mean any human being below the age of 18 years. The Uganda Population and Housing Census of 2002 estimated that of the 24.4 million people in Uganda, 56% were below 18 years. It was further estimated that 49% of the total population were people below the age of 15 years. These population figures demonstrate that children comprise the highest number of people living in Uganda. Due to the role children play currently and will play in the future development of the country, it is imperative that they fully enjoy their rights spelt out in the Constitution of the Republic of Uganda (1995), the Children Act (Cap 59, Laws of Uganda) and the Convention on the rights of the Child (1989).

10.2 Children's rights

Generally, children are entitled to all human rights as spelt out in the Constitution of the Republic of Uganda, the Children Act and the Convention on the Rights of the Child. However, it is important to note that there are several other rights that are included in other documents such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the

International Covenant on Economic Social and Cultural Rights among others.

A child is entitled to a variety of rights such as the right to know and be cared for by his/her parents, the right to maintenance, the right to leisure, the right to national identity, right to freedom of expression, right to freedom of thought, conscience and religion, freedom of association etc. Though the above rights seem to be sufficiently legally supported, their realisation has not been sufficient for most children in the country.

10.3 Maintenance

Article 34 (1) of the Constitution (1995) states that children shall have a right to know and be cared for by their parents. This right creates an obligation on the part of parents to ensure that their children enjoy the following rights; education, immunisation, adequate diet, clothing, shelter and medical attention. Though the best interests of children must be ensured, the Commission has noted that parents are still reluctant to meet their obligations. During 2004, the Commission received 602 complaints relating to maintenance reflecting the highest received complaint. Most complaints were received at Kampala and the least received were in Moroto. The table below is a break down of the complaints received.

Complaint	HQTS	Gulu	Moroto	Soroti	Jinja	Mbr	Fort portal	Total
Maintenance	231	46	22	144	48	39	72	602

In the 6th Annual Report, the Commission noted that it had received 126 maintenance complaints¹. These complaints ranked the third most received complaints. These trends had also been demonstrated in the 2001/2002 Annual Report which noted that in Kampala 63 maintenance complaints had been received being the 4th most received complaint then. However in Soroti Regional office it was the most received complaint with 86 complaints. Gulu regional office also registered maintenance matters as the most received complaint as at April 2002 with 87 complaints received². These trends demonstrate that some parents are increasingly neglecting their obligations to their children.

The reasons that have often been sighted as contributing to failure to maintain children have ranged from being unemployed, to personal problems between the parents and also pleas of ‘complete ignorance’ about the failure to make provision for the child. The above reasons notwithstanding, parents have a mandatory obligation to maintain their children. Section 5 (1) of the Children Act is couched in mandatory terms and states as follows;

‘It **SHALL** be the duty of a parent, guardian, or any person having custody of a child to maintain that child’

Gaps in the national legislation³

The Constitution and Children Act contain provisions that to go to protect the rights of the child especially as concerns their welfare. However, it is important to note that the legislation does not commit the government directly to support children. Therefore, primary responsibility is left to the parents/guardians as illustrated by Section 5 (1) of the Children Act.

10.4 Health

Article 24 of the Convention on the Rights of the Child makes provision that State parties have an obligation to recognize a child’s right to the highest attainable standard of health and to facilities of treatment of illnesses and rehabilitation. This provision creates an obligation on the state to ensure that child and maternal mortality rates are reduced, disease and malnutrition are diminished and appropriate pre-natal and post natal facilities are ensured.

There have been some policy interventions to ensure that children achieve the highest standard of health. For instance, there is the Health Sector Strategic plan that tries to make provision for the reduction of the reported number of ill health and mortality rates. This policy forms part of the government’s Poverty Eradication Action Plan (PEAP) a policy with the major objective of eradicating poverty in the country. Other initiatives include; the Integrated Management of Child Hood illness (IMCI), Early Childhood Survival and Nutrition, increasing access to safe water, immunization programmes among others. Though all these initiatives are commendable, there are still short falls that must be addressed if children are to enjoy their rights. For instance the Uganda Demographic and Household Survey (1995) indicated that infant mortality rates and child mortality then were at 97/1000 live births and 147/ 1000 live births respectively. The maternal mortality was at about 506/100,000 live births. These rates are so high depicting that the interventions still need to be strengthened. Shortfalls in human and financial resources should be addressed and increased to ensure that health programmes and initiatives get as close as possible to the children in each and every village in Uganda.

¹ Chapter 1, Table 1.3

² Chapter 1, Table 1.1

³ Adopted from a child matrix developed by Justice Resources

Further, HIV/Aids has fundamentally affected children in the realization of their rights. For instance by 1999, there was an estimated 140,000 children under the age of 12 years living with HIV the majority of whom had been infected through mother to child transmission. Further the Ministry of Health estimated that by 2001, of the 950,000 deaths caused by the epidemic, 10 % were children. Though there have been some interventions by government (Prevention of Mother to Child Transmission, Voluntary Testing and Counseling, Anti Retroviral Therapy and several programmes to assist children affected and/or infected with HIV/Aids) these are limited because they do not cover the entire country. There is hence the need to scale up the interventions to reach each and every child in the country.

Gaps in the national legislation

Though there have been measures implemented to ensure access to health services, it is important to note that there is still limitation in their accessibility. There is hence the need to improve the social welfare system and also ensure that health services are brought as close as possible to the people with all the necessary medical personnel and facilities.

10.5 Children affected by conflict

Uganda has been faced with several insurgencies most notable among them being the one waged by the Lord's Resistance Army (LRA). This insurgency has displaced approximately 1.4 Million people the majority of whom are children. During a monitoring visit by officials from the Commission and Unicef to Apac and Kitgum districts it was discovered that the continued insurgency in northern Uganda was having profound effects on children. For instance, in Kitgum, there were still several children commuting considerably long distances to the

town centre by themselves. These children were being housed in shelters such as Christ the King Church, *Kitgum* Public School, World Vision/ AVSI shelters. This visit revealed that most of the children were spending the nights without food or beddings.

Further, the provision of other social amenities has also been affected. For instance, several children have to study from learning centres which are temporary structures meant to ensure that children have access to basic education under the Universal Primary Education Programme. These learning centres are not appropriately facilitated to enable them carry out their obligations. Due to this therefore, the performance of students is affected. However there are education programmes like Northern Region Education Programme (NREP) that encourages and promotes education to all people within northern Uganda. This initiative enables any child sit their Primary Leaving Examinations (PLE) from any school in the country. These notwithstanding, the drop out rates are estimated at between 15-20%⁴. These rates were majorly attributed to poverty being fuelled by the insurgency.

Several initiatives have been taken to ensure that the war in northern Uganda is put to an end. These initiatives include; the enactment of the Amnesty Act (Chapter 294, Laws of Uganda), the Several ceasefires that have been declared by the government, the encouragement of the *Mato Oput Acholi* system of doing justice, the ratification of the Rome Statute of the International Criminal Court and the use of the force of arms. These measures notwithstanding the insurgency has continued thereby affecting the rights of all people living in northern Uganda and children in particular. Due to the urgency of ending the conflict, there is the need to urge the LRA to respect humanity and attempt to end the insurgency

⁴ This was noted by the camp officials in Kitgum and Apac districts during the monitoring visit by officials from UNICEF and UHRC between the 1st - 6th November 2004. The camps visited included; Labuje, Akwang, Achokora, Aboke.

through dialogue with the government through the channels that have already been created.

