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LIST OF ABBREVIATIONS

ACHPR	African Charter on Human & Peoples Rights
ADA	Assistant District Administrator
ADES	Assistant District Executive Secretary
AIDS	Acquired Immune Deficiency Syndrome
CAP	Chapter
CIA	Central Intelligence Agency Criminal
CID	Investigation Department
CP	Conservative Party
CSSDCA	Conference on Security, Stability, Development and Co- operation in Africa
CIL	Commercial Transaction Levy
DA	District Administrator Deputy,
DDA	District Administrator District
DOC	Development Committee District
DES	Executive Secretary Democratic
DP	Party
DPp	Director of Public Prosecutions
DSC	District Service Committee
EEC	European Economic Community
ESAMI	Eastern and Southern African Management Institute
ESO	External Security Organisation
FIDA	Federacio International de Abogadas (Federation of Women Lawyers in Uganda)
GDP	Gross Domestic Product
GNP	Gross National Product
GSU	General Service Unit
IBEAC	Imperial British East African Company
O	International Covenant on Civil & Political Rights International
ICCPR	Covenant on Economic, Social & Cultural Rights Inspector-General of
ICESCR	Government
IGG	International Labour Organisation
ILO	International Monetary Fund
IMF	International Refugee Organisation
IRO	Internal Security Organisation
ISO	King's African Rifles
KAR	Kabaka Yekka
KY	Local Council
LC	Local Defence Force
LDF	Local Defence Units
LOU	Legislative Council
LEGCO	Makerere Institute of Social Research
MISR	Member of Parliament
MP	National Security Agency
NASA	National Consultative Council
NCC	Non-Commissioned Officer
NCO	

NCS	National Council of State
NEAP	National Environmental Action Programme
NEC	National Enterprises Corporation
NEC	National Executive Council Non-
NGO	Governmental Organisation
NRA	National Resistance Army
NRC	National Resistance Council
NRM	National Resistance Movement
NSSF	National Social Security Fund
NTPP	National Tree Planting Programme
OAU	Organisation of African Unity
PAC	Public Accounts Committee
PSC	Public Service Commission
PSRRC	Public Service Review and Re-organisation Commission
PTA	Parents Teachers Association
RC	Resistance Councils
SACP	Senior Assistant Commissioner of police
SRB	State Research Bureau
TSC	Teaching Service Commission
UA	Uganda Army
UAF	Uganda Armed Forces
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNA	Uganda National Army
UNC	Uganda National Congress
UNHCR	United Nations High Commission for Refugees
UNLA	Uganda National Liberation Army
UNLF	Uganda National Liberation Front
UNM	Uganda National Movement
UPC	Uganda Peoples' Congress
UPDF	Uganda Peoples' Defence Forces
UPM	Uganda Patriotic Movement
UPU	Uganda Peoples' Union
URA	Uganda Resistance Army
USA	United States of America

INTRODUCTION

THE CHALLENGE

0.1 On 21 December 1988 the National Resistance Council (NRC) enacted Statute No.5 of 1988 which established the Uganda Constitutional Commission and gave it responsibility to start the process of developing a new Constitution. The making of a new Constitution for any country marks an important watershed in its history. It demonstrates the desire of the people to fundamentally change their system of governance. The process gives the people an opportunity to make a fresh start by reviewing their past experiences, identifying the root causes of their problems, learning lessons from past mistakes and making genuine efforts to provide solutions for their better governance and future development.

0.2 Ugandans have missed several opportunities in the past to make a fresh start. For many years they were denied sufficient opportunity and freedom to democratically determine their future system of governance. It was not until 1986 when the National Resistance Movement Government assumed power that this opportunity was accorded to the people. In order to do so the government established a Ministry of Constitutional Affairs to make arrangements for involving the people in the making of their constitution.

0.3 The challenge which was given to the nation generally and to all sections, groups and individuals in Uganda was to participate as fully and freely as possible in the exercise so that the new Constitution thereby produced would be truly theirs.

0.4 The mandate of the Commission as spelt out by Statute NO.5 of 1988 was to consult the people and make proposals for a popular and lasting constitution based on national consensus. The challenge to the Commission was to do our work "without fear or favour" and to use all means at our disposal to encourage people's participation in the exercise. We were to discover areas of people's consensus and establish areas of majority and minority views where a consensus could not be reached. We were to take the most serious account of people's views in whatever we would recommend for the new Constitution.

0.5 The challenge to government was to create an atmosphere of peace, security and freedom necessary for the fruitful discussion and debate of all aspects of constitutional issues.

0.6 This introduction gives a brief overview of the background of the exercise and the nature of the constitution-making process. It also outlines some of the major recommendations made by the Commission in this Report.

BACKGROUND TO ESTABLISHMENT OF THE CONSTITUTIONAL COMMISSION

The Context

0.7 To understand the challenge of the constitution-making process, it is important to know the context in which it has taken place and the background which led to it. Every

constitution is influenced by what has happened in the past, the present situation and the people's aspirations for the future.

0.8 Uganda recovered her independence on the 9 October 1962 with all the trappings of constitutionalism. A Constitution had been worked out, the result of negotiations among the major political actors of the day namely the major political parties, the Kingdom areas and Busoga, the districts and the retreating colonial power, the United Kingdom. The constitutional arrangements aimed at working out political formulae for balancing conflicting interests of the political elites of the day. The constitutional formulae entailed a periodically elected Parliament, a Cabinet drawn from and responsible to Parliament, federal and quasi federal status for Buganda and the Kingdom areas and Busoga respectively; and unitary status for the rest of the country. Powers of major government organs, civil service and judiciary were defined. On the first anniversary of independence, the Constitution was amended to provide for a ceremonial President to replace the Governor General as head of state.

0.9 But within a space of less than two years, another actor who had never been 7art of the political calculations leading to independence mounted the stage. This was the Uganda Army. On the 25th January, 1964, there was an army mutiny whose objectives were apparently limited. The mutiny was suppressed but was a foretaste of the important role the military were to play in the future. In 1966, following a confrontation between the then Prime Minister Milton Obote and Sir Edward Mutesa, President of Uganda and Kabaka of Buganda, the 1962 Constitution was abrogated and replaced by the Interim Constitution which was soon replaced by the 1967 Constitution. Milton Obote ruled basically with army support until he was overthrown by Idi Amin in the January 1971 *Coup d'etat.* From 1971 to 1979, ldi Amin used the army as the main instrument of government until he, too, was overthrown by a combination of Ugandan and Tanzanian military forces.

0.10 Despite misgivings many people at that time held about the activist role of the military in politics and some apparent efforts to define its role, the Ugandan military continued to be actively involved in Ugandan politic processes. From 1981 until January 1986, Uganda was embroiled in a civil strife with the National Resistance Movement (NRM) seeking to overthrow Obote. Under harassment from the National Resistance Army (NRA), the military arm of the NRM, Obote was overthrown by the Uganda National Liberation Army which in turn was overthrown by the National Resistance Movement.

0.11 As can be observed from this outline, Uganda's major political changes have not taken place within the established constitutional rules. As each government came to power it suspended provisions of the Constitution which did not favour its operation and substituted them under proclamations, decrees or legal notices without consulting the people. This has been one of the clear signs of tyranny and dictatorship in Ugandan politics since 1966.

0.12 It was against this background that NRMINRA initiated a struggle for liberation of the people of Uganda from the vicious circle of oppressive regimes. They sought to restore the hopes for a new democratic regime people entertained after the fall of Idi Amin. These hopes had been shattered by the alleged massive rigging of the 1980 general elections.

0.13 Very early in this struggle, the NRM committed itself to ensuring that once in power, people would determine the basis of their own governance and constitutional arrangements

through discussion and agreement on the future constitution for the country. This was what people had been calling for since the unilateral suspension and abrogation of the 1962 Constitution. In order to give effect to the NRM's commitment, it was agreed that a Commission of experts be set up whose general objective would be to ascertain the people's views on how they wanted to be governed.

Membership of the Commission

0.14 Membership of the Commission and tenure of office of members were established under sections 1 and 2 of the Uganda Constitutional Commission Statute (No.5 of 1988). Members were chosen from a wide variety of interests and backgrounds and included a judge, lawyers, historians, political scientists, a medical doctor, financial and military experts.

0.15 The members of the Commission were:

I.	Hon. Justice Benjamin Joses Odoki	Chairman
2.	Professor Dan Muguwa Mudoola Rev.	V/Chairman
3.	Dr. John Mary Waliggo	Secretary
4.	Mr. S. Wenkere - Kisembo	Assistant Secretary
5.	Mr. Med S.K. Kaggwa	Member
6.	Mr. Aziz Kalungi Kasujja	Member
7.	Mr. Jonathan Kateera	Member
8.	Major Kale Kayihura	Member
9.	Dr. E. Khiddu Makubuya Mrs.	Member
10.	Mary LD.E. Maitum	Member
II.	Hcm. Miria R.K. Matembe (Mrs)	Member
12.	Professor Phares Mukasa Mutibwa Hon.	Member
13.	Cuthbert J. Obwangor	Member
14.	Mr. Justine A.O. Okot	Member
15.	Professor Marcel Andrew Otim	Member
16.	Mr. Constantine Rwaheru	Member
17.	Lt. Co!. Serwanga Lwanga Professor	Member
1~	Edward F. Ssempebwa Hon. Jotham	Member
.	Tumwesigye	Member
19.	Mr. George P. Ufoyuru	Member
20.		

0.16 Major General Mugisha-Muntu, Hon. Dr. E.T.S. Adriko and Hon. Gertrude Lubega Byekwaso were all members for a brief period in 1989 before they were given other national responsibilities and left the Commission. Hon. Kirya - Gole ceased to be a member in 1991. Professor Dan Muguwa Mudoola who was the Vice-Chairman was tragically murdered and died on 22 February 1993 as we were completing the editing 'of the Final Report.

The Terms of Reference

0.17 The members of the commission were sworn in on 4th March 1989 and held their first plenary session on 9th Marcl1 1909. Our terms of reference were set out in Sections 4 and 5 of the Uganda Constitutional Statute. Our functions were:

"(a) to study and review the Constitution with a view to making proposals for the enactment of a national Constitution that will, *inter alia;*

(i) guarantee the national independence and territorial integrity and sovereignty of Uganda;
(ii) establish a free and democratic system of Government that will guarantee the fundamental rights and freedoms of the people of Uganda;
(iii) create viable political institutions that will ensure maximum consensus and orderly succession to Government;
(Iv) recognise and demarcate divisions of responsibility among the state organs of the Executive, the Legislature and the Judiciary, and create viable checks and balances between them;
(v) endeavor to develop a system of Government that ensures people's participation in the governance of their country~
(vi) endeavor to develop a democratic, free and fair electoral system that will ensure people's representation in the legislature and at other levels;
(vii) establish and uphold the principle of public accountability by the holders of public offices and political posts; and (viii) guarantee the independence of the Judiciary;

(b) formulate and structure a draft Constitution that will form the basis for the country's new national constitution."

0.18 In order to carry out the above functions the Commission was given power and required to:

(a) "seek the views of the general public through the holding of public meetings and debates, seminars, workshops and any other form of collecting public views";

(b) "stimulate public discussions and awareness of constitutional issues";

(c) "summon any person to appear before it or to produce any document or thing that may be considered relevant to the functions of the Commission"; and

(d) "form such committees as the Commission may deem necessary for the better carrying out of its functions." .

METHODOLOGY AND GUIDING PRINCIPLES

The Commission's Methodology of Work

0.19 The methodology of work we adopted was carefully designed to meet the challenge of arousing maximum cooperation and participation of all Ugandans in the exercise of

Constitution-making. Only then could areas of consensus and the controversial issues of the institution clearly emerge.

Q 20. methodology, more fully described in Chapter One, consisted of several main and aspects:

(a) If the new Constitution was to be a truly people's constitution, we were convinced that the list - or agenda - of constitutional issues to be discussed had to emerge from the people themselves. The district seminars and seminars for major interest groups and professional bodies which were held during the course of 1989 aimed particularly at achieving that aim as well as to get guidance from the general public on our proposed method of work and timetable.

(b) The second phase was the educational exercise on the constitutional issues identified. For this purpose, we conducted seminars at almost every sub-county, in major Institutions of learning and for various categories of people. They enabled us to make the closest observation of the feelings, aspirations and proposals of the people.

(c) To make the exercise entirely their own, we encouraged people in all areas to organise their own seminars on the new Constitution. Leaders of government, RCs, religious bodies, professional and economic organisations, cultural and political groups or parties gave similar stimulus to their respective people. We were able to attend whenever invited. Otherwise we awaited submissions of people's views from such meetings and seminars.

(d) We made use of the radio, television and newspapers to give more enlightenment on the exercise, to voice the submissions given to us by various groups and above all to stimulate the debate at all levels.

(e) We organised essay competitions on aspects of the new Constitution to involve the young pupils and students. We did so because of our conviction that it is the young of today who can embrace the culture of constitutionalism from the early age.

(f) The entire mass media in the country took the constitution-making exercise very seriously. They have done a lot to educate the people, identify controversial issues and throw light on them and sensitize people to fully participate in the giving of views.

(g) Having adequately prepared the ground we proceeded to collect people's views. People had ample time to discuss their views at their various levels of RCs, and in other groups. Individuals had reflected on their wishes and put them in written memoranda. Knowing, however, that ours is an essentially oral culture, we arranged ample time for the oral submission of views at every sub county and at our offices at Mengo. This opportunity was very profitably used by numerous people.

(h) We arranged to interview political leaders from H.E. The President, Vice-President, ministers, members of NRC to other prominent leaders in the country. Knowing their busy schedules of work, we often went to interview them in their own offices.

The Results

0.21 From the results of educational reports, memoranda, position papers, newspaper articles, essays and oral interviews, we have no hesitation in stating that the most important aspect of the challenge given to the nation as a whole and to us in particular has been successfully met. This success can best be appreciated when one remembers the general apathy to political participation that people had generally shown since 1966. The following list indicates the submissions received:

(a)	District Seminar Reports	33
(b)	Institutional Seminar Reports	53
(c)	Sub-county Seminar Reports	813
(d)	Individuals' memoranda Group	2,553
(e)	memoranda	839
(f)	RC 5 memoranda	36
(g)	RC 4 memoranda	13
(h)	RC 3 memoranda	564
(i)	RC 2 memoranda	2,225
U)	RC 1 memoranda	9,521
(k)	Essay competition entries	5,844
(l)	News Articles	2,763
(m)	Position Papers	290
	Total	25,547

0.22 The government also faced its challenge successfully. It created and maintained the atmosphere of peace, security and freedom of expression so necessary for the success of this exercise. It left us full freedom in the organisation and direction of our work. At no time did it in anyway interfere with what we were doing. The people everywhere manifested signs of tremendous growth in political maturity. They discussed issues without quarrelling or fighting. We observed no hostile tensions in any of the seminars or meetings we conducted as part of the exercise. Ugandans seemed to have agreed that the constitution-making process was the most crucial exercise for the future peace and stability in Uganda. As such they gave it their full support at every level.

0.23 The exercise went further to involve Ugandans living abroad. When contacted, they responded positively in most countries where a sizeable number of Ugandans live. We were able to meet them when we got a chance to visit some of those countries. They were able to organise their own seminars and to submit to us their joint or individual memoranda. We had made it very clear that we had been authorised to collect views of all Ugandans irrespective of their political views on the current administration in the country. Political groups and exiles opposed to the NRM submitted views to us on this understanding.

Summarising and Analysing Views: Common Principles

0.24 Having completed the collection of views we began to summaries and analyze them under the topics agreed upon in our early consultations with the people. Likewise we

Analyzed our observations and made a critical analysis of Ugandan society. In doing so we came to discern objectives and guiding principles generally agreed upon by the people.

(a) Ugandans were agreed and determined to get rid of tyranny and political instability under which they have suffered so much especially since 1966.

(b) They wanted to establish a democratic society based on the eight guiding principles Contained in Statute No.5 of 1988 to which they gave their consensus approval.

(c) They identified, in addition, eight other guiding principles for the new Constitution. These were to:

(i) establish a new socio-economic and political order based on the principles of unity, peace, equality, democracy, freedom, social justice and progress;

(ii) give effect to the sovereignty of the people through their inalienable right to determine the form of government in their country that can promote their active participation;

(iii) establish consensus politics as the basis for decision-making in important matters in order to promote nation-building;

(iv) establish a strong decentralised and devolved system of government as the basis for effective local governments;

(v) guarantee and effectively enforce respect for the dignity, equality and human rights of individuals and groups with special emphasis on the rights and equality of women and protection of the rights of the family, children, handicapped and disabled and minorities;

(vi) promote and consolidate national unity and consciousness, national values and heritage, while respecting the cultural values of each society;

(vii) promote socio-economic development and guarantee equal opportunities for development for all parts and sections of the country; and (viii) foster regional, African and international co-operation.

The Main Sources Used by the Commission

(1.25 We have used four main sources, as expounded in Chapter One. The primary and most important source has been people's views presented either orally or in form of memoranda, totaling to 25,547 submissions. The second source has been our observations ;11\(1 analysis of society, both past and present to discover the underlying causes of the country's political and constitutional instability. From the study of our cultures, common history, problems and people's aspirations we have been able to draw lessons relevant to the IWW Constitution. The third source was the mandatory review of the current Constitution of *1))07* with all amendments made to it. In order to do that effectively, we have also reviewed I he constitutions of 1962 and 1966 and <Ill related constitutional and legal arrangements and agreements and documents since the advent of colonialism in Uganda. The final source has well the comparative study of constitutional arrangements of other countries and studies and developments in constitutional matters and all matters related to democracy, human rights and I he rule of law. The aim was to discover relevant lessons for Uganda. From the study of

these four sources we were able to deduce some theoretical bases to serve as guiding principles for the formulation of our recommendations. These are presented below.

Theoretical or Philosophical Bases for our- Recommendations

0.26 (a) *The new constitutional order should be responsive to Uganda's potentially vulnerable geographical position.* The objective is to safeguard our national independence, sovereignty and territorial integrity. The means should include strengthening our nation-state and fostering policies of cooperation, understanding and friendliness at the regional, African and international levels.

(b) *The new constitutional order should come to terms with Uganda's multi-ethnic and cultural diversities.* The objective is to promote nation building and national unity while fully respecting our cultural diversities and ethnic identities. One of the means of achieving that is to adopt a form of government that can best respond to the above principle.

(c) *The new constitutional order should come to terms with Uganda's past and present and should be sufficiently flexible to meet internal and external challenges and people's aspirations for the future.* The aim is to avoid the pitfalls of the past which have caused much suffering, while building on values of the past which have proved workable and have survived all odds. The present should also be taken into account critically in order to identify both values that are permanent and those which seem transitory. The aspirations for the future indicate the direction which people want the country to take. They can be responded to by making a constitution that is sufficiently flexible to meet those challenges as they come.

(d) *The new constitutional order should be so devised as to enable government to govern effectively and democratically.* The objective is to avoid both anarchy and tyranny. One of the effective remedies is to distribute power and responsibility in such a way that no loopholes are left for agitators to cause anarchy and for dictators to impose their will.

(e) *There should be such a balance of forces in the new constitutional order that no one single social force or group should be able to establish its hegemony to the extent of flouting the established democratic principles.* The objective is to eliminate the politics of exclusion, sectarianism and unconstitutionality. To remedy such a situation, there is need to control all social forces within the constitutional order and to put in place institutions that can effectively resolve conflicts fairly and peacefully.

(j) *No social force or group should be politically marginalized as evidenced by Uganda's historical experience.* The aim is to establish solid foundations of equality, equity and social justice. One of the ways to achieve this is to give clear constitutional support to the rights of women, children, handicapped persons and minorities.

(g) *The established institutional frameworks should be capable of creating conditions for peaceful transfer of power.* The objective is to entirely eliminate the practice of capturing power through sheer force or other unconstitutional methods. This aim can be partly achieved through the constitutional subordination of the military to civilian authority and the establishment of independent institutions to supervise the transfer of power.

(h) *The flew constitutional order should ensure that major controversial issues are resolved through democratic discussion and where necessary national referenda.* The objective is to ensure that controversial issues do not lead to polarization of the nation into hostile camps. One of the ways to achieve this may be through use of national referenda to resolve issues democratically.

(i) *The new constitutional order should ensure that constitutional structures are viable and flexible, coherent and integrated to promote a culture of constitutionalism.* The aim is to safeguard the constitutional arrangements as suggested by the people and approved by them or by their elected delegates. The means would include clear procedures for amending the constitution, making the constitution widely known and studied and empowering people to defend it.

Statistical Analysis

0.27 A statistical analysis of the views contained in people's memoranda is contained in Appendix 1 of volume III of the Report, The *Index of Sources of People's Views.* We deliberately avoided turning the constitutional exercise into a purely statistical one. We chose not to attempt to carry out a scientific sampling of people's views. We discouraged the use of a scientific questionnaire because we were convinced it would discourage people's participation, condition their responses and above all it could be grossly abused in the absence of logistics to supervise the tilling in of responses.

0.28 What we did was to prepare some questions which were deduced from our *Guidelines on Constitutional Issues* to assist people when preparing their memoranda. We made it clear to the people, however, that they did not need to submit their views following those *guiding /questions.* They were completely free to answer as they chose and to limit themselves to a few issues or raise issues which had not been included in our guiding questions.

0.29 As a result the memoranda expressed views in a variety of ways. Many dealt with only one or a few issues of particular interest to the presenters. Some attempted to respond to most constitutional issues but without reference to the guiding questions. Others attempted to follow the guiding questions but choosing only those which were of-interest to them. A few sought to answer all the questions.

0.30 When we decided to make a statistical analysis of memoranda we mainly wanted to use it as one of the ways to get a general picture on issues of consensus and to identify majority and minority views in the memoranda on the controversial issues. We did this by reading carefully each memorandum to discover what it says on the issues identified for such analysis.

0.31 We wish, therefore, to make it clear that statistical analysis was only one of the ways to assist us reach decisions for the recommendations of our Report. It helped us to know the general trend on a particular issue. Every recommendation, however, is a result of our using all the four sources indicated above.

CONSTITUTIONAL ISSUES OF CONSENSUS AND CONTROVERSY

Areas of General Consensus

0.32 While there was a consensus generally on the objectives of the new Constitution, we received a variety of proposals on how to achieve them. The adequate period for the debate and the active participation of the people in the constitution-making process produced a broad consensus on many of the constitutional issues.

0.33 We found the people generally in agreement that the new Constitution should provide for: the sovereignty of the people, the supremacy of the Constitution and the defence and safeguard of the constitution. There was general consensus on the fundamental rights and freedoms and on the special provisions for the rights of women, children and other disadvantaged groups and on the effective mechanisms to protect them. The national objectives and directive principles of state policy in the political, economic, social, cultural and foreign policy areas received quasi-unanimous approval, although some wanted them as clear human rights which could be legally enforced.

0.34 There was general support for the direct election of the President and on limiting his or her term of office to only two. People wanted a strong and independent legislature which could provide for adequate checks on the exercise of executive power. They wanted its committees to be efficient and effective to make the executive accountable and transparent. People supported an independent, impartial and effective judiciary, able both to command general respect from the public and to enforce its decisions.

0.35 People supported English10 remain the official language for the time being and the principle of non-adoption of state religion in Uganda. The independence of the Electoral Commission, Judicial Service Commission, Audit Commisst0n and Public Service Commission was much supported. People supported institutional mechanisms for the elimination of corruption and abuse of office, the institution of the Inspectorate of Government, the decentralisation and devolution of powers to local government units and the principle of participatory democracy.

0.36 People generally supported policies for development and equitable distribution of resources; a national, professional and neutral army subordinated to civilian authority; an effective leadership code of conduct and environmental policies conducive to development.

Controversial Issues

0.37 The major challenge for the nation as a whole and the commission in particular was to come up with generally acceptable solutions to the controversial constitutional issues. It will be remembered that some of these controversial issues had been so from 1966-7. These include the unilateral abolition of the 1962 Constitution and the consequent abolition of the

Institution of traditional rulers and the federal and semi-federal status for Buganda and other kingdoms respectively. The controversy over choice of a national language has been present, since early colonial years. It was resurrected in the 1970s and remained an open issue throught the current constitutional process. The participation of the army in politics was an open reality from 1964. It was institutionised in 1980. It has continued to be controversial during the current process for the new Constitution. The electoral system emerged as a controversial issue during the constitutional debated of the past four years.

0.38 The most controversial issue, however, proved to be the political system to be adopted. Different positions were taken on the issue long before our appointment to the Commission. Then: were three main clear positions on the issue. One position strongly believed in the movement political movement as the best for Uganda because it succeeded to unite people of different parties and opinions to work peacefully for national development. A second position was that the movement system was undemocratic by nature since it infringed Peoples rights to organise and associate freely and that a system based on political parties Should he re-established. The third position held the movement system as appropriate for an interim period in which the people are expected to mature politically before return to fully-fledged party politics.

Our Approach to Controversial Issues

U.JCJ The Commission was expected to find constitutional solutions to these controversial issues which would satisfy Ugandans generally or the majority of them. This was the major challenge the Commission has found in its work.

0.40 In handling the challenge of controversial issues we were guided by the principles which have been discussed above. Since the new Constitution aimed at creating permanent people and stability, we made sure that our recommendations on them would be based on principled compromise which seriously takes into account the views of all sides. We wanted the recommendations to bring about genuine reconciliation of diverse views and positions already taken by different groups in the country and at the same time serve the best interest (If a democratic society.

Posit ions on the Main Controversial Issues

National language:

0.41 On the question of national language the country was sharply divided between two 1anguages Swahili and Luganda. We have not recommended both as national languages because we discovered that the time for such a recommendation had not yet come. We therefore left the choice to the future generation when all possible languages will have competed and the most preferred would have emerged naturally.

Forms of government:

0.42 On tile from of government the contention was between federal and unitary forms. There was, however, consensus on decentralisation and devolution. We based our

recommendation on this consensus taking into account the characteristics of federal and unitary forms to cater for the objectives of nation-building and local autonomy.

Traditional leaders:

0.43 On the issue of traditional leaders again the country was sharply divided between those who wanted their restoration and those who opposed it. We took account of both views and recommended its restoration where the people concerned want it but restricted the institution to cultural and development functions. We have also recommended the return of the properties and assets of the institution in the areas where ·people have agreed to restore it.

Electoral system:

0.44 On the electoral system most people preferred to retain the present system of win by simple majority (first-past-the-post). A minority of people was for proportional representation. We evaluated both views and recommended the former system, provided the winner attains absolute majority of all, votes cast. Such system eliminates minority governments which advocates of proportional representation are opposed to.

Army representation:

0.45 The majority supported the representation of the Army in Parliament while the minority views opposed it. We have recommended Army representation by ten members only together with members of other interest groups. Such representation, however, is not to be permanent. It will serve until society decides there is no more reason for representation of interest groups. Parliament would then be able to decide on the issue when such time comes.

Political system:

0.46 The issue of a political system to be adopted in Uganda was by for the most controversial. As indicated above different camps had already taken positions on it long
before our appointment to the Commission. Throughout the constitutional debate we discovered divided views on the topic. A consensus on the issue could not be attained, but the majority views in the memoranda, educational reports and in our observations during the interaction with people were for the movement political system.

0.47 We are fully convinced that the choice of the political system is fundamental to the realisation of peace and stability and the promotion of democracy and human rights and freedoms. In our recommendations, therefore, we have strongly insisted on the fundamental freedom of association and assembly, both for civil organisations and political parties. Following the majority views we have recommended that the formation and operation of political parties be regulated by law to ensure their full democratization and peaceful coexistence and their conformity to the national objectives and principles as identified by the people. We have also recommended the restructuring and operation of the movement political system to make it serve better the interests of all Ugandans on the basis of democratic principles and in peaceful coexistence with political parties.

0.48 To reconcile the views of the majority with those of the substantial minority we have recommended to have both the movement political system and the multi-party system within the constitution. We have safeguarded the operation of political parties in all aspects, with the exception of endorsing, sponsoring, offering a platform or campaigning for or against a candidate for any public election, during the period when the movement political system is in operation.

0.49 We have recommended that the new constitution once promulgated should start with the movement political system for the first five years. We have also recommended in this Report that if the issue of political system is not resolved by the Constituent Assembly, it should be referred to a national referendum immediately. We have recommended in addition a national referendum on the issue in the fifth year of the operation of the new constitution to determine people's preference. The issue of the political system would be decided upon regularly through a referendum until such a time that Ugandans achieve a relative consensus on a permanent political system.

0.50 Although to some such recommendation may, at first sight seem cumbersome; we are convinced it is in the best interest of peace and stability. It gives effect to people's sovereignty to decide the political system most likely at any given time, to give expression to their aspirations. The possibility of choice on two alternative political systems can effectively safeguard against the tendency to dictatorship in either political system. Democracy may therefore be given a chance to grow at the direction of the people themselves.

MAJOR ACHIEVEMENTS, INNOVATION AND FUNDAMENTAL CHANGES

Major Achievements

0.51 The achievements of the current constitution-making process can be summarized under four broad aspects. First, the consultation of Ugandans on the new Constitution has been unprecedented. This participation has made people more politically mature and given them a right sense of dignity that their views really matter in the democratic organisation of society. Once they recognise that their views have formed the basis for the new Constitution, they will be in position to respect and defend it. People now generally know what a constitution is, its usual contents and, its objectives and principles. They have come to understand that democratic constitutions ought to emerge from the people. This belief is the strongest safeguard of a national constitution which has evolved from the people themselves.

0.52 The second achievement has been that of using people's views as the basis for our recommendations both for this volume of our Report and the volume containing the Draft Constitution. Although not all may be pleased with every recommendation we make, the fact that all recommendations have been inspired by people's views will be recognized. The importance of this achievement for the future is enormous. Ugandans will always demand that their views be sought and respected in major policies of government, whether central 01:' local. What concerns them should always be done with their involvement. Such consensus politics is likely to influence the future course of our nation.

0.53 The third achievement has been the people's identification and overwhelming support for new constitutional institutions and principles which hitherto had never been part of our constitutions. The final achievement has been people's support for significant changes in the major organs of state and other constitutional issues. We single out some of the innovations and new changes.

Innovations

National objectives and directive principles of state policy:

0.54 In the past, constitutions did not normally contain national objectives an<;l directive principles to guide governmental action. The existence of clear objectives and directive principles is especially important in the provision of socio-economic development and equitable allocation of resources. They provide the national goals, the ideals, the targets which the nation must strive to achieve. Absence of national objectives has meant that the plans of each government could not be tested against popularly accepted goals. In such a situation continuity in developmental policies could hardly be expected. We have recommended inclusion of *National Objectives and Directive Principles of State Policy* in the new Constitution in order to guide government and society as a whole to move gradually towards the full realisation of the people's political, economic, social and cultural rights and environmental and foreign policy objectives. We envisage that Parliament and other constitutional institutions should be charged with responsibility of monitoring compliance with these principles and objectives.

Leadership Code of Conduct:

0.55 In earlier constitutional arrangements, there were no explicit provisions for a *Leadership Code of Conduct.* The people's views submitted to us make it clear that they believe one of the endemic problems of Uganda has been bad, misguided and selfish or. corrupt leadership. Without an effective machinery for control of leaders and for making them both fully accountable to the people and conform to acceptable ethical norms, Uganda's problems both in the political and public sectors would hardly be effectively addressed. In response to the clear wish of the people, we have, therefore, recommended that the *Leadership Code of Conduct* become a constitutional institution. The aim is to eliminate abuse of office and corruption by public and political leaders, thus compelling them to act honestly, honorably and responsibly in the interests of the nation as a whole and the people they directly serve.

Inspectorate of Government:

0.56 *The Inspectorate of Government* is a new institution which had never been provided for in earlier constitutions. It is Uganda's version of Ombudsman. People are happy to retain this institution which has been instituted in recent years and to make it a constitutional institution. We have, therefore, recommended the *Inspectorate of government* to become a constitutional office effectively empowered to- eliminate corruption in public office and enforce the *Leadership Code of Conduct.*

Safeguards for and amending of the Constitution:

0.57 We have carefully studied the 1962 and 1967 constitutions and found there were no adequate provisions for constitutional safeguards. Our history since independence has amply demonstrated that violation of the constitutions has tended to be the norm for leaders. People have put much emphasis on safeguards for the new constitution. Among other measures, we recommend it as a right and duty at all times for all citizens of Uganda to defend the Constitution, and in particular, to resist any person or groups seeking to overthrow the constitutional order by violent or other unlawful means. In response to people's unanimous demand, we have recommended constitutional provisions for dealing with any individual or groups who attempt, through any violent or other unlawful means, to overthrow or succeeds in overthrowing the Constitution. The Report recommends the compulsory study of the constitution in all institutions of learning, military training for all able-bodied Ugandans and the creation and development of a strong culture of constitutionalism among all Ugandans. We have also recommended a high degree of entrenchment of certain provisions of the Constitution to ensure that they are not easily amended without consultation or consent of the people through district councils or referendum.

The Army:

0.58 We recognise that the military and security organs are integral organs of the state and society. In the past they have been instruments of political manipulations and have taken advantage of this to play naked political activist roles. In the 1962 and 1967 constitutions there were no elaborate institutional mechanisms defining their roles and integration with the organs of state and society. We have accepted people's demand to define the role of the army within the constitution. We have, therefore, recommended the supremacy of civilian political authorities over the military and the right of access by the Ugandan people to military skills so that they can defend themselves against whoever threatens the nation and its people.

Environment:

0.59 Environment was a new subject. People have, however, identified it as of vital importance for the present and future of the nation. They have strongly supported environmental protection and promotion. The Report recommends the right to a good, healthy environment, and the need for environmental law and policy. Protection and promotion of the environment are included among the constitutional duties of citizens.

Changes **in** Major Organs of State

0.60 Every chapter of the Report contains recommendations for ne-w; and significant changes designed to solve Uganda's political and constitutional problems and to respond effectively to people's aspirations and new vision for the country: We limit our brief comment in this introduction to the major organs of state.

The executive:

0.61 The election and powers of the chief executive, the President, have been issues of great concern to the people, especially in view of the political climate in which presidents have exercised their powers since 1966. In accordance with people's views, we have recommended that the President be directly elected by adult suffrage to ensure his/her accountability to the whole nation. He or she should act in accordance with the law and within the framework of the Constitution and should be liable to impeachment and removal by parliament on specified grounds. In order to curb the tendency to dictatorship, we have recommended an effective system of checks and balances. Though the President has power to govern effectively, the people's representatives have power to approve his or her decisions in respect of a wide range of matters of major national importance. They include appointments to major constitutional offices, declaration of war or a state of insurgency or emergency and the making of treaties. We have also reflected the view almost unanimously advocated by the people that the tenure of office of the President should be constitutionally limited to put an end to the phenomenon of self styled life presidents. We have recommended a limit of two terms of five years each for any President.

The legislature:

0**.62** We observed from the study of our history that much of the powers and roles of the legislature were seriously eroded by the 1967 Constitution and subsequent amendments made to it. Since then the role of the people's representatives has been merely or essentially to legitimize the decisions and policies of the executive. We have therefore sought to strengthen the powers of Parliament as the supreme legislative body and also as the guarantor of the people in ensuring that the executive decisions are in the public interest. Parliament is to hold the executive accountable to it and will approve some of the important decisions of the executive. In the same respect we agreed with people's views to have some interest groups represented in Parliament in order to give them the voice they deserve in such a body. In order to emphasize people's sovereignty and the need for the representatives to be constantly accountable to them, we have recommended the right of the people to recall their elected representatives once they are found to perform unsatisfactorily. In the same way, members of Parliament who under a multi-party system cross from one political party to another must first seek a new mandate from the people who elected them.

A new institution of the National Council of State:

0.63 People emphasized the need to resolve peacefully any likely conflicts between the executive and the legislature. In our search for effective checks and balances in the exercise of power by both organs, we have moved towards a greater separation of powers than was provided for in the previous constitutions. With, however, the system of a separate and direct presidential election we have recommended, it is possible to have a President who may not enjoy the majority support of members of Parliament. This may make it more difficult for the President to steer the executive's proposals through the legislature. Such situations would have a greater potential for generating crises and conflicts between the two organs of government than the parliamentary system which has been used in the past.

0.64 We are also aware of the possibility of the President belonging to the same political party or group which commands a majority in parliament. This could have the reverse effect of diluting the idea of effective checks and balances. In a country where democratisation of society is still at its initial stages, the possibility that the majority in Parliament would be inclined always to Legitimize the actions of "their" executive is real

0,65 Because of these reasons and also mindful of the fact that the past constitutions provided no adequate institutional mechanisms for diffusing crises and conflicts between these two major organs of government, we have recommended a new institution to be known as *the National Council of State.* It will have two separate broad functions.

(a) First it will be the body to approve specified acts of the executive, such as appointments. In this capacity it will be effectively a special committee of Parliament composed of the Speaker and Deputy Speaker and one Member of Parliament from each district or local government. In order to avoid the problems referred to above, we have recommended that it is the district councils that will elect one of their members of Parliament from the district as the representative to the council. In our view it is most unlikely that at any given time, all district councils will be dominated by one political party or group. Besides, having a parliamentary representative from each local government in the National Council of State, would ensure articulation of the interests of each district in the Council.

(b) Second, it will be an advisory and reconciliatory body seeking both to maintain dialogue between the major organs of state and to resolve their disputes when they arise. When carrying out that role, the Council would be composed of the President as chairman, Vice-President, some ministers together with the Speaker, Deputy Speaker and the one member of Parliament from each district already referred to.

The judiciary:

0.66 The need for a strong and independent judiciary was generally expressed in the people's views. In addition to prohibiting any power or authority from interfering with the work of the judiciary, we have recommended the judiciary to be accorded such facilities including adequate remuneration that would be conducive to its independence. Having observed the popularity of the RC courts and people's expressed desire for democratizing justice and making it understood by the people, we have recommended people's participation in the administration of justice through the system of jury and assessors.

New Changes in Other Constitutional Issues

Citizenship:

0.67 In order to make it very clear that citizen's rights have also corresponding duties; we have recommended a number of duties of citizens to be included in the new Constitution. They have been missing from our former constitutions. We have also recommended that persons who have legally and voluntarily migrated to Uganda and lived here for at least twenty years may apply to be registered as citizens of Uganda.

Human rights:

0.68 In both the 1962 and 1967 constitutions there were provisions for bills of rights, but they were so qualified, especially in the 1967 Constitution, as to make it easy in practice to ignore them. We have tried to minimize the qualifications and employ them only where it is absolutely necessary. We have in addition heeded people's overwhelming support by recommending special provisions for the protection and promotion of rights of women, the family, children and the handicapped or disabled', The aim here was to redress the historical and cultural injustices done to those important sections of society. For the effective protection and promotion of human rights, we have recommended a constitutional provision for a permanent and independent *Human Rights Commission* which should be easily accessible to all.

Local government:

0.69 People have rejected centralization of government powers and functions, and have preferred strong elected local governments which can be in control of the affairs of the people directly under them and answerable to those people. We have therefore recommended a strongly decentralised system of local government which is able to devolve to the lower units and which incorporates some of the. attributes of both federalism and unitarism. Democratically elected local governments should have full jurisdiction in clearly and constitutionally defined areas. We have recommended that several aspects of the local government systems should be constitutionally entrenched so that they can only be amended with the support of at least two-thirds of the district councils.

THE REPORT: ITS ARRANGEMENT AND CONTENT

Three Separate Volumes

0.70 *The* entire Report of the Commission is made up of three separate volumes. *Volume One* contains our *analysis and recommendations;* It also includes two appendices, namely statute No.5 of 1988 and the bibliography used in our study. *Volume Two* is the *Draft Constitution. Volume Three* contains the *Index of Sources of Peoples Views.* It also includes an appendix on the statistical analysis of people's views on special and controversial issues.

Volume One

0.71 This Volume of the report consists of an introduction and twenty-eight chapters, Its ,final section contains not only the complete summary of recommendations contained in the body of the Report but also the two appendices referred to above.

Arrangement of chapters:

0.72 The chapters in this Volume of the Report can be divided into two broad categories. The first five chapters contain the methodology and sources and the critical analysis of Ugandan society. These are background chapters. The conclusions reached in these chapters are in most cases not so much recommendations for the Constitution as guiding principles which have assisted us in assessing people's views and articulating the national objectives and

principles of state policy as viewed by the people. The rest of the chapters (Six to Twenty Eight) deal with the constitutional issues discussed during the constitutional debate.

Structure of each chapter:

0.73 We have tried to adopt a similar structure for each chapter in order to assist the readers and to add to the clarity of the Report. Each chapter is divided into several sections (usually three, four or five). There is a section on the importance of the constitutional issue, its historical perspective and its relevance today. There is a section on people's concerns about that particular issue and the principles they articulated which should guide its discussion. There is sometimes a section on any other major aspect of the issue. Finally there is a section (and in a few cases two sections) on the Commission's assessment of people's views and recommendations on each particular aspect of the topic.

0.74 All sections of each chapter are of great importance, because without anyone of them, it is hardly possible to understand or appreciate or correctly judge the Commission's recommendations. Each chapter should be wholly read and studied to be in the best position to assess our recommendations. Most of the recommendations are concentrated in the final section of each chapter, but the principle was to make a recommendation on the exact position where a particular issue is discussed and assessed. Some recommendations are found in all sections of some chapters. All recommendations are put in *italics* to make them appear clearly.

0**.15** In the table of contents we indicate the title of each chapter, the sections of each chapter, the main sub-sections and, the subject of key paragraphs or groups of paragraphs. The aim here is to assist the reader to go through each chapter with minimum problems. Each paragraph has a number with the prefix of the number of the chapter. This again is to assist the reader for easy reference to any paragraph of this Volume of the Report.

Language and possible repetition:

0.76 As requested in people's views, we have tried to use simple language, avoiding obscure and technical terms wherever possible. Where we have had to use such terms for precision we have attempted to explain them. For the same purpose of clarity and making the Report easily read and understood we have chosen to repeat some aspects, which though similar or related to each other, have been discussed in separate chapters. We have tried as much as possible to present each chapter as a complete whole within the overall report. Some recommendations have likewise been repeated or differently phrased under various chapters to give the sense of wholeness to each chapter. It is however neither possible nor desirable to study any particular chapter in isolation of other chapters. All the chapters together form one complete whole, and the best way to understand each chapter is to read it and study it in relation with the rest of the chapters. In this respect there is no short-cut.

The summary of recommendations:

0.77 There might be a serious temptation of people limiting themselves to reading and studying the summary of recommendations at the end of this Volume of the Report. We wish to advise all readers that the only way a recommendation can be fully and properly

understood is to read d within the context of the entire chapter in which it emerges. Any other way is only likely to lead to a partial understanding of the recommendation, when it is isolated from its own context. The summary of recommendations should be used only for quick reference.

Other Reports of the Commission

Interim Progress Report:

0.78 As required by Statute No.5 of 1988, the Minister responsible for Constitutional Affairs could request an interim report from the Commission at any material time. We submitted our *first interim report* to the Minister in December 1990. This 109 pages' report contained our assessment of the Progress of the constitution-making process carried out to that time. It identified issues of consensus and issues of controversy from the public. It also contained a list of submissions we had received by then.

Interim Report on Adoption:

0.79 In December 1991 the Commission submitted another *Interim Report on Adoption of the New Constitution* to the Minister. It consisted of 61 pages plus a summary of statistical analysis on the issue. It had been prepared for over four months and made use of statistical analysis of people's views on this important subject. It summarized people's major concerns on adoption and gave the principles on which democratic adoption of the new Constitution should be based. It contained the Commission's assessment and specific recommendations on the entire process until the new Constitution is finally adopted.

People's submission

0.80 Several individuals and groups thought that our Report would include the texts of all the memoranda submitted to us. This was neither ever intended nor could it practically be viable. We have, however, arranged for copies of all the submissions we have received to be available to the Secretariat of the Constituent Assembly and to the National Archives and Makerere University Library for public consultation, study and information. The material consists of several hundred volumes.

Time taken

0.81 Statute No.5 of 1988 had given us 24 months for the completion of the work. It gave power, however, to the Minister to extend the period when he judged necessary. The nature of the work, the gradual manner in which consensus was emerging, the demand from the people to be afforded more time to discuss the issues and compose their submissions and above all the logistical problems of lack of founds and equipment when they were most needed, explain the period of four years taken to complete the work.

0.82 The period taken, however, has been a blessing in disguise. It enabled people to move more towards resolution of or reconciliation on controversial issues. It enabled the areas of the country which had earlier been disturbed with insecurity to have peace and contribute

greatly to the process. It also enabled people to reflect better on the implications of both the dramatic events in Eastern Europe and the waves of the era of the *second independence* for Africa Whoever has failed to contribute to the process. Would have some other excuse but not that anyone was hurried through the process or excluded in any way from participating.

ACKNOWLEDGEMENTS

0.83 We have been able to complete this work because of the moral, material and political support rendered by different institutions, governments, groups and individuals. Space cannot allow us to acknowledge all of them exhaustively.

0.84 We are grateful to His Excellency, The President of the Republic of Uganda, Mr. Yoweri Kaguta Museveni and the Uganda Government for initiating the setting up of the Constitutional Commission and rendering it constant encouragement and funding. We are fully aware that Government, through the Ministry for Constitutional Affairs, went to great lengths to support the Commission.

0.85 The diplomatic community, aware of the turbulent times Uganda has gone through since independence and therefore sympathetic, followed the exercise with keen interest and encouragement. Their support was evidenced by the visits to the Commission by high ranking leaders and officials from their home governments and the material assistance some of them extended to the Commission.

0.86 We are especially grateful to the governments of Australia, Canada, Denmark, The Federal Republic of Germany, India, Norway, Sweden, the United Kingdom, United States of America and the Commonwealth Secretariat. The assistance these governments and the Commonwealth Secretariat gave varied and included provision of logistical support (expert advice, technical tools relevant books) and sponsoring teams of Commissioners to visit their respective countries. The Commissioners during these study tours abroad were given generous hospitality and exposed to programmes from which they learnt a lot on constitutional arrangements which subsequently enriched the ideas of the Commission. We thank the leaders and officials in theses countries for such hospitality and guidance which enabled us to carry out our missions with ease and gain wider experience.

0.87 We are especially grateful to DANIDA which extended to the Commission a grant for the completion of our Report. In the same way we wish to thank the Australian government for sponsoring a constitutional expert to work with us and for accepting to extend his period of work with the Commission to over two years.

0.88 The Minister and his Ministry of Justice and Constitutional Affairs readily provided our Commission with infrastructural facilities, for which we are very grateful. The Ministry also seconded some State Attorneys and a Legislative Drafting Expert to the Commission, who have greatly assisted us in our work.

0.89 We are very grateful to all the Commission supporting staff: the legal officers and officials, the research assistants, secretaries and computer staff, drivers, messengers, cooks and others for their contribution, sacrifice and hard work as a team. We assure them that this work is the result of the combined efforts of all of his, each playing his or her special role.

0.90 Above all we appreciate with gratitude the spontaneity and enthusiasm with which the Ugandan people have responded to and participated in this unprecedented constitution-making exercise. Those involved include religious, political, socio-economic, cultural and professional organisation; the women and youth organisation; all levels of Resistance Councils in the country, other groups of Ugandans in the country and those abroad, individuals everywhere. They have all actively participated in the process and many have rendered generous hospitality and guidance to us whenever they invited us. We thank the members of the press and other mass media for their unique contribution to the debate. We thank the leaders of the various levels of society for encouraging their people to participate in this process. Only history will judge the efforts we have taken to meet the challenge of giving authentic interpretation to the great ideals and aspirations of the Ugandan' people for a united, peaceful and democratic nation.

0.91 For all the various forms of support that have been extended to us, neither our government, any government of other nations, nor any group, leader or individual person has in any way at any time interfered with our freedom and statutory independence in the exercise of our work. We assume full responsibility for our conclusions, recommendations and draft Constitution. The entire Report has been based on the collective will of the Ugandan people in so far as we have been able to ascertain and interpret it.

Conclusion

0.92 We strongly believe that this Report will assist all Ugandans generally and the Constituent Assembly in particular to give effect to the aspirations of the people for a new constitutional order. We also believe that it will assist future generations to understand and to properly interpret the new Constitution within the context of people's views.

CHAPTER ONE

METHODOLOGY AND SOURCES

1.1 The methodology adopted and the sources used in the making of the new Constitution have involved popular participation in a way unprecedented in the history of constitution-making in Uganda and perhaps in other countries of the world too. Credit for this innovation goes to several sections of Uganda society. Some Ugandans initiated the call for a new national Constitution based on people's active involvement as far back as 1979,- following the liberation war. The National Resistance Movement (NRM) promised a popular constitution for Uganda at the very start of their struggle in 1981. When the Bill setting up the Uganda Constitutional Commission was presented to the National Resistance Council (NRC) in 1988 members discussing it strongly supported the involvement of all Ugandans in the making of the new Constitution. These views were included in the Uganda Constitutional Commission Statute No. 5 of 1988 which was to serve as the terms of reference for the Uganda Constitutional Commission. Ugandans at all levels and of all sections of society needed no convincing that the exercise directly concerned them. They asserted their right to participate in order to evolve a people's Constitution. It is this methodology based on full participatory democracy that has yielded massive submissions of peoples views on the new Constitution. Uganda, therefore, can claim legitimate pride in Setting a methodological precedent in constitution-making that is most likely to be followed in other countries.

1.2 The chapter is divided into four sections. The first discusses the importance the people and the Commission have attached to a proper methodology and accurate use of Sources It highlights the principles used to eliminate the fears and concerns about the commissions operations that were expressed by some members of the public, especially at the initial stage of the constitution-making process. The second section explains how the methodology was concretely applied to the initial three main tasks of the Commission namely, education of the people on constitutional issues, the soliciting of the agenda of such issues from the people and the collection of people's views on the issues. The third section expounds the methodology used by the Commission in its critical study of Ugandan society: the history, cultures and the causes of Uganda's political and constitutional instability and the comparative study of constitutional arrangements of other countries. The last section concentrates on the methodology adopted for the study and statistical analysis of all the views submitted to the Commission and the preparation of the final report and draft Constitution.

SECTION ONE: THE IMPORTANCE OF THE METHODOLOGY AND THE PHINCIPLES UNDERLYING IT

Importance of the Methodology

1..1 The main subject of this section is the importance of the methodology and the principles underlying it. But in addition we discuss three other closely related issues. The firstt is how the chosen methodology was intended to resolve many of the fears and concerns of the people. The second is the relationship between the methodology aq9 the requirements

of the Statute which established the Commission while the third concerns the general approaches the Commission used to organise its work in order to give practical effect to the chosen methodology.

1.4 The choice of methodology has been of fundamental importance to the current constitution-making process because the process depended on the response of the people. Eventually the legitimacy of the entire exercise depended on the methodology used. The principles that guided the methodology were strongly advocated by the people, the government and the Commission.

Principles upon which the Methodology was Based

1.5 The fundamental principles upon which the methodology was based were themselves derived from the Commission's analysis of the people's views.

Fundamental change:

1.6 The people of Uganda and the NRM government wanted the new Constitution to be prepared in a new way that could clearly show a fundamental change from the manner in which all previous constitutions were made. It was to emanate from all the people of Uganda without any exceptions. It was not to be an elitist Constitution but a popular one.

Consensus:

1.7 Statute No.5 of 1988 required the Commission to evolve a new Constitution based on a consensus of views of the people. The method of seeking a consensus on major questions has been used by government in Uganda since 1986. It is the African method of settling disputes and adopting policies and the African understanding of democracy. Consensus helps to resolve conflicts. It requires listening to everyone and taking his or her view into consideration. It encourages discussion until agreement is reached. Although it is a painstaking exercise, it is most rewarding in the end. Consensus gives legitimacy to whatever is agreed upon and it creates no losers, since all are winners. It helps to instil the qualities of patience, tolerance, compromise and togetherness. Most of the aspects of the new draft Constitution have been based on consensus built up over four years of constitutional debate. For the first time in our hist<'1ry, Ugandans are fully agreed on the main principles on which their nation is to be based and developed. These are clearly brought out in the first five chapters of this report.

Participatory democracy:

1.8 Since the introduction of the Resistance Council (RC) system in 1986 the great majority of Ugandans have hailed participatory democracy which empowers them to play an active part in their own governance. The principle of participatory democracy has been embraced by the people in the constitution-making process. They have participated as individuals and groups as well as through their respective RCs. The people demanded to be enlightened on constitutional issues; they organised their own seminars and discussions. They requested the Commission to give them more time to write their views which they wanted collected from them directly by the Commission in order to ensure they were properly

Recorded .The people continued to request that they be fully informed at every stage what the commission was doing with their views. They demanded to be given the Commission's report directly so that no other power could interfere with their views. They asked to be fully represented in the processes of debate and adoption of the draft Constitution, and especially in the proposed Constituent Assembly, to enable them to defend the views they had submitted to the Commission. The entire exercise, therefore, has been highly influenced by peoples understanding of participatory democracy.

Independence from government.:

1.9 Past experience has made people very Suspicious of political initiatives taken by government. Experience of rigging of elections and election results has made people determined to ensure such malpractice do not happen again, As a result it was necessary that the methodology adopted assured all people that the Commission was working independently of Government.

Fairness to o all views:

1.10 a People had no experience of Government consulting them, and were initially. far from ,'nLlin that the Government or the Commission was seriously interested in their views. They ll;id tli be assured that each submission would be taken seriously for study and analysis. The ('ullllll1ission has fulfilled these expectations of the people. Of particular importance was to 111;lke sure that submissions from the lower levels of RCs were not in any way interfered with hy t he upper levels of RCs. As far as has been possible, complete fairness has been realized hy the Commission in the entire exercise.

Accurate analysis of views:

1.11 People insisted that their views be accurately Analysed by the Commission. This task has been carried out scrupulously by the Commission. As will be explained later in this chapter, each submission from the people was studied by the Commissioners, summarized' under the supervision of Commissioners, used for statistical analysis of selected constitutional issues and translated into English if it were in any local language.

People's views as basis for the Report:

1.12 The close involvement of the people in the constitution-making processes could only be given full effect by the draft Constitution itself being eventually based on the people's views. All other sources were to be subordinate to this fundamental source. People wanted a Constitution made in Uganda, by Ugandans, for the interests of Ugandans and based on the views and aspirations of Ugandans. The Commission has fully respected this principle, as the entire report will effectively show. In the very few instances where the Commission diverted from the majority views, it has indicated those instances and given clear, and, we believe, adequate explanation for the option it has recommended.

1.13 Throughout the whole exercise, until the deadline for submission or views, the Commission remained attentive and alert to all comments made by the people. It was this constant attention which ensured that the exercise was fully enriched by the people.

Critical analysis of society:

1.14 Both the people and the Commission regarded a critical analysis of Uganda as a major basis for the Constitution-making process. Before worthy solutions for democratic governance could be given, it was necessary to make a critical diagnosis of society to discover why peace and stability, democracy and development had been out of reach for the past thirty years. This study involved examining the history, cultures and constitutional arrangements which to a large extent can explain what has happened in the past. Many of the people's views contributed richly to this critical analysis.

Comparative study of other constitutions:

1.15 In general, the people's views agreed that Uganda cannot be studied in isolation of other countries. Constitutional arrangements of other countries can greatly contribute to the solutions Uganda is searching for. Many views gave suggestions of constitutional models from other countries, especially those which have had a stable constitutional history and experienced great strides in development. The Commission made comparative study of constitutions of numerous countries both of the developing and developed nations. Members of the Commission were invited to visit several countries and observe their constitutional order and practice. The aim was not merely to copy this or that but to discover how each nation came to its constitutional solutions and the purposes they have served.

People's Fears and Concerns

1.16 It was on the basis of the above principles that the Commission developed the methodology which has been able to calm the fears and concerns expressed by some people at the initial stage of the constitutional process. There was initial doubt in the minds of some Ugandans on the genuineness of the government in launching the exercise. A few imagined that the NRM government had already made its own constitution and had chosen a Commission of its own "liking" as a mere rubber-stamp. There was fear about whether the Commission would be impartial in its work, and free from interference by government. There was fear that people's views might be "rigged" in order to support the favoured positions of the government in the new draft Constitution. The instability in some areas still reigning i'1 1989 when the exercise started was given as a reason by a few to support the view that time was not yet ripe to make a new Constitution. Some feared that the new Constitution would be based on temporary aspirations to the detriment of lasting results. If people were to give views on the new Constitution without adequate education and enlightenment, there was fear that their ignorance would be exploited in the interests of the government. Many people feared that the new Constitution, like the previous ones would be elitist, that is, based on the views of members of the elite. Some feared that the necessary freedom of expression would be curtailed so as to impose on the people what the government wanted. Fears were expressed that the Commission would not be able to study all views submitted to it and do justice to them. The use of computers was feared by some as a way of falsifying the results. Many people were concerned that the government could tamper with the Commission's Report unless the Commission itself published it and handed it directly to the people. People suggested that to eliminate their fears, they would like to examine the Report before it went to the Constituent Assembly to ascertain it included all their views. The manner of adopting the new Constitution created concerns. The majority of people wanted newly directly elected

Representatives to be the ones to discuss and adopt the new Constitution. Everywhere there were very strong concerns about safeguards for the new Constitution. If adequate safeguards could not be found in the new Constitution, many people felt the exercise would have been

1.17 The commission took these fears and concerns very seriously and deliberately adopted a methodology intended to dispel those fears, cater for the concerns, give confidence to all and make the legitimacy of the exercise unquestionable.

The methodology and the Statute Creating the Commission

1.18 The methodology and in particular the use of people's views as sources, as stated above were also dictated by the Commission's Terms of Reference as contained in Statute No 5 of 1988 which established the Constitutional Commission, the Commission's experience of that Statute, the Commission's experience in the course of its work and above all the people's views on the methodology and sources.

1.19 The Commission closely studied Statute No.5 of 1988 with particular attention to the terms of Reference. The functions of the Commission as spelt out in the Statute were: to study and review the Constitution with a view to making proposals for the enactment of a Constitution that will, *inter alias,*

(a) guarantee the national Independence and territorial integrity and sovereignty of Uganda;

(b) establish a free and democratic system of government that will guarantee the fundamental rights and freedoms of the people of Uganda~

(c) create viable political institutions that will ensure maximum consensus and orderly succession to government;

(d) recognise and demarcate division of responsibility among the State Organs of the Executive, the Legislature and the Judiciary and create viable checks and balances between them;

(e) endeavor to develop a system of Government that ensures people's participation in the governance of their country;

(f) endeavor to develop a democratic, free and fair electoral system that will ensure true people's representation in the Legislature and other levels;

(g) establish and uphold the principle of public accountability by the holders of public offices and political posts; and

(h) guarantee the Independence of the Judiciary.

1.20 The Commission was also to formulate and structure a draft Constitution that will form the basis for the country's new national Constitution•

1.21 To carry out the above functions, the Commission was to:

(a) seek the views of the general public through the holding of public meetings and debates, seminars, workshops and any other form of collecting public views;

(b) stimulate public discussions and awareness of Constitutional issues;

(c) summon any person to appear before it or to produce any document or thing that may be considered relevant to the functions of the Commission;

(d) form such Committees as the Commission may deem necessary for the better carrying out of its functions.

General Organisation of the Commission's work

1.22 In order to effectively perform the above functions, the Commission worked out the structures, programme and timetable which it believed would respond best to the methodology adopted. The main structures of the Commission consisted of plenary sessions, the secretariat, task committees and the individual commissioners.

The Plenary Sessions:

1.23 The plenary session was the regular meeting of all Commissioners in which high policies and decisions of the Commission were made. The plenary sessions designed, implemented, monitored and assessed all aspects of the work of the Commission. The programme and timetable of work were approved by the plenary sessions. Committees of the Commission were constituted by the plenary sessions. All decisions in the plenary sessions were arrived at by consensus.

The Secretariat:

1.24 One of the critical organs of the Commission was the Secretariat, headed by the Secretary who was also a commissioner. It carried out the day to day administration of the Commission, under the overall direction of the Chairman and the Secretary. To assist the Secretary, the Commission administratively created the post of Assistant Secretary, also filled by a commissioner. The Secretariat recruited and supervised the necessary staff for the work of the Commission.

Task Committees:

1.25 The Commission established groups and ,committees from time to time, depending on the tasks at hand. Such committees carried out educational seminars in various parts of the country, assisted in working out the educational material on constitutional issues, giving programmes of publicity on the exercise, organizing the essay competition, and making an in-depth study of various issues for the Commission. Whatever a committee prepared was submitted to the plenary for discussion and eventual approval.

Individual Commissioners:

1.26 Each commissioner had a duty to study every submission received by the Commission, carry out tasks given by the plenary session, committees and the Secretariat and regularly report back to those bodies.

SECTION TWO: EDUCATIONAL SEMINARS, EVOLVING THE AGENDA AND COLLECTION OF VIEWS

1.27 The Commission's programmes and timetable were constantly modified to' take into account people's views and suggestions on how the exercise could be improved upon in order to achieve the desired objectives. The guiding principles included the following:

(a) Uganda's past and current constitutional arrangements have not so far succeeded in sustaining a stable coherent political system capable of making and unmaking leaders short of use or show of force. There is need to devise means of producing a workable Constitution that enjoys a very wide degree of acceptability.

(b) The methodologies of making Uganda's past constitutions were defective which partly accounted for the failure to achieve constitutional stability. The participants in past constitution-making processes and the circumstances surrounding the making of the Constitutions simply could not provide wide bases of legitimacy for the constitutional arrangements.

(c) In order to evolve a truly people's Constitution, it was necessary to receive the very agenda of the constitution-making exercise from the people themselves. Any imposition of an already made agenda would be contrary to' people's aspirations in this matter.

(d) It was recognised by the Commission and subsequently strongly supported by the people that the average Ugandan citizen was not well informed about the past and current constitutional arrangements. To assist him or her to be able to offer views on the new Constitution from a position of knowledge was considered to be essential.

(e) The very fact that Ugandans have been victims of bad governance, meant that all of them had a right to participate in the constitution-making process, irrespective of their class, education, wealth, sex, religion, tribe or locality. Only such participation would ensure that the new Constitution deals with past problems and is based on the wishes and aspirations of the people of Uganda.

(f) For all our constitutional and political problems in the past, the Commission believed there were no irreconcilable differences among Ugandans which could not be resolved through making a new Constitution based on consensus. The Commission was, therefore, committed to receive views from all Ugandans who availed themselves to . give them.

1.28 On the basis of those principles, the Commission developed a programme with a number of distinct components, all involving the closest possible cooperation and collaboration with the widest range of the people of Uganda. The first part of the exercise involved education about constitutional issues and soliciting an agenda of the main issues from the people. The second part of the exercise involved collection of views from the people on main issues.

Education and Agenda

1.29 There were a number of different aspects and phases involved in the education on and evolving of an agenda of constitutional issues. Education was a two-way process, with Commissioners and the people each contributing to the enlightenment of the other.

District constitutional seminars:

1.30 The first step was to hold seminars in all districts, the aims being:

(a) To bring together leaders from all walks of life within each District and sensitise them on the importance of the exercise of making the new Constitution for Uganda.

(b) To educate participants in all they needed to know in order to be fully involved in the constitution-making exercise and prepare them to pass on this same knowledge to all the people they lead so that all may fully be involved in the process.

(d) To receive views of participants on various constitutional issues of special interest to the

(c) Together with the participants, to discover the best ways of collecting views from the

people of the district right from RC. 1 to RC. 5.

district.

1.31 The two-day seminars in every district started on 7 August 1989 and were completed on 20 December 1989. All the 34 districts then in existence were covered, The topics discussed at every district seminar were: the historical background of Uganda; the need for a new Constitution for Uganda; guidelines for the new Constitution as set out in Statute No. 5 of 1988; the nature and purpose of a national Constitution and the proposed programme and timetable of the Commission.

1.32 Participants in the district seminars included: members of the National Resistance Council (NRC) from the district; the District Administrator (DA) and his or her officials; the District Executive Secretary (DES) and his or her officers; all members of the RC.5; executive members of *RCA* and RC.3; county and sub'-county chiefs; representatives of religious organisations, educational institutions, women and youth groups; elders; and other resourceful persons in the district. Any member of the public was free to attend the seminar. The recorded total number of participants in the district seminars was 10,037.

1.33 Every participant at each seminar was given a file containing documents discussing **or** setting out the following matters, most of them prepared by the Commission: the aims of **the** district seminars; the essential points in the 1962 Constitution; why Uganda needs a new

Constitution, the historical background of Uganda; the nature and purpose of a new national Constitution; Statute NO.5 of 1988; essential points in the 1967 Constitution; and the Uganda National Anthem.

1.34 These seminars were, in general, highly successful. Leaders in each district were able to meet, speak freely on all constitutional and political issues in Uganda and give very constructive suggestions to the Commission. It was from the District seminars that the Commission identified the 29 major constitutional issues which Ugandans wanted to be treated in the new Constitution. These became the central agenda for the Commission in all its subsequent work. The Commission also received views on the proposed methodology and the timetable for its work:

(a) Participants wanted the constitutional process to involve all Ugandans of all opinions, localities and situations.

(b) Tile Commission was requested to organise similar seminars at the lower levels of the district so that the entire nation was adequately educated.

(c) The Commission was to request government to ensure that the atmosphere of trust and free expression experienced at these seminars was maintained throughout the exercise to enable everyone to speak his or her mind without any fear of victimisation.

(d) Commissioners were asked to use the method of active participation where they also became learners in the process.

(e) The Commission was requested to prepare, print and distribute educational material on constitutional issues and past Constitutions to leaders of the various levels of RCs and other groups.

1.35 Several districts set up district constitutional committees to undertake the educational task of the people in the district. Some of these committees did for tremendous work, but several other committees and many participants in the District seminars did not adequately fulfill the task of educating the lower RCs on the constitutional process.

Institutional seminars:

1.36 During] 990, many institutional seminars were held, and a few in 1991. These seminars were of two kinds, first those covering the major educational institutions and second those for professional orgjn interest groups. The Commission organised one day or two day seminars for all higher institutions of learning in the country to receive views of academicians and students. These included the three Universities of Makerere, Mbarara and Mbale, Theological Colleges, Uganda Colleges of Commerce and Business Studies, the National Institutions of Agriculture and Technology and the National Teachers Colleges. Several secondary schools were also included.

1.37 In consultation with the Commission, the educational institutions organised their own programmes, chose the topics to discuss and selected some speakers from among themselves to join the Commissioners who attended. The results of these discussions were very fruitful both to the Commission and, we believe, to the institutions themselves.

1.38 Two day seminars were held for each of the professional bodies and interest groups. They were also organised in the manner described above the aim being to encourage a high level of participation in each group. Several thoroughly researched position papers were delivered and discussed. The professional bodies included: The Uganda Law Society, Permanent Secretaries of National Government Ministries, Civil Servants, the Uganda Police, the National Resistance Army, Prisons Services, national groups of youth, national organisations of women, trade unions of workers, medical doctors and nurses, teachers, engineers, and political leaders. Religious leaders organised their own seminars where commissioners were invited to attend and clarify on several constitutional issues.

1.39 Issues of consensus clearly emerged from these seminars, and those of controversy were identified. Numerous views enriched the methodology of the Commission and suggestions were offered for dealing with highly controversial constitutional issues.

Other seminars:

1.40 Numerous Ugandans organised constitutional seminars for themselves. They included a wide range of interest groups, professional bodies, religious organisations, schools and many RCs from every level. Commissioners were invited to attend some of the seminars and to deliver papers on selected topics. The Commission was not alerted, however, about others, and so was not able to be involved. These self-sponsored seminars also served a very important purpose. They clearly indicated the constitution-making exercise was f.fee for everyone to participate in such seminars could be organised in whatever waYH1e people themselves decided. The Commission did not in any way monopolize the debate on constitutional issue and the stimulation of constitutional awareness. The self-sponsored seminars were held even at the RC. I level, in many villages and thereby enabled people freely to decide on issues on their own.

Preparation of materials for education and englightment:

1.41 In large part as a response to the ideas and suggestions received from the various seminars held during 1989 and 1990, the Commission prepared constitutional materials for use in the further education and enlightenment of the people. *The Constitutions of* 1962 *and* 1967 were reproduced in large numbers. The Commission prepared *Guidelines on Constitutionalists*, an 111 page book discussing, in simple language, the nature of each major constitutional issue proposed to be 011 the agenda for discussion of the new Constitution. It also prepared *Guiding Questions*, a booklet of 23 pages containing 253 questions intended to help people in the preparation of their written memoranda. The last one was a brochure: *Guidelines on Submission oj Memoranda on Constitutional issues.* It was intended to reach every village and group of people. Over 60,000 copies were distributed. Some groups translated some of the above material into local languages to assist people's participation. All materials published by the Commission were distributed free of charge to the people.

Sub-County educational seminars:

1.42 During 1990 and 1991, the Commission conducted seminars in 813 sub-counties, which is almost all the sub-counties in Uganda. Committees of a few commissioners took responsibility for various parts of the country. All commissioners were involved in these seminars, in one part of the country or another. These seminars formed the core of the entire education exercise. Through this major exercise, the Commission came in direct touch with the people in rural areas. The views expressed by the tens of thousands of people who attended the seminars were recorded. Reports were prepared on each seminar so that all Commissioners could study the views expressed in every part of the country.

1.43 The sub-county seminar reports contain the basic concerns of Ugandans which cover the entire spectrum of political, social, economic, educational and religious dimensions. The Commissioners were able to observe how people live in all parts of the country, their joys and anxieties, aspirations and problems. It was clear Ugandans were looking for a new order in society and had very high hopes that the new Constitution would realise all their wishes and 'hopes.

Seminars for Ugandan residents abroad:

1.44 Commissioners met and discussed the constitution-making process with Ugandan residents in Britain, Denmark, Germany, India, Italy, Sweden, Ethiopia, China, Kenya, Namibia, Botswana, Zimbabwe, Canada and the United States. Educational material on the Constitution was sent to most of our embassies which responded by inviting Ugandan residents and students to discuss the new Constitution. Deep appreciation was expressed by many to the Commission for enabling Ugandan residents and refugees abroad to freely express their views and offer their recommendations on the new Constitution. Many written memoranda containing proposals for the new Constitution were received from such groups.

Essay competition:'

1.45 The Commission decided to supplement debates and seminars in schools with an essay competition on constitutional issues open to students at educational institutions. Participants were divided in four categories: Upper primary (P.V-P.VII), lower secondary (S.I-S.III), upper secondary (S.IV-S.VI) and tertiary educational institutions. The Commission attached great importance to involving the youth, as they are the effective future leaders of our society. Therefore the objectives of the essay competition were: to provide an additional channel to the youth to offer views on the new Constitution; to encourage the youth to debate these issues in their schools; to stimulate them to understand their national Constitution and respect it; and to discover areas of special emphasis of the youth in the constitution-making exercise.

Assessment of the educational exercise:

1.46 The educational seminars and essay competition contributed a great deal to the constitution-maki ng process:

(a) People's initial fears and concerns about the process were greatly minimised if not entirely eliminated;

(b) People became more politically aware and educated on how society might best be organised to bring about much-needed change, and about the need for their active participation in politics and development of the nation;

(c) People fully used the freedom of expression encouraged by the Commission to air their views and to listen peacefully to others who had different views and this in itself was a major educational exercise given the social and political conflict of Uganda's recent past;

(d) The issues on which there was consensus and those which were controversial clearly emerged everyway here;

(e) The Commission learnt a lot, from observation, participation and listening to the views given, all of which has been central in the writing of the Report;

(f) The credibility of the government and of the Commission was established, and the genuine intentions of the exercise were accepted and appreciated, resulting in a willingness among people to submit their views to the Commission;

(g) The agenda of matters to be considered for inclusion in the new Constitution was fully agreed upon, a decision that greatly eased the subsequent work of the Commission.

The Collection of Views

1.47 The Commission was determined to receive the widest possible range of views, for only in this way could its proposals reflect the wishes of the people. It therefore encouraged submission of views in almost any form.

Written memoranda:

1.48 The exercise of collecting views from all sub-counties and the general public was officially started in May 1991 and concluded in November 1991. Throughout this time we encouraged people to make written submissions. But ours being mainly an oral culture, written submissions come hard and only as a result of much extra insistence and encouragement. The Commission had ruled out an imposition on any groups, individual or RC of an obligation to submit written views. That, in our view, would have compromised the entire exercise. People were simply invited, to submit views freely and spontaneously. The Commission at this time relied heavily on the publicity about the written views it was already receiving in order to encourage others to do the same.

Assessment of the Methodology

1.53 The methodology employed has yielded tremendous results. People have become politically aware. They are eager to assert and defend their rights. They are convinced of their right to participate in their own governance. Never again will they allow major decisions which concern them to be decided upon without their being consulted. Participatory democracy and a search for a consensus have gradually become a new culture in Uganda. The ordinary citizens have found the exercise most reassuring. Their views on the new Constitution did not appear to be much different from those of the elites. They can now confidently participate in all other national exercises, fully convinced that their views will carry weight. The exercise has taught people tolerance of views that differ from their own. There has not been any instance where people in any seminar fought over an issue where there were divergent views. It is because of the methodology used that the entire nation has kept a high interest in the constitution-making exercise during the entire period of four years.

1.54 L1St but most important, the methodology has produced an unprecedented number of submissions. Uganda has never before experienced such popular involvement in the exercise of constitution-making. Below is a list which summarises the totals of the submissions received in each category of sources of peoples' views:

I.	District seminar reports	=	33 53
2.	Institutional seminar reports	=	813
3.	Sub-county seminar reports	=	2,553
4.	Individuals' memoranda Group	=	839
5.	memoranda	=	36
6.	RC 5	=	13
7.	RC4	=	564
8.	RC 3	=	2,225
9.	RC2	=	9,521
10.	RC 1	=	5,844
II.	Essay competition	=	2,763
12.	Newspaper articles	=	290
13.	Position papers	=	
		=	25,547
		=	========
		=	

1.55 Because of the fundamental importance the Commission attaches to these views, and in order to assure the people who had so much faith in the Commission that their views were received, kept and studied, *Volume three* (320 pages) of the Report contains the *Index of Sources of Pepole's Views.* Every individual, group or RC is able to find the reference of its memorandum and the names under which it was submitted.

SECTION THREE: CRITICAL ANALYSIS OF UGANDA AND COMPARATIVE STUDY

1.56 The Commission undertook to make a critical analysis of Ugandan history, cultures and the causes of the country's political and constitutional instability and the phenomenon of its underdevelopment. This was done under the strong conviction that unless the analysis of society is correct, the suggested solutions may fail to bring about the desired results.

1.57 The Commission had three sources for the critical analysis. First, many of the memoranda and other views from the people addressed the issue of fundamental causes of Uganda's instability and analyzed our past history and our cultures. Second the Commission studied the literature that addresses the analysis of Uganda and especially its history and politics. Third, it critically studied the quasi-constitutional documents and the constitutional arrangements of 1962, 1966 and 1967 and all subsequent constitutional amendments in order to discover their strength and weaknesses. The conclusions of this analytical study are discussed in chapter three, four and five. In addition each chapter of the Report critically assesses the historical background concerning the issues addressed in the chapter.

1.58 The Commission has also used a comparative methodology, wherever possible, to discover how other countries have succeeded or failed in resolving problems similar to those found in Uganda. For this exercise, several countries from among both the developing and developed nations were chosen as comparative samples. Some of these were visited by some commissioners. Their constitutions have been studied in relation to their history, cultures and tensions or stability. The lessons learnt have informed the attitudes of commissioners in offering some recommendations for the new Constitution.

1.59 From both kinds of analysis, the Commission drew three conclusions. First, every society has its peculiar characteristics which can be best catered for only when they are critically studied. Some of these characteristics may be unchangeable such as the ethnic and religious diversity of Uganda and its land-locked geographical position. Others may accept modification. Second, study of constitutional arrangements ought always to be based upon study of the political and socio-economic realities which give birth to them. Constitutions are but reflections of the wishes and aspirations either of the leaders or of the people as a whole. It is only when they are situated in the times from which they emerge that they can be critically examined and judged. Third, the study of constitutional arrangements of other countries is of vital importance, especially today, given the close collaboration of nations and their inter-dependence in many fields. The aim, however, should never be to copy wholesale what is done elsewhere, but rather to reflect on how other countries have managed to contain conflicts and achieve constitutional and political stability.

SECTION FOUR: METHODOLOGY FOR STUDY AND ANALYSIS OF·VIEWS AND FINAL REPORT

Study and Analysis of Views

1.60 Having received a massive number of reports and submissions, the problem was To design a methodology which would do full justice to each and every view. The methodology adopted consisted of various phases.

1.61 Submissions which were written in local languages were translated into English to enable all Commissioners to study them. A staff of graduates was recruited to summarise each submission under the categories of the 29 constitutional issues agreed upon. This staff was adequately prepared for the task and guided and supervised by the Secretariat an~ the Commissioners. All submissions and summaries were multiplied to enable all Commissioners to study them and use them as the basic source for the Report.

1.62 On many issues it was clear both from the memoranda and the summaries that there was a consensus. These naturally. were the easiest to treat. A consensus issue in the understanding of the Commission a-s-t)ne whichieceived overwhelming support or rejection in all categories of sources received. An issue supported by majority views was one which received majority support in most of the categories or all categories of sources received. A controversial issue was one which received a majority support in some categories and a significant minority sUPP9P in other categories; or one which had a strong minority opposition to it in all categories. On-most issues it was possible from the memoranda and summaries to establish whether an issue achieved a consensus of views, enjoyed support of majority views or was controversial.

1.63 On the controversial and highly sensitive issues the Commission wanted statistical analysis done with the help of computers, to give the picture of the frequency of support for the main view points on each of the controversial issues in the views submitted to it. This was one of the ways of testing people's support for a particular position.

1.64 Some fears were expressed in people's views over the use of computers whose operation and operators might not be strictly controlled by the Commission. In order to assure people that such doubts were groundless, it is necessary to describe in some detail the work involved in the statistical analysis.

1.65 The first point to emphasize is that we carried out statistical analysis of only a few issues, those that by mid 1992 were still undecided, or those that remained controversial. All of them were issues that were politically sensitive in some way. They included: adoption of a national language; aspects of citizenship requirements; enforcement of human rights; choice of a political system; provision for traditional leaders; choice of federal or unitary form of government; choice of electoral and voting system; aspects of the legislature; aspects of the presidency; aspects of the land tenure system; and aspects of safeguarding the new constitution.

1.66 Second, our main concern was to get a general indication of the frequency of views expressed on the issue in each of the seven categories of memoranda: group, individual, RC 1, 2, 3, 4 and 5. Because memoranda had not been written in response to a standard questionnaire, views were expressed in a variety of ways. While accuracy was the main aim, our results cannot and should not be conceived as based on a scientific questionnaire method. The Commission discarded use of a scientific questionnaire because of the abuses which could have been done to it. Logistically the Commission was not in position to supervise filling out questionnaires. Instead, our aim was to get a general picture from the statistical analysis on where the majority and minority views were. This indication would then be considered together with all the other material before us in order to assist our analysis. Among the other material were the seminar reports from districts, sub-counties, educational

institutions and professional groups, as well as position papers, news articles and students' essays. These latter sources could not be statistically Analysed mainly because, apart from students' essays each rep0l1 included views from several people which differed.

1.67 In the analysis all memoranda were given careful consideration although there were some which informed the Constitution more than others. Special attention was also paid to group memoranda and the people supporting them, mainly because they tended to include the most carefully argued positions on the significant issues.

1.68 Third, the computer played a minor role in the whole exercise. It was used at the very end of the exercise to add up the numbers in each category of memoranda which supported each of the options on the controversial issues and provide percentages on those numbers. Whatever calculations the computer did were checked at every stage to ensure no mistakes were made.

1.69 Fourth, at every step of the analysis process, the accuracy of what was being done was checked and re-checked. The Commission did this because it was not prepared to base its conclusions on anything but assured accuracy.

1.70 The statistical analysis was carried out by a staff of forty-six graduates who were recruited by the Commission, trained and strictly supervised by the Commission and its senior staff. Each statistically Analysed issue was put in a form of a question and the various options or alternatives to the question put on the form. The staff filled out one form for every memorandum.

1.71 To ensure accuracy and uniformity, every memorandum and data form was checked and - if necessary - corrected by the supervising staff and the Secretariat. It was also to ensure accuracy that each item of the data entered into the computer was printed out and physically checked against the data on the form. It was only after mistakes found in this way had been corrected that the data was fed through the computer programme which counted the numbers of memoranda in each category which supported each option.

1.72 After the statistical analysis was complete, the Commission had clearer information, both about the numbers of memoranda in each category which had expressed views on each issue analyzed and the numbers commenting which supported each option on the issue. The statistical analysis formed one of the bases for our recommendations.

1.73 In its judgment the Commission was also guided by the arguments advanced in the memoranda and by the Commission's analysis of Ugandan history and political processes, and the observations and understanding of Commissioners gained from their interaction with the people at the grassroots and especially at sub. county level. It must be emphasised that when the Commission says the majority or minority views supported this or that option, it refers to the number of submissions -which *explicitly* addressed that option but not the total number of submissions. Some constitutional issues were explicitly treated by only a few submissions. The report, therefore, should not be studied as essentially based upon statistics but rather as a result of a rich combination of sources and analysis.

Preparation of the Final Report

1.74 The methodology for preparing the final report has involved several stages. The Commission in plenary session agreed on the outline of each of the chapters. The plenary studied each first draft chapter and offered comments, and did the same to all second draft chapters. The plenary then discussed the recommendations of each chapter in the light of people's views. The Commission then prepared the final chapters which it approved as the Final Report.

Preparation of the Draft Constitution

1.75 The same methodology was followed in preparing the draft Constitution. The basis of the draft Constitution was the final recommendations agreed upon by the Plenary Session. The Commission approved the general arrangement, style and format of the draft Constitution which was then drafted by a team of Commissioners and a legislative drafting Expert. The Plenary Session discussed the first draft Constitution clause by clause which was then revised and brought back for approval by the Plenary Session. The *Draft Constitution* forms a separate volume of Report.

Nature of the Recommendations in the Final Report

1.76 The Commission makes numerous recommendations in this Report, only some of which are directly related to the draft Constitution. In addition there are recommendations: for laws needed to implement the Constitution; for other more general laws; for future policies of government; and for action by non-governmental bodies and individual people. There has been no attempt to specifically separate the different kinds of recommendations in the Report, in part because there is often considerable overlap between them. It is necessary to explain briefly the nature and importance of the various kinds of recommendations.

1.77 It is the strictly constitutional recommendations from which the draft Constitution has been drawn; they are its basis in its entirety. In this Report they are expressed in simple language. In the draft Constitution, the recommendations are put into a language which serves two main purposes. The aim is first to give precise legal meaning and, second, to provide easy understanding of the provisions to the general reader.

1.78 The recommendations on laws needed to implement the draft Constitution are closely related to the constitutional recommendations. They propose laws needed to give effect to matters provided for in the Constitution, but where only the principles or general outlines have been provided for in the Constitution. Without such laws, important parts of the draft constitution would not have any effect. For example, the draft Constitution will only need to contain the general principles of the Leadership Code of Conduct recommended in Chapter Twenty. But unless a statute is passed setting out the detail of how the Code is to operate, be administered and enforced, the provisions of the Constitution on the subject will be totally ineffective. The same applies with many other aspects of the draft Constitution, examples being the political system, the Inspectorate of Government and local government. As will be discussed in Chapter Twenty Eight *(Safeguards for and Amending the New Constitution),*

discussion and approval of the implementing laws will be an essential part of the implementation of the new Constitution itself.

1.79 The recommendations for other more general laws are closely related to the recommendations on government policy. They tend to be of a more general nature than those on the draft Constitution and the laws needed to implement it. They are prompted by the need to take general action to revise the statutes and the policies of government to bring them into line with the new spirit of a new Constitution based on the views of the people. The failure of successive post-independence governments to review our laws has meant we have many laws on the statute books which are not even consistent with the existing constitution, let alone what is proposed for the new Constitution. The views of the people have made it clear to the Commission that sweeping changes to the laws are needed, and we have recommended accordingly. As a result, this report should become an essential guide to executive government, policy makers and the legislature over the years needed to make the necessary transformation of the laws consistent with the necessity for the people's call for a fundamental change.

1.80 The recommendations for action by non-governmental bodies and by individuals flow from several vitally important considerations. First, the people's views have made it clear that they recognise that the most important safeguard for the new Constitution is the people themselves. They must be committed to the nation and its constitutional framework. Where necessary they must be prepared to act. We have recommended that in addition to enforceable rights, people should have duties as set out in National Objectives and Directive Principles of State Policy intended to guide government and people on directions of future government. Second, the future democratic development of Uganda requires the development of strong and independent civil organisations which can act as a counterbalance to or a check upon the power of the State and its institutions, and help to keep them accountable to the people. If they are to promote democratic development it is vital that those bodies themselves practice internal democracy. Third, non-governmental organisations must also be involved in provision of basic social services to the people, for government alone cannot manage to provide the full range of health, education, housing, water and other services the people need. Such organisations are necessary if the objectives of the new constitution are to be achieved. **In** the light of these and other considerations, at various points in the Report we make recommendations consistent with these principles for action from bodies outside government and from the people.

Concluding Observations

1.81 Because of the methodology adopted throughout the process and the overwhelming quantity of sources, the Commission has had to take longer to complete its work than was originally requested. Logistical problems had 'their due share in causing the delay. The Commission is confident, however, that Ugandans will agree that the time taken and resources used have been most worthwhile for they have enabled the evolving of a draft Constitution based on people's views which should now form the basis of a lasting Constitution.

1.82 As it is the distillation of the Commission's consultation with the people on such a wide range of constitutional issues, this report is basic to the understanding of the draft Constitution and the thinking behind it. It is simply not possible to understand particular provisions of the draft Constitution without understanding the mind of the people, expressed through their anxieties and aspirations in their submissions to the Commission, which underlies the Report.

1.83 The Report should therefore serve as the essential guide to the interpretation of the new Constitution by the judiciary, other government bodies, public officers and the citizens of Uganda as a whole. /

CHAPTER TWO

HISTORICAL BACKGROUND

2.1 It is pertinent to examine the historical background to the Ugandan constitution making processes with a view to establishing the extent to which the process is influenced by the past. The basic assumption is that any constitution, if it is to be viable, is as much a reflection of the past as it is of the present. Many of the people submitting views to the Commission examined Uganda's history in the belief that if the new Constitution is to provide a firm foundation for future development, it must be based on a clear understanding of our past development and problems. The Commission agrees with this view. Accordingly, in this chapter we consider our history to the present and the lessons it provides for any efforts to develop a new constitutional order. The chapter is in four sections. The first discusses pre-colonial Uganda and the colonial conquest and its consequences. The second analyses the post-independence period to 1986 and the third deals with the NRM administration. In the last section we draw some lessons through observations on past problems and future directions relevant to the constitution making process.

SECTION ONE: PRE-COLONIAL UGANDA AND COLONIAL CONQUEST AND ITS CONSEQUENCES

2.2 Befo**re** the establishment of colonialism, peoples living within the area now known as Uganda were not strangers to each other. The apparently diverse peoples, later known as "Bantus", "Nile-Hamites", "Hamites", "Nilotic" and "Sudanics", had long interacted with each other - economically, socially, culturally and politically. There had been the trans-ethnic empire of the legendary Abachwezi, later to be followed by the Empire of Bunyoro-Kitara, whose boundaries are reported to have covered large parts of present-day Uganda and the northern parts of present day Tanzania. Intermarriages and trade had been going on among pre-Uganda peoples. Empires rose and fell through wars, alliances and marriages. There were recorded attempts at unity in the face of external threats, such as that of the period when Mwanga and Kabalega forged an alliance, albeit forlorn, against the British invader.

2.3 There were pre-colonial bases for unity among the peoples but the colonial invader interrupted the processes involved. There is no basis to suggest that relations among pre Uganda peoples were perpetually antagonistic and irreconcilable in pre-colonial times, and that Ugandans cannot live together in peace and harmony in the 20th century and beyond. Long after the departure of formal colonialism, what appears to elude Ugandans is working out a constitutional formula that can come to terms with their apparent diversities.

Colonial Conquest

2.4 Colonialism had consequences for Ugandans which cannot be ignored in the constitution-making processes. Colonialism was not established overnight. From the arrival of the English adventurer John Hanning Speke in 1862, it took some thirty eight years for the British to establish their sovereignty over only a portion of what is now Uganda. Colonial conquest and rule brought massive change for Uganda in social, economic and cultural terms.

Change came through force with African political and military leaders being defeated. New administrative arrangements were established based on alien ideological, legal, administrative and physical frameworks. Pre-colonial institutions were destroyed or modified to the extent that the interests of the colonial power were served. The colonial power usurped the sovereignty of Ugandan peoples. In other words, they lost the ultimate right to define their own interests. All Ugandan political actors had to take account of British colonialism.

2.5 Socio-economic and cultural penetration of Ugandan society by the colonial power took the form of introduction of foreign trade, religion and other related cultural values. Penetration was not uniform throughout what is now Uganda. In particular, the experience of Buganda under conquest largely determined events in the rest of the region and much of the shape of the colonial system emerged.

2.6 Arab traders are known to have arrived in Buganda during the late 1840s, during the reign of Kabaka Suuna **II.** They incidentally introduced Islam in the Kabaka's Court. They were followed by British and French missionaries during the late 1870s. These successive arrivals set off socio-economic and cultural changes that had serious consequences for the Buganda political system and the whole region. The new values undermined the old ways of doing things, old political loyalties and, eventually, the political system. Within the very institutions which had for ages been the pillars of the Buganda system there were divided loyalties - some to the old system and some to the new emerging order. New centres of loyalties emerged, with the Christian and Moslem factions questioning the bases of legitimacy for Kabakaship unless it was based on their own terms. Such was the political crisis by the late 1880s that a combination of Christians and Moslems sought a Kabakaship on their terms by overthrowing Kabaka Mwanga. The Moslems made a bid for power on their own terms but were overthrown by an alliance between the Protestants and Catholics. In the next showdown in 1892 the Catholics were defeated by the Protestants in alliance with Captain F. Lugard, representative of the colonial power in the making.

2.7 The Buganda political system was not technologically and institutionally equipped to contain the colonial invader. In their own interest, the colonial invaders represented by Captain Lugard tilted the balance in favour of their allies, the Protestants. The ultimate outcome of the internal struggle for power during the 1880s and 1890s saw the establishment of colonial presence in Buganda and the ascendancy its Protestant allies. The rest of what was later to be colonial Uganda was conquered through a combination of manipulation and naked physical use of force.

2.8 The significance of the struggles for power during the 1880s and 1890s, for our purpose in the constitution-making process, is that long thereafter up to Independence and beyond, the bases for political action continued to be, to a great extent, religious.

Consequence of Colonial Conquest

2.9 With the eventual conquest of Buganda and, later, the rest of the country, the British colonial power set about "nonnalising" their colonial presence. Administrative and other institutions and the physical infrastructures necessary to sustain colonialism had to be developed. Advance had to be found in the interests of the colonial power and those of their

allies. The normalisation process had important consequences for later colonial and post colonial systems.

2_10 There were colonial documents and administrative regulations which defined the interests of some groups, their powers and their obligations. The most famous of these was the *1900 Uganda Agreement* which defined the Buganda kingdom as part of Uganda, the powers to the Kabaka and his chiefs and their material interests and those of other allied groups. But the agreement made it clear where, ultimately, power lay:

> So long as the Kabaka, chiefs and people of Uganda shall conform to the laws and regulations instituted for their governance by Her Majesty's government and shall cooperate 10yalIy with Her Majesty's government in the organisation and administration of the said kingdom of Uganda, Her Majesty's government agrees to recognise the Kabaka of Uganda as a native ruler of the Province of Uganda under Her Majesty's protection and overrule.

2.11 Somewhat more limited agreements recognising the "Native Rulers" were made with the Kingdoms of Ankole and Toro in 1901 and, in the case of Bunyoro,in 1933. In the other defined administrative areas, Ordinances defined the powers and obligations of the Chiefs. The country was carved up into administrative units, the district. With some few exceptions, the boundaries of the districts were based upon those of culturally similar groups.

2.12 A hierarchy of administration was established, placing the governor, together with his officials at the headquarters in Entebbe, in the provinces and the districts, as the overall supervisors. Local traditional institutions, where they served their purposes, were modified and incorporated into local administration. In some cases, the "Kiganda" structural model of administration was transferred in areas where the colonial power was not satisfied with the indigenous ones. Economic policies were formulated which forced indigenous peoples to give labousr for construction of a network of roads and administrative quarters. These then provided the physical infrastructural bases for the extraction of resources and administration of the country.

2.13 The colonial power provided ideological justification for its presence, claiming it was in the interests of the ruled ("the Whiteman's Burden") as Lugard would have it. The colonial power had at its services a whole range of institutions to communicate this message effectively. There was the history of colonialism itself and colonial cultural institutions. Colonial history itself tended to lead colonial peoples to believe that its presence was inevitable. There had been the superior colonial guns and organisation pitted against inferior weapons and relatively disorganized and disunited local forces. Colonial schools were among agencies supporting colonial presence. They did so through syllabi, largely drawn up by the ruling power, seeking to give inculcating values to Ugandans that were supportive of colonialism. To paraphrase Lord Macaulay, colonial peoples were to be taught how much the British Empire had done for mankind.

2.14 Colonialism created Favourable conditions for their allies. It ensured that its hegemony was not imperiled and that the allies were rewarded and foes were, at least, neutralized or marginalized. The 1900 Agreement between the colonial power and the rulers in Buganda defined relations between Buganda and the colonial. power. It defined Buganda’s interests *vis*

a vis the colonial power and the rest of Uganda. Through it a material and political stake was defined for the ruling groups. In turn, there were groups which did not gain much or were deprived through the 1900 Agreement, among them the Catholics and Moslems.

2.15 The 1900 Agreement was the *Magna Carta* for, at least, -the Buganda ruling groups. Some myths were woven around this document, including that the Agreement had been made between two equal contracting parties and that Buganda had never been conquered. Although theses myths have long since been exploded by historians, the most important point is that the Agreement served the interests of the colonial power and the local forces in Buganda which had gained by it and that it influenced political developments in Buganda and, eventually, Uganda. Buganda's interests were interpreted by invoking the 1900 Agreement. The 1900 Agreement confirmed the ascendancy of Protestant ruling groups in Buganda, who constituted themselves into an establishment that jealously guarded their interests well beyond 1966. The Protestant ascendancy was more or less replicated in other kingdoms and districts. In Buganda, denied access to the throne, the Katikiroship, and the greater majority of chieftainships, the Catholics and Moslems never politically recovered from the defeats of the 1880s and 1890s. Such limited concessions as they were given depended on colonial paternalism. This earlier relative political and material deprivation of these groups has influenced political and constitutional developments in Uganda ever since.

2.16 In addition to the Catholics and Moslems there were other groups that were disadvantaged. Among such groups were the Banyoro, the Baganda *bakopi,* and various regionally disadvantaged groups. The once powerful kingdom of Bunyoro, defeated and humiliated had, with some coercive support from the colonial power, lost some lands to Buganda. Implementation of the 1900 Uganda Agreement, entailed redistribution of land to the colonial power and its allies, the Kabaka, the leading chiefs, princesses and the Churches. This, of course, entailed uprooting thousands of *bakopi* who lost their ancestral lands. Education subsequently brought forth spokesmen of these groups. The *bataka* movement rallied all those groups who had suffered and agitated for the restoration of their lands.

2.17 The alienation of Bunyoro left a sulky and defeated Bunyoro to agitate for the "Lost Counties" and this formed the basis of political relations between Bunyoro on the one hand and Buganda and the colonial power on the other. The colonial power left this "historic wrong" to be manipulated by a future post-colonial government to isolate Buganda.

2.18 We have pointed out earlier that the boundaries coincided with traditional territories of culturally similar groups. But there were some diverse groups which together constituted districts. These provided the basis for long standing separatist feelings in several areas. Besides the Banyoro in the "Lost Counties," there were the Basebei in Bugisu as well as the Bamba and Bakonjo in the Toro Kingdom. The most persistent of these groups were the Banyoro in the "Lost Counties" who agitated for the return to Bunyoro. The Basebei, Bamba and Bakonjo also with varying vigor agitated for separate districts.

2.19 Colonial policies resulted in Uganda being broadly divided economically into two regions - the south and the north. The south, especially Buganda, the East and to some extent, the west, were cash crop growing areas. A network of road communication was built to facilitate extraction of resources. The cash· economy brought many advantages to the peasant farmers in form of cash and social services such as schools and health services. The

north, for a long time, served as a labour reserve and recruitment reserve for the military prisons and police personnel. This economic imbalance influenced political development in Uganda, especially after independence. The north-dominated military was taken advantage of by Obote in his struggle for power with his 'Southern' colleagues, and especially Sir Edward Muteesa.

