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# **HUMAN RIGHTS AND STRUCTURE OF POLICE AND INTERNAL SECURITY FORCES IN UGANDA**

Nagujja Zam Zam<sup>\*</sup>

## **I. BACKGROUND**

Uganda, like many African countries in the pre-colonial era, was a multiplicity of small kingdoms, chiefdoms and tribal societies. The primary interest of these peoples was subsistence. Criminal justice was maintained by kinship and the ultimate right to seek vengeance through the blood feud. There was a large degree of stability without a central authority, and in the 1870s a rudimentary criminal justice system existed. Punishment of breaches of peace was based on individual action rather than an established authority, except in the kingdoms of Buganda and Bunyoro-Kitara which had a more institutionalised set up. In the Buganda, each kingdom had its "army" for protection and expansion of the kingdom through tribal wars.

With the onset of colonialism, Britain wanted to produce products for export, such as cotton. To accomplish this they needed labour and law and order. Tribal wars were antithetical to these objectives; hence in 1895, the colonial government approved an ordinance to create and empower a national army and disband the various tribal armies.

In 1906, the first formal police force, known as Uganda Armed Constabulary, was introduced into the then Uganda Protectorate. Its main duty was to suppress "Native" resistance to colonial policies. This force also performed some traditional roles associated with policing, such as dealing with civil disturbance, crime prevention and crime detection.

In 1961 a delegation was sent to the Lancaster House Uganda Constitution Conference to negotiate Uganda's Independence Constitution. The result was the 1962 Constitution, which provided for a quasi-federal system of government. Under this newly created federation, each kingdom had its own police force, and the central government had a national police, the Uganda police force. While the

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Constitution provided for the establishment of this police force and the Ugandan army, little attention was paid to their status or their role.

On the 15th of April 1966, the Independence Constitution was abrogated by use of the national police force. All legislative and executive powers were then assumed by the Prime Minister. A new Constitution, the 1966 "Pigeon Hole" Constitution, was declared to be supreme law of the land. Due to the manner in which the first Constitution was abrogated by the police force, it became necessary to use this force to suppress opposition to the new order. Opponents to the new regime were arrested and detained.

In 1967, the new Parliament passed the *Public Order and Security Act No. 10 of 1967* which gave the President the power to direct the restriction or detention of any person who allegedly "conducted, [was] conducting or [was] about to conduct himself in a manner dangerous to the public and good order of security of Uganda." The duty to ensure effective implementation of this Act was, and continues to be, in the hands of the police.

The use of security forces to maintain power set the stage for military rule once the army realised its political power. President Obote was overthrown in a military coup lead by Idi Amin in 1972. The army and the police arrested and detained any suspected opponents to his rule. In 1979 he was overthrown by a foreign army comprised of Tanzanian and Ugandan exiles. The foreign army ultimately brought back Milton Obote, who ruled by "the gun" from 1980 to 1985. Then, another military coup brought in President Lutwa. In 1986, the "bush guerrillas" who had been fighting to remove Milton Obote, took over power. They established the National Resistance Movement Government under President Yoweri Kaguta Museveni, which is the party currently in power in Uganda.

## II. FACTORS CONTRIBUTING TO HUMAN RIGHTS ABUSES

The violation of human rights in post-independence Uganda has not been due solely to the weakness of constitutional guarantees. It has been due, primarily, to the frequent abrogation of the Constitution by "leaders" who use the claim of protecting "national security." The internal security forces have been the producers of the cycles of

violence and human rights abuses in Uganda. The Commission of Inquiry into Violations of Human Rights wrote that the security forces were:

anti-people, undisciplined, consisting predominantly of certain ethnic groups in and outside Uganda, and loyal only to leaders coming from the areas where the majority of soldiers originated rather than the nation and state of Uganda; were led by officers who had little or no formal education; were completely ignorant of their duty to respect, protect and promote the human Rights of the people of Uganda; were deployed more in internal suppression of the population, than in protection of Uganda from external threats; were used by leaders to acquire or retain political power; they became a battle ground for political conflicts with ultimate serious consequences for Human rights.<sup>1</sup>

This view of Uganda's internal security forces has not changed very much.

Another reason for the continued violations was the retention, from one regime to the next, of the very people who were key violators in previous regimes. Time and again, successive post independence governments continued to recruit such violators. Post-independence leaders, too, had little choice but to use the existing security forces to keep power.

Whenever there was a change of regime (invariably through violence) everything, including records of human rights violations, were swept away and things began afresh as if nothing had happened before. Each new regime quickly acquired its own record of human right violations. Another key factor in the perpetuation of cycles of violence has been the insensitivity to human rights by all parties involved. A general lack of knowledge of constitutional guarantees and the duties of by both those charged with enforcement of the laws to respect the Constitution. Victims and the general public often aided the process of abuse by remaining passive. The assumptions were that only "those who do not oppose" are safe or only those who had "offended" the regime, only those who belong to the "wrong" ethnic

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<sup>1</sup> From a pamphlet summary of the Report of Commission of Inquiry into Violations of Human Rights at 9

groups would be persecuted. The passivity of civil society seemed to sanction violations.