10.6 Child soldiers

The LRA has used abducted several children to be used as child soldiers. In a child rights study, it was estimated that about 26,000 children had been abducted by 2004⁵. Most of these children it was reported were used as child soldiers. This concern had also been raised earlier by the United Nations Economic and Socio Council which while considering a report by the U.N Secretary General noted that a considerable number of children were being abducted by the LRA with the main intention of training them to fight in both Uganda and

Sudan⁶. Though the above observations were made in 1999, Save the Children in Uganda reported that in 2004 “...CPUS registered 1,980 returnees-the highest number registered in a single year since the conflict started. Most have been soldiers with the LRA.”⁷ The use of children by the LRA as soldiers is a continuing practice.

The Uganda Peoples Defense Forces is also reported to have recruited children into its ranks. For example Save Children in Uganda noted that in 2004 ‘government... established the new 105 brigade in Gulu to absorb former LRA fighters-some children are involved...’ The table below shows the estimates of children recruited into the national army.

Area/district	Estimated no of child soldiers
Katakwi	27- Arrow boys, 2- UPDF
Kaberamaido	20- Arrow boys
Soroti	83- Arrow boys
Madi Opei Camp	200 LDUs
Pajimo	300 LDUs
Kitgum Town Council	4 UPDF ⁸
Pader ⁹	568

The UPDF has rebutted any inferences that it recruits children into its ranks. For instance in The New Vision dated 9th March 2005¹⁰, the army spokes person, Major Shaban Bantariza noted that ‘Unicef staff based in Northern Uganda are always invited and they have often done the screening with us. Two recent examples will do: In 2003, at Lugore Training Wing in Gulu district, we , in conjunction with Unicef staff, screened out of training, 33 youths, who had found their way to the wing, with written recommendations from both

their parents and local council authorities.’ He further noted that, ‘Between December 2004 to date, our commanders in fourth division Gulu have managed to screen out of entry into LDUs, 72 candidates.’ It is discernable from these comments that there are several measures put in place to ensure that children do not join the army. However, it is also important to note that children are still making all attempts possible with the assistance of their parents and the Local Councils to join the army.

⁵ CSOPNU Child Rights Violations Study, January 2005

⁶ Commission on Human Rights Fifty fifth Session E/CN.4/1999/69 27th January 1999

⁷ Edward Sembide Mwebaze, ‘The State of Children in conflict areas in 2004’ A paper presented at the UHRC Annual Report Consultative Meeting, 19th May 2005

⁸ These four children approached a member of staff of one of the humanitarian agencies working in the area and informed that staff that they were below the age of 18

⁹ Local Council chiefs in the areas of Omiya Pachwa, Paimol Muto, Laponi, Adilang and Wol IDP availed these estimates

¹⁰ ‘Unicef needs more than just reports’

Article 34 (4) of the 1995 Constitution states that, ‘Children...shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education, or to be harmful to their health or physical, mental, spiritual, moral or social development.’ Though this provision would have gone along way to ensure that children do not get into the army, there are certain set backs in the same provision i.e. article 34 (5) states that the children being referred to in article 34 (4) are those below 16 years. This implies that those children between the ages of the 16 to 18 years can actually get into the army. The Convention on the Rights of the Child (1989) ratified by Uganda in 1990, states in article 38 (3) that ‘State parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces...’ This provision of the CRC lowers the age further from that provided in the Constitution to permit the recruitment of children who ‘at least are fifteen years.’ However this provision further adds that, ‘In recruiting among those persons who have attained the age of fifteen years but have not attained the age of eighteen years, State parties shall endeavor to give priority to those who are oldest.’ The Convention gives the State parties the chance to recruit child soldiers but being careful to recruit the oldest! The Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in armed Conflicts (2002) ratified by Uganda in 2002 states that children below the age of 18 shall not be compulsorily recruited into the army. This provision creates an avenue for recruiting children into the army as long as they freely join!

Steps should be taken to ensure that children are not recruited into the army. Serving in the army affects a child’s welfare and should be discouraged whether the child consents or not. Therefore, the LRA should refrain from recruiting children into

the army. Though the UPDF’s efforts to restrain children from getting into the army should be commended, they should be further strengthened with the possibility of de-registering any child who already is recruited into the army. Parents and communities should also participate in the exercise of discouraging their children from joining the army. Resilience in society against all sorts of justifications to join the army must be encouraged.

Gaps in the national legislation

As noted above, article 34 (5) of the Constitution implies that children of above the age of 16 years can lawfully join the army. It is important to note that any person below the age of 18 years is a child and their welfare should be ensured. Since joining the army carries with it several obligations, which would otherwise hinder for instance a child’s opportunity, to attend school, it is crucial that the Constitution is amended to increase the age from the current 16 years to 18 years as is the case in the Children Act.

10.7 Children With Disabilities (CWDs)

The 2002 National Housing and Population Census report indicated that there are approximately 844,841 people with disabilities in Uganda. Though Persons with Disabilities (PWDs) are impliedly catered for by all national, regional and international human rights instruments, there are few instruments that directly address them. Article 35 (1) of the 1995 Constitution states that persons with disabilities have a right to respect and human dignity, the State is given the obligation to ensure that they realize their full mental and physical potential. Further there are measures that have provided opportunities for PWDs e.g. article 32 that has ensured representation of PWDs in Parliament, Local Councils, District Service

Commissions and other constitutional and administrative bodies, Universal Primary Education has provided opportunities for CWDs to attend school and achieve their full potential e.g. according to the Ministry of Education and Sports (Education Planning Department) by 2003, there were approximately 247,953 CWDs attending primary school.

Though these measures have been put in place, there are certain issues that need to be addressed to ensure that CWDs enjoy their rights fully. For instance, the public transport system does not make provision for CWDs in particular and PWDs in general. This inhibits their movement and thereby violates their rights to movement. Further, the fact that some schools and public buildings do not have sufficient facilities to enable CWDs have access to such places inhibits the enjoyment of their rights. Though these examples are evident all over Uganda, the conditions in Internally Displaced Peoples Camps need to be addressed urgently. For instance during a Monitoring Visit to Internally Displaced Peoples Camps in 2004, it was noted that though there were pit latrines in all camps visited, these pit latrines had no special facilities for PWDs or in the alternative there were no particular pit latrine allocations for PWDs. The pit latrines had to be accessed by PWDs in the very un-hygienic state in which they were! It was also reported by the camp attendants that though there were no particular facilities for CWDs they were included in all programmes. Therefore, though there have been some measures to ensure that CWDs enjoy their rights more interventions are still needed.

10.8 Recommendations

Though there are several measures, policies and laws to ensure that children enjoy their rights, there are areas that need to be addressed as has been

illustrated above. In view of this therefore, to ensure that all children enjoy their rights the following should be taken into consideration.