Political Actors and Colonial Politics

2.20 Through the processes just discussed the main political actors in the colonial situation emerged. These were the colonial power itself, the chiefly elements and ethnic groups which benefited from colonial rule, and those who did not so benefit. The political behaviours of these political actors influenced the political and constitutional developments in this country as we shall see below.

2.21 Inspite of its allocating resources to groups that supported it in the initial stages of establishing colonialism, the colonial power played the role of arbiter among the competing political groups as long as its interests of were not imperiled. Until colonial power was first seriously under question during the early 1950s, most groups were content to work within the colonial ideological framework.

2.22 The Protestant chiefly groups especially in Buganda and, to some extent, in the rest of the country took their political dominance under colonial tutelage, for granted. When challenged, they saw no contradiction between their interests and the groups they claimed to represent even those suffering from injustices in-built into the colonial system.

2.23 The political behaviours of chiefly and ethnic groups were conditioned by their status as officially defined under colonialism. Through the] 900 Uganda Agreement, the political pre-eminence of Buganda had been assured and the Buganda ruling groups were jealous of this status. The behaviour of other ethnic leaders were to some extent conditioned by the political pre-eminence of Buganda, which some wished to follow in other areas.

2.24 In addition to Catholics and Muslims, there were also other groups which did not benefit by the colonial arrangements. Socio-economic changes - growth of a cash economy, communication networks, education, labour migrations dc - gave birth to groups not pr0vided for in the colonial constitutional arrangements. There were the migrant laborers from the north and surrounding areas and migrants from Rwanda and Burundi, all of whom had no legitimate channels or institutional arenas through which they could advance their interests. These were to make up those anomic elements which participated in the 1945 and 1949 riots in Buganda. There were elements from the chiefly strata who had been educated but could not be accommodated into the chiefly establishments. These made up the Chief’s Sons' League and later the Young Baganda Association. The (920s had seen the emergence of "native" young men's associations which were measures of alienation or deprivation. A trade union organisation, the Uganda African Motor Driver’s Association was formed and later merged with I.K. Musaazi's Federation of Uganda Framers to protest against monopoly of trade by Asians. Trade union ranks were strengthened by demobilised African. Soldiers after World War II. The] 945 and 1949 disturbances were evidence of articulation of grievances by alienated groups against monopoly of power by the chiefly establishment in Buganda and of business by Asian traders.

2.25 While the Catholics and Moslems under colonial hegemony, appeared to accept their marginal status, they tried to seek a fair deal in the allocation of chieftainships. The Catholic elite took care to generate sufficient resources to establish their autonomy in the colonial setting by building their own schools. The growing cultural marginality felt among Catholics was to be exploited in challenging the Protestant establishments in Buganda and elsewhere from the 1950s. Their perceived historic grievances focused on their not being allowed to provide candidates for the Kabakaship, Katikiroship and the majority of chieftainship in Buganda and the rest of Uganda. The Moslems, with their political, educational and numerical disadvantages remained politically marginal and for a long time mainly sought patron-client relationships with their protestants counterparts.

2.26 Political groups advanced their interests in a colonial context whose central institutions were foreign, remote, authoritarian and paternalistic. In these circumstances, political actors were not well placed to imbibe the democratic tradition.

Post-1945 Political Developments

2.27 The post-1945 and 1950s reforms marked the beginning of struggles to control postcolonial Uganda. It was with this end in view that groups defined their interests and prepared themselves for the moment of truth. The major actors in the bid for power were the kingdom areas, the districts, religious groups and - late comers - political parties. The main struggles were between those groups whose basic objectives was to retain what they had gained under colonialism and the until then politically marginal groups who sought new constitutional arrangements in which they would be better accommodated. The various groups sought constituencies within political parties, and political parties sought constituencies within the groups.

2.28 World events and the internal political situation in Uganda dictated the colonial power's agenda. The Second World War had unleashed forces that loosened its hold on the agenda. Internally, the colonial arrangements which had incorporated the chiefs in colonial governance had to be revised. Efforts were made to satisfy new political demands by democratizing the local government structures which had been manned largely by chiefs and **by** establishing limited representation in central institutions. Under the African Local Government Ordinance, 1949, limited powers were devolved on district councils and a limited number of posts in local governments were elective. Through a system of indirect elections, non-chiefly elements were admitted into local councils. Under the governorship of Sir Andrew Cohen, a colonial blue-print for building institutions was thus promulgated.

> The future of Uganda must lie in a unitary form of central government on Parliamentary Lines covering the whole country with component parts developing within it according to their special characteristics and where they exist, according to the agreements - the Protectorate Government is too small to grow into a series of separate units of government - the different parts of the country have not the size, nor will they have resources to develop even in a federation with each other administrative organs which modern government requires. This can only be done by a central government of the Protectorate as a whole with no part of the country dominating any part but all working together for a good of the protectorate and the progress of its people.

2.29 In the situation where arenas for political action had been historically and administratively determined, Cohen's formula had come somewhat too late. Groups had already taken positions which could not be reconciled with "a unitary form of central government" and "- component parts - developing with it according to their special characteristics -". Indeed, this blue-print, based on Wallis' Report, ignored what Wallis had observed of the entrenched political identities of nationality groups which had started regarding themselves as "native states" and were thinking of special constitutional arrangements providing for autonomy status.

2.30 In these political developments, the pace-setter was the Buganda kingdom. The ruling groups in Buganda saw in political reforms of the 1950s an opportunity to have Buganda's constitutional status adequately defined. Of course, in the background to Buganda's demands was the 1900 Agreement. In the negotiations of the early 1950s, Buganda had acceded to the elective principle to the *Lukiiko* but remained suspicious of her participation in the Legislative Council and plans to integrate Buganda into a united Uganda. The outcome was a showdown between the Protectorate Government and the Kabaka, who was subsequently deported. The return of the Kabaka in 1955 and the negotiation of the 1955 Agreement which superseded the 1900 Agreement further strengthened Buganda's hand in demanding special constitutional status.

The Rise of Political Parties

2.31 In the early 1950s two important new group actors came onto the Uganda political scene. The Uganda National Congress and the Democratic Party respectively were formed in 1952 and 1954. These parties made their appeals to different groups of political followers. Although on the surface of it, nationalist, the UNC was stunted by the ethnic and religious bases of Ugandan politics. The UNC compromised itself by manipulating issues arising out of ethnic and religious divisions, and it eventually split into factions based on ethnic lines, the most prominent of which was Obote's UNC.

2.32 The formation of the Democratic Party in 1954 was a response to the struggle for power, dating back to the 1880s and 1890s from which the colonial power and their Protestant allies had emerged victorious. Taking advantage of the democratisation reforms in Buganda, the Catholic elite made a bid to challenge the chiefly Protestant establishment by fielding *Omulamuzi* Matayo Mugwanya for *Katikiroship*, a post traditionally reserved for protestants. The establishment closed ranks to ensure Mugwanya was not elected. Catholic fears were further confirmed when Mugwanya was later denied a seat in the *Lukiiko* on the grounds that he was a member of the Central Legislative Assembly. Matayo Mugwanya then became first President-General of the Democratic Party, a party whose initial *raison d'etre* was to challenge the Protestant establishment of Mmengo and elsewhere. The Democratic Party found a ready-made base throughout the country, appealing to long standing fears of Catholics about their being denied political and economic powers.

2.33 The response of the Buganda ruling factions to the rise of political parties and proposed democratisation of the Legislative Council was one of fear for Buganda's status, which. they feared would be undermined by a democratically elected Legislative Council dominated by political parties. They continued to push for special constitutional arrangements

to protect their position. Buganda's fears had unintended consequences. After the 1958 Legislative Council elections a new party, Uganda Peoples Union (UPU) was formed, the result of leaders outside Buganda seeking to contain Buganda. Formation of UPU provoked the Buganda ruling groups supporting the Uganda National Movement (UNM). The main objective of the UNM was to undermine political parties and strengthen Buganda's political hand. For Organizing boycotts of Asian businessmen, the UNM was banned by the colonial authorities.

2.34 In the face of the UNM threat, the non-Buganda leaders in the Legislative Council formed the Uganda Peoples Congress which was a merger between the Uganda Peoples Union and the UNC - Obote. With the formation of the UPC, the political lines based on ethnicity and religions were boldly drawn. There was the DP with its Catholic base. The UPC, for all its later-day nationalist rhetoric, was initially formed in reaction to Buganda's bid for dominance, and its basic aim had been to encircle Buganda. The attitudes of the kingdom areas and Busoga were basically reactive to Buganda's demands for a special constitutional status. If Buganda sought such status, they argued that they were also entitled to the same. With the exceptions of the Banyoro claims for their "lost counties", the agitations of the Bamba, Bakonjo and Sebei for separate districts, other districts were not making vehement demands for special recognition.

Towards Independence

2.35 The 1961 elections to the Legislative Council, elections, largely boycotted in Buganda, saw the Democratic Party win the majority of seats and its leader was invited to form a government as Chief Minister. This was the moment of truth for the struggle for the political mastery of Uganda.. With a DP government in power and a Buganda encircled by the UPC, the UPC and Buganda ruling groups had to think again. Buganda had three options - an alliance with DP; go it alone; or seek alliance with UPC. An alliance with the historic foe, the Catholics, in the form of the DP, was out of the question; Buganda did not have the geopolitical, material and political resources to go it alone. Baganda leaders opted to break out of the UPC encirclement and forge an alliance with UPC through a movement, *Kabaka Yekka*, which formed overnight especially for the purpose.

2.36 The stage had, then, been prepared for the London Constitutional Conference on independence with political groups properly defined - the colonial power; the Buganda leaders; the three kingdoms of Bunyoro, Toro, Ankole; the political parties; and districts. The colonial power posed as "the honest-broker" among the warring groups. The constitutional talks were based on the Relationships Commission Report. Pitted against the Democratic Party were the Uganda Peoples Congress and the Kabaka Yekka. With the tacit blessing of the colonial power, the UPC acceded to Buganda's demands for federal· status and those of the other Kingdoms and Busoga for semi-federal status. Buganda also won directly elected members for the *Lukiiko* and representation in the National Assembly through indirectly elected members from the Buganda *Lukiiko.* The DP leader's attempt at a walk out in protest against the concessions to Buganda was futile.

2.37 The result of the negotiations was a constitutional arrangement aimed at balancing conflicting interests of the major groups. Besides the federal and semi-federal status for

Historical Background

Buganda, the Kingdom areas and Busoga respectively, there was to be a periodically elected Parliament, a Cabinet drawn from and responsible to Parliament; powers for the major organs of government - the legislative executive and judiciary - were defined. On the first anniversary of Independence, this Independence Constitution was amended to provide for a ceremonial President to be elected from the Traditional Rulers and Constitutional Heads to replace the Governor General.

SECTION TWO: THE POST INDEPENDENCE PERIOD TO 1986

The "Era of Good Feeling", 1962-1966

2.38 This period may be so-called because constitutionalism appeared to work but there were underlying tensions which saw that the period was punctuated by such incidents as the army mutiny, tensions between the central and Buganda governments and within the ruling party - all these culminating into the 1966 crisis. There were surface appearances of constitutionalism only because no one group was as yet strong enough to advance its interests through the newly re-established and fragile constitutional order.

2.39 The army mutiny which broke out on the 25th January, 1964 when men of the First Battalion refused to obey orders, and demanded pay increases and improved conditions, was soon suppressed with British assistance but had consequences for constitutionalism. No effort was made by the political leadership to redefine the role of the military. Instead they went ahead to expand and reward it amply.

2.40 On the civil front there were conflicting interpretations between the central and Buganda government over Buganda's autonomy and over resolution of the "Lost Counties" controversy. Through "crossings" in Parliament from the Democratic Party and Kabaka Yekka, Obote was in a strong enough position to allow a plebiscite to take place in the "Lost Counties". The population voted for return of the counties to Bunyoro. The results were followed by resignation of the Kabaka's government and widespread rioting in Buganda. The behaviour of the central government troops in Buganda alienated the Baganda further. The UPC-KY alliance came to an end. The alienation of a significant population of a strategic region brought with it major threats to constitutionalism.

2.41 Nor was all well within the leadership of Uganda Peoples Congress which was divided into factions along ethnic lines. The anti-Obote group took advantage of a motion alleging that Obote, Colonel Idi Amin, Adoko Nekyon and Felix Onama had amassed wealth during the Uganda/Congo border clashes to censure the Obote administration. With the support of the UPC Parliamentary group the motion was passed. Faced with revolt in his own ranks, Obote arrested five of his ministers, suspended the 1962 Constitution, replaced it with the Interim Constitution of 1966 and eventually the 1967 Constitution.

2.42 The events of 1966, leading to the introduction of the 1967 Constitution are significant for the fortunes of constitutionalism because initially" Obote used unconstitutional means to abolish the 1962 Constitution. This created a dangerous precedent from which Uganda has' yet to recover. In the process, a significant portion of the citizens in Buganda had been further alienated. In the background to all these revolutionary a constitutional changes was the army, the real power behind these changes. Obote had used physical means to solve a

CHAPTER THREE

GEO-POLITICAL AND SOCIO-ECONOMIC BACKGROUND

3.1 Constitutions reflect the geo-political, economic, social and historical circumstances of their societies. Thus, we must take full account of the geo-political and socio-economic character of Uganda and its people. We believe that a constitution based on the peculiarities and realities of Uganda should last longer than previous constitutions. In this chapter, we focus on Uganda's geography, society and economy, and the extent to which they have a bearing on the new constitutional order.

SECTION ONE: GEO-POLITICAL FEATURES

3.2 Uganda is a landlocked country astride the Equator about the size of the United Kingdom. Zaire lies to the west (nearly ten times its size); Sudan to the north (more than ten times its size); Kenya to the east (twice its size); Tanzania to the south (four times its size); and Rwanda to the southwest (about nine times smaller). Uganda has had closer political and economic ties with Kenya and Tanzania than with its other neighbours. Ethnically it has links to all of them. The international boundary cuts through border ethnic groups, dividing extended families. Its location in the Nile basin gives it ties with North African countries particularly Sudan, Egypt and Ethiopia.

Some Key Features

Area:

3.3 The total surface area of Uganda is 236,859 sq.kms. Land makes up 82%. The rest consists of lakes, rivers and swamps. In 1989 only 28 per cent of the land was cultivated.

Topography:

3.4 Most of the country is flat plateau between 1000 and 1400 m above sea level. About 7 per cent of the land is above 1500 m. This area includes the western rift highlands of Bufumbira and the Rwenzori mountains, the volcanic mass of Mt. Elgon, the volcanic centres of Karamoja and the hill country of Dodoth.

3.5 The country is well drained. Most of its lakes, rivers and swamps flow into the River Nile, which flows over 6000 km from Lake Victoria to the Mediterranean Sea. The main water bodies are the Victoria-Kyoga-Albert lake complex and lakes Edward and George. The country is cris-crossed by permanent and seasonal rivers. There are many crater lakes, particularly in the southwest.

3.6 The varied topography gives rise to a varied climate. This, together with its position, has made Uganda rich in flora and fauna and given its human communities the possibility of a range of occupations.

Climate:

3.7 Uganda has a generally pleasant climate due to the altitude. In most areas, the temperature seldom goes above 29° C or below 15° C. Rainfall is distributed fairly evenly through the year. Wetter months are April/May and September/October. Around Lake Victoria and in the mountains, annual rainfall is a relatively high 1,250 to 2,000 mm. In the south and in the north it reduces to 750 mm a year. The extreme northeast (Karamoja) and parts of the southwest (Ankole) have marked dry seasons. In the north the main dry season is from November to March, in the south from June to August.

Soils:

3.8 The soils in most of Uganda are fertile. They include loamy soils in the centre and volcanic soils in the southwest and east. There are only a few areas where the soils are not fertile. However, Cultivation has largely taken place without fertilizers, leading to widespread soil exhaustion. In the near future fertilizers will be essential.

Vegetation:

3.9 Most of Uganda is covered by savannah vegetation, i.e. grass mixed with trees. However, at high altitudes there are thick impenetrable forests, at slightly lower altitudes evergreen ones. Forests including swamp forests are found around Likes Victoria, Albert, Edward and Kyoga. Many forests are protected forest reserves, but most have been greatly reduced by human encroachment and logging. Recently, government has moved to curb this destruction.

Wildlife:

3.10 The wildlife is as varied as the vegetation. In the southwest lives half the world's population of the rare mountain gorilla. In national parks in the northeast, northwest and west are plains-dwelling species, such as zebra, topi, Uganda kob, elephant and buffalo. Hippo, crocodiles and hundreds of bird species live in or around the lakes, rivers and swamps. Much of the wildlife population has been devastated by habitat destruction, poaching and wholesale slaughter by soldiers in the 1979 war. The NRM government has created three new national parks and is rehabilitating existing ones.

Minerals:

3.11 Uganda has not had a full geological survey. Its real mineral potential is not known. However, copper in Kasese district was once a major source of foreign exchange and along with cobalt may be again. Limestone in Kasese and Tororo districts is a basis for the cement industry and road construction. Tin and wolfram have been mined for many years in Kisoro and Kabale districts; clays for pottery and brick exist in many areas. Salt deposits in Lake Katwe, in Kasese district and Kibiro in Hoima generated a salt industry which predates the arrival of Europeans. Rich iron ore deposits in Kabale, Kisoro and Tororo could generate future iron and steel industries; gold is scattered all over the country. Phosphates deposits in eastern Uganda are expected to be the basis for a Preferential Trade Area fertilizer industry;

oil deposits are being prospected near Like Albert; and high-quality sand exists which could give rise to a glass industry.

Water:

3.12 Hydropower already generates almost all of Uganda's electricity and some for export 10 Kenya. It could easily be expanded to electrify the rural areas. The many interlinking lakes and rivers are a potentially cheap inland and regional transport network. There are ferries on Lake Victoria, Lake Albert and some parts of the Nile. Swamps, rivers and lakes
provide fish for domestic consumption and export.

Matters to be taken into Account in framing a new Constitution

3.13 The following aspects of Uganda's geo-political features are of such importance that they must be taken into account in the new Constitution:

(a) Uganda is landlocked and dependent on the East African coast for an outlet to the world. It is therefore deeply vulnerable to events in Kenya and Tanzania. Uganda must therefore be able to defend its borders. It must also promote closer political and economic relations with Kenya and Tanzania.

(b) Uganda's relations with Egypt and Sudan are delicate since the Nile is their lifeblood. European powers and Egypt were drawn to Uganda in the late 1800s by this strategic factor. Today international treaties restrict Uganda's use of the Nile. If the Nile is to be further tapped for Uganda's economic advancement, Uganda must actively cooperate with Egypt and Sudan. Uganda's control of the Nile's headwaters is a potential source of conflict which governments must recognize.

(c) Uganda's location in the heart of Africa gives it the responsibility to foster continental unity.

(d) Uganda shares a common natural environment with its neighbours. Close regional cooperation is needed if the natural environment is to be both exploited and protected.

(e) Countrywide, Uganda has rich economic potential. With proper political and economic policies, it could develop into a prosperous agricultural and industrial society. One of the principal challenges of the new Constitution is to put in place a system and institutions of governance and administration that will ensure that the economic potential is tapped to transform the quality of life of every Ugandan.

SECTION TWO: SOCIO-ECONOMIC BACKGROUND

The Peoples of Uganda

Ethnic origins:

3.14 Ugandans are descended from peoples who migrated into the region over the last millennium. Before the advent of European colonialism and creation of modern African states, trade, war, marriage, settlement and the flight from famine caused a great intermingling of African peoples. Today Uganda has about 50 different ethnic groups. They fall into four linguistic categories, reflecting the major migrations. There are Bantu, Nilotic, Nilo-Hamites and Sudanic peoples. (Appendix I shows Uganda's ethnic composition in 1959 while Appendix II gives population figures for most ethnic groups from 1991). By the time the Europeans came, various ethnic groups had established core areas. The colonialists then divided Uganda into administrative units based on ethnicity. Since independence these units have been further divided and many renamed. But the ethnic character of Uganda society has not changed. Each ethnic group has remained in its core area. There has 'been some internal migration, but no large-scale ethnic movements.

3.15 Uganda was brought under colonial control and its borders demarcated gradually. The process began in the second half of the 1800s and concluded in 1926 when the last border (the Kenya Uganda boundary) was demarcated. Thus some ethnic groups were incorporated decades after others. Furthermore the rival European powers scrambling for Africa did not follow ethnic logic. Thus all border groups, such as the Madi, Acholi, Bakonjo and Samia have been split up or are closely related to groups on the other side.

3.16 During the 1940s and 1950s, Rwandese and Burundi migrant labourers began flocking to Uganda, drawn by the flourishing economy. Migrant Labour also came to areas of central Uganda from the outlying areas of eastern Uganda, West Nile, Kabale and Kisoro. Rwandese and Burundi migrants continued to come until the political and economic crisis of the 1970s. Hundreds of thousands integrated into local communities, through marriage and cultural assimilation, particularly in Buganda. They participate fully in political, economic and social life.

3.17 The Asian community was an important component of society until it was dispossessed and expelled by Idi Amin in 1972. Many had been brought by the colonial government to build the Uganda Railway at the beginning of the century. Later they came to dominate commerce and industry. During the colonial period, they enjoyed rights, such as representation in the Legislative Council, which Africans did not have. Since 1982, but particularly since 1990, they have been repossessing their properties, Some who were expelled have returned.

3.18 Since independence there have been influxes of refugees escaping war, crises and persecution. In 1992 there were about 82,000 Rwandese, 88,000 Sudanese and 15,000 Zairean refugees in Uganda.

3.19 A small European/North American community has existed in Uganda since the colonial period. Originally composed mainly of missionaries, colonial servants, professionals

and entrepreneurs, its size has grown and shrunk with Uganda's troubles. Today the community is dominated by expatriates working for non-governmental organisations (NGOs) and international agencies. There is no European settler community, but race was a socio-economic and political factor during the colonial period. Europeans and Asians dominated economic and political life.

3.20 Today ethnicity is a principal social factor. It shapes the identities of the peoples of Uganda and how they relate to each other. There are therefore specific constitutional issues which result from and reflect the importance of ethnicity.

3.21 Ethnicity has shaped political behaviour. Many Ugandan leaders have exploited it, undermining national cohesion and unity. Some groups have considered themselves central to Ugandan political processes. Others, such as migrants and minorities, feel marginalised.

Religiou.5i division:

3.22 Religion has also shaped Ugandan society and politics as we saw in Chapter 2 *Historical Background.* The major religions are Catholicism, Protestantism and Islam. The 1991 census reports that 44.5 per cent of Ugandans are Catholics, 39.2 per cent Protestants and 10.5 per cent Moslems and 5.7 per cent belong to other religions. Locally and nationally, Ugandans are deeply divided by religion. The major political parties have been based on religion. Although the major religions cut across ethnicity and region they have not promoted social cohesion.

Gender:

3.23 Women have historically been subordinate to men in Ugandan society. Since 1986 gender has become an important base for division and organisation as women, encouraged by the government, have begun to address their relative lack of strength. Among other issues, women have expressed immense concern about their right to own and inherit property and to have custody of their children. They are also concerned about violence against women and children and their lack of access to education, credit, land and employment. Their status in society has urgent need of change. In the past, little was done to recognise and attach value to women's role. The NRM government has initiated measures which begin to redress injustices against women and provide for their participation in political, social and economic life.

Age:

3.24 Youth constitutes the biggest percentage of Uganda's population. Their actual and potential role in society has not been fully recognised. They have a range of special needs and problems which have not been fully addressed in the past. The question of their rights therefore takes on some constitutional significance.

Class character:

3.25 Uganda's class character derives from agriculture, the dominant activity of the population: 90 per cent of Ugandans live and work in the countryside on smallholdings or

fundamentally disturb the pre-existing social pattern. Nor was there a settler community as there was in Kenya, Algeria, Zimbabwe or South Africa, where Africans were forced off their land into "reserves" or townships to be cheap Labour for plantations or factories. Uganda is therefore still primarily an agrarian society. About 10% of the population lives and works in the urban areas, although the great majority of that group halves rural homes as well.

3.26 The rural population is not homogenous. In areas such as Ankole and Karamoja, there are pastoralists. Elsewhere cultivation dominates although such specialisation is waning. In the central region, promotion of cash cropping, commerce and processing by the colonial authorities soon resulted in a reasonable degree of stratification among the peasants. They divide into poor, middle-income, and upper-income peasants. There is also a growing number of commercial farmers who have acquired huge tracts of land usually from government to develop as ranches or farms. The number of landless, unemployed and underemployed people is increasing, particularly in highly-populated areas.

3.27 The specific socio-economic problem of Karamoja persists. The area was deliberately underdeveloped by the colonial regime and neglected and suppressed by post-colonial ones. As a result the people of that area have a range of special problems and needs, and are involved in conflicts with their neighbours, all quite distinct from the problems, needs and conflicts of most other peoples in Uganda.

3.28 Despite these differences, one common feature is that the rural people still retain a capacity to feed themselves. With the exception of Karamoja, there has been no massive starvation or famine. When food shortages occur in particular areas, supplies are bought from other parts of the country. If there is a well developed internal transport and distribution system, no part of Uganda should normally experience famine at any time.

3.29 Small elites have controlled the affairs of the country and been the beneficiaries of "development". In the colonial period, the elite was made up of European colonial administrators, businessmen and professionals, Asian entrepreneurs and professionals, and some African chiefs. In the post-colonial period, particularly after 1972, African politicians, administrators and army officers have made up the elite. There have also been some African intellectuals, entrepreneurs and professionals.

3.30 The working force is also small: factories and plantations are not many, and in 1992 almost all were working at a fraction of capacity. However, it has had a disproportionate political impact. Its impact might have been even bigger, had it not been dominated by migrant labour. Although their problems may/be similar to those of the working people, the secretariat accounting and administrative clerks, soldiers and petty traders can be regarded as formii1g another class.

3.31 Finally, there are tile urban poor and semi-urban squatters, whose conditions are generally worse than those of poor peasants in rural areas. They live in *two* worlds - the urban and the rural. They are unable to fully identify with either. They live in crisis.

3.32 The collapse of the monetary economy after 1972 devastated the living standards of most urban dwellers. They escaped starvation due to the resilience of peasant production and links with the countryside, which has subsidized them.

3.33 Uganda is therefore a class society. Some individuals own hundreds of square miles, while there are others who are landless. Most Ugandans have very low incomes, a few have very high ones, sometimes ill-gotten. A few can afford the best services, such as well equipped schools and medical facilities. Most are condemned to poor ones.

3.34 However, the role of class in Uganda is not the same as in developed class societies like Britain, the United States, or Japan. Class in Uganda is obscured and overshadowed by ethnic, regional and religious divisions. Peasants are still generally cocooned in their respective kinship environments, hardly aware of or in contact with peasants' elsewhere. Urban dwellers have not cut their rural roots. The elite has been in a position to promote social relations that transcend ethnic and religious divisions. However, it has instead, opportunistically manipulated and misused the ethnic and religious differences.

Human Geography

Population size, rate of growth and distribution:

3.35 According to 1991 census figures, Uganda has 16.7 million people. The population in 1980 was 12.6 million, giving a growth rate of 2.5 per cent a year between 1980 and 1991. Fertility is high at an average of 7.2 children per woman. Uganda's population had been projected to double in 28 years, but the AIDS epidemic now puts this in doubt.

3.36 The real issue is not the size of population; Uganda's resources are still under utilized and many areas are still sparsely populated. Given its size, resources, and an improvement in skills and technology, Uganda could support many more people than it does today. The real problem is that population growth eats away at the gains of economic growth.

3.37 In most of the 1970s and 1980s the population grew rapidly but the economy suffered negative rates of growth. The result was a dramatic collapse in living standards. In the late 1980s the economy picked up. The impact of the recovery would be more if population growth was less.

3.38 Population planning is therefore crucial. If the economy stagnates or declines while the population grows, the country will face catastrophe. Peoples' views have expressed concern about this. Population planning will also reduce Uganda's high maternal mortality.

3.39 Urbanization is among the lowest in the world. According to the 1991 census Kampala has a population of 773,463 and the next town, Jinja, 60,979. The rural bias reflects the dominance of agriculture.

3.40 In rural areas, settlement patterns have been influenced by factors such as climate, vegetation, water supply, terrain, soil fertility and disease agents. Areas with good stable rains and fertile soils and which are relatively free from disease agents have high and rising population densities (e.g. Masaka, Mukono, Mbale, Mpigi, Bushenyi, Kasese, Rukungiri, Nebbi and Arua Districts). Districts like Kabarole, Hoima, Masindi and parts of Mbarara have low densities partly due to the presence of tsetse flies. The rest of the country (Luwero and most of northern and northeastern Uganda) is sparsely populated because of poor soils and/or poor rains. Human factors have also affected settlement. The colonial economy turned

the central region into the economic heartland. It attracted migration from other parts of Uganda and neighbouring countries. Internal wars, such as the anti-colonial wars in Bunyoro in the late 1800s and the 1981-86 war in the "Luwero triangle", depopulated some areas. There has also been out-migration from land-scarce districts. Hundreds of thousands of people have migrated from Kabale and Kisoro Districts to settle elsewhere (Rukungiri, Mbarara, Bushenyi, Mpigi, Mukono, Masaka, Kabarole, Mubende, Hoima, Kibaale and Masindi). Others have left Mbale and Tororo for the central region. Pastoralists roam within and between the districts of Mbarara, Rakai, Luwero, Mubende, Masaka, Hoima, Masindi, Kamuli, Iganga, Pallisa, Apac, Lira, Soroti, Kumi, Moroto and Kotido in search of water and pasture.

3.41 Population pressure has led to land fragmentation;, soil erosion and exhaustion; desertification; deforestation; and general environmental decline. This is particularly acute in the south. Overgrazing, deforestation and insecurity in northern and northeastern Uganda, particularly Karamoja, have caused similar problems.

3.42 Every Ugandan government should be sensitive to population distribution and movements so as to protect the environment. People in densely populated areas should be encouraged and helped to migrate to less populated ones. Efforts should be made to avoid the conflicts which such migration sometimes caused in the past. The government should, at the same time, take measures to transform the land-holding system and increase productivity of the people in densely populated areas. Government should also provide facilities to induce pastoralists in some areas to lead more settled lives. This would reduce the environmental damage and social animosities often associated with nomadism.

The Economy and Quality of Life

3.43 The foundations of today's economy were laid by the colonialists who destroyed whatever industry and enterprise existed in pre-colonial Uganda and introduced cash crops for the benefit of Britain. Structures of the colonial economy remain largely intact and still dominate the economy. It is therefore imperative to examine it. But before this, we shall make three crucial points about pre-colonial Uganda. First, the African peoples of Uganda were relatively developing before the coming of Europeans. Second, colonialism, far from developing the people, largely undermined the possibilities of independent development that would otherwise have taken place. Third, elements of the traditional African economic heritage offer a basis for independent economic development. Those elements are assets which Uganda could exploit and encourage to gain comparative advantage as we compete with other underdeveloped countries for markets.

3.44 Before the advent of Europeans, Uganda was a territory occupied by political entities at different levels of economic development. Economic production, mainly cultivation and animal husbandry, was mainly for subsistence. There was a small surplus for tribute for kings and chiefs and internal and regional. trade. There was also considerable industrial activity by artisans for subsistence and trade. For example, in Bunyoro-Kitara, iron-working, salt extraction, bark cloth making and carpentry thrived. The Basoga specialised in canoe building. These industries were small and at a relatively low level of development, but they were sustainable because they used local materials and aimed to satisfy the basic needs of the people. They were also integrated with the other productive sectors.

3.45 Trade was not well developed, mainly because of poor communication but it thrived for many centuries and was improving. There was specialisation between agriculturalists and pastoralists and among artisans. Societies traded in what they produced best. The Banyoro supplied iron-implements, salt and pottery, the Baganda bark cloth and timber products. In the first half of the 1800s trade with the outside world began. Demand for ivory pushed Arab traders deeper inland.

Colonial economy:

3.46 After Uganda had been conquered and colonialism formally established in 1900, independent development of the traditional economy was undermined. The colonial authority realigned activity in the new political entity to serve British colonial interests. Britain required Uganda to supply cheap raw materials to its industry. At the same time Uganda was to buy British goods. Britain's imperial strategy was to increase the earnings of its economy, which was facing competition from other colonial powers and former colonies, such as the United States. Cotton and coffee were introduced, not to improve Uganda's traditional economy and the lot of Africans, but to subsidise the British economy and its metropolitan beneficiaries.

3.47 The first export crop, cotton, was introduced in 1903. The following year saw 50 bales exported to Britain. By 1910 -11 exports had risen to 13,378 bales. By 1917 Uganda was the third largest producer of cotton in the British empire, and by 1927-28 the second. In the 1950s coffee overtook cotton as an export, but cotton remained important. At independence cotton and coffee, contributed 75 per cent of export earnings. Coffee was introduced in 1907 as a plantation crop, although subsequently it was grown by peasants. Rubber, tobacco and tea were also introduced and minerals, such as copper were extracted. But none of these rivaled coffee and cotton. Manufacturing was not pursued in the first half of colonial rule. By 1933, no weaving textile factory had been established despite the large volumes of cotton production.

3.48 After World War II, Uganda experienced some industrialization. Britain's power was waning, while that of the United States was growing. To increase competitiveness, Britain decided to locate some manufacturing capacity in its colonies which had abundant and cheap raw materials and labour. The 1946 plan for Uganda aimed at laying down a rail and road network. Electricity was to come from the Owen Falls Dam. But there was no comprehensive plan for industrialization, and the industries that were established, such as cotton and coffee processing, milling, soap manufacturing and brewing, reduced Uganda's imports. By 1960, manufacturing constituted 10% of total GDP. Uganda, however, was far from being an industrial society.

3.49 The colonial economy was organised to minimise the costs of production. Peasants were compelled to grow cash crops by taxation, law and forced labour *(kasanvu).* Cash crops were concentrated in the central areas where the administration ensured production. Outlying areas were designated as to labour reserves. The colonial authorities ensured that Africans remained primary producers. Non-Africans were given the monopoly to manage, process and market. Thus by independence, Europeans and Asians dominated commerce and industry, although they made up only one per cent of the population.

Some consequences of colonialism:

3.50 With colonialism, Uganda lost economic independence as well as political freedom. The economy went from being diversified and internally integrated to producing two main crops for foreign markets. It became highly vulnerable to world price fluctuations. Furthermore, much of the labour of African Ugandans was now forced. Africans were largely objects of labour and the benefits they got were incidental. The beneficiaries were Britain and European businessmen and bureaucrats and Asian entrepreneurs in Uganda. Britain benefited from Uganda's cheap raw materials and from sales of manufactured goods to Uganda. Non-Africans were the major beneficiaries of high incomes.

3.51 In the late colonial period, an Asian clerk was on average paid UK £ 274 per annum. An African clerk was paid UK £ 33. An Asian store-keeper was paid UK £ 292. An African UK £ 20. Asians were the main beneficiaries of electricity and water infrastructure. They had access to better and more medical and education facilities. Asian children attended school and had more opportunity to go abroad for training. Africans were discouraged on the grounds that university-educated Africans would not fit into colonial society on their return. These injustices prevailed despite social services being financed from taxes paid largely by Africans. The rates of taxation on goods used by Africans were higher than those used by non-Africans.

3.52 As a result of colonialism, African Ugandans at independence lacked managerial and technical skill, and financial resources. The country was, also unevenly developed. Economic and social infrastructure was concentrated in Buganda and Busoga.

3.53 The narrow colonial economy did not tap Ugandan's potential. Even "developed" areas such as Buganda and Busoga saw little real development, and their inhabitants were as exploited as Africans elsewhere. This fact is important as some people, particularly in northern Uganda, have expressed bitterness about being victims of uneven development. It is true that more resources went to southern Uganda, particularly Buganda, than northern Uganda. But the entire country was underdeveloped by colonialism.

Post-colonial economy:

3.54 Uganda has remained a producer of raw materials for industrialized countries. The manufacturing sector has remained small. To make matters worse, production declined between 1960 and 1991. Only coffee performed relatively well. But because of fluctuations in the world market, earnings suffered. Despite some increases in production, there has been a progressive decline in coffee earnings and a collapse after 1989 as can be seen from the figures for production and earnings in the years 1982 to 1991 presented in Table 1.

Table I

Coffee Exports - Tonnage and Earnings, 1982-1991

Year	Tonnes	US $ '000
1982	174,700	349,400
1983	144,300	346,300
1984	133,200	359,600
1985	151,500	348,500
1986	140,800	394,200
1987	148,153	307,535
1988	144,254	265,279
1989	176,453	262,811
1990	141,489	140,254
1991	127,438	120,794

Source: Statistics Department, MFEP/, Kampala.

3.55 In the first half of 1992, the world price of coffee declined by another 15 per cent. In 1992, earnings are expected to hit a new low of US $ 90 million. As coffee provided most of Uganda's export earnings, the effects of the continued loss of value of our coffee production are devastating.

3.56 A further blow to the post-colonial economy has been the rise in the cost of the manufactured goods that Uganda imports. The economy has suffered increasingly unfavorable terms of trade and has long had negative balance of payments. Uganda's own manufacturing sector has also declined.

3.57 The "good old days" of the 1960s were not due to the strengthening of the economy after independence. The apparent initial good performance of the economy was due mainly to the substantial surplus accumulated by the colonial government from the high coffee and cotton prices of the 1950s, and bequeathed to the independence government. . Since these prices could not be sustained nor could the "good old days". Even if there had not been political mismanagement, particularly that of the Amin period, sooner or later the economy independent Uganda inherited would have no into trouble.

3.58 In 1968 the Obote government introduced the "Move to the Left, Strategy", of which the "Common Man's Charter", adopted in 1969, was part. These measures were meant to ensure that the country's resources were exploited for the benefit of all Ugandans and that· Ugandans were masters of their own destiny. State participation in the economy was radically increased. Enterprises owned by foreigners were nationalised in order to 'reduce the loss of the country's wealth to outsiders.

3.59 On Labour Day in 1970 the Government made the "Nakivubo pronouncement". Import and export business, hitherto a monopoly of non-Africans, was to be controlled by

parastatal bodies (state-owned enterprises). The government was to acquire 60 per cent of share capital in banks, transport companies, the Kilembe Mines and every major factory and plantation. The 60 per cent share holding was to be paid over a period of time from company profits. In October 1970 unskilled and semi-skilled workers from neighbouring countries were expelled to make jobs available to Ugandans.

3.60 Africanisation and the increased economic role of the State were popular. However, the State did not have the capacity to manage what it took on. The Asian and European business community, which still dominated the economy, felt threatened, and there was capital flight. Efficiency and production declined as the new State enterprises quickly became avenues to reward supporters and consolidate political partisanship.

3**.61** In 1972 Idi Amin expelled the Asians and took over their properties. British and Israeli properties were also seized. These assets were nationalized or allocated to Amin's henchmen and supporters. No regard was paid to the managerial or entrepreneurial acumen of the allocatees.

3.62 The country became isolated from the western countries to which its economy was tied. The Amin regime brought nine years of mismanagement, neglect, corruption and the death or flight of tens of thousands of skilled Ugandans. The "Liberation War" in 1978-79 further crippled the economy by destroying much of the infrastructure and productive sector. After the fall of Amin, the second Obote regime entered into a structural .adjustment programme with the International Monetary Fund (IMF). But the IMF and World Bank prescriptions were unable to revitalize the economy in the longer run and so only increased the country's indebtedness. The political instability and the civil war that broke out in 1981 also did not provide the right atmosphere for recovery.

3.63 On taking power in 1986, the NRM Government inherited a country that was shattered politically, socially and economically. It embarked on a programme aimed at creating an independent and self-sustaining economy.

3.64 Since 1986 the economy has registered some growth. Growth rates in 1987, 1988 and 1989 were 6.7 percent, 7.6 per cent, and 7.3 per cent respectively. This contrast with 1984, when the economy declined by 6.5 per cent and 1985 and 1986 when it grew by only 2.0 per cent and 0.6 per cent respectively. Growth in 1992 is estimated at 4.1 per cent and in 1993 is projected to be 6.4 percent. Concrete recovery can be seen in infrastructure (e.g. road reconstruction) and production (e.g. soap and sugar industries).

3.65 However, the war in the north and north-east from mid-1986 to 1991, corruption and inefficiency, weak productive and financial bases, and the collapse of the world coffee price since 1989 have made recovery slower than it might have been. Production is still below pre-1972 levels. Inflation has also been high.

3.66 The NRM inherited a foreign debt of over US $ 1 billion. It has had to borrow more to rehabilitate the country. By 1991 the foreign debt had reached US $ 2.6 billion compared to US $ 192 million in 1970). Yearly repayments on this debt are now greater than the amount Uganda earns each year from exports. This level of dependence on external funding cannot be sustained. It also puts in question Uganda's independence and national sovereignty.

3..67 In 1987 the NRM government entered a structural adjustment programme with the major international financial institutions and donors. This involves liberalization, privatization, and stimulation of production through better prices for producers, local and foreign investment and realistic exchange rates. These steps are necessary both in themselves and for Uganda to qualify for aid. Some, such as the retrenchment of civil servants, will cause social hardships. Others, such as cuts in military spending, should free up resources 1111 other priorities such as health and education.

3.68 Beyond these changes, there is a need for fundamental economic transformation involving:

(a) A shift away from primary production to industrialization so as to maximize the value of what Uganda sells abroad. Uganda needs to harness science and technology to industrialize and exploit its natural resources. South Korea increased its GDP from US $ 3,000 million in 1965 to US $ 236,400 million in 1990 by massive industrialization over a period of 25 years. In 1965 agriculture contributed 38 per cent, and industry 25 per cent. In 1990 agriculture contributed 9 per cent. Industry had risen to 45 per cent. For a developing country like Uganda, industrialization is necessary for development and modernisation. The service sector which is growing in the older industrialized countries is post-industrial stage of development.

(b) For transformation to be sustainable and benefit all Ugandans, it must involve the masses. Indigenous technical skills and entrepreneurship should be tapped. We should rediscover our traditional science and artisanship, take advantage of what our heritage provides, and use it to improve our competitiveness. Measure should also be taken to equip Ugandans with the appropriate scientific and technological skills.

Quality of Life

GNP per capita:

3.69 Poor economic performance and civil strife have resulted in a poor quality of life for most Ugandans. In 1992 the GNP per capita was only US $ 220. This is far below the average for sub-Saharan Africa of US $ 370. Ugandans have also become poorer over the last decades. In 1970 GNP per capita was US $ 522. Moreover, GNP per capita is an average. It hides the uneven distribution of income. In reality very many Ugandans subsist on less than US $ 220 a year, while a small minority enjoys far more.

Health:

3.70 Ugandans suffer poor health compared to developed and some underdeveloped countries. Besides within Uganda, there are inequalities in health between classes and urban and rural dwellers.

Education:

3.71 Education provides the capacity to improve living standards, but Uganda ranks poorly among developed counties. Literacy in Uganda has only. Slightly increased, since

independence. The quality of education has declined since the seventies. Countries like South Korea, and Japan emphasized scientific and technological education. In Uganda, not only did the existing education facilities crumble, they also lacked this bias.

3.72 If the lives of Ugandans are to be bettered, the government must take steps to uplift health, literacy and technical knowledge. Development must centre on the household to- raise its capacity to earn income. Regional, gender, class and rural/urban inequalities in access to social services must be reduced.

Matters to be Taken into Account in Framing a New Constitution

3.73 The constitution-making process should and has taken into account geo-political and socio-economic features of Uga~t1a. Important features which influence nation-building and the establishment of systems and institutions need to be considered in framing the new Constitution:

(a) Uganda is small and landlocked, surrounded by potentially powerful neighbours and contains the source of the Nile. This geographical position is sensitive and vulnerable. To safeguard sovereignty, the new Constitution should provide for adequate self-defence policies.

(b) Government needs to develop a policy of regional cooperation.

(c) Ethnic and religious diversity are dominant features of Ugandan society. This diversity is not incompatible with national aspirations and nation-building and can be a basis for the gradual emergence of a strong nation. Throughout h;3tory, nations and empires, have been formed out of social diversity. The present "tribes" of Uganda were trans-ethnic political and social entities before colonialism. Societies become cohesive or divided depending on the politics of those who lead them.

(d) The institutions and systems of governance that we evolve must be sensitive to this diversity. For governance to gain legitimacy, all social groups must feel they belong to and are involved in it. The new Constitution must ensure social participation. Differing social perceptions of governance must be accommodated. The peculiarities of communities should not be suppressed as long as they do not go counter to the essential principles of democracy and human rights.

(e) . The principle of decentralizing political and economic decision-making to local communities should guide the new Constitution. Under the present constitutional arrangement the destinies of the people are determined by a hierarchical and highly centralised power apparatus. This should end. Great societies such as the Soviet Union and Yugoslavia have broken up in part at least because the centre wielded too much power insensitively.

(f) The Constitution should provide an institutional and policy framework that facilitates the exploitation of Uganda's rich economic potential. Safeguards must be put in place to ensure population and ecological balance.

(g) The country is destined to industrialize. History shows that industrialization can have negative effects. Mechanization of agriculture can dispossess and impoverish peasants. There are others. Steps should be taken to counteract them. Economic development must be people-centred. The people must be capacitated to exercise the real power of decision-making and to be actively involved in all aspects of development.

(h) The people must be protected against usurpation of their rights and powers by the State, State agencies, developers or through such organisations as a State-controlled co-operative movement and trade unions. These latter should be freed from State manipulation and unnecessary bureaucratic regulation, so that they can emerge as autonomous associations of working people who come together to assert their specific interests.

(i) The rising problem of urban poverty, and general destitution in the urban areas must be addressed. We should not allow it to grow into an "inner city/town" problem, which could explode into riots or other expressions of protest against bad living conditions. The distribution of wealth must also be addressed. We must avoid situations as in Latin America where 3 percent of the population own about 99 percent of the land and property.

(j) The historical economic imbalances, between the rural and urban areas and also between the regions should be redressed.

(k) Indigenous enterprise is still weak. There is need for continued, but rationalized, State direction and participation in the economy.

APPENDIX 1

Uganda's Ethnic Composition in 1959

	Group	Core area
1	Ganda (Baganda)	Buganda
2	Nkole Banyankole	Ankole
3	Soga (Basoga) Kiga	Busoga
4	(Bakiga)	Kigezi
5	Rwanda (Banyarwanda-Bafumbira)	South West Kigezi
6	Gisu (Bagisu)	Bugisu
7	Toro (Batoro)	Toro
8	Nyoro (Banyoro)	Bunyoro
9	Rundi (Barundi)	Scattered in Buganda Budaka-
10	Gwere (Bagwere)	Bugwere in Bukedi Rwenzori
11	Konjo (Bakonjo)	Mt.Kasese District Bunyole
12	Nyole (Banyole)	County in Bukedi Samia-
13	Samia (Basamia)	Bugwe S.Bukedi Samia-
14	Gwe (Bagwe)	Bugwe in S. Bukedi
15	Amba (Baamba)	Bundibugyo
16	Kenya (Bakenyi)	Swamp fringes of L. Kyoga in Busoga and Bukedi along R.Mpologoma
17	Twa (Batwa)	In forests of Zaire close to Kigezi, Ankole, Bwamba
18	Hororo (Bahororo)	Rujumbura county in Rukungiri District In
19	Hehe (Bahehe)	Samia-Bugwe, Buhehe Sub-county
20	Tuku (Batuku)	Pastoralists on Semliki flats
21	Vonoma	Forested area of West Semliki River
22	Langi	Lango
23	Acholi	Acholi
24	Alur	South West Nile (Nebbi)
25-26	Padhola(Badama or Jopadhola)	West Budama in Bukedi
27	Jonam	S.W Nile in Jonam county
28	Abwor (Labwor)	Hill borderland of Karamoja/Acholi
29	Palwo (Chope)	Kibanda county Bunyoro into Lango
30	Akwa (Nyakwai)	Labwor county in Karimojong) Mt. area
31	Iteso	Teso
32	Karimojong	Karamoja
33	Kumam	Borderland between Teso/Lango (Kaberamaido) area
34	Kakwa	North West Nile
35	Sebei	Sebei
36	Pokot (Suk)	Karamoja
37	Jie	Karamoja (North)
38	Dodoth	Karimojong (North)
39	Tesio	Iteso in Bukedi esp. Tororo County
	Kuku	West Madi extended into Sudan

40	Lugbara	Central & North West Nile
41	Madi	Madi area
42	Lendu	West Nile Zaire border near Alur
43	Kebu (Okebu)	South West Nile & Zaire near Alur
44	Mvuba	Bundibugyo
45	So (Tepeth)	Mt. Moroto
46	Ik (Teuso)	Dodoth county
47	Nangai - N	Dodoth county
48	apore Mening	Dodoth county
49	Oropom	Teso/Karamoja border (Usuku)
50	Nubi	(Bombo)

Sources:

1. Land and Surveys Department (1967). *Atlas of Uganda,* Entebbe: Government Printer, PAO

2. Langlands, B.W. (1975). *Notes on the Geography of Ethnicity in Uganda,* Department of Geography, Occasional Paper No. 62

APPENDIX II

The Population of Uganda by Ethnic Groups in Descending Order of Size

Rank	Ethnic Group	Population
1	Baganda	3,015,980
2	Banyankole	1,643,193
3	Bakiga	1,391,442
4	Basoga	1,370,845
5	Iteso	999,537
6	Langi	977,680
7	Bagisu	751,253
8	Acholi	~ 734,707
9	Lugbara	588,830
10	Banyoro	495,443
11	BatorolBatukulBasongora	488,024
12	Alur/Jonam	395,553
13	Bakonjo	361,709
14	Karimojong/Dodoth Tepet/Suk	346,166
15	Banyarwanda	329,662
16	Bagwere	275,608
17	Badama/Japadhola	247,577
18	Banyole	228,918
19	Bafumbira(Banyarwanda)	203,030
2	Samia	185,304
0	Madi	178,558
21	Bahororo	141,668
22		

23	Kumam	112,629
24	Sebei	109,939
25	Other Ugandans	104,086
26	Barundi	100,903
27	Kakwa	86,472
28	Baruli	68,010
29	Baamba	62,926
30	Bagwe	40,074
31	Nubian	14,739
32	Bachope	12,089
33	Lendu	8,600
34	Batwa/Pygmies	1,394

Non-Ugandans are as follows

Rank	**Country of Citizenship**	**Population**
1	Rwanda	247,896
2	Tanzania	80,922
3	Zaire	67,259
4	Sudan	66,283

In all there are 16,072,548 Ugandans, 596,932 Non-Ugandans and 2,225 whose Ethnicity/Citizenship was not stated.

Source: *The* 1991 *Population and Housing Census*

CHAPTER FOUR

NATION-BUILDING PROCESS, COMMON VALUES AND NATIONAL LANGUAGE

4.1 In developing a new draft Constitution intended to provide a firm foundation for the long-term democratic development of Uganda, the Commission has received many submissions which make it clear that people have' given much thought to the question of how Uganda came to exist as a state, and how best to facilitate the building of a single nation from its many distinct peoples. We seek to deal with these important issues in this chapter. There are four sections in the chapter. The first discusses the importance of the concepts of the nation-state and of nation-building. The second discusses the experience of nation-building and development of common national values in Uganda. The third discusses the important question of whether a national language is needed in developing the nation. The fourth section discusses a range of other specific concerns and proposals from the people relating to nation-building and development of common values.

SECTION ONE: IMPORTANCE OF THE SUBJECT - THE NATION-STATE AND NATION-BUILDING

4.2 The entity known as the nation-state is people-made. It is the result of a conscious effort on the part of a people to try and live peacefully together for their mutual benefit. Whether a nation-state has evolved through conquest or through consent, the ultimate objectives of the nation-state in modern times are promotion of citizens' safety against internal and external threats, protection of their rights and general wellbeing, promotion of their moral and economic welfare and establishment of institutional mechanisms for resolving conflicts among citizens, short of use of physical force.

4.3 In most nation-states, constitutional arrangements develop which seek to attain the above objectives. Such arrangements define powers exercised by various organs of government, regulate relations between the governors and the governed and locate where sovereignty should reside. In addition the arrangements should normally spell out the citizens' rights; institutional mechanisms for protection of the citizens; mechanisms for making laws and executing them; institutions for resolving conflicts not only between citizens but also between citizens and the established organs of government; and institutional mechanisms for attaining economic objectives and allocation of resources among citizens.

4.4 The above objectives may be regarded as the "modern" objectives of the nation-state and it is to these objectives that we all aspire. But in history the objectives of nation-states have not all been the same. Nation-states have come into being through a variety of means, including conquest, annexation or by consent of the population. Whatever the means, citizens of any nation-state are likely to realise that they have to live and work together in order to :realise socio-economic, physical and political objectives. In the process, constitutional arrangements suitable to their situation are usually developed. The continued acceptance over long periods of constitutional arrangements and institutional structures outlined above is necessary for stability and democratic development. Long-term acceptance is likely only if

sustained by core national values, which are, as it were, the cement of the modern nation state.

SECTION TWO: NATION-BUILDING AND COMMON V ALVES

4.5 Nation-building is a process through which peoples within a state acquire common positive values that enable them to identify as part of a collective unit. In other words, the nation-building process involves the sum total of the positive collective attitudes towards the nation-state. It is the sum total of these attitudes that may determine the existence of the nation-state. They enable the people to sustain the various institutional mechanisms necessary for a state to operate. Survival of a nation-state will depend on how its citizens interpret their history, how they live their cultural values, how they regard representatives of the state organs, how they regard the mechanisms for transfer of power and so on. Negative attitudes on the part of substantial numbers of citizens towards administrative and political institutions within the nation-state will inevitably tend to undermine its existence.

The Nation-Building Process in Uganda

4.6 The concerns expressed by the people about building a nation have helped the Commission to examine how nation-building processes have evolved in Uganda from colonial times to the present. There have been a number of consequences from these processes, some of them negative. This analysis assists in developing long term strategies for institution building and nation-building.

Nation-building under the Colonial State:

4.7 As we have seen in Chapter Two, the peoples of the area which came to constitute Uganda were not stingers to each other, but had interacted at diplomatic, economic, cultural and political levels. Uganda, like other states, is people-made, being a product of the creation of a colonial state in which Uganda's peoples had virtually no hand. Sovereignty did not evolve from the people but was externally imposed by the colonial power. The colonial socio-economic and political and cultural institutions were imposed and supervised from outside. It is not surprising then that not only during the colonial era but even after independence Uganda has had very few attributes of what would constitute a modern nation-state and in particular, reasonably permanent common residual values.

4.8 It is not quite correct to say that colonialism in Uganda was always based on the exercise of force. But as happens in all power situations, force was always in the background. In order to economize use of force, colonial state-building mechanisms were used which were characterized by a colonial ideology which inculcated values that sustained the colonial state, and external and internal instruments of coercion. The instruments of coercion in the form of the metropolitan and colonial armies were the last resort whenever colonial hegemony was threatened. Agencies for political socialisation existed too, in the form of schools and cultural institutions whose values contributed to the sustenance of colonialism. The social-cultural institutions whose values sustained colonialism had, at least, an identity of interests with the colonial state.

4.9 To some extent states and empires are sustained by symbols and myths. The colonial state in Uganda had its own symbols and myths which reinforced colonial values. These included the British monarchy, the flag and public holidays. There were the myths of imperial heroes, the white man's invincibility and his vastly superior technology. The sum total of these and other ideological values - imperial symbols and myths - sustained the colonial state. A crisis for the colonial state came when these ideological values, came to be critically questioned by the Ugandan peoples. With colonial" legitimacy" under question no battalions could defend it.

Nation-building after independence:

4.10 The Uganda colonial state came to an end with the recovery of independence which was characterized by formal political recognition by the world political community, admission to the United Nations, acquisition of a new flag and composition of a national anthem, and adoption of an independence Constitution and formal political and bureaucratic structures manned by Ugandans.

4.11 But all the above characteristics were simply trappings of independence. Post independence Ugandan political processes have not been sustained by common values *internalized* by Ugandans. There are no such values for defining relations between the citizen and the formal institutional arrangements; no values defining mechanisms for making and unmaking governments, short of use of physical force; no intemalised values for defining short-term and long term socio-economic and political objectives.' It is true that we have had constitutions which formally define the formal rules of politics but these formal rules are never adhered to.

4.12 Consequently, the independent Ugandan state has been characterised by turmoil, with groups seeking to control State institutional structures but ignoring the formal rules. Various groups have sought to impose their own political agendas which, in turn, has provoked violent reactions from opposing groups. Such strategies for nation-building that have been worked out have been too closely associated with individuals and particular interest groups to be taken seriously as the basis for development of common values. Groups have made use of nation-building strategies only to the extent that their interests have been served or legitimized. The flag, the anthem or any such permanent symbols for nation-building have been invoked only to serve particularistic interests.

People's Views on the Experience of Nation-building

4.13 An examination of the memoranda submitted to the Commission shows that Ugandans are not satisfied with the nation-building process so far. They recognise that the thirty years since independence have been a traumatic experience in which there has been tremendous loss of life, property, violation of human rights and bad governance. They recognise that no, serious effort has been made to promote unity and such ,forlorn efforts as have been' 'made' have failed abysmally partly because democratic institutional structures have been abused, power has been misused and insecurity has been pervasive.

4.14 But it is worth noting that despite this experience, there is not a single memorandum that questions Uganda as an entity. Indeed the people seem to agree that steps should be taken to promote a process of nation-building.

4**.15** From the memoranda one observes that Ugandans are alienated from the traditional national institutions such as the executive, the legislative and the judiciary. This is not so much because of deficiencies in the institutional structures and the rules governing them as due to misuse of the institutions since independence. These structures are seen by many simply as arenas for power abuse, extravagant misuse of coercive instruments and misallocation of scarce resources.

4.16 People's views submitted to us show clearly that proper working of socio-cultural, economic and political institutions will entirely depend on positive attitudes towards these institutions on the part of both those holding office and the ordinary people. It is the sum total of these positive attitudes that can assist to sustain a political system. Among such recommended ingredients for promoting the nation-building process have been: a national language, equitable allocation of resources and democratic institutions, history and culture and tolerance, leadership, education, national symbols and promotion of human rights and particularly freedom of the press, and the family. We examine these matters in the next two sections of the chapter.

SECTION THREE: NATIONAL LANGUAGE

4.17 There is unanimity among the people who submitted views on the subject that language can be one of the most critical instruments for promotion of nation-building. Many memoranda lament absence of a language that can easily be a mark of identity of Ugandans as a people, a medium of communication through which Ugandans can easily communicate, understand one another and promote a Ugandan culture. Many support adoption of one or more national languages under the new Constitution. Those most commonly suggested are Luganda, Swahili, English and a combination of select tribal or regional languages.

Luganda

4.18 Views expressed in favour of adopting Luganda. as the national Language are mainly from memoranda submitted from the central region, and to some extent, .from Busoga. The case for Luganda, according to these views, IS that it is spoken or understood by the greater majority of Ugandans especially from the southern region. It has a well established grammar and a written literature. It is a language indigenous to Uganda with personnel and literature available to facilitate teaching it.

4.19 Views expressed against Luganda are that is too closely identified with a particular Ugandan nationality. As a result its formal recognition as a national language may spark political controversies. Others argue that the language is too much confined to Uganda and so would not be of any regional or international utility.

Swahili

4.20 Generally, the case for Swahili was expressed in views and memoranda from the northern and eastern and, to some limited extent~ western regions of the country. The support is on the grounds that it is widely understood among the general population; belongs to the Bantu family of languages and can, therefore, be easily understood; it has an established grammar; personnel to teach it may be readily available; it is not identified with any particular nationality and is therefore unlikely to provoke negative attitudes on that basis; and it is widely spoken throughout the eastern African region and, therefore can promote regional unity to which we aspire.

4.21 There are, however, views expressed against Swahili being adopted as a national language. According to some views, the language is not as widely spoken as it is made out to be. There are negative attitudes to it as a language which has been used in Uganda by violators of human rights. Although it has Bantu roots, it is not indigenous to Uganda. For purposes of teaching, it could be a burden to the country's limited resources since we would have, for a considerable length of time, to hire teachers from neighbouring countries to teach it as well as having to import teaching materials.

English

4.22 Views expressed in many memoranda recognised that the English language, though alien and colonial, has come to stay. It may serve as an official language and as a medium through which we can interact with the outside world and as a language of learning, science and technology.

4.23 Some views are against its adoption as a national language, on the basis that it was the language of the colonial power. More importantly, others argue that as a foreign tongue, with nothing African or Ugandan about it, it is not a suitable mechanism for nation-building in an African nation-state.

Select Major Languages

4.24 There is a recognition in some memoranda that adoption of a single national language may spark off more controversies than it would solve and that the issue should not be forced. As a compromise, some memoranda propose:

(a) use of a selected number of major languages which should all be promoted together as national languages and in particular Luganda, Luo, "Runyakitara" and Ateso.

(b) all existing languages of the peoples of Uganda should be promoted to the extent that resources may permit.

Assessment of Proposals on National Language

4.25 There is a general commitment in the people's views to having a national language as an instrument for nation-building but views differ over which language. We believe that this is an issue that may not be solved by statistics but should be cautiously handled. Although views were expressed widely, the debate over national language was not controversial. But premature attempts to select a national language may well turn the issue into a major controversy.

4.26 The considered view of the Commission is that English should continue to be the official language. But at the same time resources should be availed to promote Ugandan languages in all areas with a view to allowing one of these languages to evolve into one or more national languages and possibly into an official language.

4.27 Recommendation

Major languages in Uganda should be promoted. In the course of time one or more of them will emerge as the National Language. English should remain the official language.

SECTION FOUR: OTHER PROPOSALS FOR NATION-BUILDING

Equitable Allocation of Resources Through Democratic Institutions

4.28 There are memoranda which recognise that without equitable allocation of resources through institutional infrastructures that promote democracy, there can be no successful nation-building process. Of course, this poses the "chicken and egg" argument, as to which must precede the other, nation-building or equitable allocation· of resources. But the memoranda simply suggest that there should be a conscious effort to put in place formal institutions sustained by a democratic civil culture which promote equitable allocation of resources. Some memoranda have attributed past political instability and violence to failures in this regard.

Assessment:

4.29 We agree that a nation where significant groups entertain perceived injustices and institutions not sustained by a civil culture cannot create an atmosphere for successful nation1 building. We recognise that there are memoranda which contain such demands which if granted may result in unbalanced allocation of resources. It should, then, be for the constitutional arrangements to be such that they work out a "balancing formula".

History, Culture and Tolerance

4.30 Some of the views received would give the impression that many Ugandans have little or nothing positive to say about their history since Independence. On the other hand many views recognise that Uganda is culturally diverse but that cultural diversities are not necessarily antagonistic to the process of nation-building. There is a call for a spirit of tolerance among Ugandan peoples.

4.31 Uganda's history has been variously interpreted by different individuals and groups depending on the interests served. Some see it as a history of violated formal constitutional arrangements, arbitrary rule, and unbalanced allocation of resources. For other groups, Uganda's history is a "history of politics of exclusion". There are memoranda which recommend that whilst Uganda's socio-economic and cultural diversities should be recognised, care should be taken to interpret Uganda's history in a manner that promotes national cohesion.

4.32 Views expressed in many memoranda recognise that our cultural diversities should be accepted and at the same time efforts should be made to identify residual cultures that can sustain a Ugandan community of peoples. Such recommendations for what might be termed "cultural engineering" include proposals for retaining "good" cultural aspects and discarding negative cultural aspects; encouraging Ugandan peoples to appreciate each others' cultures through cultural shows; "encouraging" inter-tribal marriages; developing a "national" dress; and developing attitudes which appreciate unity in diversity.

4.33 That some memoranda recommend a culture of tolerance is a reflection of the history of intolerance we have had especially since independence. Tolerance is a function of recognition on the part of individuals or groups that such conflicting interests as they have must be peacefully reconciled because ultimately it is in their mutual interest to live together.

Assessment:

4.34 We believe that encouraging reflection on our history has a vital functional role to play in nation-building since through it, values are imparted to promote national cohesion. Uganda's diverse cultural heritages and cultures should be nurtured and promoted. The sum total of these cultural heritages contribute to a Ugandan identity. Institutional structures should be put in place to promote a culture of tolerance and mutual appreciation.

Leadership

4.35 Very many memoranda have attributed many of Uganda's ills to bad leadership. Interpreted broadly, these memoranda do not confine themselves only to political leaders. There’s a general consensus that since independence there have been leadership crises at all levels. They have arisen from the arbitrariness with which leaders have exercised power at the extreme expense of the national interest. Leaders have been accused of living off resources under their trust. Virtually no effort has been made to live by example.

Assessment:

4.36 We recognise the concern in tile people's views about the leadership crisis since independence. The formal political, socio-economic and cultural institutions should be integrated through good leadership. A leadership ethos should be cultivated at all levels. The proposed Leadership Code of Conduct which we consider in Chapter Twenty should aim at realizing this objective.

Education

4.37 The nation-building process is ultimately determined by the education system in place for it is the skill and values imparted through it that may determine values that will sustain formal democratic institutions: the way resources are allocated, the values imparted through the language, the way history is taught, the way values of tolerance are imparted, what meaning is put to national myths and symbols and what kind of leadership may emerge. Thus, the battle for nation-building may be won or lost in the classroom, or, more broadly, through agencies for moulding a person into a good citizen.

4.38 In the memoranda there is a general consensus that the educational system should be so designed that it is available to all Ugandans. The constitution and human rights should be taught and skills imparted to enable citizens to master their own surroundings. Through a sound education system a national consensus can be promoted. One memorandum sums up the function of education thus: "Education should always aim at enabling all people to participate effectively and intelligently in a free and democratic society, promote knowledge of God and the dignity of human beings and enhance justice, love, unity, mutual understanding and tolerance among all people".

Assessment:

4.39 There is a general consensus that education is an integral part of the nation-building process and that it should be so designed that it promotes it.

National Symbols

4.40 The memoranda provide evidence that our people are generally aware of symbols that should denote their identity as Ugandans. Such symbols include the flag, a national anthem and national holidays. To enhance the nation-building process, support for these symbols should be promoted so that they are respected as symbols of patriotism.

4.41 People have suggested many common values, principles, common activities and new attitudes intended to develop a sense of belonging together as a nation, and a sense of patriotism. for our country. These 'suggestions, many of which are developed in, subsequent chapters should form the basis for our nation-state. They are summed up in the, directive principles of state policy which we recommend for inclusion in the draft Constitution.

Assessment:

4.42 The current Ugandan national symbols of the flag, national anthem and Independence Day are not under dispute but should be emphasized more, in schools and elsewhere, so as to strengthen the nation-building process. We recognise the great necessity for Uganda to emphasize whatever unites us as one people, and promotes freely the values that can strengthen nation-building.

Human Rights and Civic Competence

4.43 All memoranda agree that to promote nation-building, the individual citizen should be taken as the basic unit who should be entitled to the basic human rights. Effective operation of basic human rights entails the establishment of autonomous, and coherent civic organisations through which citizens can articulate their interests through legal structures and the mass media. It has been past violation of the basic human rights that has undermined our nation-building processes. There is general agreement that autonomous civic organisations and a free press are some of the basic conditions for promotion of human rights and therefore nation-building.

Assessment:

4.44 There is unanimity of views about human rights and a free press as integral aspects of nation-building.

The Family

4.45 In addition to the individual, another basic unit for promoting nation-building is the family. It is the basic unit for inculcating social values that may contribute to the nation building process. Memoranda make many recommendations on the subject ranging from the authority structure in the family, marital relations, paternal-maternal filial relations, the law related to protecting the family, family rights related to property, to the rights of children.

4.46 The basic message from many submissions is that constitutional provisions should be made to strengthen the family as the basic unit for nation-building.

4.47 Recommendation

(a) Provisions should be made for ensuring that resources are equitably allocated in order to wipe out perceived or real injustices entertained by some groups.

(b) The Constitution should nurtur and promote a culture of mutual appreciation and . tolerance at all/eve Is .

(c) Constitutional provisions should be made for promoting a positive ethos among leaders.

(d) Education is one of the critical instruments for nation-building and should be so constitutionally defined to assist in attaining its objective.

(e) Whilst values and symbols of Ugandan diverse. cultures should be respected, there should be respect for national symbols and efforts should be made to cultivate "national" values that may promote nation-building.

(f) Human rights and freedom of expression should be promoted and enshrined in the Constitution and made to enhance the nation-building process.

(g) Constitutional provisions, defining the family as one of the basic units for providing the nation-building process, should be made with particular regard to the sanctity and rights of the family, rights and obligations of children.

CHAPTER FIVE

NEED AND OBJECTIVES FOR THE NEW CONSTITUTION

5.1 The reasons for and objectives of the new Constitution discussed in this chapter are derived from a number of sources. They include the law establishing the Commission (Statute 5 of 1988); people's memoranda submitted to the Commission; and seminars and workshops organised all over the country on the new Constitution. The lessons of Uganda's history and the realities of the country's socio-economic background are a concrete.'source which must also necessarily influence views on the need for and aims of a new constitution.

5.2 The chapter is divided into four sections. The first two relate to the need for a new Constitution. The first analyses the people's views expressing scepticism or opposition to the constiti1uon-making exercise. The second analyses views on various aspects of the need for a new n<!tional Constitution, including the pervasive political and constitutionai instability-in Uganda, and the shortcomings in the past and present constitutional arrangements. Arising from these issues we consider a number of new situations and corresponding constitutional issues that have arisen from Uganda's experience since independence. The third section discusses the general objectives which should be pursued by a new Constitution. The final section discusses the national objectives and state policy directives which the Commission has developed in response to the people's demands that the Constitution provide the basis for setting future directions for Uganda ..

SECTION ONE: OPPOSITION TO AND SCEPTICISM ABOUT A NEW CONSTITUTION

5.3 In spite of the overwhelming support that developed for the constitution-making exercise, some opposition and scepticism were expressed, particularly in the early stages of the exercise. Some people did not find anything so fundamentally wrong with the 1967 Constitution that making a new one was warranted. They argued that the only problem has been lack of adequate and effective safeguards against violation of the' Constitution so that making a new one will not deal with the problem, for it will be open to violation also. They viewed the exercise as wasteful. Others argued for reinstatement of the independence constitution, which they still regard as the country's authentic Constitution, unilaterally and illegally abrogated by Obote in 1966.

5.4 Others argued that in fact the problems of Uganda are essentially political rather than constitutional and that it was therefore mere self-deception to imagine that by writing a new Constitution those problems will be resolved. Other views, while recoghising"that Uganda needs a new Constitution, argued that the time and circumstances meant the exercise should be delayed. They noted the fact that some parts of the country were still at war. Others argued that the NRM government did not have sufficient mandate for the exercise either because it was not elected 0r on the basis that it is a "military" government. There were even claims that the whole exercise was a gimmick as the government "had already made a Constitution and was only seeking legitimacy for it".

5.5 Although there is merit in some of the arguments, no convincing case against making a new Constitution has been presented. Indeed, the very fact that there is substantial support from different groups for both the independence Constitution and the 1967 Constitution implies that neither has sufficient general acceptance (or legitimAcy) to form the cou~try's constitutional base. And while it is correct that the country's, problems me more than constitotional, they will not be resolved without also resolving the present constitutional challenges. MQreover, the process of developing consensus on constitutional issues should itself contribute to processes of resolving other problems.

5.6 It may be true that the war in the North and North East did not initially proyide the ideal circumstances, and certainly to an extent has affected the exercise adversely. However, every part of the country, including the North and North-East, participated in the debate on the Constitution and enthusiastically responded by way of memoranda. Moreover, this exercise aims at providing lasting solutions to such situations of armed conflict by ensuring that they are made unnecessary in the future.

SECTION TWO: VIEWS ON THE NEED FOR A NEW CONSTITUTION

5.7 The people have articulated many concerns and demands that justify making a new Constitution. The concerns relate to the political, social and economic life of Uganda, and their demands arise out of a belief that a Constitution can, and the new Constitution should, contribute to resolution of the country's major political and socio-economic problems.

5.8 It should be stated, however, that while constitutions, written or unwritten, have always been an important" basis for organising human society and' useful legal devices in the resulution of fundamental problems of society, there are limits to what they can do. We must dispel any illusions that with the coming into force of the new Constitution, the problems of Uganda will thereby be automatically resolved. L1W and, therefore, the Constitution, functions within the concrete context of practical realities of a particular country. The extent of its role in shaping society depends upon the state of that society and the relationships between and among the existing political and socio-economic forces dominant therein.

5.9 Indeed, modern constitutions developed as a result of the relatively recent emergence of liberal democ;racy in Europe and were to some extent consequences of the victories of broader economic interests over the absolute and divine powers of medieval monarchies. That is why important characteristics of modern western constitutionalism include limitations on the exercise of political power and protection of individual liberty.

5.10 It is because the socio-economic and political realities of African countries differed from those of the western countries that African independence constitutions modelled on western constitutionalism could not survive for long. There was not the same balance of political and economic forces which had generated modern constitutional arrangements in European countries. It should be clear that while a Constitution can provide a basis and framework for transformation in society, in the final analysis what really counts is concrete political, economic and social realities in a particular society.

5.11 We nevertheless recognise the historic significance of the present constitution-making eJrereise. Indeed, we are confident that the people's enthusiasm and expectations are not

misplaced. Uganda is at the crossroads. On the one hand, the country is emerging from decades of turmoil and destruction. On the other, the present situation of relative freedom, tolerance, and political and economic awakening among Ugandans all provide the basis for hope for a more stable and prosperous future for the country. There is an opportunity to make a fresh beginning and establish anew constitutional foundations that may stand a better chance to last the test of time. Views from the people show that there is widespread awareness of the fact that we have a chance to appraise our historical experience, the concerns and aspirations of our people and the factors that have characterised and been responsible for the country's present political and economic malaise.

Instability

5.12 Political and constitutional instability has been the principal characteristic of Uganda's post - colonial history to the extent that by 1985 the very existence of Uganda as a state was threatened. This factor alone has been highlighted by the Commission's terms of reference ill Statute 5 of 1988 and in many memoranda from the people as justifying the development of a new Constitution.

5.13 Uganda has not had a consistent or viable system of governance since independence. We have drifted from a Westminster parliamentary system into civilian and military dictatorships. Coalition arrangements in the form of the UNLF and the present broad based movement, the NRM, have also been, and are being, tried. National institutions inherited at, or created after, independence have either degenerated or have broken down altogether as successive regimes rose and fell.

5.14 The country's socio-economic fabric suffered considerable destruction and disorientation and the peoples' lives were destabilized and devalued. The country lacked coherent direction.

5.15 The ordinary people are demanding an end to sudden and violent change of government and the consequent political, social and economic destabilization that has caused s(1 much suffering. They castigate the "fashion" of "going to the bush" to resolve political and constitutional problems which has resulted in terrible consequences to the ordinary people who get caught up in the conflicts. They demand effective mechanisms to be put in place to ensure orderly and peaceful transfer of power so that peoples' lives are not unduly disturbed.

5.16 The people have noted that one of the principal causes of instability is that past constitutions have not been honoured; that "power hungry politicians" faced with constitutional arrangements that did not fit or which Limited their designs or interests simply suspended or totally abrogated them. The people are demanding safeguards to ensure that those who wield power recognise, respect and uphold the supremacy of the Constitution.

Observations

5.17 On the basis of the preceding discussion, we draw some observations about the need for a new Constitution which have assisted us in our analysis in later chapters.

(a) Only by establishing the principle of constitutionalism can peace and progress be assured.

(b) We need a new Constitution to which people have sufficient commitment to enable it to effectively control political action, governments and governed and to domesticate major political and socio-economic crises.

Performance of Past and Present Constitutions

5.18 The instability just discussed suggests that successive constitutions have had inherent weaknesses which have made them unworkable. They have been unable to contain the political crises that the country has faced. In fact, to some extent, they contributed to those crises. On the other hand, there are positive aspects of our constitutional experience which may possibly contribute to a new Constitution.

The Independence Constitution of 1962:

5.19 The 1962 Constitution is important, first, because it ushered in independence, and second, because at the time it was made, it provided an acceptable compromise for all the parties that were involved in its negotiation.

5.20 On the other hand, so far as it was largely a response to immediate events and pressures, without adequate regard paid to long-term considerations, this constitution was destined to be short-lived. Issues or concerns of a long-term nature were paid little attention to by groups euphoric at the prospect of inheriting power from the colonial authority.

5.21 Narrow and sectional interests dominated the pre-independence constitutional processes. They included vested party or regional interests and groups with inherited privileges. The constitutional formula was a response to these historic interests, which then valued and honoured the Constitution only to the extent that their respective interests were served, as was clearly demonstrated by the events leading to the 1966 crisis. The mixed federal, semi-federal and unitary system of government which is the most distinguishing characteristic of the 1962 Constitution set up tensions which undermined its viability.

5.22 This arrangement appeared reasonable to many at the time, in that it reflected the unequal political position of the respective administrative regions (and the dominant groups that controlled them) resulting mainly from their respective historic relationships with the colonial power. It was also intended to counteract Buganda's secessionist demands, thereby assuring that Uganda would acquire independence as one united country. While this arrangement could perhaps be imposed under an authoritarian colonial regime which could manage the divisions it had created under a "divide-and-rule" strategy, with the departure of the outside force, all the jealousies, animosities and prejudices that had hitherto lain latent among Ugandans were let loose.

5.23. The adoption of the British Westminster model, with its dual executive (monarch's representative and prime minister), its division of power between government and opposition on a political party basis, and a strong independent judiciary, failed to take account of the fact

that Uganda was fundamentally different from the British society which had developed that system during centuries of struggle for greater democracy.

5.24 Yet in Uganda the democratic tradition 'was weak; the people had only just moved Ilnl1l the various kingly or chiefly systems to an extended period of colonial oppression. In those historic circumstances democracy had to be nurtured and built, rather than assumed, ;IS the independence Constitution did. The country was hardly a nation, and, unlike Britain, its under-developed socio-economic foundations were fragile. It is therefore not surprising that the system could not contain the antagonisms inherent in the "winner-take all" multiparty system. The "official opposition" and the multi-party system quickly dissolved and Parliament gradually became a mockery of the principles upon which it was based. The principle inherent in the Westminster system that the head of state is a largely ceremonial position while executive authority is actually exercised by an elected prime minister was unfamiliar and perhaps ran counter to popular perceptions equating leadership with power and authority rather than mere symbolism. In fact, as the head of state, the Kabaka, still commanded considerable authority in Buganda and perceived his assumption of the Presidency as enhancement of that authority, rather than as symbolic. Hence the constitutional arrangements for division of power contributed in no small measure to the 1966/67 political upheavals.

5.25 In addition the 1962 Constitution did not satisfactorily provide for human rights and their enforcement and for promotion of social justice beyond incorporating a Bill of Rights containing mainly civil and political rights. There was little that addressed the fragile and disadvantaged socio-economic conditions of the majority of Ugandans. The fact that the British government had sought to protect European and Asian minorities by assuring their citizenship rights and, therefore, their property rights only highlighted the lack of attention to the socio-economic problems of the majority.

5.26 Our analysis has assisted us to draw conclusions and develop principles relevant to the making of a new Constitution.

(a) The independence Constitution of 1962, while appreciated by some, is not likely to adequately respond to the present aspirations of Ugandans.

(b) There are certain principles from the 1962 Constitution which should guide the new Constitution:

(i) The principle that a good Constitution is a product of compromise which, albeit to a limited extent, shaped the independence Constitution, is an important guiding principle for the current process;

(i) The principle of decentralisation governance which underlies the "federal" arrangement established by the 1962 Constitution should guide the establishment of real democratic governance under the new Constitution; and

(iii) Human rights and social justice inadequately provided for in the 1962 Constitution must he central concerns and shape central components in the new constitutional order.

The 1967 *Republican Constitution:*

5.27 The 1967 Constitution also has inherent weaknesses and cannot provide a lasting formula for Uganda's problems. Its character was determined by the political events that had been building since 1964 which tilted the balance of power in favour of the Uganda Peoples' Congress (UPC) against the Kabaka Yekka, hitherto its ally and in favour of Obote as against Mutesa. The Constitution therefore has the shortcoming that it represents not so much an arrangement arrived at after compromise between diverse socio-political groups as a partisan consolidation of political power on the part of the victors in the 1966 crisis.

5.28 The 1967 Constitution is viewed by many people as having over-concentrated powers in a Presidency that was not directly elected and therefore not sufficiently accountable to the people. At the time, this concentration of power in the head of state and central government was justified on the grounds that demands of nation-building, social cohesion and economic development required a strong "father-figure" at the helm and undiluted central direction.

5.29 Our history since then has, however, discredited this view. Moreover recent global events have, as observed in Chapter Three *(Geo-Political and Socio-Economic Background),* demonstrated that authoritarianism and concentration of power, as opposed to democracy and decentralisation, tend to be short-lived solutions to problems. The consequences of inefficiency, corruption and sectarianism associated with the 1967 constitutional arrangements are very clear. In their memoranda and i- public debates, the people identified this problem and demanded change.

5.30 The 1967 Constitution also qualifies heavily the fundamental rights and freedoms of the individual thereby tending to negate. those rights and freedoms mainly by providing government with legal power to violate and abuse them. Moreover, as in the case of the independence Constitution the rights are not exhaustive, with little concern for social, economic and group rights.

Post-1967 constitutional amendments:

5.31 Although the successive 1971, 1979, 1985 and 1986 amendments to the 1967 Constitution were ushered in by events that were, to varying degrees, welcomed by sections of the people of Uganda, the amendments in fact marked, in different ways, stages in the deepening crisis in the country. Whatever positive innovations they may have introduced to the constitutional order, they all suffered from the disadvantage of being imposed after a *coup* or war and lacked popular legitimacy.

5.32 The 1967 Constitution, whether in its original or variously amended forms, cannot provide a basis for lasting stability and development. However, there are some aspects which should be taken into account in the new Constitution:

(a) The rationalizations of the executive, particularly the fusion of the presidency and the prime minister ship;

(b) The principle of broad-based power sharing both at the level of national government and in the form of popular participation in the Uganda National Liberation Front

(UNLF) government and the National Resistance Movement (NRM) government, which has been identified by many people as a mechanism that could end the endless power struggles that Uganda has experienced; and

(c) The provisions relating to the control of the armed forces, appended to Proclamation Legal Notice No.1 of 1986, which provide a basis on which the armed forces, which in the past have caused untold suffering, can be domesticated.

New Situations and Constitutional Issues

5.33 The accumulated historical experience of the past 30 years has given rise to new situations and constitutional issues that were either not addressed properly or not addressed at all by the past and present constitutions. The long history of brutal and destructive postcolonial governance, which has affected every part of the country, has brought into sharp focus the issue of human rights and social justice and has given rise to country-wide concerns and issues relating to exercise of power. They are issues which have tended to dominate the current constitutional debate.

5.34 People are deeply concerned about abuse of power and want mechanisms to check it. They are sensitive about who exercises power and want guarantees that future leaders will be legitimate both in terms of citizenship and ability to lead a modem country. The violation of individual basic rights and freedoms and victimization of social groups by successive post., colonial governments has given rise to strong demands for protection of the security and dignity of both the individual and the society. Political and social awakening and organisation has given rise to demands for equality and social justice by various interest groups.

5.35 At the same time, the fact that every Ugandan has, in different ways and at different times, shared in the post-independence suffering reinforces the possibilities of consolidating national unity. Indeed, while the present constitution-making process has generated demands for local autonomy and federation, there is no group or region threatening secession, unlike the period immediately preceding independence.

5.36 Economic mismanagement and corruption which have all but destroyed the economy have made the material conditions of the people important issues and in consequence have led to a focus on related questions. These include: the role of the state in managing the economy; the need for balanced internal regional economic development; the need for African regional co-operation; and concerns that the weak economic situation is compromising the country's national independence and sovereignty. Other issues and concerns have arisen out of more awareness of matters that are likely to affect the present and the future of the country. Such issues include population control, constitutional independent offices for enforcement of human rights and eradication of corruption and environmental protection.

5.37 The fact that these new developments have not been addressed by past and present constitutions is itself an important reason why there is need for a new Constitution.

SECTION THREE: THE OBJECTIVES OF THE NEW CONSTITUTION

5.38 The character and content of the new Constitution should reflect the objectives it is intended to achieve. Some objectives are, as stated earlier, derived in part from Statute 5 of 1988, especially as we found that all of these received strong support from the people. Others derive from the concerns, demands and aspirations of the people as expressed in their memoranda and from the lessons and legacies of the history of Uganda.

Establishing a Firm Basis for Peace and Stability

539 Given the country's turbulent and unstable history and the destructiveness associated with it, the overriding objective of the new constitution should be to create a firm foundation for peace and stability in the country. Systems, institutions and arrangements for governance under the constitution must be directed towards sustaining peace and stability without which development and orderly life are not possible.

Sovereignty of the People

5.40 We have already noted the fact that Uganda's political history has been characterised by dictatorship. Decision-making has hardly ever derived from, or actively involved, the people. They have been made marginal in matters that affect their destiny. Although in rhetoric, their sovereignty is constantly paid homage to, in practice the people have at best been passive onlookers. At worst they have been unsuspecting and helpless victims of misuse, abuse, neglect and suppression.

5.41 Furthermore, the country has lacked a firm social base for resolving national conflicts, as the people are not organically integrated into the decision-making processes of the country. This, in no small measure, has contributed to the endemic instability.

5.42 Accordingly the principle that the people are sovereign must form the bedrock for the political, economic and social life of the country. All authority should derive from the people. In the event that fundamental controversies, conflicts or issues arise that threaten the peace, cohesion or the very existence of Uganda, the people, rather than the gun, should be the arbiter. Such an· outcome can be achieved through means like a referendum or similar forms by which people can articulate their views. Attempts to resolve conflict or controversy by resort to violence are not only destructive but usually provide only short lived solutions.

5.43 However, if the people are to effectively exercise their sovereignty, they must be equipped and organised to do so. In this respect, they must be armed both with the necessary political and military training to handle public affairs as demanded in many memoranda. Further, they must be assisted to build economic capacity so that they are not unduly compromised because of want or deprivation.

5.44 It is also necessary that the Constitution is supreme over all governmental authority and that civilian political authority is supreme over the armed forces.

5.45 Sovereignty of the people should be manifested in the Constitution by making it the expression of the people's concerns, values, interests and demands. Accordingly, in preparing

the draft Constitution, the Commission has sought to ensure that it reflects the views of the people in its entirety, and that the principle of the people's sovereignty underlies the entire draft Constitution.

Consensus Politics as the Basis for Decision-making

5.46 As discussed in the previous chapter, Uganda should have common values and interests which should guide public policy and action and around which national institutions should be built. The country has experienced instability partly because of failure to build "common ground" derived from a synthesis of the values, interests and aspirations of the people of Uganda. The crises of the past 30 years have been as a result of one or other group wanting to exclude other groups or of groups feeling excluded or marginalized by the "system". If conflicts are to be a matter of the past, consensus should be the basis of resolution' of conflict and disagreements as much as possible. I

Democratic Governance

5.47 Uganda's traditions of governance are anything but democratic. Chapters two and four have discussed this subject. Subsequent chapters underlie the same reality. It will suffice here to note some important implications and consequences:

(a) Because of a weak democratic tradition arising from its pre-colonial and colonial formations, civil society is weak. Thirty years of independence far from strengthening it, marked its further fragmentation. National unity, respect for human rights, and political vigilance and participation of the population (all manifestations of a democratic society) are still lacking.

(b) Because of the weakness of civil society, the State has tended to marginalise the people, from the point of view not only of participation but also of benefit. Authoritarianism has been the dominant characteristic of our governments.

5.48 Democratic governance requires building a democratic society based on democratic behaviour in all sectors of society. It will not be enough merely to provide for the forms of a democratic government, without addressing the issue of its social and cultural roots. Unless full account is taken of the social, cultural, political and economic capacity of Uganda, whatever democratic arrangement we put in place may not be sustainable.

5.49 True, we should not compromise the universal democratic principles of governance, but whatever we establish should be appropriate, understandable, sustainable and effective. In this regard, the Commission has tried to be innovative, relevant and realistic. We must reiterate, however, that in c1esigni hg the system of governance what has been (and should· be) overriding&-sovereignty of the people.

Popular Participation in Governance: the Principle of Decentralisation of Government

5.50 In line with what we have said above, it is necessary both as a manifestation of the sovereignty of the people, and a logical progression of democratic development, that the people are organically and actively integrated into the system of government.

5.51 In practice, this is the most effective check against abuse of power. The present Resistance Councils and Committees (Re) system has been enthusiastically embraced by the citizens in large part because it empowers them, albeit in a limited way, against abuses they have suffered at the hands of government officials. Political and military training of the ordinary people has received popular support, principally because people have suffered at the hands of "powerful" gun-toting men.

5.52 Decentralisation and devolution of the government system should be one of the main principles underlying the new constitution. As such, decentralisation should as much as possible be implemented even at the village level, where the majority of the people still live.

Regular, Free and Fair Elections

5.53 However ideal popular democracy may be, in reality, representative democracy is inevitable. A major problem in Uganda has been that those in power have been reluctant to subject themselves to the electoral process. But even when elections have been held, they have been marred by corruption, fraud, manipulation of the masses and other forms of abuse. No effective machinery exists to satisfactorily check these abuses and ensure fairness and transparency. It is no wonder that people dissatisfied with the results have resorted to extralegal action. The controversial elections of 1980 in which there were allegations of rigging sparked the civil war of 1981 - 1986.

5.54 We endorse the demands of the people that:

(a) our leaders at all levels should be elected, and at known regular intervals; and

(b) the electoral process should be designed and implemented to minimize abuse so as to guard against electoral results being challenged on the basis that they were rigged. It is because of this concern that many people have expressed support for the "Lining up" voting system introduced by the NRM.

Public Accountability

5.55 In view of massive abuses of public office and public property to the detriment of the welfare of the people and the economy, it is necessary that the new Constitution establish mechanisms designed to ensure that public office is not misused and public property is protected. Public accountability needs to be institutionalized to ensure that the people either directly or through Parliament or other representative organs keep control over their leaders and in turn, the leaders develop respect for the people, in whose behalf and for whose service they hold office.

Separation of Powers and Checks and Balances as the Basis of Government

5.56 The principle of separation of powers was originally developed as a means of preventing tyranny, as concentrating power in one individual or organ of state tends to be corrupting and to result in dictatorship. One solution is to demarcate state organs and define their powers so that each organ operates within its designated sphere. At the same time, each organ keeps check upon and balances the others. Traditionally, the state has been regarded as comprising three main organs: the executive, legislature and judiciary.

5.57 In Uganda, the more effective implementation of this principle is essential because the executive has tended to be very powerful, and has either overridden or misused the other organs. We agree with the peoples' demands for:

(a) Controls on the presidency, first by ensuring direct election by the people, who should thereby have control over him or her and second, by putting effective checks on the executive powers he or she exercises;

(b) Controls to limit abuses of power by the armed forces;

(c) Strengthening of the role of the elected representatives of the people (Parliament) in governance;

(d) Guaranteeing the independence of the judiciary so that it effectively delivers justice in conflict resolution; and

(e) Provision for independent organs other than the three traditional organs of state which should help keep the three main organs in check by ensuring their accountability, such organs to include an Inspector General of Government, a human rights enforcement body and (In Auditor-General.

5.58 At the same time, however, the powers and freedom to operate of the various organs of government must not be so circumscribed that they are unable to perform their functions effectively. In the tin(J1 analysis, what the people are interested in is not simply principles, but more so that government translates those principles into reality and governs effectively and delivers services and goods to them.

Guaranteeing the Independence of the Judiciary and Establishing Effective Administration of Justice

5.59 The objective of guaranteeing the independence of the judiciary is intended to ensure effective maintenance of the rule of law and constitutionalism so that there is no necessity or justification to resort to extra-judicial means to solve problems.

5.60 The new Constitution should put in place a judicial system that is accessible, relevant and simple enough to effectively resolve conflicts in society, taking into account that Uganda is basically a simple and peasant society. The general system of administration of justice

must deliver and be seen to deliver justice according to the perceptions of the ordinary people of Uganda.

Protection of the Security and Dignity of the, Individual and Groups and of other Basic Human Rights

5.61 Uganda has had one of the worst records of any country in recent history of gross violation of human rights. This outcome occurred in spite of the fact that basic rights and freedoms were entrenched both in the 1962 and 1967 constitutions. These rights and freedoms could not be guaranteed or enjoyed mainly because the people were not organised and capable to defend themselves against regimes that despised them and yet which held sway over, them.

5.62 There were also shortcomings in the constitutions, for as we noted earlier, social rights of historically disadvantaged groups, and general socio-economic rights of the people were not addressed.

5.63 The new Constitution should provide for those rights that have not been included in past bills of rights. But more fundamentally it should provide for effective and appropriate enforcement mechanisms, including increasing civic awareness of human rights and development of institutional capacity to safeguard them.

Promotion and Consolidation of National Unity and National Consciousness

5.64 The people are also demanding that the new Constitution should consolidate our national unity and generally our consciousness of each other as the people of Uganda. The reality is that, to date, Uganda still remains largely a "territorial shell" with various ethnic groups living in it. As we noted in earlier chapters, the colonial regime encouraged and even accentuated the differences among the peoples of Uganda through their policy of divide and rule. Many post-colonial leaders also negatively exploited differences based on ethnicity, religion and other sectarian practices to acquire and retain power. Yet as we noted in Chapters Two, Three, and Four there is an objective social and historical basis and necessity for unity of the people of Uganda.

5.65 In creating new systems, institutions and arrangements, the new Constitution should aim to consolidate national unity. Specifically, the social diversity of our people, uneven development of the regions, and perceived or real monopolization of state power by one group or another, are all divisive legacies that the new Constitution should seek to resolve if it is to enhance national unity and consciousness and therefore stability, peace and development.

Promotion of Socio-economic Development

5.66 As we discussed in Chapter Three, Uganda is both one of the poorest countries of the world and one with tremendous economic potential. The new Constitution should seek to create a political and administrative framework that ensures maximum but sustainable utilization of the country's natural resources by the people and for their benefit.

5.67 Uganda cannot enjoy lasting political independence, social justice and democracy if its economy remains under-developed. Given the fact that the country has suffered massive economic mismanagement by government, mechanisms are needed to reduce the scope for emergence of incompetent and corrupt leadership and adoption of misguided or narrow objectives by governments.

5.68 While promoting development, the Constitution should provide safeguards to ensure that any development strategy takes into account the need for protection of the environment and for population control. Present development should not occur at the expense of future generations.

5.69 Development strategies should be sensitive to the necessity that the living standards of the people must be improved. This objective requires that growth should be people-centred and sustainable and that income and services are equitably distributed.

Guaranteeing National Independence and Territorial Integrity

5.70 In Chapter Three, we noted the geo-political vulnerability of Uganda's position, 'and its physical and economic weaknesses. The new Constitution, therefore, should encourage a political system that consolidates rather than weakens national strength; a defence capacity that ensures protection of Uganda's borders; and foreign relations that promote co-operation.

Fostering Regional, African and International Co-operation

5.71 The importance of foreign and international co-operation must also be recognized, because of a whole range of interdependent relations between nations in terms of economic activity, environmental needs, defence considerations and so on. As a result it is necessary that Uganda consolidates and improves the present arrangements for regional continental and international co-operation.

5.72 On the basis of people's views and our discussion in this section, we conclude that the new Constitution should pursue the following objectives:

(a) establishing a firm basis for peace and stability;

(b) sovereignty of the people;

(c) consensus politics as the basis for decision-making;

(d) a free and democratic system of governance;

(e) a decentralised system of governance based on popular participation;

(t) regular, free and fair elections;

(g) public accountability of leaders;

(h) separation of powers and checks and balances as the basis of government;

(i) independence of the judiciary and effective administration of justice;

CD protection of the security and dignity of the individual and groups and of other human rights;

(k) promotion and consolidation of national unity and national consciousness;

(l) promotion of socio-economic development;

(m) national independence and territorial integrity; and

(n) fostering regional, African and international co-operation.

SECTION FOUR:' NATIONAL OBJECTIVES AND DIRECTIVE PRINCIPLES OF STATE POLICY

5.73 The objectives discussed in the previous section could be termed the general objectives of the new Constitution. But in addition it is clear that the people want the Constitution itself to provide clear guidance about the future direction of Uganda. The guidance should be directed both to government and to the nation as a whole.

5.74 The whole of the draft Constitution prepared by the Commission is a distillation of the concerns" principles and proposals contained in the people's views. Together, the resulting recommendations made by the Commission provide a clear picture for Uganda's future development.

5.75 The recommendations in each of the following chapters of this report seek to achieve certain objectives derived from the people's views. Most of our recommendations for constitutional provisions envisage specific legally enforceable provisions. But there are other proposals of a more genenil but nevertheless vitally important nature which involve ideals and aspirations which cannot easily be made enforceable at the present time. For example, it is clear that the people want cultural, social and economic rights to be recognized by the Constitution. Some of these have been discussed in considerable detail in this report, especially economic rights and rights concerning the environment (see chapters Twenty Three, Twenty Four and Twenty Six). On the other hand it is also clear that these cannot all be realised and given full effect immediately. They should nevertheless stand as clear objectives which both government and people should strive to achieve over the years. There should be organs of government and independent public institutions to ensure that national policies are guided by these objectives.