Both in the past, and presently, internal security forces have been dominated by leaders who disregard weak constitutions and ignore the public's rights. Today, Uganda is in the process of making constitutional changes, which everyone hopes will address these experiences

### III. THE UGANDA POLICE FORCE

Article 68 of the 1967 Constitution established the Uganda Police Force. Article 69 provided that the Force is headed by the Inspector General of Police. The same article gives very broad powers to the President:

...the President may give to the Inspector General of Police such directions with respect to maintaining security of public order, as he may consider necessary and the Inspector General shall comply with those directives or cause them to be complied with.

The provision neither provides for the President to consult nor to be advised before acting. He is free to act on matters of policing under the umbrella of national security and public order. This constitutional provision, which allows the President and his ministers to override the direction of the Inspector General, essentially makes this latter position one of a figurehead. There are no mechanisms by which the Inspector General can refuse to abide by a request that on its face is violative of another constitutional provision or of basic human rights. It is such articles, which do not provide for checks and balances in the Ugandan government, that have led to so many abuses of human rights.

Acting under this provision, Idi Amin set up the infamous Public Safety Unit in 1971. Although, Amin acted constitutionally when setting up the Unit, the atrocities it committed rendered a blow to the credibility of the Uganda Police Force. Obote used the same Article to establish the General Service Unit, a security organisation guilty of similar human rights abuses.

### ***A. Organisation of The Police***

Created by the Constitution, the police are subject to laws as Parliament may prescribe. The Police Statute of 1994, recently passed, subjects the command of the Inspector General to the directions of the Minister of Interior in matters of policy. It provides:

Section 6(2). In the performance of his functions, the Inspector General shall be subject to and act in accordance with the Laws of Uganda except that on matters of policy, the Minister may give directions to the Inspector General and the Inspector General shall comply with those directions.

The Uganda Police Force (UPF) is under the command of the Inspector General of Police (IGP) whose office is a public office. This means that his office is through Public Service and is non-political. This is a good provision for a force that ideally is supposed to be for the protection and safeguard of fundamental human rights and of law and order. However as earlier indicated, the IGP's office is subject to orders of the President and of the Minister for Public Security.

The Police Authority, established under the Police Statute, consists of the following:

The Minister of Internal Affairs

1. The Attorney General
2. The Inspector General of Police
3. Deputy Inspector General of Police
4. Senior Officer in charge of administration
5. Three other persons appointed by the President
6. The Permanent Secretary of the Ministry of Internal Affairs as Secretary.

Subject to the provisions of the Constitution, the functions of the Authority are to:

- (a) Advise government on management development and administration of the force.
- (b) Advise the President on the appointment of the Inspector General and his deputy.

- (c) Recommend to the President the appointments and promotions of police officers above the rank of Assistant Superintendent of Police.
- (d) Determine the terms and conditions of service in the force.
- (e) Hear and determine appeals from decisions of the Police Council.

While only three members are appointed by the President, all members, by virtue of their office owe their allegiance to the President.

The Police Council is established under Section 11 of the Police Statute. It consists of the IGP, his deputy, the heads of all police departments, Regional Police Commanders and non-commissioned officers. Subject to the provisions of the Constitution, the functions of the Council are to:

- (a) Recruit, appoint and promote police officers up to the rank of Inspector of Police.
- (b) Exercise disciplinary control over all police officers through police courts.
- (c) Advise Police Authority on rank structure.
- (d) Formulate terms and conditions of service, subject to approval by the Police Authority.
- (e) Advise Police Authority on rank structure.
- (f) Advise efficient organisation and administration of the force, and
- (g) Ensure that the force is of a national character.

The Police Council is the management body of the UPF. Its functions and its decisions are largely subject to the control of the Police Authority.

### ***B. Recruitment and Training***

The minimum education required for rank and file recruitment is the holding of an ordinary level certificate. In addition the recruits must have at least three credits, one of which must be obtained in the English language.

1. All officers undergo basic training for approximately nine months. The topics covered include: criminal law, criminal

procedure, evidence, local and special laws (e.g. traffic act, pharmacy and drugs act), bush craft and weapon training, riot drill and first aid. At the end of nine months the officer is then posted to general duties.

2. Additional courses are taken for service in specialised units as follows:

Two months crime investigation under the Criminal Investigation Department.

Two months Traffic division.