- (a) More sensitization programmes should be carried out to educate children on their rights.
- (b) The law should be amended to fill the gaps that have been identified above.
- (c) Parents/guardians must make it their obligation to ensure that their children enjoy their entitlements as provided for in the Children Act (Cap 59).
- (d) Central government and Local Council Administrations should facilitate Probation and Social Welfare Officers to execute their duties. There should be budgetary allocations for this office in all district budgets.
- (e) Communities should make children a joint responsibility and not just a parental responsibility. This will ensure that all people in Uganda have the responsibility to ensure that children enjoy their rights.
- (f) Both GoU and the donor community should increase their interventions in the health sector to ensure that mortality rates decline and also that other health related illnesses can be ably prevented or cured.
- (g) Stronger initiatives should be taken by both GoU and the LRA to end the insurgency in northern Uganda due to its continued effects on the children in particular and all people in general.
- (h) The UPDF should further strengthen its mechanisms of preventing children from joining the army. There should be a further provision to the effect that if any child is discovered in the ranks of the army, they should immediately be de-registered.
- (i) There should be facilities country wide to ensure that CWDs enjoy their rights e.g. all buildings should have special facilities to ensure accessibility for CWDs.

10.9 Conclusion

There are several measures that have been adopted by to ensure that children enjoy their rights e.g. enactment of the 195 Constitution of the Republic of Uganda, Children Act (Cap 59), the ratification of the Convention on the Rights of the Child (1989) among others. However these notwithstanding, the realization of child rights has still been inhibited by a variety of factors as has been shown above. Therefore it is imperative that greater interventions are made by the parents, government, and all stake holders.

CHAPTER 11 FREEDOM OF EXPRESSION IN UGANDA

11.1 Introduction

Freedom of expression is crucial for the realisation of democracy and good governance and ensuring respect for other human rights and freedoms. Freedom of expression and speech facilitate discussion, dialogue, consultation and information flow. In so doing they become vital for the realisation of the human right to participate in governance and in decision-making. Democracy entails transparency and accountability to the people from whom the mandate to govern is obtained. Freedom of speech and expression helps to keep the government in check and ensure fairness in whatever is done. Hence, it is necessary to encourage and facilitate participation of the citizens in the formulation and implementation of government programmes. This freedom is an important ingredient in the realisation of the right to development, which is the aspiration of Ugandans as provided for in the Declaration to the Right to Development (1986). Corollary to the freedom of expression is the freedom of the media, which ensures that opinions held are shared with others. The media and other means of communication promote the free flow of information and ideas, assist people to make informed decisions and facilitate and strengthen democracy, thereby ensuring full respect for the right to information.

The government of Uganda has exhibited unprecedented goodwill towards freedom of expression and freedom of the media over the past 16 years as demonstrated by the political and legal commitments made at the international, regional and national levels to facilitate realisation of the right. Uganda signed the International Covenant on Civil and Political Rights (ICCPR) in 1995, incorporated the provisions on freedom of

expression into the 1995 Constitution and presented to the UN Human Rights Committee the initial country report in 2004. However, much more still remains to be done to ensure that freedom of expression and freedom of the media become a reality. This chapter examines the extent to which the freedom of expression was enjoyed during the year under review and the challenges encountered.

11.2 Scope of freedom of expression

Freedom of expression is a fundamental human right guaranteed by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples' Rights (ACHPR), the 1995 Constitution of Uganda as well as other international and regional documents. Though the 1995 Constitution of Uganda and the African Charter on Human and Peoples' Rights do not define the right, the ICCPR provides detail on what this right entails. Article 19 (2) provides that this right includes;

'Freedom to seek, receive and impart information and any ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.'

The ICCPR General Comment No. 10 on the freedom of expression underscores the role of the media in the realisation of this right and therefore calls for measures that minimise control of the media, as this would interfere with everyone's freedom. The General Comment calls on State parties to protect freedom of expression. The African Commission on Human and Peoples' Rights also expounded on this in its Declaration

of Principles on Freedom of Expression in Africa issued during its 32nd session in Banjul, The Gambia in 2002. The African Commission on Human and Peoples' Rights further stresses the need to accord every person an opportunity to exercise the right to freedom of expression and to access information without discrimination.

In a landmark case in *Charles Onyango Obbo, Andrew Mujuni Mwenda V. AG*, 2002, the Monitor journalists Charles Onyango Obbo, Andrew Mujuni Mwenda successfully challenged the law on publication of false news as unconstitutional and an infringement on freedom of expression. The Supreme Court maintained that the right to freedom of expression extends to holding, receiving and imparting all forms of opinions, ideas and information. According to the judgement, the right is not confined to categories, such as correct opinions, sound ideas or truthful information. *“A person's expression or statement is not precluded from the constitutional protection simply because it is thought by another or others to be false, erroneous, controversial or unpleasant. Indeed, the protection is most relevant and required where a person's views are opposed or objected to by society or any part thereof, as 'false' or 'wrong'”.*

The Supreme Court judgement also stressed that applying the constitutional protection to false expressions is not to uphold falsity as had been implied in the judgment of the Constitutional Court, but the purpose was **to avoid the greater danger of smothering alternative views of fact or opinion.**

In order to enjoy freedom of expression and speech, it is imperative that other rights such as the freedom of opinion, thought, conscience and the freedom to associate, assemble and demonstrate are respected. These rights are

paramount in the realisation of the freedom of expression.

11.3 Limitations on the Freedom of Expression

Like most rights, the freedom of expression and speech are not absolute. Both the international human rights law and Art. 43 of the national Constitution of Uganda indicate that freedom of information carries special duties and responsibilities and thus provide for restrictions. Art. 43 states:

(1) “In the enjoyment of the rights and freedoms prescribed in this chapter, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest.”

Public interest under this article shall not permit-

- (a) political persecution;
- (b) detention without trial;
- (c) any limitation of the enjoyment of the rights and freedoms prescribed by this chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this Constitution.”

Article 19 (3) ICCPR provides for restrictions for the exercise of the freedom of expression. These restrictions include *respect of the rights or reputations of others and for the protection of national security and public order.*

In expounding on limitations to freedom of expression, the Supreme Court judgement noted that restriction on the exercise of the freedom is permitted **only in special circumstances and must be acceptable and demonstrably justifiable in a free and democratic society.** *“The protection of the guaranteed rights is a primary objective of the Constitution. Limiting their enjoyment is an exception to their protection, and is therefore a secondary objective. Although the Constitution*

provides for both, it is obvious that the primary objective must be dominant. It can be overridden only in the exceptional circumstances that give rise to that secondary objective. In that eventuality, only minimal impairment of enjoyment of the right, strictly warranted by the exceptional circumstance is permissible". The restrictions must be "provided by law" and must be justified as being "necessary".

The Supreme Court judgement, quoting the Supreme Court of Zimbabwe relied on the following criteria to determine whether a restriction could be considered necessary in a democratic society:

1. The legislative objective which the limitation is designed to promote must be sufficiently important to warrant overriding a fundamental right;
2. The measures designed to meet the objective must be rationally connected to it and not arbitrary, unfair or based on irrational considerations;
3. The means used to impair the right of freedom must be no more than necessary to accomplish the objective

11.4 Freedom of Expression in Uganda

Uganda has a progressive legal regime that provides for protection of freedom of expression. As stated before, Uganda is a state party to major international and regional instruments and documents that provide for press freedom. The 1995 Constitution of Uganda also enhances protection of the right in the country. However, within the same legal regime are certain provisions coupled with certain political actions that still pose a potential or real threat to full enjoyment of freedom of expression in Uganda. The Commission will examine the state of freedom of

expression in Uganda guided by the Declaration of Principles on Freedom of Expression in Africa, made at the 32nd Session of the African Commission on Human and Peoples' Rights, from 17 - 23 October, 2002, in Banjul, the Gambia.