5.76 As a result the draft Constitution we envisage would give direction on matters which most modern constitutions do not. We would seek to go further even than constitutions of countries such as India, Nigeria, Sri Lanka, Bangladesh and Papua New Guinea which provide for unenforceable (non-justifiable) policy directives which contain social and economic rights. We would expand the social and economic rights by adding what we would call cultural rights. We would do so by including them in a set of national objectives and directive

principles of state policy. We would also include other basic objectives of the nation, some of which should be given more concrete effect elsewhere in the Constitution. These include the sovereignty of the people, protection of the family, accountability of leaders to the people, and so on. The message this approach provides to government and the nation as a whole would be that they should not restrict themselves to the specific constitutional provisions, but should seek to pursue these objectives in every way possible. In this way the nation is provided with a broad future agenda based on a distillation of all the main principles and aspirations on which the Constitution is based.

5.77 The national objectives and directive principles of state policy will provide direction for the government and the nation as a whole. Governmental bodies should be guided by them in developing and implementing their policies. It will be particularly important that the judiciary is guided by them when interpreting or applying the Constitution. The citizens of Uganda should use them in determining priorities for the nation and their respective local governments.

5.78 Moreover, it shall be necessary that government takes its implementation responsibilities seriously. It should be required to make an annual report to the Parliament and to the people as to the steps taken to implement the objectives and principles. For the reasons discussed in chapter Twenty One *(Inspectorate of Government)* the Inspectorate of Government should be given the role of monitoring government compliance with the objectives and directive principles. Civil organisations should serve as pressure-groups for the steady and planned realization of those objectives by government, both national and local.

5.79 The inclusion of national objectives and directive principles of state policy in the new Constitution is a liberating innovation which is not found in our past constitutions. Several modern states, however, do have them. While they can set up tensions, especially between political rights on the one hand, and economic and social rights on the other, in general such policy directives have served useful purposes in giving clear vision of the direction in which the nation must develop. The recommendations on national objectives have clearly emanated from the people to serve as the ideals on which the nation should be built and developed.

5.80 Recommendation

(a) National objectives and directive principles of state policy which are consistent with the recommendations in the following chapters should be included in the draft Constitution in respect of the following matters:

(i) sovereignty of the people;
(ii)a state based on democratic principles;
(iii)national unity and stability;
(iv)national sovereignty, independence and territorial integrity.
(v) defence of fundamental rights and freedoms;
(vi) protection of the family;
(vii) protection of the rights of women;
(viii) *protection of rights of widows;*
(ix) protection of the disabled;
(x) protection of the aged;

(xi) promotion of a culture of constitutionalism;
(xii) accountability of leaders to the people;
(xiii) recognition of the right to development;
(xiv) involvement of the people in development;
(xv) positive role of the State in development;
(xvi) balanced and equitable development;
(xvii) sovereignty over natural resources;
(xviii) international and regional co-operation;
(xix) rights to education;
(xx) rights to health services;
(xxi) rights to clean and safe water;
(xxii) rights to decent housing;
(xxiii) provision of pensions and retirement benefits;
(xxiv) ensuring food security and nutrition;
(xxv) machinery to deal with natural disasters;
(xxvi) development of cultural and customary values;
(xxvii) preservation of Uganda's heritage;
(xxviii) protection of the environment;
(xxix) promotion of environmental awareness;
(xxx) sound foreign policy objectives; and
(xxxi) establishing duties of a citizen.

(b) *The national objectives and directive principles of state policy should guide all governmental bodies and citizens. In particular the judiciary should be guided by them in applying or interpreting the Constitution and other laws. Governmental bodies should be guided by them in their policy decisions.*

(c) *The Inspectorate of Govern me lit should monitor government's conformity with these objectives.*

(d) *The President should make an annual report to Parliament and to the people on steps taken to realise the national objectives and principles.*

(e) *Civil organisations should ensure that there is a planned and gradual realization of these objectives .*

CHAPTER SIX

CITIZENSHIP

6.1 This chapter is divided into four sections. The first discusses the notion and importance of citizenship, the relationship between citizenship and nationality, the origins of the problems related to citizenship from the colonial to the present time and the country's laws on citizenship and refugees. The second section considers the concerns and principles identified by people's views and the specific observations they contain. The third section analyses the major issues concerning citizenship and offers recommendations on each. The final section concentrates on the duties of citizens which can promote nation-building and democracy.

SECTION ONE: CONCEPT, IMPORTANCE, PROBLEMS AND LAWS ON CITIZENSIDP

The Concept

6.2 *Citizenship* is an essentially legal term, referring to a legal status acquired by an individual within a State and which confers certain rights and duties on that person. A person can become a citizen of a given country without belonging to any of the cultural or ethnic nationalities of that country. For example, the immigrants of Asian origin who were under British protection in Uganda were given the option of becoming Uganda citizens. Many of them took the opportunity to become Uganda citizens, having renounced Indian citizenship while remaining members of the Indian nationality in the broad sense.

Citizenship and nationality:

6.3 The difference between the concepts of *citizenship* and *nationality* was not clear in many of the people's views. *Nationality* can refer to a section of people of the same or similar race such as the Bantu, Luo or Arabs. In this sense, *nationality* is applied to people who, though scattered throughout the world and Citizens of different countries, enjoy a common ancestral origin, similar languages and cultures. *Nationality* may also be used to refer to large ethnic groups within a State. In this case it may be said Uganda is made up of several nationalities. But in practice, *nationality* is often used to mean exactly the same thing as *citizenship.*

Defective concept of citizenship:

6.4 From the views submitted it became clear that some Ugandans find it difficult to conceive the idea that a person from, for example, India or Germany or even any other African country can be considered truly as a Uganda· citizen. Such people believe that a ، citizen must be a *child of the soil,* whose ancestors have lived in Uganda from time immemorial. They tend to associate citizenship with the country where one's umbilical cord was buried and where one's ancestors lived, died and were buried. It becomes difficult for them to believe that a person may choose to leave his/her country of origin and become a

citizen of another country. In their view, such a person would be either a citizen of convenience or, for that matter, a temporary one.

Importance of the concept of citizenship:

6.5 Citizenship was recognised as a very important constitutional issue in the peoples views and was extensively, sometimes emotionally, discussed at all levels. This is DIA surprising, given the history of citizenship problems discussed a little later in this chapter.

6.6 Citizenship is a continual legal relationship between the citizen and the independent State. The fundamental basis of citizenship is membership of a sovereign political community. Citizenship is the major legal link between the individual and the State. It empowers the citizens to demand from the State both protection and promotion of all his/her rights. It involves both rights and corresponding duties on the individual and the State.

6.7 Citizenship is an important concept in international law and relations between countries. The right to diplomatic protection abroad is an essential attribute of citizenship. Each State has a responsibility to protect its citizens abroad. The citizen must pay allegiance to the State and the State reciprocates by offering him/her that protection. A State of which a person is a citizen may become responsible to another State for wrongful acts committed by its citizens in another country. A State has a duty to receive back its citizens when they are deported or expelled from another country or when they just decide to return to their country irrespective of the length of time they have stayed away. This has been the clear stand of Uganda in its negotiations with Rwanda on the return of Rwandese refugees. A State has a duty not to extradite its own citizens to another State except under treaty arrangements. Enemy status in time of war may sometimes be determined by the citizenship of a person. A State may also exercise jurisdiction in criminal or civil matters on the basis of citizenship. If a citizen has suffered injury or civil damages inflicted by another State, the State of which a person is a citizen may initiate proceedings against citizens of another State who are responsible for the injury or damage. The justification for exercising this jurisdiction is the right of the State to protect its citizens abroad, and if the State in which the injury or damage to a citizen has taken place, is unwilling or neglects to punish the offenders, the State of which the victim is a citizen is entitled to do so whenever the offenders come within its power.

6.8 The right of every person to citizenship of a particular State is internationally recognised with significant consequences for the State. Every country has an obligation to clearly state in its Constitution or laws who its citizens are and the clear procedure and requirements for foreigners who wish to become citizens. The State has clearly to give the ground on which a registered citizen may lose his/her citizenship. The international conventions oblige States not to deprive any person of his/her citizenship before such a person has acquired citizenship of another country. It is the obligation of every State not to create stateless persons on whatever grounds. One of the most serious consequences of dictatorship or political instability in a nation is to force numerous citizens to flee their country and become either refugees in another State or stateless persons.

6.9 It is also a serious matter for any State to refuse to accept genuine refugees and stateless persons within its territory. Numerous Ugandans have been forced to flee to other

countries as refugees since the political crisis of 1966 and have experienced the sufferings such forced status inflicts on the victims and their families. As a result, many of them have made strong recommendations on the need for peace and stability, respect for human rights, establishment of solid democracy and the cultivation of values of reconciliation to ensure that the past phenomenon of forcing citizens to flee their country comes to an end. They have also given important suggestions for treating humanely the refugees and stateless persons in Uganda.

The Origin and Nature of Uganda's Citizenship Problem

Pre-colonial:

6.10 In pre-colonial Uganda, the recognised political and cultural unit was the tribe, even where expansionist policies were pursued. Members of a given tribe or nation were easily identified by a common origin, language, culture, leadership and geographical confines. Each unit had developed institutional arrangements for assimilating foreigners from other tribes or nations whenever it so wished. The problem, therefore, of identifying members from non-
members of a given tribe or nation did not exist.

Colonial borders, identity and integration of migrating neighbours:

6.11 The boundaries of Uganda were first drawn in 1890 and based mainly on what was thought to be politically expedient to colonial powers at the time and what was seen as good common sense. Adjustments to the boundaries took place from time to time. Much of the present borders of Uganda came into being by the Anglo-German-Belgium Convention of 1910 under which a part of Rwanda which came to be known as Kigezi was transferred to Uganda. In 1914, however, new adjustments were made in the Northern part of Uganda which transferred some parts from the Sudan to Uganda and other parts from Uganda to the Sudan. Similar re-adjustments were concluded the following year in the Western part of Uganda transferring some areas from Uganda to former Belgian Congo (Zaire) and other areas from Congo to Uganda. The final adjustments took place in 1926 when parts of Uganda in the East were transferred to Kenya.

6.12 The geographical and political entity of Uganda, as created by the British administration, consisted of a multiplicity of people of different ancestral origins, languages, cultures and traditional leadership. It is in this larger colonial creation, that the identity of citizenship became a big problem. Each tribal group, assisted by the policy of indirect rule, continued to regard Ugandans of other ethnic groups as 'foreigners'. Only some people could make a clear difference between foreigners from other parts of Uganda and those from the neighbouring countries. It is only through ,the active process of nation-building that all Ugandans will be able to regard themselves as belonging to one and the same country, sharing the same citizenship and entitled to the same rights in any part of the country. One of the most important results of the constitutional debate since 1989 has been the clear and definitive acceptance by all Ugandans of the present borders of the country and the commitment to live together as one nation, without any separatist voices. This unanimity, which was lacking at the time of Uganda's independence in 1962, serves as a major pillar for building the future.

6.13 The inter-locked geographical position of Uganda made citizenship identification even more complicated. Uganda shares borders with five countries: Kenya, Sudan, Zaire, Rwanda, and Tanzania. These borders were drawn more for the convenience of colonial powers than of the African peoples. Many ethnic groups were sharply divided into parts, one part in Uganda, the other in the neighbouring country or countries. There were often no clear physical features to serve as natural borders but rather an artificial line in the mind and or the maps of the colonial powers. The African people at these borders could not and did not take them seriously. Many continued to behave as if such borders did not exist, although occasionally they received bitter reminders from colonial agents that borders had to be respected. The Masai continually defied the colonial borders until the authorities left ,them free to move within their ancestral area both in Kenya and Tanzania. On the Uganda borders, a similar but less conspicuous defiance continued as people of the same ethnicity moved in and out of Uganda to meet, visit, trade or permanently stay with relatives and tribesmen without much regard to the immigration laws of either country. Inter-marriages have continued across borders, and with each such marriage new relations formed which the borders could not adequately control. It is partly this situation which encouraged an "open door" attitude to immigration into Uganda, both during the colonial and post-independence period.

6.14 Furthermore, the colonial policies used in neighbouring countries proved to be more racially oppressive than those employed in Uganda. Kenya was' being developed as a Whiteman's country where European settlers were preferred and given the fertile highlands, leaving many Kenyans . landless. Several Kenyans migrated to Uganda in search of higher education, employment and permanent settlement. Southern Sudan under the British did not experience much development. Since many of its tribes shared a common or similar cultural heritage with several tribes in Northern Uganda, not a few migrated to Uganda prior to the exodus of refugees in the late 1950s. Belgian Congo, now Zaire, was under Belgian colonial administration. The rather oppressive treatment of Africans there, forced several of them to seek refuge and better opportunities in Uganda. Rwanda, Burundi and Tanganyika (now· Tanzania) were first under German rule until the end of the First World War. The former two were then administered by Belgium, and Tanganyika by Britain. Compared with these neighbouring countries, Uganda was endowed with more abundant natural resources (second only to Zaire), better climate and above all more humane treatment of Africans. These factors encouraged people to cross into Uganda and settle either temporarily or permanently but rarely through the official legal channels.

6.15 The stand initiated by Buganda in the 1910s and 1920s to oppose land being given to European settlers forced the British administration to encourage migrant labourers from the neighbouring countries, especially Rwanda, Burundi, and Zaire to come to Uganda and assist the local and Asian farmers to sustain and increase the growth of coffee, cotton, tea and sugar. Some came as seasonal or temporary workers but others came with an intention to stay. Those who chose to settle were easily assimilated into the local cultures, intermarriages took place and they saw no need to officially register as citizens. Such was the migration movement experienced in Uganda until the late 1950s.

Asian Immigrants:

6.16 The first Asian immigrants came to Uganda at the close of the last century as employees of the East African Railway. Many chose to settle permanently in Uganda. These

Were soon followed by relatives and new immigrants from India seeking to establish modern trade and commerce, and in the British view, to form the small middle class much needed for the development of the Protectorate. The Indian immigrants became British protected persons by virtue of belonging to the then British Empire. From the early 1960s, these immigrants were offered Ugandan citizenship as their longer term status and after independence, a number of them took that status. Some others applied for citizenship but were never registered, while the rest remained either Indian citizens or British Commonwealth citizens When Amin's 1972 expulsion order of Asians came into force, its psychological effect , and its enforcement affected all the three categories of Asian immigrants in Uganda few Ugandan onlookers, however, could distinguish the legal differences between An Asian citizen, an Asian stateless person and an Asian-British protected citizen.

Political refugees and illegal citizenship:

6.17 From 1959 severe political instability hit Rwanda, Burundi and Zaire resulting in thousands of refugees entering Uganda. Three years previously, refugees from Southern Sudan had begun to cross into Uganda in big numbers. Some of these refugees were straight away placed in special settlements, supervised by the office of the United Nations High commission for Refugees (UNHCR). Others used kinship relations to settle anywhere they found acceptance and means of livelihood. Refugees crossing into a neighbouring country rarely pass through the official borders and cannot, therefore, be duly registered. Refugees placed in special settlements cannot always be followed up if they choose to leave those settlements. Refugees naturally came with an intention of returning home once the situation which forced them to flee was no longer there. But in the cases of Rwanda and Sudan, decades came and went without the situation fundamentally changing in the countries of origin. As a result, many refugees started to regard Uganda as their permanent home and gradually became assimilated into the local population but without the official approval of the laws of the country. The children of such refugees, having been born in Uganda, have known only Uganda. Many of them believe they are Ugandans, despite the laws stating otherwise.

6.18 Uganda's political instability since 1966 added another dimension to the citizenship problem. Views have been expressed that the chaos was used by the agents of governments to give Ugandan passports of doubtful validity to some refugees and immigrants. Not a few refugees also used the opportunities provided and secured Ugandan citizenship through unofficial channels.

6.19 Soon after the December 1980 elections there was harassment of refugees and immigrants of Rwandese origin in the districts of Mbarara, and Bushenyi. This harassment may have led to several refugees both from the settlements and elsewhere to join the armed struggle against the then government.

6.20 When the constitutional debate was launched in 1989, both the remote and recent events just outlined influenced the views people submitted on citizenship and refugees.

Laws on Citizenship

6.21 Before examining the peoples' views and analysing proposals and recommendations, **it** is important to clarify the legal position on citizenship in Uganda since independence. We

therefore outline the provisions of the 1962 statute on the subject. But first it is helpful to clarify the general principles which normally underlie citizenship provisions in most Constitutions.

Acquisition and loss of citizenship - general principles:

6.22 The question of citizenship is determined by the laws of the State which is confirming or conferring citizenship. Other States will recognise citizenship laws of other countries in so far as they are consistent with international laws, conventions, principles and customs.

6.23 Citizenship may generally be acquired in the following circumstances:

(a) By *birth,* either according to the laws of the country where a person is born or according to the laws of citizenship of parents *(descent)* or both.

(b) By *naturalisation,* either by marriage, or *legitimization, adoption* or *registration.* A State has no obligation to grant citizenship to a person who has no genuine link or connection with that State.

(c) The inhabitants of a ceded territory assume the citizenship of the country to which the territory is ceded. When part of Rwanda was ceded to Uganda in 1910, its people became automatically citizens of Uganda.

6.24 A State may clearly provide in its laws the grounds on which citizenship may be lost, provided the grounds, are consistent with international laws and principles:

(a) A person may by deed signed and registered at a consulate or by declaration reject or renounce his or her previous citizenship and allegiance to that country and assume the citizenship of another country. The State of origin is obliged, however, not to withdraw a person's citizenship until that person has duly received citizenship of another country.

(b) A State may withdraw citizenship from registered citizens on grounds laid down in its citizenship laws. It has, however, an obligation not to create a stateless person. Withdrawal of citizenship may also occur where part of a country is conceded to another State, in which case former citizens automatically become citizens of the new country.

(c) Long residence abroad is never a sufficient or reasonable ground for removing of citizenship, As long as a citizen living abroad has not officially communicated renunciation of citizenship of his or her country of origin, that person continues to be regarded and treated as a citizen of his or her country of origin. A heavy burden of proof of loss of citizenship is placed on the person or State alleging the loss.

Citizenship under the 1962 *Constitution of Uganda:*

6.25 The provisions on citizenship are found in Articles 7 to 16, in Chapter Two, of the 1962 Constitution.

6.26 Article 7 dealt with the basic principles for determining who were to be citizens of an independent Uganda. Under Article 7(1) a person who was born in Uganda and who on 8th October 1962 was a citizen of the United Kingdom or its colonies or a British protected person, became a citizen of Uganda on 9th October, 1962, provided one or both of the parents of the person had been horn in Uganda. This would seem to incorporate, for example, a person of Indian, Kenyan, or other extraction whose parents or one of whose parents were born in Uganda. In addition, under Article 7(2) a person born outside Uganda but who on the 8th October, 1962 was a citizen of the United Kingdom or its Colonies or a British protected person qualified to become a citizen of Uganda if his or her father who was then dead would have qualified as a Ugandan citizen under Article 7 (1).

6.27 Article 8 dealt with registration as citizens of Uganda. The following classes of persons qualified to be registered on application to the relevant Ministry:-

(a) Any person who fell under the categories described in Article 7 but who had no parent born in Uganda;

(t») A woman married to either a Ugandan citizen or a person who would have qualified to become one under Article 7(1) whether dead or alive;

(c) A woman who married a person who had become a registered citizen of Uganda;

(d) A woman who divorced a Ugandan registered citizen or whose husband would have qualified to be a registered citizen, even if the registered citizen married to her had died;

(e) A person who was a citizen of the United Kingdom by naturalisation or registration under the British Nationality Act 1948.

(f) Under Article 11, a woman who married a Ugandan citizen after independence was also entitled to apply for registration.

6.28 Article 9 provided citizenship for all persons born in Uganda after independence. The only exceptions were persons whose parents were not citizens or were foreign members of the Diplomatic Corps, or a person whose father was an enemy alien and the birth occurs in a place under occupation by the enemy. In addition under Article 10, any person born outside Uganda after 8th October, 1962 became a citizen if at the time of his or her birth; the father was a citizen by birth or descent.

6.29 The issue of dual citizenship was dealt with under Article 12. It provided for loss of Uganda citizenship by any person holding citizenship of another country as soon as they became 21 years of age, unless they renounced that other citizenship within a prescribed time. To remain a Ugandan citizen, such a person was also required to take the Oath of Allegiance, and in cases of persons as citizens under Art. 7(2) had to make a declaration of intention, Willingness and capacity to reside in Uganda. A person over 21 years ceased to be a citizen of Uganda if he or she became a citizen of another country. Anyone who obtained Ugandan citizenship by registration under Articles 8 or 11 was required to renounce their previous citizenship.

6.30 Articles 13 and 14 provided for Ugandan citizens to also be citizens of the British Commonwealth, and for technical matters about how Ugandan law was to regard offences by other Commonwealth citizens committed in Commonwealth countries other than Uganda.

6.**31** Finally, Article 15 empowered Parliament to make laws about the acquisition of Ugandan citizenship, depriving citizenship from registered citizens, and renunciation of Ugandan citizenship.

Citizenship in the 1967 *Constitution of Uganda:*

6.32 The 1967 Constitution contained citizenship provisions which differed in some respects from those of 1962. They remain in force today. They are contained in Articles 4 to 7 of the Constitution.

6.33 Article 4 provides for the following persons to be Ugandan citizens:

(a) A person who was a citizen at the commencement of the 1967 Constitution;

(b) A person born after the 1967 Constitution commenced and whose parents or grandparents are or were citizens of Uganda;

(c) A person born outside Uganda who has one parent or grand parent who is or was a citizen of Uganda at the commencement of the 1967 Constitution;

(d) A person who is lawfully registered as a citizen of Uganda after the commencement of the 1967 Constitution, and anyone whose father is so registered;

(e) In addition, a woman who marries a Ugandan citizen is entitled to become a citizen on application, as is a woman whose husband could have qualified for citizenship but died before 8th October, 1962.

6.34 Dual citizenship is dealt with in Article 6, which provides that a person who becomes a citizen of Uganda by registration and is also a citizen of another country, ceases to be a Ugandan citizen after three months unless he or she renounces the citizenship of that other country, takes the oath of allegiance and registers a declaration as to intentions concerning residence. In addition, provision is made for children with dual citizenship to make a choice on reaching 21 years, for they lose Ugandan citizenship if they do not renounce the other citizenship by the time they are 22 years of age. Similarly, Ugandan citizenship is normally lost if some other citizenship is voluntarily acquired after a person turns 21.

6.35 Recognition is given to problems of persons who become Ugandan citizens, but whose original country of citizenship prohibits renunciation of its citizenship. Such a person, on seeking Ugandan citizenship, must make a declaration about that other citizenship.

6.36 As with the 1962 Constitution, Parliament is given power to make laws on acquisition, withdrawal and renunciation of citizenship. It can also legislate to provide preferential treatment to citizens of a Commonwealth country or of any other country with which Uganda is associated on a reciprocal basis.

Other legislation:

6.37 Parliament's power to legislate on citizenship has been exercised through the Uganda Citizenship Act of 1962, cap. 58. Among other things, it provides for a citizen of the Commonwealth or of any other African country with similar reciprocal provisions to be registered on application provided he or she satisfies the Minister that he or she is:-

(a) ordinarily resident in Uganda and has been so for at least five years;
(b) proficient in English, the official language, or in one of the local languages spoken in Uganda;
(c) person of good character i.e. has not been convicted of any criminal offence;'
(d) suitable to be a citizen of Uganda.

6.38 Applications for. Ugandan citizenship from anywhere other than Commonwealth or reciprocating African countries must satisfy the Minister as to: residence in Uganda for at least five years; knowledge of English or proficiency in a local Ugandan language; good character, and a settled intention of living in Uganda permanently.

SECTION TWO: PEOPLE'S OBSERVATIONS, CONCERNS AND PRINCIPLES AND COMMISSION'S RECOMMENDATIONS

6.39 Many views were submitted on a wide range of issues connected with citizenship. For convenience, we shall consider a range of general issues separately before we consider issues concerning refugees, immigrants and stateless persons.

Views on General Citizenship Issues

Qualifications for citizenship:

6.40 Views on citizenship tended to fall under three broad categories. The first was a narrow and restricted view of citizenship advanced by a minority of people. They wanted citizenship to be restricted to the indigenous people of Uganda. A citizen, in their view, is a person born of Ugandan indigenous parents, able to trace origins to the third or fourth generation of grandparents in Uganda and who can indicate ancestral burial grounds and land within Uganda. Strong advocates of this limited view were found in a few Districts, but it did not enjoy majority support anywhere.

6.41 The second category of viewpoint was supported by the majority. They wanted a definition of citizenship which meets international standards. They wanted, however, such a definition and the laws dealing with it to be so clear that ordinary people can understand them well and be able to identify who is or is not a citizen. Their aim here was to avoid continual accusations, allegations and conflicts on this issue. They wanted also to include *general instability* in the country as a legitimate reason for a person seeking refugee status elsewhere.

6.42 A sizeable number of views wanted citizenship to be even more liberally defined. This category wanted all people who have been in Uganda for a long time and wish to become citizens to be allowed to do so. They wanted Uganda to have a special link on this issue with

all the neighbouring countries. This view seeks to assist correcting the tensions and ill-effects of the arbitrary colonial borders.

6.43 The following are some of the concrete observations made in the submissions on who should be considered a citizen of Uganda or entitled to apply to' register as such:

(a) Indigenous Ugandans whose parents and grandparents (or even more generations) have belonged to tribes within Uganda before or since 1 Feb. 1962 when the borders were definitively fixed;

(b) Persons recognised as citizens by the 1962 and 1967 Constitutions, or lawfully registered as citizens since 1962, and also the children under 18 years of persons so registered;

(c) Persons born outside Uganda, one of whose parents (or father) is or was a citizen of Uganda at the time of the person's birth;

(d) Persons born in Uganda of a parent or parents who have lived in Uganda since 1962;

(e) A non-citizen who marries a Ugandan;

(t) Persons, born in Uganda, whose parents were not refugees or members of the Diplomatic service.

(g) Aliens who have stayed in Uganda for a long period and are well-behaved and wish to become Ugandan citizens;

6.44 Views from women emphasized the need to remove any provision which discriminates' against women citizens. For example, alien men who marry Ugandan women should be considered for automatic naturalisation once they have the intention of permanently residing in Uganda, in the same way an alien woman gains citizenship through a Ugandan husband.

Application for citizenship:

6.45 The majority views raised serious concerns and expressed dissatisfaction on the existing procedures for application and acquisition of citizenship, on the requirements which appear insufficient and the corruption and the inefficiency of the immigration office. They attribute much of the current and past confusion on citizenship on those aspects. Many suggestions were offered by way of remedy.

6.46 Some offered views on criteria for citizenship additional to those already discussed, some of which go beyond previous constitutional and legal requirements:

(a) The applicant must have come to Uganda legally and voluntarily, not as refugee or a person of a diplomatic status, unless that status is renounced.

(b) The applicant should have stayed in Uganda for at least five years, although some prefer ten years, but if he or she is married to a Ugandan, the minimum period can

be reduced to three. During that period, he or she should have resided in Uganda *continuously.*

(c) The applicant should have a skill or asset which is necessary for the development and welfare of Uganda and its people. He or she should be able to maintain himself/herself and family without any undue dependency on the State.

(d) The applicant should be an adult, having reached the age of either 18 or 21 years.

(e) She or he should be of good conduct, without criminal record and able to relate with other Ugandan residents amicably.

(t) He or she should be free from highly dangerous and communicable diseases.

(g) Each application should be recommended by a number of elders or resistance council leaders from the area where the applicant normally stays, where he or she works and where he or she has lived or worked for a reasonable period.

(h) The applicant should be fluent either in English, the official language, or in the national language if the country adopts one, or in anyone of the indigenous languages of Uganda.

(i) The applicant should give reasons supported by facts, for applying and clearly state his or her determination to respect the country's Constitution and laws and to love the country and be loyal to it at all times.

(j) The applicant should be willing to renounce his or her original citizenship.

6.47 Many suggestions were made about the body for processing applications including the following:

(a) Such body should be composed of persons of high moral integrity and national stature, willing to consider each case on its real merits.

(b) The process should start in the district where the applicant resides or works, and the recommendations of district leaders should be taken into serious consideration by the national body.

(c) There should be a time limit within which the applicant should be entitled to get the final decision on the application.

(d) There should be a reasonable and non-refundable fee to be paid by every applicant.

(e) On being registered as citizens, the names of candidates should be published in the Government Gazette and national papers and a ceremony performed for their taking the oath of allegiance to the country, its Constitution and laws and its people.

Grounds for loss of citizenship and consequences of its illegal acquisition

6.48 There was a consensus on the grounds for losing Ugandan citizenship which people wanted to include the following:

(a) acquisition of citizenship of another country;

(b) refusal to renounce original citizenship;

(c) illegal acquisition of Ugandan citizenship or provision of false information in the application forms;

(d) engagement in subversive activities such as treason;

(e) behaving in a manner that is detrimental to the welfare of the country, such as disloyalty to the host country, spying for another country, illegal possession of arms or prohibited dangerous drugs;

(f) criminal behaviour, harmful to the people in the country.

6.49 People want to see those who obtain or attempt to obtain Ugandan citizenship illegally being severely punished by law. Among the numerous suggestions made to this effect the following deserve attention:

(a) any inconsistency or falsehood in the applications should disqualify an applicant;

(b) any attempt by the applicant to bribe or canvass the elders, resistance council members. or the citizenship board members either personally or through others, should disqualify the candidate;

(c) any person who acquires or attempts to acquire citizenship illegally should be deported to his or her country of origin, or if he or she is a refugee or a stateless person should be given a chance to choose the country to go to, and the citizenship cancelled.

(d) such a person should be prosecuted under the law and given a severe sentence, once proved guilty.

Limitations on registered citizenship:

6.50 The majority of views emphasized two principles in this regard. There should be equality among citizens irrespective of the nature of citizenship. Registered citizens, however, should be de-registered on the serious ground explained above, and they should not be illegible to hold the post of President or Vice-President of the country.

Important Issues on Citizenship

6.51 The specific issues on which people wanted clarity and definition in the new Constitution included: establishing in clear terms who a citizen of Uganda is; dual citizenship,

national citizenship card; the right of every citizen to a passport; conditions for registration as a citizen authority to handle the processing and approval of registration and the duty of local leaders to register births, marriages and deaths.

Clarifying Citizenship Qualifications:

6.52 The recommendations on qualifications for citizenship are based on the following principles, which were ably articulated by people's submissions:

(a) Every person who was recognised as a citizen by the 1962 and 1967 Constitution must so remain, as a matter of natural justice and an obligation in our own laws and the international law on citizenship.

(b) Every person who became a Ugandan citizen by birth, descent or registration since the commencement of the 1967 Constitution must so remain.

(c) The problems and the confusion which have surrounded the issue of citizenship must be resolved once and for all by the new Constitution, so that the provisions are 'not changed from time to time to suit the regimes of the day.

(d) The new Constitution should not de-register any person's citizenship except in very special circumstances.

6.53 The Commission has Analysed the views and concerns of the people regarding the matter of making dear who a citizen of Uganda is in order dispel the misconception and misunderstanding on the subject as noted above. As stated in chapter three, the demarcation of Ugandan borders was finally completed as 1 February, 1926 .

6.54 This means that all those persons, communities and tribes who were within this geographical area known as Uganda and their offspring are known as indigenous Ugandans. This should be recognised and dearly stated in the laws of the country. These indigenous tribes and communities are as set out in schedule II of our draft Constitution.

6.55 Our following recommendations on who should be recognised as citizens are made in light of the above principles, the provisions of the 1962 and 1967 Constitutions and the submissions made to us.

6.56 Recommendation

The following persons should be recognised as citizens of Uganda:

(a) Every person who, on the commencement of this Constitution, is a citizen of Uganda by birth or by registration.

(b) Every person born in Uganda whose parents or grandparents are or were- members of any of the indigenous communities living within the borders of Uganda as of 1st February,' 1926 and the offspring of such person;

(c) Every person born in Uganda after the commencement of the new Constitution one of whose parents or grandparents is or was a citizen of Uganda;

(d) Every person born outside Uganda before or after the commencement of the new Constitution one of whose parents or grandparents is or was a citizen of Uganda at the time of his birth;

(e) Every person legally and lawfully registered as a citizen of Uganda after the commencement of the new Constitution.

(j) Every person who after the commencement of the new Constitution is entitled to apply for citizenship and is duly registered as a citizen;

(g) A woman married to a Ugandan citizen is entitled to become citizen on application;

(h) A man married to a Ugandan citizen is equally entitled to become citizen on application, provided he has an intention to permanently reside in Uganda;

(i) A person below the age of* 18*, whose father or mother acquires citizenship of Uganda by registration is by the virtue of that acquisition a citizen of Uganda;

(j) A person, below the age of* 18*, who at the coming into force of the new Constitution is a person whose father or mother acquired citizenship of Uganda under the law then in force, is a citizen by virtue of that acquisition.

6.57 Provision must also be included to enable Parliament to make further provision on acquisition of citizenship as required from time to time.

6.58 Recommendation

(a) Parliament may make provision for the acquisition of citizenship of Uganda by persons who are not eligible or who are no longer eligible to become citizens of Uganda under the provisions of the Constitution.

(b) Parliament may also make provision for giving preferential treatment to citizens of neighbouring countries and citizens of those countries which are members of any international organisation to which Uganda is a member or with which Uganda is in association, on a reciprocal basis.

Dual Citizenship:

6.59 The issue of dual citizenship mainly concerns two sets of circumstances. The first is whether Uganda should grant citizenship to a person who is already a citizen of another country and does not wish to renounce that previous citizenship. The second is whether Uganda should allow its citizen who has acquired citizenship of another country to remain

a citizen. Dual citizenship was very extensively debated and the people's views given on it were statistically Analysed.

Arguments in favour of dual citizenship:

6.60 Those in favour of dual citizenship advanced several arguments. It was said that dual citizenship would assist Ugandan citizens living abroad to acquire citizenship of their countries of residence while at the same time allowing them to remain Uganda citizens. This would enable them to contribute, from where they are, to the development of Uganda. It would also ensure that their children and grandchildren born abroad can enjoy dual citizenship. This argument was strongly voiced by many groups of Ugandans living abroad, both when they met with members of the Commission, and in the memoranda they submitted to the Commission.

6.61 Dual citizenship was also said to be advantageous to Uganda through attracting rich investors from abroad who would acquire Uganda citizenship without losing the citizenship of their countries of origin. It would act as a strong incentive to them and a guarantee that their investments in Uganda would be securely protected. It would also make them committed to the general welfare of Uganda. The best example cited is Israel which, through the acceptance of dual citizenship, has been able to develop rapidly through the support and investments of its dual citizens who live both abroad and in Israel.

6.62 Others argued that dual citizenship enables a woman or man who marries an alien to retain citizenship of her or his country of origin while acquiring the new citizenship of the spouse. A child born in a country where the laws allow citizenship by birth alone may be both a citizen of the parents' country and of the country of birth. Children with double citizenship are normally forced to renounce one citizenship after they come of age, if the country where they wish to settle does not allow dual citizenship.

6.63 Dual citizenship was also defended on the basis of self-interest motives. It enables a citizen to have an alternative home should there be war or unrest in one of the countries he or she is citizen of. Such a situation helps to reduce the undesired increase of numbers of refugees.

6.64 Dual citizenship, it is argued in some views, is the best way of fostering African brotherhood and co-operation among neighbouring African countries. It makes the crossing of borders quite easy, thus rectifying the errors of colonial separation of people of the same clan, tribe or ancestral (origin. Such arrangements may enhance the desired economic development in the region.

Arguments against dual citizenship:

6.65 Many views argued that dual citizenship creates possibilities of having citizens of divided loyalties which may be very harmful especially where there may be hostilities between the countries of which a person is a citizen. Dual citizens are not easily trusted especially in times of war or national crisis. They are seen as compromised citizens who live by convenience, able to move where peace and better opportunities are found and ready to run back where they were, once stability and development are guaranteed. Such persons

would often lack the spirit of patriotism and nation-building. As a result, very few countries accept dual citizenship. Uganda should also reject it to avoid the problems associated with it.

6.66 Others argue that dual citizenship can easily compromise the sovereignty of the majority of people who have only a single citizenship. The minority with dual citizenship, whose aims and ideals may not fully agree with those of the majority, could assume political and economic control of the country to the advantage of the second country or countries of which they are also citizens. This would mainly occur if the people with dual citizenship are the rich investors with strong economic interests abroad.

6.67 It was also suggested that dual citizenship could compromise the security of the State especially in Africa where because of poverty, many people could be bribed to support a detrimental system or programme. People could apply for dual citizenship for the wrong motives of spying, undermining and causing instability in the country. The comparison of Uganda with Israel in this respect is misconceived because Israel has a common and powerful link of ideology which keeps all its dual citizens united wherever they are for the good of Israel. Such ideology does not exist in Uganda.

Assessment:

6.68 The Commission acknowledges that there are powerful arguments on both sides. It was assisted in its consideration of the controversy by its statistical analysis of views on the issue, which clearly indicated almost a unanimity of views at all levels against dual citizenship.

6.69 Recommendation

The new Constitution should reject dual citizenship.

National Citizenship Card

6.70 Numerous views discussed the need to have a clear method of easy and formal proof of identity for all Ugandan citizens. This need has partly arisen from the bitter experiences of past decades during which road-blocks which demanded identity cards were the order of the day. It would be one of (he ways of easily identifying a citizen from a non-citizen. The main reasons given in support of this view are:

(a) A national identity card would simplify applications for passports and would serve as an official document in the banking and other institutions and may incidentally lessen the acute demand for passports which are now needed as official testimonials for many kinds of transactions.

(b) It would effectively control entry of illegal immigrants into the country.

(c) It would encourage an efficient system of proper registration of births and deaths throughout the country, thus assisting the monitoring of population growth and development

(d) There was unanimity in favour of such a card in the people's views.

6.71 Recommendation

A national citizenship card should be instituted and issued under law to every Ugandan citizen as formal proof of identity.

The Right of Every Citizen to a Passport

6.72 The right of every Ugandan citizen to be issued with a passport whenever h~ or she applies for it has been extensively argued at all levels throughout the constitutional debate. A clear consensus has been obtained on the issue and the following are the main reasons given:

(a) The right to a passport is essentially linked to the freedom of movement within and outside the country as a citizen may wish, a freedom which should be constitutionally guaranteed.

(b) During the many years of political upheavals in Uganda, some people who were being persecuted by past regimes failed to escape from the country due to the intricate bureaucracy in getting a passport and not a few of them were murdered or tortured as a result.

(c) Likewise because of long delays and gross corruption within the passport control office many people who wished to obtain medical treatment abroad met untimely death before they could be issued with passports.

(d) Many Ugandan students abroad who needed renewal of passports got stranded there and lost opportunities due to lack of co-operation with the passport office.

(e) Ugandans are shocked at the extent of corruption, inefficiency and maladministration within the passport control office.

(f) People have also criticized the over-centralisation of the passport control office within the Capital. Numerous problems have been endured by people coming from distant corners of the country to process their passports with procedures taking several months or years.

6.73 Recommendation

(a) ***Every Ugandan citizen should have a right to a passport to move freely out of and enter Uganda as he or she wishes.***

(b) ***The process of issuing passports should be simplified*** **so** ***as to cater for all Ugandans without any discrimination.***

(c) ***The passport control office should be decentralized to the districts for easy access and speedy delivery.***

(d) Corruption and inefficiency should be thoroughly eliminated from the passport control offices.

(e) The information concerning application for passports and the forms for new or renewal of passports should be made available in the languages the majority of people understand.

Conditions and Requirements for Obtaining Citizenship by Registration

6.74 This issue was extensively discussed. The major principles suggested to guide registration included the following:-

(a) Applicants for registration should he recommended by leaders and elders who know them well and who can certify to their character, non-criminal record and development activities.

(b) Applicants should be of an adult age (some suggesting 18 and others 21 years), able to make decisions on their own.

(c) For their smooth integration in society they should be fluent in at least one of the languages spoken in Uganda.

(d) Above all they should be law abiding, peace-lovers and loyal to the country.

6.75 The Commission notes that in respect of age limit, eighteen years is to be the voting age, and so may be the appropriate limit here. As to the minimum period of residence in the country before a person can apply for registration, it has been put at 5 years by the majority of views.

6.76 Recommendation

(a) The minimum age for application for registration as a citizen should be eighteen years of age.

(b) The minimum period of continual residence in Uganda before a non-citizen can apply for registration should be five years.

(c) The applicant should be able to speak and understand either the official language or the national language or one of the indigenous languages in the country.

(d) An applicant for registration should be:

- ***(i) Of good character, law-abiding, co-operative with local people;***
- ***(ii) Of sound mind; and***
- ***(iii) Able to contribute to the development of self, family and the nation.***

(e) ***Any person, who has been proved guilty of treason or has a criminal record or has behaved in a manner which is detrimental to the interest of Uganda should not be granted registered citizenship.***

(j) ***The candidate applying for citizenship should have the recommendation and signatures from at least 5 members of the resistance council I executive (RC 1) where he or she resides and where he or she works.***

(g) ***On being granted citizenship the applicant should make an oath of allegiance to the country, its Constitution and laws.***

Citizenship for Husbands, Wives and Adopted Children

6.77 Many views, especially from women and women organisations, have objected to the discrimination in past and current laws whereby there is no provision for easy granting of citizenship to foreign husbands married to Ugandan wives whereas there is for foreign wives married to a Ugandan male. The reasons for such discrimination appears to have been the "male" attitude which believed that rarely a foreign husband would renounce his citizenship in order to take up the citizenship of his wife's country.

6.78 Recommendation

(a) ***The same laws and procedures through which a foreign woman married to a Ugandan husband receives citizenship on application should apply to a foreign man married to a Ugandan wife.***

(b) ***Similarly a foreign child legally adopted by a Ugandan guardian or guardians shall be granted citizenship automatically when he or she reaches the age of 18.***

The Body to Process and Approve Applications for Citizenship

6.79 The qualities necessary for the body which deals with the approval of citizenship applications should according to people's views, include the following:

(a) Impartiality and attention to justice implications in the exercise of its functions;

(b) Authority and respect which are nationally recognised;

(c) Efficiency, accuracy and necessary speed;

(d) Ability to judge cases contravening immigration laws;

(e) Accessibility to people without unnecessary bureaucracy.

6.80 Four alternatives for this body have been considered: The President of the country; Parliament or its committee; the Ministry of Internal Affairs, as it is now; an. independent body appointed by the President and responsible to Parliament. The majority of views were

dissatisfied with the present arrangement. The President of the country cannot get directly involved in the day-in-day affairs of immigration and approval of citizenship. To place this responsibility to a committee of Parliament appeared unrealistic. The Commission, therefore, supports an independent body which is responsible to Parliament.

6.81 Recommendation

(a) A body to he known as the National Citizenship and Immigration Board should be established for the processing and approval of registration of citizenship applications and control of immigration.

(b) The Board should consist of not less than seven members known for their high integrity and administrative skills. They should be appointed by the President for a term of five years which can be renewed. The Chairman should be an outstanding Ugandan with proven experience in public affairs and the Chief Immigration Officer should be secretary to the board.

(c) The duties of the board should include among others:

(i) Registration and issue of national identity cards;
(ii) Issuing of passports and other travel documents;
(iii) Consideration and approval of applications for registration of citizens;
(iv) De-registration of citizens on the grounds outlined in the Constitution;
(v) Decentralisation of the duties of the Board to the districts and the overall supervision of the same;
(vi) Identification of laws on immigration and refugees which need revision in accordance with the new Constitution;
(vii) Putting a stop to the "open door" policy on immigration and devising ways of identifying refugees and immigrants in the country;
(viii) As a matter of urgency, to explain the policy on refugees and immigrants who may be entitled by this Constitution to citizenship on application.

Education

6.82 In order to clarify adequately the issue of citizenship it is important that people are given proper education on it. Such education should make people know the differences between a citizen by birth or descent and by registration; a refugee and immigrant; and the rights each one should enjoy and the limitation, if any, imposed by law on each category.

6.83 Recommendation

One of the duties of the state should be the education of all Ugandans as the meaning of citizenship and related issues as found in our law and the international laws and conventions.

SECTION THREE: VIEWS ON REFUGEES, STATELESS PERSONS AND IMMIGRANTS AND COMMISSION'S RECOMMENDATIONS

Refugees

6.84 Before considering the people's views on these important issues, it is necessary first to deal with the international dimensions of the issues. Of particular importance is the role of the United Nations and the position under international law.

The United Nations body for refugees:

6.85 The United Nations (UN) in 1946 laid down principles for humane treatment of refugees by establishing the International Refugee Organisation (IRO) which was charged with the task of protecting and resettling refugees, mainly in Europe after the Second World War. This Agency was meant to be temporary but the refugees problem has proved to be rather durable. In 1951 the United Nations High Commission for Refugees (UNHCR) was set up, again on a temporary basis, though it still continues to exist still. The task of the UNHCR is to initiate co-operation with governments for the protection of refugees wherever they are to be found in the world. It is a non-political Agency, meant to carry out it~ humanitarian activities of protecting and helping refugees in collaboration with the host country. Its function is not only to protect refugees but also to find durable solutions to their problems and to facilitate their return home once the threat to their safety is no longer there. UNHCR also ensures that the host c0untries treat refugees according to internationally accepted standards and protects them in the enjoyment of their basic fundamental rights. Refugees should never be forcibly returned to the country from which they escaped.

6.86 The UNHCR uses a definition of a refugee as being:

> "a person who is outside the country of his nationality or if he has no nationality, the country of his former habitual residence because he has or had well founded fear of persecution by reason of his race, religion, nationality or political opinion and is unable, or, because of such fear, is unwilling to avail himself of the protection of the Government of the country of his nationality".

6.87 The UN provisions which deal with the status of refugees and how refugees should be treated by the host countries are contained in the Conventions of 1951 and the Protocol of 1967. Uganda is a signatory to the 1951 Geneva Convention on Refugees, to the UN Protocol of 1967 and to the Organisation of African Unity (OAU) Convention on Refugees and African Charter on Human and People's Rights of 1987.

The Law on Refugees:

6.88 The law governing refugees in Uganda is contained in the *Control of Alien Refugees Act, Cap.* 64, a law passed in the late colonial period. Under that Act, a refugee is:

(a) Any alien being an African of the Batutsi tribe ordinarily resident in Rwanda who entered Uganda between the 1st of November, 1959 and the 10th of July 1960;

(b) Any alien who enters or has entered Uganda from Rwanda, Burundi or territories formerly comprising the Belgian Congo on or after 10th July 1960; and

(c) Any alien who enters or has entered Uganda from the Republic of the Sudan on or after 20th day of December 1960.

6.89 From the above Act it would appear that any Rwandese, Burundese or Sudanese who entered Uganda from the dates stated above to the present day would qualify as a refugee. Such definition of refugee would be very much wider than that of the UN Conventions.

6.90 Recommendation

Uganda's laws Oil Refugees should be amended to correspond to the UN Definition of a refugee and also to include peoples from other countries ill addition to those from Rwanda, Burundi, Zaire and Sudan.

Search for a lasting solution:

6.91 The UNHCR office in Kampala with other bodies interested in the refugee problem have advised government in recent years to review the law relating to citizenship. The main argument was that most of the refugees had lived in Uganda for a very long time and lost meaningful contact with their countries of origin. A plan of action regarding refugees, especially those from Rwanda was formulated by the UNHCR office in Kampala. Four options were examined. The first was voluntary repatriation to the country of origin. The second was to naturalise refugees on application. The third was to provide for a blanket or omnibus" naturalisation, through automatic grant of citizenship to all refugees, as was done in Tanzania. The fourth was repatriation to another country.

6.92 The first option was wholly supported by the Ugandan government as the best solution and has been encouraged ever .since. The naturalisation option was considered reasonable on the humanitarian basis for those refugees who have lived in Uganda for a very long time. The "Blanket" naturalisation did not find much sympathy since it would cover people who were not genuine refugees, and those who have no intention of living permanently in Uganda. The option of repatriation to another country was found to be undesirable and irreconcilable with the international conventions on refugees to which Uganda is a signatory.

People's concerns and observations on refugees:

6.93 People's concerns on refugees can be categorized as legal, political, economic, and relating to land, as follows:

(a) The legal concerns are mainly on the definition of refugees being too wide, thereby making any meaningful control of numbers of refugees impossible.

(b) The political concerns are principally directed against past regimes which from 1971 started to recruit non-Ugandans in the army and in other security services, offer them political posts and high positions in the Civil Service.

(c) The economic concerns are based on the scarcity of employment opportunities in Uganda. In such situation people expect preference to be given to Uganda' citizens in allocation of jobs and other economic incentives.

(d) The concern on land has been voiced by the people in those areas where large settlements of refugees have existed since the late 1950s. The ever-increasing numbers of refugees in these settlements and the increase of their cattle has resulted in land encroachments and constant friction between refugees and local residents.

6.94 A large majority of submissions has been sympathetic to refugees, their plight, doubts about their future and the future of their children. Refugees should be treated humanely and their human rights respected and understood. They should not be forced out of the country against their will nor should they be repatriated as long as they fear for their lives in their countries of origi n. People condemned the practice among some African countries where refugees have occasionally been betrayed by the leaders and abducted and sent home to face prosecution. What people want to see is the peaceful solution to the refugee problem. Such a solution can only come from the co-operation of the country of origin, the country of residence, the UNHCR and the refugees themselves. The root causes of the refugee phenomenon should be eradicated from the African countries. Among the specific observations, the following deserve special mention as an indication of the people's attitude to, and views on, possible solutions to the refugee problem:

(a) Records of refugees who are in Uganda should be strictly maintained. This will, assist to find the best plan of action for them. At the moment the only registered refugees are those under the care of the UNHCR. Other refugees scattered through the country and who have never registered with the UNHCR or whose application for such registration was not accepted are not adequately catered for.

(b) Refugees should be treated in accordance with the UN Conventions and the African Charter on Human and Peoples Rights. They should be able to freely associate for the betterment of their situation. It is the responsibility of both the government and the UNHCR to educate the population on the rights of refugees and the best ways to assist and co-operate with them.

(c) Uganda should encourage governments of the countries from where refugees originate to do whatever is possible to resolve their problems and facilitate the return of their people from exile.

(d) Refugees, however, should never be allowed to use Uganda as a base for attacking their countries of origin nor should Uganda aid them in such plans.

(e) Many people thought that political refugees should be placed in special settlements where they should be reasonably restricted for their own safety and in the interests of maintenance of peaceful neighbourliness with their countries of origin.

(f) Refugees with special skills for the development of Uganda, should be permitted to be employed but not in the Army, other security organs, sensitive posts in the public service and in important political offices. This view is formed from the sad events

since 1971 when non-Ugandans began to be recruited in the Army and Intelligence Organisation to oppress the citizens. Not a few of them. held very high posts in the civil service and even assumed key political positions in the country.

(g) Given an acute scarcity of employment opportunities, a citizen with the same or similar competence and qualities should' have a preferential treatment in the allocation of jobs.

(h) The status of refugees should be regularly reviewed by Parliament to determine the action to take in case some refugees desire to become Uganda citizens.

(i) Many of the people's views were against acceptance of "economic" refugees unless such people come as legally registered immigrants.

(j) Refugees should live amicably with the local people and contribute to the maintenance of law and order, peace and stability, nation-building and development.

Stateless persons:

6.95 Article 15 of the *Universal Declaration of Human Rights* (1948) clearly states that "everyone has a right to a nationality", in the sense of citizenship, and that "no one shall be arbitrarily deprived of his or her nationality". Nevertheless, persons may become stateless due to the following or similar situations:

(a) Cl1anges in domestic citizenship laws which may disqualify persons who were previously citizens;

(b) changes of sovereignty over a country or territory which may unjustly force indigenous citizens to be driven out and reduced to the status of stateless persons;

(c) denationalization or withdrawal of citizenship by the State which had granted it.

6.96 Following the creation of the State of Israel many Palestinians were reduced to the status of being stateless. Here in Uganda by 1972 there were about 20,000 Asians who were stateless, due to the failure of the post-independence governments either to accept or reject their applications for Uganda citizenship. Some children of refugees in Uganda, as will be discussed in the next section, may, in a broad sense, be considered as stateless. There has been also an attitude of mind among some Ugandans which tends to reduce some people living at the borders of Uganda to a status of stateless people. These people, especially in the case of Banyarwanda of Kisom in Uganda, are regarded by some people as Rwandese citizens, when in Rwanda they are known to be full Ugandans.

6.97 International conventions impose duties on States to regard citizenship most seriously and to avoid any action or policy which would create stateless persons. States are required to consider conferring their citizenship on stateless persons living within their borders. They are also urged to allow them the use of special travel documents and give them employment whenever possible.

6.98 Recommendation

(a) The new laws of Uganda should give a permanent solution to the stateless persons who may be found in the country.

(b) People must be fully educated to desist from considering and suspecting Uganda citizens to be foreigners and from making any derogatory remarks to that effect.

(c) The attitude among some Ugandans which marginalises Ugandan citizens who live at the borders and share a cultural heritage with tribes across the borders .should be fully eliminated by education.

(d) Ugandans of Rwandese origin and culture have the same right to their language and culture within Uganda as any other indigenous tribe of Uganda.

Aliens/immigrants:

6.99 The major concern of the people on aliens is that they should enter Uganda legally and lawfully. They should be registered as aliens and offered clear conditions for their stay and work. Their rights must be protected and they should respect the rights of the Citizens.

6.**100 Recommendation**

(a) Uganda, just like all other countries, is bound to admit aliens in accordance with the laws and conditions set for admission.

(b) An alien should come to Uganda legally and lawfully and be duly registered as such at the border entry points.

(c) An alien should be subject to the Constitution and laws of Uganda. Uganda has the right to reserve certain rights, such as voting, ownership of land, etc, to citizens only.

(d) Aliens have an obligation to pay all taxes unless they are in the diplomatic service.

(e) Aliens should be exempted from service in the Armed Forces. During war, however, they can temporarily be co-opted to serve in the local police force.

(f) An alien has a right of protection by his or her national State, although the latter is not duty bound (o exercise it.

(g) An alien's vested rights should be protected by his or her country of residence. This, however, does not prevent Uganda from passing laws which meet the international standards, but give special advantages to the citizens.

(h) An alien owes temporary allegiance and obedience to the state of Uganda and may be charged with treason.

(i) *A State in which an alien resides should have the power to expel or deport him/her. The grounds for such action, however, and the manner in which it is done must not only be just and humane but also seen to be so.*

(j) *An alien should not be deported to a country where his or her person or freedom would be endangered because of his or her race, religion, nationality, political views or other grounds.*

Refugees Who Have Stayed Long in Uganda:

6.101 Views have been submitted on all aspects of the refugee problem. The question of whether refugees who have stayed long in Uganda and wish to become Ugandans should be granted automatic citizenship on application has been widely discussed. The reasons in support of their being granted automatic citizenship are:

(a) Many refugees came to Uganda in the late 1950s or the early 1960s expecting to return home soon. As the home situation did not radically change, they settled permanently here and began to regard Uganda as their country.

(b) Many children of these refugees have been born in Uganda. They know no other country but this one. They want to become Ugandan citizens.

(c) Among the children of refugees who have been longest here, there are some who may, in the broad sense, be classified as "Stateless persons". They are born here and their refugee parents died here. These people can claim, only in theory, their parent's citizenship on the grounds of descent. They are neither known nor their parents remembered in their countries of origin. In Uganda, however, they continue to be classified as refugees.

6.102 The people who were opposed to automatic grant of citizenship to long-standing refugees advanced the following arguments:

(a) Land in Uganda is gradually becoming scarce. It remains the same while the population annually increases. It is the duty of the State to reserve and develop it for present and future generations of citizens.

(b) Granting citizenship to one category of refugees may create an impression among all refugees that if they remain long here, they will also be granted the same status. Instead of planning to return to their countries of origin, they may simply choose to stay, even when political stability has been achieved in their home countries.

(c) Several views expressed a feeling that many of the so-called refugees were simply economic refugees who are not covered in the UN definition of a genuine refugee.

(d) A minority of views tended to exaggerate and generalise the negative role played by a few refugees in the past dictatorial regimes. It was on the basis of that experience that they did not wish to see refugees automatically granted citizenship.

6.103 The views submitted on this issue were statistically Analysed and the majority support grant of citizenship on application to those refugees who have stayed in Uganda for a minimum of 20 years and who wish to become Ugandan citizens.

6.104 Recommendation

(a) Refugees who have lived in Uganda for a minimum of 20 years and wish to become Ugandan citizens, should on application, be granted citizenship.

(b) Every person who has legally and voluntarily migrated to Uganda. and has been living in Uganda continually for at least the last 20 years should, on application, be granted citizenship.

(c) For the smooth implementation of this process all non-citizens of the above two categories should be required to register with their RC.I and RC.2 Chairmen, and should receive the registration application forms from the RC.2 Chairman.

(d) Government may require each applicant for registration to be recommended by not less than 5 members of the RCI where the applicant was born and brought up.

(e) Government should ensure that this exercise is undertaken efficiently and completed within one year after the commencement of the new Constitution.

(j) In order to put into effect the recommendations above, it is necessary that government amends the Control of Alien Refugees Act Cap. 64, *which carries provisions to the effect t/wt the period spent in Uganda. as refugee does not constitute "residence" in Uganda.*

(g) Once registered as citizens, those refugees living in special settlements should be free to settle anywhere in Uganda with the assistance of both central and local government.

(h) On being registered as citizens, the former refugees and immigrants should officially renounce the citizenship of their country of origin and take a public oath of allegiance to Uganda.

Action on Illegal Acquisition of Citizenship

6.105 On the action to be taken against those individuals whether refugees or immigrants who may be proved to have acquired Ugandan citizenship or passports illegally or through doubtful channels, views are of two types. Some want such people entirely disqualified from ever becoming Ugandan citizens, or deported to their countries of origin or given a severe prison sentence. The principle on which the above arguments are based is that citizenship illegally acquired is null and void from the very beginning and cannot form the basis for legal citizenship.

6.106 The opposite view is based 011 the humanitarian principle and the principle of nation building. The political instability and chaos Uganda has experienced in the past were such

that they involved many people from a cross-section of society in a range of wrong-doings. What Uganda needs now is genuine reconciliation, avoidance of revenge and victimization. In this view, therefore, even those refugees and immigrants who in one way or another obtained citizenship or Ugandan passports illegally or through doubtful means should be considered for automatic citizenship when they re-apply through the official channels. The Commission concurs with this view.

6.107 Recommendation

(a) Those refugees and immigrants who may have obtained Ugandan citizenship or passports illegally should be required to re-apply for citizenship through the official channels once they fulfill the conditions contained in the previous recommendations.

(b) Government should declare an amnesty for a specific period which should prevent or nullify prosecution of those who voluntarily apply anew for registration.

(c) New immigration laws should provide serious penalties for anyone who attempts to receive or actually receives citizenship illegally or through doubtful means.

Special Settlements for Refugees

6.108 This issue of whether refugees should be made to stay in special settlements or live among the citizen population received a lot of comments. It was suggested that being together in a settlement. can assist the office of UNHCR to effectively serve and supervise the refugees. Local governments may more easily provide the necessary social services within. Such settlements. The refugees themselves may continue with the education of their children through the language-medium they prefer. It may even be easier for them to return home as a group once the problems which led to their escape have been resolved.

6.109 Special settlements, however, do not fit into the African culture of hospitality to strangers. They may tend to encourage a closed mentality among refugees to the realities of their country of residence. The settlements may also gradually become too small for them, thus leading either to unauthorized extensions, as has happened in some districts, or to near starvation because of lack of sufficient space for cultivation and animal grazing. The Commission believes that the main basis for the concern of people was the identification of refugees. Once that is made possible, the issue of whether refugees should stay in special settlements or live among the citizen population should be capable of being resolved by the parties concerned.

6.110 Recommendation

(a) The Commission recommends a healthy and positive attitude on the part of all Ugandans toward refugees, an appreciation of their situation and contribution and social interaction with them as fellow human beings whose dignity and' human rights should be protected and upheld.

(h) ***The office of UNHCR should have a policy to identify refugees and, together with government, to provide them with identity cards and keep an accurate record of their numbers.***

(c) ***The refugees who wish to live in special settlements should be free to do so. Those who wish to settle among the population should be facilitated to do so through the cooperation and negotiation of government, UNHCR office and the leaders of the local population.***

SECTION FOUR: THE DUTIES OF CITIZENS

6.111 There was overwhelming support for the inclusion of duties of every citizen in the new Constitution. Such duties create a necessary balance with citizens' rights. In the past it has been the order of the day to insist on rights without giving due regard to the corresponding duties. The analysis of Uganda's problems as contained in chapters two and three of this report has shown how every section of society may have had a share in the problems the country has undergone. The reconstruction of the nation and the promotion of the principles and values on which Uganda is to be built and developed demand the conscious fulfihl1ent of the duties by each and every citizen. In the same way the principles of responsible citizenship, nation-building, people's sovereignty and participatory democracy which have been clearly articulated impose essential duties on every citizen. From the several duties suggested the Commission makes a number of recommendations for the better organisation and development of the nation.

6.112 Recommendation

(a) The following patriotic duties should apply so that every citizen shall be duty bound;

- *(i) To love the country as his or her motherland, to be loyal to it and to promote its good image and wellbeing;*
- *(ii) To honour and respect the country, its special official symbols and to protect and defend public property;*
- *(iii) To work unceasingly for peace and national unity;*
- *(iv) To defend the nation at all times and to undertake military or national service in accordance with the laws.*

(b) The following democratic duties should apply so that every citizen shall be duty bound:

- *(i) To uphold and defend the Constitution and the just laws of the country;*
- *(ii) To participate in governance, promote democracy and the rule of law;*
- *(iii) To respect and promote the rights of others;*
- *(iv) To register for voting;*
- *(v) To accept to serve on the jury when called upon.*

(c) The following developmental duties should apply, so that every citizen shall be duty bound:

(i)	***To engage in gainful employment for the development of self, family, common good and the nation as a whole;***
(ii)	***To pay all taxes required by the laws of the country;***
(iiI)	***To promote social justice and participate in community service programmes and projects;***
(iv)	***To protect and restore the environment and prevent any unwholesome interference with or destruction of the country's ecosystems.***

6.113 If the above duties are to be absorbed fully into the conduct of all citizens, there will need to be major efforts to educate people about them.

6.114 Recommendation

The duties of citizens should form part of the civic, social, cultural and political education in the school curriculum at all levels. They should also be taught and explained to people of all levels using the methods most appropriate to each section of society.

CHAPTER FIFTEEN

POLICE, INTELLIGENCE ORGANISATIONS AND PRISONS

15.1 This chapter discusses three important sets of security agencies, namely, the Police Force, intelligence organisations and the Prisons Service. It contains three sections, with a separate section devoted to each of the three agencies. We consider their historical background, highlight the people's concerns and principles about each institution and examine their constitutional implications in relation to maintaining peace and security and guaranteeing law and order for progress and development in Uganda. Recommendations are made about each agency.

15.2 At the outset it must be noted that the Police Force and the Prisons Services were both the subject of analysis and recommendations by the 1990 *Report of the Public Service Review and Reorganization Commission* (PSRRC). We have taken note of the relevant recommendations which in large part we agree with. As a result, our discussion of these issues is less detailed than might otherwise have been necessary.

SECTION ONE: THE POLICE FORCE

Historical Background

Pre-colonial:

15.3 In pre-colonial African segmentary societies, keeping law and order was usually a collective responsibility while in some centralised societies, there was sometimes an organ which carried out some functions similar to modern police duties. For example, in Buganda there were the *Bambowa* whose work was to apprehend criminal offenders and either take instant punitive action or take them for trial before the chief's court. The *Bambowa* got their orders from the' king 'or chiefs.

The colonial police force:

15.4 The origins of the present Uganda Police Force go back to Sir Harry Johnston's Armed Forces Constabulary which was established in 1900 using some of Captain Lugard's forces. Under the colonial administration, the main duties of the police included maintaining law and order, protecting property and official installations and queuing riots by people opposed to colonial rule. Recruitrnent and training 'were- geared towards ensuring an aggressive and oppressive police f0rce. Qualifications for African recruits were based on physical fitness, heights and a menacing look. They were trained mainly in arms drill. The Officer corps was dominated by Europeans with a few Africans and Asians confined to the ranks" below inspector . Not until 1950s did the ,force establish specialized departments such as the Criminal Investigation Department, Special Branch, Fire Brigade, Traffic etc.

The Police Force in the post-colonial era:

15.5 The 1962 Constitution provided for both a national police force called the Uganda Police Force and separate police forces for each federal state. Overall command of the Uganda Police Force vested in an Inspector-General appointed by the President in accordance with the advice of the Prime Minister. After independence, the government Africanized" the ranks of the police as it did with most other government institutions.

15.6 In the late 1960s and 1970s, the Police Force developed some bad relationships with the people due to activities of units like the Special Force and the Public Safety Unit that were used by those in power to terrorise the people. The political turmoil of the times had its impact on the police, as on other institutions. With few resources, the poorly trained and badly paid force became ineffective. Some members of the police force were corrupt. These problems continue into the 1990s despite the efforts made under the NRM administration.

15.7 The Police Force today continues to operate under the 1967 Constitution and the Police Act 1964. The Inspector-General receives orders from the President or the Minister of Internal Affairs or any other minister whom the President may designate. Below the Inspector-General there is a Deputy Inspector-General, Regional Police Commanders and District Police Commanders for each district. At the Police general headquarters there are five major departments each headed by :1 Senior Assistant Commissioner of Police (SACP) namely Administration, Special Branch, Criminal Investigation Department (CID), Local Administration Police and Operations. These departments are further sub-divided into sections, for example, Administration includes research and planning, finance, personnel, training, legal and loans, while Operations involves signals, mobile police, support services (such as fire service, dogs section, air wing), traffic and road safety, supplies and logistics.

The Police Force as Constitutional Issue

15.8 The most important duty of the police can he seen as enforcing a social contract between the citizen and the State, whereby the citizen undertakes to obey the law and the government undertakes to govern in accordance with the same laws and regulations and protect the citizen's life as far as his or her rights are concerned. The Constitution is the main basis for the social contract and the responsibility of the police of enforcing it should itself be enshrined in the Constitution. Constitutions of many other countries including Malaysia, Papua New Guinea, Ghana and Nigeria contain provisions on the establishment and duties of police forces.

Concerns and Principles Emphasized by the People

15.9 During the constitutional debate of the past four years the following issues emerged as major concerns of the people in regard to the Uganda Police force and gave rise. to. some principles which should guide the making of recommendations about its future role and activities.'

The police as a professional force:

15.10 The Police Force is not seen as performing its duties in a professional manner. Lack of training and resources means that police officers in most fields do not have the ability to carry out their jobs properly. Political interference and corruption make these problems far worse. For example, although the rule of law demands impartiality and equality before the law, the Police Force has often tended to be indifferent to offenses committed by affluent people such as high ranking government officials while the ordinary people are always harassed, creating an impression that the law may be prejudiced against some citizens. There is need for the transformation of the Police Force into a professional force composed of men and women capable of maintaining internal security and enforcing law and order without fear or favour.

Politicisation of the Police Force:

15.11 As we have seen the Police Force is under the command of the Inspector-General of Police (IGP) who receives directives from the President or the minister authorized by !he President. The IGP is required to comply with those directions or cause them to be complied with. Under Article 69 of the 1967 Constitution, directions given by the President or minister with respect to maintaining and securing public safety and order cannot be questioned in any court. There was concern expressed that governments have abused this provision by interfering with police work, thus making the credibility and neutrality of the Police Force severely damaged by such actions.

15.12 Some people have argued that Article 69 of the 1967 Constitution is a dangerous provision because it permits a minister to usurp the police's discretionary power to exercise independent professional judgment in evaluating and determining appropriate responses to law and order issues and situations. They argue that the interests of justice and the proper enforcement of the law may be subordinated to the political interests of the minister and his party and that it impedes the growth of professionalism in the Police Force: It should also be pointed out that arty serving police former will always obey ministerial orders unless such orders will dearly result in the officer committing a' 'criminal offence. Therefore, from the submissions, there are fears about leaving the control of the police force under the President or the minister authorized by the President to give directives to the IGP in the performance of the functions of the Police Forte.

Lack of facilities for the Police Force:

15.13 A number of people have' expressed concern about the lack of logistics and equipment available to the Police force. There is an acute shortage of all sorts of equipment such as 'Vehicle's" stationery, laboratory equipment and 'office space. Lack of 10gisticS·'is due partly to lack of funds and partly to lack of planning and improper utilization of the limited resources allocated to the police. It is true that government has allocated little money to the police compared to the Army for *transport*, the Police Force has attended to survive on donations.

Corruption:

15.14 There is an outcry against rampant corruption in the Police Force. Most submissions have pointed an accusing finger at the Traffic and CID departments as the principal culprits. Due to lack of professionalism and corruption, investigations by the police are never completed and very often police files have gone missing in courts either deliberately or out of negligence. Corruption is not peculiar to the Police Force as it has hit all other government institutions though not in the same manner. By the very nature of police work,. it is difficult to completely eradicate corruption since so many culprits endeavour to bribe their way out of trouble with the law. The temptation on the part of police officers to take bribes is particularly great in the current circumstances where officers often cannot make ends meet out of their meager salaries. Views from some people suggest that corruption could be minimised with overall improvements in the performance of the economy which may enable government to afford to pay a living wage.

Abuse of human rights:

15.15 In many submissions, people expressed deep concern about the record of the Police Force in respecting human rights. In some periods, some elements of the Force have shown no respect for human life. Lack of respect for the right to liberty has been common .Use ,of torture and punishments not ordered by a court have also been c9mmon. People want to see a Police Force better Educated about human rights and where officers are punished for breaches of rights. -

Principles applicable to the Police Force:

15.16 Arising mainly from their concerns about the operation of the Police Force in the past, people have specified a number of principles which should be the basis for the future Police Force and its operations. They want a force which is nationalistic and oriented towards peaceful development of Uganda. Its members should be professional, competent, educated, disciplined and honest. To promote such qualities; its members should be well paid. It should be a politically neutral body, able to serve any government. It should not be subject to political interference. It should respect the Constitution and uphold human rights.

People's Proposals and the Commission's Recommendations on Police

The Uganda Police Force:

15.17 A majority of submissions from the people accepted both that Uganda needs national police force and that it should be provided for in the new constitution. The commission agree with this view, and supports a provision enabling Parliament to make laws for other police forces (a matte discusses further later in this section of the chapter) ...

1.5. 18 . Recommendations

The Constitution should provide for a national police force called the Uganda Police Force and Parliament should have power to legislate ill respect of the other police forces.

Functions of the Police Force:

15.19 The Police Act, 1964 spells out the functions of the Police Force which include: prevention and detection of crime; apprehension 'and prosecution of offenders; preservation of law and order; protection of life and property; enforcement of laws and regulations; and serving as a military force whenever called up,

15.20 The views expressed in people's submissions do not question those functions. However, due to the fact that members of the police have violated human rights, some submissions have proposed additional functions and especially suggest that the police must uphold and protect the Constitution and human rights. Other views have suggested that the Police Force should only serve as a military force if Uganda is at war with another country.

15.21 Recommendation

(a) The Constitution should provide for the following functions for the Police Force:

(i) upholding and protecting the Constitution;
(ii) protecting life and property;
(iii) preserving law and order;
(iv) enforcing laws and regulations;
(v) preventing and detecting crime;
(vi) apprehending and prosecuting offenders; and
(vii) serving as a military force when Uganda is at war.

(b) Parliament should have power to make Lawson the organisation; administration, recruitment, discipline and further functions of the Police Force.

15.22 There are certain aspects of police powers and functions which have given rise to controversy in people's submissions and so require' specific comment and recommendations. These involve: the beating up of suspects by police; arrest and detention powers; and availability of a police bond to a suspect. We shall discuss each in turn.

15.23 While the law presumes a suspect innocent until proved guilty, in many cases this principle has been violated by police officers. Suspects are frequently beaten to the extent of incurring serious injuries. Some have died in police cells. In quelling riots, police officers have often used excessive force to the extent that people have lost their lives. To make matters worse, officers who have committed such offences have seldom been seen to be punished or brought to justice.

15.24 Whereas it is generally accepted that police officers should not be liable for acts authorized by a judge or magistrate, there is a strong feeling from the submissions that police have often abused this privilege. It is in this connection that the following views and suggestions have been made in the people's submissions. Judges and magistrates should always: issue warrants of arrest properly signed and sealed in order for the police to execute their orders. In affecting those orders the police must show the warrant of arrest to the suspect and the suspect should be taken to court within the prescribed time limit of 48 hours so as to avoid unwarranted detention in police cells. It has been observed that very often

victims of these illegal confinements are the poor people who are unable to bribe their way out of custody and cannot even afford to sue government for a remedy. While government in Uganda accepts the principle of vicarious liability for torts committed by police officer, a civil action is not a practical remedy for most people.

15.25 The release of arrested suspects on police bond has been widely criticised in submissions from the people. A majority do not see the rationale of releasing a suspect as soon as he has been handed over to the police. They often suspect an element of corruption in this process. Those released on bond quite often interfere with investigations or simply evade trial and escape justice. Some have argued that the availability of the police bond is such a major source of corruption in the police force that it should simply be abolished. Although it has often been abused, the real rationale of the bond is that people are not 'guilty until proven so, and hence are ordinarily entitled to maintain their freedom prior to trial, especially in the case of the minor offences which constitute the majority of arrests made by police. Police bond helps reduce congestion both in the cells and in the courts. In order not to demoralise the public, we accept there should be some limitation on the use of police bond, so as to minimize unwise or corrupt granting of bonds.

15.26 Recommendation

(a) In executing their duties police officers should be mindful of their duty to treat the suspect in accordance with the law without humiliating or degrading the person.

(b) In addition to government being vicariously liable for civil damages, a police officer who exceeds or abuses power in the course of duty should be punished for arbitrary and unauthorized acts under the criminal law.

(c) Human rights studies should be part of the syllabus in police training, and officers who breach rights of citizens should be the subject of severe disciplinary action in addition to being open to damages actions, as discussed in Chapter Seven of this report.

(d) A police bond should only be given in consultation with the RC II and local chiefs.

Political control of the Police Force:

15.27 There is no consensus on who should control the Police Force. Some views have Suggested a parliamentary committee while others have proposed an autonomous Police force with loose control from the Ministry of Internal Affairs. The police is an arm of the executive, and so quite apart from the impracticality of such a large body administering the police, following the principle of separation of powers, it would be wrong for parliament or its committee to control and manage the police .

15.28 The creation of autonomous Police force with less control from the ministry of internal Affairs in our view could assist in making the Police independent of the politicians. In that case the president should appoint the IGP an d the deputy IGP because the police force through its chief, must be account table to the people through their elected representatives.

(b)

15.29 The power to appoint should include the power to influence or to give directives to the IGP or his or her subordinates in matters relating to the day to day performance of their professional duties. Particular police matters - especially criminal investigation and police prosecution should be handled without political direction or interference.

15.30 The President or a minister responsible for police matters should be able to formulate general policies relating to policing and its financing and the Police Force should be expected to implement them. But in the light of past experience, there needs to be clear limits on the power of the political executive to intervene. We suggest that all such directions should be in writing, thereby avoiding doubt about the nature or extent of the direction. They should be limited to directions of a general nature on maintenance of security, public safety or public order. To provide some check on possible abuse of this power, it should only be exercised after consultation with the National Security Council. As the political authority, the President or the minister is accountable to the people and Parliament for the maintenance of law and order. Hence it would also be in order for the President or minister to ask questions of the IGP or to express opinions and to make suggestions of a non-directive nature.

15.31 Recommendation

(a) The Inspector-General of Police should not be subject to control or direction or any person or authority in carrying out his or her functions.

(b) .The President may give directions in writing to the Inspector General of Police on ·matters of general policy concerning maintenance of security, public order and public safety, but only after consultation with the National Security Council.

Command of the Police Force - The Inspector General of Police (IGP):

15.32 The post of IGP is enshrined in both the 1962 and 1967 constitutions. The remarkable difference is that while the 1962 Constitution gave wide powers and considerable independence in carrying out police duties, the 1967 Constitution weakened the powers and independence especially through giving the President. Or Minister power to give directions and instructions as seen above. The complaints and fears contained in the people's submissions indicate that in the past some politicians have misused this power .by directing police to arrest, harass and detain their political opponents. As we have seen, they have argued that the IGP should not receive orders from anybody else and should remain independent and neutral in carrying out his duties.

15.33 Although there is no consensus on the period the IGP should serve; it is generally agreed that he or she -should have security of tenure to serve successive governments. Basic appointment. criteria should include being a Ugandan citizen of good character, with a minimum standard of university degree and working experience in police duties for at least
Ten years . There should be a Deputy with the same qualifications .

1534. |The 1962 and 1967 Constitutions provide for both grounds and procedure upon which the IGP can be removed from office. The procedure entails the appointment of a tribunal to investigate and advise the president on the appropriate action to take. It is regrettable to note

that these very clear constitutional provisions have never been followed. Instead, successive regimes have appointed new IGPs contrary to the constitutional provisions.

15.35 Recommendation

(a) The Inspector General of Police and his or her Deputy should be appointed by the President on the advice of the Police Council and with approval by the National Council of State.

(b) The IGP and his or her Deputy may be removed from office by the President for good cause or in the public interest with the approval of the National Council of State.

The Police Council:

15.36 Some submissions have proposed the creation of a police council composed of senior police officers to advice the President in the management and administration of the Police Force. At present, the President's main "formal" source of advice on police matters is the Minister of Internal Affairs. A police council would encourage participation of more senior police officers in decision-making and would make technical expertise available to the President.

15.37 The proposed membership of the Council is the Minister of Internal Affairs, the Attorney-General, the IGP, the Deputy IGP, the directors of all police departments and regional police commanders. Its functions should be to advise the President and the Minister of Internal Affairs on policies relating to recruitment, training, development, equipment, management, terms and conditions of service and any other matters relating to operation and administration of the police.

15.38 Recommendation

(a) A Police Council be established with the Minister of Internal Affairs as its Chairman and other mentbersinc1uding the Attorney:. General., the Inspector-General of Police and such other police officers as Parliament may prescribe.

(c)

(b) The functions of the Police Council should be to advise government on policies concerning recruitment, training, development, equipment, management, terms and conditions of service and other matters relating to the operation and administration of the, Police Force.

Size of the Police Force:

15.39 From the submissions there is no consensus as to the optimum size o f the Police Force. The figures proposed range from 10,000 to 1 million. Other views have suggested that the figures should be reached, by setting a ratio of police officers to civilians -say one officer for 1000 Civilians, or1 to 500 or 1 to IOO. There is -support for the principle that the optimum size should be one that enables the Police Force to assist- every person in the country. But the Commission notes that it is not merely numbers that matter but also other

factors like availability of facilities, training and expertise of officers, population concentration, the ability of the economy to support an expanded force and the level and type of criminal activity.

15.40 Recommendation

(a) As the economy improves, government should strive to establish a police post in at least every sub-county.

(b) The numbers of police officers should be determined by government from time to time. taking into account such factors as facilities, training and expertise of officers, population concentration; economic capacity and type and prevalence of criminal activity.

Recruitment:

15.41 There is a consensus from the submissions that only citizens of good character should join the Police Force. The minimum proposed recruitment age is eighteen years with a minimum educational standard of Ordinary Level. It is also suggested that commissioned officers of the police force should have a university degree and be trained professionally in police work. There is a consensus from the memoranda that before anybody is recruited into the police, local authorities such as the RC's, chiefs and elders should give recommendations about his or her character and conduct.

15.42 Some submissions have suggested that recruitment be based on a quota system depending on the population of each district. Others have suggested that recruitment should take into account tribal or ethnic balance while others have proposed that it should be left open for all those who want to join, provided they have the qualifications and that recruitment efforts are made in all districts.

15.43 The demand for, a modern Police Force to be composed of educated and highly qualified men and women of good character is sensible and realistic. A national Police Force should not only depend on tribal balance but also on professional training, discipline and commitment to duty~

15.44 Recommendation

(a) Recruitment into the Police Force should be undertaken nation-wide in all districts and given wide publicity.

(b) Recruitment should be on merit, with minimum qualifications being Ugandan citizenship, eighteen years of age, Ordinary Level in education and character references from local authorities.

15.45 Complaints have been made that under the Obote II regime, recruitment of police officer cadets was influenced by UPC party headquarters. Police independence and political neutrality must be secured, and safeguarded. In a multiparty, political system, it is especially important that the police be strictly neutral. It is suggested that processes for the recruitment

of members of the police should be insulated from political influence. A politically neutral body should be responsible for their recruitment and subsequent advancement in or removal from the Police Force. Officers should be dismissed only for good cause and after a fair and impartial hearing. Police remuneration should be reasonably adequate. It should among other things, take into account the risky nature of their work and its importance to society. Adequate remuneration will, incidentally, help to attract men and women of good character into the police.

Training:

15.46 On the training of the Police Force, some people have suggested that the police should receive military as well as police training in order to acquaint officers with the use of firearms and combat situations. With the benefit of such training they would be better able to deal with serious security situations such as armed robberies, cattle rustling and banditry. Some people have opposed training which might turn the Police Force into a paramilitary force. They argue that our recent history has shown the tendency towards use of such forces by those in power to oppress the people. For example, when a part of the police was militarized in the form of the Special Force in the 1960's and the Public Safety Unit in the 1980s, their misuse caused much suffering.

15.47 We observe that Uganda's security problems are still to be solved, there still being many guns in illegal hands. Pockets of insurgency still exist in some parts of the country and cattle rustling by heavily armed warriors in Karamoja is still a major problem. The security situation has been militarized and the civil police alone can no longer handle it. We therefore agree that there is still need for the police to be given military training so as to be more capable of responding to internal security problems.

15.48 Recommendation

(e)

(a) Para-military units should be created by the national government under the command of the Inspector-General of Police whenever the need arises.

(b) Such .units should be equipped adequately with helicopters, gun ships, armoured personnel carriers etc. They will meet the demand from the majority of the submissions that internal policing in Uganda should be left entirely to the Police Force.

15.49 As we have seen from the submissions, the people make it clear that the Police Force is regarded as having had a poor record in relation to respect for human rights, and hence we have already recommended that human rights studies should be part of the police training syllabus.

Dealing with corruption:

15.50 The corruption and poor performance ,of the Police Force _ during much of the past twenty years has been such that some submissions have gone to the extreme of suggesting dismissal of all current numbers of the force and recruitment of new ones. While we do not. subscribe to that view, we agree that firm action is needed to deal with corruption in the

Police Force. In particular, officers proved to be corrupt should be dismissed from the Police Force rather than transferred to other posts or stations.

15.51 The Police Force must establish and maintain rigorous standards for the conduct of its officers. Achieving this goal will require a range of measures and continual efforts. Among the necessary measures is establishing a code of conduct for police officers. Another is the setting up of an internal inspectorate to investigate complaints from the public and to generally keep check on police activities to ensure that the code of conduct is observed. Corruption would also reduce if police officers received reasonable remuneration.

15.52 Recommendation

(a) A department of inspectorate should be established in the Police Force with the duty to check on police activities.

(b) There should be a strict code of conduct for the Police Force which~ among other things should include: respect for human rights; commitment to one's duty and nation; obedience. and respect of civilian authority; and honesty ..

Criminal Investigation Department (CID):

15.53 The majority of the submissions have not fully discussed police departments and there is little need for us to do so since the PSRRC Report has already covered the ground. However, on the CID, many people have contributed submissions. The high level of public interest arises from the nature of the CID work. It deals with detection, investigations, assembling of evidence and prosecution of crime. In fact, much of the police work rotates around the CID. Many submissions expressed dissatisfaction with the way the CID operates . While the current law provides that a suspect must be taken to court within 24 hours of being arrested or detained, it has seldom been implemented. On the contrary, suspects tend to remain in police cells for a long time after arrest without being taken to court. Sometimes investigations take long to commence and even when they do so, are not completed.

15.54 It has been argued that while still gathering evidence the police should not arrest someone and instead should wait until investigations have revealed a probable case against an individual. We note that many of the problems with criminal investigation are due to lack of facilities, training and efficiency within the Police Force. These problems will take some time and effort to improve. In the meantime, it may be advisable to take note of the practical predicament and permit a longer period of detention after arrest within which a suspect must be brought before a court.

15.55 Recommendation

The period after detention or arrest within which a suspect must be brought before a court should be 72 *hours ...*

15; 56 Most statements given by suspects to police officers are recorded in English and are signed after they have been react to the suspect. Sometimes they are recorded so poorly that

(f)
they lead to rejection of evidence by a court. It is often argued that since most Ugandans do not know English, they sign under duress.

15.57 A number of submissions have pointed out that there are tensions between, on the one hand, the CD and on the other hand the DPP who is supposed to prosecute suspects On the basis of evidence collected by CID officers. The office of the DPP is made up of professional lawyers. It has no effective powers over the CID to direct investigations. The DPP, however, only handles major criminal matters, with less serious matters being prosecuted by police prosecutors. They have been criticised for having low educational standards. Very few have been trained in law and the procedures necessary to conduct prosecutions effectively.

15.58 Recommendation

More qualified people, preferably lawyers, should be recruited and trained in prosecution and CID work. There is need to train and equip the CID personnel to professional standards in order to meet the challenges of the job.

Creation of a police service board:

15.59 There are complaints about the dilatory performance of the Public Service Commission which is charged with the responsibility of appointing and promoting officers in the Police Force. The promotion to senior ranks is done by the IGP. It has been observed that due to volume of work, the Public Service Commission has delayed letters of appointment, confirmation and promotions with consequential adverse effects on the morale of police personnel, consequently affecting police work. The Public Service Commission is not very conversant with police personnel ,and on some occasions it has promoted those who are absent or those who are already dead.

15.60 It is also argued that the Public Service Commission is not equipped to handle personnel matters in respect of a disciplined security force like the police. Various submissions have suggested that there should be a specialised Police Service Board which ,handles all the appointment, promotion, discipline and related matters in respect of police officers previously carried out by the Public Service Commission. We accept the need for such a body. Of course, it may be necessary to have some uniformity of practices in state services, a requirement which can be dealt with by including a member of the Public Service Commission on the Police Service Board.

15.61 Recommendation

(a) A Police Service Board should be established consisting of: the Inspector General of Police as chairman; the Deputy Inspector-General of Police; a representative of the Public Service Commission; and two prominent citize1.lsappointed by the President on the advice of the Police Council.

(b) The functions of the Board should .be recruitment of police personnel, and confirmation of appointment, promotion, 4isciplining and review of their terms and

conditions of services, and carrying out any similar functions related to the Uganda Police Force previously exercised by the Public Service Commission.

Relationship between the Army and the Police:

15.62 From the people's submissions, it is clear that some aspects of relationships between the police and the army are not extremely healthy. Some soldiers have a low opinion of the police. A major factor is the continued role of army personnel in carrying out police work. Unfortunately, such activities have at times included illegal arrests, detention and torture of civilians in military barracks.

15.63 The main duty of the army in a democratic society governed by the rule of law should be to fight external enemies and to put down internal insurrection or insurgency. In doing so it should be obedient to directions from the civilian and democratically elected government. On the other hand, the police focus should be on the citizen, to protect him, or, if he is errant, to correct him. Police work calls for specialised training and for special tactics with which the army!::; generally unfamiliar or unsuited. Therefore, as a general rule, the army should not involve itself in police work. The relationship should then improve on the basis of mutual respect and co-operation. The police and the army must each understand that both forces play separate and distinct roles for the betterment of society.

Local Government Police:

15.64 The local administration police -is under the overall command of the Inspector-General of Police He is assisted by a Senior Assistant Commissioner of police stationed at the ministry of local government. Local administration police personnel are recruited, paid and maintained by their respective district administrations. They are usually deployed at district, county and sub-county headquarters. Their duties include general law enforcement and dealing with defaulters of local tax and other local government dues. Their role was significant during the 1960's when each district or federal state had its own court system and its own prisons.

15.65 Proponents of decentralization of government functions argue that control of the Police Force should also again be decentralized to enable the people to have a say over police functions;- Some submissions, 110wever, opposed this proposal arguing strongly for a national and centralized Police Force saying that it is conducive to uniformity of outlook and practice of police throughout the country. Further, they argue that a centralized Police Force will foster national unity in the sense that members of the police may be posted anywhere in the county irrespective of their places of origin. Centralisation is said to be less costly as it avoids duplication of programmes and services some of which may require specialised training and expensive equipment.

15.66 On the other hand, the arguments advanced by those supporting' decentralisation emphasize that to be effective the Police Force must be representative, responsive and accountable to the community that it serves. 'The best way to achieve this goal is to recruit the force locally and to make it accountable to the local people it serves through the people's elected officials. In a linguistically diverse country, police officers should be able to speak the language spoken in the community where they serve. They should also appreciate the

customs and culture of the people and generally have sympathy for their aspirations. They should have roots in the community. These factors, in addition to proper training, will be conducive to the vital solidarity between the members of the police and the community. It is argued that a Police Force whose members lack these qualities is likely to have problems of identity with the community. It is likely to encounter problems in obtaining the much needed co-operation and support of the members of the community who might develop hostile attitudes towards it. Such a Police Force is likely to be perceived by the community as a force of strangers.

15.67 Secondly, it is argued that decentralisation of the police will strengthen constitutionalism. Coercive power will be diffused among the people in their' local communities. The advantage is to bring the Police Force closer to the people it serves thus making it more effective while at the same time limiting the central government power and limiting any possible totalitarian tendencies.

15.68 The central police should continue to control the national capital and when there is need, it should be requested to render specialized services and advice to the local police forces. Uniformity should be maintained by requiring the minimum recruitment qualifications (above) be applied nation-wide and by having all police training provided through national level institutions.

15.69 Recommendation

(g)

(b) Common standards in police establishments nation-wide should be maintained by requiring common minimum recruitment criteria and by provision of police training

(a) There should be provision for locally controlled government police, with the national Police Force providing technical advice, support and training to the local government police.

through national institutions.

Relationships between the Police Force and the RCS:

15.70 While the RCs have a role in maintenance' of law and order, some police personnel have seen the role as a direct interference with police work. The proper relationship between police and RCs has been a contentious issue. Some have suggested that police should not arrest anybody without clearance of the RCs, while others have suggested that RCs should be abolished because they interfere with police work. A majority of people would agree on the principle of the need for co-operation and co-ordination among different organs like the RCs, police and army, to ensure maintenance of law and order. With proper co-operation, each one can complement the other.

15.71 Recommendation

For the Police Force to gain respect among the people, it should act professionally and also coordinate with the local authorities.

SECTION TWO: INTELLIGENCE ORGANISATIONS

15.72 Intelligence is evaluated information. The purpose of intelligence organizations is to provide the necessary information to government on which to base decisions concerning the conduct and development of such' diverse matters is foreign affairs, defence, the economy and protection of the country's national interests from foreign or intern::l1 security threats.

Historical Background

Intelligence in the pre-colonial era:

15.73 The pre-colonial intelligence function was mainly vested in fortune tellers, soothsayers, prophets and medicine men or women who had the benefit of interacting with many people who were seeking a cure for their problems, At the same time they paid homage and allegiance to the king or chief who in turn gave them protection and could summon them collectively or separately to give advice over happenings in society. This type of intelligence worked quite well in a small society.

The colonial era:

15.74 During the colonial period, the Police Force was the main body carrying out intelligence work, but it was often assisted by local chiefs and colonial administrators or experts. With the advent of independence, the Police Force through its department of Special Branch was the most organised organ of state for collecting and analysing intelligence information.

Intelligence organisations in the post-colonial era:

15.75 After the 19M army mutiny, the government set up the General Service Unit (GSU), an elite paramilitary force whose most important role was counter-insurgency. It was created as an alternative secret police force to ensure security of the government and reduce reliance on the Uganda Army whose loyalty was suspect immediately after the mutiny. Under Amin's regime the GSU was replaced by the State Research Bureau (SRB) which was in turn replaced by the National Security Agency (NASA) during the Obote II regime. All these organisations were under the direct command and control of the office of the President.

15.76 Under the Security Organisations Statute (Statute 10 of 1987), the NRM government established two intelligence organisations, namely, the Internal Security Organisation (ISO) and the External Security Organisation (ESO), each headed by a director general. This was the first time in our history that there has been a law creating and governing the operations of intelligence organisations.

Concerns and. Principles Emphasized by the People

Personalizing of intelligence organisations,

15.77 Intelligence organisations under the past regimes tended to be personalized to the extent that they were often only protecting the interests of those in power. When a President

(h)

fell, his cronies in intelligence organisations also fell. These bodies ere composed of all sorts of people, citizens and non-citizens, with little or no formal education. They conducted their business above the law and caused untold misery, death and havoc to the people.

Lack of governing law:

15.78 The lack of any law governing the operations of intelligence organisations was seen by the people's submissions as contributing to their awful performance prior to the NRM government passing the Security Organisations Statute 1987. That law at least sets a legal framework for the action of these bodies. People commended the NRM government for making such a law and were glad to observe improvement in the conduct of intelligence personnel, though more improvement was called for.

Violation of rights and freedoms:

15.79 In the past, there has been constant and appalling infringement of the rights and freedoms of the people under the pretext of protecting state security. This pretext resulted in unwarranted arrests, detention, torture, and grabbing of people's property. It has been suggested that in order to build a democratic society, there should be a balance between the need to protect state security on the one hand and the need to protect and observe individuals' freedoms on the other hand. The people have, therefore, proposed that in order to accomplish the above, the intelligence personnel should be specifically trained in human rights and freedoms and elementary law.

Lack of accountability:

15.80 It was observed by the people submitting views that in the past the members of intelligence organisations were not accountable to anybody. Death, torture and disappearance of many people have all been attributed to these organisations yet the state organs, such as the executive, legislature and judiciary all feared to denounce these inhuman and criminal activities committed in the name of the State. The intelligence bodies became so powerful that at one time during the Amin regime the heads of intelligence plotted to overthrow the President. The people would like to see transparency and strict accountability of these bodies for their activities. At the very least their functions should be spelt out by law, indicating what they should and should not do.

Lack of institutionalization:

15.81 People's submissions indicated some concern about the lack of institutionalization of intelligence organisations. Every government which comes to power disbands existing bodies and establishes its own intelligence organisation. The staff of the disbanded organisation have often been declared outright criminals, persecuted, imprisoned and sometimes killed. Such practices have created uncertainty which, together with revulsion of ordinary people about the appalling abuses committed by some members of intelligence organisations in the past, has turned intelligence work into a hated and abominable occupation. Those who have, supported the existence of such organisations would like to see institutional stability so that they continue to serve governments.

Analysis of People's Proposals and the Commission's Recommendations

Necessity for intelligence organisations?

15.82 A minority of views expressed in the submissions supported a total ban on intelligence organisations. It was argued that they are likely to behave in the same manner as they did in the past. Others tended to challenge the role of intelligence organisations as opposed to the Special Branch of the Police Force. Some argue that the Special Branch is a professional body charged with the collection of information while intelligence organisations exist mainly to protect partisan interests of the government in power rather than the security of .the state. In that case, the citizen would be better off without them. We note that past experience has prejudiced many people against intelligence organisations whether or not they accept them as possibly having some useful functions.

15.83 A majority of submissions on the subject agreed, however, that a modern state requires proper intelligence and that it is best gathered by experienced and professional officers. The essential issue was seen to be that of maintaining control over intelligence bodies. The Commission also notes that intelligence organisations have become part of modem government machinery and most countries have laws on the subject. For example the Central Intelligence Agency (CIA) in the United States which started during the Second World War was incorporated into a statute by the National Security Act of 1974. Britain, Canada and Australia also have made laws governing their intelligence organisations.

15.84 Recommendation

Because intelligence organisations have become so important for modern government and because their operations need to be carefully regulated to ensure protection of people's rights the Constitution should both provide for their existence and limits on the way they operate.

Names of intelligence organisations:

15.85 From the people's submissions, views were not very clear as to what the name of any of intelligence organisation should be. They concentrated more on the nature and functions of the organisation. We note that the Security Organisations Statute 1987 (Statute No 10 of 1987) establishes bodies called the Internal Security Organisation (ISO) and the External Security Organisation (ESO) and see no further reason to discuss the question of names save in the context of future organisation of intelligence bodies (below).

Nature and functions of intelligence organisations:

15.86 The most important issues involve aims of intelligence, the type of intelligence we need and the organisations required to get it. Intelligence tends to be classified according to the military, foreign, economic, political or biographical information needed by .c-ach sector of government or by the President. Some examples may be useful.