3. Those officers of or above the rank of Assistant Inspector of Police have to pass the Police Law Examinations before promotion.
4. Promotional courses must also be taken:  
Constable Corporal courses - 2 months.  
Sergeant officer - 3 months  
Cadet - 9 months for graduate
5. The candidates for promotion are recruited through the Public Service machinery.
6. Overseas command training is taken at Grams-Hill Staff College in the U. K.
7. Special courses in criminal investigation, ballistics, fingerprinting, scenes of crime and photography are also given.

We should note that most courses are focused on prevention of crime, little emphasis is given to teaching the Constitution and safeguarding human rights. It is only recently that the training department has started taking lawyers and lecturers to the training school to address these topics. The Human Rights Desk, established in the Ministry of Justice in 1993, has also made an input at training level.

### ***C. The Police Code of Conduct and Other Accountability Provisions***

The Police Statute of 1994 provides a disciplinary code of conduct that is the basis for the control and disciplining of police officers. The statute established a disciplinary hierarchy as follows:

- (a) A disciplinary court at every Police Unit
- (b) Police Stations



- (c) District or Division headquarters
- (d) Regional or Extra Regional headquarters and
- (e) Force Headquarters.

The Statute also provides for the establishment of the Police Council Appeals Court. Disciplinary measures are supposed to be initiated whenever there is a breach of the Code of Conduct by police personnel. The following acts or omissions are considered to be a breach of the Code of Conduct.

- (a) Using the office for undue gain
- (b) Disobedience of lawful orders
- (c) Neglect of duty
- (d) Malingering
- (e) Breach of confidence
- (f) Corrupt practice
- (g) Uncleanliness
- (h) Damage to clothing or other articles supplied for duty
- (i) Cowardice.

The penalties for breach include dismissal, discharge, demotion, fine not exceeding one third of the defaulter's salary, confinement, severe reprimand, reprimand or communal labour (S.47). The power to discipline a police officer of or above the rank of Assistant Commissioner (ACP) is vested in the Police Authority; an officer below the rank of ACP is sanctioned by the Police Council acting through a disciplinary court.

The code imposes the duty on police officers to treat humanely all persons without discrimination. It is imperative, therefore, that the provisions of these sections also be enforced.

A police officer is not liable for any act done in compliance with a warrant issued by a court of competent jurisdiction (S.44 Police Act). He is only liable for criminal acts or omissions committed in his capacity as an individual. In regards to civil liability, "[a] police officer is not liable for any act or omission committed in the course of his employment, where such act or omission is done negligently, wantonly or carelessly." Rather, responsibility for civil wrongs by agents of government is borne by the Attorney General (Section 11 Government Proceedings Act). It is unusual to find police officers

sued through the Attorney General for unlawful arrest, detention or prosecution, harassment or assault. Although, Section 65(7) of the Police Statute provides that, "[n]othing in this statute shall affect the jurisdiction of any ordinary civil court to try a person for an offence triable by a disciplinary Court," it is rare that an officer is sued in civil court.

The issue of corruption is specifically addressed in the Police Code of Conduct. Corruption is defined to include:

- (a) Soliciting or receiving bribes
- (b) Failing to account or make prompt return of money or property received in official capacity
- (c) Directly or indirectly soliciting or receiving any gratuity.

Like all written laws, to be effective in stemming corruption it must be administered in a consistently systematic and fair manner.

Police records are not available to everyone, but they are generally made available to the lawyer of an individual accused of a crime. The Ugandan Constitution provides that an individual may not be deprived of his freedom without the benefit of a trial. The state has a duty to ensure that all persons charged with a capital offence are afforded a lawyer and to be effective, a lawyer must have access to Police records.

#### ***D. The Police Under The NRM***

The NRM Government has tried to overhaul the Police Force with respect to recruitment, qualifications and numbers. Notwithstanding, the Force continues to be a symbol of brutality and oppression. It is often used by the government to suppress opposition views and it appears unwilling to hear the demands of individuals or civil society.

The Government has maintained prohibitions on certain political party activities. It has limited freedom of speech, press and peaceful assembly. In March 1994, two journalists were arrested on spurious sedition charges. In August and September 1993 three seminars on constitutional issues were stopped on orders of the Inspector General of Police; the topics to be discussed did not fall in line with the policies of the NRM Government. Though the journalists and

politicians were subsequently acquitted by Court of the charges, these police activities cannot be overlooked.

The police commonly beat up suspected criminals. It can happen at the time of arrest or interrogation and is often done for the purpose of forcing confessions.<sup>2</sup> Under Ugandan law, a suspect must be charged within twenty-four hours of arrest and brought to trial or released on bail within 240 days (480 days for capital offences). The police rarely conform to any of the above arrest requirements and it is not uncommon for suspects to spend more than two weeks in police cells without appearing in court for charging.