These principles are:

1. The guarantee of freedom of expression
2. Non- interference with freedom of expression
3. Media diversity
4. Freedom of information
5. Private broadcasting
6. Public broadcasting
7. Regulatory bodies for Broadcast and Telecommunications
8. Restrictions on print media
9. Public complaints system that is accessible
10. Promoting professionalism
11. Attacks on media practitioners
12. Protecting reputations
13. Criminal measures
14. Economic measures
15. Protection of sources and other journalistic material

11.4.1 The guarantee of freedom of expression and non-interference with freedom of expression

Freedom of expression and speech is guaranteed by the 1995 Constitution of the Republic of Uganda, which is the supreme law of the land. The Constitution, which is based on the principle of equality and non-discrimination, also guarantees this right for every citizen.

Articles 29, 41, and 43 of the Constitution provide as follows:

29(1) Every person shall have the right to: freedom of speech and expression, which shall include

freedom of the press and other media; freedom of thought, conscience and belief...

43 (1) *In the enjoyment of the rights and freedoms prescribed in this chapter, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest.*

11.4.2 Media diversity

Government has continued to promote diversity in the media. So far, a total of 75 radio stations and a number of Television stations have been licensed to operate while many newspapers and magazines have also been registered. (See Table 11.1). This has increased the availability and promotion of a range of information and ideas to the public. Some of these media operate in local languages and have specially designed content to reach varied audiences including the vulnerable or marginalised groups, such as women, children and refugees, as well as linguistic and cultural groups. The distribution of the radio stations especially FM stations has had the greatest impact

in this as all regions in the country are covered with radio stations tailoring their broadcasts to the needs of the localities (including the local language) where they operate. The emergence of community radios has also enabled specific audiences to access empowering information to enhance their capacity to participate in governance and decision making. The Internet, which has emerged in Uganda in the past few years, has brought a revolution in the information sector because of its ability to condense large amounts of information in very little formats and make it instantly available from all over the world. Information is easily solicited, received and imparted over the Internet. The government has liberalised provision of Internet services and so far a number of internet providers have been licensed. Although easily accessible from the city and a few urban centres upcountry, the internet is still inaccessible to the larger population of Uganda due to computer illiteracy, unavailability of equipment and unaffordable rates for the commercial internet cafes.

Table 11.1 The Distribution of radio stations in Uganda

Region	Number
Central	30
Western	18
Eastern	13
Northern	14
Total	75

Source: Uganda Broad Casting Council

11.4.3 Freedom of access to information

The state is obliged to allow citizens access to public information and encourage private broadcasting. This is guaranteed by the Constitution of Uganda in Art.41 which states: (1) *Every citizen has a right of access to information in the possession of the State or any other organ or agency of the State except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the*

right to the privacy of any other person;

41(2) Parliament shall make laws prescribing the classes of information referred to in clause (1) of this article and the procedure for obtaining access to that information.

The Access to Information Bill, 2004 was passed by Parliament in July 2005. Even though it has taken government a decade to enact a law to

operationalise this constitutional provision, the Commission notes with appreciation Parliament's effort to make this constitutional provision a reality. The Commission was part of the consultations and discussions with stakeholders and partners aimed at improving the provisions of the Bill. The Act will go a long way in facilitating access to information held by public and private bodies, which is necessary for the exercise or protection of any right and compelling public bodies to publish important information of significant public interest. It also bars sanctions for releasing in good faith information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment save where the imposition of sanctions serves a legitimate interest and is necessary in a democratic society. This will definitely lead to greater public transparency and accountability as well as good governance and the strengthening of democracy.

11.4.4 Private broadcasting and Public broadcasting

As already pointed out above, government has done well in facilitating the growth of a diverse, independent private broadcasting sector. Government's economic policies on liberalisation and investment have provided a conducive environment for the establishment of private broadcasting media and have also led to their flourishing as more investment and business boost the advertising industry.

Realisation of press freedom requires that community broadcasting be promoted given its potential to broaden access by poor and rural communities to the airwaves. However, there has been a long standing complaint by some community radios being denied the concessions and being treated as any other commercial stations. They have complained against very high license fees charged by the Broadcasting Council whereas

these community radios do not make profits.

Government has taken steps to turn the state broadcasters namely: Radio Uganda and Uganda Television into public ones as required by the provision on freedom of expression. Already Parliament debated and enacted in May 2005 the Uganda Broadcasting Corporation Act 2005 tabled in 2004, aimed at transforming state broadcasters into public ones, thus ending state monopoly over broadcasting which is not compatible with the right to freedom of expression. The Commission was pleased with the consultative process and the debates thereof while the Bill was still before Parliament, although the Act does not reflect much change of what was originally in the Bill. The major concerns of stakeholders especially the media fraternity were whether the law as it is will be able to turn the state broadcasters into public ones in reality. The powers that the law grants to the Minister of Information and Broadcasting are excessive and could expose the Board to interference, particularly of a political or economic nature.

The Commission therefore recommends that the law be applied reasonably to achieve its intended aim of turning state broadcasters into public ones and guard against using it to operate a state broadcaster under the guise of a corporation. **The Commission would like to see application of this law conforming to the requirements of the State obligation to guarantee editorial independence of public service broadcasters.**

11.4.5 Regulatory Bodies for Broadcast and Telecommunications and print media

The creation of independent regulatory bodies for broadcast and telecommunications is a tenet of freedom of expression. Such regulatory bodies in

Uganda include the Media Council established by The Press and Journalist Act (Chapter 105, Laws of Uganda); the Broadcasting Council established by the Electronic Media Act (Chapter 104, Laws of Uganda) and the Uganda Communications Commission. The independence of these bodies is crucial for safeguarding press freedom. **Whereas the Minister of Information appoints the members of these bodies and the law states that they should be independent and adequately protected against interference, particularly of a political or economic nature, some sections of the media have complained that in practice this hardly applies.**

It is crucial for freedom of expression that editorial independence in the media is encouraged while undue political interference is discouraged. It is also necessary to encourage circulation of the media to rural communities. However, the reality has shown otherwise as it has not been entirely possible to prevent commercial considerations and political forces from unduly influencing media content. While in the past, political interference and influence was obvious and in some extreme circumstances state inspired; in the past decade or so it has assumed a subtle clandestine nature. Moreover, the state was one major client for the media as it controlled the biggest share of businesses in terms of government enterprises and parastatals and constituted big readership. Political interference sometimes manifests in the overzealousness of some political appointees or officers passionate about protecting the government from media and public scrutiny. On the other hand, commercial considerations like sales and advertising revenue have had an unprecedented impact on the media as they changed from public service to commercial entities and struggled to survive in an environment of competition. Decisions on media content are now heavily influenced by how much sales and

advertising revenue might be attracted. As a result, media content has drastically changed in the past few years many times bordering on the controversial and thus earning certain media unflattering labels like pornography or anti-government from some sections of society. Although the freedom of expression principle requires that media owners and media professionals be encouraged to reach agreements to guarantee editorial independence and to prevent commercial considerations from unduly influencing media content, this is not always the case as the media owners especially private media have total control over their investments and therefore call the shots. The biggest dilemma has been where the owners are at the same time the professionals.