15.87 Military intelligence is usually gathered by military attaches who enjoy diplomatic status. Military information is often difficult to obtain in peacetime, although advanced

countries use space reconnaissance technology in order to expand their collection capacity. In war time, it can be got from captured equipment, captured enemy forces and information gained from patrols. Usually the information the armed forces are looking for concerns the military organisation and equipment, procedures and formations and the number of units and total personnel of enemy forces.

15.88 Economic intelligence includes all information that might be needed by decision makers when dealing with another country. It may concentrate on issues like inflation, foreign debts and balance of payment crises, drought, food shortage and famine. Data may be required on trade, finance, natural resources, industrial capacity and estimated gross domestic product. Furthermore, it is important for intelligence agencies to keep on updating data on foreign population, topographies, climate and a range of ecological factors.

15.89 Intelligence bodies must be constantly on guard against information leakages. At the same time they are often involved in what is known as counter-intelligence which protects one's own intelligence operations. Its purpose is to stop or prevent spies, infiltrators or other agents of foreign countries from penetrating into one's own armed forces or intelligence agencies. Counter-intelligence may also be concerned with protecting a nation's high technology (if any), deterring terrorism, stopping drug trafficking and detecting double agents. The main reason intelligence organisations tend to operate in a clandestine manner is safeguard the flow of information. Once information is obtained, it is analyzed and passed on to the relevant authorities.

(i)

to collect, receive and process intelligence data on the security of Uganda; and

15.90 With regard to the functions and mode of operation that should apply to intelligence bodies in Uganda, the views submitted to the Commission are clear and emphatic that they should work for the security of the State and should collect information affecting the nation and other countries. The Security Organisation Statute 1987, provides for the functions of the existing organisations as follows:-

(a) to collect, receive and process intelligence data on the security of Uganda; and
(b) to advise and recommend to the President or other relevant authority what action should be taken in connection with such data.

15.91 There may also be a need to focus on use of intelligence to prevent:

(a) espionage, which is an acquisition of information by whatever means in order to assist a foreign power to further a subversive political aim;

(b) political and economic sabotage and subversion which are acts or omissions intended to damage interests of the state; and

(c) terrorism which is the use of violence and intimidation in the furtherance of a political aim.

15.92 Further, intelligence organisations may usefully serve a role in monitoring and reporting on the smooth running of government departments as well as liaising with the army to detect indiscipline and attempts at infiltration.

15.93 Recommendation

The functions of intelligence organisations should be to gathered and evaluate information concerning the security, defence, foreign relations and economic performance relevant to national interest, Emphasis should be put on detecting and countering espionage and other threats by foreign intelligence services or internal saboteurs.

Organisation and control:

15.94 It is proposed that instead of having two intelligence organisations with two director generals and in order to harmonise their operations, there is need to merge the two organisations under one Director General who would coordinate the activities of two directors, one for internal and another for external intelligence. The Director General should be the overall supervisor of intelligence officers and employees. It is proposed that the Director General be appointed by the President.

15.95 We note that Statute No .10 of 1987 provides for the establishment of an Advisory Council chaired by the President, and consisting of the Minister in the President's Office responsible for security, the two director generals for ISO and ESO, the Director of Military Intelligence and any other person to be appointed by the President. The functions of the council are to advise the President on: policy regarding state security; the prescribing of laws and regulations governing the terms and conditions of service of the officers and employees of the organisation; and the formation of the code of conduct governing the officers and other employees of the organisation. We agree that such a body should play a useful role in advising government on intelligence matters.

15.96 Recommendation

(a) *There should be a single intelligence organisation under the supervision of a Director General of Intelligence who should be appointed by the President on the advice of the Security Council subject to approval of the National Council of State.*

(b) *There should bean Intelligence Council with functions to advise the President on State security policy, terms and conditions of service of employees of intelligence organisations and the formation and administration of a code of conduct for intelligence officials.*

(c) *The composition of that Council should be as follows:*

- *(i)* *the President who should .be the Chairman;*
- *(ii)* *the minister responsible for security;*
- *(iii)* *the Director General of Intelligence;*
- *(iv)* *the Director of Military Intelligence;*
- (vi) *the Director of Special Branch ;and.*
- *(vi)* *any other person appointed by ;the President.*

(d) *Parliament should legislate concerning the organization, powers and functions of the intelligence organization •.*

15.97 In the execution of his duties, the Director General should be subject to general directions from the President or the minister authorised by the President. Furthermore, the organisation should be answerable to the President and to the Permanent Parliamentary Committee on Defence and Security. With such measures there will be some control over the activities of the intelligence organisation.

Recruitment and training:

15.98 The practice of non-Ugandans serving openly in intelligence organisations has been strongly criticised by many. Although there is a consensus from the submissions that only citizens should serve in any intelligence organisation, this may not be possible because sometimes the organisation may need to employ foreigners in other countries to be its informers or employees. What should be required is that non-citizens should not head the intelligence organisation or its departments.

15.99 On the issue of the educational qualifications necessary for officers of the intelligence organisation, the majority view from the submissions suggest that the minimum standard should be an Advanced Level Certificate. An intelligence officer should be an intelligent person of high integrity. Recruitment should be based purely on merit.

15.100 As to training, it is suggested that intelligence officers should receive military training in addition to professional intelligence training. In analyzing data collected, intelligence operatives need to be highly qualified personnel preferably university graduates trained as research analysts. It is proposed that a school or academy to train intelligence personnel be established where they can acquire knowledge and professional skills. However, since Uganda has not yet established such a school, some intelligence personnel should be sent to other countries for whatever training is necessary.

Relationships with Other Security Organisations

15.101 Views from the people opposed to establishment of intelligence organisations argued that such bodies overlap with functions of or interfere with the work of the police and the army, a problem that has sometimes' caused conflict among these state organs. In this context, it should be remembered that both police and army have units which do work closely connected to intelligence operations. In order to have checks and balances' each organisation should operate alone and report directly to the concerned authority without going through intermediaries. In that way, each organisation can provide checks on the others in terms of

-,quality of data and may also identify defective personnel. The personnel of intelligence agencies should all be subject to the same code of conduct and any employee or officer who misbehaves should be tried by a disciplinary tribunal.

15.102 Recommendation

There should be a code of conduct spelling out the limitations applying to the conduct of all intelligence personnel among which should be the followi1ig:~

(a) no officer or employee of an intelligence organisation should take action directly against or affecting any person about whom intelligence is collected;

(b) no officer or employee of the intelligence organisation should have power to arrest, detain or confine any person by virtue only of being an officer or employee of an intelligence body;

(c) :to officer or employee should pose publicly that he or she is an intelligence officer; and

(d) officers and employees of an intelligence organisation should always respect the rights and freedoms of people.

Conclusion

15.103 While it is true that most constitutions do not provide for establishment of intelligence organisations, intelligence has become a part of modern government machinery, and is officially provided for in many countries. The current statute needs to be amended to include the recommendations made in this chapter, and in particular incorporate the proposed code of conduct. Since intelligence organisations have caused a lot of chaos and havoc in Uganda in the past, we are of the view that the new Constitution should make brief provision so that people become aware of their existence. Parliament should subsequently enact a law prescribing other relevant matters.

15.104 Our major concern is to see that intelligence personnel should not see themselves as loyal to a particular regime but rather serve the nation on similar terms of service to other state security agencies. In that way, we should be able to create a professional and impartial intelligence organisation.

SECTION THREE: THE PRISONS SERVICE

Historical Background

15.105 Imprisonment was not a form of punishment in the pre-colonial African societies. This is not to say that there were no wrong-doers in society. They were, however, dealt with by traditional forms of punishment such as payment of fines, compensation, banishment and public executions. Prisons were a colonial creation and a prisons service was introduced by law in 1903. It was in 1906 that the Police Force, which included the prisons services was separated from the army and placed under the command of the Inspector-General of Police. A separate Prisons Service under a Commissioner of Prisons was formally established by the prisons Service Act of 1958.

The Rationale for Prisons

15.106 One way, of looking at the-role of prisons is to see it in the context of a social contract between the state and its citizens wl1ich requires that the state not only maintains law and order but also owes citizens a duty to protect both their lives and property from anybody that might threaten their security . The citizens on the other hand are expected to abide by the law and ensure that their enjoyment of their rights and property does not interfere with their neighbors' rights. The State must therefore remove all those elements that tend to threaten peace and order or which interfere with or violate the rights of others and confine

them both for punishment and to prevent their causing problems for others. The place where these elements are confined me called prisons.

15.107 Imprisonment is an infringement of a person's right of movement and only justifiable where a person is either suspected or found guilty of transgressing the law. Prisons have become an integral part of modern government machinery.

15.108 We observe with regret that in Uganda places never intended to serve as prisons have nevertheless been used as such. These include military barracks, police cells and sometimes buildings occupied by intelligence organisations . It was the sincere hope and wish of many of the people who participated in the constitutional debate that the new Constitution will remove this highly regrettable anomaly from the system of prisons service.

Prisons as a Constitutional Issue

15.109 The 1962 and 1967 constitutions are silent about the Prisons Service. Indeed, few constitutions in other countries deal with such. issues, though many do explicitly permit deprivation of liberty (imprisonment) in execution of a sentence or order of court.

15.110 We note that the Uganda Prisons Service has been established by an Act of Parliament (The Prisons Act). The service is a very important and necessary institution. Its role does not end at punishing offenders hut also entails rehabilitation, training and education of prison inmates by providing them with skills and time for reform before they can be reintegrated in society. It is such an important institution that brief provision for it should be clearly provided for in the new Constitution, in the same way as other government bodies. In this regard we note that the recent constitutions of Ghana and Namibia have also provided for prisons services.

15.111 Recommendation

The new Constitution should establish the Prisons Service.

People's Concerns

15.112 The submissions commenting on the Prisons Service expressed some Concerns about the lack of remuneration and training available to officers in the service. But their major concerns were to do with the treatment and conditions of prisoners who are often victims of inhuman, illegal and degrading treatment. Many cases were quoted to us based on people's experiences. While there seems little doubt that treatment of prisoners was worst under past regimes, there have also been problems under the NRM government. The bad record of treatment is particularly regrettable in view of the fact that Uganda is a signatory to the *Convention Against Torture and Other Cruel and Inhuman or degrading Treatment* (as discussed in Chapter Sever!; *Fundamental Human Rights and Freedoms),*

15.113 People's concern about Treatment of prisoners involve a number of distinct issues:

(a) There is concern that offenders and suspects are not only kept in gazetted prisons, but also in places such as military barracks and premises of the intelligence organisations, usually as a result of unwarranted arrests and detention by army and intelligence personnel. Such places were never built to serve as prisons and do not have adequate facilities.

(b) Facilities and amenities for prisoners in government prisons are inadequate. Prisoners usually take one meal a day; there is often no drinking water and no blankets; sanitary and recreation facilities are very poor even non-existent. Prisoners are given little time for personal hygiene.

(c) The Prisons Service staff often exploit prisoners' labour requiring them to work on farms owned by staff or by other people either without pay, or if payment is made, it is taken by the prisons officers or by government.

(d) Suspects are kept for long periods on remand and are deployed to do manual work while on remand. According to the law, one can remain on remand for 480 days in case of capital offenses and 240 days in other cases before he or she is entitled to be released on bail. However, even after those periods, bail or release is not automatic, and can be refused by a court. Many people argue for a shorter minimum period after which a suspect should be released automatically.

(e) Detention of pregnant women and suckling mothers with their babies has caused great sympathy and concern among people submitting views to us. In most prisons there are no maternity facilities and the environment is not conducive to the growth of children. By detaining or imprisoning a mother an innocent child is also illegally confined. Many people proposed that for the sake of the child, pregnant women and suckling mothers should have automatic right to bail save in capital offenses. Furthermore, people argued that no court should sentence any pregnant women or suckling mothers to serve prison sentences in minor offenses.

(f) Prisoners tend to be prevented from seeing other people including relatives and friends. Sometimes they are even refused private communication with immediate family members or lawyers.

(g) Overcrowding in government prisons has caused grave concern as expressed by many people, and the Commission's own observations confirm that there is a serious problem. When we visited Luzira Prison in April 1992, we were informed by the authorities that although it was built in 1927 to accommodate 600 inmates, it was in fact accommodating 1,457. A similar situation existed at Murchison Bay Prison which was acco::1modating 1,346 as opposed to the 480 inmates it was originally intended for. While Uganda’s population n has continues to rise, prison facilities, have deteriorated because they were neither maintained nor improved upon Of course, as a result of political turmoil not only prisons. are over crowded but also hospitals, schools Universities and even peoples homes. For the 20 years almost no new structures could be built or improved upon. But the increased numbers of prisoners has led to tremendous problems not faced in other institutions where people are much more free to come and go. Crowding in prisons results in sub-human conditions

which often endanger life itself. Submissions made various suggestions intended to reduce overcrowding in prisons:-

(i) the period for remand should be reduced and a law stipulating a specific period after which a remand prisoner must be <1utomaticaliy released;
(ii) magistrates courts should be conducted at prisons so that bail and other 111;clHtfS are dealt with on the spot. This could work as a temporary measure until the Prisons Service is equipped to transport all prisoners to court as required.

(h) The suggestion of separation of different categories of prisoners has received overwhelming support from the people's submissions. The criteria suggested for separating prisoners included sex, age, criminal record and health so that:

(i) men and women are as far as possible kept in separate prisons;
(ii) in order to avoid homosexuality and indiscipline, young prisoners are separated from adult prisoners;
(Hi) remand prisoners are separated from convicts;
(iv) prisoners suffering from contagious diseases are isolated from others; and
(v) proven homosexuals are separated from others ..

15.114 While the Prisons Service is, to some extent, already organised along such lines, with different types of prisons for different offenders, much more needs to be done.

Objectives and Functions of the Prisons Service

15.115 The Prisons Act does not clearly spell out the objectives and functions of the Prisons Service. However, from the submissions received by us the following objectives and functions have been identified as the most relevant for the Service:

(a) to punish offenders;

(b) to carry out custodial duties in respect of offenders or suspects thereby protecting the law abiding society;

(c) to rehabilitate and reform prisoners through vocational training programmes so they acquire, skills that will assist them to be self-reliant citizens after release; and

(d) to act as a deterrent institution for other citizens.

Organisational Framework

15.116 For the Prisons Service to implement its functions a[ld objectives, it must have a proper .organizational framework that provides an effective flow Of authority within the service. In the light of views submitted to us, we believe mere is a· need for provision on direction, a body to advise on overall policy, and a body to perform the functions the Public Service Commission at present carries out in respect of the service.

(j)

15.117 As to overall administration, direction should continue to be the responsibility of a Commissioner of Prisons who should be supported by a deputy, Both should, be appointed by the President after consultation with the Prisons Service Council (below) and subject to approval by the National Council of State, The Commissioner should be responsible to the relevant minister. But government needs specialized advice about prisons, and hence we suggest establishment of a Prisons Service Council to provide this function, We discussed the possibility of the Prisons Council being composed of the ,Minister of Internal Affairs as Chairman, the Attorney-General; the 'C:omri1issioner of prisons and his Deputy, directors of departments 'IP the ,prisons Service and regional prison commanders. But we recommend a smaller body consisting of the Minister of Internal Affairs as Chainman the Attorney General, the Commissioner of Prisons and not more than three members appointed 'by the £resident ,with the approval of the National Council, of State.

15.118 We found useful the establishment of a Prisons Service Council whose role should be to consider general policy concerning prisons and advise the President or the minister concerned on policy matters concerning the prisons service including appointments and discipline senior officers: including appointment of the Commissioner. It should also hear appeals from the Prison service Board and perform such other functions as Parliament may prescribe.

15.119 On appointment discipline promotions, complaints have been similar to those in respect of the police, namely that the Public Service Commission, due to its volume of work has been delaying the promotions and appointments of the prisons officers, In order to streamline the handling of such matters, there should be a special service board in respect of the prison services. Members of the prison service Board should be appointed by the president and it should determine the terms and conditions of service for all the prisons staff, discipline prison officers below the rank of senior superintendent of prisons and do any other duty formerly performed by the public service Commission.

15.20 Recommendation

(a) There should be a Commissioner of prisons responsible for administration of the prisons Service, supported by a deputy, both to be appointed by the president after consultation with the Prisons service council and subject to approval of the National Council of state.

(b) There should be a prisons service Council comprised of :

- **(i) the minister of internal affairs who should also be Chairman**
- **(ii) the Attorney-General**
- **(iii) the Commissioner of prisons**
- **(iv) not more than three members appointed with approval of the national Council of state.**

(c) The functions of the prisons Service Council should be to advise the president on policy Concerning prisons, appointment of the commissioner and deputy Commissioner and such other matters as parliament may determine.

(d) A Prisons Service Board should be established which should consider appointment, promotions and discipline of prison officers below the rank of senior superintendent of prisons and carry out other functions previously carried out by the Public Service Commission. The Prisons Service Board should be composed of:

(i) the Commissioner of Prisons who should also be chairman;
(ii) the Deputy Commissioner of Prison;
(iii) a member of the Public Service Commission; and
(iv) two prominent citizens appointed by the President on advice of the Prisons Service Council.

(e) The Prisons Act should be amended to provide in more detail for the functions of the Prisons Service, Prisons Council and Prisons Service Commission.

The Local Prisons Service

15.121 The 1962 and 1967 constitutions provided for a local administration prisons system. The prisons under local administration handled a limited range of cases and especially those sentenced by the traditional or native court system which operated until shortly after independence. This system was different from the national prison service system in regard to various matters such as standards of recruitment and training, procedures and terms and conditions of service.

15.122 In the light of the system of decentralisation recommended in Chapter Eighteen, control of the prisons service is among those functions that should be decentralized to local authority. Local services could handle prisoners sentenced in RC III courts and magistrates courts at county level. In that case there would be a need to establish prisons at sub-county and county levels. The staff to work in such prisons should be recruited by the district service committees (see Chapter Eighteen). However, their qualifications and training should be the same as those of the national Prisons Service in order to have some uniformity.

15.123 Recommendation

Prisons should be established (It county and sub-county levels to be operated by prisons services under the control of local authorities at district level.

Recruitment

15.124 Views submitted to the Commission are very clear on recruitment into the Prisons Service. There is consensus that recruits should be citizens over eighteen years of age and with a minimum educational standard of Ordinary Level Certificate. The majority submissions do not want to see non-citizens and uneducated people serving in the Prisons Service or any other security force. Their argument is based on experience of uneducated prison warders who have tended to harass prisoners in the past. They suggest that for one to qualify as a prison warder a person should be literate and intelligent enough to be, able to eradicate- and train the inmates in rehabilitation programmes. It is suggested that pe0ple with technical skills such as carpenters, cobblers, masons and so on should be recruited into the

ranks of the Prisons Service. It is almost unanimously suggested by those submitting views on the subject that the local population, through their RCs or elders, must vet those who want to join the Prisons Service. There is yet another view that recruits must come from all districts of Uganda so as to avoid one tribe or ethnic group dominating the. Prisons service.

15.125 The Commission is of the view that the above proposals can be implemented during recruitment. Candidates with professional or technical qualifications should be given priority. Proportional representation of tribes in service of this type does not make sense and is uncalled for. Recruits should be considered purely on merit but recruitment programmes should be carried out in all districts.

Training

15.126 Submissions have suggested that, in addition to professional training, prison warders and officers should undertake training in specialised fields especially psychology, human rights, elementary principles of law, agriculture, civil engineering, mechanics, carpentry etc. h is assumed that once properly trained the Prisons Service will be a professional service .able to carry out its objectives efficiently.

15.127 Recommendation

Government should endeavour to provide prisons warders and officers with courses that will equip them with knowledge of law, human rights and various technical skills which can in turn be passed oii to the inmates.

Improvement of Prison Conditions

15.128 A number of views have been given on how prison conditions could be improved to meet basic human standards:

(a) accommodation facilities for prisoners should have all the necessary requirements to make them suitable for human habitation, such as adequate ventilation, lighting, floor space, sanitary facilities and temperature control;

(b) prisoners should be given enough time to attend to personal hygiene and physical fitness;

(c) clean clothing and bedding should be supplied by the prisons authorities;

(d) sufficient food and clean water should always be provided to ensure that prisoners can remain healthy and strong;

medical care should be provided and every prison should have a medical clinic;

(t) prisoners should have access to 'books, newspapers, radio and T.V which might be provided either at his or her own cost ()r by the prisons;

(g) a prisoner should be free to practice a religion of his or her own choice;

(h) prisoners should be allowed reasonable access to visiting friends, relatives and lawyers;

(i) the Human Rights Commission or IGG should have an office in every prison to receive complaints.

CD There should be established a complaints bureau which should be accessible to all people and non-governmental organisations (e.g. the Red Cross). The bureau would serve as an outlet and a remedial instrument for aggrieved prisons staff and prisoners. It should ensure correct behavior by prisons staff and prisoners. The bureau could deal expeditiously with inmates' problems of an interpersonal and inter-group nature.

(k) The institution of the visiting Justice of Peace should be revitalized, so that independent judicial officers go around prisons to hear complaints at regular and short intervals. Reports should be taken seriously and implemented by the concerned authorities.

(I) As discussed in Chapter Seven *(Fundamental Rights and Freedoms),*. the majority :view is that detention without trial should be scrapped from Ugandan laws and anybody not properly remanded or convicted by a court of law should not be kept in prisons.

15.129 Recommendation

The people's proposals for improvement of prison conditions set out in this chapter should form the basis for an agenda of action by both government generally and the Prison' Service in particular .

Conclusion

15.130 While it is generally agreed that the rights of prisoners must be protected and their welfare in prisons improved, society must not lose sight of the victim of the crime and of the tax payer who currently foots the bill for the prisoner. The issue of balancing the rights of the .prisoner with those of the victim of crime has not been resolved by lawyer's moralists, theologians or sociologists. But as discussed in Chapter Seventeen *(Judiciary land the Administration of Justice)* while the offender should be punished by serving the sentence, he or she should also compensate the victim of the crime.

15.131 We note, however that due to the decline in the economy, the Prison Services has not been able to give prisoners what is due to them under the law. Most of the suggested improvements proposed by the submissions are already required by the Prisons Act. But being a member of the United, Nations and a signatory to various conventions on rights of prisoners, and being committed to full protection of human Rights, Uganda has no option but to make a major effort to improve conditions of prisoners.

CHAPTER SIXTEEN

PUBLIC SERVICE

16.1 In this chapter, we consider the public service and parastatal bodies (state owned companies or public enterprises in which the State has interests). We do not deal with special groups of employees of government such as the police, prisons service, intelligence organisations and the army as they have been covered in other chapters of this report. Many aspects of the public service have been dealt with in detail in the 1990 report of the *Public Service Review and Re-organisation Commission.* We agree with quite a number of the recommendations made in that report, some of which have already been accepted and implemented by government as per sessional paper No.1 of 1992 entitled *The Implementation of the Recommendations Contained in the Report of the Public Service Review and Reorganization Commission 1989/90.* As a result we do not need to consider this subject in as much detail as might otherwise have been the case..

16.2 . However, the Commission has carried out a different exercise from that undertaken by the Public Service Review and Re-organisation Commission (PSRRC), which carried out a largely technical evaluation of the public service. The Constitutional Commission has Consulted the people on all constitutional issues, including the public service. While much of what the people say on the subject is consistent with the earlier technical evaluation; in other respects the popular views are different or go further . In any event, as the popular views on the public service are to form the basis for provisions in the draft Constitution, there is in some cases a need for overlap with matters dealt with in the 1990 PSRRC report.

16.3 The chapter is divided into four sections. The first one deals with the role or public service and the importance of the subject; the second evaluates relevant provisions of the past constitution and the operations of the public service since pre-colonial times; the third discusses the concerns and principles emphasized in the people's views; and in the fourth we analyze the major proposal s and make our recommendations on the subject.

SECTION THE ROLE OF PUBLIC SERVICE AND THE IMPORTANCE OF THE SUBJECT

The Role

16.4 The public service is the active arm of government which implements government laws, policies and programmes . It is involved in collection of taxes, providing services e.g. health , teaching postal services, transport etc. It is the major source of technical and professional and professional advice for the government. Most government policies are based on the advice

ensure political stability, social progress, security, democracy and prosperity. So by virtue of its role alone, the public service is a subject with great relevance to future constitutional development.

16.5 In implementing government policy, a civil servant is expected to be guided by the traditions and qualities of the civil service of the British model, from which ours is derived, namely loyalty, integrity, impartiality, political neutrality and anonymity.

16.6 The major dilemma for any constitutional system is how to ensure a public service which is not only responsive to government direction but also independent, impartial, and professional. Constitutions of many Commonwealth countries pursue such aims by setting up an independent public service commission intended to ensure that appointments in the service are made purely on merit. If there is no political patronage involved in decisions affecting individual civil servants the public service should maintain independence and impartiality, insulated from political pressures.

16.7 In most African countries the expansion of state activity, particularly in the economic field in the late colonial and early post-colonial period, was seen as necessary by many policy-makers because of the weakness of the indigenous private sector. The state became the main agent of economic development and in turn stimulated the creation of new public enterprises. As a result there was a massive expansion in the public sector especially, in the number of persons employed in state owned corporations. Uganda was heavily committed to such policies.

16.8 While its work in providing services to the public and advice to government has been appreciated, there is substantial demand in the views of the public which echo recommendations of the PSRRC report that the public service should change from the traditional role of providing service to a more results oriented approach. Government ministers should have specific targets which they must accomplish..

Importance of the Issue

16.9 The majority of people who submitted views, were concerned about the performance of the public service. They lament that. while at independence Uganda was considered to have one of the best civil services in Africa, it has since deteriorated mainly due ,.to political instability and economic destruction. The civil servants themselves talk of the "good old days" when their salaries and .allowances used to be meal,l1ingful to them before they were almost destroyed by inflation.

16.10 There are high expectations that the new Constitution should solve some of those problems and even improve things so that the public service once again makes a major contribution to development, ,and civil servants can live a better life .. A lot of suggested improvements have been proffered but we suggest that many of the problems can best be solved by better management and administration and improvement of socio economic conditions rather than through the constitution. The constitution can, however, play a role, for it can set up and determine roles of institutions like the Public Service Commission in a manner which can assist government to eliminate the problems within the public service.

SECTION TWO: EVALUATION OF PAST CONSTITUTIONS AND OPERATION OF THE PUBLIC SERVICE

Public Service in the Pre-Colonial Period

16.11 Both the segmentary and centralized pre-colonial African societies had their own methods of organising the administration and implementation of societal norms and laws. The organisation centred around either the king, clan leaders or the paramount chief whom the whole community respected as their leader and symbol of unity. In kingdom areas of Buganda, Bunyoro and Ankole there had developed a hierarchy of administration in addition to general mobilisation of every member of the society. In Buganda each clan was given a specific duty to perform in relation to the maintenance of the Kabaka. The *Embogo* (Buffalo) clan, for example, was in charge of transporting the Kabaka whenever he wanted to visit any part of his kingdom. Among the Acholi, work was organised on the basis of age sets and proved capabilities of an individual.

16.12 There was a degree of specialisation in pre-colonial African societies. Some specific duties were recognized and reserved for the experts. These included the medicine men and women, the rain makers, priests, war leaders etc. But in general, roles were rather diffused. In some cases the medicine man would also be the priest, the rain maker, the soothsayer, but he had always to pay his allegiance to the king or chief of that society.

16.13 In the kingdom areas of Uganda, and especially Buganda, chiefs tended towards being specialist administrators. In Buganda they constituted an appointed - rather than hereditary and hierarchical system of local administration. There was the Kabaka, *Katikiro, Bataka* (clan heads) county chiefs, sub-county chiefs, parish chiefs and *batongole* chiefs'(village chief) in that order, throughout the kingdom. Senior chiefs were both the initiators and implementers of policies, mobilising the people or delegating implementation power to lesser chiefs.

16.14 Under this system of administration the. Kabaka was able to govern his kingdom effectively from the outset, the British colonial administrators, were impressed by the kiganda model of local government and quickly decided, it would. be the most viable and probably the cheapest to be "exported" to all parts of Uganda.

The Public Service in the Colonial Period

16.15 The Uganda Order in -Council 1902 which to all intents and purposes: provided the legal framework for the13ritish Protectorate government in Uganda did not make specific provisions for the public service. This was perhaps considered unnecessary at the time because the intention was to post officers from Her Majesty's service in Uganda together with the African chiefs who were to be incorporated into the administration by establishment of native authorities and later, local governments. The chiefs and all other officials held office at the discretion of the colonial power.

16.16· The public service was dominated by Europeans at sender levels and they were both the political and civil heads in their respective departments. . The public service was categorized into two parts, namely the colonial service and the local service. The colonial service was almost exclusively staffed by Europeans and a few Asians at the lower level

while the local service was staffed by Africans (natives) recruited from East Africa. All categories of chiefs, their clerks and interpreters were in the local service. The two services provided fundamentally different terms and conditions of service to their respective employees with the former offering far more lucrative terms than the latter. Nevertheless, the use of the kiganda model of administration meant that there were many more Ugandans in the public service than was the case' in most British colonial territories.

16.17 There was no separation of political and administrative control of the public service until shortly before independence. 'Under the colonial: administration, public officers were appointed, disciplined and removed from office at the pleasure of the 'British Crown through the Governor who was the chief representative of the Crown. In 1955, government set up a Public Service Commission (PSC) which was established administratively and later legalised by an Order-in. Council of, November 1957. The PSC consisted of the chairman, one African member and one European member and later deputy chairman was appointed. A separate Police --Service Commission was also established by, an Order in- Council of 1 December 1958.

16.18· Each departrnent was headed by a professional director who rep6'rted to the Chief Secretary and through him to the Governor. There was a considerable level of decentralisation of activities in the field through regional and districts offices each head of department including provincial and district commissioners wielded considerable power in their respective spheres of influence. This system has been criticised for producing civil servants who, had developed a mentality of being their own masters, and would not easily take orders from their relatively less professional and inexperienced new political masters at independence

The Public Service in the post Colonial Period

16.19 An Order –in council of 1962 established an executive PSC- that is, a body which exercised direct powers over officers, rather than merely a body advising government on its exercise of such powers. The executive role was initially retained by the independence Constitution of 1962. In 1963, however, a constitutional amendment abolished the executive role and PSC became an advisory body. The powers of appointing public officers and promoting and disciplining them were vested in the President who was supposed to act in accordance with the advice of the Prime Minister. The PSC retained its powers to make regulations regarding its procedures and functioning and had power to delegate its authority. PSC members were to be appointed by the President on the advice of the Prime Minister. The 1963 changes provided considerably more scope for *political* control of the public service than envisaged by the original 1962 constitution and set the pattern for the future

16.20 Under, the 1967 interim constitution; the PSC remained an' advisory body to the executive president, who 'was empowered to delegate his powers in 'writing thing of the PSC sub committees, any of, its members or any public officer. The president appointed the PSC with the advice of the Cabinet. The president also had powers to appoint, remove or discipline public servants in accordance with the advice of PSC.

16.21 The, 1967 Constitution, increased presidential powers over the public service in two important ways. First; the President’s power to appoint PSC members was unfettered no

advice was needed from any person or authority. The PSC could therefore be filled with strong supporters of the President and was most unlikely to act independently.

16.22 Second, under Article 104, the President 'had power to appoint persons to hold or act in any office in the public service or a district administration or urban authority. The President could confirm appointments, exercise disciplinary control over public servants. and remove such persons from office. He could delegate powers in writing to the PSC, Teaching Service Commission or any public officer or other authority.

16.23 It has been argued that most public servants were genuinely committed to the task of socio-economic transformation and were members of the modernizing force. But with the reduction of democracy under Obote's rule the wide powers of the President ensured that the public service including parastatals quickly became an important source of patronage. Government could seek to boost it's support by rewarding party supporters with jobs even if they did not have the required qualifications.

16.24 Political interference as well as poor management slowly sapped the morale df the civil service under Obote. Senior officers were no longer confident that they could count on a career in the civil service while those below them wondered whether proved political loyalty was more important criterion for promotion than administrative or technical efficiency.

16.25 The situation worsened with the 1971 coup and the year that followed which saw the expulsion Of Asians and many European experts who had been working in the public service. There was· gross mismanagement and destruction of the ,infrastructure and general of morale among the public servants. 'The political climate was so bad that many of the well qualified and trained public servants had to flee the country because their lives were in danger. There was complete loss of discipline and professional ethics. With inflation making salaries meaningless there were few brakes on corruption which soon became the order of the' day and was almost institutionalized in Some sectors of the public service. Any service required a bribe.

16.26 The NRM government has been laboring since 1986 to reverse the trend in the civil service. It has taken some positive measures in particular by appointing PSRRC in 1989 which reviewed the public service and in 1990 made recommendations some of which government has started implementing. These include retrenchment programmes to eliminate the “ghost workers” and reduce the redundant personnel so that not only can those who stay be paid better but the Public service become more effective. Another measure is the decentralisation policy here by government responsibilities and services are to be transferred to local governments in such a way that the people can plan how to solve problems that affect them (see ,Chapter Eighteen *Local Government).* However, the NRM government has so far failed to combat corruption in the public service despite putting in place institutions intended to combat it, e.g .IGG, Public Accounts Committee and the Leadership code.

SECTION THREE: CONCERNS AND PRINCIPLES EMPHASIZED IN THE PEOPLE'S VIEWS

16.27 In their submissions, people expressed many concerns about the performance of the public service, generally lamenting its lost glory, honour and respect. They also pointed out principles which could assist in improving and solving some problems in the public service.

Concerns of the People

Corruption:

16.28 Most of those who addressed the issue criticised the rampant corruption existing within public service. People observed the greed for material wealth and open theft. They noted with disgust the fact of massive embezzlement of public funds and misuse of public property by public officers. What frustrates the people most is that corrupt civil servants have survived successive regimes and have continued to frustrate government efforts unabated. The few that have been arrested and charged are normally released on bail and charges are later dropped or the defendant is acquitted for "lack of evidence" ..

Misuse of government property:

It is widely known that government property entrusted to public officers to assist them perform their duties has often been turned into almost personal property. The people criticised misuse of government vehicles by officials; for example, through weekend visits to villages on personal business, or long evenings parked at bars, contrary to the standing orders. Telephones, typewriters, furniture, houses and so on belonging to government are also misused, with users not even caring to maintain them because they belong to the public. We observe that in general Ugandans seem to have no culture of respecting and looking after public property. Proper care of government property prolongs its life and helps to save huge sums of replacement costs. There is a need to develop our social consciousness and realise that social property is in many cases even more important than private property.

Under-qualified staff especially at lower levels:

16.29 Due to nepotism and patronage, a number of unqualified staff have found their way in the civil service. These, have contributed to the poor performance of the public service because they do not have the relevant qualifications- and experience. People in their submissions often suggested that many such people have often been protected by high ranking officials in government. They demanded that retrenchment exercises should eliminate such persons from the public service

Grossly inadequate remuneration:

16.30 There is an outcry from the public servants themselves, particularly the teachers, that the salary they are paid is so low. as to be virtually meaningless. Many people have attributed the inefficiency and incompetence on the part of civil servants to the low morale resulting, from extremely unrealistic remuneration. The living wage has always been quoted as a right

for any public officer, although for many years the government has not been in position to pay it due to the poor performance of the economy.

16.31 The unrealistic salaries are not received on time, often taking months to reach the country field staff in particular. Allowances of field staff are seldom paid, nor do they receive operational funds to assist them do their work. The claims that they forward to their respective head offices are seldom paid. The situation is aggravated by fraudulent practices on allowances and other claims in the civil service. Staff demand that such anomalies should be corrected by the new Constitution. However, we propose that the anomaly should be corrected administratively.

16.32 In their submissions, the people noted that the inadequate pay has led to massive reduction of hours actually worked. Many civil servants own retail shops, small restaurants, hairdressing salons and taxis. The majority are *bibanja* (plot) owners so on weekends or even during weekdays they have to spend some time developing them. As a result of these and other practices, many - perhaps a majority - actually work for fewer days and hours than officially' required and so contribute far less than what is expected of them.

Lack of support for field staff'

16.33 There is a genuine complaint particularly from the field staff officers who complain that there is apparent abandonment of field staff by the ministries headquarters which have tended to abdicate their supervisory duties and the provision of guidance to the field staff.

Lack of facilities:

16.34 Many people have pointed out that some government departments lack facilities' to do their work competently. It is undoubtedly true that due to poor economic performance, corruption and mismanagement, many offices have not been equipped as they should.

16.35 It is absurd that some government ministries and departments which have been accommodated ,in low rent Asian properties have been evicted for non-payment of rent. Other departments are hibernating in the parliamentary; building; in offices that are intended for use by parliamentarians. Due to the political turmoil of the last twenty years, government has not been able to construct new buildings even for ministry headquarters. Those built by the colonialists are poorly maintained mainly due to lack of funds or embezzlement. Some district headquarters such as Luwero, Kumi, Apac and Rakai continue to lack office accommodation of their own after fifteen years ,of their existence There is acute shortage of stationery and office equipment such as chairs, tables, filing cabinets, typewriters, etc. most of which were looted ,during the previous years of turbulence. The people lamented that often in government hospitals there are no drugs, beds, mattresses water etc. although the doctors are also compelled to go and do their own business , thus deserting hospital. In schools there are no text books and exercise books, even school chalk is a problem. In rural areas the schools have no desks; children sit on the ground.

16.36 The people complained that government neglect to furnish necessary equipment has forced the ordinary people to devise means like Parent Teachers Association (PTA) funds or medical fees to keep government facilities running. To some people, this is seen as neglect of duty by government. However, the people -were aware that although some of the requirements such as drugs and be,oks have not been supplied in big quantities, even the little that has been supplied by government has often been diverted or stolen by the public officers.

16.37 We also observe that a good number of high calibre and dedicated public officers have braved the unacceptable situation and maintained service to the people. Others have given up and diverted their attention and efforts to other things like petty trade or joined other fields which are considered to be more profitable. The teaching professional is the most affected, particularly in rural areas. There is little doubt that several government departments like the government chemist, the Police construction units, some hospitals and schools, urgently need to be rehabilitated and equipped with necessary equipment. People argued that government should mobilise funds or even borrow to arrest the deteriorating situation of such institutions, most of which could make vital contributions to development.

Lack of response to needs of people:

16.38 Public officers have been accused of being reluctant to attend to people's needs. The Police has been criticised for not being very active in prevention and detection of crime even when they receive free information. The medical personnel; have been criticised 'f6t sometimes being reluctant to attend to emergency cases. The accountants clerks and secretaries have been criticised for not processing papers in time. The government drivers have not taken into account lives of the people they are carrying neither do they know the value of the vehicles. The list is very long, with almost every category of public officer seen
,as having problems· in performance.

16.39 In addition, many people pointed. out that public officers lack respect' for the people they are supposed to serve, which they show in many ways such as rudeness, not giving 'attention to clients, not coming to work on time, etc. *The* public would like to see such behavior eliminated, from the public service because the civil servant is employed and part by the people out of the people's tax contributions

Lack of implementation of government projects.

16.40 The people in their views. expressed, alarm about delays, in. implementation of government projects. Year after year large amounts of funds are -said to have been voted for the same projects which did not take off. It was, observed that, the whole country was littered with un finished projects. Some people gave Kampala as an example and observed that there are constructions and repairs off offices which have been stagnant for years not withstanding the constant outcry concerning shortage of office accommodation. Lack of supervision by the concerned ministries has largely contributed to the non implementation of governments projects. Most of the resources and funds for the project are either diverted or stolen by the implementing officers. Many people proposed that those responsible for non implantation of projects be investigated and the culprits brought back to book.

Government handling too many activities:

16.41 Some people in their submissions have criticised government for taking on too many activities, with few, if any, being managed properly. They therefore suggest that part of the blame for poor performance of the public service lies with government for failing to develop sound policies for implementation by the public service. It was proposed that government should pull OJlt from non-essential activities better handled by the private sector e.g. trade, tourism, marketing and processing. Then it should concentrate on priority areas in which it should have actual impact. '

Excessive emphasis on rules and procedures:

16.42 Some people have noted that sometimes civil servants over-emphasize the rules and procedures for doing things. They argue that in some cases certain procedures could be avoided in order to achieve results, but often the bureaucrats insist on procedures with the result that they are not solving the problems of the people. They have suggested that the standing orders of the public service should be revised to fit the current situation and minimize unnecessary procedural requirements.

16.43 We observe, however, that the standing orders have not been strictly followed by the civil servants because they are not easily available even to the civil servants themselves. They just refer to them. There has been no deliberate effort even t0 enforce them because they are unknown to most of the public officers.

Principles Emphasised by the People

Public Service to be independent and impartial:

16.44 Submission have pointed out that while the public service should be responsive to government the same, time should remain independent, impartial and politically neutral.

16.45 The common view expressed in the people's submissions is that the principle of independence of the public service should always prevail. The principle is seen having two aspects. Although the political leaders should be the ones in charge of the government policies, they should not interfere with the running of the public service by either dismissing public officers or appointing new ones of their own. The work of appointing, disciplining and removal of the public officer should be left to an independent impartial body such as the public commission. The second aspect is that civil servants also should practice political neutrality and refrained from pursuing party political interests.Althoughb the civil servant is entitled to have political ideas and ideals, he or she should not express them through holding office in parties and other prominent activities. The principles of impartiality, independence and political neutrality will assist to build a strong public service free from manipulation by any authority.

Principle of service to the people:

16.46 The duty of a civil servant should be to serve the public. All members of the public should be his or her masters who should be served equally, without discrimination, fear or favour. While the people in their views have stressed the importance of service to the public, the public servants in actual reality are not servants of public, instead (hey are chiefs or lords, it is the other way round the public is on its knees begging civil servants to provide what they should automatically get. It has been suggested that unless there is a dramatic change, public servants should be called "public chiefs" or "lords" because they are not servants as the word seem to suggest. In performing his or her .duty a civil servant should know that the service he or she is offering is vital to the public and sometimes even a monopoly of government (e.g. issuing passports, licences, permits) such that it cannot be obtained anywhere else. The fact of such a monopoly should not be abused. The civil servant should be aware that he or she is employed and paid by the members of the public out of their taxes.

Efficiency:

16.47 Civil servants also manage the day to day affairs of the State mainly by administering services to the people. If services are to be delivered effectively, the principle of efficiency must be observed by civil servants. Efficiency involves proper use of resources and appropriate training.

Fair remuneration:

16.48 It is generally an agreed principle in management that work which is well done deserves fair pay. Most people in their submissions have stressed the principle of fair remuneration to all competent civil servant. This is seen first, as a right and secondly, as providing motivation to increase effectiveness and efficiency in public service.

Transparency and accountability:

16.49 The people have demanded transparency and accountability in the performance of public affairs and state duties. Every public officer should be held responsible for his or her actions to the public. If the integrity of the public service is to be restored, every public officer will need to meet some basic standards of integrity. In particular they should:

(a) (a)take fair decisions with respect public affairs;

(b) take proper care of public property as if it were their own;

(c) avoid stealing or pilfering public property

(d) avoid corruption in discharge of public duties;

(e) keep their dignity and respect in the public eye.

16.50 People argued that those officers who do not meet minimum standards should be dealt with through disciplinary proceedings, and government and institutions such as the TGG should apply pressure to ensure that this occurs. They expressed concern about the general lack of action taken to deal with misconduct of civil servants ranging from corruption to abuse of government property, neglect of duty and carelessness. It was suggested that such offences should always be punishable. We observe that the standing orders would have gone a long way to solve the indiscipline in the public service if they were in fact enforced by the heads of departments and PSc.

Promotion on performance and merit:

16.51 It is the view of the vast majority of the submissions commenting on the subject that promotion in the public service should depend on merit, good conduct, training, exemplary performance and experience in one's work. It is suggested that promotional examinations both oral and written should be undertaken by those qualified for promotion. Long service alone should not qualify someone to get promotion. We observe that the PSC has already made specific provisions about promotion. These regulations are based on principles of personnel administration but sometimes they have not been followed due to political ,interference. People want to be sure that a person's performance in the service is clearly evaluated to make sure that he or she is actually equal to the task involved in any appointment. In cases of vacant post.;; in the public service, it was suggested by many that wide publicity should be required, not only through Kampala newspapers, but also on the radio and district notice boards.

Decentralisation as a priority:

16.52 It is the view in most submissions that the 1967 Constitution provided for an excessively centralized system of government. The new Constitution should correct this anomaly and ensure that the local governments have some autonomy in the management of state and public affairs and control of public servants carrying out functions of local responsibility. We note that the NRM government has already committed itself of a policy of extensive decentralisation and we recommend that it continues (see Chapter:Eighteen).

SECTION FOUR: ANALYSIS OF MAJOR PROPOSALS

Management of the, Public Service

16;53 One of the problems highlighted in, the people's submissions about the public service is political interference by political leaders in ,appointing unqualified people to public service positions on the basis of patronage and nepotism. While the PSC is intended to co-ordinate the recruiting of civil servants. Sometime faces pressure from political leaders seeking to interfere with deployment, appointment and even promotions of public servants. In respect of senior appointments, political Interference has sometimes been blatant. In 1980, the Military Commission dismissed many district commissioners who were suspected not to be

sympathetic to UPC party apparently to prevent them acting, in the course of their duties, as returning officers in the general elections of that year. During the Obote II Regime, the UPC government dismissed or retired or suspended those permanent secretaries and chiefs whom it suspected were not UPC supporters. It should not be considered that the UPC government was necessarily acting unconstitutionally by suspending or dismissing or retiring particular officers. As we have seen, Article 104 of the 1967 Constitution vested all such powers of the President.

16.54 There seems no doubt that in future the public service should be much better insulated from political interference. One of the best ways of doing so is to separate the overall management of the public service from decisions on appointment, promotion, demotion, dismissal, etc. of individual officers - matters which might be described as personnel matters. While government has every right to be concerned with overall management and efficiency of the service, an independent body should be responsible for personnel matters.

16.55 Recommendation

(ay The Ministry of Public Service sh6uld handle overall management and efficiency of the public service on behalf of government.

(b) An independent. Public Service Commission. should handle personal matters concerning appointments into and advancement within the public 'service.

The Public Service Commission

Role and functions:

16.56 According to the people's views, an independent Public Service Commission should be entrenched in the new Constitution. Most agree that the PSC should have exclusive executive powers as regards removal of civil servants and in addition, should ,advise the Presidents on appointments to senior constitutional posts. The following are some of the reasons advanced to create an executive PSC.

(a) Taking way the executive powers of the PSC in the 1960s opened the door to destructive political interference in the public service which should be permitted to happen again;

(b) In practice the President is so busy with other state duties that he or she has no time to exhaustively scrutinize the appointments, the appointments, promotions, promotions,desciplinary matters, etc affecting public officers. Vesting these powers in an independent body will also protect the president from being approached and pressurized by ministers, supporters or clan members to appoint or promote persons who may not have relevant qualifications. Hence many views argue that vesting executive powers in the PSC will reduce malpractice, restore confidence in the service and improve it qualitatively.

16.57 The following are some of the proposed functions of the PSC which have been suggested by the people's submissions:

(a) To interview, appoint, promote and dismiss civil servants;

(b) To discipline civil servants;

(c) To advise the President on the appointment of high ranking constitutional officeholders and other senior public officers, in accordance with law; and

(d) Review the Standing Orders and Regulations so as to bring them into conformity with the changing circumstances in the country.

16.58 Recommendation

(a) The functions of the PSC should include:

(i) to advise the President in making appointments to high ranking constitutional and other offices, in accordance with law;
(ii) to appoint, promote, discipline or dismiss other civil servants;
(iii) to review the terms and conditions of service of public officers; and
(iv) to review the Standing Orders and Regulations, training and qualifications and all matters connected with management and development of public service and advise the government.

(b) The PSC should be answerable to Parliament in performance of its duties and should submit annual reports to Parliament.

Appointment, Qualifications and Disqualification of Members of PSC

16.59 An overwhelming majority of people in their views suggest that the members of the PSC should be appointed by the President subject to parliamentary approval. We doubt that it is practical for the whole Parliament to consider such issues, but agree that the principle of scrutiny of proposed appointees should apply to persons proposed for appointment to such important positions. We would suggest that the National Council of State be given this role.

16.60 The majority of people indicate the PSC should be composed of prominent citizens of high integrity and with suitable experience. They should not include public servants or members of Parliament or district councils, or persons holding executive positions in political parties, as any such appointment may be seen as compromising the independence and neutrality of the PSC.

16.61 There are suggestions that the PSC should have enough members so that it may divide itself into committees to enable it discharge its responsibilities. There is general consensus that members of the PSC should be subject to dismissal for misconduct or failure to perform their duties.

16.62 Recommendation

(a) Members of the PSC should be appointed by the President but subject to approval by the National Council of State.

(b) The PSC should be composed of the Chairman and eight other members two of whom may be appointed as deputy chairmen.

(c) The members of the PSC should be people of high integrity and good character with wide experience but should not include members of the public service or members of Parliament, district councils or executive bodies of political parties.

(d) A member of the PSC who fails to perform his or her duties or is guilty of misconduct should be removed by the President on the advice of the National Council of State.

Tenure of Office

16.63 There are people who want the term of PSC members extended beyond that of the President so that not every President who assumes office has power to appoint a new commission. It is argued that such arrangement will tend to create stability in the institution. We accept the need for some continuity in membership of the Commission. On that basis, tenure of office should be renewable, and there should be provision for the terms of only some of the members to end at anyone time, so as to ensure continuity in membership.

16.64 Recommendation

The members of PSC should serve for a period of four years and should be eligible for re-appointment, but half of the first members should be appointed for a lesser period, so as to ensure the terms of members terminate at different times, thereby providing some continuity of membership.

The Teaching Service Commission

16.65 A few memoranda addressed this issue. The 1967 Constitution established the Teaching Service Commission (TSC) under Article 102 as an advisory body to assist the President in appointing, promoting and removal of teachers. The views suggest that the TSC, like the PSC, should have executive powers and so should no longer be merely advisory to the President. It should also be composed of competent people of high integrity.

16.66 Recommendation

The TSC should perform similar functions to those of the PSC in regard to teachers and should be subject to composition requirements similar to those recommended· in respect of PSC.

Creation of New Offices in the Public Service or Teaching Service

16.67 There is no consensus as to who should create a new office in the public service. Some people have suggested Parliament, others the President and some the PSC or TSC, as appropriate. The present practice is that the civil service falls under the Ministry of Public Service which is responsible for determining the size of the establishment, and fixing the terms and conditions of service in consultation with the Treasury. The legal power, however, to create such a new office is vested in the President.

16.68 We are of the view, that creation of offices (as distinct from appointments of officers to such offices) is essentially a management function, which should ultimately be in the hands of government. Nevertheless, there are numerous personnel issues relevant to such matters, including the qualifications, terms of service and so on as appropriate to an office. Accordingly, power to create a new office or department in the public service should be exercised by the President but only after consulting the appropriate service commission.

16.69 Recommendation

The President in consultation with the relevant service commission or committee may create new offices in the public or teaching services of Uganda.

Decentralisation of Functions of PSC and TSC

16.70 It is clear that neither the PSC or TSC can operate effectively if they attempt to handle all their responsibilities on a centralised basis. There has been a long history of district based service committees which exercise various functions on behalf of the PSC, and we note the general popular support for government proposals to increase the role of district committees under its decentralisation policy.

16.71 As discussed in more detail in Chapter Eighteen, we propose that both the PSC and the PSC should delegate their powers to lower levels at the district so as to increase efficiency and effectiveness. The members of the service commissions at the district levels should be appointed by the district councils or its committees. Members of Parliament, of district councils and of political party executive bodies should not be eligible to serve on such commissions.

16.72 Recommendation

The PSC and TSC should decentralize their functions to district service commissions Appointed by district councils, which should not include members of Parliament district councils or political party' .executive bodies.

Appointment of Presidents Personal Staff

16.73 While most public servants should be appointed by the PSC, we, are of the view that special considerations should apply to the personal staff of the President. The President should be allowed to appoint personal staff but they must have the necessary qualifications

and should not be unnecessarily numerous. The numbers should be determined by the approved establishment in the office of the President. The President should also be free to remove them. But in respect of normal discipline, they should conform to public service standing orders.

16.74 Recommendation

(a) The President should have power to appoint and remove his or her personal staff.

(b) The salaries, allowances and discipline of such staff should be guided by Public Service Commission Standing Orders.

Management of Ministries and Departments

16.75 The major figures involved in management and direction of departments and ministries are ministers and the public service heads of ministries, who are at present called "permanent secretaries". Under Article 67 of the 1967 Constitution, a permanent secretary has functions of organising operations of a department; advising the minister on departmental business; implementing government policies; and is responsible for government funds. A permanent secretary is intended to be a mature person, with wide experience in planning and administration and is appointed by the President under Article 104 of the 1967 Constitution. He or she is assisted by an under secretary, principle assistant secretary, senior assistant secretary and a number of assistant secretaries.

16.76 On the relationship' between ministers and permanent secretaries views from the people have suggested that the Constitution should make a clear demarcation of the roles and functions of each in order to avoid conflict. In brief it, is suggested that the minister should be responsible to initiate policies and convince the general public, particularly the Parliament, that government policies are good for the development of the country while the permanent secretary should ensure the actual implementations of the policies and handle the general administration of the ministry.

16.77 People have suggested that the power to fire and hire permanent secretaries should be vested in the PSC and not the President because Article 104 has been abused by successive Presidents. The argument is that because of the great responsibilities shouldered by permanent secretaries, they should enjoy security of tenure like that of Inspector General of Police and the Auditor General. At the moment, they hold their posts at the pleasure of the President. We recognize that security of tenure is quite important for any high ranking officer in public service so that he can act without fear or favour. However, incase his or her behavior or performance is very poor, the President should have power of removal. The President is, after all, the one who is ultimately politically answerable for the failure or success of government policies. Therefore, we propose that the President should have powers to appoint and to remove permanent secretaries, but in order to ensure the power is not exercised for political reasons, it should be exercised in consultation with the PSC.

16.78 Some people have suggested that there are people who might not be traditional civil servants but have such management skills, experience and qualifications that they should also be considered for appointment as permanent secretaries in the civil service. We agree that there is good reason to be able to bring in suitably qualified and experienced persons to senior post as they may be able to make considerable contributions, and bring fresh approaches.

16.79 Some people are opposed to the name of the administrative head of a ministry being called a permanent secretary because the name is misleading since the incumbent is not permanent. The PSRRC suggested that permanent secretary should be renamed "Director _General", however we propose that he or she should be called a "principal secretary" on the basis that all other senior posts are also designated as secretaries of one kind or another, so that the most senior post should have a name making him or her the principal among secretaries.

16.80 Recommendation

(a) There should continue to be persons appointed to head departments, who should have a role similar to that provided in Article* 67 *of* 1967 *Constitution, so that such a person should be the administrative head of the ministry or any government department, with functions which should include:

(i) organising and ensuring the smooth running of the department or ministry;
(ii) advising the minister, as required, on the operation of the department or ministry;
(Hi) ensuring implementation of government policies; and
(iv) being responsible for accounting for government moneys.

(b) The name given to heads of departments should be changed from permanent secretary to "principal secretary".

(c) The principal secretary should be appointed and may be removed by the President in consultation with the PSC.

(d) Those who may not have risen in the ranks of the traditional civil service but have relevant management skills and experience may be appointed *to positions of principal secretaries.*

Transfers and Training pf Public Servants

Transfers:

16.81 Some people have supported transferring civil servants from one department t9 another or from one location to another as a healthy administrative arrangement. They argue that it can help to fight corruption and to expose civil servants to different part of the country so as to make them appreciate and, deal with different communities in Uganda. It is argued that public officers who are exposed to the country and its different people are less likely to be parochial in making decisions. Staying in one place and becoming too familiar with it is regarded as often resulting in officers getting into compromised situations which may lead to

corruption. On the other hand, transfer as a punishment for major wrong-doing is strongly opposed by the people's submission because there is no place in Uganda that needs incompetent or inefficient civil servants, who should rather be punished or dismissed.

16.82 Some people have suggested that a number of considerations must be borne in mind before an officer is transferred, especially as nowadays government lacks facilities such as the accommodation necessary for officers to do their work with peace of mind, especially in more remote rural areas. In, such areas, it is suggested that preference should be given to the officers resident in the area where the job is based as long as they have the necessary qualifications. We note that decentralisation should help to solve some of these problems in the longer term.

16.83 Many people, especially women, have expressed disgust about transfers of officers being made without taking into account family needs such as education of children or the employment opportunities for the other partner. Many women have lost jobs because their husbands get transferred to areas where there are no job opportunities. Some propose that domestic stability, convenience of a family and equality of sex should be taken into consideration when transfers are being effected.

Training:

16.84 The majority of the people who submitted views on this issue emphasised the importance of training civil servants. The good training institutions which operated in the 1960's have disappeared or are in a state of grave disorder. It was observed that while new systems have been introduced in management in many other parts of the world, Uganda's civil service has lagged far behind. Few civil servants have been exposed to the new science and technology of the modern world. The few scholarships offered by foreign organisations or governments often expire before a candidate can be chosen. People complain that training abroad is reserved for lobbyists, who can move from office to office or for those who use bribery. Some officers go for overseas courses which have no relevance. In other cases it is said high ranking officers insist on attending workshops or courses intended for junior officers, mainly in order to get allowances in foreign exchange.

16.85 Locally, there is a major shortage of training institutions in management and planning. There is mainly the Ugandan Management Institute that can offer managerial skills apart from Eastern and Southern African Management Institute (ESAMI) in Arusha Tanzania, which is a regional institute. Other institutions which used to offer training to junior civil servants have almost come to a halt because of mismanagement and lack of maintenance funds. Even these are highly centralised, the civil servants in the district administration having little access to them. Hence there is a need to rebuild institutions and develop a decentralized approach to selection of trainers and in the design of training programmes. These matters should be important priorities for the Ministry of Public Service and its proposed Human Resources Planning and Redevelopment Department.

16.86 We propose that there should be a department of human resources planning and development which should coordinate training. It should identify opportunities and even select the appropriate qualified persons. It should oversee rebuilding of training institutions and design and implement decentralised and other required training programmes. Such a department could be in the Ministry of Public Service.

16.87 Recommendation

(a) Government should establish a Human Resources Planning and Development Department in the Ministry of Public Service with responsibility for organising training of public servants.

(b) Government should establish a staff college for senior civil servants and should rehabilitate the few existing ones for junior officers.

(c) Transfers of public servants should take into account domestic considerations for proposed transferees.

Retirement and Pension

Retirement age:

16.88 This subject was addressed by a number of people in submissions covering mainly three alternatives on retirement of public servants, namely: voluntary retirement; compulsory retirement; and retirement after a special fixed period of service.

16.89 The majority of people want to have a fixed age upon which a civil servant must be retired. A minority advocated contractual service, whereby on expiry of a contract an officer ceases work with agreed benefits unless the contract is renewed. Those who advocate for contractual services argue that public officers would serve more diligently and the policy would help to create job opportunities for new entrants into the service. Still others argue that after a person has worked for 20 or 15 years he or she could retire irrespective of age and should be entitled t6 retirement benefits. In that case, there would be no need to fix the retirement age. The majority of people who have opted for a fixed retirement age have given alternative ages, the commons ones being 50, 55, 60, and 65 years. The majority views opted for 55 years as the fixed age for retirement.

16.90 Currently the Pensions Act provides for pension rights for an eligible public officer who has served continuously for a minimum of ten years in a pensionable post in the public service and who retires with a clean record at either the voluntary retirement age of 55 or at the compulsory retirement age of 60 years.

16.91 Under the Public Service Act, (cap 277), the President can retire or remove a civil servant from office in the public interest. Although this power was misused in previous regimes, it was not intended to be a punishment but rather to enable removal of a civil servant on compassionate grounds. A person removed in public interest *is* entitled to terminal benefits,

16.92 Recommendation

Powers to ,retire public servants ill the public interest Should be. exercised by the PSC or in case of constitutional office, by the President in consultation with the PSc.

Rationale for retirement:

16.93 Whereas the assumed rationale behind retirement should be that people who have worked enough for government should be given a chance to retire and rest to enjoy the fruits of their sweat, the people's submissions suggest other rationale. They look at retirement as a way of giving a chance to other people to work for government. According to their views, the earlier one retires the better for the new entrants. This view reflects the fact that the government is the biggest employer of trained personnel and so many young people are looking to it for employment.

16.94 However given the current political stability in the country and assuming that the situation will continue to improve to allow economic and industrial growth which will open more avenues for the people to get employment, we are optimistic that there will be less need
to look desperately to the civil service as the main source of employment. We observe that improvement in the economy should also lead to improvement in social services and hence increase the life expectancy of our people. If this occurs, the age of 55 years which the majority have proposed for compulsory retirement, will be less realistic for there will be many \ civil servants with much experience which could be utilised for the public good who might usefully serve to an older age.

16.95 Recommendations

The retirement age for public servants should remain as it is, namely with voluntary retirement at the age of* 55 *years and compulsory retirement at the age of 60 years.

Pension:

16.96 The issue of pension benefits was of great concern to many people in view of the fact that the current levels of retirement benefits are unrealistic. They want the new Constitution to guarantee a reasonable pension to those who have worked for government for a long time. Pensions are currently computed on the basis of 1/500th of the last highest pensionable annual emoluments multiplied by the total number of years completed in the service. The people have bitterly complained that while the money is so little, it is not even paid in time. The distances they often have to travel to collect their cheques from the district headquarters means considerable transport costs may be incurred. Yet if they do not collect the cheques in time they become stale. They propose that payment of pension should be regular and easily accessible to the pensioner. We are of the view that government should think of other ways of paying such

16.97 As to the level of benefits; many pensioners feel cheated' by a society which they served diligently when they were still strong and on becoming of age they are left to become social misfits by being given next to nothing. They proposed that pension levels should be reviewed from time to time taking account of the prevailing economic situation. We note that a pensioner and a salary earner are both hit by inflation, but that a salary earner still may have some more energy to earn income from other sources while many pensioners have little chance of alternative income. Where is a consensus that pension benefits-should not be taxed at all however much it may be after being reviewed.

16.98 Recommendation

(a) Every civil servant should receive a reasonable pension taking account of salary and length of service.

(b) To qualify for pension, an officer should have served for a continuous period of not less than tell years.

(c) Government should devise appropriate means to ensure that pensioners receive their pensions regularly and promptly.

(d) Pensions should be reviewed regularly to take account of inflation and should not be taxed.

Parastatals

16.99 Every parastatal body is established by an Act of Parliament which provides the objectives of the corporation, describes its functions and powers and creates its management board. Public corporations are usually established to carryon some economic or social function which government considers is beneficial to the public but which cannot be adequately provided by the private sector, but which should nevertheless be publicly accountable. They are normally fairly independent of government but may be directed on general policy by the minister concerned. Parastatal bodies are supposed to prepare annual reports of their activities for the concerned minister who must normally present it to the legislature. Each parastatal is governed by a board of management most of whose members are appointed by government. Uganda's public corporations range from more conventional ones such as railways, post services, transport, electricity, water to such industrial and commercial activities as cement production, hotels, banks, agricultural marketing boards, newspapers and even soft drinks.

16.100 The rapid expansion of government commercial activity particularly after independence took place because of the relative weakness of national domestic entrepreneurs and because government wanted to end foreign control over the economy. In 1969, Obote declared his policies embodied in the "Move to the Left" and the Nakivubo Pronouncements in which the State acquired 60 percent of shares in selected companies. In 1972, Idi Amin declared the disastrous economic war which chased away both Ugandan and British citizens of Asian origin. The Asian community had until then provided the leading private domestic entrepreneurs, so that their departure and the expropriation of their properties left a huge gap in the private sector. After that time, government became ver more heavily involved in commercial activities by mainly nationalising those private enterprises that were abandoned. The NRM government which inherited a wrecked economy has tried to correct the blunders by returning the properties to the rightful owners. However the NRM has also created new public enterprises in industry, aviation, taxation etc. in order to re-organise those services with a view to better management and efficiency.

16.101 Many people have criticised State owned corporations on the basis that they have been inefficient, corrupt and saddled with such cumbersome administrative procedures that they cannot compete effectively with the private sector. It is alleged that many such

companies operate at a loss because they are so constantly subject to political pressures as to enable them to run on businesslike lines. Another reason people advanced to explain the poor performance of Parastatals is the way patronage and nepotism have led to recruitment of unqualified staff in some cases right from the management hoard to the lowest officer.

16.102 It is proposed by many people that in order to encourage better management of Parastatals and also to enable more highly skilled people to participate in the affairs of their country, the management boards should be appointed from prominent citizens with relevant skills and qualifications. Persons holding political offices should not be eligible for appointment.

16.103 Because of political patronage many Parastatals have suffered a shortage of qualified and experienced personnel resulting in inefficiency, mismanagement and poor performance. There are complaints that civil servants dismissed from the service for embezzlement of government funds may find their way into Parastatals, where they continue to squeeze more resources. It is suggested in some views that in order to track down such persons there is need to establish a central employment authority for all government employees or to Create a parastatal service commission which could co-ordinate with the other government employment commissions and regulate terms and conditions of service for parastatal employees. The idea has much to recommend it but may need a more detailed study to see how it may work.

16.104 There are complaints and allegations that officials who work in parastatal bodies are paid more than their counterparts in the civil service. While the allegation may be true for some Parastatals, it should be noted that most such bodies should be organised with a view to production of goods and services for a profit. It may be necessary to pay incentives. for over-time and other allowances so that the enterprises meet their objectives. They are not like a government department and so dependent on monthly Treasury allocations. Parastatal bodies are important in the economic development of a country because a good number of them control a substantial sector in the infrastructure of the economy. Therefore, it is our considered view that they should be managed by qualified and competent personnel who should receive competitive remuneration.

16.105 In general, however, the government should not become involved in areas of activity which can easily be handled by the private sector. We note that government has already taken steps to privatize selective government services and to sell a number of state owned enterprises. Such steps, once well-planned to protect the interest of the nation and its citizens, may prove more advantageous.

16.106 Recommendation

(a) Members of parliament or holders of political offices including executive members of political parties should /lot be appointed on management boards of Parastatals.

(b) Members of management Boards of parastatal-s should be appointed by the executive from among prominent citizens who have relevance experience and knowledge.

(c) All vacant jobs in Parastatals should be widely advertised and interviews conducted publicly by the management board in consultation with the PSC or any other relevant service commission.

(d) Parastatals should continue to be answerable to the Parliament that sets them up. An annual report from the management board should be presented to Parliament.

(e) There should be a parliamentary committee on Parastatals that will monitor the performance of the parastatals and also vet or approve management board members of parastatals

Involvement of Public Servants in Politics

16.107 It is the view of the majority of the submissions that civil servants should not participate publicly in political activities such as multi-party election campaigns, hold office in political parties and so on. It would be difficult for a person so involved to be seen as an impartial servant of the people. The proponents of this view suggest that those civil servants who want to participate in political contests, should be allowed to do so after they resign their offices. However, it is suggested that civil servants should be able to participate in community activities that promote the socio-economic development of the areas in which they work.

16.108 A minority of people in their submissions supported a right for civil servants to participate in political contests and other aspects of political activity. They argue not only on the basis of human rights to freedom of association and participation in government but also on the basis that Ugandan society is still a backward peasant society in which a large proportion of educated people is working in the public service. Stopping civil servants from political participation may deprive the country of an important political resource. They argue that if the private sector was well developed such a ban on political participation would have made more sense. They further argue tl1at in reality politics and administration or management are very much interlinked especially at higher levels.

16.109 It is true that until the NRM came to power, civil servants were not allowed (by law) to participate in political campaigns (although many were ignoring the ban) unless they resigned their offices. As of now civil servants can participate in the RC system elections, and can even hold executive offices on the RC Committees up to RC III without resigning their public service posts. They can even contest elections to NRC without resigning, though resignation is required if actually elected to the NRC. These arrangements may be suitable for a movement political system but we are rather convinced that in a multi-party democracy, resignation of public officers before they contest any election should be mandatory. Otherwise the principle of political neutrality in public service may be compromised.

16.110 Recommendation

(a) Public officers should not hold offices in political parties, and those who want to contest for political offices should resign their offices.

(b) Under a Movement political, system civil servants could participate in RC system at a lower level from RC J to RC III.

(c) Under a multi-party political system, civil servants should refrain from active political campaigns.

CHAPTER SEVENTEEN

JUDICIARY AND ADM1INISTRATION OF JUSTICE

17.1 In this chapter we examine not only the vitally important institution of the judiciary but also the way in which justice is administered in Uganda. The chapter is in five sections. The first considers the role of the judiciary and the importance the people's views attach to both that institution and the administration of justice. The second section discusses the historical background of the judiciary from pre-colonial times to the present. 'It is the people's experience of the judiciary and administration of justice which has prompted them to express concerns about the matters and formulate principles which should underlie what the new Constitution should say on the subject, and these are dealt with in the third section. In the fourth and fifth sections, we analyse the main proposals from the people and make our recommendations, the fourth section dealing with the judiciary and the fifth f00\hsing on the administration of justice.

SECTION ONE: ROLE OF THE JUDICIARY AND ITS IMPORTANCE IN THE PEOPLE'S VIEWS

17.2 The judiciary administers a system of laws which in Uganda includes the Constitution, statutes enacted by Parliament, common law principles derived' from English law and customary law. Customary law is essentially local in character having evolved from the traditions of the varied tribes of Uganda. Although almost entirely unwritten, customary law continues to provide a primary reference for the regulation of the lives of most Ugandans in respect of basic activities and relationships including family life and property rights ~g. land and livestock. It is recognized as enforceable law, particularly in the field of civil disputes, provided it is not in conflict with statutory law and not repugnant to justice and equity (see the Judicature Act, 1967 sections 3 (2), (3) and (8), the Magistrates Court Act, 1970, sections 8 and 9, and the Resistance Committees (Judicial Powers) Statute, 1988, section 4).

17.3 The judiciary alone is the organ of State vested with powers to interpret the law and determine all justiciable disputes. The rationale for this principle is derived from the doctrine of separation of powers as it is applied to the relations between the judiciary and other branches of government i.e. legislature and the executive. In order for the people to have faith that the judiciary is independent in interpreting the law and deciding disputes, it must be independent from the legislature and the executive. Equality important, neither the
legislature nor the executive should exercise judicial powers.

17.4 The judiciary and the administration of justice have been matters given much attention in the people's views. There are' many who are uncertain about the relevance of the introduced courts and laws. The instability and the destruction of institutions of the past 25 years has had its impact on the judiciary and administration of justice, so much so that the introduced courts tend to have little relevance in the lives of most ordinary people In addition, there is a feeling among any that during much of that period, the courts did not playa strong enough role in standing against the executive in support of the Constitution. 111 other words, they may have contributed to the failure of constitutionalism. Many people have

expressed concerns about lack of access to justice, delays in justice and corruption in administration of the courts. On the other hand, many have expressed support for introduction of the locally based RC courts, which are accessible to the people, and operate in a way they can understand.

17.5 It is clear from these and many more views advanced by the people that we discuss elsewhere in this chapter that the people have high expectations of the new Constitution and the laws put in place under it. They want to see major changes and improvements in the judiciary and in the way justice is administered in Uganda.

SECTION TWO: THE HISTORICAL BACKGROUND OF THE JUDICIARY IN UGANDA

17.6 An understanding of the historical development of the judiciary is important to the Commission's analysis, because it is the people's experience which is the basis for the concerns, principles and proposals which they have advanced on the subject.

The Judiciary in the Pre-colonial Period

17.7 In the centralised societies in pre-colonial Uganda, justice was usually dispensed by the king and his councilor by his chiefs and in segmentary societies by a council of elders. In dealing with important cases, the king or clan head presided over the council. In centralised societies the councils, namely the *Lukiiko, Ishengyero* and *Rukurato,* were also responsible for enacting and interpreting laws in regard to disputes concerning marriage, divorce, succession, land, cattle, etc. Such laws sought amicable dispute resolution through compensation~ reconciliation or restitution. The aim was to create peace, stability, harmony and co-operation, all of which were regarded as indispensable to society. The administration of justice was clearly understood by everyone because it evolved out of their own practical and historical experiences. There was no monopoly of legal knowledge by a few members of society. It was therefore possible for any member of society to recognise and point out a breach of the norms.

17.8 There was an established hierarchy of courts in both the centralised and segmentary societies. In centralised societies, the highest court of appeal was the Kabaka's or Omukama's court while in segmentary societies it was normally the clan head's or chief's court. The proceedings in these courts were generally open to the public in as much as any member of the tribe or clan was free to attend and even take part in the proceedings regardless of his social status in society, These were true *people's courts.*

The Judiciary in the Colonial Period

17.9 The British colonial administration introduced English law into Uganda together with a court system to a minister it. Thy High Court was at the peak of the hierarchy .of introduced courts, with First Class, Second Class and Third Class magistrates under it. Appeals from the High 1c'OU~ went to thy Court of Appeal or Eastern Africa. The magistrates were mainly administrative officers, not trained lawyers save for Resident Magistrates. The courts
Operated :mainly in the towns.

17.10 A system of native courts operated alongside the courts administering received law. They were established in a hierarchy corresponding to the local government administrative structure, the lowest at sub-county level and the highest at district level. They were composed of both chiefs and unofficial members. In criminal cases the courts had power to order sentences of up to six months imprisonment. Both county and district native courts had original and appellate jurisdiction. Appeals lay from district native courts to the district commissioner and then to the High Court. The High Court could also try a case to which customary law applied as a court of first instance.

The Judiciary in the Post-colonial Period to 1986

17.11 The 1962 Constitution provided for the establishment of both a High Court of Uganda and a High Court of Buganda, but they were made up of the same judges. The High Court of Buganda administered justice in the name of the Kabaka. When sitting in the kingdoms of Ankole, Bunyoro, Toro, or the territory of Busoga, the High Court of Uganda administered justice in the name of the respective rulers of those kingdoms or the territory. Judges of the High Court were appointed by the President on the advice of the Prime Minister.'

17.12 Appeals lay from the High Court of Uganda to the Court of Appeal for Eastern Africa and from there to the Privy Council. Appeals to the Privy Council were abolished in 1967. The dual system of courts (African - formerly native - and other) endured until 1964 when the African courts were abolished. New legislation then created four grades of magistrates (chief magistrate and magistrates Grade I, II and III) replacing the three grades formerly used by the colonial government. Chief magistrates exercised also appellate jurisdiction and supervised lower magistrates.

Observations on the Judicial System from the Pre-colonial Period Onwards

17.13 Short-comings of the system of justice in the periods just discussed included the following:

(a) the major courts remained distant from the people. They were hardly accessible to the vast majority of the people in rural areas;

(b) the received law remained foreign to the majority of people. It was not (and is still not) in harmony with the norms and customs of African peoples;

(c) the judge sitting alone to solve disputes was (and is) contrary to the African way of administration of justice;

(d) the law was (and is) known and understood by; the privileged few - the lawyers; and

(e) there was little separation of powers, in both the pre-colonial and colonial periods.

The Existing Court System

17.14 The existing judicial system operates mainly under the 1967 Constitution, the Judicature Act 1967 and the Magistrates Court Act 1970. There have been a number of changes in court structures and Judicial hierarchy since the 1967 Constitution came into effect. When the East African Community was disbanded in 1977, appeals to the Court of Appeal for Eastern Africa ceased, and a Court of Appeal for Uganda was established under a Chief Justice, with the Principal Judge heading the High Court. From 1980 to 1987, there was a President of the Court of Appeal, with the Chief Justice heading the High Court. In 1987 the Supreme Court replaced the Court of Appeal, and the Chief Justice moved to the Supreme Court. Since 1987, the High Court has been headed by the Principal Judge (though the latter also sits on the Supreme Court). Although the Chief Justice is the head of the judiciary, there is some confusion about the demarcation of administrative roles between the Chief Justice and the Principal Judge as head of the High Court, an issue about which we make recommendations later in this chapter. The introduction of the Resistance Committees Courts under the Resistance Committees (Judicial Powers) Statute 1988 has been the most recent major change to the courts system.

17.15 All appeals from the High Court go to the Supreme Court as the highest court. It normally sits in Kampala but at the discretion of the Chief Justice it may sit anywhere in Uganda. It consists of the Chief Justice, Deputy Chief Justice and not less than three other judges. The court is duly constituted by three judges save in constitutional cases where five judges are required.

17.16 The High Court is a court of unlimited jurisdiction in both civil and criminal matters. It has both the original and appellate jurisdiction from the magistrates' courts. It sits in Kampala and other designated places in the country. It is headed by the Principle Judge and numbers of other judges that vary from time to time. Some judges are resident in up country centres. The High Court is duly constituted by a single judge, assisted by assessors in criminal matters. Three judges are required for constitutional cases.

17.17 Uganda is divided into eighteen magisterial areas each headed by a chief magistrate with a number of magistrates grade I, II, and III under his/her supervision. The chief magistrates and magistrates grade I are professional lawyers, while the other grades are officers expected to possess a diploma in L1W and Judicial Practice from the L1W Development Centre. All magistrates' courts exercise original jurisdiction in criminal and civil matters, save for capital offences (murder, treason, armed robbery, rape etc.) where jurisdiction is vested in the High Court. The chief magistrates courts also have appellate jurisdiction over magistrates grade II, III, and the RC courts. Before the introduction of the RC courts the magisterial bench handled the bulk of the work and was more in contact with the ordinary people than any other section of the judiciary.

17.18 The Resistance Committees (Judicial Powers) Statute (Statute No.1 of 1988) provides that the nine members of the resistance committees in every village, parish and sub-parish (RC 1, RC 2 and RC 3) are established as courts. Five members of the RC form a quorum and decisions are arrived at by consensus or by maj0rity vote. They have powers to try:

(a) civil cases of value up to U.Shs.5,OOO/= (generally debts, contracts, assault and battery, conversion, trespass and damage to property);

(b) Customary law matters such as disputes on land, marital status of women, paternity of children, identity of customary heirs, impregnating of girls under eighteen years of age, elopement with girls under eighteen years and customary bailment; and

(c) cases arising from infringement of bye-laws made under the provisions of the Resistance Councils and Committees Statute of 1987.

Lawyers are not allowed to appear before these courts except when dealing with breach of RC bye-laws.

17.19 The RC courts operate under the overall supervision of the High Court which supervises aU courts below it. Appeals lie from decisions of RC 1 courts to RC 2 courts then to .RC 3 courts, from where appeals lie to the chief magistrate's court and ultimately to the High Court.

17.20 The RC courts have been generally successful in providing an alternative mode of dispute settlement which is easily accessible, cheap, speedy and simple. They are not without their problems or their critics, as will be discussed later in the chapter. Nevertheless, they have proved to be an important and generally popular innovation in the democratisation of the administration of justice. As a result the majority views - especially those from RC memoranda - have demanded that the powers of RC courts at all levels should be increased to include a criminal jurisdiction.

SECTION THREE: CONCERNS AND PRINCIPLES EMPHASISED BY THE PEOPLE

17.21 The experience of the people of the judiciary and administration of justice has given rise to expression of many proposals for change. These tend to be based on their concerns about past and present problems, and various principles they have indicated should govern future arrangements. In this section we summarize the main concerns and principles.

The People's Concerns

Injustice and discrimination in the administration of justice:

17.22 Many views from the people have expressed grave concern that justice has almost become a commodity, to be bought and sold. The result is a corrupt system which favours the rich and dishonest members of society. People stated, for example, that those who have become rich by. embezzling millions from government and Parastatals are granted bail and later acquitted the newspapers are full of stories of refusal of bail and imposition of severe sentences on poor people who have stolen a mere chicken or bunch of matooke. People also claimed the rich receive more sympathetic treatment from the courts because they are of similar social status to judges and magistrates, while the poor are judged by people who have no understanding of the problems of the peasants.

Corruption, sectarianism, and bribery:

17.23 The concerns expressed on the question of corruption suggest that confidence in the judiciary has been severely eroded by this problem. Submissions maintained that corruption is particularly severe in the magistrate courts of all grades. Even High Court judges are not immune from criticism on this ground.

Lack of independence of the judiciary:

17.24 Many people expressed deep concern about the way the executive arm of government has interfered with the judiciary over many years. This has extended to murder of a Chief Justice, and the practice on the part of incoming Presidents of appointing new Chief Justices and other judges, giving the appearance of trying to ensure a favourable composition of the superior courts. The courts are widely perceived as being unwilling to take stands against the executive, especially in constitutional and human rights cases.

The foreign nature of the law:

17.25 Most of Uganda's laws are derived from English law, and in the past were used by the colonial masters to rule Uganda. Following independence, the whole legal system should have been transformed to suit our own culture, norms and customs. The opportunity was never taken and so much of our law has remained foreign to most of the people of Uganda, both educated and non-educated, with the exception of members of the legal profession. There are several distinct and important aspects to the concerns people have raised in connection with this issue. Without being exhaustive, three such aspects are mentioned as examples.

17.26 The first aspect concerns the alien orientation of the introduced criminal justice system. While the African principle of criminal justice aims at resolving disputes through compensation, reconciliation or restitution, the English principle of criminal justice aims mainly at punishing the criminal without compensating the individual victim of crime. The reasoning advanced is that crime is not so much against the individual as it is against the society and therefore it should be the society to punish the criminal. Many views expressed concern and even bitterness about criminals being taken to prison or fined without thought being given to compensation for the victim. People indicated they failed to understand the current criminal justice system where the victim of crime can only recover compensation after a criminal trial, through an often lengthy and costly civil trial, which few can afford. As a result, many people indicated they prefer to settle matters without recourse to the criminal justice system. Even the classification of cases into criminal and civil is not very clear to most of the people.

17.27 The second aspect of concern about the foreign nature of the law relates to the-failure of much of’ the' statute -law to take into account Ugandan cultural norms. People raised special concerns about particular laws such as those on marriage, divorce, a'd6p'tibnetc.which they said do not conform with the customs and norms of 'the African culture. As such la, laws have remained foreign to the people, many of whom 'have continued observing their own culture and ignored the received law.

17.28 The third aspect of the foreign nature of law concerns the alien language, dress and procedure of the courts. For example, many views criticised the practice of conducting court proceedings in a foreign language through an interpreter as something which tends to exclude the ordinary person. Some proposed that the courts should operate in the language of the localities where they sit. Others expressed concern about continued use of outmoded and inappropriate forms of court dress inherited from Uganda's colonial masters.

Lack of information about the law:

17.29 A number of related concerns were raised about the lack of knowledge people have about the law, a problem seen to be compounded by the alien nature of the law. First, the law is written in English, a language which the majority of people do not know how to read and write. Second it is written in highly technical language that even educated people have trouble understanding. Some views suggested that the written law should be both written in simple English and translated into local languages. Third, people complained that law books and statutes are inaccessible to them but available to only judges, magistrates and lawyers. There is a popular demand that the ordinary people should be given an opportunity to learn and understand the law.

17.30 People complained that our judicial system accepts the approach of the English law system which says that ignorance of the law is no defence'. In the eyes of the people this is absurd because neither the judicial system nor the police have made any deliberate effort to educate the public about the law.

Delays in dispensation of justice:

17.31 People made numerous comments about delays in the delivery of justice by judges and magistrates, some seeing delays as involving violation of an accused's constitutional right to have a speedy and fair trial. Delays have been blamed on many factors which cannot be dealt with in any detail here. They include: slow and poor quality police investigations in turn caused by lack of facilities, laziness and corruption on the part of the investigating officers; scarcity of judges and magistrates and technicalities in court procedures. There is a need to address some of these issues.

Disappearance of files:

17.32 There is concern expressed that police files have disappeared when needed in court, often due to corruption or disorganisation on the part of the police. People claimed that in some cases tiles have survived disappearance only because the victims of crime have bribed be prosecution to retain them.

Rights of prisoners

17.33 People expressed concern the prisoners on remand or sewing sentence are often treated inhumanly. They note that while it may be necessary that a prisoners movement should be restricted, food, water, medical care and even visits by relatives or friends should be guaranteed. Prisoners should also be allowed to consult their lawyers. People complained that some magistrates ignore the condition of persons appearing before them, even when they

are produced with evident signs of having been tortured, beaten or starved for days. Others expressed concern about *habeas corpus* orders in respect of persons detained by the military forces not being respected or obeyed.

Lack of access to the courts:

17.34 A number of submissions have criticised the Supreme Court and the High Court as being divorced from the people in terms of both geographical distance and cost. The High Court has tried to decentralize by posting resident judges in a few major towns but some have not taken up residence because of lack of accommodation and other facilities. The magistrates courts which should be nearer to the people have also become too distant for the ordinary person. We were told of cases of villages which are over a hundred miles away from the nearest magistrate's court.

17.35 The efforts formerly made to take justice closer to the people through the practice of the High Court judges moving to all district headquarters at regular intervals have reduced markedly due to lack of funds and logistical support. One result is a massive backlog of cases pending for long periods; thus denying justice.

17.36 There is a strong popular demand for judicial services to be taken nearer to the people. Decentralisation of the higher courts is often suggested. There is also ample support for abolition of Grade II and iii 'magistrates and for their replacements with RC courts or the integration of Grade II and iii magistrates with the RC courts.

Principles Emphasized by the People

Independence of the judiciary:

17.37 There is a consensus in the people's views that effective administration of justice requires an independent judiciary. Independence is also crucial if the courts are to act as an effective check on unconstitutional acts of the executive and the legislature. People agreed that, among other things, independence implies freedom of the judiciary from interference from either the executive or the legislature in the exercise of judicial functions. To this end, appointments need to be based on clear performance related criteria. Security of tenure must be guaranteed. Sufficient resources must be provided for the judiciary to operate effectively. Good terms and conditions of service must be provided.

The rule of law:

17.38 There is clear consensus in the people's views that the rule of law must be adhered to and maintained in Uganda. The rule of law implies that all people, but especially those in authority, should act according to established principles of law. Whoever deviates, whatever this or her position, must be punished by the appropriate authority. The principle implies strong commitment from all those in authority. It also implies education about the law, both for the ordinary person and for members of the security forces, and other government officers.

Just and fair trials:

17.39 Virtually all submissions commenting on this subject were committed to just and fair trials for any accused person. Justice can only be achieved if every criminal suspect is tried by a judge who is impartial.

African values:

17.40 A majority of people agree that both the law and the way in which justice is administered should reflect much more values of African peoples. Concerning administration of justice, for example, people want the focus of criminal justice to go beyond punishment of the offender to dispute resolution and compensation or restitution for the victim.

Improved and fair access:

17.41 People generally want to see much improved and fairer access, with courts closer to the people. The principle of access also implies ensuring that lack of finances do not act as a bar to people obtaining justice. A state supported legal assistance, scheme has been seen by many as an important way of giving effect to this principle.

Equality before the law:

17.42 There is a consensus in people's submissions that all persons should be equal before the law regardless of age, sex, status or rank in society. This implies that individuals such as ministers, army officers, intelligence officers and corrupt elements in society should never again be exempt from the law. Arbitrary arrests and arrests without sound preliminary investigations should stop.

SECTION FOUR: ANALYSIS OF VIEWS AND RECOMMENDATIONS ON THE JUDICIARY

Independence of the Judiciary

17.43 . On the basis of the concerns and principles just discussed, it is clear that everything possible must be done to ensure the fullest independence of the judiciary, 'and to this end we make a number of recommendations. The recommendations we make- elsewhere in this chapter concerning such things as appointment and removal of judges are also essential to the maintenance of the independence of the judiciary.

17.44 Recommendation

(a) In the performance of its functions the judiciary should be independent and subject only to the Constitution ,and the law.

(b It should be obligatory for ail citizens and other entities to obey court decisions and Enlarge them whenever necessary.

(c) All judicial Officers should be adequately facilitated and remunerated so that their performance is exemplary and is· not compromised in any way. The salaries of

judges should be fixed by law. The security of tenure of judges should be guaranteed by the Constitution.

The Court Structure

17.45 Most submissions had little disagreement with most aspects of the current structure and hierarchy of courts and their jurisdiction (though some specific issues on jurisdiction are discussed separately later in the chapter). We consider, in particular, the Supreme Court and the High Court.

17.46 There is no doubt that the Supreme Court should be at the peak of the hierarchy of the courts of Uganda. It should be the highest court of appeal, thereby exercising a supervisory role over all other courts and quasi-judicial bodies. It should have all the enforcement powers necessary to see that its orders are obeyed.

17.47 Recommendation

(a) *The Constitution should establish the Supreme Court as the highest court of appeal.*

(b) *The Supreme Court should have supervisory powers over all courts and any other adjudicating authority and may issue orders and directions for the purpose of enforcing or securing the enforcement of its supervisory powers. It should also have appellate jurisdiction in respect of all cases heard by the High Court inclusive of cases which can be. the subject of appeal to the High Court.*

(c) *The Chief Justice should preside over the Supreme Court and should be head of the judiciary in Uganda.*

(d) *The Supreme Court should consist of the Chief Justice, Deputy Chief Justice and a minimum of five other justices.*

(e) *Three justices should constitute a quorum of the Supreme Court in any ordinary case.*

(f) *Five justices should constitute a quorum of the Supreme Court in any case of a constitutional nature.*

Hierarchy of the Judiciary and Responsibility for its Administration

17.48 There is a lack of clarity about the respective roles of the Chief Justice and the Principal Judge. The problem is a hangover from the system that applied when the East African Court of Appeal was a supra-national body. As such, it had not in relation to . supervision of the administration of the courts of Uganda. Rather, it was the Chief justice, as head of the High Court, who was responsible for administration of the judiciary/ When the Court of Appeal for Uganda was established, the basis of that arrangement was continued, so that even though that court Was at the peak of the appellate hierarchy, the Chief Justice remained the head of judicial administration with the head of the lower court (the High Court)

as the Principal Judge. As we have seen, changes made in 1987 saw the Chief Justice become head of a new Supreme Court, and at the same time head of the judiciary and Chief Administrator. There was, however, no clear demarcation made of the roles and responsibilities of the Chief Justice and the Principal Judge as head of the High Court. It was commonly understood that the Principal Judge was responsible for administration of both the High Court and the lower courts, but the extent to which he was subject to the supervision of the Chief Justice, in his capacity as head of the judiciary, was unclear.

17.49 The Commission has considered whether or not the Principle Judge should be a member of the Supreme Court or not. It is not an issue considered by many submissions. The main issue is that the Principal Judge is both a trial judge in the High Court, and supervisor of other trial judges, all of whose decisions are subject to review by the Supreme Court on which he also sits. His role in the High Court may make it difficult for him to be an impartial appellate judge of the Supreme Court in view of the people's views that there should be a clear separation between the two courts.

17.50 is essential that the demarcation of responsibilities is clear so that administration of the judiciary can be stream-lined. The Chief Justice should remain the head of the judiciary with overall administrative responsibility for the institution. He or she should be assisted by the Deputy Chief Justice in the Supreme Court and the Principal Judge in the High Court.

17.51 In that capacity, the Principal Judge will play the role of head of the High Court without feeling that he or she is independent of the Chief Justice. For the sake of ensuring the demarcation remains clear, the Principal Judge should neither sit in the Supreme Court nor deputise for the Chief Justice, a responsibility that should normally fall on the Deputy Chief Justice. The order of precedence should be Chief Justice, Deputy Chief Justice, justice of the Supreme Court, Principal Judge, and judge of the High Court, in that order.

17.52 The respective powers of the Chief Justice and the Principal Judge in relation to the administration of the business of the High Court should also be clarified. There is inconsistency in the laws. The Judicature Act and the Magistrates Courts Act envisage the Chief Justice saving powers over both the High Court and magistrates courts, even to the extent of the, Chief justice retaining powers to designate times and places of. High Court circuits, and to distribute business before the High Court (Judicature Act sections, 13 and 14). Yet Article 83 (4) of the 1967 Constitution provides that the High Court should sit in such places as the Principal Judge appoints. Similarly, the Judicature Act vests the power to supervise magistrates in the High Court. Yet the Magistrates Courts Act provides ~hat a magistrates court may be held at such place and buildings as the Chief Justice may assign as court houses.

17.53 The administrative functions of, the Principal Judge should be specifically laid down In the relevant law extended to administration over the High Court and supervision in of magistrates Courts. The Judicature Act and the Magistrates Courts Act should be amended accordingly.

17.54 Administratively, the Chief Registrar is the accounting officer and the chief administrative ye office of the judiciary who handles day to pay administration of the judiciary in consultation with the Chief Justice and the Principal Judge. Both the Supreme Court and

the High Court have other registrars who administer their affairs. The High Court is also served by the deputy

17.55 Recommendation

registrar and assistant registrars, all answerable to the Chief Justice and the Principal Judge through the Chief Registrar.

(a) *The Chief Justice should, as the head of the judiciary be responsible for the administration and supervision of the judiciary.*

(b) *The Deputy Chief Justice should assist the Chief Justice in the administration of the Supreme Court and carry out any duties as may be assigned to him or her by the Chief Justice.*

(c) *The Principal Judge should assist the Chief Justice in the administration and supervision of the High Court and subordinate courts and should carry out such functions and duties as may be provided under any law, but he or she should not be a member of the Supreme Court.*

(d) *The Chief Registrar should be the chief administrative officer of the judiciary. If e or she should be assisted by such registrars as may be provided for by the Judicial Service Commission.*

Appointments, Qualifications and Tenure

17.56 The people's views put forward a range of proposals about appointments, qualifications and tenure of the judiciary, all matters of vital importance to the independence and the proper functioning of the judiciary.

Appointments:

17.57 The people's concerns discussed earlier in this chapter make it clear that they wish to see some checks on the power of the executive arm of government in appointing members of the judiciary. We therefore agree with the proposals made by people who would wish to see the President continuing to appoint judges, but only acting on the advice of the Judicial Service Commission. As discussed later in the chapter, the Commission should consist of independent and --expert persons, knowledgeable about the necessary qualities of candidates for judicial appointment.

17.58 It is recognized, however, that their seniority makes the position of the Chief Justice and the Deputy Chief Justice somewhat different. We agree that there should be no requirement for the formal involvement of the Judicial Service Commission' in' their appointments. It should be noted that our recommendations' on the Judicial Service Commission elsewhere this chapter would make the Chief Justice the head of' that body, and the Deputy Chief Justice may deputise in that position. As a result involvement 'of the Commission in recommending the persons for appointment to those positions would raise potential problems. It should not be thought/however, that limiting the 'role of the Judicial Service Commission in this way will give rise to a danger that these vital positions will be filled solely at the whim of a Presidency First, such appointments will be subject to approval

of another independent body, as discussed below. Second, occupants of these offices will be protected in terms of tenure, only able to be removed from office for just cause, as discussed below. It would also be hoped that the President would normally consult with the Judicial Service Commission on such appointments, despite there being no legal requirement to do so.

17.59 There were some views that wished to see a second level of checking for normal judicial appointments, that is, a level additional to that provided by the Judicial Service Commission. This they would seek to achieve through involvement of the people's representatives, the Parliament. This proposal was objected to by others who argued that in case of multi,-party elections, the majority party in Parliament might be tempted to use its numbers to block proposed presidential appointments on political grounds, or 'even to influence appointments in the interests of the party.

17.60 We agree with the proposal that the people's representatives be involved in the appointment of judges. This principle should apply to the Chief Justice and Deputy Chief Justice as well as to the other justices of the Supreme Court and judges of the High Court. It would, however, be unwieldy to involve the whole Parliament in the exercise, and so instead it should be the National Council of State which has this role. As discussed in chapter thirteen, part of the intention of our recommendations about the composition of that body is to ensure that it is able to take a broad view of the issues that come before it without being tied down by sectarian or other narrow interests.

17.61 Recommendation

(a) The Chief Justice and the Deputy Chief Justice should be appointed by the President subject to approval by the National Council of State.

(b) The justices of the Supreme Court and the judges of the High Court should be appointed by the President on the advice of the Judicial Service Commission and subject to approval by the National Council of State.

Qualifications for appointments to the Supreme Court:

17.62 There was unanimity among those submitting views on the subject that the Chief Justice and the Deputy Chief Justice should, be Ugandan citizens of the highest integrity Because of th*e* nature of their duties; we also believe that it would be wise if they had already gained some experience of the judicial role. In the case of appointments as Chief Justice, the would preferably be while serving as a justice of the Supreme Court, or at least in a court of similar jurisdiction. In the case of the Deputy Chief Justice, the experience might have been genuine as a judge on, the Supreme Court or the high court candidate for appointment as a Justice of the. Supreme Court would need similar qualifications.

17.63 We considered the possibility of acquirement that all or some of these appointment be made *only* from the ranks of serving High Court or Supreme Court judges this would both ensure the necessary experience and opportunities for upward proII.1otion of existing judges from time to time. But we believe that there is no good reason-why persons 'who have had lengthy and exemplary careers-as advocates should not also be excellent justices. Indeed, there' may at times be every reason to introduce fresh perspectives to the cranks of the

judiciary by doing just that. We believe that practice at the Bar for a minimum period of ten years should be a sufficient qualification for appointment as Chief Justice or as a justice of the Supreme Court.