The NRM Government has adopted what it calls a broad-based structure of government that allows participation of opposition leaders in political affairs of the country provided they follow NRM policy. This system has no known political guidelines and basically depends on the good will of the President to accommodate or "buy off" the opposition. The NRM Government is determined to convince Ugandans that this system is the only available course for Uganda. In order to force its conviction on the populace and opposition politicians with contrary views, the NRM Government uses the police to stop any program that professes views contrary to its own.

In March, 1994, the police arrested two Uganda People's Congress (UPC) party leaders and threatened acting UPC General Secretary Cecilia Ogwal with arrest for publishing the UPC Manifesto for the election campaign. In April, 1995, although she was a Constituent Assembly Delegate (CAD), she was stopped by the police from addressing her Constituency. There were other CAD members throughout the country who were free to address their constituencies; those particularly sympathetic to NRM were actually screened on national television and given police protection to ensure that the NRM message was delivered.

In August and again in September, 1994, the police barred two seminars on federalism sponsored by the "Crusade for Constitutional Governance." In the first instance the police cited security reasons for refusing to issue a permit for the outdoor meeting. The permit was granted for the seminars on September 25th, but the police revoked it just before the meeting began.

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<sup>2</sup> U.S. DEPARTMENT OF STATE, HUMAN RIGHTS REPORT ON UGANDA (1994).

Police opened fire on a group of 500 Makerere University students gathered at Freedom Square in December, 1994. The students had organised a general assembly following a boycott of lectures started on the 5th of December 1994. They were demanding the reinstatement of transport and stationery allowances abolished in August, 1989. The students were not armed and were demonstrating in an area designated by the University as a place for freedom of speech on any issue. The police, without reason, fired at the students. Following the shooting, the Cabinet condemned the act. The policemen involved in the actual shooting were arrested, pending investigations. The Inspector General of Police and his deputy were suspended. In a statement announcing the suspension and appointment of new police chiefs, the shortcomings of the police were acknowledged:

Owing to the incident involving students and the police which took place yesterday at Makerere, that resulted in the death of two students and injury of a few others, as well as owing to other long-standing short-comings in the Police Force....

It was later reported that the students had "incited" the police into shooting at them by shouting things like:

Go away to Gabiro ... the NRM has no democracy". Other insults were allegedly, "Police zeeee" a term used at the campus to mean "down with the useless police."

The above occurred notwithstanding the official statement which acknowledged: "it appears that there was no riot as such but only an illegal and noisy assembly, which ought to have been controlled by the police using non-lethal methods."

As a result, a commission of inquiry, chaired by a Judge of the High Court, was set up by statutory instrument under the Commission of Inquiry Act. The terms of reference were inter alia: "To inquire into the conduct of the police with regard to the shooting and other acts carried out by the police on the occasion." Section 3 of the Legal Notice that laid out the obligation of the Commission of Inquiry, provided: "The Commission shall submit a report of its findings and its recommendations to the President of the Republic of Uganda within such period as he may direct."

On 24th November, 1994, the workers of Uganda Railways Corporation engaged in a sit-down strike demanding arrears amounting to 4.5 billion. An ultimatum was given to the strikers on the 28th November, 1994, to return to work or be terminated. The strike continued. On 29th November, 1994, a peaceful assembly of strikers was attacked by the anti-riot police, wielding batons and gas canisters. The strikers were beaten by the police; over fifteen workers were injured.

A committee was set up to investigate the workers' claims of abuse. It was determined that the police had acted reasonably. It appears that where there are no killings, acts of violence by the police against peaceful protesters will be tolerated by the government.

The police in Uganda are regarded with good cause as an instrument of terror. On Christmas 1994, a Police Constable, Alfred Ogwal, opened fire into a crowd of people who were attending a disco in celebration of Christmas. He injured twenty-seven and killed eleven. The shooting was sparked by the organisers of the disco having failed to recognise the policeman's status as a police officer and granting him free entry.

### *E. Police Powers of Arrest and Detention*

The Public Order and Security Act No. 26 of 1967, provides that if the President is "satisfied" that, "any person is conducting or is about to conduct himself/herself in a manner dangerous to public order, security or defence," he may order the arrest or detention of that person. The requirement under Section 31 of the CPC that an arrested person be brought before a court of law within forty-eight hours is annulled under this Act. Arrestees can be detained indefinitely with no requirement that they appear before a court of law.

The restriction order is served by a police officer of or above the rank of Assistant Superintendent of Police. The restriction can take many forms, for example:

- (a) house arrest
- (b) restriction from association with or communication to any persons or organisation
- (c) notification of one's movements to any appointed authority.