11.4.6 Public complaints system that is accessible

The Media Council and the Broadcasting Council are the main systems of arbitration in complaints against the media. Currently there are no non-statutory mechanisms to settle complaints. There is reasonable access to the Councils, which do not levy any charges for complaints filed. Complaints, once filed are determined in accordance with the rules and codes of conduct that are stated in The Press and Journalist Act (Chapter 105, Laws of Uganda); the Broadcasting Council established by the Electronic Media Act (Chapter 104).

However, the general trend has been for the complainants, including the state to immediately run to courts of law where in case of civil matters exorbitant amounts of damages have been awarded against the media, while in criminal matters jail sentences or fines meted out. The State has continued to use criminal measures to sort out its complaints against the media.

In August 2004 the Broadcasting Council fined

Radio Simba Ug. Shs. 1.8million and demanded a public apology as a penalty for hosting a group of homosexuals on a live Talk show. The radio was accused of promoting homosexuality, which is a crime in Uganda, thereby offending sections of society although the argument in defence was that the radio was providing a platform for all diverse views. Issues of homosexuality have drawn sharp vehement reactions with extremist arguments on both sides.

Effective self-regulation is the best system for promoting high standards in the media. The State is therefore required by the human rights legal regime to encourage and support the formation of a self-regulatory system to handle complaints. There have been processes of consultations and lobbying that have been on going but which have not yet resulted into a self-regulatory mechanism for media practitioners. However, a programme spearheaded by Panos Institute Eastern Africa and involving stakeholders is ongoing to eventually lead to the formation of an independent, voluntary, non-statutory media self-regulatory body.

The Commission recommends that Government supports and participates in the process of forming the self-regulatory system to handle complaints so that the interests of all the parties concerned are taken care of in establishing a system that arbitrates and resolves conflicts amicably rather than punitively.

11.4.7 Promoting Professionalism

Media practitioners, just like all other professionals in the country are free to organise themselves into professional groups and associations subject to the existing law. The Non-Governmental Organisations Act under which all such organisations are regulated governs them. The law, which provides stringent conditions for registering an organisation and operating it, can be used to

prevent media associations from thriving thus stifling freedom of expression. But there is no evidence that media practitioners have been specifically targeted by this law and refused the freedom to organise themselves into unions and associations.

There exist constitutional guarantees and laws for workers to join trade unions in Uganda. However, as the Commission has pointed out before in other reports, the formation and operation of trade unions in general has largely been affected by administrative challenges resulting into very weak unions. Investment policies have also affected the formation of trade unions in private enterprises. This has not spared the media sector either. However, practitioners in government media, just like civil servants are prohibited by standing orders from forming or joining trade unions.

Section 9 of the Press and Journalist Act establishes a statutory Media Council. Among other duties, the council is supposed to license journalists on yearly basis, and discipline them in case of breach. Sections 14 - 26 establish a professional body, the National Institute of Journalists of Uganda (NIJU) to establish and maintain professional standards in the profession. The law requires one to be a university graduate of journalism or have any other degree but with another journalism qualification to be a member of NIJU. Journalists without the minimum qualification of a degree can only be associate members of the Institute but without voting powers and with no right to be voted into any office of the institute.

Sections 27 - 29 require all journalists to have a practicing certificate which has to be renewed every year, without which they face a fine not exceeding three hundred thousand shillings or imprisonment for a period not exceeding six months, in case one fails to pay the fine. The

Commission supports the idea of regulatory bodies provided they are established and allowed to operate in accordance with the requirements of human rights standards. *However, the requirement of licensing journalists on a yearly basis serves no purpose other than keeping them under control of a certain authority. This imposes substantive restrictions on the right to freedom of expression.* The same can be said of the restrictive minimum requirements for one to become a member of NIJU. The arguments in favour of this restriction are neither sustainable in a liberalised economy, nor in an environment in which human rights standards require that restrictions must be reasonable and necessary in a democratic society. Media practitioners should be left free to organise themselves into unions and associations. The right for one to express himself or herself through the media by practicing journalism should not be subjected to undue legal restrictions.

In the period under review, some sections of the media were accused of unprofessional tendencies. Criticisms were made of some media accusing them of promoting pornography and promiscuity and un-African cultures; fuelling rebellion; xenophobia, and other divisive vices and also becoming promoters for commercial gains. A lot still remains to be done to build the capacity of the media sector to make practitioners more responsible and professional.

11.4.8 Attacks on media practitioners

History has recorded a tremendous improvement in Uganda in the past decade or so on prevention of attacks such as the murder, kidnapping, intimidation of and threats to media practitioners and others exercising their right to freedom of expression, as well as the material destruction of communications facilities. The biggest score has been an end to State-inspired kidnap, murder, and illegal detention of media practitioners although

overzealous state agents have occasionally intimidated and threatened them. In the period under review, no incident of murder, kidnap or illegal detention of a journalist was recorded. However, individual journalists reported some threats or intimidation in situations such as the rebellion in the north where threats came from both the rebels and the state agents; elections where contending candidates issued such threats; political activity where both pro-government agents and the opposition threatened media practitioners thought to be on “the other side”; exposure of corruption where the affected parties sought to intimidate journalists.

However, intimidation and threats continued to assume a subtle form, with actions amounting to threats and intimidation taken within the confines of the law. This is usually done through phone calls, phone tapping, surveillance of individuals and other psychological torment. As will be hereunder discussed under the section on criminal measures, government agents continued to invoke some bad sections of the law to intimidate or deter practitioners, editors and proprietors.

The Commission recommends that action be taken to remove attitudes and end actions that undermine independent journalism; freedom of expression and the free flow of information to the public. Government should investigate them when they occur, punish perpetrators and ensure that victims have access to effective remedies.

11.4.9 Protecting reputations

The legal regime in Uganda guarantees protection of reputations. Constitutional provisions provide for responsibility and respect for other’s rights stating: *“In the enjoyment of the rights and freedoms prescribed in this chapter, no person shall prejudice the fundamental or other human rights and freedoms of others or the public*

interest.” The Constitution also guarantees the right to privacy. Defamation laws exist and aggrieved parties have been able to go to court and get redress. The law requires that public figures tolerate a greater degree of criticism; no one shall be found liable for true statements, opinions or statements regarding public figures, which it was reasonable to make in the circumstances; and sanctions should never be so severe as to inhibit the right to freedom of expression. However, the delay in disposing of cases in courts and the exorbitant awards in damages has become costly to the media houses as they incur high costs in bringing witnesses to court. This could affect the media rendering them overcautious thus restricting freedom of expression unreasonably.

11.5 Criminal measures

The Penal Code Act (Chapter 120, Laws of Uganda) is the comprehensive law that provides for criminal offences and penalties. However, some sections of the Act have been criticised for contradicting the spirit and letter of the Constitution in as far as freedom of expression is concerned. They may make it difficult for any person to report objectively and truthfully especially on information that might not please the powers that be. The following are the sections of the Penal Code Act that should be reviewed in order to safeguard freedom of expression.