Qualifications for appointments to the High Court:

17.64 There is no controversy about the qualifications for appointment as a judge of the High Court. We believe that a person who has either extensive experience as an advocate for a minimum period of seven years, or who has served as a judge in a court of similar jurisdiction should meet the minimum criteria for appointment. There should not, however, be any restriction whereby only persons who have served on a court in a British Commonwealth country can be appointed, as is presently the case. Again, it may sometimes be useful to bring fresh perspectives from suitably qualified and experienced judges from other countries.

17.65 We sympathize with the numerous proposals for improved access to the courts which say that the High Court should be decentralized so that there is a resident judge in at least all major towns of Uganda. Although we support the ideas in principle, it is not a matter about which we feel we can make a formal recommendation. Rather, it is a matter about which government should give serious consideration so that necessary funds and logistical support can be made available in the longer term.

17.66 Recommendation

(a) A person should qualify to be appointed a Chief Justice if he or she is a citizen of Uganda and has served as a justice of the Supreme Court or a Court of similar jurisdiction, or has been an advocate before such a court for a period of at least ten years.

(b) A person should qualify to be appointed a Deputy Chief Justice if he or she is a citizen of Uganda and has served as a justice of the Supreme Court or a judge of the High Court, or a court of similar jurisdiction, or has been ,(lnq4vocateJ,efore such a court, for a period of at least ten years.

(c) A person shou14 be qualified to ,be appointed as a justice of the Supreme Court if he or she has served as a judge of the High Court or court of similar Jurisdiction, or has. Practised as an advocate before such a court for a period of at least ten years.

(d) A person should be qualified to be appointed a judge of the High Court if he or she has served as a judge of a court with similar .jurisdictitm or has practised before such a court for a period of not less than seven years:

Tenure of office and retirement

11.67 The majority views have proposed that the tenure of office for members of the judiciary should be guaranteed by the constitution while the minority view is that they should work on contract. The suggestions of contracts for the judiciary has been opposed on the

ground that it may undermine judicial independence; there would be obvious potential for various pressures to be applied to judges approaching the end of a contract period. Judges should not be open to dismissal save in very clearly defined circumstances of incapacity or misbehavior. It is therefore proposed that a person appointed a justice or judge should normally serve until retirement age.

17.68 Views are divided on what constitutes an appropriate reliving age. The main proposals have been 65, 70 and 75 years. As of now the normal retirement age for judges of the High Court is 65 years, and judges of the Supreme Court is 70 years. However a judge who has attained that age is authorised to remain in office so as to enable him deliver judgment or to do any other thing in relation to the proceedings that were commenced before he/she attained that age. We take the view that the appropriate age may vary from person to person so that it should be possible to retire voluntarily with full benefits at an early age of 60 years, while it should be compulsory once a person attains the age of 65 in case of the High Court or 70 in case of the Supreme Court when it will be normal for there to be some reduction in mental abilities. But it should be possible after retirement for such judges to be called upon to serve in other capacities where their experience is considered invaluable.

17.69 Recommendation

Justices of the Supreme Court and judges of the High Court should be able to retire with full benefits at any time after turning sixty (60) years of age while the compulsory retirement age should be seventy (70) years for a justice of the Supreme Court and sixty five* (65) *years for a judge of the High Court.

Removal of Members of the Judiciary

17.70 The majority of people's views make it clear that in order to protect the integrity and credibility of the judiciary, there must be a procedure for removal of judges who are incompetent or corrupt. On the other hand, people are also concerned to protect the independence of the judiciary. so that it is important that removal procedures cannot be wrongly utilized to victimized judges who are not popular with those in positions of political power. Removal procedure must balance these two concerns. 'the necessary balance should be achieved by specifying in the Constitution the circumstances in which a judge may be removed from office and the procedure to be followed in such cases. The minority views have suggested impeachment for removal in cases of misbehavior while majority views have proposed a tribunal to investigate the issue and advise the President. The tribunal should be composed of three judges of the High Court or Supreme Court. It is proposed that in cases where complaints are forwarded for the removal of the Chief Justice the President may appoint-three distances of the. Supreme Court or judges of -similar jurisdiction in a Commonwealth country to investigate the case.

17.71 Recommendation

There should be constitutional provision. To guarantee the tenure of office of the ·members of the judiciary, consisting of the following:

(a) *members of the judiciary should only be removed from the bench, on the report of an independent tribunal;*

(b) *a justice of the Supreme Court and a judge of the High Court should not be removed from office except for proven misbehavior or incompetence on grounds of inability to perform the functions of his office arising out of infirmity of the body or mind;*

(c) *a justice or judge may be removed from office by the President after the Judicial Service Commission has determined that there is a prima facie case and advised the President to set up a tribunal consisting of three judges of the High Court or Supreme Court to investigate the matter and make recommendations to the President, and the President should act in accordance with the recommendations of ;the tribunal; and*

(d) *a complaint seeking the removal of the Chief Justice or the Deputy Chief Justice on account of inability to perform his duties or incapacity arising out of infirmity of body or mind should be lodged with the President. The President in consultation with the National Council of State should appoint a tribunal of three justices of the Supreme Court or judges or former judges of a court of similar jurisdiction to investigate the case, and the tribunal should furnish the President with the report of its findings With advice on the course of action to take and the President should act in accordance with the recommendation of the tribunal.*

The Judicial Service Commission

17.72 We have already seen that there is a consensus in the people's views that in order to guarantee the independence of the judiciary, there should be an independent Judicial Service Commission involved in the procedures for appointment and removal of justices and judges. If it is to have sufficient standing and independence, this important body must be provided for in the Constitution. In general the functions of the Commission should be to control, discipline and recommend appointments and dismissals of officers within the judiciary'. Issues arise concerning the composition and powers of the Judicial Service Commission.

Composition of the Judicial Service Commission:

17.73 The Judicial Service Commission is at present provided for under Article 90 of the 1967 Constitution. It is composed of the Chief Justice, who is Chairman, and the Attorney General, the Principal Judge, and up to three other members appointed by the President. The Secretary of -the Public Service Commission is its Secretary. The current composition provisions have been criticised in the people's views as not ensuring that the Commission-is'" independent. The Commission is merely advisory to the President in matters of appointment and discipline of judicial officers; ultimate power remains with the Preside of The Commission should gave more independent members and be given executive powers in
appointment and, discipline of judicial officers.

17.74 There is a consensus on the need for persons of integrity and independence to be appointed to this body. Other than members holding positions on the Commission by virtue

of another office (e.g. the Chief Justice), members of the Judicial Service Commission should be appointed by the President, but subject to the approval of the National Council of State. This approval procedure should reduce risks of purely political appointments to this important body. They should be people of high integrity, preferably with several from the legal profession.

17.75 In most Commonwealth countries, the body equivalent to the Judicial Service Commission is chaired by the Chief Justice or someone from within the judiciary. The idea of a retired judge as Chairman has been proposed in some views but a suitable candidate may not be available or if the judge is available he or she may lack the vigour and strength to shoulder the heavy responsibility of the office. A prominent citizen who is not a lawyer may not have sufficient experience or standing with judges and the legal profession to command authority and respect. Hence on balance, it may be best to leave the position to the Chief Justice. The Chairmanship of the Commission by the Chief Justice rather than any one from outside the· judiciary would enhance rather than undermine the independence of the Commission. It would enable the Chief Justice to manage better the judiciary as a professional service and reduce any possible conflicts and unnecessary political influence. The Chief Justice's impartiality would not be impaired as he or she would not have daily contact with most judicial officers especially magistrates who would fall for appointment and disciplinary action by the Judicial Service Commission. Moreover, there would be sufficient independent members on the Commission to counter his or her influence.

17.76 Concerning the rest of the members, it is obviously necessary for the Principal Judge to be a member. Equally, to ensure that government views are considered, the Attorney General should continue to be involved. Several views suggested that the Law Society should be represented on the Commission by prominent, distinguished and experienced lawyers in order to counter-balance what might be seen,. as the dominance by the judiciary and the Attorney-General. While we accept that the legal profession should be involved, as its members will have useful insights into the capabilities of candidates for judicial appointment, they should not be so many as to dominate, as there are many other interests involved. As the Commission will be involved in appointments of magistrates, it will be useful for members of the Public Service Commission to be involved. But the general, public has the most vital interests, and must have a voice in the appointments by being represented on the Commission.

17.77 Recommendation

(a)' An independent Judicial Service Commission should be established.

(b) ,The commission should be enlarged consist of the following.:-

- ***(i) the Chief Justice, who should also be Chairman;***
- ***(ii) the Principle judge. .***
- ***(iii) the Attomey-General;***
- ***(iv) three prominent lawyers elected by the Uganda Law Society;***
- ***(v) a prominent Citizen who is not a lawyer; and***
- ***(vi) two members of the Public Service Commission***.

(c) Members of the Commission other than those holding their posts ex officio should be appointed by the President subject to the approval of the National Council of State.

(d) Members should serve for a period of four years subject to renewal.

17.78 The Judicial Service Commission should be provided with a secretariat, including at least a full time secretary to do the day to day administrative work.

Functions and duties of the Judicial Service Commission:

17.79 The consensus of views is that in addition to advising the President on appointment and removal of judges, the Commission should appoint all other judicial officers (e.g. registrars, magistrates) and determine their terms and conditions of service. It is further proposed that the Judicial Service Commission should take an aggressive role to ensure fair and just administration of justice in the entire country. In that case it should have a major responsibility to draw up programmes for educating the people about the law and their rights.
These programmes could be implemented by the judiciary itself, other law enforcement agencies, the Law Society, the LIW Reform Commission and other organisations interested in human rights. The issue of education on the law is further discussed later in this chapter. The Judicial Service Commission should also monitor how justice is dispensed in all courts and disciplinary tribunals or courts martial. It should receive the people's complaints concerning the legal system and take appropriate measures or advise the concerned government organs to take necessary action.

17.80 Recommendation

The following should be the functions and duties of the Judicial Service Commission

(a) to advise the President on appointment and removal of justices of the Supreme Court and judges of the High Court- other than the Chief Justice and the Deputy Chief Justice, subject to the provisions of the Constitution;

(b) to appoint all other judicial officers and determine their terms and conditions of service, in consultation with government;

(c) to discipline judicial officers (other than justices of the Supreme Court and judges of the High Court);

(d) to devise programmes to educate the people about the law and administration of justice;

(e) to receive and consider people's complaints concerning the legal system;

(f) to monitor the administration ,of justice ill the country and tender advice, to the concerned authority.

Terms and Conditions of Service for the Judiciary

17.81 There is overwhelming support in the people's views that if there is to be an independent and honest judiciary, judges and magistrates should receive adequate remuneration. Their terms and conditions of service should be good enough to attract suitable candidates for judicial appointments and to enable judges to work with settled minds and devotion. In some cases, prominent and competent lawyers have declined judicial appointments mainly because of poor conditions of service. There are allegations, some of which are from judges, that the executive as a whole is never willing to provide terms and conditions of service for the judges which tend to exceed their own. It is for this reason that it is proposed by some views that the terms and conditions of service for judges be entrenched in the Constitution and not left to either legislative or executive decision. Of course, this does not mean specifying monetary levels, which could not then be changed without constitutional change. What is necessary is to spell out the basic principles in terms of such things as adequacy of remuneration, periodic adjustment of remuneration to take account of inflation, and prohibition of change of terms and conditions to the disadvantage of a serving judge.

17.82 Recommendation

Members of the judiciary should be accorded terms and conditions of service commensurate with their status and responsibilities. Their remuneration should be adequate and fixed by law and should not be altered to their disadvantage while in service.

17.83 On retirement benefits for the judiciary, views from a few people suggested a wide range of specific things including: facilities to write memoirs; payment of water, telephone, and electricity bills by government; full salary as before retirement; two domestic servants; guards at the residence at night; and two weeks holiday outside Uganda every year paid by the State for the retired judge and spouse or spouse alone. In our view, such proposals are not appropriate on economic grounds alone. The best that can be done is to suggest that government ensures an adequate level of retirement benefits, comparable to those of a serving judge.

17.84 Recommendation

A retired justice or judge should enjoy retirement benefits similar to the terms and conditions of a serving justice or judge.

Financial Autonomy of the Judiciary

17.85 The delay or failure by the judiciary in the discharge of its responsibilities is often blamed on lack of adequate funds. The Supreme Court and High Court have generally been unable to hold sessions unless funds 'made available by the Treasur1'pemtit. 'As 'a result, sessions are postponed or even cancelled. It is argued that persistent financial constraints imposed on the judiciary tend to undermine its independence. Therefore people propose that the judiciary should be financially autonomous. 'It is suggested that being self-accounting would not be enough. Financial autonomy would 'permit the judiciary to plan and control its

operations without getting permission from the Treasury. The judiciary could even earn some revenue. But at present, levels of fines and other charges apart from court fees which have recently been revised are so outdated as not to contribute significantly to the government revenue. There is need for a general review of fines to bring them into line with inflationary changes. The increased revenue so raised could then be used to improve the judicial service. However, the judiciary must first clean its own house. There are persistent reports of mismanagement and outright embezzlement of courts' revenue by field staff, and .by magistrates in particular.

17.86 Recommendation

(a) The judiciary should be given financial autonomy. Funds in the form of a grant should be determined by Parliament and should be released directly to the judiciary on quarterly basis. The judiciary should also be allowed to utilise the revenue collected by it so as to enable it reduce the persistent problem of lack of funds for the administration of justice.

(b) All court fees and fines should be revised to take account of inflation.

(c) All irregularities in collection of court revenue should be rectified.

The Role of the Judiciary - A Special Constitutional Court?

17.87 Special considerations arise concerning the role of the judiciary in respect of the interpretation and application of the Constitution. Such matters may include a wide range of issues, including: relations between the organs of State; disputes between the central and local authorities; questions about the constitutionality of laws passed by Parliament; and actions taken by the executive and the officers who serve it.

17.88 As proposed in a substantial number of people's views, it is possible to vest this vital role in a body other than a court (as is done under the Constitution of France and some other European countries). But there are advantages in giving the role to the courts, and in a country such as ours, they are the bodies best equipped to offer interpretations of the law. They also should have the necessary degree of independence from the executive and the legislature to be able to make rulings without fear or favour. Nevertheless, it is not without some misgiving that we reach that conclusion, for the performance of the courts in dealing with constitutional matters since independence has not been spectacular. They have tended to be conservative and literal in their interpretations, and have been far from activist in their approach. On the other hand, we see no other body better equipped to take on the role. Further, we trust that in the more open political atmosphere that has developed in recent years, an atmosphere which should be further developed under the new Constitution; the courts will feel less cost rained to deal with ,constitutional matters in an active and liberal way than has previously been the case. We make additional observations in this regard in our discussion of *Safeguards for the Constitution* in Chapter Twenty Eight.

17.89 Another substantial body, of views suggests that there should be a special court established to deal with, constitution matters. Many discussed the idea, in the context of measures to safeguard the Constitution. They argue' advantages, which would include an

increased public consciousness of constitutional issues, encouragement of constitutional litigations is a way of keeping a check on government. It might also result in development of special judicial skills, and a more activist judiciary in relation to constitutional law. Another advantage would be finality and certainty in constitutional litigation, for there is usually no 3ppea! from a specialised constitutional interpretation body.

17.90 However, other views are opposed to a special constitutional court. They fear possible limits on appeals from such a court. They argue that a right to appeal contributes to a fair trial, and should be available in all cases. Others fear monopo!isation of constitutional interpretation by one court.

17.91 We would envisage then that the High Court be given the primary responsibility for dealing with cases involving the interpretation of the Constitution. Thus, if a substantial constitutional issue arises in a lower court or tribunal, the issue in question should be referred to the High Court. Due to the importance of such cases, it will be necessary for at least three judges to constitute the bench. For the same reasons, the court should be required to deal with such matters as soon as is practicable. There will need to be a right of appeal from decisions in such cases, and it should of course lie to the Supreme Court, which should 'also be required to dispose of such appeals promptly. The Constitution should spell out clearly that the two courts have power to declare both legislative and executive acts null and void if they are found to be in contravention of the Constitution.

17.92 Recommendation

(a) *The High Court, constituted by three judges, should have jurisdiction to deal with cases involving interpretation or application of the Constitution.*

(b) *Other courts and tribunals before which a constitutional issue of a substantial nature arises should be required to refer the issue to the High Court which should be required to deal with the issue promptly.*

(c) *An appeal should lie to the Supreme Court from the High Court's decision on a constitutional matter, and the Supreme Court should be required to deal with the matter promptly.*

(d) *The High Court should, subject to appeal to Supreme Court, be given constitutional power to declare null and void any legislation or executive act found to be unconstitutional.*

The Role of the Judiciary - Other Aspects of Jurisdiction

17.93 There were few detailed submissions, on the jurisdiction of the various courts. In the interests of flexibility, most aspects of such issues are, in any event, better left to statutes rather than contained in an inflexible, Constitution. Nevertheless, there are some specific aspects of the jurisdiction of the courts and the ways in which, they ,carry out their functions which clearly arise either from principles from the people, or as necessary implications of the concerns and principles emphasized by the people which require general recommendations.

In particular, the people have expressed concern about various aspects of the criminal jurisdiction of the courts and the way it is administered.

17.94 In general the people's views indicate a concern that more account should be taken of African cultural norms in respect of courts being empowered to order compensation for and restitution of victims, and being encouraged to promote reconciliation, so that causes of criminal behaviour can be dealt with.

17.95 In addition, people want to be sure that in all cases, members of the judiciary act fairly, and in the interests of justice. They must always be required to be Neutral and impartial.

17.96 There is also concern that the inadequate investigation of criminal cases results in many criminals being acquitted by the courts. In a largely rural-based society such as ours, the village people often have detailed knowledge of the background to and commission of crimes. The whole justice system is brought into disrepute if known offenders are constantly acquitted. Part of the problem is the role that the court traditionally plays in the British system, where prosecution and defence come before the court as adversaries before a neutral umpire. We do not suggest that the courts take on the active inquisitorial role as in much of continental Europe and in Francophone Africa. We do, however, suggest that where criminal cases come before a court, which have clearly received inadequate investigation by police and prosecuting authorities, the court should be empowered to order further investigations before it orders an acquittal due to lack of evidence.

17.97 In a similar vein, people would like to be sure that where a court believes justice may not be served due to inadequate examination of prosecution witnesses or defendant (or their lawyers), the court should be able to become actively involved in pursuing lines of questioning to establish the truth.

17.98 In addition, people want to see a simplification in court procedures, to enable the ordinary person to more clearly understand what is happening, and why, in all court proceedings. Technical rules which can only be understood and therefore manipulated by lawyers should be simplified.

17.99 Finally, lack of legal representation of defendants in serious criminal cases can result in great unfairness. Hence whatever- occurs in relation to establishing a general legal aid scheme, there must nevertheless be power for courts to order representation at State expense in appropriate cases.

17.100 Recommendation

(b) In addition to adjudication of cases in accordance with the law and dealing with criminal trials, the courts should be required to order compensation and restitution for victims of crimes, and should promote reconciliation among the parties, in order

(a) Parliament should make laws as it may deem appropriate and consistent with the Constitution, in connection with power, composition and jurisdiction of the Supreme . Court.

to promote justice.

(c) In the execution of their duties the justices, judges and magistrates should be required to be impartial and neutral and all persons should be equal before the law and all law enforcing agents should apply the law without fear or favour.

(d) Where a case before a court has not been properly investigated, the judge should order further investigations before an acquittal based on lack of evidence is made.

(e) The judge or magistrate should be actively involved in cross examining the witnesses during trials in order to ensure that substantive justice is obtained.

(f) Court procedures should be simplified, particularly the technical rules. The role of the lawyers in disputes should never be allowed to defeat the principle of equality before the law.

(g) In cases where the court is of the view that the accused person will suffer injustice if not represented by a lawyer, it should order that the State provides legal representation for the accused at the expense of the State.

Court Dress

17.101 During court sessions, judges and advocates are required to wear robes inherited from the British who have maintained such court dress traditions since the 17th century. Judges wear a long red or black gown, white shirts with stiff collars neck bands and bench or bottomed wigs. Most advocates also wear black gowns, shirts with stiff collars, neck bands over dark jackets, and add wigs if they are trained in Britain.

17.102 Many people are critical of court dress and ask whether such robes are really necessary for the administration of justice. They argue that the robes only encourage judicial arrogance and widen the gap between the public and the judicial officers. Supporters of court dress say that the intent of the robe is creation of a solemn atmosphere, where the law is respected; it is essential in order to maintain the dignity and authority in court proceedings and to provide anonymity which protects judges and make them appear more impartial. Unfortunately, say the critics, court dress can also create an intimidating atmosphere to the witnesses and the accused who may fail to give evidence freely.

17.103 In order to foster respect for the courts, judges and advocates should be dressed decently but the attire should not be such as to scare people away from the courts. The attire should also be relevant to the society and should be understood by the people the public servants serve. It is proposed that the court dress for both lawyers and judges should be modernised to fit with our society.

17.104 The commission notes that court dress is not a constitutional issue, but comments on it in response to the people's views. The issue is one that should be carefully considered by the Judiciary, the Law Council and the Law Society. It would hot be appropriate for government to impose an attire on members of any profession without consulting them.

SECTION FIVE: ANALYSIS AND RECOMMENDATIONS ON THE ADMINISTRATION OF JUSTICE

17.105 There is a considerable overlap between issues concerning the judiciary and those concerning administration of justice. As a result some aspects of administration have already been touched upon in the preceding discussion - an. example being the issue of demarcation of administrative responsibilities of the Chief Justice and the Principal Judge. We now turn to a range of other institutions concerning the administration of Justice.

Popular Justice: Resistance Committee Courts

17.106 The most radical transformation of the administration of justice in Uganda occurred in 1988 with the vesting of judicial powers in RC Committees. The vast majority of people now have far more to do with the RC courts than they would ever have with the formal judiciary. By placing the major component of the system for administration of justice in the hands of the people's elected representatives at the village, parish and sub-county level, the NRM government has introduced a system sometimes referred to as popular justice. The role and the performance of the RC courts has been the subject of sometimes heated debate during the past three years.

17.107 Systems of popular justice have developed in some countries through armed struggles against colonialism or neo-colonialism as is the case in Mozambique. Alternatively, strong pressure groups in society can introduce it. In Uganda, the system has been the result of a combination of both armed struggle and pressure groups, with the experience of the armed struggle of NRM first giving rise to such courts and their subsequent expansion to the whole country once the NRM was in power. As they operated in the bush war, RCs heard cases and settled disputes, and were generally regarded as performing very useful functions in so doing, for magistrates courts had been too remote from village people. With the establishment of the RC system under statute, there were widespread popular calls that they be given judicial functions even though they had not been provided for in the original law. This popular support was noted by the 1987 Mamdani Commission of Inquiry into Local Government. Government quickly responded with the Resistance Committees (Judicial Powers) Statute (Statute No.1 of 1988). The powers of the RC courts as provided in this statute have already been outlined, in section one of this chapter.

People's views on the role and performance of RC courts:

17.108 The people's views indicate that RC courts are generally popular. They are seen as accessible both because they operate at village level, and because proceedings are conducted in languages that the people understand and without the technicalities of formal courts. While the RC courts charge small fees, they can entertain those who cannot pay. The barring of advocates from practising in RC courts has created a balance since neither party has any advantage over the other, unlike formal courts where the rich gain advantage by paying for lawyers. The fact that now a case can be settled in a court of law fairly, cheaply and expeditiously has helped in strengthening the rule of law. People are less likely to take the_ law into their hands. Because they can take their cases to RC courts, there is evidence that murder and other violent crimes often connected with such things as land disputes, have sharply declined. This decline is also attributed to the conciliatory approach adopted by RC

courts in the settlement of disputes. This method has helped in creating peace and harmony in the community.

17.109 While there is no doubt that RC courts have popularized the administration of justice in the country at the lower level, there continues to be controversy about them. A minority of views submitted to the Commission was strongly opposed to the new courts which were equated with "mob justice".

17.110 Some lawyers, particularly those who trained in common law system, look on in horror at any attempt to give judicial powers to anybody other than the established judiciary. On the other hand, supporters of popular justice argue that unless the broad sectors of society actually control the fashion in which the judicial power is exercised, one cannot speak of a democratic government. It is also argued that popular justice is more in keeping with local needs than is the introduced legal system; there is need to move away from the introduced adversarial system and re-create the council iatory systems of dispute resolution that are believed to have prevailed in the pre-colonial African societies.

17.111 There seems little doubt, however, that the overwhelming support in the people's views reflects the positive role that the RC courts have been playing, and so the Commission has no doubt they should continue, though perhaps with a change of name to reflect the proposed change in name of resistance councils to local councils (as discussed in Chapter Eighteen - *Local Government).*

17.112 In spite of the general popularity of RC courts, there are areas of concern raised in the people's views. Some involve matters of principle such as application of the doctrine of separation of powers. Others involve operational matters where performance of the courts has sometimes been poor. These issues may need to be addressed if the system is to be strengthened. These are issues which have been raised in many fora during the debate on the new Constitution, as well as in public discussion of the operation of the RC system itself

The issue of separation of powers:

17.113 A minority of submissions have argued that the exercise of Judicial powers by RC committees offends the doctrine of separation of powers. They propose that a separate set of people selected either by the RC themselves or by some other body should exercise judicial functions.

17.114 It is true that Resistance Councils exercise both legislative power (pass bye-laws) and executive powers mainly in their administrative work. As we have recommended in Chapter Eighteen, they should get increased powers as part of improved local government administration. As the people involved in RC committees and councils do not change according to the function exercised, one group of people may exercise legislative, executive and judicial powers.

17.115 It should be appreciated, however, that though the principle of separation of powers is taken as an indispensable component of a democratic system, hardly any country in the world attempts to give full effect to it. The doctrine is a useful reference point in the

distribution and exercise of state powers, but the modalities of its implementation generally reflect the cultural, historical and economic circumstances of the country.

17.116 In Uganda at the leve1 of RC ⅃ or RC II or even RC III, it is debatable whether separation of powers if it were to be applied as its progenitors imagined it would do the people any good. It is very likely that each organ would neutralize the others, a situation that would soon result in absence of effective action. People at this level, perhaps because of their social and economic circumstances, want institutions that exercise effective authority. It is of course true that they detest abuse of power as much as anybody else. They want to enjoy freedom and to be governed properly. At grassroots level, creation of different centres of authority in the name of separation of powers is likely to confuse people. The authority of the competing centres of power would be less than that enjoyed by present RCs. There could well be other practical problems; for example under a multi-party system if the heads of the executive and judicial committee happen to come from different parties. Moreover at village level in some areas it may not be possible to get sufficient suitably qualified members to fill two different sets of committees, one to hear cases and another to do the rest of the RC work.

17.117 The objection to RC committees exercising judicial functions does not come so much from the views received from ordinary people as from a few educated persons, and particularly the lawyers. The submissions from RCs and most individuals were more interested in the RC Courts being educated about their judicial roles so that mistakes which are being made can be avoided.

17.118 Perhaps the most important issue is not so much that of separation of powers as the need to minimize abuse of powers. That is the major aim of the principle of separation of powers, but it may be achieved in other ways. It is of course important that those exercising judicial powers do so impartially, without bias or influence. Members of RC courts must disqualify themselves from cases involving issues where they have interests, and so on. But these aims may be achieved by education, both of RC officials and the public, so that officials know the principles that should apply to those exercising judicial powers, and the public are aware they can remove from office any RC official who abuses his or her powers. Thus the powers of recall of RC committee members should remain a feature of any local government system, as recommended in Chapter Eighteen.

17.119 Recommendation

(a) *RC Committees should continue to exercise judicial powers, as should the committees of any new or modified local government system established in accordance with the recommendations of Chapter Eighteen of this report.*

(b) *RC courts should be reformed Local Council Courts according to the level of the Councils.*

Jurisdiction of RC courts:

17.120 On the issue of the powers of RC: courts, views are quite divided. Some have suggested that they should remain as they are; others have proposed that they should be increased, quite a number supporting a criminal jurisdiction beyond prosecutions for breaches

of RC by-laws. A small minority has suggested that RC judicial powers should be abolished. As clearly discussed, there are some mistakes and weaknesses in the operation of the RC courts which need to be rectified if the system is to be a part of our local government arrangements. For this reason we are of the view that the main judicial powers for RC I and II should remain as they are until the people have been educated on the judicial roles. The judicial powers of RC III may be increased to try minor criminal cases e.g. assault etc, The Grade II and III magistrates whom we have proposed to be integrated with the RC III court (see below) should guide the court on legal procedures in such cases. But the RC III committees should not have the powers to make arrests in respect of criminal matters which they later hear. Vesting of investigative and arrest powers in the body exercising judicial powers in respect of the same matters would have obvious danger.

17.121 Recommendation

RC III committees may be given power to try minor criminal cases but in that case they should Rot exercise powers of arrest as is currently provided in the RC Statute.

17.122 We note the proposals of the report of the Child Law Review Committee (March 1992) for RC I courts to be vested with a criminal jurisdiction in respect of minor offences by children, and believe this will be a positive development provided it is introduced in a planned way, with a major effort to train and educate RC officials about the new responsibilities involved.

Problems with the operation of the RC courts:

17.123 *Need to educate RCs on their judicial powers:* The RCs themselves generally recognise that there is need for improved understanding on the elementary aspects of how a case should be conducted. Certain glaring irregularities in the way cases are often heard by RCs have been commented on:

(a) Many RCs keep almost no court records. As a result, judgments and orders are often known only through oral transmission. In such circumstances, it is difficult if not impossible, to conduct appeals. As a result, when dealing with appeals RC 11 and RC Ills often have to hear cases again, from the beginning. The result may not only be unnecessary duplication, but injustice, for witnesses may not always be available at all subsequent proceedings.

(b) Many courts have little detailed understanding of the limits of RCs jurisdiction and as a result try cases without jurisdiction to do so. Despite having no criminal jurisdiction, many near criminal cases and even impose sentences such as corporal punishment, banishment of the accused and so on, all without legal authority. They have also· been exceeding their pecuniary jurisdiction in relation to civil cases.

(c) Some RCs have been entertaining cases which are the subject of other court proceedings, although section 34 of the Resistance Committees (Judicial Powers) Statute, 1988 pf0hibits this.

(d) RCs sometimes sit and dispose of cases without the quorum required by law.

17.129 In the majority of cases, however, RC court decisions are respected. This is because public participation in and support for the RC system means decisions of RCs have a social force, and moral authority. It is this rather than legal power conferred on the RCs that commands respect.

17.130 According to section 4(3) of the Resistance Committees (Judicial Powers) Statute 1988, where the RC court awards compensation exceeding U.shs. 5,000/=, the court shall refer the case to the chief magistrate of the area for the purpose of execution of the order. The procedures for referring cases to the chief magistrate are not understood in practice. Because of legal complications and as the distance of the chief magistrate's court is frequently great, few are in practice referred for execution. As a result some defendants have defied RC rulings with impunity. With the merging of magistrates Grades II and III into the RC courts, there should be more capacity in the RC courts to deal with such matters, especially in the higher level RC courts, and the law should be amended accordingly.

17.131 Recommendation

The law should be amended to allow execution of orders of RC courts to be made by the RC III courts, and eventually by other RC courts if administrative resources are sufficient to enable them to take on such work.

Appeals:

17.132 Appeals from an RC III court go to the chief magistrate and from there may go to the High Court. An appeal to the High Court is not automatic, and is only permitted if the chief magistrate or the High Court is satisfied that the decision being appealed against involves a substantial question of law or appears to have caused a substantial miscarriage of justice (Section 26 (2) of the Resistance Committees (Judicial Powers) Statute).

17.133 Some views have argued against such appeals. Some say appeals result in uncertainty, others point to practical difficulties, with the Chief magistrate's court sometimes being as far as 100 miles from a poor peasants home. Appellants may not be able to afford transport, accommodation and to pay advocates conversant with the intricacies of procedure and evidence. However, we suggest that the right to appeal should be a constitutional right of a citizen for only with appeals; .can a right to a fair hearing be reasonably assured; We accept, however, that limiting appeals beyond RC III to chief magistrates and the High Court is too restrictive of access. We see no reason why either a magistrate Grade I or a chief IJ1.agistrate should not hear appeals from RG III courts. Appeals might then lie from either level of magistrate's court to the High Court, but leave would still be required in either case.

17 .134 Recommendation

There should be a right to appeal from all RC III court to either a magistrate Grade I 0r a chief magistrate, and appeals may lie from either of those to the High Court, but only with leave.

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Supervision of RC courts:

17.135 Under the Resistance Committees (Judicial Powers) Statute (section 30) supervising powers over RC courts are vested in the High Court. This was apparently an error in the law, the original intention being to give this power to Chief Magistrates. As we have already indicated in most cases the Chief Magistrate IS too remote and has no capacity to supervise all the RC courts in his or her area. They are just too many for him or her to manage. The law should be changed to vest the supervisory power in both chief magistrates and magistrates Grade I.

17.136 Recommendation

***The power to supervise RC courts should be given to chief magistrates and magistrates Grade*1.**

The Jury

17.137 A substantial number of submissions to the Commission have proposed the establishment of the jury system in courts so that a, court is constituted of the judge and the jury. Very few memoranda have elaborated on how the jury should work its advantages and disadvantages. Our study of the jury in Commonwealth and Caribbean countries, and in the USA and England has suggested that the jury may be an important means of revolutionizing our adversary and conservative system of justice.

17.138 This is not the first occasion when introduction of the jury system has been considered in Uganda. Indeed, an attempt was made to utilize the system in Karamoja in the 1960s, under The Administration of Justice (Karamoja) Act Cap.35, which provides full details of a system for selection of juries and conduct of jury trials. Practical difficulties prevented its general implementation in Karamoja where the aim had been to involve the people of that area in the system of justice, and make them responsible for the verdict in any serious criminal matter.

How the jury operates:

17.139 A jury is a panel, commonly of nine or twelve ordinary people, selected at random to sit together with a judge hearing a case. The historical function of the jury is to determine the facts of the case. The judge rules on the law and in his summing up to the jury instructs them OR the legal principles applicable to the case. The jury applies these legal principles to the facts as they find them and so arrive at a verdict. Jurors normally serve for a shut period, and are then replaced by others. As ordinary people, without legal training, there are expected to have a fresh outlook on the problems in the community, one that the judge as a professional may be lacking because he is not constantly exposed to every day experience. Juries may be used in both civil and criminal cases, though in some countries their role 'is now; mostly restricted to criminal cases.

Arguments in support of use of the jury system:

17.140 In the sense that the use of the jury involves decisions on the facts of cases being made by ordinary people, the jury is not new thing in African societies. In pre-colonial societies, courts often consisted of the chief (king), court members and ordinary people. Even during the colonial period the involvement of ordinary people was maintained in the African native courts concerned with customary laws. This ceased with the abolition of the African native courts after independence when the courts were integrated into one system. From that time, criminal trials were heard by a resident magistrate without assessors or, in the High Court, by a single judge with assessors. The assessors were mainly retired civil servants who did not necessarily influence decisions of the trial judge, although they tended to be of some assistance to expatriate judges who often had little knowledge of the customs of the people. There have been attempts to abolish the use of assessors in criminal trials in the High Court but they have been futile because assessors represent lay participation in administration of justice. Several views, however, have supported the continued use of assessors working side by side with the jury system, whenever possible.

17.141 Some advocates of the jury system argue that justice emanates from the people and should therefore involve them closely rather than be exercised by a single judge. They consider the judges and magistrates to be people of the upper middle class who do not understand the problems of ordinary people, who can hardly get justice when tried by a person of such different background. The right to a fair trial should mean that an accused person is tried by his or her peers. One assumption of the jury is that if the list of persons from which the panel of jurors is selected is broadly representative of the population there should be a reasonable mixture of people who may have similar background and experience to the accused or at least a broader cross-section of background and experience than a single judge, thereby ensuring a fairer assessment of the case.

17.142 The Commission notes similar concerns about trial by one's peers in many other countries. Most of the Commonwealth Caribbean countries have adopted trial by jury as the method of trial in all serious cases and some like Bahamas and Bermuda have entrenched this right in the chapters on fundamental rights and freedoms in their constitutions. The American Constitution guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district in which the crime shall have been committed.

17.143 The majority of submissions on the administration of justice have accepted that the principle of popular democracy and participation is relevant. The jury and its participation in the judicial process gives a stamp of public approval to the results reached in a trial which can be of great importance in securing the acceptance of the entire judicial system. Without public acceptance the administration· of justice can be seriously weakened. The jury is expected to represent a broad based sense of values generally acceptable in the community and in that way the jury shares the burden of decision making on hotly disputed issues of fact on which judgement of life or death may depend..

17.144 There were few submissions that argue strongly against use of the jury system. A few noted that the system would be expensive and difficult to administer. One or two argued that ordinary villagers may not have sufficient experience and knowledge to understand

matters in a court. A few others pointed to weaknesses in the jury system experienced in other countries.

Weaknesses in and possible improvements to the jury system:

17.145 Critics of the jury system have pointed out that it tends to reduce transparency in the judicial decision making processes because a jury does not give reasons for its decisions. Jurors are not normally allowed to take notes. Everything depends on memory. Yet criminal cases sometimes take weeks or months before they are concluded, so that lack of notes may be of grave disadvantage. The idea of the rule against taking notes is that the juror with the most accurate notes may influence the rest in decision making. But in fact, in the absence of written notes the juror who claims to have the best memory may be equally irifluential.

17.146 Random selection of the jury may turn up members who feel they are inadequate for the task because they lack knowledge and experience to understand the evidence. Experience in many countries has shown that non-specialists jurors can have great problems understanding the evidence in fraud or other complicated cases. It is proposed that in such cases a special jury composed of persons with broader experience and relevant professional knowledge should be deliberately chosen.

17.147 The rule that jury verdicts must normally be unanimous may make effective subversion of a jury comparatively easy. All that need to be done is to subvert a single juror, thus breaching the unanimity rule. It has been suggested that in such circumstances there can be a retrial but apart from the expense of the retrial there is the risk that a witness available at the first trial may subsequently be unavailable. The risk of bribery of jurors can be reduced in two main ways. The first by is concealing the identity of jurors and likely jurors from the members of the public. The second is to provide for cases to be decided by majority verdict. In some states in Australia for example, a majority of ten out of twelve jurors is sufficient. However, a majority verdict should not apply in murder cases where the disagreement of jury should result in a retrial.

The Commission's assessment of proposals on the jury:

17.148 Having assessed the arguments about the strengths and weaknesses of the use of the jury in the administration of justice, the Commission's assessment is that although the jury system is not necessarily a cornerstone of a good system of justice it should nevertheless improve the present system, in that it actively involves the public in the administration of justice. Public participation in the administration of criminal justice in particular, is important to help secure public understanding and acceptance which should add considerably to the strength of the judicial system., However, the role of competent and professional judges is also very important and must be retained in all trials in order to provide legal direction and to assist the jury to teach a verdict not, based on extraneous circumstances. In general, we believe the likely expense of the jury system does not outweigh its value. Further, we believe ordinary people have the necessary experience to serve on juries. Finally, in most of the major weaknesses in the jury system experienced elsewhere can be dealt with in various ways.

17.149 Recommendation

(a) There should be a jury system in all criminal cases for all courts from magistrate Grade I to the High Court. The jury should consist of nine* (9) *people:

(b) There should be a jury system in civil cases where both parties agree or where the court so decides;

(c) In all civil cases where there is no jury, the court should be constituted by a judge or magistrate together with assessors;

(d) It should be the duty of every adult citizen to serve on the jury. Parliament may make laws on the numbers and selection of members of the jury in each court, and those government officials or legal professionals who may be exempted from jury service, such as ministers, members of parliament, members of armed forces and security organs on active service and lawyers; and

(e) In relation to the verdict of jury:

- ***(i) the verdict should be communicated by the jury to the presiding judge or magistrate who should announce it to the court;***
- ***(ii) a unanimous verdict should be binding on the judge or magistrate;***
- ***(iii) in a capital offence the verdict should be unanimous; and***
- ***(iv) in cases other than capital offences a majority verdict of seven or more should bind the judge or magistrate.***

Specialised Tribunals

17.150 Specialised tribunals are usually set up by Parliament when it empowers persons or bodies other than the ordinary courts to solve particular kinds of disputes. Laws are passed creating special courts or tribunals with judicial or quasi-judicial *powers.* They might include industrial courts or tribunals to deal with industrial disputes, or family courts or tribunals to deal with issues concerning family law.

17.151 While the majority views have supported the existence of specialised tribunals in the administration of justice, the minority views have suggested that such tribunals should be abolished and all cases dealt with by the ordinary courts. One ground of attack is the composition, of such tribunals, which are, alleged sometimes to· be made up of incompetent people with no knowledge of legal procedures whose decisions often lead to miscarriage of justice. Supporters of specialised tribunals argue that becaqse of their nature content, and complexity, certain kinds of disputes need to be handled by specialised courts or tribunals. Many of the disputes that come before the special tribunals (e.g. labour disputes, professional misconduct and indiscipline) often involve relatively minor issues which do not normally warrant the service of the of a Judge. Furthermore, it is argued that such issues are best understood not by a judge but by people, with .specialist knowledge of,tl1ei[1]main,areabf work of the tribunal, knowledge usually gained by' years of work in labour relations, professional organisations or other areas relevant to the various tribunals. Tribunals can normally solve

disputes more quickly and cheaply than the ordinary courts. The procedure followed in most tribunals usually involve less technicalities than in the ordinary courts.

17.152 Some submissions that supported use of specialised bodies proposed that there should be observers from the judiciary on all such tribunals to ensure that justice is done. We see little need for such a requirement, for there is normally a right of appeal from these tribunals to the ordinary courts which should be sufficient to enable miscarriage of justice to be dealt with in most cases.

17.153 From the submissions received from the people, the following tribunals have been discussed or suggested: administrative tribunals; the industrial court; military courts; disciplinary tribunals for police, prisons and intelligence organisations; tax courts; family courts; a human rights court; a constitutional court; sharia courts; cIan courts and other informal courts. We have discussed some of these in other chapters or elsewhere in this chapter. The idea of a human rights court was discussed in Chapter Eight, court martials are discussed in Chapter Fourteen and the proposal for a constitutional court was dealt with earlier in this chapter. Hence, in the following discussion we make a few comments *op* only the other bodies.

Administrative tribunals:

17.154 The existing laws provide for various kinds of administrative tribunals. Some have jurisdiction to deal with disputes in government departments or public organisations and in particular to solve disputes between the employees and the management or between the employee and the employer (e.g. boards under the Public Service (Negotiating Machinery Act), cap.278). Others are intended to enforce professional discipline particularly among lawyers, doctors, bankers etc (see, for example, the Medical Board established under the Medical Practitioners and Dentists Act, cap.262). The members of such tribunals are normally proposed by the concerned organisation or authority. There is little controversy about such bodies.

Industrial Court:

17.155 The Industrial Court established under the Trade Disputes (Arbitration and Settlement) Act cap.200 has power to hear and arbitrate any dispute between employers and employees (or between employers) referred to it by the Minister of Labour or directly but jointly by all the parties to the disputes. The Act contains no requirement that members of the court be qualified lawyers conversant with the relevant law governing industries and industrial disputes. At present, the court is made up of a Chairman (called a President), a deputy chairman and one other .permanent member, and may have other members added to deal with particular disputes. Appointment of the permanent members are made by the Minister of Labour.

17.156 Some concern has been expressed in a few memos received by the Commission that the ministerial power to appoint and. the lack of provision on qualifications could result in political appointments of poorly qualified people. While this is not a matter for constitutional recommendation, the Commission suggests that this important body should include a President and Deputy President who are qualified lawyers and perhaps three other people with relevant

practical experience, all appointed by the Judicial Service Commission. The members of the court should serve for a period of 3 years subject to renewal. The President and Deputy President of the court should have security of tenure similar to the judiciary. Parliament may regulate the procedures and powers of the Industrial Court.

Informal courts:

17.157 Although the magistrates and RC courts dispose of many disputes which may arise out of customary law in Uganda, many such disputes are solved by informal courts, usually clan and family courts that deal with disputes between individuals. Some views have suggested that such courts should be recognised by law so that their decisions can be enforced. We are of the view that this should not normally be necessary because anyone dissatisfied with the decision of such courts can commence proceedings in the RC courts which have power to deal with a wide range of customary law matters.

Family courts:

17.158 Some submissions have proposed that instead of family matters going to the ordinary magistrates court, special family courts should deal with cases of marriages, dowry, divorce, child abuse and any matter pertaining to family. Such courts could be composed of elders, religious leaders, psychologists, sociologists or social workers of both sexes and with wide experience in family matters. They would always be required to sit in closed sessions in view of the fact that some litigants may fear or feel shy to speak out family issues in the public.

17.159 The idea of special family courts has much to recommend it. It might, however, be difficult to implement due to lack of funds, not to mention limited specialised personnel. The few who may be available may end up working only in urban centres thus leaving the majority of the people in the villages not attended to. Government might give attention to. the possibility of at least having a specialised family division within the High Court, and of setting up specialised family courts once resources and facilities permit. In the meantime, local courts (RC courts) or informal courts can properly handle most family matters in the villages. We note the proposals of the 1992 report of the Child Law Review Committee in respect of the future role of RCs and RC courts as the initial points of referral for matters relating to children; and for the establishment of a Family and Children Court in each district to deal with matters which have 'not been satisfactorily resolved by RC courts and with more serious criminal matters. In general, we are supportive of such initiatives. However, whatever court deals with major family or marriage disputes should ideally do so in closed sessions, so that parties and witnesses feel free to speak openly.

17.160 Recommendation

(a) Consideration should be given to establishing special family courts once funds and facilities are available.

(b) Any court dealing with marriage disputes and family and children's issues 'should normally sit in closed session to enable parties and witnesses to speak, freely.

Tax courts:

17.161 Some submissions have suggested the establishment of special courts to deal with all those who evade tax. It is argued that special tax courts may be more effective in dealing with tax defaulters than are the ordinary courts which have jurisdiction at present it is true that tax collection in Uganda has for some years been very low compared to most other African countries. Uganda's total revenue collection is less than 10 percent of GDP unlike Zimbabwe that collects 34 percent of GDP. There are a number of reasons for this poor performance which have been discussed in Chapter Twenty Two *(Public finance).* Government has recently created the Uganda Revenue Authority to handle tax collection (see Uganda Revenue Authority Statute 1991 (No.6 of 1991». In order to facilitate the work of this body, there is much to be done not only to improve the tax base but also to improve tax collections by improved detection of both evasion and corrupt tax collectors. Setting up tax courts will not help unless these fundamental problems are dealt with. However, setting up of specialised tax tribunals may be a matter worthy of future consideration, once more fundamental problems have been tackled effectively.

Sharia courts:

17.162 Several memoranda especially from the Muslim community have suggested that the new Constitution should recognise the Sharia courts that administer the Islamic law of the Koran. They propose that Sharia courts operate at the parish, county, district and national levels. At the national level the Sharia Court would be presided over by the Chief Khadi in consultation with the General Assembly. It is suggested that Sharia courts would arbitrate and settle disputes among the Muslim factions and individuals according to Islamic law. It is argued that such courts would perhaps be more effective than the ordinary courts which are said to have had little success in resolving disputes among the Moslems of Uganda.

17.163 Islamic law is applied in Uganda at present mainly in personal matters such as marriage, divorce and inheritance. It is formally recognised by law in some cases, as for instance under the Marriage and Divorce of Mohammedans Act, Cap.213.

17.164 Any additional formal role for Islamic Law would involve many complex technical issues which were beyond the competence of this Commission to study. If there is to be any change, it should be based on a detailed study of these issues, which might perhaps be carried out by a body such as the Law Reform Commission.

Legal Aid Schemes

17.165 Elsewhere in this chapter we have pointed out that legal representations been necessary if a person is to have access to justice. Indeed, a defendant who is not represented by an advocate in criminal proceedings may be doomed to lose his or her case largely because of inability to deal with the technicalities in the criminal law. But the fact is that the majority of the people cannot afford the exorbitant fees charged by advocates. This fact contributes to great inequality between the rich and poor before the criminal courts'.

17.166 Some members of the legal profession and human rights activists have proposed that a legal aid scheme is needed to redress the imbalance. Under such a scheme, legal

representation would be offered free of charge or at a minimal cost to those incapable of paying lawyers' fees. It is suggested that since government is the guarantor of people's rights it should take an active role in the establishment and maintenance of such a scheme rather than leaving it to. nongovernmental organisations. A department of legal aid could be established in the Attorney-General's chambers. Others suggest establishment of an independent legal aid institution, perhaps called a "public defender" or a "public solicitor". Although such a scheme would undoubtedly be expensive, the Commission argues that human rights - especially the right to a fair trial - cannot be adequately guaranteed without it.

17.167 We note that there is a Poor Persons Defence Act which allows a poor person to get free legal representation, but it has little or no effect at all. However, the Uganda Law Society and FIDA have in recent years started some legal aid schemes with support from foreign donations. The Commission see this as a good develapment which should be encouraged. Apart from assisting the poor and reducing the burden an government legal aid, such efforts will help to restore the confidence of the people in the legal profession and reduce the current resentment for lawyers by the majority members of the public.

17.168 Recommendation

(a) There should be legal aid scheme where people unable to afford advocate's fees can go for legal advice or counseling.

(b) Government should either establish a department of legal aid in the Attorney-General's chambers or establish an independent institution to assist people who cannot afford legal representation.

(c) NGOs and the legal profession should be encouraged to establish and support voluntary and non-governmental legal aid schemes.

The Director of Public Prosecutions

The role of the DPP:

17.169 The office of the Director of Public Prosecutions (DPP) is important to the administration of justice because the DPP controls all the main criminal prosecutions. Article 71 of the 1967 Constitution empowers the DPP to institute, take over or discontinue any criminal proceeding against any person and at any time.

17.170 It is generally accepted that if a person is suspected of committing a criminal affine, it does not automatically follow that such a person must be prosecuted. The DPP considers the evidence against the suspect and decides whether it is sufficient to justify prosecution or trial. Tile DPP. may decide not to prosecute when he considers that it may not be in the public interest to prosecute if a conviction is doubtful, or if due to. mitigating circumstances, only nominal punishment is likely to. be impased. In other cases the DPP may decline to Prosecute when the offence which has been committed may be a breach of "stale" legislation which mast people no lager regard as relevant.

17.171 In order to carry out his or her functions the OPP must rely on other state machinery for the detection and investigation of crime and the processing and assembling of evidence necessary for prosecution of the offender. Hence the OPP largely relies on the police force and particularly the CIO - and to some extent the Special Branch.

17.172 Another function of the DPP is to represent the State in criminal appeals instituted by convicted persons. The OPP can also institute appeals from magistrates' courts decisions considered to have been erroneous. The OPP is also required to furnish views in cases pending revision by the High Court before provisional orders are made in exercise of that court's powers to check and revise the actions of lower courts. At times the DPP has withdrawn charges which are pending before the High Court by way of entering a *nolle prosequi.*

17.173 The few memoranda that have addressed the issue of the OPP are largely in agreement with the provisions of the 1967 and 1962 Constitutions as far as the functions of that office are concerned. However, some suggest that there are problems with the operations of the DPP that need to be rectified.

Political control of the DPP:

17.174 Many views have expressed grave concern that Article 71(5) of the 1967 Constitution subjects the OPP to the direction and control of the Attorney-General. They note that there is grave danger of abuse if prosecution powers are subject to political direction. Many have proposed that the independence of the OPP should be guaranteed. He or she should have powers to decide professionally without reference to any other authority. He or she should be impartial and guided by public interest. The DPPs power should only be subject to the Constitution. However, administratively, the OPP might be under the Attorney-General to get guidelines on matters of general policy.

The DPP and CID:

17.175 While the OPP depends very heavily on the CIO, he has no power of control over the CIO personnel, in the sense that if they were to disobey directions he or she cannot do much apart from reporting them, for while the OPP is under the Ministry of Justice, the CIO is part of the Police, in the Ministry of Internal Affairs. There have been cases where orders of the OPP have not been complied with. For example, the Public Service Review and Reorganisation Commission Report of 1990 noted a case where the OPP, acting on the evidence assembled by the CIO, directed the arrest of a government minister. The arrest could not be effected, however, because the then Minister of Internal Affairs directed the CIO not to comply with the DPPs directive (page 423, para.89). Some submissions have suggested that the CID should be transferred to the Ministry of Justice to ensure that the orders of the DPP are complied with. The alternative would be to create coordinating machinery to ensure that all the bodies involved in administration of justice work effectively together. Transferring the CIO to the Ministry of Justice would be difficult because much police work rotates around the CIO. The OPP does not have capacity to supervise the work of the CIO in the whole country.

(j) In exercising the powers and performing the functions conferred upon him or her by the Constitution, the DPP should have regard to the public interest injustice and the need to prevent abuse of legal process but should not be subject to the direction and control of any person or authority.

(g) The prosecution should pay expenses of prosecution witnesses. The court should continue to pay expenses of other witnesses.

Administrator General & Public Trustee

17.179 The Administrator General is not a constitutional office but due to public outcry about the office in people's views, some issues require comment. The office of Administrator General is established by an Act of Parliament, and is empowered to look after the estates of deceased persons and to ensure that their immediate relatives and dependants benefit from their estates.

17.180 The first complaint from the people's views is that the office of the Administrator General is too remote from the ordinary people. It is proposed that it should be decentralised to at least district level so that it can be more accessible. The office is also claimed to take too long to act on complaints addressed to it, partly because of its distance and partly due to lack of commitment on the part of the personnel in the office. Delays often result in estates from which orphans and widows should have benefited being hijacked by distant relatives. A number of customary practices provide for the take-over of a deceased man's property (including his wife) by his relatives rather than by his spouses or children. In such a framework, justice and human rights for the widow and orphans are often violated. It is proposed that in order to overcome such injustices the office of the Administrator General should be strengthened so that he becomes the protector and defender of the widows and the orphans who are nearly always disadvantaged in the society. If the office of the Administrator General is decentralised it should have the powers to finalise issues at district level so as to minimise on time and avoid the unnecessary expenses of transport for the widow and the orphans.

17.181 Recommendation

The office of the Administrator General should be decentralised at least to district level to enable the people finalise their matters within the district instead of travelling to Kampala.

The Prerogative of Mercy

17.182 A few submissions have commented on the prerogative "of mercy, some noting that it is important for the Head of State to have the power to commute, a sentence of death, to grant pardons, and reduce sentences. Such power should be mainly intended to enable the government to rectify injustices which only become apparent after the time for appeal against a conviction or sentence has passed. Some minority views oppose the prerogative of mercy, some arguing that sentences of convicted criminals should be carried out50 as not to frustrate the independence of the judiciary and others noting dangers of exercise of the power for political reasons.

17.183 The necessity for a power to grant mercy is generally accepted, but there is disagreement on who should exercise such power and how to ensure it is not abused. Some have suggested that it should be exercised by the Chief Justice since he is the head of the judiciary which imposes sentences. Others have proposed the power should be exercised by the President, is Head of State, because it will he the State forgiving the convicted person. Since the Chief Justice is a part of the judicial system, it may cause difficulties to involve him or her in decisions on the grant of mercy to a person he or she may have convicted. We accept that the powers should be exercised by the President. However, it should not be a power exercised for political reasons, and we therefore believe it should only be exercised on advice of an independent body.

Committee on the Prerogative of Mercy:

17.184 It is proposed that before the President exercises the power of mercy he or she should be advised by a committee and should act in accordance with the advice received. Views have suggested that the committee be composed of persons from the legal profession while others have proposed that it should be a mixture of both legal officials and ordinary respectable citizens.

17.185 The current committee on the prerogative of mercy is chaired by the Attorney General and is composed of not less than six persons appointed by the President. We accept that the Attorney-General should continue to chair the committee, for it is important that full account is taken of all the issues that can be brought before it by virtue of the resources available to the Attorney-General. But government concerns should not dominate, but rather, the concerns of society as a whole should be taken into account, we therefore suggest that the Committee should include three prominent citizens of high moral standing appointed by the President. But to ensure their independence, their appointments should be subject to approval by the National Council of State. There should also be a nominee of the Uganda Law Society, to ensure that independent views of the legal profession can be taken into account. This should help to ensure relevant and proper considerations are born in mind by the Committee. But again, the appointment should be subject to approval of the National Council of State, to ensure the appointee enjoys high public esteem;

1.7.186 Recommendation

(a) *The President upon advice of the Advisory Committee on the Prerogative o/Mercy should have powers to grant pardons to any person convicted of any offence and* ***to*** *give reprieve and respite and to remit, suspend or commute any sentence passed by any court or other authority.*

(b) *The Advisory Committee Oil the Prerogative of Mercy should consist of*

(i) The Attorney General who should be its chair-person;
(ii) three prominent citizens of high moral standing, appointed by the President, Subject to 'approval by the National council of State;
(iii) one member appointed by the President after nomination by the Uganda ***Law*** *Society, subject to approval by the National Council of State.*

(c) The members of the committee should serve for a period of three (3) *years subject to renewal.*

Education on the Law and Reform of the Law

Relevance and knowledge of the law:

17.187 In section two of this chapter we discussed the concern expressed in the people's views about the foreign nature of the law and the lack of information and knowledge ordinary people have about the law. It is therefore necessary for us to consider measures which might deal with these deep concerns.

17.188 In our view, the two concerns are connected to some extent, in that the foreign nature of the law contributes to the ignorance of people about the law. It is very hard for most people to understand a foreign legal system which has made little effort to take account of African needs and values. Those laws are written in complex and technical language which people cannot understand. Moreover, the laws are hardly available to ordinary people; even
many lawyer's offices do not have full sets of the laws.

17.189 It is also true that many of our existing laws were passed by the colonial regime. They contain not only irrelevant material which has long been replaced in the statute books of the former colonial power, but also harsh and oppressive provisions, contrary to basic standards of human rights. There has been no systematic effort to review the laws to delete provisions contrary to human rights. This is despite the fact that Uganda is a signatory to many international conventions on human rights (see Chapter Seven). In fact, it might appear that acceding to such conventions is done for the sake of appearances, for neither are· consequential changes made to existing laws, nor are new laws made to reflect international human rights standards, for example, in relation to rights of women and children.

Review and reform of the law:

17.190 In general, the Commission has found that since independence there has been very little effort to review our statutes, so that not only do many outdated and irrelevant provisions remain in force but in some cases, complete statutes have become totally out of date. It is therefore necessary to put in place an effective mechanism for ongoing review our laws so that government has the information needed for repeal and replacement of outdated or irrelevant Jaws, and for making amendments necessary to bring other laws up to date or in line with the changing needs of our society.

17.191 We note that there have been some largely ineffective efforts to set up review processes the past. They include a Law reform committee established in the 1960s which produced some reports which were used by government but was of limited effect. In the mid1970s, the work of the committee was structured into the, Ministry of Justice but the department in question was provided with no resources, and was able to achieve very little. After the NRM government came to power, a committee was established to examine the needs of law reform and following its report, the Uganda Law Reform Commission Statute 1990 (No.7 of 1990) was passed. It provides for a commission of six ordinary members under a full time chairperson, and with a secretariat to provide necessary support. Its

to approval of the National Council of State, all of whom should serve four year terms with eligibility for reappointment.

(b) The chair-person should be a justice or judge or a person so qualified, and should serve on a full-time basis.

(c) Two of the members should be non-lawyers with experience and qualifications relevant to the work of the Commission and, in view of the fact that women are particularly disadvantaged by the current law, should also include at least one woman.

(d) The Law Reform Commission should examine our laws on a continuous basis, to ensure that they are: in conformity with the Constitution; relevant and appropriate for contemporary society; reflect the wishes, values and aspirations of our people; in conformity with international conventions and instruments on human rights which bind Uganda; and comprehensible and intelligible to the ordinary citizen by rendering them in simple, straightforward language. In particular the Commission should review existing offences under the Penal Code and other criminal legislation and offences recognised by various customary legal systems of the country, with a view to removing those that are not appropriate to our current circumstances.

(e) The Commission should promote development of new areas of law and new or more effective methods for administration of justice to ensure that the law and its administration remain responsive to Uganda's changing needs.

(j) The Law Reform Commission should report to the Attorney-General and through him or her, to the Parliament, with reports on particular subjects provided from time to time, and an annual report on its activities.

Informing the people about law:

17.198 Ensuring our laws are brought up to date will require a programme of some _years. In the meantime, it is still essential that a major and ongoing programme of educating the public about the law is undertaken. If the Law Reform Commission can succeed in simplifying and translating laws, that will be a major step forward. But more is required if people are to be fully informed about law and their rights. Only then came the people get Justice. Only then can they advise government on necessary change.

17.199 We believe that the judiciary at all levels, the Judicial Service Commission, all law enforcement agencies, as well as the Law Reform Commission, should all have a special responsibility to increase popular awareness about the law. There should all actively involve themselves in programmes needed to achieve better popular understanding of law and of the administration of justice.

17.200 Recommendation

It should be the duty of the judiciary the Law Reform Commission, the Judicial Service Commission am law enforcement agencies to develop programmes to increase people's awareness of the law and the administration of justice and of the people's rights under law.

CHAPTER EIGHTEEN

LOCAL GOVERNMENT

18.1 Local government is a matter of great importance to Ugandans, as has been made clear in the people's views submitted to the Commission. This chapter is divided into five sections. The first considers the significance of the issue. The second provides a brief account of the experience of local administration up to 1986, while the third section discusses local government and decentralisation in the period from 1986 to 1992. This experience gives rise to a number of concerns and principles emphasized by the people on the subject of local government which we outline in section four. They are used in section five to analyze the main proposals from the people concerning local administration and to make recommendations on the subject.

SECTION ONE: THE IMPORTANCE OF LOCAL GOVERNMENT IN THE VIEWS OF THE PEOPLE

18.2 The people submitting views to the Commission have almost all attached the greatest importance to the question of local government. More importantly, they have been almost completely unanimous on Uganda's need for strong and autonomous local government. They have therefore been very much in support of continuing and strengthening existing decentralisation policies adopted by the central government.

18.3 The support for local self-government is not surprising. Ugandans managed their own affairs before the force of colonialism swept away most aspects of autonomous management of our own affairs. But the memory of proud traditions did not die. And so people were glad to again take more control of their own lives with the establishment, first of local advisory councils in the 1930s and 1940s, and then of elected governing councils at district and lower levels in the 1950s and 1960s. But the discussion of the history of local government later in this chapter shows that the flowering was brief, crushed in the mid-1960s by the central government which was suspicious of and threatened by local forces it could not dominate. There followed twenty years of centralisation when local initiative was crushed, and the capacity of local administration minimised. Throughout the period, the people longed for peace and stability based upon their full involvement in government and in the management of matters most closely affecting them.

18.4 The establishment from 1987 of local government councils, in the form of Resistance Councils, operating from village to district level has restored people's faith in their ability to manage strong local governments. This .is not to say that they are completely satisfied with every aspect of the existing system. There is much that they criticize. But almost nobody criticises the principle of local authority and decentralisation.

18.5 This support provides a very strong foundation· upon which tile new Constitution can develop a democratic, government system based upon the widest possible popular participation, from the village to the national level.

SECTION TWO: HISTORICAL BACKGROUND TO 1986

18.6 It is important to evaluate Uganda's experience of local government so that the Commission's recommendations on the subject are based on realistic foundations. We must take account of the lessons learnt from experience of operating local government and of social and political factors which might limit the chances of people's aspirations being effective. In particular, we must take into account past constitutional and legal arrangements and how they have worked in practice.

The Pre-Colonial Period

18.7 The system of local governments before the colonial period varied from area to area. In the centralised kingdom areas like Buganda, Ankole, Bunyoro and Toro, chiefs of various grades were appointed by the kings to administer particular areas. In the segmented societies like Karamoja, Teso and Kigezi, chiefs or clan leaders exercised a varied range of administrative functions over their clans.

The Colonial Period to 1949

18.8 The British found a system of administration in Buganda based on a hierarchy of chiefs from the sub-parish chief through the parish chief, sub-county chief and county chief. A chief was answerable to the one immediately above him. They were civil servants and did not hold office on a hereditary basis. This system of administration so impressed the British that they not only maintained it in Buganda but also introduced it in other areas of the Protectorate, initially using Baganda agents though they were replaced by local appointees from the early 1920s. The chiefs were made responsible for assessing and collecting taxes, keeping law and order and generally carrying out other functions on behalf of the Protectorate Government.

18.9 There was an appearance of local participation, first because in Buganda and to a lesser extent the other kingdom areas, the traditional rulers were left free to administer their areas, provided they remained loyal to the colonial government. The second reason was that outside Buganda, after the withdrawal of Baganda agents, the chiefs were chosen from among the notable personalities in the local area. In many cases, they were the traditional chiefs in these areas who enjoyed the support and loyalty of their people.

18.10 Uganda was divided into local administration units based on areas inhabited by the different ethnic groups. The administration units under the Protectorate Government consisted of provinces, districts, counties, sub-counties, parishes and sub-parishes. Buganda was the only province which was administered as a single unit without being divided into districts. With the exceptions of Bukedi,Kigezi, Toro and West Nile, the district boundaries coincided with relatively homogeneous ethnic groups.

18.11 Declaration of local administration units on the basis of ethnicity had the advantage of unifying peoples who shared a common history, language, culture and traditions, thereby modifying the impact of the major changes accompanying colonial rule. On the other hand, the system tended to make Ugandans feel more loyal to their local areas than to the country as a whole. Some feel this may have tended to work against national unity.

18.12 Local administration was almost entirely the responsibility of chiefs until the 1930s. During the 1920s, they were the only members of the district councils, created by the colonial government, and having an advisory role. In the mid-1930s, some nominated members who were not officials were added to the councils to represent local opinion. In the 19408, councils made up of chiefs and elected representatives were set up at county, sub-county and parish level. Election was by means of accommodation of local tax payers at parish level, and indirectly thereafter was, through electoral colleges of the elected members (pre-figuring the RC system). These councils also had only advisory roles, with no executive or legislative powers. But they provided a forum for debate of local issues from the village to the district level. The system was operating in all districts except Buganda by 1950.

18.13 Although the system appeared to provide some local autonomy, in reality it remained highly centralised. Ultimate control and veto power over the activities of the local administration remained with the Protectorate Government. People had no involvement in selecting the chiefs, who were government appointed civil servants. Other than the advisory councils, there was n6 popular involvement in government. It was only as independence approached that the British began to introduce some democratic changes.

The Colonial Period: 1949-1962

18.14 The Local Government Ordinance of 1949 provided a statutory basis for the multitiered council system established in the 1940s. The District Administrations (District Councils) Ordinance of 1955 made the district councils more representative and though chiefs remained members they lost control to elected politicians. During the late 1950s, more and more district councils were elected, though not all reached that stage until 1964. The councils were made responsible for a number of services, including administration of land, primary and junior secondary schools, rural health services, rural feeder roads, rural water supplies, agricultural and veterinary services, and the maintenance of law and order. Staff at district level expanded during the 1950s, with central government officers being transferred to district control as responsibility for their functions was transferred. Chiefs lost their judicial roles, and came under local political control to some degree.

18.15 In order to have funds necessary to carry out the responsibilities and functions conferred on. them, district council') were given powers to impose and collect taxes, subject to control by the Protectorate Government. The main source was graduated tax, and it has remained so to this day.

18.16 As Uganda approached independence, it had a variable system of administration below the national level. There was one system for the kingdoms (where there was still no popular participation through elections), one for the majority of districts with elected councils and, virtually direct administration for, the few remaining areas. These differences were part· of the reason why the question of local administration was so sensitive. In December 1960, the Munster Commission was appointed to consider the type of government best suited to independent Uganda, and to look into the question of the relationship between the central government and the Local governments.

18 .17 The Munster Commission's, report, published in 1961, recommended that Uganda should be a single democratic state with a strong central government. However, the

relationships between the central government and Buganda should be federal in nature, and those with the other kingdom areas of Ankole, Bunyoro, Toro and the Territory of Busoga, should be semi-federal. The rest of the districts should have a unitary relationship with the central government. To some extent, the distinctions in the autonomy and powers of the various local level governments reinforced tensions between the 'non-kingdom areas and the kingdoms, especially Buganda.

From Independence to 1966

18.18 The system of local government introduced during the late colonial period remained relatively undisturbed at independence. The 1962 Constitution largely implemented the recommendations of the Munster Report. Schedules, to the Constitution provided detailed systems of government for the kingdom areas and Busoga, including elected councils and ministers. The central government could not change the constitutional relationship with these areas without the agreement of the governments concerned.

18.19 The rest of the districts of Uganda (Acholi, Bugisu, Bukedi, Lango, Teso, West Nile, Karamoja and Kigezi) had a unitary relationship with the central government. The 1962 Constitution specified that each district would have a council with such functions in relation to the administration of the district as may be conferred upon it by Parliament". In other words, the central government was to have ultimate control over the districts through legislation. Over the period to 1966, the central government made a series of laws which gradually reduced district councils to mere agents of the central government. The Minister of Local Government was given control over political and administrative matters, and elections or appointments in the district administrations. Councils effectively became appointed bodies, with appointments made on the basis of patronage, in order to improve the local fortunes of the political power in control at the centre.

From 1966 to 1986

18.20 The 1967 Constitution abolished the kingdoms, declared Uganda a Republic, and introduced a unitary relationship between central government and local administrations for the whole country. Buganda was divided initially into four districts. The basic thrust of the new constitutional provisions and other laws on local government was to assert strong central control. The justifications advanced publicly by government emphasized the need for national unity and the promotion of development.

18.21 The powers of local government bodies were greatly reduced and their control by the central government greatly increased by the 1967 Constitution and laws made under it. Parliament was given broad powers to make laws on district administration. The Constitution gave the President power to make laws for a local government or authority if cabinet advised that extraordinary conditions existed. The President was also empowered to appoint persons to any public office, including those of district administration or urban authority, and to confirm appointments, and to discipline and remove officials from office. A district or urban service committee could make recommendations on the appointment, disciplining and suspension of officers in the district administration or urban authority, but they were subject to the direction and control of the ministers responsible for public service and local government.

18.22 The Local Administration Act, (Act No. 18 of 1967), confirmed and entrenched the reduction in the powers of the local administrations. The political offices in a district (the secretary-general, assistant secretary-general, and financial secretary) were to be appointed by the Minister of Local Government from a list of names submitted by the district council. Nominated members were appointed by the central government administration.

18.23 Many of the services previously provided by local governments were taken over by the central government, together with some of their sources of revenue. A local government was *not* allowed to carry out functions other than those permitted by the law. Central government control of district council finances was greatly increased, with the district commissioner given wide inspection powers. In general, district council's capacity for independent action was drastically reduced. While county councils were retained, they hardly met, and the lower-level councils were abolished.

18.24 The district commissioners were heads of the civil service in the districts, and really in effective control of local governments. They were appointed by and were representatives of the President in the districts. District councils no longer had power to direct chiefs, who remained in charge of counties, sub-counties, parishes and sub-parishes. Appointments of chiefs and other district civil servants were politicised from 1967 to ensure that they were acceptable to the ruling political party.

18.25 The military government which lasted from 1971 to 1979 introduced some changes in local administration, including: abolition of district councils and all district level political posts; strengthening of the powers and responsibilities of the district commissioner; reintroduction of a provincial level of administration (above the districts) with ten provincial governors of ministerial rank provided for and directly responsible to the President; and expansion of numbers of districts so that by the time the military government fell in 1979 there were 40 districts. The period of the military regime saw the general destruction of many aspects of local administration. There were again widespread changes in the ranks of chiefs, with patronage as the crucial factor in many appointments. Uneducated military personnel became chiefs in many areas, even at the sub-parish and parish level.

18.26 The Uganda National Liberation Front (UNLF) administration which succeeded Amin in 1979, the second Uganda People's Congress (UPC) administration and the short-lived Military Council before the National Resistance Movement (NRM) seized power in January, 1986 made few significant changes at local level, the main one being the abolition of provincial administrations. Throughout the period, district civil service appointments (including chiefs) continued to be a source of patronage, with party or military loyalty as the crucial criterion.

Consequences of Experiences up to 1986

18.27 The experience of the 100 years to 1986 has had a number of consequences which are of importance both for the policy changes made by the NRM government in the period since 1986, .and for the Commission's recommendations for anew Constitution:

(a) Ugandans have had very little experience of involvement in local level government, for it was only in the 1950s and 1960s that elected governments had executive and legislative power to make decisions on matters of local concern;

(b) Uganda had even less experience of ejected government accessible to the people in the village, for district governments are quite remote from ordinary people, and governments below district level largely ceased to operate from 1967;

(c) While a strong system of local civil service administration was inherited at independence, its capacity was largely destroyed between 1967 and 1979, due to appointments on the basis of patronage and party (or military) loyalty, destruction of facilities and records, and other impacts of this period of instability. With limited resources and questionable political legitimacy, local administration had little chance of attracting capable officers.

(d) Together with the destruction of the capacity of local administration, went a major reduction of the responsibilities and resources of local governments, so that there is little experience at local level of policy making and administration in relation to many matters of local concern.

(e) The instability of the period, the limited remuneration available to civil servants and the low quality of officers has made corruption endemic in local administration.

(t) Without either a strong political arm or a capable civil service administration at the local level, districts and lower level units had very little capacity to collect revenues or attract financial and other resources from the centre, and so the standard of services offered to the people at the local level deteriorated drastically, resulting in deep dissatisfaction throughout the country.

SECTION THREE: DECENTRALISATION, 19,86-1992

18.28 Soon after taking over power in 1986, the NRM Government began to make major changes to the local administration system most of which sought to take account of the problems just outlined above. The ongoing changes are aimed at progressively decentralising power and functions to local governments over time.

Resistance Councils and Committees

18.29 The most significant changes so far have been made through the introduction of the Resistance Councils and Committees (RCs). The system had been used by the NRM during the bush war in the area which has become known as the "Luwero Triangle". The councils had legislative and policy-making functions, while the committees implemented the decisions of the councils and exercised functions of administration, security and adjudication.

18.30 After taking overpower in 1986~ the NRM Government introduced the RC system in the whole country. The system was regularised through the Resistance Councils and Committees Statute of 1987 (the RC and C Statute). The foundation of the RC system is the village council which consists of all adults residing in the village. The RCs are organised in

a hierarchical manner from RCI at the village level through the parish, sub-county, county/municipality and district levels which are known as RC 2, RC 3, RC 4 and RC 5, in that order.

18.31 Each Resistance Council has an elected resistance Committee which forms the executive. The committee is made up of" officials:- the chairman; vice chairman; general secretary; secretary for youth; secretary for women; secretary for information; secretary for mass mobilisation and education; secretary for defence (security); and secretary for finance.

18.32 The powers and functions of a Resistance Council generally cover policy matters in its area of operation. In particular, it is expected to: identify local problems and find solutions to them; formulate and review development plans; at the district level, pass annual estimates; and perform other duties delegated to it by the national minister responsible for local government.

18.33 A council has legislative powers. A district Resistance Council can make by-laws in respect of any of its powers, duties and functions, but subject to the approval of the Minister of Local Government. The lower level councils can make by-laws for their areas but subject to the approval of the district resistance council. All by-laws must be consistent with laws of the central government. These legislative powers, though little used, are potentially quite broad, for the combined effect of the RC and C Statute and the Local Administrations Act 1967 is to vest district councils, at least, with numerous powers and duties, all of which can be the subject of by-laws.

18.34 A Resistance Committee is responsible for implementing policies and decisions made by its Resistance Council. Its functions are broad. It assists the police and chiefs in maintaining law and order and security in its area. It encourages, supports and participates in self-help projects. At village and parish levels, it examines and makes recommendations on the character of persons wanting to join the security services or other governmental institutions. It is supposed to act as a channel of communication between the central government and the people in the area and oversee the implementation of government policy in its areas. At sub County level, it elects members of the tax assessment committee for the area. It is also required to playa role in ensuring the accountability and responsiveness of other governmental bodies, for it is required to monitor administration in its area and report to the appropriate authorities any cases of bad administration, corruption and misuse of public property.

18.35 In addition, a Resistance Committee has important judicial powers, under the Resistance Committees (Judicial Powers) Statute, 1988. RC courts exist at the village, parish and sub-county levels. They are composed of all members of the Resistance Committee at the level in· question. They have powers to try and decide civil cases where the value of the matter in dispute does not exceed 5,000/= in cases of debts, contracts and assault and/or battery. In cases of damage to property and trespass they are not restricted by the monetary value of the matter in dispute. They can also try and decide on disputes of a civil nature which are governed by customary law and involving: land; marital status of women; paternity of children; identity of customary laws; impregnating a girl under the age of 18; and

customary bailment. If a court awards compensation exceeding shs.5,000/=, the case should be referred to the Chief Magistrate, who has powers to reduce it.

18.36 The Minister for Local Government has powers under the RC Statute to suspend a Resistance Council on the reCOl11mene!;Jtion of the DA if he believes that the council is practicing sectarian politics; involved in smuggling; interfering with national plans; engaging in activities which disturb public security and law and order; or engaging in corrupt practices such as diverting commodities meant for the public to private use. The Minister must give a written report to the NRC after suspending a council. The NRC makes the final decision on the fate of the council.

18.37 The District Resistance Council, known as RC 5, is composed of representatives from every sub-county, municipality and town within a district. Every sub-county elects two representatives, every county resistance council (RC 4) elects one woman, and each town or ward of a municipality sends two representatives to the district council. The council elects its own committee of nine to run the affairs of the district. In addition, it elects sub-committees to handle specific areas like health, education and finance.

18.38 The RC and C Statute also provides for a district development committee (DDC) in each district. Chaired by the district administrator, it is made up of about half the district council members, heads of government departments in the district and some technical experts. The DDC is charged with the responsibility of formulating development plans for the district and of ensuring that development projects are properly planned and implemented. It also prepares annual estimates of the district before they are passed on to the district council for consideration. Although the RC and C Statute provides for the DDC to be responsible to the District Resistance Council, in practice they often tend to act independently, with little political direction accepted by the officials who tend to dominate the DDC.

18.39 The political head of the district is the District Administrator (DA) who is appointed by the President. He will be replaced as the political head ('If the district by the Chairman of the District Council under the central governments' decentralisation programme soon to be implemented. The DA may be assisted by Deputy District Administrators (DDA), or Assistant District Administrators (ADA). The DA has in his office a team of people charged with the responsibility of carrying out political mobilisation in the district and educating the RCs on their functions.

18.40 The head of the district, formerly called the district commissioner, has been re-named the District Executive Secretary (DES). He has a number of assistants of different ranks serving under him. Chiefs remain as civil servants in charge of counties, sub-counties and parishes, though most of their powers and functions have been taken over by the RCs.

The New Decentralisation Policy

18.41 The NRM government has always recognised that introduction -of local councils through the RC system was not enough to ensure that people could manage their own affairs. The RC system has not had a major effect on the delivery of basic services to the people. District level governments have continued to be responsible for the same mandatory services (schools, health, roads etc) as before, with the same basic financial and personnel resources.

The major proportion of government revenue and staff have remained concentrated at the centre, unresponsive to the needs of the majority of rural dwelling people.

18.42 In a series of major studies, the central government examined how best to give effect to its often stated commitment to decentralize government activity and resources These included: *The Report of the Commission of Inquiry into the Local Government system* chaired by Professor Mamdani; a 1988 Ministry of Local Government committee on local government finance; the 1990 *Public Service Review and Reorganisation Committee;* and the 1990 *Report of the Rationalization of District Boundaries Committee.* During 1990 - 91, the Ministry of Local Government coordinated an inter-ministry committee which developed a report called *Summary of Recommendations to Strengthen Democratic Decentralisation,* the principles of which were approved by Cabinet in July 1991. Those principles have subsequently been evaluated by a World Bank report *(the Uganda District Management Study* of June 1992) and by a team of Danish Government funded consultants in September 1992 . Out of all of this evaluation has emerged the government decentralisation policy launched by President Museveni at the beginning of October 1992.

18.43 As the basic principles underlying both the people's views and government's on local government and central decentralisation policy are very close, it has not been difficult for the Commission to harmonize them into a single set of recommendations on local government. For the sake of clarity, it is helpful to summarise major elements of the decentralisation policy.

18.44 In relation to institutional and administrative arrangements, the aim is to simplify structures and eliminate overlap of responsibility and uncertainty in lines of authority. T~ RC hierarchy will be reduced by eliminating the sub-parish level. The RC 5 chairman will become political head of the district, with the DA becoming a representative of the central government. Municipality and town governments will be subordinate to the RC S. The DES will be head of the public service, answerable to the district government and almost all existing central government departments at district level will answerable to him or her. A single District Service Committee will handle most public service and teaching service appointments and related matters in each district Staff now at national, district, county, and sub-county level are intended to be transferred out to work at lower levels, to be closer to the people they serve.

18.45 In terms of division of responsibilities between the centre and the district, the central government is to remain responsible for security, national planning, national unity, defence, foreign affairs and major national projects. Virtually all other matters will be handled by district governments, through the DES and his or her staff.

18.46 The transfer of massive new responsibilities to the district requires transfer of control of the finances previously used by central Government. District vote’s are to be established for such funds in the national budget, and the DES will be accountable. There are numerous other aspects of the financial aspects of decentralisation, some of which are discussed later in the chapter.

18.47 To implement the decentralization policy, it is intended to establish a specialized secretariat in the Ministry of Local Government. Some thirteen districts are to have the

changes introduced first, probably in the 1992-93 financial years, and lessons learnt in that exercise will be applied as the changes are gradually introduced elsewhere. In the meantime, it is proposed to repeal all the existing, and to a large degree, numerous laws oil local government and replace them with a single, harmonious law.

18.48 While the decentralisation policy is largely consistent with the concerns, principles and proposals of the people concerning local government, there are some aspects where change may be required, as indicated in subsequent parts of this chapter. In addition, the commission notes some weaknesses which it is concerned may be inherent in the decentralisation policy.

18.49 In particular, the magnitude of the tasks involved in transferring to district control most functions hitherto carried out by central government ministries may have been underestimated. As discussed later, even to break down the expenditure of ministries on a district basis is likely to present immense difficulties. It may therefore prove necessary to allocate many highly qualified expert staff to organise the process. The complexity of the exercise may also make it necessary initially to carry out the exercise on a trial basis in only one or two districts rather than the proposed thirteen. This will make it easier to identify more precisely all aspects of the exercise which will have to be carried out. The Commission is also concerned that the capacity of staff at district and lower levels must be very much improved if they are to handle increased responsibilities. Experience in other countries which have attempted to implement decentralisation policies shows that there is a tendency for staff at the national level to resist transfer to district and lower level posts. In general, there is also likely to be strong resistance by central government ministries to loss of staff and revenue intended to be transferred to the district". The strongest political and senior bureaucratic support and pressure will be needed if the policy is to be successfully implemented in the face of likely opposition. Finally, the Commission sees little evidence of a major emphasis in the· new policy on decentralisation beyond the district level.

SECTION FOUR: CONCERNS AND PRINCIPLES EMPHASISED BY THE PEOPLE

18.50 The people's experience discussed in the previous two sections has given rise to a number of concerns, and led to their developing several basic principles concerning local government. They wish to see all of these taken fully into account in the development of recommendations on the future of local government in Uganda.

Concern

Excessive centralisation:

18.51 There is concern that· concentration of powers and functions at the centre failed to achieve its stated aim of promoting national development. People believe that instead it has been responsible for the decline in our development and the consequent inability of both the central and local governments to meet the basic needs of the people. Too much centralisation has stifled local initiatives and resulted in plans and programmes which do not take· the priorities and interests of the people into account.

Destruction of national unity:

18.52 The attainment of national unity was one of the stated aims of centralisation. In the opinion of many people, the exact opposite happened. In their view, forced unity which does not take into account the diversity of the people is hound to fail because it arouses hostility and resentment.

Lack of checks on the centre:

18.53 Many Ugandans believe that there is a relationship between the weakening of local government and the emergence of dictatorship in Uganda. So long as local governments had sufficient powers and resources, they could exert some pressure on the central government to act within the confines of the law. Buganda, the semi-federal states and the elected district governments had provided some checks on the central government. With the abolition of the kingdoms and the gradual destruction of local governments, checks and balances built into the Constitution at independence disappeared.

Patronage.:

18.54 Many people complain that local government and the district civil service became little more than a source of patronage. When the mandate of the people to elect their own local leaders was usurped by the central authorities, political leaders and civil servants, including chiefs, tended to be chosen on the basis of their loyalty to those in power, rather than on merit. People see this as one of the reasons why there are so many unqualified, corrupt and uncaring people in positions of leadership in the local administrations.

Control over and accountability of officials:

18.55 There is concern about lack of control over officials who serve our local administrations. With no popular control over political leaders and civil servants, there was no accountability to the people.

Democratic participation:

18.56 Some views expressed the opinion that by undermining representative institutions at local level, successive governments have retarded or reversed the development of democratic habits and practices among the people. From the pre-colonial period to the present, people have had few opportunities to choose who should govern them at the local level. People became increasingly marginalized in deciding on matters which affect them, and grew apathetic about government. Yet it is at the local level that the citizens have the fullest opportunity to participate directly in their own governance.

Pressure-to "capture "the centre:

18.57 The emasculation of local governments meant fewer· opportunities to exercise political power. Many Ugandans believe that this partly accounts for the intense and sometimes violent competition for political and public offices at the national level.

Lack of financial resources for local government:

18.58 Limited fiscal resources have in turn led to failing to provide the services expected by the people. Though local governments are charged with responsibility of providing basic services to the people, the central government removed from them important sources of revenue. The ability of local authorities to assess and collect taxes also deteriorated with the collapse of the economy and administration and increase of corruption.

Abuse of human rights:

18.59 Accusations have been made about DAs, RCs, chiefs, and local police and defence organisations exceeding their powers and violating the rights of the people. There is often ignorance of the law on the part of the authorities and, especially the victims. However, on occasions there is willful violation of the people's rights.

Conflict and overlap among laws:

18.60 It is not only legal experts who feel that the existence of different laws with conflicting aims and objectives has created difficulties in local administration. Existence on our statute books of the Local Administrations Act, 1967, the Urban Authorities Act, 1963 and the Resistance Councils and Committees Statutes, 1987 means lack of clarity and conflicting provisions. Uncertainty about the roles of chiefs and RCs, rivalry between locally elected political leaders and political office holders appointed by the centre and conflict between the representatives of the people and civil servants serving in the local administrations are all in part blamed on the lack of certainty in the law.

Principles

18.61 There are a number of basic principles which the people agree should apply irrespective of the details of the local government system they prefer.

Democratic choice and accountability:

18.62 In as far as political representatives are concerned, people believe they should not only be directly elected periodically, but should also remain accountable to the electorate when they are in office, or even after leaving office, if they have committed offenses or acts against the interest of the people, while in office. People have emphatically rejected the system of appointing their representatives by remote officials in Kampala or Entebbe.

Uniformity of local government:

18.63 The significantly different arrangements for local administration between the kingdom areas and the rest of Uganda in the colonial and immediate post independence period contributed to tensions between peoples of Uganda. Uniformity need not mean that precisely the same arrangements apply to all districts, but rather that they all have the opportunity of similar levels of decentralisation if they can meet basic criteria;

18.64 There is agreement on the need for local authorities to exercise effective control over public servants carrying nut functions which involve matters of district responsibility, irrespective of whether they are employed by the central or local government. At the same time, however, there is recognition that civil servants must also be protected against undue political pressure or victimization if they are to perform their duties impartially, effectively and efficiently.

Rejection of patronage:

18.65 People have made it clear that there should be no way in which those in power in the centre can use local governments as a source of patronage, something clearly in conflict with local control of government.

Unity in diversity:

18.66 Nobody has expressed the view that Uganda should not remain as one entity, but many views want a system of local government which allows for unity in diversity. By this they mean that the system should be flexible enough to cater for local circumstances and conditions, while at the same time ensuring minimum national standards and goals in local governments.

Encouraging of local initiative:

18.67 People at the local level should be encouraged to take initiative to deal with local needs and problems in their own way. They should be encouraged to develop their own policies, plans and programmes and manage their implementation.

Equalization of development:

18.68 The issue of balanced development of all parts of Uganda has figured prominently in the views submitted to this Commission. As long as there are noticeable disparities between different areas of the country, there will be tensions and conflicts in the country.

Decentralisation beyond district level:

18.69 There is consensus on the need to decentralize powers and functions to the grassroots level. People do not want decentralisation to stop only at the district level, which, in their view, maybe merely transferring bureaucratic control of government from Kampala to an almost equally remote district headquarters.

Guarantee o/adequate resources:

18.69 Many views advocate that local governments should be given sufficient and reliable financial and human resources tenable them to provide services to the inhabitants of their areas. To avoid uncertainty, sources of finance for local governments should be guaranteed against encroachment by the central government.

Clear division of responsibilities:

18.70 It is agreed that there is an urgent necessity to clearly define the powers and functions of central and local governments as well as those of elected officials, appointed officials and civil servants. This requires at least harmonization of the laws on local government to eliminate unnecessary conflicts and tensions between officials at different levels of local government.

Constitutional protection for local government:

18.71 People want to be assured that a strong local government system is here to stay. Experience has shown that government policies on the subject can change dramatically and depending on political interests at the centre, local autonomy can be destroyed. People are also aware that there are strong political and bureaucratic interests at the centre likely to oppose the existing decentralisation policy. As a result, they want the basic principles of decentralisation and strong local autonomy entrenched in the new Constitution.

SECTION FIVE: ANALYSIS OF PEOPLES VIEWS AND RECOMMENDATIONS

18.72 Views submitted to the Commission dealt with every imaginable aspect of local government and administration. In this section, we discuss the main proposals from the people and develop recommendations for not only the Constitution, but for the broader local government policies of Uganda.

System of Local Government

18.73 As discussed in Chapter Nine *(Form of Government)* most parts of Uganda, with the exception of Buganda, are generally in favour of a unitary rather than a federal system of government, but one which is highly decentralized. There is little controversy about the basic constitutional principles upon which the system should be based.

18.74 Recommendation

(a) The following principles should be followed in decentralizing power to local Government.

(i) a system should be put in place to ensure that the transfer of powers, Functions and responsibilities from the central to the local governments is done in a smooth and coordinated manner;

(ii) the aim should be to decentralise to all levels of local government, from the district to the villages;

(iii) each local government unit should have sound, reliable and adequate financial resources to enable it perform its functions effectively;

(iv) appropriate measures should be taken to enable local government units to Plan and initiate and· implement policies, programmes and projects on matters affecting the inhabitants of their areas;

(v). persons in the service of local governments should be under, the effective control of local authorities; and

(vi) as far as practicable, local governments should have powers to oversee and evaluate the performance of persons employed by the central government who work in their areas, and to monitor the implementation and performance of central government projects and services in their areas.

(b) The system of local government should be based on democratically elected councils and political leaders at every level.

Constitutional Guarantee of Local Government System

18.75 To ensure that the decentralised system of local government and the principles on which the system should be based are protected from being arbitrarily changed by the central government, there should be a constitutional guarantee for the system. It is proposed that this guarantee should be ensured by requiring a substantial majority of the districts to agree to any or all changes in the constitutional provisions relating to the system and principles of decentralisation of local government.

18.76 Recommendation

Any constitutional amendment by Parliament which affects the system and principles of decentralisation of local government should be ratified by at least two thirds of all the districts of Uganda.

Change of Name

18.77 Many people opposed the continued use of the word "Resistance" to refer to the councils and committees operating from district to village level. The objections are based on the grounds that:-

(a) "Resistance" is associated with the NRM, whereas what is needed is a name which can be applicable under all governments and political systems;

(b) the present name tends to isolate those who served in previous regimes; and

(c) there is no longer any justification for the principle of "resistance" to be emphasis ed, and the focus should instead be on bringing people together to resolve their problems.

18.78 Various alternative names have been suggested, such as "people's councils", "community councils" or simply councils", none of which has a lot of support. However, there is no doubt that a substantial number of people are not happy with the use of the name “Resistance’.

18.79 Recommendation

The name "Resistance" should be dropped, and instead the councils and committees operating from village to district level should be· called local councils and committees. The village Parish, sub-county and county/municipality councils and committees should be referred to as local council,1, local council 2, *local council* 3, *local council* 4 *and local*

council 5 (LCI, LC2, LC3, LC4, and LC5) respectively. The district council may be referred to as either LC5, or the district council 1.

18.80 There has been little contention about the administrative units below district level. People are accustomed to the existing hierarchy and see no need to make changes for the time being at least. The central government Otcentral1sation policy proposes to reduce the administrative hierarchy by abolishing the sub-parish level of administration. All other levels would remain, although the post of county chief would be abolished, to be replaced by an assistant district executive secretary (ADES).

The District as the Basic Unit of Decentralisation

18.81 There is considerable support for retaining the district as a unit of local government. This system is familiar to the people, having existed in areas other than Buganda since colonial times, and in Buganda since 1967. With few exceptions even supporters of federalism tend to support the retention of existing districts or the creation of new ones.

18.82 Recommendation

The district should form the basic unit of local government, and Parliament should have powers to make laws to create administrative units below the district level.

Numbers and Boundaries of Dish-ids

18.83 The boundaries of the existing districts have not been accepted everywhere as suitable for the inhabitants of their areas. It would, however, be impossible to satisfy all groups on this issue. For the time being, we suggest accepting existing boundaries as the starting point, and developing principles for dealing with groups seeking boundary changes or creation of new districts. The same should apply to boundaries of lower level units.

18.84 The demarcation of local administration boundaries has not always been logical or natural. A fair system should take into consideration, among other things, common language, culture, geographical features, natural boundaries and economic viability.

18.85 Over the years, governments have attempted to rationalize boundaries of districts on different bases. In 1959, there were sixteen districts all with properly established headquarters, offices and staff houses. By 1979 when the military regime was overthrown, there were 40 districts. The number was reduced to 33 in 1979. In 1989, it was increased to 34 and in 1990 to 38 districts. Many of the newly created districts lack proper office and residential buildings or the other infrastructure necessary for proper administration. In 1990, the Ministry of Local Government estimated that only eighteen of the then 34 districts had properly established headquarters buildings.

18.86 Adjustment of district boundaries or creation of new districts has often been in response to the demands of the people in the areas concerned. The 1987 Mamdani Commission Report was hesitant to recommend-the creation of new districtsOl1 the grounds that it would increase administration costs as new infrastructure and personnel would be required in the new districts. It was suggested that the status of all then existing districts

should be evaluated with the view of phasing out those that do not meet minimum criteria. The creation of new districts might be justified on the grounds of: bringing services closer to the people by improving communication and increasing the number of service centres equitably; making officials responsive to the needs of the people; addressing historical tensions between certain ethnic groups communality in the economy of the area; and remoteness from existing administrative centres as to be effectively deprived of equitable consideration in the distribution of resources and services.

18.87 The 1990 Kabera Committee on *Rationalization of District Boundaries* focused on the financial viability of districts, noting that at least eleven of the then 34 districts were not viable, in the sense that they had insufficient revenue to provide basic services to the people. It pointed out that many districts had been created without the basic infrastructure and revenue needed to operate effectively. While pressure for creation of districts was seen as often being a response to the breakdown in government services experienced since the early 1970s, the committee warned that creation of districts alone could do little to reverse the trend.

18.88 There are a number of districts claiming counties, sub-counties or parishes from neighbouring districts, mainly on the basis of ethnic or geographical considerations. Such claims might be dealt with through boundary re-adjustment if some common understanding of those involved can be reached. Experience, however, tends to show that proposals for boundary adjustments between districts tend to arouse much tension. They therefore need to be handled carefully.

18.89 There are also districts claiming parts of countries neighbouring on Uganda, usually on the basis of ethnic kinship considerations not taken into account when international boundaries were set during the colonial period. We were not in a position to ascertain the position of these claims, but caution should obviously be exercised where claims affect international boundaries.

18.90 Recommendation

(a) Uganda should be divided into the districts, counties, sub-counties, parishes and villages existing immediately before the new Constitution comes into effect.

(b) Parliament should have power to make laws altering the boundaries of or creating new districts and lower administrative units, but with the agreement of the affected districts or lower level units.

(c) Any measure for altering boundaries of or creating new district or lower level administrative units should be based oil:

(i) the necessity for effective administration and the need to bring services closer to the people;
(ii) the, economic viability of the· area; and
(ili) other criteria such as means of communication, geographical features, population density and the desire of the people concerned.

The District Government

18.91 Different considerations apply to the arrangements for local government <1t the district as compared to lower levels. Accordingly, we first consider the issues relevant to the district.

18.92 Over the years, the central glWtllll1ellt has encroached on the powers, functions and responsibilities of district level governments to the extent where they became mere agents of the central government. They had in fact ceased to be local governments and instead became agencies of the centre, subject to directives and orders from central government authorities and organs. People are unanimous in their view that district governments should be strengthened in virtually all facets.

Membership of District Councils

18.93 There is consensus in the people's views that local governments should be controlled by the elected representatives of the people, who should remain answerable to the electorate after being elected. At the district level, they want an elected district council to be the supreme political authority. People do not want to return to the situation where a national government minister or any other authority can appoint some or all members of a district council.

18.94 Many views were given on the method of electing members of the district council. There is agreement that universal adult suffrage should apply. There is disagreement in relation to the system of voting between the majority who prefer the system of lining up behind candidates, and a significant minority who want the secret ballot to be used.