What is important to note is that a restriction or detention order cannot be questioned in a Court of law (Section 13). The only provision to check such abuses is for a Tribunal to review the case. This review is provided for under Article 101 of the Constitution. Unfortunately, the Tribunal is set up by the President, so it reviews cases in which the President has already caused a person to be detained or restricted. The Tribunal becomes ineffective in checking abuses, because of his presidential control.

### *F. Women and Police*

The United Nations Convention on the Elimination of all Forms of Discrimination Against Women, now signed by over thirty-four countries in the African Region, including Uganda, explicitly acknowledges that discrimination against women violates the principle of equality of rights and respect for human dignity. Discrimination against women has continued in Uganda, but an even more pressing concern is violence against women.

Violence deprives women of their ability to achieve full equality. It threatens their safety, their freedom and their autonomy. Violence against women is a fundamental violation of human rights which include: the right to life, liberty and personal, mental and physical integrity; the right not to be subject to torture or to cruel, inhuman or degrading punishment; the right to equal protection before the law and equality within the family. Many cases of violence against women go unreported, particularly when violence occurs in the home. The majority of women do not speak out or report to a court on violence but keep silent as victims because of fear, shame or misplaced feeling that they are somehow responsible. The police, influenced by "traditional practices," view wife beating as a man's prerogative and rarely intervene in cases of domestic violence. It is more often than not useless for a woman to report to police violence in the home. She would generally be ordered to return home and "be good."

Women in the police force are dwindling in number. There was a time when women had opportunities for recruitment. Today this is no longer the case. Several factors have caused this to happen. They are primarily based on the traditional roles women play and occupy in

Ugandan society. It appears that at some point after basic training, most women get married, usually to civilian men, and in most cases they find their marriages strained by their police duties. Many women tend to leave the police force very quickly, especially after starting a family. Hence, women are now considered to be a "risk" and a drain on resources for training. The tendency today is to recruit mostly men: as a result there are few women in senior positions in the force.

When a woman is the suspect of a crime and is arrested, she is often placed in a police cell which is not only small, but which often houses male suspects. This exposes women to rape or assaults. In prisons, the conditions under which they are housed are deplorable. The hygiene in these facilities is very poor. They have no access to items such as soap or sanitary towels, and many prisons do not have bathing facilities.

The Government has encouraged the participation of women in government. There are forty-three women in the National Resistance Council (Parliament) out of 246 positions. There are also forty-eight women in the Constituent Assembly. Women hold positions of responsibility at all levels of Government and within some of the political parties. The President appointed Dr. Specioza Wandira Kazibwe as the first female Vice-President in November 1994. Despite these gains, women in Uganda remain oppressed. Discrimination against women, domestic violence and rape remain serious social problems with very little effort by the law enforcement agencies to alleviate the situation.

### *G. Community Policing*

The Uganda Government, in conjunction with the British Government, has initiated the concept of "community policing." It is an attempt to remove the barriers, mistrust and fear that exist between the police and the people. The objectives are to achieve more effective crime control, reduce fear of crime, improve quality of life and improve police services by getting citizens to work hand in hand with police as partners for law and order. The program started in 1989 but came to a halt due to the inability of the program directors and government to come up with a workable plan. In 1993, with the

assistance of the British Police Project, the program was revamped and reintroduced. By October 1993, after the first phase of the new project, forty police officers were trained as Community Liaison Officers (CLOs). The CLOs are attached to different districts in the country and are in turn expected to teach their colleagues how to reach the people through the local government system.

The new training courses eventually included a course specifically designed for women and the problems specific to women and children. In January 1995, two such training courses were carried out for eighty women police officers. The courses focused on investigation of sexual offences, child abuse and domestic violence. The response from the public, in the areas where these officers were sent to conduct sensitising work, has been positive.

The program still faces problems. The main one is corruption, namely bribery. As long as the public continues to see suspects that were reported to police roaming the roads and streets only hours after an arrest has been made, the aims of community policing will not be achieved. Community policing cannot work where there is little trust of the institution itself.

#### **IV. RIGHTS OF CIVIL SOCIETY TO MONITOR POLICE ACTION AND INTERNAL SECURITY FORCES**

The law empowers the courts to issue a writ of habeas corpus for the production of any person illegally arrested and detained by the police or army (Judicature Act). The order must be complied with and failure to do so leads to arrest of the officer in charge of such police station, barracks or prison. The use of habeas corpus is common in Uganda.

The office of Inspector General of Government was established by Statute No. 2 of 1988. It is the equivalent of an Ombudsman. The IGG is directly responsible to the President. The duties of the IGG under Section 7 include protecting and promoting the protection of human rights and the rule of law in Uganda and eliminating and fostering the eliminating of corruption and abuse of powers.

The IGG is also empowered to investigate:

- (a) deprivation of human life, arrest and detention without trial



- (b) torture and inhuman or degrading treatment
- (c) unlawful acquisition, possession or damage to property
- (d) corruption.