Importation of a publication

Sections 36 – 40 give the Minister responsible for information the powers to prohibit the importation of publications that he deems to be “injurious to the public interest.” The minister has total discretion to define the public interest and then determine what is injurious to such interest. These sections also prohibit the “publication, sale, distribution and reproduction” of such publications deemed injurious to the public interest. Section

38 defines the punishment for such offence as imprisonment for two years for first offenders or a fine not exceeding two thousand shillings, or both, or three years imprisonment for subsequent offenders. Section 38 (2) even prohibits the possession of such publications. Section 39A prohibits the publication in a “book, magazine, or newspaper” any information regarding military operations, strategies, troop location or movement, and such other information related to the military that may endanger the safety of the forces. Section 39A of the Penal Code is particularly worrisome in that it makes it difficult for any person to report objectively and truthfully about a conflict especially information that might not please the powers that be. This in a way interferes with freedom of expression that involves seeking, receiving and imparting information.

Sedition

Section 41-45 of the Penal Code Act defines and prohibits sedition. In the period under review, Political editors of *The Monitor* and *The Observer* newspapers were quizzed by police on allegedly uttering seditious statements in remarks made on a talk show on KFM and CBS radios. No charges were preferred. A senior journalist with The Monitor who also hosts a talk show on KFM is currently battling the charge of sedition in court for utterances he made on his show in August 2005. KFM radio on which the show was aired was closed down and its broadcasting licence suspended before it was fined (Ug Shs. 4.8 million) and reopened.

Publications with intent to further boycott

Sect 49A (2b) a person who through a publication advises, induces, or persuades or attempts to persuade any person or class or person to take any action which related to boycott may be convicted and imprisoned

Incitement against tax

Section 50B bars any person to incites people through a publication to refuse to pay lawful taxes, or delays, prevents, obstructs the assessment or collection of lawful or threatens to do so.

Offences affecting relations with foreign states and external tranquillity

Section 51 bars publication of anything degrading, reviling or exposing to hatred or contempt any foreign prince, potentate, ambassador or other foreign dignitary with the intent to disturb peace and friendship between Uganda and the country of the dignitary.

Contempt of court

Section 101(1-3) on publication of judicial proceedings.

This section bars disrespect, disturbance, interference or influence of judicial proceedings as well as failure to attend or give evidence in a judicial proceeding to which one has been summoned. It also prohibits publication of a report of evidence that had been directed to be held in private.

In the period under review, this section was invoked in June 2004 and 6 journalists and a defence lawyer were jailed, convicted and fined by the Military Court Martial for allegedly reporting on the proceedings that had been directed to be private. The Editor in Chief, Mr. William Pike, reporters Mr. Steven Candia and Mr. Maurice Okore all of *The New Vision* together with Managing Editor John Baptist Wasswa and reporters Mr. Solomon Muyita and Ms. Jennifer Nakalema all of *The Monitor* had been summoned to show cause why they should not be charged with this offence but were instead detained. They were never formally charged and were never allowed to take plea, but they were eventually fined 1000 shs each by the Court Martial.

Criminal trespass

Section 302 (b) bars anyone who in spite of lawfully entering an office remains there for long with the intent to annoy. In June 2005, A New Vision journalist was charged, remanded and fined 50,000/= by the Soroti Chief Magistrate under this section. The complainant was a district official whom the journalist had gone to interview on allegations of double allocation of plots in the municipality. This was the first time in history that a journalist had been charged under this section in the course of duty.

The major concerns on the criminal restrictions on freedom of expression stem from the very wide applicability of the laws making it extremely difficult to determine ahead of publication, what expression will be perceived as likely to cause the mischief guarded against. The Supreme Court judgement that ruled the publication of false news as unconstitutional pointed out the “*difficulties that confront those who have to guess before deciding to publish, what perception a publication might evoke*”. The judgement noted that “*in practical terms, the broadness can lead to grave consequences especially affecting the media. Because the section is capable of very wide application, it is bound to frequently place news publishers in doubt as to what is safe to publish and what is not. Some journalists will boldly take the plunge and publish, as the appellants did, at the risk of suffering prosecution, and possible imprisonment. Inevitably, however, there will be the more cautious who, in order to avoid possible prosecution and imprisonment, will abstain from publishing. Needless to say, both the prosecution of those who dare, and the abstaining by those who are cautious, are gravely injurious to the freedom of expression and consequently to democracy*”.

The Commission recommends a review of the sections that impose criminal restrictions on content to ensure that they serve a legitimate interest in a democratic society. As the Supreme Court judgement on press freedom noted the State should realise that freedom of expression should not be restricted on public order or national security grounds unless there is a real risk of harm to a legitimate interest and there is a close causal link between the risk of harm and the expression.

11.6 The Anti-Terrorism Act, 2002

Much as this Act was not intended specifically for the media, the Commission believes it carries some of the heaviest affronts to media freedom in the country in the sense that it carries the maximum penalty of death, in case of breach, even for journalists. It virtually outlaws any form of coverage of an organization or person gazetted as a terrorist. Section 9 (1) (b) forbids publishing and disseminating news or materials that promote terrorism, and Section 9(2) prescribes death as the punishment for any breach. The media have a duty and responsibility to balance coverage by giving two sides of the story or by giving a platform to diverse views or the right of reply. This compels them to get information from both sides of a conflict, as is the case with the war in the north. Since the definition of promoting terrorism is not clear and can therefore be construed to mean any form of coverage of what has been gazetted as a terrorist organisation, journalists can easily be inadvertently caught up by this law in the course of being professional. This provision was maintained in the Bill leading to the Act in spite of a strong recommendation against it by the Commission. The Commission would like to caution that this law be applied reasonably.

In June 2004, the army announced that it was investigating some journalists for links to LRA

rebels. Army spokesman Major Shaban Bantariza said the investigations followed the army's recovery of the telephone contacts of some journalists from the body of an LRA commander who was killed by the UPDF in northern Uganda. He added that those mentioned should defend themselves because they were "dealing with terrorists."

11.7 Economic measures

The State has done well in promoting a general economic environment in which the media has flourished. Although in the past the state has used its power over the placement of public advertising as a means to interfere with media content, it was not the case in the period under review.

11.8 Protection of sources and other journalistic material

A vital indicator of respect for freedom of expression is media practitioners not being required to reveal confidential sources of information or to disclose other material held for journalistic purposes. The state has largely respected this provision although journalist who have been subjected to threats and intimidation from some sections of society including state agents in their individual capacity have also reported attempts to force them to reveal their sources.

11.9 Threats to the freedom of expression

Assemblies

Assemblies are some of the avenues through which freedom of expression can be realised. Article 29 (1) (d) of the Constitution provides that every person shall have the right to assemble and demonstrate peacefully with others. Together with

this right, individuals may freely express their opinions. On the other hand, if individuals are deprived of their right to assembly, their right to expression is also curtailed. During the year under review 21 rallies and demonstrations by several individuals and groups were dispersed by Police.

The Police have often dispersed public rallies invoking their powers under the Police Act. Section 32 (1) of the Police Act (Chapter 303) states that,

‘Any officer in charge of police may issue orders for the purpose of- (b) directing the conduct of assemblies and processions on public roads or streets or at places of public resort and the route by which and the lines at which any procession may pass.’

Sub section (2) states, ‘*if it comes to the knowledge of the Inspector General that it is intended to convene any assembly or for any procession at any place of public resort, and that Inspector General has reasonable grounds for believing that the assembly or procession is likely to cause a breach of the peace, the Inspector General may by notice in writing to the person responsible for convening the assembly or forming the procession, prohibit the convening of the assembly or forming the procession.*’ This provision gives the Inspector General the discretion to determine whether the assembly shall cause a breach of public peace, and if it is probable, he has the powers to prohibit such an assembly.