18.95 Those who want the queuing system are attracted by the transparency and cheapness of the system. They say it is a guarantee against rigging of elections. In addition, it is said to be simpler, faster and more convenient, and to offer particular advantages to voters who cannot read or write, for whom use of ballot papers can present particular problems. Those who oppose lining up behind candidates argue that it is not practicable where there are many voters involved, and it lacks the element of secrecy which is essential if the electorate are to cast their votes without fear or intimidation. They argue further that secret ballot is the universally accepted method of voting and Ugandans should learn to move together with the international community. The scourge of rigging, which is the major concern of those who prefer the queuing system, can be taken care of by other methods like using common ballot boxes and counting of votes on the spot in the presence of the candidates or their agents.

18.96 We are inclined to agree with those who support secret ballots for elections of district councilors. In the first place, we agree that queuing would be impractical because the number of voters involved would be too large. Secondly, the fear of rigging elections arises from historical experience, but we believe that it is not a good basis for making long term decisions. We are convinced that once Ugandans have a method of voting by secret ballot in which they trust, they would prefer it to the system of lining up. However, different considerations may arise when considering the voting method for lower level councils, as discussed later in this chapter.

18.97 The issue of special representation for women on the district council has received limited attention in submissions to the Commission. However, women's groups are strongly in favour of it on the grounds that women are a disadvantaged group who need affirmative action to be taken in their favour. We agree that special representation should continue as women still have a long way to go before they can compete on equal footing with the men in direct elections due to historical, economic and cultural factors. It is important that women, who make up over half of the population and are a major productive force should have their voices heard in district councils.

18.98 Recommendation

(a) The district council should be the supreme political organ in the district, with powers to make policies, pass laws and supervise the activities of the administration within the district.

(b) The district council should consist of:

(i) one person from each electoral area within the district directly' elected by universal adult suffrage through secret ballot; and

(ii) two women representatives elected by each county council to represent the county.

18.99 Many people have given views on qualifications for a person to be elected to the district council. On the whole, people want candidates with a reasonable standard of education and a clean record in the community. A candidate should also ordinarily be a resident in the area, in order to know the problems and needs of its people. In our view, there is no need to prescribe any formal educational standard. Any person who can read and write and speak the local language reasonably fluently should qualify to be elected. We must trust that the electoral process itself will weed out incompetent people and produce the right councilors for the district.

18.100 Recommendation

The minimum qualifications for a district councilor should be that a person:

(a) has ability to read and write;

(b) has a clean record, in the sense of not having been convicted of an offence involving moral turpitude; and

(c) is ordinary resident the area he or she wishes to represent.

Demarcation of electoral areas:

18.101 Election of local government councilors not only enables them to represent the people but also gives, the people an opportunity to exercise some control over their representatives. For both representation and control to be effective, a councilor should

represent an area which is not too large. The member is then reasonably close to his or her people and aware of their needs, and the electorate can monitor his or her activities.

18.102 There have been few specific suggestions on how district council constituencies should be eliminated. However, there is general agreement that the number of voters should not vary greatly between constituencies. The means of communication within, and geographical features and density of the population of constituencies should also be taken into account.

18.103 At present, each sub-county is represented by two councilors in the district council. The central government believes that this makes the district councils too large and expensive to service. It has therefore proposed as part of its decentralisation policy that each sub-county should be represented by only one councilor.

18.104 If the sub-county is to continue to be the basic constituency, it must be noted that there is often wide disparity in the population of sub-counties. For reasons of justice and equity, those sub-counties with large populations should send additional councilors to the district council, on the principle that the number of inhabitants represented by a councilor is as near as possible to the population quota decided on for the average constituency.

18.105 Recommendation

A district should be divided into electoral areas based Oil sub-counties so that each sub county is represented by at least one councilor, and larger population sub-counties are divided in such a way that the number of inhabitants in each area is as nearly equal to the population quota for the sub-counties in the district as possible. However, variations may be made in the population quota depending on the means of communication, geographical features and the density of the population.

Timing of district council elections:

18.106 There have been few views given on the term of office of councils and timing of local government elections. We consider that they should be held every three years. The shorter term, as compared with the national Parliament is to ensure greater accountability and in this regard, the Commission notes that local level governments have been prone to abuse in the past. Moreover, local government elections are not as expensive to organise as national elections.

18.107 There have been views submitted that district council elections should not coincide with elections for the national parliament. The argument is that the electorate may be distracted from local election issues by the national elections. It can be argued that the issues around which the two elections are contested are not always the same.

18.108 Recommendation

(a) A district council should be elected/or a term of three years.

(b) Elections for district councils should be held so as not to coincide with the elections of members of Parliament. The details should be worked out by law and in consultation with the Electoral Commission.

Right of Recall *of* Members of District Councils

18.109 There is a popular demand throughout the country for the right of the electorate to recall their representatives at all levels, including district councilors. Some people have expressed fears that while good in principle, a right of recall can be abused for political reasons. Others fear that if councilors are in constant fear of recall, they may not always act in the best interest of the district or country, but pander to popular opinion.

18.110 In view of the principle of accountability, we agree that the electorate should have the right to recall their representatives. However, this right should not be used lightly, but only on serious grounds. The grounds should be specified and the process should be such that this right is not easily abused.

18.111 Recommendation

The mandate of a district councilor may be revoked by the electorate only on serious grounds, according to law enacted by Parliament. The grounds for recall should include the following:-

(a) that the councilor has abandoned the policies and programmes for which he or she was elected;

(b) that since he or she was elected, the councilor has consistently behaved in a manner unbecoming of a district councilor; and -

(c) that he or she has abandoned or neglected his or her duties.

Political Head of the District

18.112 At present, two officials in the district can claim to be political head of the district. The DA, appointed by the President, has been the formal political head of the district since the NRM came to power in 1986. At the same time the chairman of the district council is an elected representative of the district. Many chairmen behave as though they are the effective political heads of the districts. Tensions between DAs and chairmen are not uncommon.

L8.113 The views received from the people overwhelmingly want the political head of the district to be elected. They argue that the head of a district must be answerable to the electorate, not to the President. People reject the argument that they are not educated enough to make the right choice, nor do they accept that elections of district leaders necessarily encourages parochialism. They believe they are mature enough and have had enough experience through our history to make the right judgment. At any rate, the best way of learning to govern themselves is by doing it practically.

18.114 The central government has already accepted the views of the people on this matter. Implementation of the decentralisation policy will result in the district council chairman assuming political leadership of the district. The role of the D.A. will change to one of representation of the central government in the district.

18.115 Recommendation

(a) There should be a district chief executive for every district council who should be elected from among the members of the council with an absolute majority required where there are more than two candidates contesting.

(b) The district chief executive should be the political head of the district and should:-

- ***(i) chair meetings of the executive committee of the district;***
- ***(ii) oversee the general administration of the district;***
- ***(iii) co-ordinate the activities of the lower councils; and***
- ***(iv) co-ordinate the relationship between the district and central government with a view to ensuring proper exercise of powers, responsibilities and functions.***

18.116 In order to have an in-built system of checks and balances between the district executive and the district legislature, the district chief executive should not chair the meeting of the district council. It is proposed that there should be a chairman for each district council, elected in the same way as district chief executive from among the elected members of the district council. His or her role is to chair meetings of the council; in essence, it will be a position similar to the speaker of national parliament.

18.117 Recommendation

There should be a chairman of the district council elected from among the elected members of the Council who should be the speaker of the council.

The Executive Committee of the District Council

18.118 Under the RC and C Statute 1987, every district resistance could elects the 9 members of an executive committee. The positions are those specified in the Statute, and are the same as those found at the lower levels of the RCs. Many people have argued that the positions as specified do not reflect the priorities of the people. There is no flexibility to enable each local council to decide on what is needed for its area. It is also argued that there is no reason why the committee should always have 9 people on it. One reason why people want decentralisation is that it gives the opportunity for people in a particular area t6 act in accordance with their needs and priorities. However, we also believe that the offices created should be adequate for providing services in the district.

18.119 Recommendation

Districts should be free to establish executive offices under the District Council but the executive should include:-

(a) The district chief executive;

(b) Secretaries elected by the district council on recommendation of the district chief executive from among the members of the council to be in charge of:-

(i) finance and development planning;
(ii) security;
(lii) social services, including education, health, social welfare and social infrastructure;
(iv) land, natural resources and environme1lt;
(v) agriculture, livestock and fisheries; and
(vi) women and youth.

(c) A district council should be free to decide on the number and title of additional members of the district executive committee and additional services that a committee may undertake in the district.

(d) The executive committee may co-opt any person to attend its meetings but a co-opted person should not have the right to vote.

(e) The district executive committee may be removed by a two-thirds majority vote of the district council.

The District Development Committee

18.120 It is acknowledged by government and observers alike that many DDCs have failed to fulfill the responsibilities and functions entrusted to them. The report of the Public Service Review and Re-organisation Commission (PSRRC) suggests the explanation is threefold: their large membership renders them ineffective; the composition of membership, in that the technocrats and politicians do not often agree; and lack of access to or control over resources necessary for their work.

18.121 The PSRRC recommended that the DDC carry out. its present statutory functions but with numbers of elected representatives reducing to enable technocrats to dominate. While we agree with the view that the membership of the DDC should be reduced, it is important that the district council and its executive exercise effective control over the district planning process, and not merely rubber stamp decisions made by technocrats, as often appears to be the case at the moment.

18.122 Recommendation

(a) A district should have a district development committee composed of the district executive committee and heads of civil service departments in the district, and chaired by the district chief executive.

(b) The 'district development committee should be respo1lsible fori1litiating and coordinating development plans, and monitoring and evaluating the implementation

of development plans, programmes and projects ill the district. It should be answerable to the district council.

Finances of the District Government

Local government funds:

18.123 Under the unitary system of government established by the 1967 Constitution, special financial provisions for the federal and semi-federal states were abolished. While the Local Administrations Act 1967 gives district councils powers to manage their funds, the Minister for Local Government has overriding powers in relation to the financial management of the districts. Among other things, the minister approves estimates of revenue and expenditure and graduated tax assessments, and is responsible for making financial regulations for local administrations. A number of sources of funds for district councils were also removed by the 1967 Act.

18.124 The existing sources of district funds are outlined in the Local Administrations Act 1967. The most important is *Graduated Tax* a tax on the population of a district based on the income of the individual. Assessment is done by chiefs and local resistance committee members. The Minister for Local Government fixes the minimum and maximum levels of tax, often without consulting the district councils. The tax is intended to be progressive in that higher income should attract higher rates of taxation. Assessment has often met with difficulties. People complain that chiefs and RC committee members make arbitrary assessments, in most cases based on property or assumed income rather than actual income, except for those in paid employment. The great majority of the rural people who pay graduated tax are self-employed peasants. Others complain about embezzlement of tax monies. Despite all the problems, graduated tax remains the biggest source of revenue for local administrations.

18.125 *Rates, rents, fees and fines* are also important revenue sources. Rates are paid by developers and occupiers of urban land while rents are paid by those who occupy market stalls and other council properties. Fees are levied on all types of production originating in the district such as food crops, charcoal, fish and timber. Royalties are collected from sand pits, murram pits, stone quarries, brick works and other economic activities. School fees for pupils in primary schools constitute another source of funds. There are various types of fines imposed by courts which go to the local administrations.

18.126 *Grants are at present of limited significance as a revenue source.* Once the Minister for Local Government has approved the budget for a district or urban authority, the deficit between the estimated revenue and expenditure is supposed to be covered by a grant from the central government, known as a 'block grant'. For many years now, the Ministry of Local Government has not been able to obtain sufficient funds from the central government for block grants to meet any reasonable purpose. A local administration has powers to raise *loans* with the approval of the minister responsible for local administration. The Ministry of Finance guarantees such loans; whether they are obtained from local or international financial institutions and organisations.ln practice, most local administrations are unable to borrow money because they are not credit worthy.

Views on local government funds:

18.127 Many people have given views about local government revenue and expenditure. The main proposals are:-

(a) Local governments should be provided with additional sources of revenue (including Sources currently reserved to the central government) provided that they follow general guidelines laid down by Parliament.

(b) The controlling powers of the Minister for Local Government in financial matters should be abolished or significantly reduced, while at the same time local governments would be required to be fully accountable for their funds.

(c) Local governments should have powers to collect all governmental revenue within their areas of jurisdiction and retain a percentage of the taxes submitting the balance to the centre, in accordance with a formula to be worked out. This would not affect the taxes and dues currently levied and retained wholly by the local governments.

(d) Some views favour paying grants from the Consolidated Fund directly to the district governments and not through the Ministry for Local Government. It is alleged that the Ministry sometimes diverts funds meant for one district to another one which it considers to be in more need. Districts which raise a higher percentage of their revenue from their own sources are said to be the main losers as funds meant for them are diverted to districts which are considered to be more in need.

(e) Many suggest that grants from the central government should be based on the level of development of a district, so that the less developed a district the more it should receive in grants. This is in fact what is happening now, although the level of funds involved is too small to make any difference to imbalances in development between the different areas of Uganda. Many believe there is need for the central government to pull up the less developed areas through the redistribution of financial resources.

(f) On the other hand, there are some people who suggest that grants should be given equally regardless of the level of development. In their view, this would give incentive to people in all districts to work hard. According to this view, if people in an area know that government will assist them with financial resources once they fall behind other areas in development, they will have no incentive to work hard enough for themselves or to raise sufficient revenue for their area.

Financial aspects of the new decentralisation policy:

18.128. The new decentralisation policy will have a major impact on the financial relationship between the centre and, local governments in general and on the financial powers of the Minister for Local Government. The main changes can be summarized as follows:-

(a)' Funds previously voted by Parliament for each ministry to fund their activities in the districts will in future be sent to the district, to be controlled by the District Executive

Secretary. These funds will include salaries of civil servants working in the district, as well as development funds for the district.

(b) Districts will have power to vary taxes such as graduated tax, property tax, trading licenses, rents and rates, without first obtaining approval from the Minister for local government as presently required. As a result, districts could have different tax scales, depending on the level of development and available resources.

(c) Central government and local government will share costs in providing services of national importance. This could apply to services like roads, and protecting the environment.

(d) Central government will continue to cover budgetary deficits for those districts which fail to raise enough revenue to cover their estimated expenditure ..

(e) Central government should extend matching grants for key projects in the districts, particularly where a local government has taken the initiative to start such a project.

(t) The districts which are exceptionally poor are to be given extra financial support in order to equalize development between the different areas of the country.

(g) Areas that bear disproportionate burdens are also to receive extra assistance. This consideration could apply to areas in which important national institutions like universities and airports are located.

(h) Local governments are advised to improve on revenue collection by reducing costs and eliminating corruption in tax administration. Savings and increased revenue would be used to improve services and on development projects.

(i) Up to 30 per cent of the taxes collected at sub-county level will be retained in the area to finance locally initiated projects, as is already being done in several districts.

(j) It is suggested that some of the taxes which used to be shared between the central and the local governments before 1967 should be restored.

18.129 In our view both the central and local governments should have enough funds to enable them to carry out the functions expected of them. This is certainly not the case at present, and many district governments are bearing an unfair share of the burden. The 1990 study of *Rationalization of District Boundaries* showed that on 1988-89 figures 25 of the 32 districts surveyed had under 50 per cent of the revenue necessary to maintain the basic mandatory services they were required to provide. Thirteen districts had less than 30% of the revenue required. Although revenue collections have improved since 1989, problems are still severe in any districts. A 1992 World Bank study of the government decentralisation policy showed that 1990 91 revenue in even one of the wealthiest districts (Mukono) was not much more than sh8.500 per head of population. There is little that can be done with shs.500 per Person, But one of the poor districts, Kotido, had revenue amounting to only 8hs; 90 per head of population. While there are certainly severe constraints on central government revenue, it must also be remembered that the ·districts provide basic and with services - schools, health,

maintence of feeder roads and so on. Hence there is a strong case for a fairer distribution of revenue. Since the local governments are being given greater responsibilities, they must be given additional revenue including powers to increase their local sources of revenue.

18.130 The proposal to provide districts with the funds currently being spent by central government ministries on functions which are to be decentralised is a good one in theory, but is likely to prove very difficult to implement. Ministries do not keep their accounts on the basis of district expenditure, and making an accurate breakdown will not be easy. There is also a danger that ministries will seek to retain as much money as possible for their own use. Hence great care will be needed in implementing this aspect of the decentralisation policy.

18.131 It will be necessary to reduce the powers of direct control over and intervention in district finances currently enjoyed by the central government minister. The present level of central control causes endless delays and stifles local initiative. On the other hand, there is sometimes a need for districts to conform with national policies and objectives. Hence, there may be a need for overall oversight to be maintained by Parliament. In addition, strict accountability for all district funds must be maintained, and should the Auditor General or other authorities detect serious fiscal mismanagement or corruption, that may be a ground for central government intervention in the management of a district.

Increasing local government revenue:

18.132 Many proposals have been made regarding ways of increasing revenue to the local governments. These include increasing the sources of revenue and varying the rates of taxation. In our view, the main new sources of revenue should be those taxes and levies which can be more easily and more cheaply collected by the local administrations than by the central government.

18.133 Recommendation

Local governments should be given powers to increase their sources of revenue and vary rates of taxation. Sources of revenue should include graduated tax, rates, rents, market dues, fees and fines, interest to investment, royalties and licenses which have been traditionally collected by them, and in addition to those they collected before 1967 *(such as fishing license, land rents and premium's, royalties an minerals, parks and tourism, crop cess and cattle license).*

18.134 In addition to taxes levied exclusively by the local governments, we propose that they should have a share in some taxes levied by the central government since they are taking over some functions which have been the responsibility of the central government. The central government will still retain important sources of revenue including sales tax excise duty, customs duty and corporation tax.

18.135 Recommendation

Local governments should be made responsible far collecting taxes like food licenses, *corporation tax;' sales/ax, excise duty, toad tolls and agricultural export tax on behalf of the central government, and they should retain a share of these taxes in accordance with*

a formula to be worked out by financial experts and mutually agreed on between the central and local governments.

18.136 It is likely that there will be some difficulty determining a fair means of sharing such collections, which may even favour a few districts, and especially Kampala. Given the inadequacy of their existing revenue sources, and the extent of the new functions they are to take over under the new decentralisation, many districts - especially the poorer ones will still need financial assistance from the central government.

18.137 Recommendation

A formula for sharing revenue between the central and local governments should be worked out, taking into account each district's size, population, number of primary schools, and health units, length of feeder roads, agricultural productivity and revenue potential. This should be done in such a way as to assist the least developed districts, but at the same time motivating those districts which contribute more to central government revenue.

Grants from Central Government

18.138 Even with increase in sources of revenue and sharing some revenue with the central government many local governments are not likely to raise all the funds they need to carry out their responsibilities. They are therefore likely to continue to need financial assistance from the central government. In our view, block grants can still playa crucial role in bridging budgetary deficits of many local administrations.

18.139 Block grants from the central government usually cover no more than 10 per cent of district budgets. But as we have seen, there are many districts which do not raise even 50 per cent of the revenue they need to meet the levels of expenditure needed to maintain existing levels of basic services, let alone expand services to deal with population growth or to equalize development with more 'advanced' districts. More assistance from the central government is required for such districts. They include both those which have long been less developed as well as some of the newer and/or smaller districts which have limited capacity to raise revenue" internally. It is in the .interests of national harmony and, cohesion that they receive special assistance. The assistance should be directed not only at meeting the urgent social needs of the people but also at developing the potentials of such districts and especially the less developed ones, so that in the long run they become more self-reliant.

18.140 Recommendation

(a) The system of block grants to the districts should continue, but should be If implemented as originally intended.

(b) Due to the importance people attach to the issue of balanced development, there should be a constitutional provision empowering the President to declare a district to be needy, with the approval of the National Council of State. Any district so declared should, if addition to grant extended to all districts ,be entitled to catch up non conditional l grant, the details of which should be determined by Parliament from time to time..

Loans and Investments

18.141 There may be need for a local government to raise loans from domestic or foreign financial institutions to finance medium or long term development projects. In our view, the districts should retain the power to raise such loans. They should not, however, be required, as they are now, to get the consent of the Minister for Local Government. Rather, the matter should be brought before the National Parliament's Finance and Public Accounts Committee scrutiny. After examining the purpose, amount and the terms and conditions of the proposed loan, the committee should recommend to the full Parliament acceptance or rejection of the loan. However, due to the technical intricacies and risks involved, it should be the ministry responsible for finance which guarantees such loans.

18.142 Recommendation

A local government should have powers to raise domestic or foreign loans subject to the approval of Parliament. Such loans should be guaranteed by the ministry responsible for *finance.*

18.143 The power of local governments to invest in development projects in their areas should be strengthened. In our opinion, there is no need for the Minister for Local Government to consent before a local government can make investments in small scale projects. The local authorities must be presumed to know what is best for their areas. In the case of medium or large undertakings, there should be consultation with the Uganda Planning Commission which should have overall responsibility for coordinating development plans for the whole country. What constitutes a medium or large project may vary from time to time. Parliament should have the responsibility of defining from time to time what constitutes a medium or big investment.

18.144 Recommendation

Local governments should have power to make investments, provided that for medium or large projects as defined from time to time by Parliament, they should do so in consultation with the Uganda Planning Commission.

Sharing Revenue below District Level

18.145 The proposal to generalize the system under which part of the revenue collected in a sub-country is retained at that level to finance development and welfare activities in to area is a welcome one. It would encourage people to pay taxes more willingly since they can see the benefit for themselves. It should also help to take development and services loser to the people; Government proposes that 30 per cent of the revenue collected 'in' ȁ sub "'county is' retained. We agree with the principle, though the ratio can be varied from place to place and from time to time depending on the circumstances. However, .care should betaken to ensure that such funds are well' managed The district councils should ensure both that projects identified by the people are executed by competent people,' and accountability 6f the-funds.

18.146 Recommendation

District Councils should work out formulae for sharing with sub-counties the revenues originating from the sub-counties. There should be strict accountability for the funds retained in the sub-counties.

Management and Control of Local Government Funds

18.147 There is as much need to put in place proper institutions and machinery for the efficient management and control of district funds as there is of public funds at the national level. The power to authorize raising of revenue and expenditure should be vested in the district council, which should pass annual estimates of revenue and expenditure for the district. The district council cannot, however, be involved in the day to day management and control of the funds. This should be the responsibility of the treasurer. There have been many complaints about district treasurers said to be unqualified for their jobs, a situation which needs to be rectified with decentralisation.

18.148 Recommendation

Every district government should have a district treasurer who should:

- *(i) be appointed by the district service commission for such period and upon such terms and conditions as the district service commission may determine;*
- *(it) be in charge of the day to day management of the finances of the district government, in conjunction with the DES; and*
- *(Hi) have relevant qualifications and experience ill financial management or accounts .*

18.149 District administrations are required by law to prepare annual accounts and to have them audited, but most have failed to do so for many years. One reason is said to be lack of qualified personnel in charge of district finances. The recommendation to employ qualified people to manage the finances of district administrations is in part intended to remedy this situation. There should be strict requirements that accounts are audited regularly and in good time if proper management and control over district funds are to be ensured.

18.150 Recommendation

Due to the importance attached to the regular and timely preparation and audit of accounts:

- *(a) district governments should be required to prepare their. accounts and have them audited within six months after the close of the financial year; and*
- *(b) the audited accounts and reports on them should be laid before the district councils for scrutiny not more than nine months after the close of the financial year.*

18.151 In addition to other checks and controls already mentioned, the district council needs to put in place a system for planning the use of district funds and checking on the

administration of its finances on a regular basis. The whole council cannot do the work. It needs a small committee of the council to do it. This committee should be elected from among the members of the council, with consideration being given to expertise and experience in/financial matters. The committee should have access to experts who are not members of the council.

18.152 Recommendation

(a) Every district council should elect a district finance and accounts committee from among its members. It should be chaired by the secretary in charge of finance.

(b) The district finance and accounts committee should be responsible for:

- *(i) identifying sources of funds and planning for their collection and for utilisation of resources;*
- *(ii) advising the district council 011 collection and allocation of funds to different departments and units in the district or to lower councils within the district;*
- *(iii) monitoring and control of expenditure of funds;*
- *(iv) advising the district council on general financial /natters;*
- *(v) scrutinizing the audited district accounts and reporting on them to the district council; and .*
- *(vi) instituting measures to instill discipline and control corruption and abuse of office by elected officials and public servants in the district.*

Personnel for District Governments

18.153 A district government also needs sufficient personnel resources to enable it fulfill its obligations and responsibilities. This should include staff who are directly recruited for the local government and those posted from the central government to work in the district.

18.154 Local governments cannot recruit all the staff they need locally, especially highly specialized technical officers. It is for this reason, among others, that the central government will need to continue to support district governments with personnel. The central government's on-going decentralisation programme deals with district personnel issues in various ways.

18.155 The DES will head the civil service in the districts. (We note proposals to change the DES's title to district executive director, and have no comment on the proposal). To give him or her the authority and respect necessary in the discharge of their functions, the DES is to bean officer of the rank of Under-Secretary. Central government departments in the districts will be headed by officers in the salary scale U 1 US who will besec6hded'by their respective ministries to the local governments. They will be supervised and controlled by the DES 'from whom they will 'take instructions' and· directives.

18.156 It is proposed to set up in each district a district service committee (DSC) with the responsibilities for the appointment, promotion transfer and discipline of public servants and teachers in the salary scale U8 - US - U4. The exception will be the Kampala. City Council which will have powers to appoint officers between U8 - U3 without reference to the centre.

The principle involved here is to minimize politicization of the civil service in a district government by ensuring that an independent body deals with appointments, control and discipline of staff. The DSC will have powers to discipline all civil servants working in the district, whether they are directly employed by the district government, urban authorities or the central government. In the case of staff directly employed by the district government, the decision of the DSC will be final, while in the case of staff seconded by the central government any disciplinary action it takes will be subject to review by the Public Service Commission. In order to maintain national standards, the Public Service Commission will seek to ensure that the merit system is adhered to by all DSC's in dealing with staff. Otherwise disparities in standards and qualifications for recruitment into the district services could develop which would in turn affect the performance of the local governments.

18.157 The Commission agrees in principle with the proposed developments. It believes, however, that there is a need to give the proposed DSC more status to enable it to effectively fulfill the significant roles it will be called upon to carry out. For this reason, we think the name District Service Commission would be a more appropriate title than District Service Committee.

18.158 Recommendation

(a) *A district service commission, should be established in each district and given the authority and powers to act independently in many matters relating to members of the civil service working in the district.*

(b) *The District Service Commission should consist of a chairperson and four members all of whom should be appointed by the district executive committee with the approval of the Public Service Commission. They should:*

- *(i)* *hold office for a period of four years, but should be eligible for re-appointment for another term of four years; and*
- *(ii)* *be persons of high integrity and moral standing.*

(c) *A member of a district service commission may be removed from office by the district executive committee with the approval of the Public Service Commission. The grounds for dismissal should include:-*

- *(i)* *inability or failure to discharge the functions of office due to physical or mental incapacitation or any other cause; and .*
- *(ii)* *gross misconduct and misbehavior.*

(d) *The powers of the 4istrictservice commission should include appointment , promotion, transfer and discipline of staff directly employed by the local government. It should also exercise control and discipline over staff ~econ4ed by the central government, subject to the approval of the Public Service Commission.*

(e) *Members of the district .service commission shall be paid by/he district council such remunerations maybe approved by Parliament.*

Relations between the Central and Local Governments

18.159 The views of the people are virtually unanimous on the need for strong local governments, with sufficient powers and resources to: decide on matters of local concern; initiate and implement policies, programmes and projects for the development and welfare of their areas, instead of merely implementing decisions made at the centre; and provide checks on the powers of the central government, and thus provide a restraint on the emergence of dictatorship and tyranny at the centre.

18.160 There is, however, at the same time a realization and desire to vest the central government with sufficient powers and resources to enable it to effectively fulfill the responsibilities and functions expected of it. A proper balance should be struck to enable both levels of government to carry out their expected roles effectively.

Division of responsibilities and functions:

18.161 The responsibilities and functions of a local government can be arrived at by excluding those functions of national and international importance for which the central government should have exclusive responsibility. These are mainly matters necessary to state security and the unity of the country.

18.162 Recommendation

(a) The central government should be responsible for the following functions: and services; (schedule to the constitution)'

(i) arms ammunition and explosives;
(ii) defence, security and maintenance of law and order;
(iii) banks, banking, promissory notes, currency and exchange control;
(iv) taxation of incomes, profits and such taxation as arises by way of implementation of services on the exclusive list;
(v) citizenship, immigration Immigration, deportation, extradition and passports;
(vi) copyrights, patents and trade marks and all forms of intellectual property; incorporation and regulation of business organisations;
(vil) land, mines, minerals and water resources and the environment;
(viii) national parks, as may be prescribed by, Parliament;
(ix) public holidays;
(x) national monuments, antiquities, archives and public records as prescribed by Parliament;
(xi) foreign relations and external trade including the control of prices and customs and duties as parliament may deem appropriate.
(xii) making national plans for the provision of all services, including those to be run by the local Government ;and
(xiii) any matter incidental to the services mentioned on this list.

(b) A district government should have powers to provide any services or perform functions which are not reserved for the central govemmel1t and which it has the ability and interest to provide or perform.

18.163 There is, however, need to be flexible in defining the responsibilities and functions of both levels of government. There are many situations where it will be necessary for responsibilities and functions to be shared. For quite some time yet, many local governments will not have the resources to undertake many of the functions and services they are expected to. Even those district~ which are considered to be more advanced than others will initially have to share many responsibilities with the central government. It should be a matter for consultation and negotiation between governments to decide such matters, the aim being to ensure no adverse effect on the quality of services already being provided.

18.164 Conditions and circumstances may arise which make it necessary or desirable for the central government to transfer a function or service which is reserved for the centre to a local government. This should only occur through consultation and agreement. To ensure that the quality of services is not affected, there should be thorough scrutiny and vetting by Parliament or its competent committee.

18.165 In areas such as maintenance of law and order, education, immigration, taxation, transport and telecommunications, economic and social infrastructure and public utilities, it may be necessary or desirable for the central and local governments to exercise joint responsibilities. This may include supervision of personnel implementing the services, use of equipment and machinery, and evaluation of performance of projects.

18.166 Recommendation

(a) *Decentralisation services and functions should be implemented in phases, depending on the ability of districts to take over the provision of services designated as district responsibilities.*

(b) *The central government may transfer some of the functions and services reserved for the centre to a local government if it is considered necessary or convenient to do so. The National Council of State should approve such transfers.*

(c) *The central government and a local government may, by mutual agreement, share in the provision of certain functions and services which are reserved for the central government or within the powers of local government to provide.*

The Central Government Representative

18.167 We have already pointed out the need for co-operation and co-ordination between governments, if conflicts and suspicions are to be avoided. There are also matters of national security and political stability in the whole country which need be taken into consideration.
The central government, while agreeing with the people on the need for all elected head of the district government proposes to retain the DA in the districts but to change the role. The DA will become the representative of the central government,-and the link between the central and local governments. We agree in principle with thisl'£0posal, but do not agree with the name suggested in the decentralisation policy proposals -,namely district government representative That title has4he potential :for confusion, for it is the 'central government that is· to be represented;

18.168 Recommendation

(a) There should be a representative of the central government in every district to be known as the Central Government Representative.

(b) The Central Government Representative should be appointed by the President, subject to the approval of the National Council of State.

(c) The Central Government Representative should be responsible for:

(i) coordinating the administration of central government services in the district;
(ii) advising the district executive committee on matters which affect the relationship between the district government and the central government; and
(iii) generally overseeing the relationship between the district and central government.

(d) The Central Government Representative should not be involved in the direct administration of the district.

Administration of Districts by the President and Suspension by Minister

18.169 Although everything possible should be done to secure the powers of local governments, circumstances may arise which make it necessary for the central government to take over the administration of a local government. Such powers should not be exercised lightly.

18.170 A local government may itself request the central government to intervene if the district council feels that it is in the national interest to do so. If a state of emergency is declared in a district, it may also be necessary for the central government to intervene. There may also be other circumstances which make it impossible or extremely difficult for a local government to function. These may include widespread corruption and abuse of office, gross financial mismanagement, breakdown in law and order and activities which threaten national unity or the sovereignty of the country.

18.171 The aim should be to restore a local government as soon as the circumstances which made the take-over necessary no longer obtain. It is important that during the period when the central. government, is in control, all steps are taken to restore the situation to normal in the shortest time possible.

18.172 As taking over a 10ca~gQvernment is, such a serious matter; it should be decided on by the highest authority in the land with the approval of the elected representatives of the people. During the period when the central government is administering a district, Parliament should be kept-informed of the steps being taken to restore the situation to normal.

18.173 Recommendation

(a) The President should have power, ill extraordinary circumstances, to take over the administration of a district. The National Council of State should approve such action on the part of the President.

(b) The following should be the circumstances under which the President may take over the responsibilities and functions of a district government:

(i) where there has been a specific request for a take-over by a district council by a vote supported by two thirds of all the members of the council;
(ii) when a state of emergency has been declared in the district as a result of national calamities, riots or other situations; and
(iii) if a situation arises which makes it impossible or extremely difficult for a district government to carry out its responsibilities and functions.

(c) The President may appoint any officers or persons he considers fit to administer the district whose administration he has taken over.

(d) Unless parliament approves a longer period, the President should not take over the administration of a district for a period exceeding ninety days;

(e) If circumstances make it impossible to restore a district administration six months

after the President takes over its responsibilities and functions, fresh elections should be held for a new district council, provided that the unexpired term of the current council is more than 12 *months.*

18.174 The RC and C statute gives the Minister for Local Government power to suspend a resistance council or its committee on the recommendation of a DA on the grounds already mentioned. This power was given at a time when there was insurgency in some parts of Uganda, especially in the North and North East. Some RCs were then suspected to be supporting rebels. Essential commodities were also then scarce. Both conditions no longer obtain. It is not convincing to say that the power should be retained on the basis of its wise use to date (for no minister has yet used it). Its retention dearly undermines democracy and the empowerment of the population to choose their own leaders. Moreover, the views of the people make it clear that they want this power removed from the Minister and DA.

18.175 Recommendation

The power of the Minister of Local Government to suspend a local councilor its committee should be abolished as it no longer serves any useful purpose.

Decentralisation below the District Level

18.176 Many people have expressed concern that decentralisation may simply mean transferring bureaucracy and control from the central government to the district headquarters. There is a widespread demand for decentralisation of powers and functions to lower levels of administration within the districts. This is justified in view of the fact that district

headquarters are in most cases remote from many far flung parts of the districts. The people want lower level councils and committees to be given sufficient powers to plan and implement policies, programmes and projects for the development and provision of services in their areas. In order that they do this effectively, they should have access to resources.

Participatory Democracy

18.177 When we talk of decentralisation to districts and lower levels, we have to consider the RC system, with its elected councils operating down to village level. The essential elements of this system are accepted by the overwhelming majority of the people. As discussed in our chapter on forms of government, the Commission believes the new Constitution must be based on the principle of participatory democracy. It is the involvement of people in running their own councils below the district levels that is perhaps the most fundamentally important way of ensuring active participation of the people in government.

18.178 This is not to Say that the present RC system is perfect. Views have been given on how the system of lower level councils can be changed and improved on to be more accountable and to further empower the people, so enhancing participatory democracy. Already we have discussed one aspect of change, namely the replacing of the name 'resistance councils'. We now consider other matters.

Elections for local councils below the district level:

18.179 Although there are direct elections at the village level, all elections to 'higher' level RCs are indirect, with the committee members from the lower level acting as an electoral college for the election to the level above. So all village level committee members elect the parish level committee members, and soon. This system served its purpose at a time when there were financial and other constraints. But there is now country-wide demand for direct elections for all levels of local councils. People believe that democracy means that they should elect their councils directly. They also see this as the main way to ensure accountability of their councilors. Voter participation is regarded as one of the pillars of democracy and the people believe they are mature enough to make proper choices. The system of electoral colleges may be open to manipulation and corruption as there are only a few voters to deal with.

18.180 While there is demand for direct election of councilors, there is overwhelming support in favour of continuing with the voting method of standing behind candidates. The arguments for and against the queuing method have already been considered, in our discussion of elections for district councils.

18.181 In an ideal situation, all elections should be by secret ballot. For the time being, however, people clearly prefer the method of queuing behind candidates for local elections. Since the number of voters involved is not as large as those for district council or national elections, it is a practicable method. Then is also the financial aspect to be considered as it is quite cheap compared to secret voting. This is an important consideration in view- of the large numbers of local councils for which elections have to be held. 1t is estimated that there may be as many as 45,000 councils from the village to the district levels. It may also be argued that there is not as much as stake in a local council election as there is in national and

district council elections. The losers are therefore more likely to accept defeat with more /grace. It should, however, be borne in mind that the aim should be to gradually introduce secret ballot elections at as many levels as possible.

18.182 Recommendation

(a) In order to make local councils more democratic, councilors at all levels should be elected directly by the voters.

(b) Voting below the district level should be by lining up behind the candidate or his agent, or through other open methods of voting such as show of hands.

(c) A local council should be free to decide that council elections should be by secret ballot, provided that not less than two thirds of the members of the council support it. The Electoral Commission should be consulted for its views on the matter.

(d) If a council decides on secret ballot, then the method should be used from the next general election to the council.

(e) If a council which has adopted the secret ballot wishes to revert to the open method voting, it may do so any time after consultation with the Electoral Commission.

18.183 The issue of campaigning for local elections is contentious. At present, campaigning is not permitted for RC elections. It seems the ban was motivated by fear of resurrecting violence and sectarianism which characterised past election campaigns. Despite the ban, it is known that some campaigning has taken place, secretly, for RC elections. In our opinion, banning campaigning altogether limits the chances of exposure of the can4idates to the electorate. The electorate is not given adequate opportunity to know the policies and programmes supported by a candidate. Moreover, limited exposure may result in election of persons whose leadership qualities are hardly known to the electorate.

18.184 Any person who aspires to an elective office should be prepared ~o be subjected to public exposure and scrutiny. Campaigning during elections gives candidates opportunities to talk about themselves and their opponents. We, however, agree with the view that election campaigns should be free from corruption, intimidation, violence, character assassination, sectarianism and other unfair methods of campaigning. Candidates should be given opportunity to appear on organised common platforms to give them equal opportunities to explain their policies and talk about themselves. However, they should also be free to use other lawful methods of campaigning.

18.185 Recommendation

In addition to other lawful ways of canvassing for votes, there should be organised meetings- where all candidates are required to appear and address the electorate.

18.186 There is no agreement in the country on whether a system of elected local councils from the village level upwards should be open to competition between political parties. The local councils are basically community based, and many people believe that their success and

popularity can be attributed to the fact that people who had hitherto been divided along party lines can sit and discuss together to plan for the development and welfare of their areas. This experience of seven years is a big challenge to political parties that when they are in control they should try to keep the local communities united and peaceful. Local Councils need a sense of community and of belonging and togetherness in order to be effective in dealing with their situations and problems.

18.187 We believe that Local Councils should remain democratic and accommodate all people in the community. Party-politics should respect the values of the people and their aspirations.

18.188 Although numerous people from the lower levels of RCs had wanted political parties to operate only at the district and national levels, we believe that under multi-party political systems all levels of society could usefully employ the system while keeping the local community united and peaceful. This will be one of the clear indications that people are growing in political maturity.

18.189 Recommendation

The election to Local Councils should be organised according to the political system in operation at the time, while taking into account the need to keep the local communities united in the achievement of their objectives and aspirations.

18.190 The regulations for RC elections require that at least two thirds of the electorate should assemble before the commencement of elections. Few villages have registers either of voters or of residents. It is therefore not always easy to identify those eligible to vote. To be a voter at the local elections, one is usually required to be a resident. It is not easy to identity a resident in the Ugandan context where a person may have land, houses and (in the case of men) even wives in more than one place. it is therefore possible for a person to vote in more than one place at an election. Few villages now keep registers of residents. But use of registers could enable many possible voting anomalies to be eliminated, as a person would be required to register in only one village.

18.191 Recommendation

Every village should be required to have a voter's register. A person should only be allowed to register in the village.

Political Education

18.192 There are complaints that the people still remain ignorant of their political and civil rights, despite the power given to them under the RC system. On the other ,hand, there are

also complaints about rampant abuses of or exceeding of powers by the councils and committees, in many cases due to ignorance of the law. This is not surprising, in view of the fact that people have been denied their rights and deliberately kept ignorant for a long- time.

18.193 Recommendation

In order to strengthen the councils and committees, political and civic education should be strengthened to make people aware of their rights and responsibilities.

Relationships between Local Councils, Chiefs and Police

18.194 As mentioned earlier, committees are charged with the responsibility of implementing policies and decisions made by the elected councils. In addition, they assist the chiefs and police to maintain law and order, and maintain security in their areas~ and various other duties. The RCs have in fact taken over most of the functions previously performed by chiefs. By the time the RC system came into existence, the position of chiefs had already been seriously undermined due to corruption and Political interference in their appointment and work. Chiefs tried to resist the take-over of their functions by RCs, but with little success. The RCs have moral and democratic authority on their side. They also have the means to enforce security and law and order as they can recruit, train and arm their local defence units (LDUs). Some people argue that the only work left for the chiefs may be collection of taxes, a function that the RCs also want to take from them.

18.195 As a result many people do not see the need for retaining chiefs. As we have noted already, central government proposes to replace them at county level with assistant district executive secretaries, while the post of sub-parish chief is due to be abolished. Government, however, intends to retain civil servant chief at the parish and sub-county levels. We believe that in order to avoid misunderstandings and conflict, there is need to spell out the functions of both local councils and chiefs. It is proper to retain the civil servant chiefs because the positions of local councilors are not permanent, but rather are elective positions, and subject to change from time to time. The chiefs provide a degree of continuity. They must, however, be both responsive to political direction in terms of their governmental programmes of work and insulated from political pressure. They should therefore be recruited, promoted, disciplined and transferred by the district service commission, and not by the district council.

18.196 Recommendation

(a) Chiefs should remain civil servants in their local administrations. They should be appointed by the district service commission in consultation with the people.

(b) The role of chiefs should be to:

(i) implement government policy; and
(ii) ensure the observance of law and order in the area.

18.197 There have been misunderstandings and conflicts between RCs and the police RCs complain that the police do not recognise or respect them. Police, on the other hand, complain that RCs at times interfere in their work by shielding criminals and obstructing

police investigations. There is justification for the complaints on both sides. Police are at times known to indulge in corruption, extort bribes from criminals, and to pervert the cause of justice for other reasons. It is also alleged that powers of the police to release suspects on police bond has been grossly abused. The RCs on the other hand, are at times known to handle serious crimes beyond their judiciary they do not always respect the professionalism and expertise of the police.

18.198 Recommendation

There* is *need for the police and the local councils to co-operate and appreciate the role of each other in the maintenance of security law and order. They should be educated on their respective roles.

Local council committees:

18.199 As we have seen in respect of district councils, the RC and C Statute provides for councils at all levels from village upwards to have a committee of nine members whose titles are also prescribed. Many people have argued that there is no need for such rigidity. They argue that local government is intended to be. responsive to local needs. On the basis of that principle, each area should be free to choose the numbers, responsibilities and titles of committee members in accordance with their own priorities and needs. This argument is persuasive. However, we think that in order to ensure that all councils are giving attention to some basic needs common to all people, certain committee posts should be found in every local council. However, any council can decide to create other posts on its committee in accordance with the needs and priorities of the people of the area.

18.200 Recommendation

A local council (other than a district council should have a committee which should include:-

(b) general secretary;

(a) a chairman;

(c) secretary for security;

(d) secretary for social services;

(e) secretary for development ordinance;

(j) secretary for women and youth; and

(g) such other positions as the council decides are necessary in the light of local needs.

Right of Recall

18.201 For the reasons discussed in relation to the district councils, there is strong support throughout the country for the electorate to be given the right to recall their representatives at all levels including lower level local councils and their comrl1ittees.

18.202 Recommendation

The electorate should have power to recall an elected representative to all councils and committees below the district level on any of the following grounds:-

(a) for abandoning the policies, and programmes for which he or she was elected;

(b) for behaving consistently ill a manner which is not befitting of a representative of the people; and

(c) for abandoning or neglecting his or her duties.

Financial Resources for Councils below District Level

18.203 Local councils at all levels are expected to perform development and welfare activities in their areas. However, it is not clear how those below district level should raise funds to pay for the services they are expected to provide. We have already indicated our support for the central government's proposal that 30 per cent of the revenue collected from local taxes, fees and other levies should be retained in the sub-county from where it originated. This measure would go some way to meeting the demands of the people who want to see direct benefits from the taxes and other levies they pay.

18.204 In our view, it is also important to empower the local councils at all levels to raise revenue which they can retain wholly or partly to finance services of their choice in their areas. There is, however, need to introduce such a system gradually, and after careful examination of all potential problems. The district council must also exercise some control on the use of such funds. If the inhabitants feel that there is misuse or embezzlement of funds, they will not be willing to pay taxes and other charges. Care should also b~ taken to ensure that the poor peasants and workers are not over-burdened with taxes and levies.

18.205 Recommendation

Every level of local council should be given power to· raise revenue to pay for services identified by the people in their areas. The district council should ensure that the revenue raised is used for the purpose for which it is raised, and that the local people are not over-burdened with taxes and levies.

Judicial Powers of Local Committees

18.206 The judicial powers of resistance committees were discussed earlier in this chapter. The RC courts have brought justice closer to the people and so are popular. There are, however, many people especially lawyers, who are opposed to exercise of judicial powers by

anything other than the normal courts. The detailed discussion on RC Courts is found in this report in the cha1J~cr on the Judiciary.

Urban Authorities

18.207 The urban areas at present are governed under the Urban Authorities Act. Under the proposed decentralisation programme, municipal and town councils will be subordinated to the district council. This is justified on the grounds that it will facilitate the process of coordination of government activities and integrated planning in the district. In order to cater for the special characteristics of urban areas, it is proposed that the towns and municipalities should retain their functional responsibilities. They may also be required to perform such other functions as may be delegated to them by the district councils.

18.208 Recommendation

Apart from Kampala City Council, the municipalities and towns should fall under the district councils of the districts in which they are found. However, they should continue to perform the functions and provide the services which they have been providing, with the necessary modifications which take into account their changed status.

The Legal Position of Local Governments

18.209 The legal position of local governments was for many years primarily defined by the 1967 Constitution, the Local Administration Act 1967, and the Urban Authorities Act. Together, they provided for a highly centralized system of control of local administration. While the RC and C Statute of 1987 brought about significant changes in the system of local government, it left most of the pre-existing legal framework untouched. The government has recognised the need to harmonize the conflicting laws and we are informed that the Ministry of Local Government is in the process of drafting the necessary legislation. The implementation of the governments decentralisation proposals make the need for changes to the law all the more necessary. But in addition, it will eventually be necessary for the law to reflect the provisions of the new Constitution.

The role of Parliament:

18.210 The Constitution makes provisions about the principles in respect of local government in many cases. Parliament is left with the responsibility of making laws for giving effect to the constitutional provisions. Although in principle local governments ought to be free to perform any functions and provide any services within their areas of responsibility, there is need to maintain minimum national standards, to ensure national unity, and to maintain harmony, peace and stability throughout the country. It is the responsibility of Parliament, as a body composed of representatives from all parts of Uganda, to legislate for the attainment of the above aims and objectives.

18.211 Recommendation

Parliament should have power to make laws Oil local government, especially for the purpose of giving effect to the provisions of the Constitution, and in order to:

(a) implement the principles outlined ill this chapter;

(b) regulate the limits of allowances to be paid to members of the councils;

(c) prescribe the procedure for conducting elections to councils;

(d) enable local councils to make laws and regulations and other instruments for the administration of the areas which fall under their jurisdiction;

(e) to provide, with appropriate modifications, for the system of government at district level to apply to the lower levels of local governments;

(f) prescribe the procedure by which the electorate may exercise their right to recall an elected member of a council; and

(g) prescribe the qualifications for persons who may contest for elections to a council.

CHAPTER NINETEEN

TRADITIONAL LEADERS

19.1 This chapter is divided into five sections. The first section discusses the background to the institution of traditional rulers in Uganda and the importance people's views have attached to it. It also analyses the types and roles Of traditional authority under colonial and in the post-independence period. The second section deals with Buganda and its relation with nation-building and national politics and development. The third section discusses the position of traditional leaders after independence and the history and implications of the abolition of the institution of traditional rulers. The fourth section brings out people's concerns on the institution of traditional rulers and the principles necessary to guide decisions on it. The last section gives the Commission's evaluation and recommendations.

SECTION ONE: BACKGROUND AND IMPORTANCE OF THE INSTITUTION OF TRADITIONAL RULERS

Importance and Relevance

19.2 The issue of traditional rulers was extensively debated throughout the country and more especially in Buganda. It was identified by the people as one of the constitutional issues which the new Constitution should decide on once for all.

19.3 The relevance and importance of traditional rulers are based on the uncontested fact that they were the basis of government and organisation of African societies from time immemorial to the advent of colonialism. They shaped the history, culture and identity of the various peoples who now make up the Uganda nation. The way they related to the colonisers and the emergent colonial policy towards them shaped the character of the State of Uganda that was moulded in the process.

19.4 Throughout the colonial period, the traditional rulers, played an important role in the politics of the country, the creation of law and order and in the struggle for independence. Ever since 1967 when the institution of traditional rulers was unilaterally abolished, it continued, in certain parts of the country, and more especially in Buganda, to be loved, recognised and respected by the people.

19.5 As many of the people's views expressed,' the institution of traditional rulers is essentially an issue of the fundamental human right to culture and unity in diversity. Since people fully wanted the new Constitution to be based on fundamental human .rights, the institution of traditional rulers had to be seriously reviewed from this important perspective.

Types and Roles of Traditional Authority

19.6 The people of Uganda had by the advent of colonialism reached different stages of development. There were those who were still close to communalist living, and others who had evolved centralised forms of governance. By the time colonial rule was established,

traditional leadership could be categorized under three broad types: monarchies, clan councils and paramount/military chiefs.

19.7 As peasant economies of pre-colonial Africa required close relationships among the people, in all the various societies of pre-colonial Uganda, the leadership was closely linked with the people, even where monarchs reigned. In all the systems of government, clan councils were important organs of political, social and cultural organisation.

Monarchies

19.8 Buganda and much of the Western region of the country which is part of the interlacustrine region had evolved economies more developed than those in other areas. It, therefore, became possible to develop an efficient centralised administration that is always a necessity to regulate relations in relatively developed economies. As a result powerful monarchies had evolved in the region.

19.9 The historical origins of these monarchies are interpreted differently by the historians of each monarchy. It is not our purpose to enter into such a controversy of interpretation, issues which are not necessary for the purposes of our recommendations. One fact, however, is recognised, namely that in the period prior to colonial rule the kingdoms of Bunyoro-Kitara and Buganda wielded much power beyond their geographical confines as subsequently determined by the colonial agents at the close of the nineteenth century.

19.10 The main characteristics of these monarchies included the king being the paramount chief over all small chieftains which had either been created by him or brought under hi~ influence by conquest. Kingship was hereditary in the sense that rights of succession were limited to the royal clan or family. Succession, however, had at times to be contested militarily among the qualified contenders.

19.11 The king's sphere of influence depended on the unity of his people and his ability to organise militarily so as to defend his kingdom and conquer and retain extra territory. This was the main thrust of foreign relations. Immediately before colonialism, Buganda was expanding rapidly by incorporating territory mainly at the expense of Bunyoro Kitara.

19.12 The social relationships under monarchies were to some extent akin to the feudal system but varied from kingdom to kingdom. In the Buganda kingdom by the nineteenth century, the Kabaka ruled through a hierarchy of appointed chiefs *(Bakungu)* and the clan leaders *(Bataka)*. Through the well-organised clan system descending from the *Ow'akasolya, Ssiga, Mutuba, Lunyiriri* to the *Luggya"* the people became attached and linked to the monarchy, the chiefs and clan leaders; The Kabaka is the head of all clans, *(Ssabataka~,into* which Ganda society is neatly divided. Although the Kabaka is selected from the royal line *(abalangira)* an important relationship to every clan is provided by custom whereby the Kabaka is an exception to the patrilineal rule of a person taking his father's clan. The Kabaka takes the clan of his mother and this ensures that every clan has a chance of one day returning a king. Besides, every clan has a traditional duty which it alone can carry out in relation to the king and his palace.

19.13 In contrast is Ankole, where there has been a division of society between the pastoralist *Bahima* and the *Bairu* cultivators. The former gained control of the Ankole Kingdom and dominated its public affairs. They had greater chances to advance both economically and politically, thus constituting a traditional and modem elite class. Since it W::J5: from them th'1{ kings were selected or emerged through military victory, the rest. who formed the majority, could not be expected to be as much attached to the king& as the Bahima. A similar distinction, but less pronounced, among the population existed in the kingdoms of Bunyoro and Toro and the territory of Busoga where the *Babiito/Bahuma* and *Abaisengobi* respectively constituted the royal class from which kings emerged.

19.14 This crucial difference between the monarchy of Buganda and other monarchies goes a long way to explain the great attachment to the monarchy manifested in the views from Buganda in contrast to the minority of views supporting restoration of other monarchies.

Clan Heads

19.15 The cultural and/or political arrangements based on the clan system were widely known and used in the Ugandan societies. The clan incorporates a people who can trace their ancestry to a common ancestor. The size of the clan varied from society to society. In some areas, such as Buganda, some clans are very big and all still play important social and cultural functions. They assist in uniting the members of the clan under one head and subsequently associate the people of Buganda under the *Ssabataka,* the head of all clans. They give identity to clan members and to all the Baganda. They determine the naming of children, marriage, control of clan land, administration of justice within the clan and many other functions. In most parts of Uganda the clan system exists but with functions which vary. Among the Acholi, the social organisation of society is along the clan system.

19.16 Frequently clan leaders were cultural, social as well as political leaders. In Buganda, for example, clan leaders had considerable political power because they were trustees of clan lands and controlled its use. Their role, therefore, went beyond ensuring' harmony within the clan and kingdom as a whole. The clan leaders in Buganda opposed the *mailo* land settlement of the 1900 because, in their view, it wiped out the traditional system of leadership whereby people owed allegiance to clan leaders and to the king through the control of land on which people depended for livelihood.

19.17 In many non-kingdom areas of Uganda, political authority evolved around the clan leadership. Most governments, however, in the non-kingdom areas were rather loose either because the clans were small and tied together through direct lineage or because the clan leaders did, not exert much military authority. Clan leaders were, however, much respected as elders and judges and sometimes they were associated with extraordinary powers such as the power to call rain.

19.18 Those clan leaders, therefore, had both political and cultural significance. They were respected and obeyed when they made decisions. In several areas, however, the various clan section leaders within an ethnic group could act much on their Own without paying tribute or homage to a paramount chief. The form of government was based on decentralized authority

of clan heads or chiefs. Such was roughly the position in Acholi, West Nile societies and Karamoja.

19.19 Among the factors which may have weakened the clan system in some aspects,
Mentioned can be made of colonial policy, the change to a modern economy, private ownership of land, settlement of clan members in scattered localities, the inter-ethic and even interracial migration of peoples and the modern educational system which at times has not taken cultural values seriously.

Paramount or Military Chiefs

19.20 Pure military chiefs were rare in African traditions. Usually military leadership was conferred on elders in society or on clan heads. Military chiefs usually emerged on personal courage and strength. They were responsible for leading expeditions, battles and wars. Through successful ventures they could be recognised as paramount chiefs first by their military warriors and gradually by the society around them. Such chiefs, however, were rarely succeeded by their own descendants, since personal qualities and skills outweighed hereditary considerations.

Traditional Rulers Under Colonial Rule: Agreements

19.21 The agreements made between the four kingdom areas and the colonial authority were conditioned by the existing relations with the colonising power, the atmosphere in which they were made and the ability of the local leaders to negotiate. Accordingly, they differed greatly in contents.

The 1900 Buganda Agreement:

19.22 The 1900 Agreement between Buganda and Her Majesty's Special Commissioner, Sir Henry Hamilton Johnston, although not made between equals, struck a certain balance which made both parties share feelings of victory. The Buganda Agreement was made in circumstances which favoured Buganda. The chiefs who were negotiating it had learnt reading and writing since the 1840s and 1870s when the Arab traders and the Christian missionaries respectively arrived. They had struck an intimate relationship with the missionaries to whom now they could go for advice. It was dear that the colonising power needed Buganda's cooperation more than Buganda needed its protection. The mutiny of Sudanese soldiers at Bukaleba in 1897 and Mwanga's revolt in the same year had been definitively defeated with the decisive and powerful cooperation of Ganda chiefs. All these factors and others to be developed later made the colonial administration recognise the vital role of Buganda in forging a wider Protectorate.

19.23 The Buganda Agreement contained a number of important elements.

(a) The Agreement dearly fixed the boundaries of Buganda, including within them areas which had recently been part of Bunyoro Kingdom and Ktihula county which had belonged to Ankole. Kamuswaga's Kingdom of Kooki became one of the twenty counties of Buganda. This was victory for Buganda.

(b) In article 2 of the Agreement, Buganda renounced any claims to tribute from any other part of Uganda. It was a concession to the colonizing power, expressed in the following terms:

> The Kabaka and chiefs of Uganda hereby agree e henceforth to renounce in favour of Mr. Majesty the Queen any claims to tribute they may have had on the adjoining provinces of the Uganda Protectorate.

(c) Under article 3, Buganda conceded to "rank as a province of equal rank with any other provinces into which the Protectorate may be divided. This was victory to the colonial authority.

(d) Under article 4, Buganda conceded the revenue collected by the Uganda Administration to be merged in the general revenue of the Uganda Protectorate, as the revenue of the other provinces of the Protectorate. Here again was a victory to the colonial power.

(e) Under article 5 both parties gained. The principle that laws made for the general governance of the Uganda Protectorate by Her Majesty's government would equally apply to the Kingdom of Buganda was accepted. There was, however, an important. Exception that such laws should not conflict with the terms of the Agreement. In case ",they did the terms of the Agreement would constitute a special exception in favour of Buganda.

Article 6 has been most controversially interpreted. For some, it eroded the basis; of the Kabaka's power throughout the colonial period for others it was the basis for the Buganda autonomy through out the colonial period. It was a conditional article. So long as Buganda :fulfilled its part Her Majesty's Government was also bound by the Agreement.

So long as the Kabaka, chiefs and people of Uganda shall conform to laws regulations instituted for their governance by Her majesty's government in the organisation and administration of the said kingdom of Uganda, Her Majesty's Government agrees to Recognise the Kabaka of Uganda as the native ruler of the province of Uganda under Her Majesty's protection and over-rule .

> The Kabaka was conferred with the title of His Highness and he was to receive a minimum yearly allowance of £1,500 out of the local revenue of the Uganda Protectorate. He was to exercise direct rule over all the "natives" of the Kingdom and would administer justice his people in a manner approved by Her Majesty government

(g) under article 7 Namusole was also given an annual allowance of £50.

(h) The government of the Kingdom under article nine was much the same as before the colonial rule. The Kabaka's chief ministers and county chiefs, however, were now to be paid allowances from the Protectorate Administration and were in some aspects directly under the Protectorate Administration.

(i) The taxation agreed upon although burdensome to the people was a basis for the Increase of annual allowances to the Kabaka and chiefs, once it was efficiently collected (article 12).

(j) 0n the important issue of land, both parties emerged victorious. The Kabaka, Namasole, princes and princesses each received adequate *maiio* land. The chief ministers, the county chiefs, the three Missionary societies, the leader of the Muslim group and one thousand other chiefs each received *mailo* land, either in their private capacity or their official work or both. The Colonial Administration also received land, approximating to half of the total Kingdom (articles 15-18).

(k) The two conditions for withdrawal of recognition to the Kingdom were failure to raise or pay the agreed upon taxation or "should the Kabaka, Chiefs or people of Uganda, pursue, at any time, a policy which is distinctly disloyal to the British Protectorate". In such a case, Her Majesty's Government would "no longer consider themselves bound by the terms of this Agreement (article 20).

19.24 We have paid special attention to the 1900 Agreement because it did, to a large extent, influence the attitudes and behaviour of Buganda during the period of colonial rule and also had a great impact on the 1955 Buganda Agreement, the Munster Report of 1961 and the constitutional arrangements of 1962. It has, in addition been widely referred to in views from people in Buganda received by the Commission.

Other kingdoms' agreements:

19.25 The Toro Agreement of 1900 also defined the borders of the Kingdom, imposed taxes, required payment of allowances to the King of Toro and the chiefs and allotted some land to them, It did not, however, result from the same forceful negotiations as the Buganda Agreement and so lacked the same protections and even decorum. Under article 3, the conditions for withdrawal of recognition are bluntly put:

> So long as the aforesaid Kabaka and Chiefs abide by the conditions of this Agreement they shall continue to be recognised by Her Majesty's Government as the responsible chiefs of the Toro district. They shall be allowed to nominate their successors in the event of their demise, and the successors thus nominated shall be in like manner recognised by Her Majesty's Government as the successors to the dignity of chieftainship, on the understanding that they equally abide by the terms of this Agreement. But should the Kabaka or the other chiefs herein named fail at any time to abide by any portion Of the terms of this Agreement they may be deposed by Her Majesty's principal representative in the Uganda Protectorate, and their titles and privileges will then pass to any such other chiefs as Her Majesty's principal representative may select in their place. Should the Kabaka of Toro - Kasagama or his successors -be responsible for the infringement of any part of the terms of this Agreement it shall be open to Her Majesty's Government to annul the said Agreement, and' to substitute for it any other methods of administering the Toro district which may seem, suitable.

19.26 The Ankole Agreement of 1901 was no better; in fact it was framed and phrased almost totally in the manner of the Toro Agreement.

19.27 The Bunyoro Agreement of 1933 again did not give much direct power to the Omukama. Even appointments and dismissals of chiefs by the Omukama were subiect to the approval of the Governor whose decision was final (article 14).

19.28 All in all, these various agreements showed clearly that ultimate power lay with the colonial administration and that the king~ had conceded their pre-colonial sovereignty to the new-comer~. Before colonial rule these monarchs had been executive kings who exercised their authority through a hierarchy of chiefs appointed by them to represent them at all local levels. Now these chiefs were also representatives of the colonial administration and could be appointed or dismissed at the initiative of the colonial powers. It is however, correct to say that the Buganda Agreement of 1900 succeeded in securing more concessions from the colonial administration than the agreements with other kingdoms. It is of particular importance that the Kabaka retained clear, if reduced, executive authority. In all kingdom areas, the traditional structure of authority which was retained by the colonial administration was gradually developed into a system of local administration supervised by the colonial agents. In such a situation, it was not always obviously clear which traditional powers of monarchs had been fully lost to the colonial administration, which ones had been retained in full and which had been retained in a modified form.

Deportation of Muteesa II and the Buganda Agreement of 1955:

19.29 The 1900 Buganda Agreement was subjected to a critical test in 1953 when the Governor deported Kabaka Muteesa II invoking the powerful phrase in the Agreement: "so long as the Kabaka cooperates loyally with Her Majesty's Government ... ". In the eyes of the Governor, Muteesa had failed to live up to provisions of the 1900 Agreement. The shock created by the Governor's act of deporting the most powerful king in Uganda alerted all other monarchs to the fact that they were no longer as powerful as their forefathers.

19.30 The triumphant return of Muteesa II from exile in 1955, however, was interpreted as victory. by both parties. For Buganda, the Kabaka's return meant that the Governor had erred in dep0rtingthe king. The 1900 Agreement had been violated by the Governor. In the mind of the colonial administration the return of the king was seen in the light of the 1955 Agreement whereby the Kabaka accepted to become a constitutional monarch.

19.31 As independence approached, it was clear that the issue of monarchies had to he adequately addressed, if Uganda was to be kept together as one nation.
Non-kingdom qreas:

19.32 In the non kingdom areas colonial policies aimed at reducing gradually the authority of traditional rulers. Some were recognised initially as having valid authority. They were given powers to collect taxes, administer justice, establish-law and generally implement colonial policy.

19.33 As time went on, these rulers were incorporated in the colonial local government structure as chiefs. This was done in a variety of ways. The most prominent method of

assimilation was through the introduction in the rest of the country of the Ganda structure of administration through *Saza* (county), *Gombolola* (sub-county), *Muluka* (Parish) and *Mutongole* (village) chiefs. The existing traditional rulers were recognised as the chiefs to man these structures.

19.34 A good example of the assimilation policy is Busoga. Before colonial rule, Busoga was divided into various chiefdoms; each presided over by a hereditary chief. The administrative structure was similar in many ways to that of Buganda, with *Bakungu,* and below them *Mitala* and *Bisobo* chiefs. Under colonial rule, Baganda agents were used to remodel the structure to equate each chieftainship to a county with its traditional ruler becoming then a county chief.

19.35 The traditional rulers became paid agents of the colonial government under the new administrative structure of local government. The difference between Busoga and the kingdom areas was that the Basoga had no paramount chief to act as the titular head. Kakungulu initiated the Council of Basoga chiefs with a chairman who later came to be known as "the President" and whose title was changed to Kyabazinga in 1938. The Basoga traditional rulers were thus serving the colonial government directly. Their demands to get *mailo* land and to exercise customary control over land were rejected. Without a real hold on land, the chiefs' powers were reduced to a considerable extent.

19.36 What happened to traditional rulers in Busoga was generally true of traditional rulers in other non-kingdom areas. The difference was that in some of these areas, weak clan chiefs and rulers of small communities or groups were simply ignored. Their powers withered away in the face of the new administrative structures and colonial economic transformation.

Traditional Rulers at Independence

19.37 Immediately before independence the only traditional rulers of national significance were the monarchs of Ankole, Buganda, Bunyoro and Toro. The Kyabazinga of Busoga had also gained prominence of local stature as the accepted traditional head of Busoga. The four monarchs and the Kyabazinga, in varying degrees, did influence the course of national politics leading to independence.

19.38 First, as the rallying point of their Kingdoms vis-a-vis the colonial authority, they contributed to the struggle for independence. Theirs were presented as self-governing kingdoms which could negotiate directly with the colonial government.

19.39 Second, the Buganda monarchy had a unique role to play. Baganda leaders took every opportunity to remind the colonial administration that it was Kabaka Muteesa 1 who had voluntarily invited, the British to his country. The important implication of this reminder was that the Kabaka was in a position to determine that his, invitees Had overstayed their welcome The exiling of Kabaka Muteesa ll was significant not only to Buganda but to the of Uganda struggle for independence. It aroused feelings of anger among the nationalists at the uncalled for humiliation of an African leader. It helped to unite the Baganda more closely and it strengthened the nationalist feelings f()f demanding independence immediately.

19.40 Third, even if the kings had lost their traditional executive powers, they were listened to by their people and most often their wishes were implemented. It would be a true comment on the Kabaka's status after the 1955 Agreement that in practice he remained much more than a constitutional monarch. He actually shaped policy from behind the scenes and had it implemented. As rallying centres of influence, the kings reinforced the work of nationalist politicians.

19.41 Fourth, the political influence of the kings played an important part in the negotiations for the independence Constitution. It also ensured that their status was entrenched in the Constitution of 1962.

19.42 Fifth, the existence of these kings with governments under them contributed to the image of federal self-governing states even before independence. As the Wild Report and the Munster Report of 1959 and 1961 respectively clearly show many people .of the kingdoms lost no time in suggesting the federal arrangements as the best means of preserving the *status quo* and the privileges of the kingdoms.

19.43 Finally the birth of political parties, founded on religious, tribal and regional biases, which had roots in the social formations that grew with colonialism, threatened and destabilised the position of the kings and their kingdoms. We shall deal with Buganda as a separate case in the next section if this chapter. In other kingdom areas as well, political parties tended to divide people into opposing camps thus leaving the king with the serious dilemma of divided loyalty. In those kingdom areas where the population was traditionally divided between the pastoralists and cultivators, the tendency was for each group to join a different political party.

19.44 Inter-kingdom rivalries and political jealousies between kingdom and non-kingdom areas were also exploited by politicians thus adding to the sectarian nature of the country's politics. This, as explained in Chapter Two *(Historical Background),* was one of the origins of political instability both shortly before and after the attainment of independence.

SECTION TWO: BUGANDA AND NATION-BUILDING

19.45 Several writings refer to what they call "the Buganda factor" or "Buganda Question". In the submissions we received, particularly from Buganda, there is ample reference to the position of Buganda within Uganda, the special status of Buganda and the roles it has played and should play in the future in nation-building, national politics and development. We considered it important, therefore, to devote this section of the chapter to the roles of Buganda in relation to the entire process of nation-building.

19.46 In considering the Buganda factor there are important points to emphasise and which have been articulated in people's views.

(a) As already stated it was Kabaka Muteesa I who invited the British to his country to help him develop and educate his people .. The fact that soon after this royal invitation, the British met with other colonisers and divided the entire African continent under their various spheres of influence does not minimise the reality at the British having been voluntarily and peacefully invited by the Kabaka of Buganda.

(b) Once in Uganda the British took Buganda as the base around which they would construct the Protectorate of Uganda. This in part explains their generally cordial relations with Buganda and the contents of the 1900 Buganda Agreement.

(c) Buganda's administrative structure was introduced almost wholesale into all the various parts of the country. With it went the Ganda agents to initiate others into the workings of such a system. It. was mainly this factor which has been referred to as lithe sub-imperialism" of Buganda that created feelings of dislike for the Baganda among the people of several areas. The initiative, however, of introducing Ganda administrative structures and sending Ganda agents elsewhere did not originate with the Baganda themselves but rather, with the colonial administration.

(d) Similarly the use of Luganda in areas beyond Buganda kingdom was the initiative of the colonial administration and/or christian missionaries.

(e) The geographical position of Buganda in the centre of the country and the fact that the national capital was put within Buganda both added to Buganda's ,influence on both nation-building and national politics and development.

(t) The population factor is also of great significance. Over a quarter of the entire population of the country is in Buganda. This makes it imperative that if peace is to prevail in the country, Buganda must be peaceful. Past experience has shown the validity of this observation or affirmation.

(g) Both Islam and Christianity were in Buganda decades before the advent of colonial agents. They were responsible for introducing literacy and rudiments of essential structures for development. The concentration of structures for modernization and development in later years within Buganda was more a result of the colonial policymakers than of any insistence of Buganda.

19.47 The above factors need to be reflected on seriously and objectively by society in order to create a positive attitude to Buganda in the entire process of nation-building. As it has been argued in some views submitted to us, it is unthinkable to imagine Uganda without Buganda or Buganda without the rest of Uganda.

19.48 Both its monarchy and Buganda’s status more generally did playa prominent role in the political development of Uganda. They determined the shape of the independence constitution in which Buganda was guaranteed a federal relationship with the rest of Uganda. Buganda's monarchy also, to a great extent, assisted in determining both the survival and semi-federal status of other monarchies in the same way as its unilateral abolition also meant the demise of the other monarchies.

19.49 Almost a consensus of people's views from Buganda has expressed the desire for the restoration of the institution of Kabaka. It is thus important to analyse the basis for this strong demand.

19.50 The attachment of the Baganda to the institution of Kabaka can only be understood in the light of the roles it plays in society. The Kabaka was not only a political ruler but also

played important cultural, social, religious and judicial roles. The *Buganda Constitutional Proposals* submitted to us by the Ssabasajja Ssabataka's Supreme Council and the Buganda Bataka Heads of Clans' Council explained this attachment in the following manner:

(a) The institution of Kabaka is part and parcel of the cultural heritage of the Baganda.

(b) This institution is as old as 600 years during which it has always been the focal point in the culture of the people.

(c) Kabakaship is tied to the people of Buganda through the clan system. The moment a muganda is born and is given a clan name he or she is intractably and forever tied to his or her clan and subsequently to the Kabaka who is the head of clans. The clan dictates not only the name he or she is given but the particular traditions he or she may follow, who he be she mayor may not marry, where to be buried, who may succeed to his or her property, etc.

(d) %e institution accounts to a large measure for the relatively high level of development in tile areas where it existed. It promotes unity and peace and creates incentives for community 'development.

19.51 The Kabaka held supreme executive and judicial powers but exercised most of his functions through the traditional and appointed chiefs. That a few Kabakas abused their powers and one is referred to as having been deposed from the throne, did not make the people hate the institution itself, which is always distinctly conceived from the individual incumbent. The Baganda hold this royal institution as sacrosanct despite the continued social and political changes in the powers and privileges it enjoys at any particular time.

19.52 As the *Buganda Constitutional Proposals* indicate, Ganda traditional society was stratified in three segments namely:

(a) the Kabaka with the royalty;
(b) the chiefs and *Bataka;* and
(c) the communality, the ordinary people.

The first two segments controlled government and the clan system but they had to rely on the loyalty and support of the commonalty, who according to the above memorandum "at all times have had the clout to dictate the structure policies, changes and nature of government, with power to decide who to accept or not to accept as Kabaka or chief, and to make representations as to the governance they require of Buganda". This social-political structure underwent changes after the advent of colonialism and subsequent to the attainment of independence. It is, therefore, necessary to examine the effect of such changes on the Buganda kingship and people's loyalty to it.

Buganda and Nation-Building

19.53 The advantages Buganda had over the rest of Uganda are as described above. They created attitudes both in Buganda and in other areas which were not conducive to nation-

Traditional Leaders

19.58 Cash crop production spread quickly in Buganda and the economic growth of the province advanced at a greater pace than perhaps in most other parts of the country. Peace and stability, the unity of the people under the king and chiefs, the contribution of both missionaries and colonial agents to the creation of the necessary infrastructure of roads, schools, hospitals and industry, the provision of employment in the modern sector all contributed to the economic development of Buganda. Other factors included the attraction to the capital city of numerous foreign investors, the contribution of migrant workers from the neighboring countries and the hospitality of the province to people from any part of Uganda and from outside who wished to enhance development.

19.59 These opportunities for economic development, however, were also shared by people from other areas of Uganda. The attitude created in some areas of an economically "superior" province of Buganda often overlooked the obvious fact that in general the people of Buganda remained as underdeveloped as the rest of Ugandans.

Buganda and National Politics

19.60 It was in Buganda in the early 1920s that associations with political objectives began to emerge. The Young Baganda Association used the new tools of an indigenous press to attack strongly the over-stay in power of the old chiefs and in the process dismantled the old regime of chiefs.

19.61 The rich peasants and the young educated gentry who had gained from cash crop production and modern education were at the centre of opposition to what they saw as political and economic injustices. It culminated in the riots of 1945 and 1949. The leaders of the opposition called for democracy in the *Lukiiko* and wanted a greater say in the management of the economy. Of course, these agitations and the articulation of grievances influenced the spirit of nationalism throughout the country, thus laying a basis for national politics.

19.62 It is significant to note that in all antagonistic clashes in Buganda, each side endeavoured to justify its stand as being in the best interests of the Kabaka and Buganda as a whole. The rioters of 1945 and 1949 condemned the chiefs as being collaborators in colonial rule which had usurped the authority from the king.

19.63 In the processes of consolidating their powers, the chiefs were in turn to use the Kabakaship. Throughout the 1950s, in the name of preserving the kingship and the position of Buganda, they took a stand to isolate Buganda from the rest. They refused to take part in the general elections of 1958 and in the national Legislative Council. They rejected participation in the constitutional consultations of 1959 and 1961. They expressed their dislike of national politics in the region and gradually prepared the way for the declaration of Buganda's independence in December 1%0. Anyone who disagreed with the chiefs was branded anti-Kabaka.

19.64 When it became inevitable to have national party politics, Buganda's nationalism found expression in the Kabaka Yekka (KY) political movement. The ultimate aim was to save Buganda and its traditional institutions, but the methods used by the movement became

sectarian and divisive, arousing the socio-political and religious animosities of the 1880s and 1890s.[19.65] The spillover from Uganda politics was the alliance of KY with UPC which is said to have promised to safeguard the position of Kabaka and the special status of Buganda. It was a strange twist of political manoeuvring that UPC which had many supporters who had no attachment to monarchy or were clearly opposed to it was able to make alliance with supporters of the monarchy in order to register political victory.

19.66 The events in Buganda throughout the 1950s and early 1960s did, however, have great influence on national politics. The nationalist and provincial politicians and the colonial government took lessons from what was happening in Uganda and used them in the constitutional consultations preceding Uganda's independence.

19.67 In essence this is the Buganda issue which is the background to the current debates about traditional rulers. Here was a nation that was independent before the advent of colonialism and which, through the 1900 Agreement, seemed in appearance under indirect rule to have preserved its autonomy under colonialism and to have kept its special status. On the other hand, it was the clear colonial policy that the entire Uganda Protectorate was to form one nation.

19.68 The 1962 Constitution was negotiated and promulgated against this background. The colonial government and the nationalist politicians were all insisting on independence for Uganda as one nation. Separatist voices were identified as a danger to national politics and to the immediate achievement of independence.

19.69 It is against this background of Buganda's positive role in national politics and its attachment to its traditional institutions that the issue of traditional rulers can be best discussed. Buganda has been the axis in the formation of the nation. It contributed a large percentage of the domestic product plus the human and physical resources for the continued existence and development of Uganda. Many national institutions were sited in Buganda. Uganda needed Buganda just as Buganda needed the rest. This is the basis for principled compromise for the good of each and all.

19.70 What is said of Buganda in this section could also be done for each part of Uganda. Each had a unique history and contribution for the good of all and above all in the process of nation-building. Each needs Uganda and the preservation of its identity.

SECTION THREE: TRADITIONAL LEADERS AFTER INDEPENDENCE AND THEIR ABOLITION

19.71 Under the 1962 Constitution, the status of the four monarchs and the Kyabazinga of Busoga was entrenched. Their legal status was defined in the Constitution of Buganda and the special provisions relating to the other kingdoms and Busoga as contained in Schedules 1-11 of the Constitution. The kingdom governments were to be run in the names of the kings or Kyabazinga who were to be kept informed on important matters concerning government. In law, however, the kings were constitutional heads who were required to approve whatever their governments decided.

19.72 In practice these rulers continued to rule their areas in much the same way as before independence, except now there was an African-led national government to which they subscribed and under which, in specified areas, .they were fully subordinate.

19.73 Tensions between Buganda and the central government did not take long to emerge. The first disagreement was over the financing of the Buganda government as contained in Schedule 9 of the 1962 Constitution. The financial arrangements were not very precise. The central government could withhold grants to the detriment of Buganda. This caused continuous strains between the Kabaka's government and the central government.

19.74 One of the compromises of the 1962 Constitution was to postpone the appointment of the Head of State until the following year. In 1963, a constitutional amendment was introduced enabling the creation of the office of a constitutional head of a district and providing for the election by Parliament of a President Head of State from among the rulers of Federal States and the constitutional heads of the districts. All districts except Karamoja, Teso and West Nile created constitutional heads. When Parliament came to make a choice, it elected the Kabaka of Buganda as President and Kyabazinga of Busoga as Vice President.

19.75 This constitutional compromise has been extensively referred to in people's views as having solved only the problem of the moment but created more serious problems for both the Kabaka and the kingship institution more generally. It created a deep conflict of roles for Muteesa II who was both the Kabaka of Buganda and the President of Uganda. He became the centre of both Buganda and Uganda politics. He could not avoid criticism and attacks from either side nor could he be expected to take an entirely impartial position as national President where the interests of Buganda were threatened.

19.76 The issue of the "lost counties" left unresolved by the 1962 Constitution highlighted the precarious position of Muteesa II in his dual capacity. Bunyoro claimed the two counties as belonging to it. Buganda also claimed them as its own. When the referendum was held in L964, the inhabitants of Buyaga and Bugangaizi overwhelmingly decided to belong to Bunyoro Kingdom. This decision seriously strained relations between the President and the executive Prime Minister and between Buganda and the central government. From then on the alliance between KY and UPC gradually came to an end and a stage was mounted leading to the 1966 crisis.

19.77 The 1966 crisis witnessed the unilateral suspension of the 1962 Constitution, the removal of Muteesa II from the post of President and the arrest of the alleged conspirators. When Muteesa II protested) Obote's reaction was to abolish the Kabakaship in the 1967 Constitution which had been kept in the interim Constitution of 1966. The other kingdoms and Kyabazingaship were also abolished in the process. Likewise the 1967 Constitution abolished the federal and semi-federal structures of the kingdoms. In the eyes of the then Parliament the office and the political arrangements were accorded similar treatment indicating that one had led to the other.

19.78 What happened in the crisis of 1966 and afterwards has greatly influenced people's views in discussing the issue of traditional rulers. In the views of many people, Obote's crisis of 1966 did not in any way warrant the dictatorial suspension of the Constitution of 1962. The tensions between him and Muteesa II did not warrant the full-scale attack on and

destruction of the lubiri and the people therein. The manner in which both the provisional Constitution of 1966 and the Constitution of 1967 were made was against the spirit and the provisions contained in the 1962 Constitution for amending a national constitution.

19.79 The abolition of traditional rulers was preceded and followed by a continual state of emergency over Buganda which lasted until the coup of 1971. Many areas, especially Buganda, felt very insecure and deeply wounded by what happened from 1966. This experience of suffering nurtured great attachment to the institution of traditional ruler which has been able to be given free expression during this constitution-making process.

SECTION FOUR: PEOPLES' VIEWS, CONCERNS AND PRINCIPLES

19.80 In view of the history and cultural impact of the institution of traditional rulers and given the tragic and unilateral manner in which it was abolished, it was naturally expected that the people from the former kingdom areas would provide serious debate on the issue. We certainly found this to be the position and especially in Buganda.

19.81 Right from the time of the district educational seminars held soon after the Commission was established, we found that the participants in the districts of the Buganda region discussed this issue very widely. In the regions of other former kingdoms and Busoga, the issue did not feature prominently. In the non kingdom districts, the topic received minimal discussion.

19.82 From subsequent seminars at sub-county level, in educational institutions and for professional as well as interest groups, the topic of traditional rulers appeared to us to be a national issue which people wanted to be determined as part of the constitution-making process. The reasons given for this view included the fact that traditional rulers were enshrined in the 1962 and 1966 constitutions. They were abolished by the 1967 Constitution. The new Constitution could not leave this issue out. Besides, the overall motive for the making of the new Constitution was to give Ugandans a rare opportunity to express themselves freely on any issue connected with creation of a better society for all. Since a cross-section of society were deeply concerned about traditional rulers whether for their restoration or their continued abolition, it was important that the topic became a constitutional issue.

19.83 Those who were opposed to making traditional rulers a constitutional issue belonged to two camps. Some supported the restoration of traditional rulers but argued that their inclusion in the Constitution would be detrimental to their permanent existence as the experience of the 1967 had shown. Whenever a new constitution would be made, their existence would be again discussed. To avoid such a thing happening again, they preferred to generally include the issue of traditional rulers and their institutions as part of the fundamental right to culture. That would ensure the permanency of the institution and its distancing from constitutional politics. The other group wanted traditional rulers left out of the new Constitution because it believed they had outlived their usefulness and relevance in the modem nation-state.

19.84 From the memoranda submitted, the oral views received and the observations of the Commission it was clear that the issue of traditional rulers was both constitutional and

national. Its national character, however, was a subject for heated discussion. One group of people argued that only those people who have had experience and a tradition of traditional rulers should express their views on the subject. The reasons for such a stand were articulated thus:

(a) Only communities which intimately know the institution and have had experience of it can meaningfully say whether or not they like the institution to exist;

(b) The institution of traditional rulers is an essential part of a culture which applied only to a specific people and in a variety of ways; and

(c) Above all there was fear that if this traditional institution were to be left to the open debate of all, the majority of Ugandans might be unfavorable to it.

19.85 The nature of the constitutional debate, however, and the objectives set out in Statute No. 5 of 1988 and the spirit in which the Commission operated all dictated that every Ugandan had a right to freely debate any issue connected to good governance of the country. While therefore the final recommendation on the institution would depend on a number of factors, the discussion on the issue was made truly national.

Arguments for and Against the Institution

19.86 There were two broad camps on the issue, one for and the other against the institution of traditional leaders. The people who stated they did not mind that areas which were desirous of having traditional leaders to have them were taken as supporting the institution. The views of those who remained silent on the issue could not be interpreted and so did not influence the debate either way.

19.87 Among the reasons advanced against the institution were the following:

(a) Traditional rulers were dictatorial or oppressive in the past. They exercised absolute rule before the advent of colonialism, having power over life which they often abused. Their rule has no place in the modern world which craves for democracy and respect for life.

(b) They had a purpose to serve in the past when society was very backward and there was need for a cultural leader to keep law and order. That purpose no longer exists since modern institutions have been designed to bring peace and unity.

(c) Traditional rulers are expensive to maintain. Their restoration would imply a return to a system of feudalism whereby the subjects pay dues on much of what they produce or earn to the institution. Such a practice would be unbearable and unacceptable in the contemporary society.

(d) Traditional rulers were said to have contributed in no small measure to the sufferings of post-independence Uganda, with the Kabaka of Buganda sharing especially in the responsibility for the crisis of 1966.

(e) Some accused the institution of creating sectarianism especially where one people are divided into the ruling and the obeying classes or castes.

(f) Above all the majority of views in this category regarded the institution as not conducive to nation-building and national unity. It was seen as obliging people to think primarily of their own ethnic groups thus encouraging lack of openness to, the country as a whole. Those who thought that traditional rulers must necessarily have governments to head, dreaded the thought of repeating the experience of the 1962 Constitution of *governments within a government.*

19.88 Those in favour of the restoration and preservation of the institution of traditional leaders were quite articulate as to its utility and relevance. Buganda submitted the majority of views on the issue, which included the biggest single memorandum received by the Commission from the *Ssabataka-Ssabasajja's* Supreme Council and' Clan Leaders. The *Abalangira* of Busoga, the *Babiito* clan of Toro and the *Orukurato orukuru oruteraniza Engabo za Bunyoro-Kitara* also submitted memoranda.

19.89 The arguments most emphasised included the following:

(a) The institution of traditional leaders is part and parcel of the cultural heritage of some Ugandans. As such, those who want it and respect it should be able to have it as an essential part of their fundamental right to culture. The institution is intimately linked to the clan system which forms the essence of all social relations. Without the *Ssabataka* (head of clans) in the case of Buganda, the entire clan system and social development is seriously affected.

(b) The institution did a lot to unite people and forge their identity. It can do the same now and in the future as other .monarchies in Europe and Africa have continued to do for centuries. To achieve meaningful and lasting national unity, it is imperative that the different units which make lip the nation-state are strongly united among themselves. Far from being a hindrance to national unity, the institution of traditional leaders, once well motivated, is an important asset towards that goal. In this view it is not accidental or coincidental that the abolition of the institution in 1967 was the beginning of the real national instability and disintegration.

(c) Traditional leaders inspire and motivate their people for development in every aspect. They advocate cooperative action, encourage community development, enhance education and economic growth. All this is possible because of the special attachment people have to them. Their word is much respected. Their praise is much appreciated and their example is emulated.

(d) Traditional rulers have important judicial powers in the clan affairs of their people. Their judgment is much respected and so tends to bring about peace and reconciliation among family members, clan members and between clans.

(e) Every nation to be strong and stable needs values and traditions on which it is based. Without a specific identity a nation cannot be proud of! itself, let alone be respected

by other nations. The values and traditions on which Uganda should be built should come from every ethnic group in order to provide an enriched identity of unity in diversity.

Like all other aspects of culture, the institution of traditional leaders grows and adapts to the changing values and aspirations of its people. It is the ordinary people who condition it and re-shape it to be constantly relevant. The values of democracy, participation, respect for human rights, mutuality and cooperation with others all influence the nature and functioning of the institution of traditional leaders in the contemporary society.

(g) The fact that the institution was dictatorially and unilaterally and, as most advocates assert, unconstitutionally abolished, and was given as an extra reason why it should be restored. The NRM government ushered in a new era to rectify the errors and grievances of the past. One such error which has caused much grievance was the abolition of traditional rulers in 1%7.

19.90 After assessing the arguments for and against the institution, the Commission had to decide whether its recommendations on this issue would be based on the majority view nationally or on the majority view in each former kingdom and Busoga. We decided to base our recommendations on the majority view of the areas concerned, which have traditionally had the institution. We had several reasons for doing so:

(a) The institution of traditional leaders is an aspect of the human right to culture. Each of Uganda's areas has its specific culture which should be respected.

(b) We observed that there are other cultural aspects practised in some areas of Uganda Which, if brought to the decision of all Ugandans may be condemned by the majority, although if those specific areas they still command much respect. We have taken the stand that strong cultural sentiments about a particular issue ought to be given consideration even if emanating from a numerical minority nationally, provided it is not against the spirit and the declared objectives of the Constitution.

(c) The views from Buganda on this issue were nearly unanimous in favour,. {, institution. To discard such unanimity in favour of national majority appeared to us to offend against the wishes of powerful minority. This can itself set up or exacerbate deep tensions in any society. One of the principles of the new Constitution is respect for the rights of the minorities.

Buganda's Position

19.91 As stated before we have found that the institution of traditional leaders has been strongly supported in the Buganda region. Memoranda from all levels of RCs, individuals and groups of people from Buganda came out in favour of the- restoration of the Kabakaship. It was only in very few districts of Buganda that there were views which did not favour the restoration of kingship. Among all the regions of Uganda, Buganda submitted to us the greatest number of memoranda. The *Buganda Constitutional Proposals* submitted to us were

the result of many memoranda collected by or submitted to the Buganda Constitutional Committee.

Position of Other Former Kingdom Areas

Ankole:

19.92 The situation was rather different in the other kingdom areas and Busoga. Mbarara and Bushenyi form the two districts of the former kingdom of Ankole. Judging by the seminar reports, our own observation, and the memoranda from these districts, there appears to be a dominant view that kingship has no further role to play in those areas. In the seminars and public debates we noticed that, when compared to Buganda, there were far less people who supported the restoration of Ankole kingship. Even those few who supported it did not speak with the same love and commitment to it as their Baganda counterparts. The memoranda of the two RC 5s in Ankole did not favour the institution. The majority of the memos of RC 3s and RC 2s were also opposed to it. It is significant that all who opposed the restoration of the monarchy did not even see any role for it as a purely cultural institution.

Bunyoro-Kitara:

19.93 The three districts of Hoima, Masindi and Kibaale in the former kingdom of Bunyoro had strongly mixed views on kingship. On the whole the majority did not favour its restoration. Of the 27 RC 2s of Masindi district which said something on the issue, 25 were opposed to the restoration of the monarchy. A similar trend is found in the district of Hoima. In Kibaale district, out of 34 RC 2 memoranda 29 were not in favour of restoring the monarchy and saw no role for it. The well argued memorandum, however, we received from the five members of the *Orukurato Orukuru Oruteraniza enganda za Bunyoro-Kitara* was very strongly in favour of the restoration of the kingship in Bunyoro and asserted to be speaking "on behalf of ourselves and on behalf of the entire people of Bunyoro-Kitara". The views contained in this memorandum did not find support in the views submitted by RCs, other groups and individuals of Bunyoro.

Toro:

19.94 In the former Toro Kingdom which in pre-colonial times covered what is now Kabarole district the majority of views expressed through seminars, public debates and memoranda were against the restoration of the institution of *Omukama.* Among the RC lIs which spoke on the issue, for example, only five out of twenty-nine supported the institution. The Commission received a memorandum prepared by 32 elders of Toro and presented by their delegation to us. In that memorandum, the elders strongly recommended the restoration of Toro Kingdom.

Busoga:

19.95 In the districts of Jinja, Iganga and Kamuli which made up the former territory of Busoga under the Kyabazinga we found a significant minority in support of the restoration of Kyabazinga. We also received a memorandum from the *Abalangira and Bambejja of the*

in so doing facilitate development. Being a cultural aspect and one that is free for all who want to have it, the issue of traditional leaders should not lead to resentment by those societies which never had it and which even when given a chance, would not choose to have it.

Feudalism and modern democratic society:

19.101 Another concern has been on the issue as to whether traditional rulers at the present time can avoid a return to feudalism and instead promote modern democratic values. Those opposed clearly indicate that the institution belongs to the past, before democratic and human rights values became the centre of society. The advocates of the institution of traditional rulers argue that, especially when it is left out of politics, it is always able to adapt itself to contemporary values without losing its identity and that of the people it unites.

Principles

19.102 The principles on the basis of which the issue of traditional rulers should be decided have also been referred to in various ways in the previous section. What is given below is a summary of the main principles.

Right to culture and cultural identity:

19.103 The institution of traditional rulers belongs to the right to culture, once the people who are affected by it freely choose to have it and continue with it. The same right gives power to the people to decide to do away with any aspect of culture they no longer wish to have.

The non-political role of traditional leaders:

19.104 The largest majority of those who want the institution of traditional ruler and those who do not mind whether it exists or not emphasised the principle that if the institution is restored, it should not have political roles both in the central and local government. This principle was a result of the lessons of our history. Keeping the traditional ruler out of the tensions of politics was seen as the best way of preserving his position and ensuring a smooth process of nation-building. It was in this context that people suggested that the title "traditional ruler" should be turned into "traditional leader" since his main duty would be to guide and lead his people in cultural unity and "development rather than involved in "rule" through an active position with an executive authority in government.

The people concerned to democratically decide:

19.105 As stated above, the principle that the people of a particular ethnic group or of the former kingdoms and Busoga should be the one to decide on the issue using democratic means was accepted by the Commission. It is a necessary and principled compromise to deal in this way with important issues of local importance which also have some national significance.

The rights of the people concerned and importance of respecting fundamental human rights:

19.106 Many views while wanting the people concerned to determine the manner in which the cultural leader and his institution should operate, wanted also to ensure that the fundamental human rights are observed. Only in this way would the fear of the national majority which was opposed to the institution because of its tendency to feudalism and sectarianism be dispelled.

Desirability of building the new Uganda on the basis of our cultural identity and values:

19.107 Many views expressed the conviction that our national interest to emerge as a strong and stable nation should take our cultural values as a basis for nation-building. Those traditional institutions, systems and values which have managed to outlive the destructiveness of the colonial and post-independence periods, and which can be usefully reconciled with the modern principles of democracy, human dignity, human rights and development should be encouraged. They give a specific identity to our nation and ensure that Uganda will not totally depend on artificial, foreign concepts, values and institutions while neglecting its own. The contribution of Uganda to the world society would only appear in its best form when it is based on our local values and aspirations.

SECTION FIVE: ASSESSMENT AND RECOMMENDATIONS

Establishment of Institution of Traditional Leaders

19.108 In view of what we have stated in this chapter, we restate our conclusion that the majority views on the national level expressed against the institution of traditional rulers constitute an important objection to the return of:

(a) separate constitutional arrangements and treatment for various parts of Uganda just because they have monarchs or traditional rulers of entire ethnic groups;

(b) mixing traditional institutions of a local nature in the national politics of the country thus causing national instability and resentment;

(c) using national funds to maintain the institution of traditional leaders which exists in only some parts of the country;

(d) a feudal system of relationship between the traditional leader and the people of his area which becomes an obstacle to promoting new values of democracy, human rights and development; and

(e) a system of physical and psychological use of force to oblige everyone under the confines of a given ethnic group to pay homage and allegiance to, and contribute to the maintenance of, a traditional leader.

19.109 We agree that for the peace, prosperity and unity of Uganda, traditional institutions should not be shaped in a way that gives particular regions, ethnic groups or districts a

Baisengobi Clan in Busoga signed by ten elders and presented by the delegation. They recommended restoration of "a traditional head as a symbol of unity", to "take care of our cultural values"

Kasese:

19.96 Among areas which did not form cultural units with the above described kingdoms, it was in Kasese district that we found a significant minority in support of the institution of traditional rulers. It may be noted that the kingship that existed in part of the present Kasese district was suppressed during the colonial period when the Kingdom of Toro was spread over the areas now comprising Kasese and Bundibugyo districts. The overrule of the Toro Kingdom thus imposed was so unpopular in those two districts that it became part of the basis of their demand for separate district status. The views which requested restoration of traditional rulers in this context could only be interpreted, where they were not articulate enough, as demanding recognition of the *Jremangoma* as king of the *Rwenzururu.*

Non-kingdom areas:

19.97 In the non-kingdom areas, it was in Arua, Nebbi, Gulu and Kotido that we found a significant minority that was either in favour of traditional rules in general or did not mind if those areas which had them wished to restore them as purely cultural rulers. Other than these areas, the overwhelming view in the non-kingdom areas was opposed to the restoration of traditional rulers. Those who did not care if these institutions existed where the people desired them were a small minority.

Concerns

19.98 From what is discussed in the previous sections of this chapter the major concerns of both those who want the institution and those opposed to its restoration have been elaborated. What is done here is to summarise the major concerns and principles before we give our own assessment and recommendations.

***National u**nity:*

19.99 Both the advocates and the opponents of traditional rulers advance the issue of national unity to support their stand. Traditional rulers are said to be against national unity and to complicate the process of nation-building. They are, however, also said to be the pillars of ethnic unity which is a prerequisite for national unity. The national unity we aspire to have should be one which welcomes and respects legitimate diversity rather than enforcing uniformity everywhere.