It is also empowered to investigate the following public organs of government,

- (a) Uganda Police Force
- (b) National Resistance Army
- (c) Prison Services.

The reports from such investigations are taken to the President, and a summary of them is provided to the legislature twice each year.

The IGG has no power to question, review or investigate "any matter the review or investigation of which has been certified by the President as likely to:

- (i) be prejudicial to the security, defence, international relations Uganda, or
- (ii) be a matter of a secret or confidential nature which would be injurious to the public interest."

As much as the office of the IGG appears to be a forum to address and check human rights abuses, its operation is under the control of the President. All reports must be submitted to him, and all corrective actions taken by him. The IGG can only arrest when necessary to acquire information.

A Commission of Inquiry to investigate violations of human rights was set up by the NRM Government by Legal Notice No. 8 in 1986. The Commission had a limited mandate: to investigate human rights abuses during the period 1962 to 1986, the period before NRM came to power. A report of their findings was to be published.

The efforts of the Commission have been wholly compromised and undermined by the government that created it. In 1992 for instance, funding for the HRC was reduced to 20% of its original budget. Without adequate funding, the HRC could not effectively carry out the work it was set up to do. The funding cuts dramatically slowed down the process and increased the time for the production of the report, which was to provide the basis for bringing past perpetrators of gross violations to justice.

The Commission was specifically required to investigate:

the manner in which the law enforcement agents and the state security agencies executed their functions, the extent to which the practice and procedures employed in the execution of such functions may have violated the Human Rights of any person and the extent to which the state security agencies may have interfered with the functioning of the law enforcement agents.

In November, 1994, after eight years, the first report of the Commission was presented to the Minister of Justice and Attorney General. The Commission revealed that two officers investigating human rights violations died after unearthing incriminating evidence against a top NRM official. They identified the dead investigators, but the dates and nature of their deaths were not disclosed. According to the Commissioners, one investigator died after signing a case sheet involving a top government official accused of atrocities, a document that no one in the office of the Director of Public Prosecutions (DPP) had dared to sign.

This led many in the country to believe that the Report did not contain the whole truth. Many believed that, with the death of the two officers investigating human rights violations by the government, the Commissioners worked under fear of death should they involve present NRM officials in their report.

It was revealed that the vast majority of the culprits were from the Military Intelligence Organisations and state security organs such as the police, public safety unit, para-military and other state agencies.

It was also revealed that vital public records and documents relevant to the Commission's work could not be traced. Among those missing were records on the Nakulabye incident of 1964 where the Special Force shot and killed a number of people. Documents relating to the murder in Gulu in January 1970 of Brig Pyerimo Okoya and his wife Anna were also missing.

The Commissioners announced that while many citizens were willing to give evidence about human rights violations, others were discouraged when known perpetrators were not prosecuted. They also said that those who had hoped for redress saw government as a "toothless bull dog" when culprits were not tried.

The Government of Uganda has not yet given serious attention to the issue of redress. This failure may pose a danger, as many people

are willing to take the law into their hands and solve the problems in their own ways. This is already evidenced by the increasing rate of inflicting "mob justice" on culprits.

In its report, the Commission recommended prosecution of the perpetrators of human rights violations, compensation of victims, education of the masses about human rights and the creation of a permanent human rights body. Other recommendations relate to the administration of justice, function of courts, the police, military, and prisons.

It should be noted that the Commission was not established as a permanent body and already it is under pressure from the government to wind up its affairs.

The press in Uganda now enjoy some degree of freedom. Media can expose human rights violations. In reporting on specific crimes, police and army performance and court proceedings, the press's role is to force the ISFs to discharge their duties in a manner that recognises human rights and the rights of citizens generally. This can be accomplished by raising a number of questions from a social, economic or political viewpoint. They can ask why the Government keeps police officers in a perpetual state of poverty or how a Judiciary that is permanently insolvent can be honest, powerful and respected. A free press also has the ability, and maybe the responsibility, to inform the public of their rights as citizens and the laws that provide for and protect those rights.

The Government has begun to take steps to limit the press's freedom. There are already some provisions in place that allow the Government to censor the press. The Government has also used sedition, defamation and other techniques to attack its critics in the press. These tactics, to some extent, have resulted in self-censorship on the part of the media.

The arrest of three journalists in late 1993 had a chilling effect, causing a period of great caution on the parts of other journalists. The three journalists were released on bail and continued to publish articles critical of the government and its human rights abuses. On the 6th October 1994, the Editor in Chief and deputy editor of the *Monitor* (a newspaper) were arrested by the police in connection with what was alleged to be a false publication. The deputy was released that day,

while the Chief Editor was held overnight by the CID in Kampala. The following day he was freed after the DPP dropped all charges without any explanation.