The Police have contended that there is a necessity for informing them prior to any of these assemblies. To the contrary, some organisations have stated that they need no permission. These organisations further state that they only inform the Police to provide security during such assemblies. This argument has been premised on the fact that these organisations are guaranteed a

right to assemble and expression which rights need no Police permission. However the Police for the year under review have been vigilant in stopping many assemblies and in the process violating both the rights to assembly and expression.

11.10 Challenges to the freedom of expression

1. Assemblies and peaceful demonstrations continued to be dispersed by the police using their powers under the Police Act. The unjustifiable powers given to Police in this respect should be reviewed so that they are not applied in such a way as to violate freedom of expression.
2. Access to some information within the control of some government ministries and departments is still very difficult.
3. Some individuals continued to be threatened by overzealous security operatives and government officials over certain statements. Some individuals who hold divergent views from those held by government have been associated with rebel activities. This is usually meant to intimidate such individuals into silence.
4. There have been some incidents of abuse of media freedoms by the practitioners and the lack of professionalism among the media.
5. There are still laws that hinder free enjoyment of the freedom of expression particularly in the Penal Code Act.
6. Accessibility to the Internet is unregulated and as a result there is a big challenge of instituting mechanisms of preventing abuse of this facility. Children are not adequately protected from exposure to pornography, bestiality or violence churned out by the Internet.
7. The Internet is not accessible to the majority of Ugandans especially in rural areas. This affects their enjoyment of freedom of expression.

11.11 Recommendations

Law Reform

There is need for reform of the law governing the media in Uganda so that it is consistent with the Constitution and other international instruments on freedom of expression and of the press. The Commission calls upon all stakeholders such as the Attorney General's Chambers, the Law Reform Commission, Parliament, media organisations and journalists associations as well as Media Houses to review existing laws and work towards the repeal or amendment of those that infringe on freedom of expression.

Peaceful and non-violent demonstrations

Peaceful and non-violent demonstrations should not be dispersed. Article 29 (1) of the Uganda Constitution 1995, guarantees the freedom of assembly, and as long as these are peaceful, the security agencies should refrain from dispersing them as this infringes on other rights such as the freedom of expression.

Coordinated and adequate provision of information

Government should try to use the weapon of truth and accuracy to counter lack of professionalism among the media. It should try to provide accurate and clear information in the first place if not undertake to reply to inaccurate statements made in the media. As noted above, the freedom of expression extends to all kinds of information, therefore in the case of inaccurate statements rather than harass the sources of such information, it is better that the government issues statements in rebuttal or statements that detail the accurate information.

Access to information

The Commission hails the Government for passing the Access to Information Act, 2005, however, information especially within government control should be made accessible to the public.

Extra judicial methods

Government should check its agents and officers to get them to refrain from extra judicial methods of reacting to information published by the media. This does not only project the government in bad light even when it has not sanctioned such acts, but these methods are illegal and create 'incentive' for the media to withhold information that is necessary in a democratic and free society. Parliament should amend all the laws that directly or indirectly infringe on the freedom of expression.

11.12 Conclusion

Although the legal regime governing the Ugandan media since 1995 is more liberal than the previous regime, many of the provisions of the Penal Code Act and media related Statutes do not appear to stand the liberal test set by the Bill of Rights under the 1995 Constitution and other international human rights instruments. This has affected the full realisation of freedom of speech, expression and the media, which are fundamental for the realisation of all other rights. However, government should be commended for the efforts so far taken to fulfil its obligations towards this right but it needs to do much more to fulfil the freedom expression in its entirety.

CHAPTER 12

FREEDOM OF ASSOCIATION AND ASSEMBLY

12.1 Introduction

This section contains observations and comments regarding freedom of association and freedom of assembly during the year 2004. They are made bearing in mind the new political developments in the country, especially the March 2003 NEC recommendation to free the activities of Political Parties, and the general transition process from a Movement system of Government to multiparty system. Other new developments are court rulings that outlawed some sections of the Political Parties and other Organizations Act 2002 (PPOA), the Constitutional Review Process and the White Paper debates by Parliament, and the on going political transition process in the country.

12.2 Positive Developments

The year 2004 had many positive developments in regard to the promotion and protection of freedoms of Association and Assembly. Of greatest interest are the land mark judgments in the Constitutional Court that stretched up to the early part of 2005 that led to the struck down of most obnoxious sections of the PPOA 2002. The Human Rights Commission salutes the judiciary for being a great partner in the struggle for promotion and protection of fundamental human rights and freedoms.

12.3 Urgent issues for smooth transition

The Commission would wish to observe from the onset that respect for freedoms of Association and Assembly is important now than ever before as the country transits from the Movement to a

multiparty Political System. This requires total removal of all stumbling blocks to freedom of Assembly and a review of the Movement Act and the Police Act accordingly.

12.4 Registration of Political Parties

Several parties and Organization have been registered by the Registrar General's Office and they gained legal status during the course of 2004.

12.5 Past Observations and comments of UHRC on freedom of association and assembly

Since 1997, the Commission has consistently pointed out the true meaning and enjoyment of freedom of Association and the right to participate in peaceful activities to influence government policies. In spite of the guarantees of these rights by the Constitution, the Police time and again declared even well intentioned and peaceful assemblies unlawful.

In the 1998 Annual Report, the Commission addressed Parliament on these rights and called upon government to ensure freedom of association during the process leading to the referendum. All sides of the referendum should have a fair opportunity to present their views to voters.

In the 2001-2002 Annual Report, the Commission made observations about the Political Parties and other Organizations Act 2002 and pointed out sections that did not resolve the controversy about the enjoyment of freedom of association and assembly in Uganda.

In its 6th Annual Report 2003, the Commission reiterated all its past comments on freedom of Association as reported in its previous annual reports, from 1997 to 2002.

The Commission further reported on the continued infringement on these Freedoms as noticed in the various political gatherings dispersed by Police during the course of the year 2003. The report further singled out sections in the PPOA 2002 invoked by the Police wherever dispersing rallies, and Legal limitations under the Police Act Cap 303.

12.6 The meaning of freedom of Association and Assembly

The right to freedom of Assembly and Association means that all persons, including the most marginalized such as the poor have a right collectively to express their opinions by organizing demonstrations and similar types of public meetings in order to attract the attention of Government, the media, and the Public at large.

All persons have the right to freedom of Association with others, including the right to form and join trade unions, for more effective efforts for the protection of their interests.

The Commission looks at freedom of assembly and association in a holistic manner. It considers these rights as essential for the participation of civil society, including the most vulnerable like the poor, in a free and democratic society. Freedom of Association and Assembly is constitutive of the right to information.

12.7 Limitations to freedoms

In order to be legitimate, limitations to freedom of Assembly and Association must be; imposed by law, based on a prescribed ground, and necessary in a democratic society.

12.8 Political Associations

The Commission considers Political Associations and Parties as instruments for furthering the democratization of modern societies, Uganda inclusive. Therefore political parties can advance under the right of Freedom of Association that allows association with others for a political purpose.