Unequal treatment and special privileges:

19.100 Another major concern for both camps is about arrangements which offer unequal treatment to the various regions of Uganda, treatment that is often interpreted as involving special privileges or status. Those opposed to the institution argue that the crisis of 1966 was a result of resentment of such special status for Buganda. The advocates of the institution contend that what traditional leaders do is to enhance the special identity of the people and

constitutionally privileged position over other regions, ethnic groups or districts. Such constitutionally privileged positions could lead to tensions and harm the well being of the nation.

19.110 We also agree with the view expressed by the overwhelming majority that traditional offices should not have any role to play in national government and politics. Leadership positions in national politics must be determined by the democratic choice of the people,

19.111 Because of the above, we also agree with the suggestion of the majority that traditional leaders should not hold any political post or play any role in local government and politics. To do so would tend naturally to lead them into national politics which to all intents begins from the local level.

19.112 We have found the reasons given for having traditional leaders where the ethnic group~ concerned want them convincing. We are of the view that traditional leaders with purely cultural and developmental roles should be able to exist in Uganda without harming national unity or interfering with the operations of both local and central governments.

19.113 It is our considered view that the question as to whether a particular region, ethnic group or district should or should not have a traditional institution is of legitimate concern to all Ugandans if its existence would have implications for national politics or national resources. Otherwise we believe that the people concerned are the best judges on the issue, either because they have had a long history of association with the institution or they believe the institution has still an important role to play for them.

19.114 It would certainly not be conducive to unity and stability to suppress the cultural desires of any ethnic group in the country unless such desires are inimical to the national interests or otherwise contrary to the basic ideals of the Constitution. The cultural desires of ethnic groups should be guaranteed by the Constitution, subject to the above qualification.

19.115 Recommendation

(a) ***The institution of traditional leader should exist where the members of a region, ethnic group or district concerned express the desire to have it.***

(b) ***It should be established in accordance with the respective cultures, customs traditions, wishes and aspirations of the people concerned and subject to the provisions of the new Constitution.***

(c) ***A traditional leader should not play any role in the politics and governance of both the central and local governments.***

(d) *The functions of a traditional leader should be restricted to purely cultural and developmental roles.*

(e) *A traditional leader who opts to join central or local government politics or takes up office in either government should first resign from his office of traditional*

leader and renounce his title. He should automatically forfeit all benefits and privileges attached to his office.

Titles

19.116 The titles to be given to the traditional leaders of any ethnic group or region should be left to the people concerned. The four monarchs and Kyabazinga who were recognised traditional rulers in the 1962 Constitution can, if their respective peoples desire to restore them, enjoy the same titles as those of 1962.

19.117 Recommendation

It is the right of the people concerned to give such titles and names to their respective traditional leaders as their cultures and traditions require ..

Allegiance

19.118 We recognise the fact that all areas of the country are now settled by Ugandans from other parts of the country, some of whom may not understand or easily appreciate or assimilate the cultures of the indigenous people where they settle. Adherence and allegiance to local cultural practices should therefore be a matter of the individual's choice. Such freedom would add to rather than subtract from the respect and dignity of traditional institutions if people freely embrace and subscribe to them. This freedom to have allegiance and pay homage to a traditional leader was much voiced in people's submissions. We support it.

19.119 Recommendation

Neither the indigenous people of a region or district which has a traditional leader nor those from outside that region or district should be compelled to adhere to local traditions and cultural practices or to pay allegiance to the traditional leader.

Maintenance

19.120 The issue of maintenance for the institution of a traditional leader received much discussion in people's views. There were several alternatives considered.

(a) There was a total unanimity that the central government should not maintain traditional leaders. It was considered dangerous to the nation and in the long run to the institution itself.

(b) The central government funds having been rejected, the second possible source considered was the federal state or Local government in which the traditional leader exists. Some views, including the *Buganda Constitutional Proposals* wanted it to contribute to the maintenance of the traditional leader. The majority of views, however, were opposed to it, since local government finances are by nature very political. The annual budget of the local government could each year tend to cause

heated discussion of the traditional leader, thus bringing the institution right into politics.

(c) The third alternative was to maintain the institution on the voluntary basis of those who support the institution. This is the alternative which received an overwhelming support from views from the people. An institution that is voluntarily maintained would be free from resentment from any corner and from control or undue influence from any other authority. Voluntary contribution could also come from the central and local government as a donation which is not required by law, depending on the contribution to development and to the unity of the people it finds in the institution of the traditional ruler.

(d) The last alternative discussed was for either the central or loc<ll government or both to provide the institution with assets given once and for all, from which the institution would be able to draw its regular income. This alternative will be dealt with further when we come to consider the much heated subject of return of the properties of former traditional offices.

19.121 Recommendation

(a) The costs of maintenance and upkeep of a traditional leader and his office should not be the responsibility of government, either central or local.

(b) No person should be compelled to contribute to the costs of maintenance or upkeep of a traditional leader.

Relationship Between Traditional Leaders and Government

19.122 In spite of restricting the roles of a traditional leader to areas of culture and development, we are mindful of the fact that in the exercise of those roles, traditional leaders must at times interact with government organs and leaders. Questions are bound to arise as to how relations can be defined.

19.123 Views from some people expressed a wish that the cultural significance of a traditional leader should not officially go outside his traditional areas of influence. In case such a leader decided to visit other parts of the country, as indeed he is entitled to, he should go there in his private capacity. If the people in those other parts decide to welcome hi in as more than a private individual, they would only be exercising their right.

19.124 Since as recommended above traditional leaders should not hold any governmental offices or be heads of local governments, any proposal emanating from them which would require implementation by organs of government should be regarded not as policy initiatives but rather as mere proposals to be considered. Government could implement such proposals when they are found to fall within its official plans, budget and set priorities. This would be true of both central and local governments. Where a local government operates in an area of influence of a traditional leader, in matters of a government nature, such governments should be entirely outside the control of the traditional leader.

19.125 As far as protocol is concerned, on national functions government representatives should take precedence over a traditional leader unless the latter is officially invited to officiate. In functions of a traditional or cultural nature organised by the traditional leader or his council, the leader would naturally take precedence over a government representative, with the exception of the Head of State who, by nature of his office, always takes precedence over anyone else.

19.126 Recommendation

The proper relations between the government and the institution of traditional leaders will be realized when each institution keeps to the roles given to it in the Constitution.

19.127 (a) In order to acknowledge the positive role that can be played by traditional leaders who enjoy the support of their people, many views suggested that all or some of the privileges of traditional leaders as contained in the Schedules 1-11 of the 1962 Constitution should be considered for restoration. The specific ones referred to included granting of a diplomatic passport to the leader, exemption from direct personal taxation, protection of his personal property from compulsory possession and a specially appointed council to settle any conflict which may arise between the central or local government and the institution of traditional leaders.

(b) We agree with many of those proposals where they do not go against the position and roles we have recommended for the institution of traditional leader. We also find useful the recommendation contained in the *Buganda Constitutional Proposals* of setting up a special council to settle any disputes between the institution and the government. Such a negotiated approach removed from the open courts would be advantageous to both institutions.

19.128 Recommendation

(a) A traditional leader, fully recognised and officially instituted by his people in accordance with the customs and traditions should have the following privileges:

(i) entitlement to a diplomatic passport;
(ii) exemption from direct personal taxation; and
(iii) freedom from compulsory acquisition or taking of possession of property held in his personal capacity.

(b) Whenever there is a dispute between government and a traditional leader personally or the institution itself, both parties should constitute a council of equal representation to decide the dispute peacefully and amicably.

Traditional Practices and Customs

19.129 Our analysis of people's views and our observations of the seminars and public debates clearly indicated that a large section of the people identified the institution of traditional leaders with outmoded, and sometimes de-humanizing and oppressive practices.

In modern Uganda people do not expect any person, regardless of his status, to trample on the rights of others. The institution should therefore be under the law and comply with it.

19.130 It is, however, clear that supporters of the institution of traditional leaders are free to express the dignity and respect they wish to show to it without being restrained by law. This is a matter which should be left to the culture and customs of the groups concerned. The law should not interfere in cultural practices that are not against public interest or the ideals of the Constitution. Among the ideals of the Constitution is the Bill of Rights. We believe it necessary to make a recommendation designed to allay the fears of those who see the possibility of the institution refusing to adapt to the new values.

19.131 Recommendation

Customs, practices or traditions relating to a traditional leader but which detract from the rights of any person as contained in the Constitution should be abolished.

Election and Removal

19.132 The procedures for electing or appointing a traditional leader and the manner of removing him, together with the manner of operation of the institution and its related structures should be left to the groups concerned. It is each people who know best their customs and practices and the cultural functions of their leader. In order, however, to dispel any possibility of suppressing any person's fundamental rights, and thus causing unnecessary tensions which can undermine the institution, we have accepted people's suggestions that in the entire process, the rights of every person should be respected.

19.133 Recommendation

Subject to the ideals and provisions contained in the new Constitution, the election, appointment, succession and removal of a traditional leader, the organisation of the institution and if necessary its abolition should be solely left to the customs, practices and usages of the community concerned.

Assets of Former Traditional Rulers

19.134 The assets of former traditional rulers abolished in the 1967 Constitution are intimately connected with the important issue of their maintenance and upkeep once their offices are re-instated. It is also linked with the functions they would have. This issue takes on a more significant role since, as we have noted above, the majority of views wanted the maintenance and upkeep of these institutions to be on voluntary basis and we have recommended accordingly.

19.135 It should be remembered that under many monarchies, the king's powers and influence derive much from his or her control over land and the estates which are attached to kingship to allows it live a standard of life that commands respect. The institution of kingship is an elaborate one in most societies without sure and adequate means of maintenance it can hardly function to realise the objectives for which it is instituted.

19.136 Many proposals on this subject have been given in people's views and especially in those memoranda and delegations by the representatives of former traditional kingships and the "Kyabazingaship." We find many of these proposals useful in solving the issue of maintenance of the institution of traditional leaders.

(a) Among the proposals given were those that government should return to the institution all such assets and properties which belonged to the institution before the crisis of 1966. Such would include not only the official residence of the king but also all such buildings which were used for the functions of the king and royalty.

(b) Traditional rulers had land estates given to them by the colonial agreements both in their private and official capacities. These estates would also revert to the institution to serve as sure sources of revenue.

(c) There are some traditional places and sites of great national importance and which are also centres for tourism attraction. These include sites of royal tombs" royal coronation and others. Because of their importance and attraction government should contribute to their upkeep as centres of our heritage while the revenues collected should go to the maintenance of the institution which would have the ownership of such sites and places.

(d) Another proposal given and already put in motion in the case of Buganda was that where the institution of traditional leader is clearly' desired by the people concerned the institution should negotiate with the government for the official return of the properties and assets which were unilaterally taken from it by the previous governments.

19.137 We agree with the proposals given above. The return of properties which were misappropriated from the Asians in 1972 is currently taking place. This policy of government has encouraged the institution of traditional rulers and other groups or individuals to demand the same justice and to ensure that there are no double standards in this whole exercise.

19.138 Recommendation

(a) The property and assets which belonged to the institution of a traditional ruler in his official capacity before 1966 *should be returned to the institution where the people concerned want the institution to be re-established.*

(b) The estates which belonged to the institution of a traditional ruler in his official capacity before 1966 *should likewise be returned to the institution, once the people concerned want it re-established.*

(c) Government should contribute to the maintenance of traditional sites and places of national importance and which preserve our heritage. The revenues from them, however, should contribute to the upkeep of the traditional institution where it is re-instituted by the wish of the people concerned..

(d) Government should negotiate with the representatives of the institution to determine the properties, assets and estates which should be returned and the mode of their return once the people concerned have demanded the restoration of the institution.

(e) Government, both central and local, can voluntarily contribute to the maintenance of the institution of traditional leaders either through donation or granting it assets which bring in revenues or both.

Buganda

19.139 As we have discussed elsewhere in this chapter, the only ethnic group which expressed to us a nearly unanimous desire to have its king restored is that of the Baganda. We therefore, recommend the immediate restoration of the institution of Kabakaship in Buganda.

19.140 Recommendation

The institution of Kabakaship in Buganda should be officially re-instated.

Other Former Kingdoms Areas and Busoga

19.141 As discussed elsewhere in this chapter, what we received from the views, seminars and our own observations indicated that there was neither consensus nor majority views on the restoration at the moment of the institutions of traditional leaders in the former kingdoms of Ankole, Toro and Bunyoro, and in Busoga. Since however, we have recommended the recognition of the existence of the institution of traditional leaders where the people concerned decide to have it, it is our view that should the people of those areas decide to have the institution they would be free to have it.

19.142 Recommendation

(a) ,The former kingdoms of Ankole, Bunyoro and Toro, and the territory of Busoga, may have the institution of traditional leaders only when the people concerned have clearly expressed the wish to have them.

(b) Other ethnic areas which did not have the institution of traditional leaders in the 1962 Constitution but which may in the future want to have it would be free ,to establish it in accordance with the expressed wishes of the people concerned.

(c) The institution of a traditional leader described in this chapter should be understood as meaning the former kings and Kyabazinga whose status was included in the 1962 Constitution and any other traditional leader of an entire ethnic group in Uganda, recognised by the people of his total area of influence.

CHAPTER TWENTY

LEADERSHIP AND A CODE OF CONDUCT FOR LEADERS

20.1 Ugandans generally are deeply worried by the apparent moral decay and misconduct of so many leaders - both elected and appointed public office-holders. To many, the situation appears to be out of hand, beyond the nation's ability to cope with. They demand a solution to the problem. The success of government or of the new Constitution and the future development of Uganda will, to a large extent, depend on the quality of the leaders,', responsible' for implementing its provisions. It is imperative for the new democratic constitutional order to make major efforts to change standards of leadership for the better.

20.2 The people want to see a new culture of leadership where both elected and appointed leaders serve the nation and the people. They generally believe that the new Constitution has an important part to play both in setting new standards of leadership and in providing mechanism to encourage 'adherence to such standards. Many aspects of the new constititutional orders we have recommended in other chapters are intended to help to achieve these aims - for example, recommendations on recall by voters of elected leaders at all levels. In this chapter and the one that follows *(Inspectorate of Government)* we examine specialised mechanisms intended to playa major part in establishing and enforcing the new standards of leadership Galled for by the people.

20.3 This chapter contains four sections. The first section discusses the people's demands, for new standards of leadership. The focus is the concerns and principles they have advanced to guide what the new Constitution should do to establish such standards. The second section discusses the people's views on the need for and importance of a leadership code of conduct, .including views advanced in the long debate in the National Resistance Council over the *Leadership Code* (Statute No.8 of 1992) passed earlier in 1992. The third section discusses the concerns and principles emphasised by the people specifically directed to the Code of Conduct itself. The final section analyses people's proposals on how the Leadership Code of Conduct should operate and sets out the Commission's recommendations on the subject.

SECTION ONE: THE PEOPLE'S DEMAND FOR NEW STANDARDS OF LEADERSHIP

20.4 Any realistic attempt to establish new standards of leadership must take account of the history of leadership in Uganda, and the root causes of why the past and to a large extent the present leadership standards are unacceptable. The people's concerns about past and present leadership and the principles they advocate for the future provide guidance as to the standards to apply in the new Constitution. The experience of other countries concerning the role constitutions can play in setting new standards needs to be considered to ensure that what we attempt in the new Constitution is realistic. The stand taken on leadership in past and present Ugandan constitutions can then be compared with the overall approach on leadership taken in this report as a whole.

Historical Perspective

Leadership in the pre-colonial period:

20.5 In pre-colonial Uganda, public duties were performed in accordance with ethnic customs under the guidance of local clan leaders, elders or rulers. In most societies, public administration and service in the modern sense, with its bureaucracy and red tape, was almost completely unknown. There were no wages, salaries or fixed remuneration as we know them to-day. Rewards were generally in the form of tangible things and bestowal of gifts or honour. Community obligations were performed in conformity with a society's tradition, culture and customs. The type of society and community determined whether there was any specialization of administrative officials, or whether those duties were handled by hereditary or age set leaders.

20.6 In the segmented societies, there were no hereditary rulers or paramount chiefs. Leaders were generally not appointed, nominated or elected; instead, they simply emerged, as persons who lived exemplary lives, showed extraordinary courage or heroism and were spontaneously respected. To remain leaders, they needed to reciprocate that respect by being just, fair and honest to the people they led. On the other hand, in the more centralised societies of the centre and west of Uganda, hereditary rulers could be more open and direct in the exercise of their powers; they were often feared and generally obeyed by their subjects. They exercised centralised authority, in some cases - as in Buganda - through appointed rather than hereditary chiefs, so that "administrators" were dependent on the patronage of the ruler.

20.7 It needs to be emphasised that even hereditary rulers were not exempt from people's control of excesses of exercise of power. Customary rules well known to all determined the main duties of leaders of all kinds, and set limits on the way in which they carried them out. Excesses and abuses of office involved acting beyond the limits set by custom. They were not accepted and could eventually lead to overthrow of leaders. Although accountability to the people was more notable among the segmented societies, it was also evident to some extent in the entralised societies. It is a feature that has not been much evident in leadership since that time.

Leadership in the colonial period:

20.8 The on-set of colonial bureaucratic administration, coupled with the introduction of a wage and market economy, transformed traditional leadership in many ways. First, the ordinary people were even less involved in their own governance than had been the case in the pre-colonial period (where they had some role, most clearly manifested in the segmented societies). Second, the importance of the traditional rulers and chiefs was reduced in the early colonial period, and later the role of chiefs was taken over by appointed civil servants. In general, both administration and traditional leadership were subordinate to a strong colonial authority. Ugandan national political leaders began to emerge only in the later colonial times. Third, there was less accountability of the appointed leaders than in the previous era. Corruption or abuse of office could not easily be dealt with by the ordinary person, who was not encouraged to be politically aware and lacked effective information channels. If he or she wanted to protest, it would require an appeal to the remote Governor or the even more remote colonial office in London. Lack of involvement of people in their own government

and limited accountability of administration provided a poor basis for the building of a democratic government and accountable administration in the post-colonial period.

Leadership in the post-independence era:

20.9 The lack of preparation and education for democratic governance created conditions which enabled dictatorships to emerge in post-independence Uganda. Those controlling the central government quickly did away with many major checks on their powers. Federal or decentralised arrangements for exercise of power were abolished. Power was concentrated in the hands of an executive President. What enforcement mechanisms that existe.d was brought firmly under the control of those in power. Government even ceased to be accountable to the people through regular national elections. As we have seen in previous chapters, in the absence of regular and free elections, those in power had to maintain support from "significant" groups in other ways. All arms of government gradually became sources of patronage for the government of the clay. Dictator-presidents appointed supporters to positions as chiefs and officials at all levels of society. As we saw in Chapter Sixteen *(Public Service)* Idi Amin even appointed army personnel as parish chiefs. From the bottom up, these officials tended towards the same dictatorial tendencies as the ruling party or the national government of the time. They ignored the people's rights, and committed gross abuses of office with impunity.

20.10 At the same time, with inadequate checks and ineffective accountability, those in control of government were able to plunder the resources of the State to become wealthy. Corruption became either acceptable or tolerated at all levels of government. Appointment to public office became the best and most certain way of breaking the circle of poverty. Just as officials at even the lowest level copied the dictatorial tendencies of those at the centre, they also copied their corrupt ways.

20.11 As a result, the suffering under dictatorship penetrated down to every village, perpetuated by the agents, hooligans and functionaries of the ruling group or clique. But even the removal of dictatorship could not end the suffering of the people. Abuse of office and corruption by officials has continued to be a way of life in Uganda at all levels. They have become the accepted ethic of many in public office, from the lowest to the highest levels.

Concerns and Principles about Leadership Standards Emphasised by the People

Concerns about corruption:

20.12 The corruption of elected and appointed leaders at all levels was constantly bemoaned in submissions from the people. Many leaders use their positions for getting personal wealth and power. They steal government al1'J donor funds, so that the resources of government intended to assist the development of the nation are wasted and the ordinary people suffer. They seek bribes for carrying out official duties. They use their official positions in their own interests by awarding contracts to companies in which they have interests.

Concern about abuse of office:

20.13 Abuse of office by all kinds of leaders also results in much suffering. Abuse of office was seen by people as including such things as neglect of duties, or making arbitrary Dr discriminatory decisions about granting of services or rights to benefits of various kinds to people. It includes abuse of peoples human rights and freedoms by police officers, members of the army and security organisations, education and medical personnel etc. Ordinary people have generally felt powerless in dealing with government officials of all kinds.

Concern about dictatorial tendencies of leaders:

20.14 The dictatorial tendencies in elected and appointed leaders at all levels were noted by many people. Leaders have tended to want to monopolise power, and exclude ordinary people from decision-making and benefits.

Concern about lack of transparency and accountability:

20.15 People were concerned about the lack of information available about what leaders do with public funds. The truth is constantly hidden. They also complained of the lack of any effective mechanism for ensuring accountability of leaders to the people they are supposed to serve. There is no effective challenge to anyone who abuses office. There is no adequate check on an official who has amassed wealth far beyond what should be possible on government emoluments.

Concern that abuse by leaders extends beyond public office-holders:

20.16 For the ordinary person, suffering caused by abuse of office is often at the hands 9f . leaders of non-governmental bodies, the organisations they deal with on a regular basis. Organisations such as churches, trade unions, cooperative societies, community development organisations, cultural bodies, professional organisations, interest groups (such as those representing women and youth), political parties and so on. People expressed concern that new standards of leadership and accountability needed to extend to leaders of all such bodies.

Concern about people's understanding of leadership qualities:

20.17 Some expressed the view that ordinary people have contributed to the problems ,of bad leadership. When they have had the opportunity they have not always known how to Identify a good leader. This is mainly a consequence of the limited opportunities they have had over the past 100 years to participate in selection of leaders and of the corrupt leadership practices that have developed since independence. As a result, they have often supported people who have bribed them or offered them calculated favours to win votes. They have thus tended to support the rich and those close to or supported by the ruling faction. These tend also to be the ones most likely to harm ordinary people if displeased.

Principle of a broad concept of leadership:

20.18 The concept of who is a leader should extend to the lowest levels of elected and **appointed officials, as well as to the leaders of non-governmental bodies. Thus all RC**

committee members from the village level upwards- would be expected to meet the highest standards of leadership. The same would apply to leaders of religious bodies, cultural organisations, trade unions, professional bodies, interest groups and so on.

Principle of service for the common good:

20.19 The power of all leaders - both elected politicians and appointed officials - comes from the people. They are elected by the people or appointed on behalf of the people. The people have one aim in mind for them, that of serving the people for the common good. They should not seek office if they are not prepared to serve the people they are either elected to represent or are appointed to serve. That responsibility overrides self interest. If there is any conflict of interests between a leader's own interests and those of the people, the leader is required to put his or her own interests second. This may even result in sacrifice or in personal loss, especially for elected leaders. In general, the higher the position of leadership, then the more serious is the responsibility of the leader. Even the leaders at the lowest level, however, have the same basic duty.

Principle of leadership setting an example:

20.20 Leadership should aim to set standards and goals which the rest of the nation follows. If we are to achieve the national objectives the Commission has recommended to be included in the new Constitution, it is especially important that directions be set by the leaders. A good example provided by a respected leader goes a long way in influencing others to do the same.

Principle of honest, impartial and non-discriminatory leadership:

20.21 People want to see all leaders behaving in an honest and upright way. This principle extends beyond ending bribery, conflicts of interests and other corrupt practices involving abuse of office. It includes the kinds of practices used by elected leaders to get into office. Bribes to voters and empty campaign promises must also become a thing of the past. Leaders need to act impartially in the interests of all the people they serve. They should work for all the people they representer serve irrespective of factors which have so often served as a basis for discriminating against some people in the past. These include gender, tribe, religion, political party membership or citizenship. .'

Principle of sensitivity to marginalised groups:

20.22 All leaders should be especially sensitive to the needs and the problems of the hitherto marginalized sections of our society. They include the poor, the children, the rural workers, the sick, the disabled and the aged. I f their rights are to be fulfilled, then they need preferential treatment. There should be a commitment by society, through its leaders, to uplift those most in need and most vulnerable.

Principle of developmental leadership:

20.23 Leaders - both elected and appointed - should seek to promote the welfare of the people they represent. They need -a clear vision about where they and their people are

heading. They should seek development through policies and programmes formulated in consultation with the people and which will assist the people.

Principle of democratic leadership:

20.24 Leadership needs to be exercised in a democratic style which respects people at all levels. Elected leadership positions should be open to all people. The people should be free to choose without undue influence. Prospective leaders, should therefore, not buy votes with bribes or empty campaign promises. They need to be open to recall and replacement if the people they represent are not satisfied with their performance. Leaders ought not to seek to monopolise power. They should seek to involve the people in decision-making. Democratic leadership is just as important at the village as at the national level and as vital in the management of political parties, trade unions and other major organisations as in the running of Parliament.

Principle of respect for the rule of law:

20.25 All leaders at all levels need to be fully committed to the rule of law established under the Constitution. Respect for the rights and freedoms of the people should be absolute. There must never again be a repetition of the abuses committed by security forces and party officials under past dictatorships.

Principle of periodic testing of leadership:

20.26 At every level of our society, the people's views on the performance of elected leaders should be given in the form of regular and periodic elections. Further, leaders who perform particularly poorly should be open to removal even between elections. There should never be self proclaimed life leaders holding public office anywhere in our society.

Principle of a sense of "shame".

20.27 Our leaders should become inculcated with the new standards of leadership so that they have a clear sense of what is becoming and what is unbecoming of a leader. They need to have the sense and understanding to resign once an action or behavior of a leader shames his or her public position and office, so as to maintain orderliness and fairness in society.

Principle of transparency and accountability of leadership:

20.28 Both elected and appointed leaders at all levels need to be fully transparent in their activities and fully accountable to the people they represent or serve. Transparency must extend to being open about their activities and about the public funds and property they handle. Accountability should also include both the way they carry out their duties and their honesty. The higher the level of leadership, the more public and open the accountability should be. People should be able to see that leaders, whose power comes from them, are exercising it in the people's interests, and not their own.

Principle of a new culture of leadership:

20.29 People want the principles of leadership to be accepted by all leaders at all levels as an unwritten code of conduct, well understood by the people and the leaders. They want a new culture of leadership as service for the common good to be inculcated into the ordinary people as well as the leaders. It should guide the people in selection and removal of leaders. Leaders must fully understand the new principles of leadership so that their conduct is always guided by them. The new culture of leadership should be based upon and encouraged by the new constitutional order and extend to all types of leaders in all major political, economic, educational, religious and professional bodies or fields.

Constitutions and Leadership

20.30 Under most constitutions, there is some avenue provided for dealing with wrong-doing by constitutional office-holders. Under the United States Constitution, for example, the President, Vice-president and "civil officials" (inclusive of judges) can be impeached by the Senate for treason, bribery and other "high crimes and misdemeanours", while members of the legislature are subject to disciplinary action and even expulsion for wrong-doings. Many other constitutions provide for removal of particular officials by their appointing authorities in cases of misconduct or misbehaviour. These officials include judges, members of the Public Service Commission 0r the Auditor-General. In order to prevent abuse of power through removal of constitutional office-holders for personal or political motives, there is usually a requirement for investigation by an impartial authority prior to removal.

20.31 Many constitutions are more explicit in setting standards for leaders. One of the main ways is to focus on prevention of corruption by specifying conduct which particular kinds of leaders must not engage in. Another is to provide for a code of conduct applying to a range of leaders. The provision of national objectives or goals in a constitution is also intended to set standards for leaders to follow. Idealistic objectives, however, will only be pursued by leaders of high moral fibre and integrity. This is itself an important reason for trying to develop effective constitutional provisions that contribute to improving leadership standards.

20.32 Dealing first with constitutions which prohibit certain kinds of conduct, some are general and comprehensive both in terms of the kinds of conduct and the leaders concerned while others are quite specific. The Constitution of Venezuela, for example, is comprehensive in prohibiting all public officials from holding more than one remunerated public position and from involvement in contracts with public bodies. In Yemen all ministers and members of the legislature are under similar restrictions. In Egypt such restrictions apply to the President, ministers and members of the legislature. More specific are constitutions such as that of Germany and Senegal which impose restrictions on the ability of the President to hold other posts. In Guinea, ministers are the main ones restricted in terms of occupation, as is the case with the United Arab Emirates, where they must also not seek profit from their official positions for either themselves or close associates. In Tanzania and - Peru, a range of occupations and business interests are forbidden to members of the legislature. Other constitutions forbid such leaders to be involved in government contracts (e.g. Bahrain, Guatemala, Malta and Venezuela) or to work for or be on boards of directors of businesses (e.g. Greece, Bahrain, Yemen and Germany). In most cases, there is no specialised mechanism for dealing with leaders who breach the provisions. Instead, breach is deal with

by use of the normal provisions for dealing with wrong-doing by presidents; ministers, legislators and other major officials of government.

20.33 Codes of conduct provided by constitutions are less common. Examples include Zambia, Belize, Nigeria, Ghana, Papua New Guinea, Vanuatu and Mexico. They set guiding principles which usually apply to many kinds of public officials - usually elected leaders,
constitutional office-holders and the more senior public servants. They usually specify.
certain kinds of conduct which are prohibited (though some leave it to letter laws or regulations to specify these). Most provide general principles, as in Papua New Guinea, Belize and Vanuatu. Leaders are required to avoid: conflicts of interest; conduct demeaning public office; conduct allowing their integrity to be called into question; and conduct which might endanger or diminish respect for or confidence in the integrity of the government. Codes of conduct usually require annual submission by leaders of statements of income, assets and liabilities. There is usually an authority given responsibility for administering and/or enforcing the code. A special court or tribunal normally deals with breaches of the codes. They tend to be treated as almost criminal in nature, and may attract penalties ranging from fines to suspension from or loss of office for various periods.

20.34 It is nowhere claimed that constitutional attempts to eradicate corruption and establish leadership standards are completely effective. On the other hand, if such provisions are actively enforced, they do put some pressure on leaders to meet basic standards. Those who fail are dealt with publicly, and ~ in cases of leadership codes - under specialised procedures which focus public attention on leadership standards. This alone tends to act as an affective deterrent.

Setting Leadership Standards under Uganda's Constitutions

The past and present constitutions:

20.35 past and present Uganda constitutions have paid little explicit attention to prevention of corruption on the part of leaders. There have been almost no restrictions on occupations or business dealings of major government officials. There has not even been provision for impeachment of the President for wrong-doing, and provisions for removal of constitutional office-holders had few requirements for impartial investigations (the main exception being judges).

20.36 The first serious step towards constitutional prohibition of conduct for leaders was taken only in 1992 with the passing of an amendment to Legal Notice No.1 of 1986 which prevents members of the national legislature (the NRC) from also holding office in the public service or in any body in which government has a major or controlling interest. The aim is to prevent people from holding two full-time paid positions, which might result in their failing to give full attention to one or the other position and might also involve conflict of interests. In addition, in 1992, a Leadership Code was established, though this was done under ordinary statute rather than in the Constitution. We discuss this new Code later in the chapter.

Leadership under the new Constitution:

20.37 In addition to our recommendations later in this chapter about a leadership code of conduct and in the next chapter on an Inspectorate of Government, the Commission has responded to the people's demands for setting new standards of leadership under the new Constitution. In previous chapters we have made many recommendations aiming at reducing corruption and abuse of office and promoting a new culture of democratic leadership.

20.38 Recommendations on corruption and abuse of office include proposals that appointees to/major constitutional offices be persons of high moral character and proven integrity. The offices involved include the Human Rights Commission, the Electoral Commission, the Judicial Service Commission, the Uganda Audit Commission, the Public Service Commission, the Teaching Service Commission and local government service committees. By giving joint responsibility for most such appointments to the President and the National Council of State, we envisage the question of moral character and integrity of proposed appointees to be examined seriously.

20.39 We have also recommended that some constitutional office-holders should not hold other public offices or other positions likely to compromise their office. These include the President, ministers, members of Parliament, members of the Electoral Commission and members of the Public Service Commission.

20.40 Recommendations have been made seeking to limit the possibility of personalisation of important positions. In a situation where patronage and corruption have not yet been brought under effective control it is important that no individual or group of individuals hold positions of central importance for excessively long periods. Hence, we have recommended that a person should hold office for only a specific period. Such limited periods in office have been suggested for the President, members of the Electoral Commission, the Judicial Service Commission and the Uganda Audit Commission.

20.41 We have also sought to increase accountability of seni0f leaders. We have recommended clear arrangements for major constitutional office-holders to be removed from office for wrong-doing. They include recommendations about impeachment of the President and those about removal of judges, the Director of Public Prosecutions, and members of other important bodies such as the Electoral Commission and the Human Rights Commission. In each case we have sought to ensure that there’s an impartial investigation of allegations of wrong-doing so that removal powers are not used for personal or political motives.

20.42 Accountability of leaders is also the aim of the recommendation that Parliament should have no power to exempt any public body from audit. Similarly, we have sought to ensure leaders do not escape liability for corrupt misuse of public funds or property. It has been recommended that both ministers and permanent secretaries to ministries or departments should be accountable for management of public funds. If either of them directs misuse of funds both may be required to account for or make good the resulting-loss.

20.43 Accountability is also an important element of other recommendations intended to promote a new culture of democratic leadership. Numerous recommendations aim to develop a vibrant participatory democracy_ which operates at every level, from the village level

upwards. These include provisions for constitutional guarantees for the existence of local governments down to the village level; provision for recall of elected leaders by their electorate; requirements for nationalistic and internally democratic political parties; prohibition against members of Parliament elected as members of political parties "crossing the floor" of Parliament; and provision for mechanisms such as the National Council of State intended to promote consultation and consensus in decision-making at the national level.

20.44 The very existence of strong and democratic governments at all levels is intended to put press life on both elected leaders and public servants which does not operate adequately in a centralised system of government. In particular, elected leaders in the' national government should be kept more accountable by strong district governments. Strong local governments should provide experience and training for a body of potential leaders at every level ready to challenge leaders at the next level should they fail to perform. Elected leaders at district and lower levels should be under pressure to account for their actions to the electors. Public servants at all levels in the districts will be accountable to elected representatives of the people. Our recommendations on political parties are intended to make them democratic so as to lessen any likelihood of their becoming vehicles for dictatorship. The recommendations on the National Council of State are intended to reduce the chances of serious political instability and confrontation and to encourage participation of the widest range of political forces in a consultative approach to decision-making at the national level.

20.45 It will be vitally important if this new democracy is to flourish that the ordinary people become fully committed to the new culture of leadership and political maturity. Only then will they make it a practice to select their elected leaders wisely. Only then will they make effective use of the important power of recall to deal with leaders who fail the people's trust.

SECTION TWO: PEOPLE'S VIEWS ON THE NEED FOR AND IMPORTANCE OF A LEADERSHIP CODE OF CONDUCT

20.46 The people have identified bad leaders as one of the fundamental causes of Uganda's instability and lack of development over the past 30 years. They have made it clear that they believe that if there is to be a fundamental change then effective control over leaders is absolutely necessary.

20.47 An important question, then, is whether the recommendations intended to prevent corruption and promote participatory democracy just discussed are sufficient to achieve the desired new culture of leadership. In general, people making submissions on the issue took the view that more was required. They were overwhelmingly in favour of a Leadership Code of Conduct being provided for by the new Constitution, as well as the Inspectorate of Government discussed in Chapter Twenty One. They wanted provisions on both to cover as many elected leaders and public officers as possible.

20.48 A principal reaS0n for people wanting the Code was that fundamental; change in the conduct of leaders is not going to be easy to achieve. In a situation of widespread institutionalised corruption, the new standards of leadership will require massive change. There are so many temptations for our leaders, that some form of counter-balance is, required. In this regard, specialised mechanisms which set standards and then seek to enforce them are necessary. A Leadership Code of Conduct which specifies forbidden kinds of conduct and

provides a mechanism for dealing with leaders who breach the Code serves vitally important functions. It educates leaders about what is expected of them and also provides a deterrence against corruption and other forms of abuse of power.

20.49 Of very great importance is the fact that people wanted the new Constitution to set out national objectives and policy guidelines, so that leaders are guided and directed by them in the way they serve the people and develop the nation. It is not possible to make such goals constitutionally enforceable. Achieving them will depend very much on the commitment and dedication to service of the people on the part of the leaders of Uganda. It is also vital to ensure, through positive steps, that leaders do not use their positions in ways that threaten the national objectives. Using their offices for personal gain, corrupt dealings with businessmen and many other kinds of abuse of office will have that effect.

20.50 People gave two main reasons for wanting the Leadership Code of Conduct provided for in the Constitution. First, it would give the Code a high status in the eyes of both the leaders and the ordinary people. The Code and its standards would become institutionalised. This was seen as necessary if the Code was to become a major instrument in inculcating new leadership standards. Second, it would make it hard for any action to be taken to abolish or weaken the Code and its enforcement mechanisms. People wanted to be sure that the Code was protected from change by any political party or narrow interest group which might be temporarily dominant in Parliament at some time in the future.

20.51 There were also views advanced against the idea of enacting a Leadership Code of Conduct in any form, either in ordinary statute or in the Constitution. Such views were given in a few memoranda submitted to us but more especially in the NRC debate on the *Leadership Code Bill* (during 1991 and 1992). There are some important issues raised by the critics of the Code, some of particular relevance to the concerns of the people which are discussed in the next section of the Chapter. We are, however, convinced that there are obvious answers to each of the arguments against the Code.

20.52 It was argued that specialised procedures and institutions for a code of conduct involve duplication of effort. A few people pointed to other laws dealing with corruption and to the existence of institutions like the courts, the Uganda Police Force, the Inspector General of Government (IGG), the Auditor-General and Public Accounts Committee all seeking to stamp out corruption. It was said that there was little wrong with existing laws. All that was needed was provision of additional resources to the existing enforcement institutions. As. a result some argued that the money and effort required to operate the Leadership Code would be better spent on existing institutions.

20.53 We do not accept that a Leadership Code necessarily involves duplication with existing laws. There are, for example, many new standards of behavior for leaders set in the Leadership Code Statute No.8 of 1992 which go fm beyond standards previously embodied in the criminal law. For example, requirements to avoid conflicts of interest and to seek approval of any contracts with government are quite new. These and other new standards are necessary if our leadership is to meet the aspirations of the people. This is not to say that there is not a problem with enforcement of existing laws; we accept that there needs also to be more effort in this regard.

20.54 In a similar vein, views were advanced to the effect that there were already far too many laws which the State had failed to enforce. This was because of lack of resources and lack of support from the bureaucracy and from, some officials. It was argued that the Code was likely to suffer the same fate. The implication here was that government was essentially powerless in the face of corruption, so that there was little point in trying to deal with it through Leadership Code legislation.

20.55 We do not accept that the fact that some other laws have not been enforced means that the same fate will necessarily occur with the code of conduct. We note that a new anticorruption institution such as the IGG has received strong support from government. We see no reason why the same should not be true of whatever body is given the job of administering and enforcing the Code. **In** other chapters, we have taken note of the need for constitutional guarantees for the resources needed by important constitutional offices. Similar recommendations can be made in respect of the body that is to handle the Code.

20.56 Others argued that it is really the terrible plight of the economy which has driven so many people to use public office corruptly. They argued that it is premature to consider enacting a code of conduct when the State is unable to afford to pay a living wage to its employees. They suggested that extensive corruption would no longer be a problem once the economy improved and public officials were better paid. As a result, the Code would not really be necessary, or it might need to take a different form to deal with whatever residual corruption remained after economic improvement.

20.57 We do not agree that improvement in the economy alone will eradicate corruption. Two major factors persuade us to the contrary. First, corruption has become so deep-rooted in our society that it appears as an accepted ethic. There are many who are corrupt not because they are starving, but simply because they have become greedy. Improved economic times are not likely to reduce their avarice. Second, corruption is not a problem unique to Uganda. It occurs in all societies, and often on such a large scale that special laws are passed as part of efforts to deal with it. This has been the experience of both developed and less developed societies.

20.58 It was also suggested that the Code was a threat to leaders because it tended to undermine their authority. The implication here was that there should not even be a public debate of corruption by elected national leaders because the stability of the nation as a whole was likely to be threatened if ordinary people lost confidence in their leaders. We do not regard this as a serious argument. Corrupt leaders are a far more serious threat to the society than exposure of the reality of corruption, something which is likely to do good. **In** any event, it is clear that the people are well aware of the extent of corruption and wish to see it contained and eventually eliminated.

20.59 Still others argued that the Code as debated and passed by the NRC was unconstitutional because it violated the right to privacy and the right to private property. Privacy was said to be violated by the requirement of the Code that leaders submit statements of assets, income and liabilities. The right to property was said to be violated by proposals for forfeiture of improperly obtained property. It was even suggested that such codes are found only in police states and dictatorships and thus were contrary to democratic practices.

20.60 This argument is not convincing. No person has a right to privacy or to private property as a shield to protect ill-gotten gains. Further, the new standards of leadership involving service to the people and sacrifice. of self-interest on the part of leaders may necessarily involve some sacrifices in relation to such things as privacy. Indeed, one of the best guarantees against a police-state or a dictatorship developing will be if a new, clean and democratic leadership develops which does not fear the transparency and accountability involved in a Leadership Code of Conduct.

20.61 Others argued on more pragmatic grounds. They saw the Code as seeking to create an ideal type of leader who does not exist in reality. They argued that it was impossible to legislate to acquire certain standards of moral behaviour unless they were in step with actual standards of the society. They saw the Code as placing unrealistic restrictions on behaviour of leaders which were completely out of step with accepted standards' of behaviour. Unrealistic rules would only force leaders to develop elaborate ways of hiding what they were doing. The result would be a mockery of law and of morality.

20.62 The people who submitted views on the subject do not accept such an argument. They insist that the Constitution and the law be used in an effort to develop new standards of leadership. It is, however, true that the Code will not work if those new standards are not gradually inculcated into the population at large. Standards embodied in the law alone will not change things. Hence the vital importance for education and consciousness raising in respect of leadership so that the people at all levels choose only leaders that accept the new standards, and force those who fail to do so to leave office.

20.63 It was also said that the Code was unworkable in practice because it was aimed at "big" leaders who were untouchable. Police, the Auditor-general, the IGG and others responsible for investigating breaches of the law would either be intimidated when dealing with such leaders, or might be "paid off" to leave them alone. There was no sufficient reason to think that the enforcement of the Leadership Code would be any different. It was suggested that in practice it would be more effective for "big" leaders to be dealt with by the President or the Prime Minister's office.

20.64 We would suggest, however, that a major aim of a leadership code of conduct is to gradually change this situation, so that all leaders are regarded as required to comply with the law. All enforcement agencies would then feel there was no necessity to treat a leader in any way differently from an ordinary person. An independent constitutional office with high status which fearlessly tackles all breaches of leadership standards without fear or favour should be a vitally important agency in bringing about such a change.

20.65 Recommendation

There should be a Leadership Code of Conduct provided for in the new *Constitution.*

SECTION THREE: CONCERNS AND PRINCIPLES ABOUT THE CODE EMPHASISED BY THE PEOPLE

20.66 We have already, in section one of this chapter, identified the concerns and principles advanced by the people in relation to the general question of leadership standards. In this

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section, we focus on their concerns and principles in relation to the much narrower but nevertheless important issue of the proposed Leadership Code of Conduct. While we do not repeat the issues discussed under the concerns and principles already discussed, many of them are clearly relevant to the Code of Conduct, and have been taken into account in our discussion of proposals and recommendations in the last section of the chapter.

Concerns of the People About the Code of Conduct

Co-operation of the public:

20.67 The long periods when the people have been at the mercy of corrupt leadership has made them accustomed to use or take advantage of personal contacts, favouritism, nepotism and bribery as the way of getting favours or cooperation from leaders at all levels. There is concern whether it will now be possible for ordinary people to cooperate in developing new standards, so that justice and honesty become the yard-sticks for action by leaders.

Co-operation of public officers and elected leaders:

20.68 Both elected leaders and senior public officers are in very powerful positions. People are concerned that they will not willingly surrender the powers and privileges they have become accustomed to. They have long been used to "buying" their way out of trouble, thus spreading the web of corruption to those they have sought to influence. It is a web that people fear will be difficult to disentangle.

Effectiveness of enforcement:

20.69 People were clear that the Code would only be as effective as the efforts made to enforce it. They were well aware of the lack of serious efforts made to enforce some other government programmes to deal with corruption. While they were heartened by the efforts made by the IGG, they were also critical, feeling that this was only a small beginning. If the Code of Conduct was to be effective much more would need to be done to ensure effective enforcement. This would involve not only providing necessary resources for enforcement agencies, but also spreading the enforcement effort beyond just those agencies. People were worried that these things may not happen.

The difficulty of creating a new leadership culture:

20.70 Many people who want to see a new leadership culture in Uganda are concerned that it will be very difficult to develop it. They are worried that if the Leadership Code of Conduct does not assist with progress in this regard that the future prospects for development of our country are bleak.

Principles Emphasised by the People for the Operation of the Leadership Code

Setting standards for conduct of leaders:

20.71 People want the Code to set strict standards and guidelines for the conduct of leaders both in their public and private lives. They want it to restore professional ethics and moral behaviour of leaders. It should encourage standards of leadership based firmly on the principles discussed in section one of this chapter.

Coverage of a wide range of senior leadership posts:

20.72 While there were some who wanted all public servants and local government committee members down to the village level covered by the Code, a majority thought the Code should have a more limited application. In the interests of effectiveness they argued that it should cover the more senior leaders with the heaviest responsibilities. It was noted that in any event less senior elected leaders and public officers will be subject to the Inspectorate of Government as discussed in Chapter Twenty One *(Inspectorate of Government).*

Ensuring speed of investigations:

20.73 People wanted to be sure that action would be taken promptly when allegations of breach of the Code are made. They noted the slowness of action against corruption in the past which has often allowed those implicated to destroy evidence and to "buy" their way out of trouble. They called for a specialist enforcement agency which could move promptly and effectively.

Exposure and punishment of erring leaders:

20.74 Where leaders breach the standards established by the Code, they should be publicly exposed and punished in a severe way. People believe that only in this way wills the Code act as a deterrent against misconduct by leaders. Punishments should be designed to ensure people are protected from wrongdoers, and so that wrongdoers do not benefit from their errors. Accordingly, dismissal from office and a ban on holding public office for specified periods should be included as should power to forfeit or recover funds and property obtained in breach of the Code.

Education of the people about leadership:

20.75 As we have seen, new standards of leadership will be a reality on}y when they are generally inculcated and accepted as a new culture. Hence, people agreed that it is essential that there is constant public education about the qualities arid standards ~f leadership and about the *Code* itself. People will then be in a position to differentiate between aspirants for leadership posts and judge the performance of those already in office. Many suggested that the body which administers and enforces the Code should have a special educative role-.

A broad approach to enforcement:

20.76 People emphasised that enforcement was the key to the long term impact of the Code. They wanted a broad range of enforcement measures to be taken, and in particular suggested that:

(a) an independent body with guaranteed resources should have primary responsibility for administration and enforcement;

(b) a free press should be given ample room to evaluate the work of leaders and expose them when they breach the standards expected of them;

(c) there is a need for the education of the public discussed above to emphasize the Situation when members of the public can seek redress against bad leaders; and

(d) there is a need for cooperation from the public at large and from employees of government when investigations of leaders are being carried out in respect of specific allegations of breach of the Code, for often it is silence and fear of those affected which makes the obtaining of evidence virtually impossible.

SECTION FOUR: PEOPLE'S PROPOSALS ON THE CODE AND THE COMMISSION'S RECOMMENDATIONS

20.77 In the light of the recommendation already made in section two that a leadership code of conduct should be provided for by the Constitution, it remains for us to consider people's proposals about the content and operation of the Code. Before doing so, we make two preliminary observations.

20.78 First, although we agree that the Constitution should provide the basis for the Code, there is no necessity for all its details to be in the Constitution. In fact there may well be advantages in providing the principles in the Constitution and the details in an ordinary statute. In that way the Code can more easily be adapted to meet changing circumstances. Second, as there is already a detailed Code of Conduct operating under the *Leadership Code* Statute of 1992, that Statute provides a useful point of reference for discussion of most of the main issues which arise about how the Code should operate in future.

20.79 In summary, the present Statute defines a range of public office-holders who are subject to the Code. It seeks to set leadership standards mainly by prohibiting certain kinds of conduct and requiring annual submission of, a statement of income, assets and liabilities. A Leadership Code Committee administers the Code and handles most aspects of its enforcement. Breach of the requirements of the Code can be investigated on complaint or on the Committee's own initiative. If a breach is proven, the Committee can recommend penalties which can be imposed by the person or authority with power to discipline the leader. They include suspension or dismissal from office.

20.80 Our discussion of proposals and recommendations on the Code can conveniently be divided into three main parts. The first is the issue of who should be covered by the Code.

The second is the duties and responsibilities of leaders. The third concerns administration and enforcement of the Code.

Who should be covered by the Code - the Definition of a Leader

20.81 The definition of the leaders to be covered by the Leadership Code of Conduct evoked much discussion in the views submitted to us. As noted already, there were those who wanted almost every conceivable type of leader covered. The majority, however, believed that in the interest of making it manageable, there should be some limits. Even accepting that principle, there is still controversy about how far down· among the levels of elected leaders and public officials the coverage should extend. Some argued that the only elected leaders covered should be members of Parliament. Others wanted members of district and urban councils covered as well. As for appointed leaders, some wanted only constitutional officeholders covered; others would add permanent secretaries of ministries while still others would add departmental heads and other lower level officers.

20.82 There are also some people who would like to see the Code extend to many other kinds of officials of organisations that operate in public including political parties, religious organisations, cultural organisations, major NGOs and so on. The argument is that such persons have great power and often have custody of considerable resources entrusted to their organisations by members of the public. As such, they should be subject to the same standards of behaviour as other public leaders. In this regard, we note that the Papua New Guinea Code extends to executive officers of registered political parties.

20.83 Under the *Leadership Code* (Statute, No.8 of 1992), the present Code covers a wide range of senior leaders listed in the First Schedule to the Statute. They include the President, Vice-President, ministers and members of the NRC; members of the judiciary; permanent secretaries and other public servants at the rank of under-secretary and ambassadors; members of the National Resistance Army Council; directors of security organisations; officers in the office of the IGG; police officers above the rank of senior superintendent; District Administrators, Deputy District Administrators, Assistant District Administrators, District Executive Secretaries and other senior district officials; senior officials of parastatal bodies, the Bank of Uganda, all institutions of higher learning and co-operative unions; and members of all District Resistance Committees. In addition, while they are not subject to any other provisions of the Code, every member of any Resistance Council is subject to the provisions of the Code requiring disclosure to any public body to which he or she belongs of a personal interest in any matter to be discussed before the body. The present Code does not extend to religious and other non-governmental organisations.

20.84 In-the light of the concerns and principles advanced by the people, we consider that the list in the Schedule to the' present Statute is in most respects sufficiently comprehensive. However, it should also extend to all constitutional office-holders (such as the Electoral Commission, the Human Rights Commission, and so on).

20.85 It will not be practical to extend the Code to cover the many tens of thousands of elected leaders of local government bodies below district level. We would suggest that instead, government should encourage such bodies to establish their own codes of conduct. Perhaps modelled on the national Code.

20.86 As for proposals to extend operation of the Code beyond governmental bodies, we do not believe it would be practical or desirable to enforce it in respect of religious, cultural, professional and other kinds of leaders. The bodies from which such leaders are' drawn should instead be encouraged to enforce their own codes of conduct for their own members. It is up to the NGOs, religious and cultural institutions to deal with their members who do not fulfill the moral standards required of them.

20.87 We do accept, however, that there should be flexibility in the Codes coverage. It should be capable of expansion as circumstances dictate. It may well be, for example, that at some future time it is felt necessary to include political party leaders or some other category of leaders. Hence, Parliament should have power to prescribe the categories subject to the Leadership Code.

20.88 Recommendation

(a) The definition of leaders covered by the Leadership Code of Conduct should include the following:

(i) the President;
(ii). the Vice-President
liii) ministers, deputy ministers and assistant ministers;
(iv) members of Parliament;
(v) all holders of constitutional offices;
(vi) heads of government departments including the security forces;
(vii) heads of local government departments;
(viii) judges and magistrates;
(ix) senior officers of institutions of higher learning;
(x) senior officers of parastatal organisations; and
(xi) members of district councils.

(b) Parliament should have power to prescribe additional categories of people to whom the Leadership Code of Conduct applies.

Duties and Responsibilities of Leaders

20.89 There were few submissions from the people which went into detail about the specific duties and responsibilities for leaders which should be laid down in the Code of Conduct. Most made general statements about such things as the need for ethical behaviour; financial honesty; avoiding conflicts of interests; not having in a discriminatory manner; and not acting dictatorially. There were some specific proposals, such as strict requirements for annual statements of income assets and liabilities which should continue to be made for three years after leaving office; a prohibition on leaders having bank accounts outside the country; and requiring leaders to account strictly for wealth ,and assets beyond that which might reasonably be consistent with their public income.

20.90 Some of these matters and many others are provided for in the present *Leadership. Code* Statute. Its main requirements can be divided into those setting standards of conduct and those related to annual submission of a statement of income, assets and liabilities (annual

disclosure). Standards of conduct are dealt with mainly by specifying a range of prohibited conduct. The requirements as to annual disclosure are intended mainly to provide the information necessary to know whether a leader is adhering to the standards of conduct in respect of financial dealings. Enforcement of the Code does not rely solely on annual disclosure, for the body administering and enforcing the Code can receive complaints and initiate inquiries about a leader on its own initiative (matters discussed in more detail later in this chapter).

20.91 Major issues which arise here are: whether the approach of simply prohibiting some kinds of conduct is the best or the only one for setting leadership standards; whether some additional categories of conduct also need to be prohibited; whether the requirements on disclosure are sufficient; and whether aspects of the Code should apply as much to a leader's spouse and children as to the leader himself or herself.

Prohibition of conduct as the main approach:

20.92 Because the main approach to setting leadership standards is to prohibit a wide range of conduct, the Code does not gel1erally seek to give positive guidelines to leaders. There are, however, some positive requirements mingled with particular prohibitions. Thus, the prohibition on taking part in deliberations of a public body without first disclosing any matter in which he or she has a personal interest involves a duty of disclosure. The prohibition on leaders entering into contracts with government or some kinds of foreign bodies without prior consent of the Leadership Committee involves a duty to seek such consent. The prohibition on receipt of gifts includes a requirement that ceremonial gifts to leaders shall be treated as gifts to government. But these provisions do not detract much from the general approach of the Code.

20.93 The question of whether prohibitions on certain kinds of conduct is the best or only way of improving conduct of leaders arises because of the people's concern that quite new standards of leadership should be established. While it is accepted that it is necessary to ban certain kinds of conduct by leaders, it may also be that more positive standards or duties or obligations should be set for leaders to aspire to.

20.94 Leadership codes under several other constitutions do put the leadership requirements in more positive terms. As discussed in Section One, those of Belize, Vanuatu and Papua New Guinea are all framed in terms of duties of leaders to conduct themselves in certain ways. The key provision of the Papua New Guinea Constitution in respect of the Leadership Code says that a leader " ... has a duty to conduct himself in such a way, both in his public or official life and his private life, and in his associations with other persons" to avoid: conflicts of interests; conduct demeaning of public office; conduct allowing integrity to be questioned; and conduct which might endanger or diminish respect for or confidence in the integrity of government. Failure to carry out the duties so imposed makes a leader guilty of "misconduct in office". A separate Statute spells out specific kinds of behaviour which also constitute such misconduct, but it is the statement of duty which is the core of the Papua New Guinea Code. Numerous leaders have been charged with and found guilty of misconduct in office for things done which have been expressed in terms of breach of this core duty.

20.95 At the very least, leaders should he under a positive duty to act in accordance with the law. The basic standards required of leaders under the present Code might also be usefully recast in terms of basic duties. Leaders might also be given an obligation to seek the achievement of the National Objectives and Principles of State Policy. The Code would then point the way to the future by setting positive guidelines for leaders.

20.96 Further, as we discuss later in the Chapter, it may well be possible for a leader to evade many of the prohibitions of the Code by doing things through family, agents or nom1inees. The Papua New Guinea Leadership Code seeks to deal with this problem by
imposing special duties on a leader, namely:

(a) to ensure, as far as is within his lawful power, that his spouse and children, and any other person for whom he is responsible (whether morally, legally or by usage), including nominees, trustees and agents, do not conduct themselves in a way that might be expected to give rise to doubt in the public mind as to his complying with his duties

(b) if necessary to publicly disassociate himself from any activity or enterprise of any of his associates, or of a person referred to in paragraph (a), that might be expected to give rise to such a doubt."

Consideration should be given to including duties of that kind in Uganda's Code of Conduct.

Prohibited conduct:

20.97 The *Leadership Code* Statute prohibits leaders covered by the Code from involvement in a detailed list of certain kinds of conduct. There are two main kinds of conduct involved. First, there are several kinds of prohibited conduct specific only, to leaders. In other words, except for the fact of prohibition in the Code, such conduct is probably not illegal. This conduct includes: asking or accepting gifts or benefits in relation to exercise of official duties; permitting a conflict of interests between official duties and personal interests; failure to seek prior approval from the Leadership Code Committee to contract or deal with government or some kinds of foreign businesses; abuse of government property; and misuse of official information not available to the public.

20.98 In addition, there is a range of conduct which may well be prohibited by existing laws, but which is nevertheless also prohibited to leaders. One result is that leaders who commit such conduct could be subject to both proceedings for breach of the Code and to criminal or other proceedings under any other law relating to such conduct. The conduct in question includes: misappropriation of public funds; improper use of official position to· obtain property; use of official time for private business to the detriment of official duties; conduct prejudicial to official status; evasion of taxes or other financial obligations; furthering the interests of a foreign government contrary to Uganda's interests; practising favouritism or nepotism; committing sectarian acts prohibited by the *Penal Code;* neglect of duty so as to impede efficiency of government; acts prejudicial to people's rights, inclusive of sexual harassment; violation of fundamental rights and freedoms; and activity designed to undermine the integrity of government.

20.99 All the kinds of conduct outlined in the previous two paragraphs are prohibited to all leaders (that is, all those listed in the First Schedule of the Statute). In addition, the more senior of those leaders (those listed in the Second Schedule) are also prohibited from either holding shares, franchise, proprietary interest or office in any foreign business organisation or operating as commission agents.

20.100 Committing either kind of conduct is a breach of the Code. It can result in investigation by the Leadership Code Committee (or other authorities requested by the Committee to conduct investigations as discussed below). Upon a finding that breach occurred, the committee can recommend a range of disciplinary measures (See below).

20.101 In the light of the concerns and principles emphasised in the people's views, there are also certain other kinds of conduct which should be considered for adding to the prohibited list. In particular:

(a) all leaders covered by the Code should be prohibited from:

(i) engaging in acts or omissions which amount to professional misconduct;
(ii) doing or failing to do any act that diminishes the value of public property; and
(iii) in the case of elected leaders, failing or neglecting to honour pledges made at a fundraising event.

(b) senior leaders (those covered by the Second Schedule) should, unless they notify and get the consent of the authority responsible for administration and enforcement of the Code, be prohibited from:

(i) holding a gainful directorship in a public company other than one where the nomination is made by government;
(ii) engaging in other gainful employment; or
(iii) accepting loans.

Disclosure requirements:

20.102 Under the *Leadership Code* Statute, annual disclosure of income, assets and liabilities of a leader must be made to the Inspector General of Government in the manner specified in a form set out in the Third Schedule to the Statute. Serving leaders must do so within three months after commencement of the Leadership Code, and new leaders within the same period after assuming office. Subsequent statements are required to be submitted annually during them mouth of December as long as a person remains a leader. A person who ceases to be a leader must submit a statement within six months after ceasing to be a leader. The disclosure must cover both the leader and his or her "nominees". A nominee is defined as anyone who controls or manages business or affairs of which the leader is principal beneficiary, or whose business decisions or acts are SUd1 that they are in essence made or done by the leader. The disclosure statement are treated as secret, and can only be disclosed to the Leadership Code Committee, the IGG, the Auditor-general, senior Police officers investigating an offence or a person authorised by order of the High Court. Failure to submit a disclosure statement or submission of an inaccurate statement is a breach of the Code. These provisions give rise to several issues.

20.103 Many submissions from the people demanded that disclosure should be made publicly, so that the public could be fully aware of the amount and sources of income and property held by each leader. Some even wanted leaders to make public declarations of how their assets and wealth were obtained. One advantage of public access to the disclosure statements would be that members of the public who had suspicions about the honesty of a leader could check the accuracy of the information. In this way, breaches of the Code might more easily be exposed than would be possible otherwise. - On the other hand, the Leadership Code Committee already has power to examine the statements and to probe any discrepancies. Where information from the public raises doubts about the accuracy of a disclosure, the Committee can take action. Public disclosure would involve an unwarranted invasion of the privacy of some leaders who are honest.

20.104 The provision for income, assets and liabilities of a leader's nominees to be included in the disclosure statement included in the Statute during its debate in the NRC and replaced a proposed requirement that a leader's spouse be covered by the disclosure. The change was made at the suggestion of a Select Committee which argued that inclusion of spouses would violate the sanctity of matrimony, militate against the fundamental right of women to own private property as well as being discriminatory. In addition, it was said a leader should be treated as an individual; any shortcomings were those of the leader's alone, and not those innocently related to him or her, any other approach being seen as contrary to natural justice.

20.105 We note, however, that there are good reasons why some leadership codes in other countries -do require disclosure by a leader's spouse and, even his or her children under eighteen (as in the case of Papua New Guinea). It may be easy for a leader to hide behind immediate family members, by ensuring that ill-gotten gains are Rut in their names. Under the present Code, unless it could be proved that the family member was under the leader's control - and therefore a nominee - it would not be possible to question sudden increases in wealth and assets of such a family member.

20.106 The *Leadership Code Bill* as originally presented to the NRC in 1991 provided for a leader to continue submitting disclosure statements for a period of three years after leaving office. The NRC Select Committee said such provisions would be retrospective -and therefore unpalatable. On the recommendation of the Committee the period was reduced to only six months "to ensure smooth handing-over of power generally and office in particular":

20.107 The reason for the proposed three year period was to continue to monitor leaders after they left office in order to identify any inexplicable increase in wealth or assets which might flow from corrupt dealings while previously in office. Many submissions from the people complained about the sudden wealth of leaders once they left office, and gave that as a reason for wanting disclosure to continue for a reasonable period after leaving office. We accept that the period of six months is too short to serve any purpose. A period of two years would be fair.

20.108 It is not clear to us why all the disclosure statements are required to be submitted in the same month every year (December). They are meant to be scrutinised and the information they contain verified. These are onerous tasks when undertaken in respect of many hundreds 'Of statements. The load might be better spread if the statements were received throughout

the year, as would tend to be the case if each leader simply had to submit once within each twelve month period after the date of taking office.

Applying the Code to a leader's spouse and children:

20.109 Some people have suggested that many of the kinds of conduct prohibited to a leader should also __ be prohibited to a leader's spouse and children. They argue this is necessary for the same reasons why the disclosure requirements should apply to spouses and children, namely to prevent leaders using them to do things the Code prohibits.

20.110 If there were to be such a prohibition, it would only apply to those kinds of conduct where a leader could use family members, and not to conduct only possible on the part of the leader himself or herself. Examples of the former include acceptance of gifts or bribes, or taking interests in contracts while examples of the latter include neglect of duty or engaging in private business to the detriment of official duties.

20.111 The present Statute seeks to deal with the problem through a general provision. It makes the .leader guilty of a breach of the Code where he or she does any act or causes any act to be done through another person which is in contravention of the Code. It also specifically makes the leader guilty of a breach in respect of anything done by his or her nominee. The leader is not, however, liable for things done by a nominee which he or she shows either were without the leader's knowledge and consent or that he or she did all within his or her power to prevent the breach. These provisions could apply to a spouse or children of a leader.

20.112 The major problem with these provisions is that they put the initial responsibility for proof that the leader acted through some other person on the enforcement authorities. In practice, it will often be difficult to prove the fact of the leader's involvement in getting a person to commit a breach of the Code on his or her behalf. The rationale for requiring spouses and children to abide by the same rules as the leader is that they can be assumed to be so close to the leader that what they do is with his or her agreement or knowledge. The leader could be protected from responsibility for things done without his knowledge or agreement by the exception in the present Statute, or provision similar to that in the Papua New Guinea Leadership Code (Paragraph 20.96, above).

20.113 Recommendation

(a) The duties and responsibilities of leaders shall be prescribed by Parliament and shall include:

(i) the duty to conduct themselves both in the official, public and private lives in accordance with the provisions of the law, and the provisions of the leadership Code of Conduct in particular;

(ii) the duty to seek achievement of the National Objectives and Directive Principles of State Policy; -

(iii) the duty to ensure that as far as is within their lawful powers their spouses, children and any other persons for whom they are responsible including nominees, trustees and agents also conduct themselves in accordance with

the law and with relevant provisions of the Leadership Code of Conduct, and do not do anything which could give rise to doubt about the leaders' compliance with the Code;

(iv) the duty to publicly disassociate themselves from any business activities or enterprises of any of the persons referred to in (iii) above.

(v) the duty to disclose their interests in contracts with government, government bodies or enterprises; and

(vi) the duty to declare their assets, incomes and liabilities and those of their Spouses at least once in every period of twelve months while remaining a leader and for a period of two years after ceasing to be a leader.

(b) Leaders should be prohibited from engaging or conducting themselves in certain acts or omissions which shall include those provided for in the Leadership Code Statute (No.8 of 1992) *and in addition all leaders covered by the Code should be prohibited from:*

(i) doing or failing to do an act where professional misconduct is involved;

(ii) doing or failing to do an act that diminishes the value of public property; and

(iii) in the case of elected leaders, failing or neglecting to honour pledges made at a fundraising event.

(c) Senior leaders should, unless they notify and get the consent pf the authority responsible for administration and enforcement of the Code, be prohibited from:

(i) holding a gainful directorship in a public company other than one where the nomination is made by government;

(ii) engaging in other gainful employment; or

(iii) accepting loans.

Supervision and Enforcement of the Leadership Code of Conduct

20.114 In their submissions, the people expressed strong views on various aspects of supervision (administration) and enforcement of the Code. In particular, they wanted a powerful and independent body to have these roles. It must be free from any suggestion of political direction or interference and must have guarantees of adequate resources. Some suggested creation of a specialised body, while others suggested various existing institutions, including the IGG; the courts; the Public Accounts Committee of the legislature; the Auditor General the, Public Service Commission; or the Police. A clear majority favoured the IGG having the job. They wanted strong action to be taken against people who breach the Code, including imprisonment; confiscation of ill-gotten property; suspension or dismissal from office; and fines.

20.115 The Leadership Code Statute, 1992 gives the main work of supervising and enforcing the Code to the Leadership Code Committee. Its five members are appointed by the President on the advice of the NRC, after the responsible Minister has submitted names of suitably qualified people to the NRC. They should be persons of the highest probity and integrity. Nothing more is said about their qualifications, or experience. They are appointed for a

five-year term and are eligible for re-appointment for a further one five year term only. The Committee appoints its own secretary on terms it deems fit. A member may be removed from office by the President for inability to perform official duties or for misbehaviour after ,a report of investigation by the Inspector General of Government has recommended such removal and the National Resistance Council has approved it and advised the President accordingly.

20.116 There is not a clear separation of the Committee's supervisory and enforcement roles. However, while it alone supervises or administers the Code, it shares the enforcement role with the Inspector-General of Government, the Auditor-General and the Police Force, and with the various authorities responsible for disciplining the leaders covered by the Code (in the Statute called "the authorised person").

20.117 The Committee has several supervisory roles. The first is receiving and examining the annual disclosure statements, which it presumably is required to retain from year to year for purposes of comparison (though this is not specifically stated in the Statute). It also examines and rules on both leaders' intentions to enter into contracts with government or foreign businesses and Schedule Two leaders' requests to hold shares etc. in foreign businesses or to operate as commission agents. The Committee has the further task of receiving and registering complaints that leaders have breached the Code.

20.118 The enforcement roles of the Committee extend to inquiring into complaints of breaches of the Code or making inquiries of its own initiative. It can either conduct inquiries itself or can request the IGG, Auditor-General or the Inspector-General of Police to carry out inquiries on its behalf. Reports on their inquiries by the latter bodies must be submitted to the Committee. In any case, on the completion of an inquiry, the Committee is required to make a report to the "authorised person" in relation to the leader in question, and where a breach of the Code has been established, it makes recommendations for appropriate action to be taken. The report is a public document which has to state whether or not a breach of the Code has occurred. In case of a breach, the report states its nature, its circumstance, a summary of evidence and the Committee's findings and recommendations.

20.119 The Provision requiring every "member of a Resistance Council" to make disclosures of interests before participating in deliberations, mentioned in paragraph 20.101 above" would seem to have the effect of bringing every member of every Resistance Council, from village level to RC V, under the Code in respect of the disclosure requirements. Any failure to make disclosure by any person in any RC meeting would therefore involve a breach of the Code and open that person to investigation and discipline under the Code. This provision was added during debate of the Bill in the NRC. It seems likely that it was not realized at the time the extensive implications it would have for it would add an impossible burden to the work of enforcement of the Code. It may need to be reviewed.

20.120 The Committee itself has no power to take action against the leader. The Statute is not completely clear as to whether the "authorised person" is required to act in accordance with the Committee's recommendations, although that would appear to be the intention. The Statute is silent on what actions the Committee can take if its recommendations are ignored. This position is unsatisfactory and should be clarified to the effect that the recommended

action must be taken, with failure to do so within a set period resulting in automatic execution of the recommended action.

20.121 The action that can be taken against a leader who has breached the Code includes: warning and caution; demotion; suspension from office; dismissal; advising the leader to resign; imposition of any penalty provided for under disciplinary rules relating to the office of the leader in question; and initiation of any other action provided for by any other law. Where the Committee's report proves that the leader obtained property in breach of the Code, the report itself has the effect of divesting the leader of the property subject only to any appeal the leader not make. Finally, the Committee can recommend to the Attorney-General that civil or criminal proceedings be taken in respect of anything the subject matter of its report.

20.122 We note that there is no indication in the Statute concerning the length of time a person can be suspended from office or whether dismissal from office acts as a bar from holding the same or similar office for a particular length of time. Under some other leadership codes, dismissal from office for breach of the code results in a person being barred from holding either elected or appointed office for periods of from five to ten years. Similar provisions should be included in Uganda's Code. We also agree with people's submissions about the need for additional potential penalties, and in particular imposition of a fine. We do not agree that imprisonment should be available, as these are not criminal proceedings.

20.123 The Statute gives the Committee both investigative and judgment powers, in that it decides guilt or innocence and recommends penalties in cases of findings of guilt. The leader being investigated is protected by requirements that the Committee observe the rules of natural justice ,and by a right of appeal to the High Court.

20.124 The Statute specifies only four kinds of prohibited conduct where a leader can be proceeded against for breach of the Code despite having ceased to be a leader (misappropriation; obtaining property by misuse of office; evading taxes or other financial obligations; and violating human rights). The implication seems to be that for breaches of the Code in relation to all the many other kinds of prohibited conduct, a person who ceases to hold a leadership post cannot be dealt with under the. Code. This would seem to be a serious weakness, for it would enable a leader to escape proceedings being taken under the Code by resigning from office. The Committee would not be able to investigate further, make a report, recommend action or bring about divestiture of property obtained in breach of the Code. It is a weakness which should be treated most seriously; an almost identical loop-hole under the Papua New guinea Leadership Code has been taken advantage of by many leaders who have resigned just before being prosecuted for misconduct in office.

20.125 In the light of the people's views, we must consider whether or not the present Leadership Code Committee is the authority best equipped to carry out the supervisory and enforcement roles. We have some misgivings about the Committee in that its method of appointment may result in it being seen as too close to the NRC, itself made up of leaders subject to the Code. More importantly, its members are not required to have any special expertise other than being persons Il of the highest standard of probity and integrity. Further the Statute provides no guarantee of provision of the resources (funding and personnel) necessary to ensure the Committee can carry out its work effectively.

20.126 In other countries, the supervisory and enforcement roles are separated in various ways and either or both roles tend to be handled by bodies with recognized expertise thus in Ghana, disclosure statements are submitted to the Auditor-General and allegations of contravention of the Code are handled by the body equivalent to the IGG. In Zambia, while a Leadership Code Committee supervises the Code and investigates breaches, it refers completed investigations of serious matters to a specialised tribunal chaired by an appointee of the Chief Justice. In Papua New Guinea, the Ombudsman Commission (the equivalent of the IGG) supervises the Code and investigates breaches, while prosecutions for breach of the Code are heard by a special tribunal headed by a judge.

20.127 There should be no need to separate the supervisory and enforcement roles in Uganda provided there continues to be strong safeguards protecting persons alleged to have breached the Code. But we accept that a more specialised body should handle these roles. There is no body better equipped to prevention and investigation of abuse of office and corruption than the IGG. It already handles investigations into such matters. It already has gained a reputation for independence and probity. Its present Statute guarantees its independence in various ways, and our recommendations should result in these being enhanced under the new Constitution, as discussed in the next chapter.

20.128 We recognise, however, that it may be that the roles in relation to the Code become so onerous that a specialised body should handle it. Parliament should have the power to establish such a body if the circumstances should arise.

20.129 If the IGG (or Inspectorate of Government, as we recommend it should be called in future) is to take over the role of the Leadership Code Committee, it will, of course, need extra resources necessary to handle the additional responsibilities. An issue will also arise as to where the members of the Inspectorate should submit their annual disclosures, and what authority should investigate allegations of breach of the Code alleged to be committed by them. Under the present Statute, the IGG handles these functions in respect of the members of the Committee. We would suggest that they be handled by the Principal judge of the High Court or the Chief Justice, in respect of the Inspectorate of Government.

20.130 Recommendation

(a) *The Leadership Code of Conduct should be supervised and enforced by the Inspectorate of Government, or such other authority as Parliament may determine, and it should receive annual disclosure statement~~ and should monitor observance of the Code.*

(b) *The Code should provide that action recommended against a person and to have breached the Code must be taken by the relevant authority within a-certain period, after which the recommended penalty should take effect automatically.*

(c) *There should be limits set out in the Code on the period for which a person can be Suspended from office for breach of the Code.*

(d) There should be provision in the Code far a person who is dismissed from office far breach of the Code to be prohibited from holding public office for a period of at least five years.

(e) There should be provision far imposition of a fine as a penalty far breach of the Code.

(f) The Code should provide that action under the Code may be taken in respect as breaches even after a person ceases to be a leader.

(g) Members of the Inspectorate of Gavernment or such other authority as is made responsible far supervision and enforcement of the Code should submit their annual disclosures statements to. the Principal Judge, who should also deal with allegations of breach of the Code by such persons.

(h) Parliament should prescribe the procedures to enforce the Code and in particular shall make provisions far:

(i) the duties, functions, procedure and powers of the Inspectorate of Gavernment;
(ii) the lodging of complaints against the alleged or suspected breach of the Code;
(iii) the investigation of cases of alleged breach of the Code;
(iv) Determination of such cases by the investigating authority;
(v) Prescribing penalties or other consequences that may result frame a lawful Determination of breach of the Code;
(vi) the disposal or temporary central of the assets or income of a leader to. whom the Code applies and;
(vii) the creation of offences under the Code by leaders, and other persons and prescribing penalties for such offenses.

CHAPTER TWENTY ONE

INSPECTORATE OF GOVERNMENT

21.1 This chapter considers a special institution to fight abuse of office and corruption. There is already such an institution established by law in 1988 called the office of the Inspector-General of Government (IGG). It is similar to bodies established in many other countries on the model of the 110mbud$_{sman}$l1 first developed in Sweden as long ago as 1809. In addition to "eliminating and fostering the elimination of corruption and abuse of public offices", the office of the IGG has the duty of "promoting the protection of human rights and the rule of law in Uganda" (Inspector General of Government Statute - No.2 of 1988). As the Commission has, however, recommended a specific body for the protection of human rights (see Chapter Seven), we envisage the Inspectorate of Government established under the new Constitution to become an institutionalised specialist body dealing with elimination and prevention of corruption and abuse of office.

21.2 The chapter is divided into four sections. The first outlines the origins and nature of specialist bodies elsewhere in the world established to fight abuse of office, and the experience which makes such an institution relevant in Uganda. The second section analyses the roles and performance of the present IGG in the five years since it was established. In the third section, we discuss the people's concerns about the purposes and effective functioning of such a specialist body and the principles they have offered on which it should be based in the future. In the final section we assess the people's views about specific proposals for such a body and offer our recommendations.

SECTION ONE: ORIGINS AND NATURE OF THE OMBUDSMAN AND RELEVANCE OF SUCH AN INSTITUTION IN UGANDA.

21.3 Before we can examine the role of the present office of the IGG and make recommendations for the future role of any institution like it, we must first examine the origins of the idea for such an institution and the background to its establishment in Uganda.

Origin and Nature of the Ombudsman

21.4 As established and operating in Sweden and other countries of the West, the ombudsman is an independent government institution made up of one or more highly experienced officials. The name and the precise roles given to such institutions vary from country to country. In Namibia it is the Ombudsman, and in Papua New Guinea it is the Ombudsman Commission. In Tanzania it is the Permanent Commission of Inquiry; in Nigeria the Public Complaints Commission; in Zambia the Commission for Investigations; in Ghana the Commission on Human Rights and Administrative Justice; in Pakistan the *Mohtasib;* in India the *Lokayukta;* in Hong Kong the Commissioner for Administrative Complaints; and in the United Kingdom the Parliamentary Commissioner for Administration.

21.5 The main role of such bodies is to act as a watch dog on behalf of ordinary people in their dealings with government and to investigate complaints about maladministration or abuse

of office by any official. There is no precise legal definition of "maladministration" or abuse of office, and so the laws of different countries dealing with ombudsman institutions define their roles in various ways. The general idea is that officials of all kinds should behave fairly and within the law when dealing with or making decisions about members of the public. If a decision, recommendation, act or failure to act is contrary to law (including constitutional law and its provisions on human rights) or established procedure, or is made for arbitral or unreasonable or biased or discriminatory or irrelevant reasons, or because of corruption (for example bribery or nepotism) there is maladministration involved. The concept of natural justice is important here; people are entitled to basic fairness when decisions about their rights and entitlements are being made. While few laws establishing ombudsman institutions explicitly provide for investigations of human rights violations and corruption, the concepts of "maladministration" or abuse of office will often extend to such abuses. As a result, ombudsman institutions play important roles in combating such abuses.

21.6 If its investigations show that a complaint is justified, an ombudsman institution usually recommends action to remedy the complaint. It does not normally have any enforcement powers of its own. Instead it recommends action by other authorities. But the status of the institution is usually so high that its recommendations will normally be acted upon. If they are not, there is often power to report to the head of state who can decide what further action is needed.

21.7 There are, however, a few ombudsman institutions which have wider powers to supplement their investigative and recommendatory powers. Under the Namibian Constitution the Ombudsman can take direct action by bringing court proceedings for "an interdict or 9ther suitable remedy to secure the termination of the offending action or conduct, or the abandonment or alteration of the offending procedures". This power could be very important in cases where officials are refusing to co-operate with the Ombudsman or in cases of great urgency. The Namibian Ombudsman can also challenge statutory provisions if an official seeks .to justify an offending action on the basis of subordinate legislation or a regulation which is "grossly unreasonable or otherwise ultra vires". If criminal conduct by an official is uncovered in an investigation, the Namibian Ombudsman may itself refer the matter to the Prosecutor-General for possible prosecution. In Ghana, the Commission on Human Rights and Administrative Justice has powers similar to those of the Namibian **Ombudsman. In** Pakistan the *Mohtasib* can award reasonable costs and compensation to a person who has suffered loss or damage as a result of maladministration, and this is recoverable from the official or the agency involved. In Papua New Guinea, the Ombudsman Commission can challenge the constitutionality of any law or proposed law. In Uganda and in Pakistan, the IGG and the *Mohtasib* respectively have functions of dealing with root causes of corruption and the IGG has an educative and mobilising role as well.

21.8 It has been mainly in the period since the 1960s that institutions similar to the original Swedish ombudsman have been established in many other countries. In developed countries, the need for such a body has grown with the ever enlarging omnipresence of bureaucracy in many welfare and other programmes of the post-war period. The interaction of the citizens and government administrative officials has constantly increased so that the possibilities that actions or omissions of officials might adversely affect a person have also- increased markedly.

21.9 In many developing countries, institutions similar to the ombudsman have been established, but in some cases with additional functions to those exercised by such bodies in developed countries. Reflecting the particular needs and problems of various countries, some have been explicitly given roles of fighting corruption, protecting human rights, protection of the environment, encouraging implementation of constitutionally defined national goals and recommending on law reform. The Ombudsman of Namibia and the Ombudsman Commission of Papua New Guinea are good examples of bodies with roles much wider than those normally given to such bodies.

21.10 There have been some difficulties in the functioning of these institutions in many of the developing societies. Whether or not the institution can function satisfactorily in a country depends on such factors as:

(a) the political climate, with instability and violent change in regimes limiting the scope of action of an independent 11,,tchdog" keeping a check on government;

(b) a clear demarcation of the scope of operations, jurisdiction and powers of the institution;

(c) the independence of the institution from the authorities that appoint its members;

(d) the impartiality of the institution in the way it carries out investigations;

(e) availability of the human resources and equipment necessary for the institution to carry out its functions;

(f) the citizens' knowledge about and attitudes towards the institution; and

(g) protection of the investigating officials and those preparing reports from corrupt elements.

21.11 It is also necessary that people allow such an institution to grow in scope, size and effectiveness. They should not expect the impossible to happen but should instead be appreciative of the limitations of such a body. No one institution can be expected to solve at once such deep-rooted problems as corruption' and abuse of office. Its role is to bring incremental change and help develop new standards.

Relevance of such an Institution in Uganda

21.12 Because many aspects of the origins and nature of the problems the IGG is supposed to deal with have been dealt with in previous chapters, there is no necessity to discuss them in detail here. (Corruption and abuse of public office have been discussed in some of the introductory chapters, and those on the Public Service, Judiciary, Police Force and Army, while Human Rights have been discussed in some detail in Chapter Seven). The point here is not to go over that ground again but rather to consider whether an institution such as the ombudsman has relevance in Uganda.

21.13 Throughout the pre-colonial, colonial and post-independence history to 1988, there was no such impartial institution intended to deal with the problems caused by persons holding official posts. Other than the courts of la~, there was no recourse for a citizen seeking redress against the State and its powerful agents. The courts were of limited assistance to most people because they tended to lack the resources to challenge government. In addition, the technical rules applicable to proceedings in the introduced courts are not always conducive to the uncovering of the full facts or the granting of adequate relief in corruption, human rights and abuse of office cases.

21.14 The rampant corruption of the post-independence period has seriously compromised the ability of the courts to administer justice. As discussed in Chapter Seventeen, many people doubt the impartiality of the judiciary, especially at the lower levels.

21.15 The gross abuse of human rights since independence has been perpetrated against citizens mainly by state organs and state agents. They have been able to act with impunity, usually without fear of court action let alone any other form of effective checking and discipline. Dictatorships made the leaders and their public agents and functionaries behave as if they were above the law.

21.16 The resulting breakdown in the rule of law contributed not only to human rights abuse but also corruption and other forms of abuse of public office. Nepotism, sectarianism, discrimination and victimisation became the order of the day in public affairs, public employment and provision of public services.

21.17 The management of public offices is such that it is often difficult for the ordinary person to obtain justice when having even simple dealings with government officials. Officials are no longer accountable. The ordinary citizen is powerless to remedy injustice. Only the very wealthy have any chance of redress.

21.18 In these circumstances, people in Uganda generally welcomed the establishment of a special institution to deal with all kinds of abuse of public office. The fact that it was impartial and that it soon gained a reputation for independence and ability to stand up to powerful institutions were aspects of the office of the IGG that many people emphasized in their views submitted to us. In addition, its ability to investigate abuses on behalf of the people was welcomed, for the ordinary person seldom has the resources necessary to carry out the investigations necessary to unearth adequate evidence to institute court cases against government officials.

SECTION TWO: ROLES AND PERFORMANCE OF THE OFFICE OF THE IGG

21.19 In this section we consider three main issues. The first is the background to the establishment of the IGG for it was against a history of previous attempts to deal with problems of abuse of public office that the office of the IQG was set up. The second is the provisions of the law in respect of the establishment and independence of the office of the IGG, its broad duties and functions and its limited ability to have action taken in respect of abuses investigated. The third is the performance of the office of the IGG over the past five years in carrying out its roles and functions .

Background to the Office of the IGG

21.20 Various efforts were made by post-independence government to deal with corruption and other abuses of public office, There were commissions of inquiry into human rights abuses set up under the Amin regime, though they were mainly directed towards appearances and had little, if any, effect on the abuses being committed at the time.

21.21 Both the Obote I and Amin regimes took some steps to control the ever increasing corruption. The Prevention of Corruption Act (No.8 of 1970) was announced with much fanfare as part of Obote's "Move to the Left", Among other things it was intended *to* make it easier to deal with corrupt officials by defining various crimes where rules of evidence which might favour defendant were relaxed. For example, possession of unexplained funds well beyond the salary of an official might be prima facie evidence of corrupt practices, resulting in conviction unless the official provided an adequate explanation. The Act is still part of the law. Although there have been some prosecutions, it has had little effect. One factor here may have been the coup of 1971 reducing efforts to implement the Act. There were also fundamental problems with it; for example, obtaining the necessary evidence of corruption for criminal proceedings in a bribery case may be impossible without co-operation of the person who offered the bribe in the first place, and such persons seldom volunteer information to the authorities. Under Amin, the Economic Crimes Decree (No.2 of 1975) was passed supposedly to combat a number of ills, including embezzlement and corruption, hoarding of commodities, smuggling and overcharging. Trials for these offences were handled by a military tribunal which in fact became an instrument of terror. Allegations of minor crimes were used to harass relatively minor offenders or innocent people while extensive corruption by high level officials continued unaffected.

21.22 The NRM Ten Point Programme included commitments to eliminate corruption, abuse of human rights and misuse of power by officials. Initial steps to combat corruption were taken early in-1986 with the establishment of commissions of inquiry into each of the then existing ministries. Most of these proved to be ineffective. Some leaders appointed their friends to the commissions to ensure little came out. None of the commissions had the time or resources to do a thorough investigation. At the same time, the NRM policies raised people's expectations and there was a flood of public complaints about excesses and abuses of office as well as corruption and human rights violations by officials.

21.23 As early as the end of 1986, government announced the intention to establish a single and permanent institution to ensure thorough and continuous investigation of corruption and monitoring of government activities. Human rights was added to the role of the IGG during discussion of establishment of the body which went on through 1987. The additional role was decided on in the light of NRM commitments on protection of rights, the growing number of complaints about abuse of rights and the fact that the Commission of Inquiry into Human Rights Violations established in 1986 was restricted to dealing with allegations of abuses prior to 26 January 1986.

21.24 The office of the IGG in fact started to operate on an administrative basis during 1987. The statute establishing the IGG was assented to by the President in March 1988, and the institution was officially established shortly after that.

The Inspector-General of Government Statute (No.2 of 1988)

21.25 The statute establishing the office of the IGG (the IGG Statute) provides for four main sets of matters: establishment of the institution and appointments to positions in it; duties, functions and powers of the body; conduct of investigations; and reports by the IGG on its investigations and actions on its recommendations. Through examination of views from the people on these and other aspects of the Statute and through study of the Statute itself, the Commission has concluded that in general the provisions are suitable and adequate. There are, however, some weaknesses which may need to be taken account of in our recommendations.

21.26 Dealing first with establishment and appointments, the office of IGG established by the Statute consists of the IGG, Deputy IGG and a Secretary who heads administration, all of whom are appointed by the President and other officers and supporting staff appointed by a special board. No provision is made in respect of either the term of office served by the presidential appointees or their removal from office for such things as misconduct. There is no requirement for the President to seek advice or approval in respect of the appointments of IGG, Deputy and Secretary. The only qualification required for persons to be appointed IGG or Deputy is to have "served in a field or discipline relevant to the work of the office of Inspector-General of Government, for not less than seven years".

21.27 The Statute aims to provide the office of the IGG with a high degree of independence, an aim pursued through several approaches. First, section 2(2) specifies that the office of the IGG is not subject to direction or control by any other authority (though it is also "directly responsible" to the President, a matter which gives rise to some concern about whether it can be truly independent, as discussed below). Second, because of an amendment to the 1967 Constitution made by the IGG Statute, the remuneration of the IGG and Deputy is not set by the same administrative procedures as most other public offices, but is instead determined under constitutional provisions in the same manner as for judges, members of the Electoral Commission, the judicial Service Commission and the Auditor-General (Article 97 of the 1967 Constitution). Third, the counsel, officers and other staff are not appointed by the Public Service Commission (PSC), but by a special Appointments Board consisting of the IGG, the Deputy IGG, the Secretary, the Chairman of PSC, the Permanent Secretary responsible for the Public Service and two other members appointed by the President.

21.28 There are aspects of the provisions on establishment and appointments which have caused concerns to be raised in the people's views submitted to us. In particular, there was concern about whether the independence of the institution was fully protected. While people generally accepted that the President values the independence of the office of the IGG and has not sought to interfere in its work, it was emphasized that if independence is to be properly protected in the long run, it needs to be guaranteed in such a way that even a power hungry President is unable to interfere. Hence concern was expressed that the appointment and removal of the IGG, Deputy IGG and Secretary by the President alone could permit future abuse.

21.29 In a similar vein, making the office of the IGG directly responsible to the President was seen by some as potentially dangerous, for that seems to be the basis for a range of other provisions in the Statute giving the President wide powers over the office of the IGG. These are all discussed further later in this section of the chapter. They include assigning functions

to the IGG, directing investigations to be· carried out and certifying that searches or investigations should not be carried out for security or other reasons. In addition,)he office of the IGG has to rely entirely on the President for action to be taken on its recommendations, for its detailed reports are directed to the President who alone decides what action is to be taken.

21.30 AS to other criticisms, some people suggest that there should be more detailed provisions about the qualifications required of the IGG and the Deputy IGG and in respect of their terms of office and grounds and procedures for removal from office. A few people suggested that the Appointments Board did not have sufficient independence in that the three members from the IGG could be outvoted by the other four members and because the President can assign it functions directly.

21.31 Concerning duties, functions and powers, the main duty of the IGG is the elimination arid prevention of certain kinds of abuse by persons in public office. It is giveaway number of specific functions to perform in carrying out that duty and a number of powers to assist it in performing the functions.

21.32 Under section 7(1), the office of IGG is "charged with the duty of protecting and promoting the protection of human rights and the rule of law in Uganda, and eliminating and fostering the elimination of corruption and abuse of public offices." Hence the duty of the IGG can really be divided into four closely related duties in relation to public offices, namely: protection and promotion of human rights; upholding and promoting the rule of law; eliminating corruption of public offices; and eliminating the abuse of public offices.

21.33 The duties are closely related. When a public officer violates human rights or is corrupt, there is abuse of office involved. Similarly, the rule of law is undermined by not only human rights violations but also by corruption and by other forms of abuse of office (" maladministration ").

21.34 It is only the duty in respect of elimination of abuse of public offices which is normally the explicit task of ombudsman institutions. They are nevertheless often closely involved in human rights and corruption issues because, as we have seen, abuse of office or "maladministration" often extends to corruption and human rights violations. The main difference in Uganda is that because of the prevalence of human rights violations, debasing of the rule of law and corruption, the IGG has been given explicit duties in fighting these particular abuses of office.

21.35 The application of the duties given to the office of the IGG not only requires that body to take action, but also requires the office to actively involve others in a wider struggle. It must itself protect as well as promote protection by others of rights and the rule of law; and it must not only itself eliminate, but also foster elimination by others of corruption and abuse of office. It is for this reason that some of its functions envisage it playing an educative, mobilising and generally preventive role.

(i) arbitrary deprivation of human life;
(ii) arbitrary arrest and detention without trial;
(iii) breach of the right to a fair trial;
(iv) use of torture or inhuman and degrading treatment; and

21.36 The IGG's functions as listed in the statute are not intended to be exhaustive but they highlight the focus of its work. They are divided into the following groups;

(a) in relation to the duty in respect of human rights, to inquire into allegations of human rights violations by persons in public office, and in particular:

(v) unlawful acquisition, possession, damage or destruction of private property.

(b) in relation to the duty in respect of the rule of law, to inquire into the methods the law enforcement and state security agencies use to execute their functions and the extent to which they uphold or detract from the rule of law;

(c) in relation to the duty in respect of corruption in public offices, to detect and prevent corruption in public offices, and in particular to:

(i) examine procedures of all public offices to discover corrupt practices and secure changes in those procedures;
(ii) advise public offices on ways and means of both preventing corrupt practices and improving performance of the offices;
(iii) spread information on the dangers of corruption and foster public support for elimination of corruption; and
(iv) receive and investigate complaints about corrupt practices and injustices and make recommendations for appropriate action;

(d) in relation to the duty in respect of abuse of public offices, to investigate conduct of public officers connected with or promoting abuse of office, neglect of official duties or economic malpractices;

In addition, the IGG is required to perform other functions as prescribed by the President.

21.37 In carrying out these functions, the IGG has jurisdiction over a very wide range of people including anyone who serves in any of the offices which the Statute defines as "public offices". These go far beyond what might normally be regarded as governmental bodies, though virtually every conceivable such body is listed including: the Cabinet, the National Assembly, the Courts, Army, Police, Prisons, all resistance councils and committees, and Parastatals. Included in the Statute are bodies which may not usually be regarded as public offices such as: political parties, professions, cooperative societies, trade unions and schools. The definition of public office in the Statute does not include the President, leading some to wonder whether that vitally important office is exempt from investigation. There is, however, a general "catch-all" provision extending the IGG's roles to "any other office that offers service to the public or that administers funds on behalf of the public or a part thereof", and that may well extend to the President as well as to other governmental and semi-governmental bodies not specifically mentioned.

21.38 The office of IGG is provided with a wide range of powers necessary to carry out its functions. It can initiate investigations by IGG officers; require public officers to answer questions and produce documents; have access to documents relating to work of any public office; search premises of any public office or of any vessel, aircraft or other vehicle where it is suspected that property corruptly acquired may be concealed; and investigate bank, share, purchase or expense accounts or any safe or deposit boxes in a bank. The search powers are subject to an exception where the President certifies that such search may prejudice security, defence or international relations or investigation of offences, or disclosure of Cabinet deliberations on secret or confidential matters which would be injurious to the public interest.

21.39 There were some criticisms expressed about the provisions on duties, functions and powers. In the firs~ place it was suggested they were too wide, so much so as to make it very difficult for the IGG to be effective. The first is in going beyond the traditional functions of ombudsman institutions by adding human rights abuses and corruption to the normal role of dealing with abuse of office. Second, the range of offices covered was seen to be so wide as to make it impossible to cover them effectively without an army of investigators. The criticism was not against the aim of dealing with abuses by all such offices; rather, it was that
by giving one body too much to do it would inevitably be seen to be ineffective and so its reputation would suffer. Many people felt it would be better to spread the load of work among other institutions.

21.40 There were other criticisms that in some respects the functions are too narrow, in that there are some significant exceptions to what may be investigated. In particular, no investigation can be made or question raised by the IGG in respect of: decisions of courts or tribunals or matters before a court or tribunal; any exercise of the prerogative of mercy; or matters certified by the President as likely to prejudice security, defence or international relations or investigation of offences, or involving disclosure of Cabinet deliberations on secret or confidential matters which would be injurious to the public interest. Finally, there is a time limit within which all complaints must be made except those relating to criminal offences. If two years have elapsed from the time of the facts complained about, the IGG is not to receive the complaint unless there are exceptional circumstances. There was concern that these exclusions could allow major abuses of office to escape investigation, and that the broad powers of the President to prevent investigations could be open to abuse. Others were concerned about the failure to list explicitly the President among public offices which could be investigated by the IGG.

21.41 Other criticisms related to the functions concerning human rights violations. It was noted that the IGG is the only body charged with investigating such violations occurring after January 1986. As a result it was felt it should not have been restricted solely to violations by public officers, there being concern that abuses by other persons might never be dealt with. There was also concern that the IGG Statute gives only some of the full list of rights protected by the Constitution. While the list of functions is not exclusive, listing only some 9,f the rights is likely to limit the attention given to other rights which may also need the protective efforts of a body such as the IGG.

21.42 There were also criticisms of the President's powers both to give additional functions to the IGG and to prevent searches by the IGG. People felt that while it may be necessary

to vest such powers somewhere, they would be open to abuse if they were exercised by the President without any checks by some impartial body.