By and large, over ten newspapers and magazines cover a wide range of viewpoints. They regularly report on corruption in Government and human rights abuses by the NRA, the police and prison officers.

A Human Rights Desk was introduced in the Ministry of Justice in 1993 to receive and act upon complaints from the public on abuses of human rights. This Desk has turned out to be a "white elephant." Despite the publicity it received when it was set up, the Desk has only one officer, who has the duty of doing other government work. It does not have a budget specifically targeted for its work and no attempts are made to publicise its presence. As of now, it is quite dormant.

The Government permits a variety of local NGOs concerned with human rights to operate but monitors these organisations if their activities touch "prohibited" political areas. There are five active NGOs that monitor human rights: The Foundation for Human Rights Initiatives (FHRI), the Uganda Human Rights Activists, the Uganda Law Society, the Ugandan Chapter of the International Women's Lawyers Association (FIDA) and Action for Development. The FHRI regularly visits prisoners to monitor conditions and supports penal reform efforts. FIDA concentrates on cases involving women and children. These NGOs can freely operate as long as Government does not feel threatened. In February 1994, the Election Commission withdrew accreditation from the National Organisation for Civic Education and Monitoring (NOCEM), an umbrella group of fourteen NGOs, for conducting civic education before the Constituent Assembly elections after the Commission received "complaints" from Government that NOCEM was "partisan."

#### ***A. The Police Under The Proposed Constitutional Draft of 1994***

The draft constitution currently under debate has taken some positive steps in acknowledging and safeguarding human rights. Article 12 provides:

....

(2) All organs and institutions of government shall regard the defence and promotion of human rights and freedoms as their primary responsibility.

(3) Human rights education and a culture of constitutionalism shall be actively promoted in all institutions and include part of the curriculum at all levels of education.

....

(6) Access by individuals to groups and communications to regional, continental and international institutions dealing with breakdown of human rights and freedoms [shall be free].

Article 14(2) addresses the needs of women as follows: "[T]he state shall protect women and their rights, taking into account their unique status and natural maternal functions in society."

The draft also sets up a Police Council and a Police Service Board with clearly defined functions. The above provisions, if passed by the Constituent Assembly, will embody a constitutional duty to protect human rights hitherto unacknowledged as an issue to be addressed specifically.

If the police are to play their proper role, and be the cornerstone of justice, the following recommendations need to be implemented:

- (1) The constitution should clearly spell out bodies charged with control and administration of the police force.
- (2) The powers of the President to order the police to do his bidding should be checked by establishing an advisory body prior to the order.
- (3) Police training should have clear guidelines to incorporate education on fundamental human rights and the legal significance of the Constitution.
- (4) The police force must be trained, equipped and administered in such a way that it will carry out its functions in ways that enhance procedural justice and protection of human rights.
- (5) Police accountability should be developed to permit constant review of complaints by aggrieved persons.

- (6) Education of the masses on the duties of the police and how it co-relates to each individual citizen should be undertaken.
- (7) The legislative body should enact a code of conduct governing the internal operations of all ISFs and prescribing the conduct of each individual ISF member.
- (8) None of the police powers should be performed by any individual who is not a member of an authorised ISF organisation.
- (9) Laws governing ISFs should provide for keeping of records regarding all arrests, detentions, interrogations and other security activities directly affecting the rights of all persons.
- (10) The role of the press and NGOs in monitoring ISF violations should be protected and encouraged and standards and processes should be established to enable any member of the public to secure access to official records, detainees and responsible officials.

### ***B. The Army***

The Ugandan Army was established by the 1967 Constitution. Article 78(1) provides that the supreme command of the army vests in the President who has the following powers:

- (a) to determine operational use of the army
- (b) to appoint members of the armed forces to promote and dismiss any member of the armed forces and
- (c) to delegate any of the above powers to any member of the armed forces.

This centralised Presidential control is one of the most significant causes of all coups and abuses of human rights.

Any able-bodied person is eligible for recruitment into the army. Ordinarily one must be eighteen years of age or older. However, during the NRM Guerrilla Struggle, one saw the recruitment of children as young as thirteen years of age.

The promotion of army officers is handled by the High Command. The President is the Chairman of the High Command and the

remaining eight members are appointed by him. All members of the High Command, which is the policy body, are also members of the Army Council.

There is no available documentation as to what training is undergone by army officers.

The NRA has an elaborate code of conduct, which is found in Legal Notice 1 of 1986 (Amendment) Decree 1 of 1987, which sets out the relationship of the army to the public, as well as the relationship between soldiers. "The lower echelons of the army must obey the high echelons [who in-turn must] respect the lower echelons."