Freedom of Association, particularly the right to form Political Parties has a direct impact on electoral democracy. Art.25 (b) of the ICCPR confers upon people in State Parties the right to “vote and be elected at genuine periodic elections which shall be by universal and equal suffrage, and shall be by secret ballot, guaranteeing the free expression of the will of electors.” This requires that all sides to the elections are treated equally and that laws apply to all in an equal manner.

12.9 Relevant laws, National and International

Freedom of Association and Assembly are well covered, catered for and documented in almost all International human rights instruments.

In 1995 Uganda ratified the International Covenant on Civil and Political Rights (ICCPR) thereby agreeing to accord its citizens, through legislation and practice, the rights and freedoms outlined in the Covenant. Freedom of assembly and freedom of association are among these rights. In addition, Uganda assented to the African Charter on Human and Peoples Rights and Freedoms. Article 20 of the Universal Declaration of Human Rights also provides for these freedoms.

12.10 Relevant articles of the Constitution of Uganda

The 1995 Constitution of Uganda has provisions for the protection and promotion of Freedoms of Association and Assembly. Art. 29 clearly brings

these out, however Art.43 subjects the enjoyment of these rights to qualifications. Freedom of assembly and association are not mentioned among the non-derogable rights set out in art.44.

12.11 Developments on Freedoms of assembly and Association

In 1986, the legal notice No.1 of 1986 banned the activities of Political Parties. Whilst the 1995 Constitution recognized Freedom of Association and Assembly under articles 29(1) d and 29(1) e severely restricted the operations of Political Parties rendering them un operational. The PPOA 2002 further severely restricted the operations of political Parties as understood in International Human Rights Laws assented to by Uganda.

12.12 Positive developments on Freedom of Association and Assembly in the year 2004

Following the enactment of the Political Parties and other Organizations Act 2002, the Registrar general's office registered many political parties. The Constitutional Court nullified those sections of the PPOA that hitherto violated freedom of association and assembly as earlier highlighted by the Commission in its Annual Reports. In 2004, the Constitutional Court struck down section 10(4) of the PPOA and also held that section 10(8) and 10(9) infringed on freedom of association and assembly.

12.13 Infringement on freedom of Assembly and Association

Despite developments made during the reporting period, there were also infringement on the freedom of assembly and association during the period. The Commission wishes to point out that breaking up rallies organized by the opposition is a violation of both freedom to associate and to assemble as contained both in international human

rights instruments and the 1995 Uganda Constitution. In 2004, 21 cases of political rally dispersion were registered. In dispersing the rallies Police has always relied on guidelines from the Attorney General.

In particular, the Commission recorded the following rallies that were dispersed by police;

- Dispersing of Parliamentary Advocacy Forum (PAFO) meeting in Jinja on 13th March 2005.
- Police dispersed an anti third term rally organized by Popular Resistance Against a Life President (PRALP) at Clock Tower.
- Police dispersed an anti third term rally organised by PRALP at Napier market, Jinja on 13th April 2004. Earlier, the rally had been scheduled to take place at Kaziningi, but dispersed before going to the new venue.
- Police dispersed the Kyotera rally organized by PRALP on 7th June 2004. It arrested several organizers, who on 10th June 2004 were remanded in Kalisizo, Masaka.
- On 14th July 2004, Police dispersed and beat up supporters of the Reform Agenda district chairperson Mr. Edison Asaba Ruyonga in Fort portal town. Ruyonga is the Mayor of Fort Portal Municipality in Kabarole District. The Reform Agenda supporters were holding a demonstration against Movement supporters who had demonstrated through the same town of Tuesday 13th July 2004 to protest the Mayor's election as Reform Agenda Kabarole district chairman.
- The beating up of four Members of Parliament in Pader by the UPDF when they tried to organize a consultative meeting on Constitutional Amendment on November 22nd 2004.
- On 29th November 2004, Major General Mugisha Muntu of the Forum for Democratic Change was blocked to address a meeting in Luwero.

In dispersing the rallies Police has always relied on guidelines from the Attorney General. These guidelines apply to;

- Holding of public meetings, including assemblies and rallies by political parties or organizations
- Carrying out investigations and prosecution of unregistered political parties or organizations
- Use of symbols and slogans by political parties and organizations
- The role of the Registrar General under the PPOA
- The conduct and procedure of Police in relation to public meetings including assemblies or rallies

The guidelines provide that;

- The Police are empowered to use its powers under the law to do anything necessary to disperse peacefully, persons assembled at an unlawful public meeting, including a rally or assembly or at a riotous assembly including the use of such force as is reasonably necessary.
- The guidelines provide that any public meeting held by an unregistered Political party or Organization during the period when the Movement political system is in force is illegal under section 6 of PPOA. The implication of this is that police should disperse such meeting. A public meeting is defined under Section 2(1) of the PPOA, 2002 as to mean a meeting at which the public are generally invited.
- The guidelines further provide that any political party or organization that holds a public meeting including assemblies or rallies contrary to the law commits an offence and may be charged under Section 10(9) of the PPOA. Section 10(9) however only applies to registered political parties and organizations, issued with a certificate.
- The guidelines also provide that public meetings including rallies and assemblies convened or carried out by an overzealous member/person of a political party or organization without the authorization or knowledge of the political party's or organization's executive committee are prohibited. That such a member or person may be dealt with and prosecuted under Sections 34 and 35 of the Police Act Cap 303 or Sections 61 and 62 of the Penal Code Act Cap 120, for unlawful assembly.
- The guidelines further provide that where a Police Officer, in the course of his or her duties, comes across a public meeting being held and forms an opinion that the public meeting is being held contrary to the PPOA, 2002, the Police Officer shall disperse the public meeting in accordance with the Penal Code Act, Cap 120 and the Police Act, Cap303 of the Laws of Uganda and may use such reasonable force as is necessary to disperse the meeting.
- The guidelines provide that where the Police receives information to the effect that a public meeting or conference is about to be held contrary to the PPOA, 2002 or have reasonable grounds to believe that a public meeting is about to be held contrary to the Political Parties and Organizations Act, 2002. That the Police should take such steps as are necessary and reasonable in accordance with the Penal Code Act and the Police Act to prevent the holding of the public meeting or assembly.
- That for the case of unregistered continued political parties or organizations in case they hold an illegal meeting, police can prosecute members of the executive committees or other officers of the political parties or organizations or can even prosecute other persons involved in such an illegal

meeting under the Penal Code Act and the Police Act for aiding and abetting or for an offence of an illegal assembly.

12.13 Comments of the Commission on the Guidelines

The Commission notes the advice by the Attorney General given to the Police on the law and the guidelines it has issued. In the opinion of the Commission however, the guidelines are very restrictive and difficult to sustain in a free and democratic society. They strictly and unnecessarily police the activities of Political Parties who should be allowed to freely operate unless they breach the peace. Parliament should enact a fair Political Parties and Organisations Act that promotes rather than hinder freedom of Assembly and Association. Genuine political activities should be criminalised.

12.14 Recommendations

- The PPOA 2002 should be amended to free the operationalisation of Political Parties and allow them operate freely as ruled by the Constitutional Court.
- Government should eliminate all legal and administrative barriers, which might prevent the vulnerable such as the poor from participating in elections and other democratic decision making processes.
- Government should make special effort to provide voter education facilities addressed to the most vulnerable such as the poor and illiterate. Ugandans should take active part in debates on the recently approved right to information bill in order to get the best from the bill as regards freedom of expression, since this would determine freedom