The supreme trial organ under the code is the General Court Martial, which is appointed by the High Command. The General Court Martial is attended by two advocates for the NRA, qualified lawyers who act as "judges." Cases triable by the General Court Martial include: murder, manslaughter, robbery, rape, treason, terrorism and disobedience of lawful orders.

At the lower levels, disciplinary units are established pursuant to the NRA Statute 3 of 1992. Section 76 establishes a disciplinary committee at each army unit. The tribunals established are as follows:

- (a) Division Court Martial with unlimited jurisdiction forms an appellant Court but also with original jurisdiction.
- (b) General Court Martial - supreme trial organ with appellate jurisdiction.
- (c) Court Martial appeal Court hears appeals on legality of any findings or sentence.

Section 90 of Statute 3/92 provides that jurisdiction of civil courts remains intact. Like those against the police, lawsuits against a member of the army are filed against the Attorney General for any civil liability incurred in the course of his/her employment. Section 104 provides that the Minister may, after consultations with the Army Council by Statutory Instrument, make regulations for discipline and good administration.

Section 107 provides: "The provisions of this Statute shall apply to women members of the army as far as may be practicable subject to such modifications may be necessary." Although, there is equal opportunity for women to be recruited in to the army, currently very few women have enlisted.

The structure of the army and its administration is in the hands of the President. There is lack of clear structural control and accountability. The High Command, the policy body and the Army Council are all dominated by people who are appointed by, and owe allegiance to, the President.

The army is shrouded in secrecy based on a notion of national security. This prevents any of their acts or omissions from being questioned. It allows the army to act with almost total impunity. To compound this, the Constitution gives the President total protection for not consulting with advisors before using the army. Article 79 provides vis:-

Where the President is required by this Constitution or any law to consult or to consider or act, the question whether he has acted with such advice shall not be questioned in any Court.

## V. RECOMMENDATIONS

1. The Constitution should clearly limit the powers of the President in controlling of the army.
2. Independent institutions should be set up for the recruitment and service of army personnel.
3. Bodies responsible for the administration and control of the army should be enshrined in the Constitution.
4. The law should create an army subordinate to civilian authority.
5. Minimum education standards should be established to eliminate the idea of a non-trainable army.
6. An institution to address abuses of the public by the army should be set up with a view to create accountability for actions.
7. A clear policy in the army favourable to women soldiers should be drawn up.
8. Privileges protecting records from public access or disclosure should not be allowed.
9. The penal laws of the country should contain explicit provisions criminalizing the violation of the basic



human rights of citizens by military officials acting under colour of law.

## VI. OTHER INTERNAL SECURITY FORCES

There are other security organisations established with a duty to obtain information not readily available from within and without the country. Past regimes in Uganda established such organisations on an ad hoc basis, capitalising on the weakness of the Constitution. Such organisations included the State Research Bureau under Idi Amin and the General Service Unit under Obote. The organs were responsible for arrest, detention and torture of innocent people under the guise of public security.

Today, the *Security Organisations Statute 10 of 1987* establishes an Internal Security Organisation and an External Security Organisation. Both are government agencies, with duties to collect, receive and process internal and external intelligence data on the security of Uganda and directly advise the President. Both organs are headed by a Director General, who is appointed by the President and directly accountable to him. Other officers and employees are appointed by the President on advice of the Directors General. Today, heads of both these organs are lawyers by profession.

Codes of conduct and recruitment policies are not laid out for these organs. However, an Advisory Council is set up under the statute to advise the President on these issues. The Council is comprised of:

- (1) President - Chairman
- (2) Minister in Charge of President's Office - Secretary
- (3) Minister of Internal Affairs
- (4) Minister of Defence
- (5) Director General of ISO
- (6) Director General of ESO
- (7) Director of Military Intelligence and any other person appointed by the President.

From the composition of the Council, one can determine that the President is in control since each of the members of the Council is a presidential appointee. There is no duty on the President to act on advice of the Council.

The law on these security organisations is very obscure or non-existent. There are no clear guidelines as to recruitment, training discipline, or codes of conduct. The chances of human rights violations occurring in efforts to secure internal intelligence are high. There are no guidelines as to what methods can be followed to obtain information needed to guard the safety of Uganda.

There is an ever-increasing need in Third World countries to reform the laws controlling the governance and accountability of the police, military and other internal security forces. This is vital in order to develop democratic systems of governance. There is further need to return to democracy by laying down a strong constitutional basis for the internal security forces. Legislation relating to internal security forces should be clear in terms of set-up, control, daily management and accountability. Clear recruitment and education standards should be set out and provisions for continued training and review devised for effective control.

The law establishing and setting forth the functions and powers of every ISF organisation should be enacted by a representative, elected legislative organ of government, and never by decree promulgated by the executive branch without the advice and consent of the legislative body. Only when the above are addressed by Third World countries will there be hope for democratic governance, human rights and the rule of law.