21.43 On the conduct of investigations, the Statute allows the office of the IGG to investigate complaints received from the public or initiate investigations itself in respect of any of the functions mentioned above. In addition, it has jurisdiction to investigate or inquire into any other matter which may be "specified or directed by the President". It may investigate actions of a person even after that person has ceased to serve in a public office. It can decline to investigate any matter where in its opinion: the complainant has at any time had the right or opportunity of obtaining relief or redress by means of application to any executive authority or proceedings before a tribunal or court; the complaint is trivial, frivolous, vexatious or not made in good faith; or the investigation would be unnecessary, improper or futile. No reasons need be provided by the IGG for declining to investigate on any of these grounds.

21.44 Complaints should normally be in writing, except where a complainant cannot write. The IGG can determine its own procedures for conduct of investigations. It is, however, required to act in a confidential manner. The head of any public office, the subject of an investigation, and any officer, the subject of a complaint, has a right to a hearing. In fact no adverse comment can be made by the IGG in any report on any matter unless such a prior hearing has been provided.

21.45 The IGG has a range of powers to assist it in carrying out its investigations. It can summon people to appear before it, administer oaths to witness~, issue warrants of arrest for persons failing to answer any summons, pay witnesses allowances and so on. There is also provision for various offences by witnesses and others intended to give the IGG some power to enforce obedience of persons involved in its investigations.

21.46 The provisions on conduct of investigations were criticised by some people. The two year time limit on complaints in respect of all save criminal offence was seen as unduly restrictive. The wide grounds on which the IGG has a discretion to decline to investigate worried others who were concerned that many matters may escape investigation where these discretionary powers are exercised for inadequate reasons which need not be revealed by the IGG. Others were concerned about possible abuses of the wide powers of the President to direct investigation of any matter at all, irrespective of whether the investigation has any connection with the normal functions of the IGG.

21.47 As to the last of the four sets of matters dealt with in the IGG Statute, the only power the IGG has at the conclusion of an investigation is to make reports of two distinct kinds. The first is a full and confidential report on every inquiry made by the IGG which must go' to the President covering the proceedings, providing conclusions and recommendations, and stating remedial action taken by the public office or officer investigated. The second kind is a six monthly report to the legislature which must provide summaries of the reports to the President but which must not identify any person whose conduct was investigated unless the legislature passes a resolution requiring the IGG to provide more details.

21.48 The IGG has no power itself to take action against anyone it investigates. It may only make recommendations for action by other authorities. It is for the President to determine

what action is to be taken. It may be any action under or in accordance with any written law. The major criticism of the provisions on reports and action is the inability of the IGG to take any action itself or to enforce its recommendati9ns for action by other authorities. Some felt its powers were· so limited as to make it largely ineffective in practice.

Assessing the Performance of the IGG

21.49 The I GG carries out numerous investigations each year,/some on the basis / of complaints received and others initiated by the body itself. The figures for complaints received from the public in the years 1987, 1988, 1989 and 1990 were 2137,/3753, 1;316 and 1287 respectively. Only some of these are investigated. As, to investigations initiated/by the // IGG, in 1990 there; was a total of 412 such cases. The investigations involved a wide range/ of public offices. The five with the highest numbers in the years 1987 to 1989 were the Ministry of Defence, the Police, and the ministries of Health, Rehabilitation and Education.

21.50 The focus of matters fully investigated in most years has been corruption. There have been a number of property matters (land or eviction or tenancy disputes) most involving the Departed Asians Property Custodian Board, and most in fact involving some elements of corruption allegations. Very few cases have involved human rights abuses, though some of the corruption and other cases have had human rights implications. Investigations have involved politicians and officials of the highest levels as well as lower ranks, indicating clearly that the IGG does not feel in any way constrained by the importance of the office of the person it is investigating.

21.51 In addition to investigations of alleged wrongdoings, the IGG carries out preventative work, requisitioning accounts from government bodies to ensure there has been no corruption and insisting on maintaining or establishment of proper accounting and auditing systems by public offices. There is ample evidence of efforts to comply with recommendations made on such matters by the IGG.

21.52 The IGG operates subject to significant constraints. It is entirely dependent on its staff for the effective carrying out of both investigations and preventative work. Although it has an approved establishment of about 150 positions, only 72 had been filled in 1992, and of these, only 32 were investigative staff. Few had wide experience or extensive training relevant to their work. The IGG has not been able to attract sufficiently qualified persons to many positions including three of the five most senior posts - those of commissioners for Corruption and Abuse of Office, Human Rights and Legal Affairs. The result has been severe limits on its ability to carry out major investigations. The IGG says that limited staff and logistical constraints are major reasons why it has done little in respect of its duty and functions concerning human rights violations.

21.53 There is some concern about the lack of action taken on recommendations made by the IGG in its reports to the President. It has in fact been suggested by some that it is unrealistic to have the reports go to the President, who simply cannot possibly have the time needed to evaluate numerous detailed reports in the midst of numerous other pressing duties.

21.54 By late 1992, the IGG had not submitted any of the six monthly reports required by the Statute to go to the legislature. The reason given is again lack of logistical requirements.

The same factor is a major constrain on effectiveness in terms of making the IGG accessible to rural people. It has offices only in Kampala, and has not even made the rural tours which the Tanzanian Permanent Commission of Inquiry makes in order to reach the widest possible range of people.

SECTION THREE: CONCERNS AND PRINCIPLES EMPHASISED BY THE PEOPLE

21.55 Arising from their bitter experience of corruption, abuse of office and violation of human rights by public officers and their observations of the operation of the IGG to date, the people have a number of concerns about the IGG and its roles and functions. ,As a result, they have suggested a number of principles which should govern future provisions about such an institution. A number of concerns have already been noted in our discussion of the IGG Statute and the performance of the IGG and so do not require elaboration here.

Concerns of the People

Honest and impartial personnel:

21.56 A number of people expressed the concern that corruption is so rampant and so embedded in virtually every section of the society that it may not be possible to find sufficiently honest people to provide the necessary personnel for such an institution as the IGG to carry out its work effectively and impartially.

Accountability:

21.57 Others wondered whether it is possible to ensure that the IGG is impartial. They suggested that it might be necessary to have some independent person or body to supervise the IGG. Most recognised, however, that there would be considerable difficulty in setting up such arrangements. In the same vein, people wondered how such an institution could be made accountable to the people while at the same time keeping its own officials honest, and not involved in the corruption so prevalent in our society.

Willing co-operation:

21.58 Others were concerned about the willingness of government agents and organs to accept and co-operate fully with investigation by the IGG. They noted that some agents and organs of government have long been so powerful and unaccountable that they would not easily accept change that may limit their freedom to act as they wished. People were not sure that the institution would be truly theirs and capable of resisting being co-opted to serve the interests of government organs.

Real powers to enforce decisions:

21.59 Some submissions were concerned about whether such an institution could get real powers necessary to enforce its findings and to resolve conflicts without causing duplication with the work of the courts.

Adequate qualified staff from the relevant fields:

21.60 Others were concerned that there may not be sufficient technical staff available, able to penetrate the powerful and closed system of the government bureaucracy. They feared the difficulty of establishing justice and openness when various government organs have proved so willing to cover up for each other.

Speed of investigations:

21.61 People also expressed concern about the speed with' which such an institution, would be able to investigate and deal with wrongs committed by officials against ordinary people. They observed that, justice delayed is often justice denied.

Dominance by judges, lawyers and bureaucrats:

21.62 Some people fear that such an institution could be dominated by lawyers, judges and bureaucrats, and if that were to happen in Uganda, the institution could easily become bogged down with the same sort of bureaucratic procedures and technical language which are characteristic of courts of law.

Adequate resources:

21.63 It was also felt by many who submitted views that government was most unlikely to allocate sufficient funds and resources to this institution whose functions include investigating of government departments and putting pressure on its officials to be accountable. Lack of funding and non-availability of other resources would be the easiest way of crippling the work of an institution such as the IGG.

Principles Proposed by the People

Independence:

21.64 It was emphasized by many that the IGG must be independent from government. Without this being assured, they saw little point in such an institution. To give effect to this principle several basic things would be required. First, in relation to appointments to the institution, it would be essential that power is not solely in the hands of the President. In this regard, people pointed out the experiences in other countries. In some cases, the appointments are made by Parliament (as in Sweden) or on the recommendation of Parliament (as in New Zealand or the United Kingdom). Even where the appointment is an executive responsibility, it is sometimes made on the advice of an independent body, as in Zambia or in Papua New Guinea. It would also be necessary to ensure some financial autonomy for the institution, and to let it control the selection, promotion and discipline of its staff.

Impartiality:

21.65 People wanted to be assured of the impartiality of the institution and its officers. They remembered the: various special investigative bodies established by previous governments

Which had become tools in the hands of particular people in power. They wanted to be assured that this would never occur with a body such as the IGG.

Professionalism and efficiency:

21.66 The professionalism and efficiency of the institution and its, staff needs to be established as a principle. Only the most exacting standards of work will bring hope of exposing and bringing to justice the corrupt officials who have come to dominate public offices in Uganda, and who devote such extraordinary levels of intelligence and energy to the obtaining and protection of corrupt gains.

Entire institution, to be exemplary:

21.67 Many people emphasized the need for the highest moral, academic and administrative standards for the IGG and Deputy IGG and also the staff of the institution. Without these they would find it difficult to trust it in its role of imposing high standards on others.

Accessibility:

21.68 People wanted to be assured of easy accessibility of the institution and its officers. This principle would need to be manifested in a number of ways. In partLe61ar, the institution and its officers would need to be either decentralized or to carry out regular and widely publicized tours of rural areas, or both. There would need to be much more effort to spread information about the institution to ordinary people. This requires simple language leaflets, translated into local languages, and broadcast on radio and put on television. The institution would need to make every effort possible to assist people who cannot read or who have little experience of bureaucracy to make their complaints. NGOs and other bodies, and persons with genuine concern for victims of abuse of office should be permitted to initiate complaints on behalf of victims. There is need to have sufficient number of staff to enable the institution to deal with the flood of complaints likely to follow from its services being widely publicised and brought closer to the people.

Accountability to the people as a whole:

21.69 It was noted by many that the institution should be accountable to the people as a whole. After all, it is intended to be a watchdog acting in the people's interests, and so must constantly satisfy the people that it is so acting. At the very least, this principle would require that the institution make full and regular reports to the people's representatives in Parliament. In this way its work can be examined by the people's representatives and by the nation as a whole. Such a report should be available to the news media and to the people themselves.

Transparency:

21.70 There is also a need for transparency in the work of the institution. While it is necessary to have confidentiality in respect of the conduct of particular investigations, there should be no secrecy in relation to the general conduct of its work. Secrecy in this regard would undermine the confidence of the people. The findings and the general performance of

the institution and the problems it encounters should be openly discussed in Parliament and in the mass media.

No exceptions to investigative jurisdiction:

21.71 The powers of the IGG should not be restricted. All governmental bodies should be open to its investigations. Even the President and his or her office should be under its jurisdiction. Making any exceptions may give the impression that some organs of government are above the law whereas they should all be under clear pressure to meet the highest standards.

No obstruction:

21.72 The institution needs clear powers to initiate and conduct to conclusion whatever investigations it believes are necessary. Hence if there are to be state security or other grounds for limiting investigations, they should be the narrowest possible exceptions. Further, they should be brought into play only subject to checking mechanisms which reduce the possibility of their being manipulated for political reasons to prevent potentially embarrassing investigations from proceeding.

Origin and nature of complaint:

21.73 There should be no restriction -on the basis needed for the IGG to commence an investigation. Investigations might be prompted by formal complaint or anonymous/tip off or press report or by any other means that the institution accepts as reasonable. Any restriction is likely to tie the hands of the institution or form the basis for efforts to obstruct its work.

Remedial powers:

21.74 It was proposed that the IGG should have powers to take remedial action itself if its investigations reveal wrongdoings which warrant action. Without such powers, it was seen as likely to have limited viability in its efforts to stamp out malpractices and corruption in particular. There will always be people with interests in protecting corrupt elements. Such people prevent reports reaching the President and delay action on recommendations to take court action. Only if the institution has independent powers to prosecute will effective action be assured.

Confidentiality:

21.75 The institution must do everything in its power to encourage complaints from ordinary people. It must therefore ensure absolute confidentiality in respect of the identity of both informants and witnesses. Without clear protection of this kind, people are likely to fear retribution from those complained against and thus become reluctant to come forward.

Security of tenure:

21.76 It should be noted that in some countries, institutions of this kind are subject to provisions on removal from office similar to those applicable to judges. In many countries there are proceedings similar to impeachment which are conducted by the legislature, as is the position in Hong Kong and Zambia. However, to ensure the continued honesty and independence of the institution, it was seen by many as necessary to make provision for the removal from office of a member of the institution who breaches the trust of the people.

SECTION FOUR: ANALYSIS OF PEOPLE'S VIEWS AND PROPOSALS AND THE COMMISSIONS RECOMMENDATIONS

21.77 As we have already noted, the present duty of the IGG is to redress abuses of office committed by government officials. The unprecedented levels of human rights violations, corruption and maladministration are viewed by the people with grave concern. They therefore commended the NRM administration for having taken the initiative to redress these abuses by creating the office of the IGG. They called above all for the strengthening of the institution in the new Constitution, by, *inter alia,* giving it a clear constitutional protection and status, providing it with much more independence, and spelling out clearly and unequivocally its functions and powers. It was also suggested by many - including the IGG itself - that its duties in respect of human rights violations might best be handled by a specialist body, leaving it free to concentrate on corruption and other forms of maladministration by public officials.

21.78 It is therefore clear that, in general, the institution of the office of the IGG has been very much accepted by the people. We do not, therefore, need to make detailed recommendations about it save in respect of those aspects where the views of the people clearly indicated a need for important changes.

Establishment, Name and Composition of the Institution

21.79 There was virtual unanimity in the views submitted to us that the institution be provided for in the new Constitution. This would give the institution more independence in that it would be protected from abolition or significant change except through constitutional amendment. There may be a danger with a body such as the IGG that if it is provided for only by ordinary. statute, it could be abolished or weakened by a simple majority vote of Parliament - something which may occur, for example, if Parliament were ever to be dominated by a group or a political party made hostile by IGG investigations or criticisms. Further, as it is the Constitution which establishes the major organs of government and their relationships, it is necessary that an organ as important as the IGG, and the roles it plays in relation to other organs of government, are all given clear recognition as part of the fabric of the state. Only then will the IGG and its work be given the respect required if its work is to have impact.

21.80 Recommendation

The institution Of the I inspectorate Of Government should be enshrined in' the Constitution in accordance with subsequent recommendations made in this chapter.

Name of the institution:

21.81 Although there were a few submissions suggesting a new name for the institution (the most common being "ombudsman") the majority view was that there was no need for change. Indeed, it can be argued that the office of the IGG has gained an excellent reputation, and that it may confuse people about the identity of the body if the name is now changed. We note, however. that the institution is commonly referred to as "the Inspector-General of Government", rather than as the "office" of IGG. As a result, there is a tendency for the institution to be personalized around the incumbent IGG rather than the institution as a whole, made up of IGG, Deputy IGG and other officers. The result can be undue pressure upon the incumbent IGG. It might also be the case in the future that mistakes or poor performance of a particular IGG could damage the reputation of the institution as a whole.

21.82 In this regime, we note from the submissions made to us by the IGG that during the establishment of the body, the name "Inspectorate of Government" had been preferred by many, precisely in order to avoid the dangers of personalization. This proposal was rejected at the time in favour of "office" of IGG on the basis that the title office of Auditor General'! was in use without problems being caused. We are persuaded that there would be advantages in changing the name to that proposed in 1987.

21.83 Recommendation

The name of the office of the Inspector-General of Government should be changed to Inspectorate of Government.

Composition of the Inspectorate of Government:

21.84 Although there were few submissions on the matter, those that did discuss the composition of the office of the IGG suggested that there were not enough members in the institution to effectively carry out its heavy duties. It was suggested that there needed to be not only the IGG and one deputy, but at least two deputies, and that there should, be some facility to increase the number of deputies if the workload of the Inspectorate demanded it. We agree with the need for at least two deputies, so that there can be one focusing on each of the main areas of activity of the institution. We also accept the principle of flexibility in providing for more deputies as required to do the work efficiently and speedily.

21.85 Recommendation

The Inspectorate of Government should be comprised of an Inspector-General of Government and at least two Deputy Inspectors-General, with Parliament having power to provide for such additional deputies as may from time to time be required.

Appointment and Qualifications

Appointment:

21.86 For reasons already discussed, there was much criticism of the powers of the President, acting alone, to appoint the IGG, Deputy IGG and the Secretary. The clear majority

view was that Parliament should be the appointing authority, the arguments supporting this view being first that presidential powers of appointment should be curtailed. Second it was said that citizens want to appoint their own tribunal through their representatives. The-third argument was that Parliament would be an effective body to. Scrutinise the backgrounds of the proposed candidates and screen them to ensure choice of a person of the right quality and caliber, thereby enhancing the independence of the Inspectorate.

21.87 There were also minority views supporting appointment by either: the President with the approval of some ether body (Parliament, Cabinet or a special advisery organ); or Cabinet acting alone; or the Judicial Service Commission; or the Public Service Commission; or the judges of the High Court. It is clear that the principles upon which most such proposals are based is that there should be an open appointment process without pelitical interference so as to ensure appointment of independent persons of the highest ability. These same principles ", can be met by appointment involving both the President and the NCS, as discussed shortly.

21.88 Although it is more common for appointments to ombudsman institutions to be an executive responsibility, as already noted, there are countries where this is either the role ef Parliament as a whole or is done on the recommendation of Parliament. We accept the principle that the President should not have an unfettered power ef appointment, a principle we have sought to. give effect to in numerous recommendations in ether chapters of this report. We also accept that there should ideally be a sense in which the membership ef the Inspectorate is seen as approved-by the people's representatives and answerable to them. We are net, however, convinced that the whole of Parliament need be invelved for this aim to. be achieved. Indeed, as we have noted in respect of other appointments discussed elsewhere in this report, it is net practical for a body of 200 or more members to. handle such tasks. It would therefore be better conducted by a committee of Parliament. We would envisage the role going to the parliamentary members of the National Council ef State, acting as a special committee ef Parliament, as discussed in Chapter Thirteen. We also note that the assumption that appointment by Parliament would ensure independence ef appointees igneres the lessens ef our .experience ef a multi-party system which show that it is possible for one party to dominate both the executive and legislative arms of government. The competition of the parliamentary element ef the N CS is such that complete domination ef its membership by one group or party is less likely, and hence impartial appointments should be mere likely even if Parliament as a whole happens to. be dominated by that group or party.

21.89 If approval of the parliamentary element of the NCS is required for any appointment to the Inspectorate, we see no reason to completely exclude the executive from the appointment process. Indeed, it would seem to us important that appointments are as widely acceptable as possible. Hence we would propose that the President and the NCS should both participate in the process.

21.90 Recommendation

The Inspector-General of Government and Deputy Inspectors-General should be appointed by the President with the approval of the National Council of State.

21.91 If the vitally important duties of the Inspectorate are to be carried out effectively, it is ef course essential that its members devote themselves full-time to their tasks.

21.92 Recommendation

The members of the Inspectorate should not hold any other paid position or other public offices.

Qualifications:

21.93 The provision as to qualifications for the IGG and the Deputy IGG in the present Statute (not less than seven years experience in a relevant field or discipline) is vague. People's views emphasised the need for persons of high moral standing, relevant education and extensive experience. A few stressed the need for age qualifications (e.g. a person between 40 and 60 years). Others suggested the basic qualification as being a person who is a judge of the High Court. Many people insisted on such things as a minimum of a first degree and a demonstrated commitment to justice and assisting the poor and the powerless and to accountability.

21.94 Some of these proposed qualifications would also be restrictive. The main objective would be to ensure the highest possible quality of the appointee. Restrictive age qualifications would not necessarily achieve this aim. Similarly, we see no reason why all members of the Inspectorate need to be judges. If legal training is seen as necessary, there are numerous experienced lawyers from among whom a choice may be made. It is our view, however, that the Inspectorate does not necessarily require all or most of its members to have legal training; indeed there seems no reason for even the Inspector-General of Government, as head of the institution, to be either a lawyer or a judge. The issue is competence and experience. A person with wide experience in administration and demonstrated commitment to justice, accountability and democratic values should be able to handle the problems which the Inspectorate will be dealing with.

21.95 On the other hand, we do accept that given the complex legal issues that will sometimes be involved in the work of the Inspectorate, it would be wise for at least either the IGG or one of his deputies to be a lawyer with considerable experience.

21.96 Recommendation

(a) To be eligible for appointment to the offices of Inspector-General of Government or Deputy Inspectors-General a person should be a citizen of impeccable moral character and proven integrity with wide experience and clear competence and caliber in the management or conduct of public administration.

(b) Either the Inspector-General of Government or at least one of the Deputy Inspectors - General should be a person qualified to be appointed as a judge of the High Court.

Term of Office and Removal From office

21.97 The IGG Statute does not state the term of office of the IGG and Deputy IGG. It would seem they either serve as long as they wish (presumably even to retirement age) or until the President decides to remove them, whichever first occurs: It was argued by many

submissions (including the IGG itself) that this was a serious omission. It undermines the independence of the organisation if the members can be removed at any time. Its effectiveness is also undermined if the institution becomes personalised around virtually permanent personnel.

21.98 There are contrary arguments to the effect that setting limited terms of office may reduce effectiveness, in that it may both prevent people from gaining public stature through being well known, and lessen their opportunities to gain relevant experience. It may also be argued that set terms could affect independence in that members of the Inspectorate would want to keep appointing authorities happy in the hope of being re-appointed.

21.99 We accept that it is preferable to have set terms, both as a means of enhancing independence and to lessen the likelihood of personalization of the institution. We see the danger of personalization as more of a concern than the worry that lack of long serving members will reduce the stature of the body. Its stature will best be assured through performance of the institution as a whole rather than the high public profile of particular members. The gaining of experience can be assured by setting reasonably long terms and by permitting re-appointment. There is little need to worry that concern about re-appointment will undermine independence given the role in the appointment process of both the executive and the special parliamentary committee made up of Parliament's members on the NCS.

21.100 Most submissions on the subject stressed that it was wrong for the President to have power to remove members of the Inspectorate from their offices. There could be no guarantee of independence in such circumstances. Like other constitutional institutions, tenure of office should be protected by the Constitution. Provisions similar to those pertaining to removal from office of other constitutional officers should apply to the Inspectorate.

21.101 We accept this argument, and believe removal from office should be possible only for inability to perform the functions of the office or for proven misconduct. As to the method of removal, the same procedures as apply to appointment should provide sufficient safeguards against abuse.

21.102 Recommendation

(a) *The Inspector-General of Government and Deputy Inspectors General should serve for terms of four years and be eligible for reappointment.*

(b) *The Inspector-General of Government and Deputy Inspectors-General should be removed from office by the President with approval of the National Council of State only for inability to perform the functions of the office due to physical or mental incapacity or other cause or for misconduct or misbehaviour.*

Independence of the Inspectorate

21.103 Views from the people have emphasised the necessity of ensuring the independence of the Inspectorate. That is essential if it is to carry out its work impartially and without

political interference or manipulation. It will be trusted by the people it is intended to serve only if they are confident of its independence.

21.104 Some of the recommendations we have already made will greatly enhance the independence of the inspectorate. In particular, the proposed appointment and removal procedures should mean the IGG will be much less open to any potential pressures from appointing authorities, and its becoming a constitutional office will also protect it from threats of abolition or interference on essential matters provided for in the Constitution. There are, however, several other aspects of present arrangements which need attention to further strengthen independence of the Inspectorate. They include the provisions on direction and control and responsibility to the President; those on provision of funding and personnel resources to the Inspectorate; and those on terms and conditions of the members of the Inspectorate.

Direction and control:

21.105 As already discussed, the IGG Statute provides not only that the IGG should not be subject to the direction or control of any person or authority but also that it shall be directly responsible to the President, and gives the President a wide range of powers over the functions, investigations and implementation of recommendations of the institution. Such powers could be abused and they are not compatible with the high degree of independence for the Inspectorate insisted on by the views from the people.

21.106 Most people commenting on the subject wanted the Inspectorate to be free from direction and control, subject only to the Constitution and the law. It should be responsible only to Parliament as representatives of the people in whose interests the institution must act. That responsibility would be manifested in Parliament controlling the Inspectorate's funding and in the Inspectorate submitting its reports to Parliament, both in accordance with the requirements of the Constitution, as recommended below.

21.107 Recommendation

The Inspectorate of Government should be independent in the performance of its functions and should not be subject to direction or control by any person or institution but should be subject only to the Constitution and the law, and should be responsible to Parliament in terms of funding and submission of reports, in accordance with subsequent recommendations.

Provision of adequate resources:

21.108 Many people submitting views noted that inadequate resources - both human and financial - are often placed at the disposal of commissions set up by government, greatly reducing their possible effectiveness. Our discussion in Section Two of this chapter shows that limited resources is a major factor hampering the present office of the IGG. It is clear that the people feel very strongly that ensuring the effectiveness of the Inspectorate is vital to the overall rehabilitation and development of the society.

21.109 To this end, it is important that the Inspectorate has an adequate budget. This goal might best be assured by giving Parliament responsibility to determine the annual budget allocation to the Inspectorate separately from the normal budget processes. In this way, the special needs of the institution will be best assured of adequate consideration.

21.110 The Inspectorate should also have a high degree of control over the allocation of funding provided to it. The funds should not be allocated or controlled through any other department or agency of government. External control of funding would open the Inspectorate to interference in its operations, and especially sensitive investigations. It would not be able to control and plan its own development. Outside control would also harm the image of the Inspectorate as an institution independent of government.

21.111 It is also essential that the Inspectorate obtain and retain the services of a range of highly qualified personnel necessary for carrying out investigative, preventative and administrative work. To be able to do so, it needs to have a high degree of independence in determining the size and composition of its own personnel establishment, levels of remuneration for personnel and in recruitment and management of personnel. The first two of these matters are much connected with funding levels. Actual decisions on all of these matters are currently the responsibility of the Appointments Board provided for under the IGG Statute. Provided such a body is itself independent of government and responsive to the needs of the Inspectorate, such arrangements should continue. The main point is that government should do all in its power to ensure that the Inspectorate has adequate staff.

21.112 Recommendation

There should be provision to ensure that adequate resources are available to the Inspectorate to enable it to carry out its duties and functions effectively and in particular the Inspectorate should:

(i) control its own budget which should be appropriated by Parliament separately from the normal annual budget appropriation; and
(ii) be assisted by government to whatever extent is necessary to ensure it is able to engage such qualified staff to enable it discharge its duties and functions effectively.

Duties, Functions and Powers of the Inspectorate of Government

Promotion and protection of human rights and the rule of law

21.113 Although people were generally satisfied with the provision of the IGG Statute in respect of the duties of the IGG, there were a number, including the office of the IGG itself, which made submissions suggesting that the duty in respect of human rights violations ought to be vested in a specialised body rather than in the Inspectorate of Government. In the light of the difficulties experienced by the office of IGG in respect of its duties and functions in respect of human rights (discussed above) we have little hesitation in accepting the necessity for change. In Chapter Seven we have already recommended establishment of a specialised Human Rights Commission with duties solely in respect of dealing with and preventing human rights violations. There should therefore be no necessity for vesting such duties in the Inspectorate, which should instead focus on its duties of dealing with corruption and other

forms of abuse of office. In this role it will still be involved in protection and promotion of the rule of law, in that corrupt practices and abuse of office (or "$_{ma}l_{a}$dministration") also undermine the rule of law.

Corruption and abuse of office:

21.114 It is true that corruption is a world-wide social evil but it is in danger of becoming a fatal disease in Africa and other developing countries. It is an impediment to democracy and socio-economic development; it leads to instability, regression, anarchy and political chaos. Since Uganda's independence corruption has changed in form and sophistication. It is a major factor in gross abuses of office. We have already noted the public outrage about the moral decay in public offices. Views from vast numbers of people expressed appreciation for the work being done by the office of the IGG in the fight against corruption. But they want more; they want a universal declaration of war against this evil.

21.115 We have already noted the five functions of the office of the IGG related to its duty in relation to elimination and fostering the elimination of corruption. Two are mainly intended to be preventative, namely: examining office practices etc. to discover and secure elimination of corrupt ones; and advising public offices on how to prevent corruption. Two are educative and mobilising, namely: disseminating information on the evil and dangerous effect of corruption on society; and enlisting and fostering public support against corrupt practices. Only the fifth relates to investigations of specific instances of corrupt practices.

21.116 As to functions in respect of abuse of public offices, the functions specified in the Statute involve investigation of anything either connected with or conducive to abuse of office, neglect of duties or economic malpractices. The two latter functions involve specific examples of abuse of office which were presumably mentioned in the act because of their prevalence. These functions can extend to either investigation of specific instances of any form of abuse or to investigation of broader patterns of conduct which may lead to or encourage such abuses. In the latter case, the preventative and educative role of the institution is again highlighted.

21.117 We noted, in section two of this chapter that the functions listed in the Statute are not intended to be exclusive of the functions that may be carried out as the institution seeks to fulfill its duties. Nevertheless, they do tend to be the ones that are concentrated on, and perhaps to the exclusion of others. We therefore must emphasise that the people's views indicate that the widest possible range of functions need to be undertaken by the IGG in its war on the evils of corruption and abuse of office. Among the many suggestions they made were the following:

(a) devising new preventative measures to be established in public offices to discourage corrupt practices and other forms of abuse of office;

(b) devising new criminal offenses to supplement existing penal provisions for culprits;

(c) mounting a general campaign that makes elimination of corruption a matter of national concern:

(d) for such a general campaign to be effective, it is essential that law enforcement agencies do not frustrate the public by cooperating with corrupt elements, for, to give an example, if a culprit is apprehended. at the instance of a citizen and then promptly set free, not only is the citizen demoralised but also threatened;

(e) the authorities should place only upright and competent people in offices where Important decisions affecting public funds and property are taken, and so promotion in public offices for reasons other than merit must cease;

(t) economic policies should be relevant to the country's needs and geared to alleviate the economic plight of public officers and the citizens generally, thereby removing a major cause of corruption;

(g) there should be strict supervision of public officers and accountability should be mandatory and not discretionary;

(h) state bureaucracy and "red tape" should be re-examined with, the aim of lessening opportunities for officials to pursue' bribes;

(i) a major campaign is required against favouritism, patronage, nepotism, sectarianism and the like in public offices;

punishments passed on persons convicted of corruption should reflect society's abhorrence of such crimes with a view to having a preventive effect and might include: long terms of imprisonment without the option of a fine; forfeiture of misappropriated properties; recovery of embezzled funds; tracing and de-registering properties corruptly obtained; attachment and recovery of properties in foreign countries and recovery of monies in foreign banks accounts; permanent disqualification from holding any public office; and other forms of exemplary punishments; and

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(k) the role of the public in the endeavour to eliminate corruption and other abuses should be constantly stressed for only the total rejection of the scourge will assure its final elimination from society.

21.118 There were some views submitted suggesting that the Inspectorate should become solely an "anti-corruption squad". We see this as a reflection of the general abhorrence of corruption as one of the worst evils prevalent in our society. The majority of submissions on this subject opposed the Inspectorate becoming solely an anti-corruption squad, mainly because they saw other forms of abuse of office as also requiring attention. A few were also mindful of atrocities committed by previous such squads.

21.119 We have also considered the recommendation made in the 1990 report of the *Public Service Review and Reorganization Commission* for the establishment of a specialist anticorruption tribunal to expeditiously try all corruption cases emanating from the investigations of the Police Force and the Inspectorate of Government or from proceedings of the Public Accounts Committee. We have reservations about the need for such tribunals, especially if the administration of justice and the judicial system can be improved in accordance with the

recommendations we have made in Chapter Seventeen, in which case corruption cases can be dealt with in the ordinary way.

Administration and enforcement of the Leadership Code of Conduct:

21.120 We must comment on our recommendation in Chapter Twenty that it should be the Inspectorate that administers and enforces the Leadership Code of Conduct. The major reasons for the recommendation are, of course, contained in that chapter. We should, however, recall here that the Leadership Code is intended to be one of the cornerstones in the fight against corruption. Divested of its duties in respect of human rights, the Inspectorate will be the undisputed authority in respect of corruption and other forms of abuse of office, both of which will' be the subject of the Code's proscriptions. In addition to leaders covered by the Code there will be many other public officers subject to the general jurisdiction of the Inspectorate in its efforts to eliminate corruption and abuse of office. It will be better placed than any other organisation to investigate allegations of abuses by leaders. More importantly, it is intended to be an independent and impartial constitutional authority, and so will be far better suited to administer and enforce the Code than a committee appointed on the recommendation of members of Parliament, as is provided by the present legislation. As they are one of the main groups subject to the Code, it would be most difficult for members of Parliament to be impartial in administering it, and it would have the appearance of making a mockery of accountability if they were to retain the role.

Monitoring compliance with National Objectives and Principles of State Policy:

21.121 We have already discussed, in Chapter Five, the need for monitoring of government compliance with the National Objectives and Principles of State Policy which we have recommended should be included in the new Constitution. As they are intended seriously to provide direction to both government and the nation as a whole, monitoring by an impartial body is necessary.

21.122 The best body to carry out the monitoring role would be the Inspectorate. First, there is no doubt that at present, the failure of government to meet its goals is very much due to corruption and abuse of office. There is no doubt that a massive proportion of government funding never reaches the projects and programmes it is allocated to. Instead, it goes into the pockets of corrupt officials. Abuse of office is also a major factor, for lazy and inefficient officers contribute little or nothing to government programmes. A second reason for giving the monitoring role to the Inspectorate is that its duties and functions will require it to be constantly examining and evaluating the performance and operations of all governmental organs and agencies. It should always be reminding all such bodies of their duties achieve the objectives and principles. In its reports to Parliament (below) it should deal with the issue of implementation of the National Objectives and Principles of State Policy.

21.123 Recommendation

(a) The duties and functions of the Inspectorate should be the following:-

Eliminating and fostering elimination of corruption and abuse of public office.

(ii) fostering the improvement of the work of public offices and in particular eliminating unfair and/or discriminatory practices or procedures from them;

(iii) protecting and promotion of the rule of law as it relates to administration and in particular, ensuring that principles of fairness and natural justice apply in public administration;

(iv) enforcing of the Leadership Code in accordance with the provisions of this Constitution and the Leadership Code of Conduct Statute; and

(v) monitoring of observance and compliance by government or any of its instituiions of the National Objectives and Directive Principles of State Policy to be contained in the Constitution.

(b) In light of our recommendation for establishment of a Human Rights Commission, there no necessity for the Inspectorate to have a role in relation to promoting protection of human rights.

Extent of Jurisdiction of the Inspectorate

21.124 The majority views submitted by the people make it clear that they believe that the Inspectorate should have jurisdiction over the widest possible range of people with official or semi-official dealings with the public, or with powers to regulate the public or any section of the public. As discussed in both Chapter Twenty *(Leadership and A Code of Conduct for Leaders)* and earlier in this chapter, people want new standards to be observed by leaders and public officials at all levels. Those who are not subject to the Leadership Code of Conduct will constitute the vast majority of political leaders and officials, and people want to be sure they will be accountable to a powerful and impartial authority.

21.125 There were contrary views. Indeed, as discussed in Section Two of this chapter, there were suggestions that because its jurisdiction was so broad, the IGG could not hope to perform its duties and functions effectively. But as pointed out in other views submitted, the mere fact that an official is subject to the jurisdiction of the IGG may itself have some effect on performance, and the threat of reference to the IGG may itself be useful to persons suffering at the hands of a corrupt or arbitrary official. Further, the removal of its human rights duties and functions and its improved independence should enhance the capacity of the Inspectorate.

21.126 Hence we would suggest that the range of public offices covered by the IGG Statute is not unreasonable. We see nothing wrong with that list extending beyond normal governmental bodies, and suggest the range of jurisdiction should be a matter for Parliament to determine from time to time.

21.127 Recommendation

The jurisdiction of the inspectorate should extend to such officers or leaders as Parliament determines whether employed in public or not, and may include institutions, organisations or enterprises as Parliament may prescribe.

Investigations by the Inspectorate

21.128 There were few submissions on the· investigative functions and powers of the Inspectorate, but those emphasised the need for the widest possible range of powers as might be needed to ensure maximum effectiveness of the institution. Of particular concern to some was to ensure that the Inspectorate be able to investigate either on complaint or of its own initiative. As noted in Section Three, a number of people wanted to be sure that NGOs or other persons or bodies acting in the public interest should be able to initiate complaints on behalf of others. This was seen as essential if the poor and the powerless were to have any real chance of their voices being heard.

21.129 We have noted the criticisms, discussed in Section Two; of the limits on investigations in the present IGG Statute. We recognise the concerns of the people that extensive limits may result in an ineffective Inspectorate. We accept that there may need to be some limits, so that, for example, the Inspectorate does not interfere in ongoing court proceedings. Any such limits must, however, be very precisely defined in the law providing for the Inspectorate, and defined as narrowly as possible. For example, there should be no general power in the hands of the President to prevent investigations simply by certifying that security ·or other considerations are put at risk. If there is to be any kind of power to limit investigations on such grounds, the grounds must not only be precisely defined but it would also be best if a decision on whether grounds exist in a particular case is made by an impartial body. Although this is not a matter for constitutional recommendation, it may be that the High Court would be the best body to decide such matters, on application of the Attorney-General.

21.130 As to other limits on investigations, we accept that there should be some time limit within which complaints should normally be brought to the Inspectorate and that the two year limit in the present Statute is reasonable. Such a limit can constitute a kind of *prima facie* test of how serious the complainant is. But if there are good reasons why the complaint was not made within time, the limit should be waived as of right. So we would suggest that the provisions of the present Statute be revised to ensure that the waiving of the limit is not purely discretionary.

21.131 We noted people's complaints mentioned in Section Two of the chapter - about the wide discretionary powers under the IGG Statute under which the IGG can decline to investigate matters. We accept, however, that there must be some limits on what the IGG takes on. Assuming that upright and committed people are appointed to the Inspectorate, we believe there should be little concern about abuse of such discretionary powers. Indeed, we note that the present office of the IGG tends to take a very broad view of its powers, and seldom declines jurisdiction.

21.132 Finally, the Inspectorate will continue to need wide powers if it is to be able to be effective in its investigations, and most of the powers in the present Statute will continue to be necessary. But in addition, we have recommended (below) that the Inspectorate should have remedial powers, which will be closely related to its investigative powers.

21.133 Recommendation

The Inspectorate may initiate an inquiry into any matter relating to its duties and functions either on its own initiative or on complaint made to it either by a person affected by the subject matter of the complaint or by some other person.

Remedial powers

21.134 As we saw in Sections Two and Three of this chapter, there has been widespread concern expressed in views submitted to us about the lack of action taken on recommendations arising from IGG investigations. In general, most submissions agreed that the Inspectorate should have much broader remedial powers.

21.135 In the first place, it should not entirely rely on some other office to which it makes recommendations for action. Very often the recommendations made to the President in reports from the IGG will be for the President to recommend some other body to take action. For example, if the IGG investigation discovers evidence of criminal activity, the report may recommend that the President recommend a prosecution by the Public Prosecutor. There is every reason why the Inspectorate should make such recommendations itself, to whatever body it believes should take action.

21.136 In the second place, many people argued that the Inspectorate should be able to determine cases and enforce its orders in relation to matters in its jurisdiction. While it is unusual for ombudsman institutions around the world to have enforcement powers, there are cases where powers of this kind are exercised, as discussed in Section One of this Chapter. Vesting of enforcement powers would not necessarily mean that the IGG would become a court dealing with all criminal charges of corruption of any kind. It would be expected that the courts would continue to deal with such matters in the normal way, often dealing with prosecutions recommended by the Inspectorate. But for example, if investigation reveals that corruption or abuse of office has caused loss or damage to a complainant, the IGG should have power to determine the extent of the loss and order payment to the complainant by the public office or public officer concerned. Its powers in this regard would be similar to those recommended to be vested in the Human Rights Commission (see Chapter Seven).

21.137 The precise extent of the powers to hear and determine cases should be prescribed by Statute. There would be need for careful safeguards written into the Statute to ensure proper procedures are followed when such powers are exercised - for example, full rights to a hearing to any person the subject of proceeding would have to be guaranteed. There would also need to be a right of appeal to the Supreme Court for any office or officer affected by such proceedings.

21.138 If the remedial role of the Inspectorate is to be .carried out effectively, the Inspectorate will need a wider range of powers than it has now (most of which are designed to facilitate investigations only, and not dealing with substantive matters). We therefore think it should be vested with powers similar to those of the High Court to summon witnesses, enforce its orders and soil.

21.139 Recommendation

(a) Subject to the provisions of the Constitution and the law in respect of the Inspectorate, the Inspectorate should have power to hear and determine cases and enforce its orders involving corruption or abuse of office.

(b) Appeals against a finding of the IGG under clause (a) above should be to the Supreme Court.

(c) The Inspectorate should have such powers, rights and privileges as are vested in the High Court for purposes of carrying out its functions under the Constitution.

Reports of the Inspectorate

21.140 At present not only is the submission of reports to the President a manifestation of the IGG being responsible to the President (as already discussed), but it is also a fact that the only possibility of enforcement of action on findings by the IGG is through recommendations made in its reports. As we have recommended that the enforcement powers of the Inspectorate be drastically enhanced, the former role of reports in this regard should no longer be relevant.

21.141 There is need for the IGG to make a report to Parliament. Quite apart from the issue of principle concerning the Inspectorate being responsible to the people's representatives, we accept that the President is not the ideal authority to deal with such report, as his office is so busy. Parliament or its committee will have more capacity to sift through and weigh the material in periodic and detailed reports from the Inspectorate. In any case, Parliamentarians being representatives of the people are accessible, and are likely to get to know of the misdeeds, if any, of the IGG. We also feel that the IGG's report should also contain all matters of interest to the nation.

21.142 Recommendation

(a) A report on the performance of its functions should be submitted by the Inspectorate to Parliament at least once in six months.

(b) The report should include such recommendations in respect of matters dealt with by the Inspectorate as it considers necessary and such other information as Parliament may require.

(c) A copy of the report should be provided by the Inspectorate to the President.

(d) A copy of any material in such a report dealing with the administration of any local authority should be provided by the Inspectorate to that authority.

Chapter 21

Accessibility of the Inspectorate to the People

21.143 Submissions from the people complained about the lack of accessibility of the office of the IGG in at least two main senses. The first was that the work of the IGG is very much confined to Kampala and the surrounding areas. They proposed that the institution should establish branch offices at every district level so that its services can reach the people who deserve those services most.

21.144 In the same vein, the many people who wanted the Inspectorate to have remedial powers wanted it to hold sittings and hearings all over the country. This would both educate the ordinary people about its role, and encourage them about its effectiveness. It would also have a deterrent, effect on public officers in up country areas.

21.145 The second issue was that little information about the office of the IGG and its duties, functions and operations reached the people. This was despite its functions of disseminating information about corruption. We agree that despite its funding and logistical problems, the IGG could do a lot more in these regards, and that duties to make efforts in respect of accessibility should be imposed upon the Inspectorate.

21.146 Recommendation

(a) The Inspectorate may establish branches at district or other administrative levels as it deems fit for the better performance of its duties and functions.

(b) The Inspectorate may hold sittings and hearings at any place in Uganda.

(c) The Inspectorate should stimulate public awareness about the values of constitutionalism in general and the activities of its office in particular through any media and other means it deems appropriate.

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CHAPTER TWENTY TWO

PUBLIC FINANCE

22.1 Public Finance concerns the funds a government raises from taxes, borrowing and other sources for the purpose of running government and providing services to the citizens and residents of a country. This chapter deals with control over the raising and expenditure of government funds, and the source and management of the funds. The chapter is divided into two sections. Section one discusses the importance of the subject and the concerns and principles advanced by the people. In section two, we examine people's proposals on the main issues relating to the sources, management and control of public funds and we make recommendations.

SECTION ONE: IMPORTANCE, CONCERNS AND PRINCIPLES

Importance

22.2 The debate on public finance has been limited in scope due to lack of knowledge and information among members of the general public on the subject. The views received from the people are mostly concentrated on corruption, misuse and embezzlement of public funds, abuse of office and unfairness in taxation.

22.3 For government to carry out its numerous developmental and welfare activities, it has to raise revenue through taxation or borrowing. It is important to ensure that government revenue is spent on the items determined by Parliament and that there is accountability for the funds.

22.4 Taxation is not only for the purpose of raising revenue, but it can also be used as an instrument of equity and social justice by transferring wealth from the rich to the poor. It may also be used to perpetuate injustice by taxing the poor more heavily than the rich. In addition, taxation policy and practices have a bearing on the overall economy of a country. Taxation is often a controversial issue related to the politics of the day. People have revolted because of taxation and in the history of this country there are several cases of tax revolts. This is an indication of how seriously the ordinary citizen views taxation. It is important for any government to heed people's views and concerns about the assessment, imposition, collection and expenditure of taxes.

22.5 Uganda does not raise all the money needed for development and recurrent expenditure from taxation. A big part of our revenue comes from domestic and foreign borrowing or foreign aid. The funds borrowed internally or externally have to be repaid in the short or long run. It is therefore very important that the terms and conditions attached to the loans and aid, as well as the use to which the funds are put should be carefully scrutinised to ensure that they meet the needs and the interests of Uganda.

Concerns

22.6 Certain concerns have been expressed, by the people in regard to the control and management of public finance. They cover a wide range of issues.

Corruption and embezzlement of public funds:

22.7 There is a great deal of concern about corruption and the embezzlement of public funds. People are of the view that a lot of public funds are being diverted to private use. They point to unexplained wealth in the form of houses, cars, luxurious life-styles and other evidence to back up their claims that some government officials, especially those 'handling public funds, are corrupt or have embezzled public funds. There is an overwhelming feeling that not enough is being done to control corruption and embezzlement of public funds.

Laxity in control of public funds:

22.8 There is equally great concern about laxity in the management and control of public funds. This results in diversion of funds to purposes for which they are not intended, over expenditure on some projects and under-funding of others, among other things. Though there are laws meant to regulate the management and control of public funds, there are too many cases of misuse and diversion. The people feel concerned that these laws are being ignored with impunity.

Discrimination in taxation:

22.9 There are many people who are of the view that the tax system discriminates against some individuals and groups. Government tends to concentrate on a few sources of revenue and levy "punitive" taxes on them. Those in paid employment complain that they bear a heavier tax burden than those in self employment and private business. The poor also feel that they bear disproportionately heavier taxes than the rich, many of whom have devised various ways of evading taxes.

Criteria for fixing tax rates:

22.10 The criteria for fixing tax rates, especially graduated and poll taxes, appear illogical and unfair to many people. There appears to be no consistent principle which is followed. The result is that arbitrary methods are used by basing the rates on criteria like the number of animals owned, numbers of coffee trees or banana plantation or acreage of crops planted, without taking into account the actual or estimated income and expenditure of the tax-payer. Quite often poor people are assessed at higher rates than those who are obviously better off. This is an issue on which people have expressed a lot of bitterness and it often leads to lack of co-operation from the tax-payer.

Lack of benefits to the tax-payer:

22.11 There is widespread feeling among the people that they do not benefit from the taxes which they pay. The authorities are said to be interested only in collecting taxes, and not

about the provision of services to the tax-payer. This is one of the reasons why some people resort to avoiding paying taxes, especially in the rural areas.

Financial fears of needy areas:

22.12 People from the less developed areas where less revenue is collected than in the areas which are considered more developed fear that they will be left behind in socio-economic development. They fear that the disparity in resources and revenue between the former and latter will widen the gap between them unless government extends financial assistance to the needy areas.

Narrow tax-base:

22.13 There is concern, especially in government circles, about the narrow tax-base in this country. Taxes are levied on a limited number of items due to the narrow economic base. Some people feel that not enough is being done to identify and tap new sources of revenue. There are also the problems of tax evasion and corruption which deprive government of much needed revenue.

Foreign borrowing:

22.14 Government cannot balance the budget from domestic taxation, and it has therefore to resort to domestic borrowing and foreign loans and aid. Excessive reliance on loans and aid from outside the country not only undermines our independence and sovereignty, but it is also an unreliable means of development. This is a matter of considerable concern to the people of Uganda who value their independence and the sovereignty of the country.

Inflationary monetary and fiscal policies:

22.15 The government often resorts to printing money to bridge budget deficits. This is one of the major causes of inflation in Uganda. Inflation makes life miserable for the farmer, wage earner, businessman and the ordinary citizen alike, for it renders their savings, salaries, wages and earnings generally meaningless. Only a few profiteers benefit from it.

Principles

22.16 There are certain principles which should be followed when levying taxes or borrowing funds to meet government expenditure. Some of these are universally accepted while others emerge from the views of the people.

No taxation without representation:

22.17 The people want to have a say directly or through their representatives in the way revenue is raised and spent. In their own way, the people are sayirrgtl1at there should be no taxation without representation. This is an important principle which has been developed over a period of time and is now accepted at least in theory by all governments.

want government to be free to print money to cover budgetary deficits or meet unplanned expenditure, unless it is absolutely necessary.

Widening the tax-base:

22.24 There is consensus on the need to widen the tax-base, but when it comes to the details of how this should be done there is no agreement. There is, however, agreement in principle as to the need to identify new sources of taxation and to intensify collection from existing sources,

Cost-effective method of collecting taxes:

22.25 One of the universally accepted principles of taxation is that the system of collection should be cost-effective. In other words, the aim should be to incur the least expenditure possible to raise the highest revenue possible. There are some people who think that this principle needs to be emphasized in our country where costs of collecting taxes is said to be high.

Strict control and management of public funds:

22.26 The people want better control and management of public funds, If this is done, then more funds will be made available to be spent on socio-economic development of the country and the welfare of the people.

Control over foreign borrowing:

22.27 Strong views have been expressed on the need to control foreign borrowing. The people want foreign borrowing and aid to be limited to what is absolutely necessary, we should not, as a matter of principle, incur debts if the funds are not used to strengthen the economic position of the country or meet emergency needs.

SECTION TWO: ANALYSIS OF ISSUES AND RECOMMENDATIONS

22.28 In this section, we examine the sources of government revenue and the management and control of public funds with a view to identifying areas of weaknesses. We examine the views of the people in the light of these weaknesses and make recommendations on measures which need to be taken to bring about improvements. Some of the recommendations are for the Constitution, while others are for ordinary laws or deal with general policy considerations.

22.29 Since the Commission recommends a presidential executive system, it should be the President or a person appointed by the President rather than the minister responsible for finance who should be responsible to Parliament in financial matters, as is the case with all other matters of state. In practice it will be the minister responsible for finance, but the Constitution should make it dear that it is the President who is responsible and accountable, but that he or she can delegate powers to another person.

22.31 The principle of parliamentary control over government revenue and expenditure is based on two main considerations. Firstly, it is intended to ensure that the tax-payers, who are in most cases at the same time the electorate, have a say about, or at least some influence over the way money is raised and spent by government. Secondly, this control provides one of the means through which the legislature exercises checks over the executive. There is no disagreement on the need for Parliament to be the supreme authority on matters of taxation.

22.32 Recommendation

The Constitution should provide that the power to raise revenue and authorize expenditure should lie with Parliament.

Taxation

22.33 Every year, Parliament has to pass the annual budget which authorizes government to raise revenue and specifies how the funds so raised are to be spent. The main source of government revenue in normal circumstances is from taxation. Presently, there are six main taxes in Uganda, namely *income tax, export tax, customs duty, excise duty, sales tax and commercial transactions levy (CTL).*

2234 A detailed consideration of the different forms of taxes is outside the scope of this report. A brief outline of the various forms of taxes referred to above will, therefore, suffice:

(a) *Income tax* is a tax on income payable according to the level of income. According to available statistics during 1989/90 and 1990/91 financial years, income tax provided the fourth largest source of tax revenue to government. It is therefore a major source of revenue.

(b) *Export tax* is a tax charged on exported goods such as coffee, cotton, tea and tobacco. After customs duty and sales tax, export tax provides government with the third most important source of revenue.

(c) *Customs duty* is charged on incoming or imported goods. It is by far the largest source of government revenue.

(d) *Excise duty* is a duty charged on locally manufactured goods. It contributes significantly to government revenue.

(e) *Sales tax* is charged on consumable goods such as drinks, clothing and domestic appliances. It is the second most important source of revenue at the moment.

(f) *Commercial Transactions Levy (CTL)* is a levy charged on certain services including accommodation or lodgings, dry cleaning, meals in hotels and restaurants, water and electricity supply.

22.35 Before independence, other types and sources of taxes were considered. These included estate or death duty; gift tax; and inheritance taxes. In addition other sources could be considered:

(a) *Wealth tax,* paid on accumulated savings or capital goods.

(b) *Capital gains tax,* levied on gains accruing from appreciation of capital goods over a period of time and normally collected' when the owner disposes off the goods. Although this type of tax has not been seriously considered in Uganda, it is levied in many other countries.

(c) Many people during the constitutional debate and in their memoranda have proposed that *land tax* should be levied on idle land as a way of discouraging speculative land-holdings, or simply as a means of raising revenue. There are, however, many people, especially land owners, who oppose any form of taxation on land.

(d) *Sumptuary tax* is a tax paid on goods that are normally restricted on the grounds of morality, health or economic considerations. It may be charged on items like alcohol, tobacco, luxury cars and other luxury goods, in part to discourage the importation of goods used by only a few rich people and part to raise revenue. Usually the rate of taxation is high.

Constraints in tax collection:

22.36 It is one thing to suggest new sources of taxes, but quite another to collect the taxes. **In** the first place, careful consideration would need to be given to the feasibility of collecting the taxes. Secondly, the moral and cultural aspects of any proposed new taxes would have to be studied. It is, for example, considered immoral and culturally unacceptable to impose death tax among many communities in Uganda.

22.37 Uganda has not been as efficient in collecting taxes as many countries at a comparable level of development. Whereas Kenya and Tanzania collect taxes to the tune of 15 - 18% of GNP, Uganda collects taxes only amounting to between 5 - 10% of GNP. Many developed countries are able to collect taxes of as much as 35 - 40% of their GNP.

22.38 Though it is recognized that the tax-base is narrow, there are other factors that constrain the country in realising a higher level of revenue from taxation.

(a) People expressed concern to us over the issue of corruption among tax collectors and over the country. This is said to have become a culture brought about by the breakdown of law and order and moral fibre.

(b) Some of those employed to collect taxes have, over time, become incompetent and with lack of political direction over years many civil servants no longer serve the state, but act only out of self-interest.

(c) Tax-payers themselves have no culture of paying tax, particularly since the emergence of the "informal trade" during Amin's era, with no records and accounts being kept. This problem has been compounded by the breakdown of state machinery for assessing and collecting taxes.

(b) Some of those employed to collect taxes have, over time, become incompetent and with lack of political direction over years many civil servants no longer serve the state, but act only out of self-interest. .

(c) Tax-payers themselves have no culture of paying tax, particularly since the emergence of the "informal trade" during Amin's era, with no records and accounts being kept. This problem has been compounded by the breakdown of state machinery for assessing and collecting taxes.

(d) The emerging entrepreneurial class has been pressing for tax-breaks on the grounds that they need time to establish themselves. There are also many foreign organizations and foreigners who get exemption from paying taxes for one reason or another.

All these factors contribute to reduction in taxes collected and remitted to government.

The Uganda Revenue Authority:

22.39 It is possible to increase tax revenue significantly from existing sources if all those who qualify to pay taxes can be made to do so, and if all the· revenue collected reaches government coffers. It is for the purpose of increasing tax revenue that the Uganda Revenue Authority was created by Statute in August, 1991. It is an agency of the government under the general supervision of the Ministry of Finance. It's main function is to improve revenue collection.

22.40 The Uganda Revenue Authority has been given powers which were previously exercised by various departments of the Ministry of Finance which were formerly responsible for collecting revenue such as the Income Tax Department, Customs and Exercise Department and the Internal Revenue Department. The authority has powers and obligations to assess, collect and account for all the revenue from various sources all of which is credited to the Consolidated Fund, except that the minister responsible for Finance has power to allow the authority to retain some revenue to pay for the cost of running the Authority. In addition to revenue collection, the Uganda Revenue Authority is responsible for advising the government on matters of policy relating to taxation.

22.41 The authority was only created recently and it is therefore too early to assess the impact it has had in terms of actual collection of revenue and the formulation of policies. Nevertheless, it is pertinent to mention here that revenue collection is said to be rising, although it is still far below what experts believe to be feasible.

22.42 The success of the authority might depend on how much independence it has to carry out its responsibilities. The statute setting up the authority gives the minister of finance powers to give directives from time to time on various matters. It is not possible at this stage to asses how this may affect the work of the authority.

Public Debt

22.43 In addition to taxes, other government sources of domestic revenue include fees and licensees payable in respect of certain services and commercial and non-commercial activities. They are not major sources of revenue at the moment.

22.44 Government also raises revenue locally through other means including treasury bills and stocks, national lotteries and stamp duties. As we have seen, in certain instances government can resort to borrowing from the central bank for the purposes of financing budget deficits, though this is something which is usually not looked upon favourably as it fuels inflation.

22.45 The government currently relies a great deal on foreign borrowing and foreign aid to raise funds. Funds borrowed from outside should ideally only supplement our own efforts, but the situation at the moment is that it is a major source of revenue for government due to failure to raise sufficient funds domestically.

Internal borrowing:

22.46 Internal borrowing means borrowing from within the country. The Bank of Uganda normally does the borrowing on behalf of the government. The internal borrowing can be openly done as it happens when treasury bills are issued to the public for purchase. This is short-term borrowing usually for covering a shortfall in the budget. It is done in anticipation of raising taxes soon to repay the lenders. The government can also borrow from the banking system rather than from public.

22.47 In order to attract people with liquid cash to lend money to government, the interest paid on treasury bills is usually higher than that offered by commercial banks on short-term deposits. Treasury bills mature in a period of between 35 to 91 days.

22.48 The government has in the past also borrowed for the medium and long-term by issuing what is normally known as government stocks, which is a certificate to acknowledge that government has borrowed from an individual or organisation a certain amount of money which will be paid back after a period normally ranging from five years upwards. Government stocks attract very high interest rates as one has to forego the use of the cash for a long time, as compared to treasury bills. However, the government has not resorted to this type of borrowing for sometime. The reasons are understandable, and most likely related to inflation and the very-high rates of interest currently offered by commercial banks on fixed and other long-term deposits.

22.49 Medium and long-term loans are normally contracted when government wants to invest in long-term projects and infrastructure and where the economy is stable, earnings are also stable and those with cash do not need it for quite sometime. Government sometimes guarantees borrowing by parastatal bodies who issue bonds to carry out development projects. For example, the Uganda Electricity Board borrowed from the public at the time of constructing the Jinja dam and carrying out the associated power distribution network in the late 1950s and early 1960s.

22.50 Generally, internal borrowing is not a serious strain on the economy and liquidity management as the government can "re-schedule" repayment, particularly if it has borrowed from parastatal bodies, etc. It can also print paper money if the economy allows such measures.

External borrowing:

22.51 People have expressed concern to us over the government's dependence on foreign borrowing. Available statistics would definitely worry a concerned citizen, particularly if benefits and long-term impact expected are not taken into consideration.

22.52 As of 30 June 1991, the total outstanding bilateral fund as a debt was US $ 288.9 million, excluding interest and principal arrears. The total foreign debt as on that date was indicated to be US $ 2500 million. Most of this money has been borrowed from the World Bank and the International Monetary Fund (IMF).

22.53 Views have been expressed that Parliament should approve each loan secured by government from any source outside the country. Some people have expressed disapproval of the policies of the World Bank and the IMF which they consider to be indifferent to people's needs and the national interest.

22.54 Many people on the other hand have been demoralized by corruption, particularly where transparency lacks. Rumours of second-hand machinery purchased with borrowed money or abandoned projects financed by foreign loans, are among the most common issues raised in the press. Imposed foreign workers who eventually take funds to their home countries in form of consultancy fees and management expenses have irked the public. Some people have questioned the beneficial impact of some of the loans received from outside.

22.55 The people recognise that for some time to come, Uganda may have no alternative but to get loans and aid from international financial institutions and from donor countries. However, people want some control over foreign borrowing with a view to ensuring that the terms and conditions of such loans and the use to which the borrowed money is put meet national interests and priorities.

22.56 There is agreement that loans from multilateral financial institutions and foreign countries should be approved by Parliament. This is not the case at the moment, where such loans are often "hidden" within the minister's budget proposals. Once the government proposals are approved by Parliament, then it is taken as a general mandate to the government to raise foreign funds. Many people want Parliament to specifically scrutinize and approve all foreign loans. In addition, Parliament should set the general policy and terms and conditions on which foreign loans and aid may be negotiated or received.

22.57 Recommendation

(a) Parliament should set out the general policy framework on which international and foreign loans and aid may be negotiated and received.

(b) All agreements in respect of international and domestic loans and aid should be submitted to Parliament for scrutiny and approval. Parliament should approve among other things, the terms and conditions of the loan, and the purpose of the loan.

Expenditure of Public Funds

Consolidated fund:

22.58 The past and present constitutions have provisions relating to the establishment of a Consolidated Fund, in which all monies received by the government are to be deposited. The 1967 Constitution provides that no money may be withdrawn from the Consolidated Fund except to meet expenditure that is charged upon the fund by the Constitution or by an Act of Parliament or by a supplementary estimate approved by a resolution of Parliament. Similarly, no money may be withdrawn from any other public fund, other than the Consolidated Fund, unless it has been authorised by or under any law. Any withdrawal has to be approved in a manner prescribed by Parliament.

22.59 The minister of finance is required to lay before Parliament at the beginning of each financial year estimates of revenue and expenditure, popularly known as the budget proposals. An Appropriation Act has to be passed by Parliament annually to authorise withdrawals from the Consolidated Fund to meet expenditure as contained in the approved budgetary estimates. Supplementary estimates have to be similarly approved by supplementary Appropriation Acts.

22.60 It is not always possible for the minister of finance to get parliamentary approval before spending public funds. In such circumstances, the minister is given powers to authorise withdrawals from the consolidated Fund in order that government service may not grind to a halt. This power should only be exercised when it appears to the minister that the Appropriation Act for the financial year will not be passed at the beginning of the year. The minister's authority in this respect expires four months after the beginning of the financial year or on the coming into operation of the Appropriation Act, whichever happens earlier.

22.61 Parliament is given power to make provision for the establishment of a Contingency Fund intended to meet urgent and unintended expenditures not contained in the budget estimates. The minister responsible for finance may authorise withdrawal from that fund to meet any emergency needs not catered for in the budget. Where such withdrawal is made from the Consolidated Fund, the amount so advanced should be replaced through supplementary revenue.

22.62 The 1967 Constitution provides for the payment of the emoluments of holders of certain offices, from the Consolidated Fund without prior approval of Parliament. This is intended to ensure financial security to the holders of such offices.

22.63 There were few views expressed on the Consolidated Fund in submissions from the people. This may be because the people had no strong views on the matter, or more likely, because it is something which is not easily understood by the average Ugandan without senior public service experience.

22.64 However, all the people realize that maintaining effective control over government revenue and expenditure is of paramount importance. The requirement that, as a principle, all government revenue should be paid into one central fund and that withdrawals from such fund should be only with the express authority of Parliament and according to the law, is intended to secure parliamentary control over government revenue and expenditure. When

all government revenue is kept on one account it makes it easier for Parliament to exercise general control over the fund.

22.65 It is not possible to plan for all possible contingencies. It is therefore possible for situations to arise which may require government to create funds for specific purposes as and when the needs arise. However, care should be taken to ensure that the executive does not resort to the creation of such funds as a means of avoiding parliamentary scrutiny.

22.66 Recommendation

(a) ***(i)*** ***The Consolidated Fund should be retained in the Constitution;***

(ii) ***All revenues or monies raised or received by the government should be paid into the Consolidated Fund, except where Parliament specifically authorizes the creation of special Funds;***

(iii) ***Where Parliament authorised the creation of a special fund apart from the Consolidated Fund, the President should report or cause a report to be made on the use of the fund to Parliament ill a manner to be prescribed by Parliament; and***

(iv) ***No taxes should be imposed to raise revenue for both the Consolidated Fund and district treasury funds, without the authority of Parliament.***

(b) ***No withdrawals should be made from the Consolidated Fund, except to meet expenditure that is charged upon the Fund by the Constitution or as provided for by Appropriation Act or any other law.***

(c) ***The President should be given powers to authorise withdrawals from the Consolidated Fund to cover expenditure for a period of four months, or until the budget is approved by Parliament, whichever comes first.***

(d) ***(i)*** ***Parliament should have powers to authorise the President to create a Contingency Fund to meet expenditure in respect of urgent and unforeseen situations; and***

(ii) ***Where any advance is made from the Consolidated Fund a supplementary estimate should be presented as soon as possible for the purpose of replacing the amount*** so ***advanced.***

(e) ***The salaries of constitutional office holders and others who may be specified by the law should be charged directly on the Consolidated Fund.***

Management and Control of Public Funds

Treasury Department*:*

22.67 The day to day management of public funds is the responsibility of the Treasury Department. The Finance Act and Treasury instructions give detailed provisions regarding the management of public funds.

22.68 The Treasury Department is responsible for preparing the annual budget and for administering the monies allocated to different government ministries and departments. It

posts or seconds accounting staff to other government ministries and departments. The accounting staff works under the general guidance and direction of the permanent secretaries who are the accounting officers of the ministries they head.

22.69 The Treasury Department holds the public funds in trust for the people. It is charged with the duty of ensuring that money voted for a particular purpose will be used for that purpose and for proper accountability for the funds. Accountability is a very important aspect of the management of public finance. Without accountability, the public cannot be sure that their money is being properly managed.

Auditor-General:

22.70 In order to ensure proper control and accountability of public funds, the office of the Controller and Auditor-General was established under the 1962 Constitution. The Controller and Auditor-General was charged with the responsibility of reporting on public accounts of Uganda and of all offices, courts and authorities. The Constitution authorised the Controller and Auditor-General or any person authorised by him to have access to books, records, returns and other: documents relating to those accounts. The Controller and Auditor-General was required to submit his or her reports to the minister responsible for finance, who was in turn required to lay them before Parliament.

22.71 The 1962 Constitution provided that in the exercise of his functions under the Constitution, the Controller and Auditor-General was not to be subject to the direction or control of any other authority. This was intended to reinforce the independence of the Controller and Auditor-General in the performance of his or her responsibilities.

22.72 The 1967 Constitution more or less repeats those provisions of the 1962 Constitution. There are, however, some changes with regard to the title and scope of authority. The title is changed from Controller and Auditor-General to simply Auditor-General. The scope of authority of the Auditor-General has been extended to cover district administrations and "such bodies or authorities as may be prescribed by Parliament." The minister of finance is required to cause the reports of the Auditor-General to be published soon after they have been laid before the National Assembly. Although the independence of the Auditor-General is preserved under the 1967 Constitution, the minister responsible for finance has power to require the Auditor-General to submit a report on any accounts of a specified body or authority and the Auditor-General is obliged to comply.

22.73 The management and control of public funds is of great concern to the people. The consensus is that there is laxity in the management and control of public funds, in spite of the provisions of the Constitution, the Public Finance Act and the other laws and regulations intended to bring about effective management and control. Some people even suspect that there is lack of will on the side of the authorities to manage and control public funds properly because there are too many cases of misuse and embezzlement of public funds about which it appears nothing can be done

Views on accountability:

22.74 As far as general management and control is concerned, the following views have been expressed; ,,

(a) Accounting officers should be qualified people in the field of finance. Presently accounting officers who are entrusted with public funds are senior administrators. They are assisted by accountants who are supposed to have qualifications in financial management, but many of them are not fully qualified accountants. There is a view that the senior administrators who are usually permanent secretaries in the various ministries are ill-equipped to manage public funds as they are not trained in financial management. The same view has been expressed in the 1990 report of the *Public Service Review and Re-organisation Commission.*

(b) Accountants should manage public funds side-by-side with the permanent secretaries. This would mean that there would be joint accountability between the permanent secretaries and accountants who are responsible for the day to day management and control of the funds. At present only the permanent secretary as the accounting officer is accountable to the Treasury and Parliament. Joint accountability would mean that Treasury which supervises accounting staff would remain jointly accountable with accounting officers, and this would provide checks and balances in the management of public funds.

(c) Views have been expressed to the effect that ministers should be made accountable to Parliament for funds voted by Parliament to run their ministries. Presently ministers are not usually called upon to account for funds of their ministries, even when they may have contributed towards the mismanagement of those funds. This is felt to be unfair, especially as some ministers exert their influence and power over accounting officers to spend money without following the laid down procedures and regulations. It is felt that the law should not protect the ministers simply because they are not signatories to vouchers and accounts. They have effective influence as to how the funds are or should be used.

22.75 Recommendation

(a) There should be a constitutional provision that -

(i) the minister and permanent secretary should be jointly and severally accountable to Parliament for public funds under their ministry;

(ii) any minister or holder of political office ill any ministry or department or institution of government who directs an accounting officer or any other officer to apply or use public funds contrary tf) the law and government financial regulations should be responsible for any loss or damage arising out of the directive, irrespective of whether the holder of political office who gave such directive is out of office at the time the discovery is made.

(b) Any accountant who fails to advise his or her permanent secretary correctly on the use of public funds should be liable to the same extent as the permanent secretary for any loss or damage arising out of the negligence or wrong advice.

The Uganda Audit Commission:

22.76 Few suggestions have been received on the Audit Department. However, the few who have commented want the Auditor-General to be independent of the minister responsible for finance in discharging his responsibilities. He or she should instead be directly answerable to Parliament. The minister is in charge of staff administering public funds for which he is answerable to Parliament. It is, therefore, not proper for the Auditor-General to report to the minister. There are also complaints about delays in auditing and reporting on public accounts which has almost become an accepted practice. The people want this to stop.

22.77 In order to strengthen control and supervision over the management of public funds, we propose that the Constitution should establish a body to be known as the Uganda Audit Commission to replace the Audit Department. The Uganda Audit Commission should be vested with sufficient powers, resources, facilities and personnel to enable it to carry out its functions effectively.

22.78. In order to ensure control, supervision, quality of work and prompt reporting to Parliament, the status of the Uganda Audit Commission is extremely important. It is important to create terms and conditions of service that would attract highly qualified citizens to take up such a challenging job. It should enjoy independence from control and direction from any authority or person in discharging its duties. The Commission should be made up of a Chairman; a Deputy Chairman; and not more than three other members. The Chairman should be in charge of the day to day administration of the Commission. He or she should exercise control over the staff of the Commission. It has been considered necessary to establish the position of a Deputy Chairman so that at any time whether or not the substantive Chairman is available, important work can continue to be done and documents signed without delay .

22.79 The Uganda Audit Commission should be served by sufficient well qualified personnel to bring order to government accounts which now take more than two years before being audited. The Commission should also be strong enough to take on audit of accounts of the decentralized local governments throughout the country.

22.80 We feel that a strong body in the form proposed above can also contribute towards eradication of corruption and embezzlement of funds. Given the possibility of recruiting people of high calibre, and authority given by law, the Uganda Audit Commission should make an impact on the financial management in government ministries, departments and institutions.

22.81 Recommendation

(a) The Uganda Audit Commission should be established by the Constitution.

(b) The Uganda Audit Commission should be composed as follows:-

- ***(i) a Chairman;***
- ***(ii) a Deputy Chairman; and***
- ***(iii) not more than three other members***. . **'**

(c) (i) The Chairman and other members of the Uganda Audit Commission should be appointed by the President with the approval of the National Council of State for a period of five years ..

(ii) The appointment of any member of the Uganda Audit Commission may be renewed for a period of five years. No person may serve on the Uganda Audit Commission for more than ten years.

(iii) No person should be appointed Chairman of the Uganda Audit Commission unless he or she has a recognized qualification in accountancy or financial management and has experience of not less than ten years in the relevant field. .

(iv) No person should be appointed a member of the Uganda Audit Commission unless he or she has a recognized certificate in accountancy or financial management and has experience of not less than seven years in the relevant field.

(v) A member of the Uganda Audit Commission should be removed from the office by the President with the approval of the National Council of State only for inability to perform his functions as a result of physical or mental incapacity or for gross misconduct and misbehaviour or any other cause that would make the member unfit to remain in the Commission.

(d) (i) The Chairman of the Uganda Audit Commission should be responsible for the management of the Commission and control over its staff;.

(ii) The Deputy Chairman of the Uganda Audit Commission should assist the Chairman in the performance of his or her functions and perform other functions as the Chairman may assign.

(e) The functions of the Uganda Audit Commission should be:-

(i) to approve any withdrawals from the Consolidated Fund;

(ii) to audit the accounts of all offices, courts and authorities of the government of Uganda;

(iii) to audit the accounts of all local governments and authorities which get grants or funding from the government of Uganda or receive taxes as authorised by Parliament; and

(iv) prepare a yearly report on the audited accounts and submit a report to Parliament within six months after the close of the financial year.

(f) The Uganda Audit Commission should, subject to the Constitution, carry out its functions without receiving any directives or control from any person or authority.

(g) In the performance of its responsibilities the Uganda Audit Commission should have:-

(i) adequate resources, facilities and competent and qualified staff to enable it to carry out its functions effectively;

(ii) powers to call for, examine or inspect any books, records, returns, vouchers and other documents relating to any accounts falling under its jurisdiction.

(h) *The funds for financing the activities of the Uganda Audit Commission should be charged on the Consolidated Fund.*

(i) *No law should be enacted for the purpose of placing any entity of the government of Uganda or any local government or authority outside the jurisdiction of the Uganda Audit Commission.*

(j) *The accounts of the Uganda Audit Commission should be audited and reported on by an auditor appointed by Parliament*

Parliamentary Control of Public Funds

22.82 Parliament has an important role to play in the management and control of public funds. In the first place, as already discussed, the minister responsible for finance is annually required to present to Parliament the budgetary proposals for the new financial year. This provides an opportunity to the members of Parliament to evaluate the budgetary performance of the previous year and to scrutinise the estimates for revenue and expenditure for the new financial year. It is also an occasion to review medium and long-term plans against the backdrop of the past and present budgets.

22.83 If Parliament is to exercise genuine control over the budgetary process, then it is important that the budget should be presented before or at the beginning of the new financial year so as to provide Parliament with enough time to examine the estimates of revenue and expenditure and make any amendment and modifications as the members consider necessary.

22.84 Recommendation

In order to provide Parliament with enough time to scrutinise the estimates of revenue and expenditure and make necessary rectifications and modifications to them, the President should be required by the Constitution to present or cause to be presented the annual budget before Parliament not later than fifteen days after the start of the financial year.

The Public Accounts Committee:

22.85 It would be very difficult for the full Parliament to scrutinise the budget and audit reports in detail in the short time available for that purpose. Such functions are better performed by a committee of Parliament. It is for that reason that the Public Accounts Committee (PAC) of Parliament was created.

22.86 The PAC is a standing committee of Parliament which based to function after the military take-over in 1971. It resumed work after the NRM came to power. Since resuming its role, the public has come to learn about widespread mismanagement of public funds and corruption among public officers. The PAC has summoned and cross-examined senior administrators and others on matters related to management and control of funds in their charge. The main areas covered by the PAC include the following:

(a) over-expenditure by ministries, departments and institutions without the approval of Parliament;
(b) expenditure on items not originally approved by Parliament;
(c) misuse of government vehicles;
(d) lack of accountability; and

(e) lack of control of public funds.

22.87 The people have noted shortcomings. in relation to the work of the PAC which they would like to see rectified. These include:-

(a) Apparent lack of action when individuals are shown to have mismanaged funds or to have engaged in corrupt practices. The tax-payers are not informed of what action authorities take after the Public Accounts Committee has presented its findings.

(b) Ministers are not called upon to explain issues which affect their ministries.

(c) The PAC deals with history. The Auditor-General's report on which it bases its investigations almost always comes a long time after the matter being reported on occurred. It is therefore of doubtful value in preventing mismanagement of funds and corruption.

(d) The Committee deals with reports connected with actual expenditure. People are concerned with many issues connected with general performance of government ministries. Such matters include non-completion of projects, misuse of vehicles and thefts.

(e) The Auditor-General's report, in many cases, does not deal with incomplete projects and performance of projects.

22.88 It is clear from the views of the people that the public has confidence in the PAC. However, they would like to see the Committee's scope of functions increased to include:-

(a) monitoring of current public revenue and expenditure performance;

(b) scrutinising and giving advice on all matters related to government borrowing from within and outside the country;

(c) monitoring the utilisation of funds and implementation of projects funded by government;

(d) checking on allocation of funds to government ministries, departments and institutions;

(e) ensuring equitable allocation of financial and other resources to different regions, districts and areas of Uganda, including national projects; and

(t) advising government in broad terms on national financial matters.

Finance and Public Accounts Committee:

22.89 It is felt that the PAC as presently operating is not equipped to carry out the functions outlined above. For that reason it is proposed to replace it with the Finance and Public Accounts Committee, which should be a standing committee of Parliament. The Committee should have powers to seek assistance from experts among public employees or professionals in private employment. It should, in addition to scrutinising the audited accounts and audit

reports monitor the performance of the current budget. It should also advise government on various areas of financial management and control.

22.90 Recommendation

(a) The Public Accounts Committee should be replaced by a Finance and Public Accounts Committee which should be a standing committee of Parliament.

(b) The functions of the Finance and Public Accounts Committee should be to:

- ***(i) receive and scrutinise the audited accounts and reports of the Uganda Audit Commission;***
- ***(ii) receive quarterly reports oil the accounts of the current financial year from the Uganda Audit Commission;***
- ***(ii) make independent inquiries and investigations into the management of government revenue and expenditure;***
- ***(iv) ensure that government ministries, departments and institutions are accountable to the legislature for the funds they administer;***
- ***(v) check that funds are being used for the purposes for which they are allocated;***
- ***(vi) advise the government on the distribution of revenue between the central and district governments;***
- ***(vii) advise the government on the formulae for making grants-in-aid to districts; and***
- ***(viii) advise government generally on national financial matters.***

(c) The Finance and Public Accounts Committee should be responsible and accountable to Parliament.

(d) The Finance and Public Accounts Committee should be provided with;

- ***(i) Adequate and competent staff and sufficient facilities, resources and funds to enable it to carry out it functions effectively; and***
- ***(ii) Enough powers to carry out investigations and to examine witnesses, and documents in discharging its responsibilities.***

Bank of Uganda:

22.91 Strong views were expressed on the mismanagement of monetary and fiscal policies. People were particularly concerned about rampant inflation. There is consensus that the government should not be free to print money to cover budgetary deficits or for meeting unplanned expenditures. As we have already seen, inflation has playedhav0c with the people's savings and rendered salaries, wages and earnings generally meaningless.

22.92 There is consensus on the need to maintain a stable currency and to generally pursue prudent monetary and fiscal policies. Many people believe that this can be achieved by vesting the Bank of Uganda with more powers and giving the bank a meaningful degree of autonomy. However, some people point out that the central bank cannot be completely

autonomous of the government since it is required to implement fiscal and monetary policies formulated by the government.

22.93 It is also suggested that the central bank should be given greater authority in the control over other financial institutions including commercial banks, building societies and savings and credit societies. This latter suggestion is prompted by the recent failure of some building societies which has made many people to lose their savings. Some people go to the extent of proposing a wider role for the bank including playing a crucial role in the promotion of economic development and better utilisation of our resources.

22.94 Recommendation

(a) *The Constitution should establish the Bank of Uganda as the central bank of Uganda which should be the only authority to issue Uganda currency.*

(b) *The functions of the Bank of Uganda should be to:-*

(i) promote and maintain the stability of the value of the currency of Uganda;
(ii) regulate the currency system in the interests of the economic progress of the country;
(iii) encourage and promote economic development and the utilisation of the resources of Uganda through the effective and efficient operation of a banking and credit system.
(iv) do all such other things that would promote the aims and objectives for which the Central Bank is established.

(c) *There should be a Governing Board of the Bank made up of the Governor, Deputy Governor and not more than five other members.*

(d) *The Governor and other members of the Board should be appointed by the President with the approval of the National Council of State. The Chairman of the Board should be appointed by the President with the approval of the National Council of State from among the members of the Board.*

(e) *The Governor and other members of the Board should hold office for five years, and may be re-appointed for only one more term of five years.*

(j) *The remuneration of the members of the Board should not be reduced while they continue to hold office.*

(g) *The members of the Board should be removed from office by the President with the approval of the National Council of State only on grounds of gross misconduct, misbehaviour, or inability to perform their functions due to physical or mental incapacity.*

(h) *In exercising its functions, the Bank of Uganda should be guided by monetary and fiscal policies formulated by the government, but it should otherwise not be subject to direction or control of any person or authority in the day to day performance of its responsibilities.*

CHAPTER TWENTY THREE

PRINCIPLES AND OBJECTIVES OF SOCIO-ECONOMIC DEVELOPMENT

23.1 This Chapter deals with two inter-related matters, namely, the principles and objectives of socio-economic development; and the economic and social rights of individuals and groups. In section one, we discuss the importance of the subject and the concerns and principles expressed by the people about it. An analysis of the main issues addressed by the people and our recommendations on them is found in section two.

SECTION ONE: IMPORTANCE, CONCERNS AND PRINCIPLES

Importance of Establishing Principles and Objectives for Development

23.2 No modern nation can survive as a truly sovereign state, let alone flourish, without a sound economic base capable of supporting the various state structures and organs, including the military, police and civil service. It is universally accepted that the modern state has the responsibility to formulate appropriate policies and establish institutions for the development of the country and welfare of its citizens. The State is also expected to provide or facilitate the provision of basic social services and infrastructures, including medical care, education and welfare services, especially to the most needy members of society.

23.3 Traditionally, constitutions have provided only for civil and political rights and freedoms. These rights and freedoms include:

(a) The right to life, liberty, security of person and the protection of the law;

(b) Freedom of conscience and religion, expression, assembly and association; and

(c) Protection of the privacy of the home and other property and from deprivation of property without adequate compensation.

23.4 However, civil and political rights are of little use if the economic rights of the people are not guaranteed. People who are hungry, poor and diseased, and without reasonable levels of social services, cannot enjoy civil and political rights. The full enjoyment of these rights requires a reasonable level of socio-economic development.

23.5 A number of modern constitutions, particularly of developing countries, tend to lay down principles and objectives of socio-economic development. These tend to be in the nature of fundamental principles of state policy, which are intended to offer general guidelines to the legislative, executive and judicial branches of government, public authorities and other government agencies. They are intended to ensure that such bodies act within the basic socio~ economic constitutional framework.

23.6 Economic rights belong not only to individuals and groups, but also to states. A series of international instruments, negotiated under the auspices of the International Labour Organisation (ILO) protect the right of workers. There are a number of other international charters, covenants, declarations and resolutions, many of them to which Uganda -is a signatory, which spell out the principles and objectives of socio-economic development and economic rights. Among the most important are the *International Covenant on Economic Social and Cultural Rights, The African Charter on Human and Peoples' Rights* (both discussed in Chapter Seven) and the *Declaration on the Right to Development* adopted by resolution of the General Assembly of the United Nations in 1986. Many of these instruments require the state to give effect to them by adopting appropriate legislative or other enactments.

23.7 The views we have received from the people of Uganda show they are generally agreed that the new Constitution should serve as an instrument for fostering socio-economic development and promoting the welfare of the people. The majority are of the view that there should be constitutional provisions on the principles and objectives of socio-economic development as well as for economic and social rights. Future governments would then be required to base their socio-economic policies and programmes on those provisions. Moreover, constitutionally set objectives would serve as a yardstick for evaluating the performance of successive governments.

23.8 There have been some arguments against inclusion of such provisions in the Constitution on the grounds that they are difficult to define, and could not easily be made enforceable by courts of law. Nevertheless, the overwhelming majority are of the view that despite such problems, the provisions would provide useful guidelines to the government and its officials in devising policies and programmes for development and the welfare of the people.

Concerns Expressed by the People

Alien models of development:

23.9 There is concern about alien models of development which the country has been following but which have not resulted in genuine development. Some people argue that Africa in general and Uganda in particular, cannot develop because there is a false basis for development not rooted in the culture of the people. There has been a failure to devise indigenous solutions to our problems.

Failure by indigenous Ugandans to utilise the resources of the country to create wealth:

23.10 Many Ugandans are concerned about the failure of indigenous people to utilise the abundant human and natural resources to achieve individual and collective development. It is pointed out that when foreigners come to Uganda they are able to make money, sometimes within a short time, and yet the majority of the people have been unable to exploit the potential of the country to escape their grinding poverty. Obstacles which hinder the people from creating wealth for themselves and the country must be identified and eliminated.

pace of socio-economic development. These issues are also developed further later in this chapter.

Imbalance in socio-economic development:

23.17 Real or perceived imbalances in socio-economic development are of great concern to various groups in Uganda. In the first place, some areas feel that they are more disadvantaged than others. Secondly, there is concern in the rural areas that most of the development and social services are concentrated in the urban areas, even though it is the rural areas which produce most of the wealth of the country. L1Stly, there are groups like the youth, peasants, urban poor, women and people with disability who feel marginalised by society in the process of socio-economic development and provision of social services.

Principles Emphasised by the People

23.18 We can identify ce11ain principles from the views of the people on socio-economic development and the economic and social rights. These are the principles which people are agreed on irrespective of the political or economic system they want to be adopted.

Integral development of the human person:

23.19 People want development to aim at the integral development of the human person. Progress is often defined in the narrow sense of material progress, which tends to ignore the cultural and spiritual aspect(s) of development. It is only when material progress is firmly rooted in the culture of the people that it can be sustainable.

Involvement of people in the development process:

23.20 The people want to actively participate in the development process. They want to be involved in the decisions as well as the implementation and evaluation of development policies and project especially those which affect them directly.

Priority to basic needs:

23.21 There is widespread support for the view that priority should be accorded to the basic necessities of life such as food, water, shelter, health services, education, communication and social welfare for the needy when deciding on priorities for socio-economic development and provision of services.

Development built on social justice:

23.22 People want to see the kind of development which is solidly built on tempered by social justice. Development which produces a few extremely wealthy people while the great majority live in abject poverty without adequate food, shelter or medical care is rejected utterly. The development process must guarantee a life of dignity for all citizens.

peoples' duty to contribute towards development:

23.23 The people realize that it is the duty of citizens to contribute towards their own development and that of the country as a whole. The State is expected to provide the citizens with the right political environment and appropriate policies and programmes which would enable them to make meaningful and significant contributions to the development process.

State to facilitate development:

23.24 There is general agreement that the State has a vital role to play in facilitating development in the country. The State is expected to set the general policy guidelines; provide essential infrastructure; retain control over strategic sectors of the economy; and play a general regulatory role to ensure that development is in accordance with national goals and principles.

Decentralisation of economic activities:

23.25 People want to see greater decentralisation of economic activities. This should be based on the principle that whatever people can do best for themselves at the appropriate level should be left free in their hands. Decentralisation will release the initiative and energy of the people and lead to faster development.

Resources to be used for development of all Ugandans:

23.26 People want the natural and human resources of the country to be used for the development and welfare of all Ugandans. They are opposed to any individuals or groups who may want to grab the resources of the country, particularly land, at the expense of other citizens.

Economy controlled primarily by Ugandans:

23.27 The predominant view is that the economy of the country should be primarily controlled by Ugandans, although foreign investors are welcome. People want foreign investment only to supplement their own efforts. There is generally opposition to domination of the economy by foreign interests represented by a small number of foreign agents.

Prudent monetary and fiscal policies:

23.28 There is consensus on the need to put in place prudent monetary and fiscal policies. Inflation has wreaked misery on the population and the people definitely want it to be controlled, if not eliminated altogether. The country should follow a non-inflationary strategy of development.

SECTION TWO: ANALYSIS OF PROPOSALS ON ISSUES AND RECOMMENDATIONS ON THEM

Development as a Human Right

23.29 It has been mentioned that the right to development does not belong only to individuals, but also to states. These rights are generally not enforceable by legal means (justiciable) as they state general principles rather than substantial entitlements. Ugandans realise that the full enjoyment of civil, political and cultural rights can only be possible when there is rapid and sustainable socio-economic development to enable the people to enjoy a reasonable standard of living. As we have already seen, Uganda is a signatory to many international instruments which affirm the right of the people to development.

23.30 It should be emphasized that declarations calling for the right to socio-economic development should not be used by governments to erode the civil and political rights of individuals and groups. Authoritarian governments often deny such rights for example the right to freedom of expression, association and assembly on the grounds that their enjoyment would jeopardize socio-economic development. Ugandans have clearly rejected this line of reasoning. They have identified bad governments, lack of democracy, and disrespect for human rights as major causes for poor economic performance in the past. They believe that the respect for these rights would in fact promote development. Development should be for all: women and men, children and adults, rural as well as urban dwellers.

23.31 Recommendation

(a) Development should be a fundamental human right.

(b) All development efforts should be directed towards ensuring the maximum social, economic and cultural well-being of the people.

(b) Necessary measures should be taken to ensure that women play an active role in the development process.

The Role of Citizens in Promoting Socio-Economic Development

23.32 The *right of participation* in decision-making by those affected by policies and programmes for socio-economic development is closely related to the *right to development.* Those involved in development work, including governments, non-governmental organisations (NGOs), development agencies, and others are increasingly recognising that democratic participation is as necessary in the area of socio-economic development as it is in the political process. People should be central in any development process since they are the main participants and beneficiaries of development.

23.33 There is general agreement in the views submitted by the people as regards the role of the citizens in promoting development. There is a consensus that the citizens should take part in the planning, implementation and evaluation of development policies and programmes. As far as planning is concerned, they point out that people can participate in the process by identifying areas of priority. Likewise, the citizens are expected to take part in the

Implementation of agreed policy. It is also the duty of the people to evaluate the success of such programmes. The active participation of people in all phases of the development process is necessary for sustainability.

2334 Many Ugandans realise that every citizen has a duty to contribute positively and to the best of his or her ability towards the development of self, the family, the community and the nation as a whole. To this end, every citizen should, among other things:-

(a) work conscientiously at his or her chosen occupation or trade or calling;

(b) take part in self-help and community projects wherever possible;

(c) pay taxes arid other dues in accordance with the law;

(d) combat misuse or wastage of public property; and

(e) take active interest in the development of his or her community and country.

23.35 Recommendation

(a) All necessary steps should be taken to involve the people in the formulation, implementation and evaluation of development policies and programmes affecting them.

(b) Every citizen should have the duty to contribute positively to the development of self, the family, the community and the country.

The Role of the State in Promoting Socio-Economic Development

23.36 In many developing countries, including Uganda, the state is involved in a wide range of socio-economic activities either out of ideological conviction, or necessity or both. There are a number of ways in which the state gets involved, including the following:-

(a) the formulation and management of fiscal and monetary policies;

(b) drawing up policies and programmes for socio-economic development;

(c) legislating on various matters which affect the economy and welfare of the people, such as investments, salaries and wages, taxation, education, medical services and social security;

(d) direct employment of labour, the state in third world countries often being the biggest employer outside the agricultural and rural sectors of the economy;

(e) control and regulation of what it regards as strategic resources and sectors of the economy like land, water resources, minerals and vital industries; and

(t) Sole, majority or even minority share-holding in Parastatals and companies engaged in producing goods and services considered vital or strategic for the national economy and welfare of the citizens' including power, water and sanitation, posts and telecommunications, railways, banking and insurance.

23.37 People generally acknowledge that the State has an important role to play in promoting socio-economic development. Traditionally, the State has been responsible for maintaining law and order, and the defence of the country against external aggression. In addition, Ugandans expect the State to provide a peaceful, secure and stable political environment for development. The State should put in place institutions and infrastructure which will stimulate and support agricultural and industrial development.

23.38 The government is largely expected to play a regulatory role in stimulating socioeconomic development. To this end, the people feel that in the past, government overextended itself by creating too many Parastatals and engaging in economic activities not traditionally performed by governments. They, however, support the retention or establishment of strong, viable Parastatals in strategic sectors of the economy like water supply, energy supply, telecommunications and railways. But they stress that such bodies should be run by people appointed on the basis of their knowledge and experience, and not on political grounds, or on the grounds of patronage. These modes of appointment are held partly responsible for the poor performance of many Parastatals. It is even proposed by some people that there should be an independent appointing authority to reduce patronage in appointments to top posts in Parastatals. This issue was also discussed in chapter sixteen, where we agreed with the need for appointment on merit and only following wide advertising of vacancies and the conduct of interviews by boards of management.

23.39 Recommendation

It should be the duty of the State to stimulate agricultural, industrial, technological and scientific development through appropriate policies and the enactment of appropriate laws.

The Need for Planned Development

23.40 Development planning is not new in Uganda. The first five-year development plan, which was drawn up with the assistance of the World Bank, covered the period 1961/62 1965/66; and the second five-year development plan followed in 1966-71. The 1990 report of the *Public Service Review and Reorganization Commission,* states that these plans succeeded mainly because:-

(a) they were formulated and implemented in a relatively settled political and social environment;

(b) the country had adequate financial resources and an efficient civil service both necessary to implement the plans;

(c) government exercised a reasonable degree of discipline in allocating resources according to the plan guidelines; and

(d) government had the good sense not to interfere with, undermine or antagonize the private sector, which was very vigorous at the time.

23.41 Since the collapse of development planning as a strategy for development, Uganda has had a series of Sh011 term rehabilitation and recovery programmes under various names mainly with the support of the World Bank, IMF and donor countries. The continued and deepening dependency on international financial institutions and foreign countries for our development needs undermines our independence and sovereignty, and is not a reliable basis for development.

23.42 Some people have pointed out that even the first five-year development plans which were held to have been successful were based on wrong premises which could not be sustained in the long run. For example, the plans:-

(a) depended on foreign aid, rather than investment, which is more reliable in the long run;

(b) adopted development strategies which did not integrate agriculture with industry so that Uganda continued to produce and export raw materials, principally coffee, cotton, tea, tobacco and copper, while the industries continued to depend on imported raw materials;

(c) concentrated on import substitution industries, rather than industries which produced goods for the export market; and

(d) were drawn up without consulting the people at the grassroots level who were affected by them.

23.43 The Uganda Planning Commission was established by an Act of Parliament in 1963. The Commission was given powers to plan for the socio-economic development of the country. It has in fact effectively been extinct since the early 1970s. This is not surprising, given the mismanagement of the economy and the general chaos that prevailed in the country from that time.

23.44 The people of Uganda have not lost faith in development planning. They have indicated their overwhelming support for planned socio-economic development. Among the reasons given for this support are the following:-

(a) There is need for a central authority to plan and co-ordinate development so as to bring about balanced development between different areas of Uganda.

(b) There can not be any positive development without proper planning and direction.

(c) The State should plan and direct the process of development in order to improve on the standard of living of the people.

(d) Planning can ensure right priorities in socio-economic development.

(e) Planning and directing the process of development can be used to promote social justice and reduce inequalities especially, as in our situation, where private entrepreneurship is the predominant form of economic order.

(f) Natural and human resources can be better and more rationally utilized with careful planning and direction for it helps to avoid wastes which often occurs if development is not planned.

Decentralisation of Planning

23.45 The 1987 Resistance Councils and Committees Statute introduced the RC system with the aim of, among other things, transferring powers to plan to the local levels. In Chapter Eighteen *(Local Government)* we discuss the aims and the institutional frameworks for decentralisation and so do not need to discuss the issues further here, other than to emphasize that the involvement of local government (at all levels) in the planning process is the most important way of involving people in the planning and development processes. As already emphasised, such involvement is crucial for planning and development to succeed.

Manpower Planning and Development

23.46 One aspect of socio-economic development that has not received proper attention in Uganda for a long period is manpower planning. It is said that the greatest resource that a country has are the people. The development of human resources can have a dramatic impact on the economic and social progress of a society. The greatest challenge facing Uganda today is the eradication of poverty, disease and ignorance, which are all signs of backwardness. When we talk of backwardness, we really mean that the human resources have not been developed sufficiently to enable us to overcome the obstacles to socio-economic development, among other things.

23.47 There has not been much manpower planning to talk of in Uganda. The rate of illiteracy is still high and the educational institutions continue to bring out many graduates who do not have the knowledge and skills necessary to be absorbed in the labour market. There is little linkage between the educational and training institutions on the one hand and the needs of the economy or employment opportunities on the other hand. That is why many graduates from the universities, colleges and schools go without jobs, while vacancies exist in vital sectors of economy for which expatriates have often to be hired.

23.48 It is time to take development of human resources seriously. There are countries like Japan, Singapore, and Hong Kong that have few resources other than their people, and which have attained rapid and impressive socio-economic development because of investment in those resources. This is because they gave the kind of education and training which meets their development needs. This type of education and training include:-

t

(a) universal primary education;

(b) improving of practical skills;

(c) developing scientific, technological and managerial knowledge and skills; and

(d) research and development in areas relevant to their development needs, including agriculture, science and technology, industry and services.

23.49 The argument that education and training are expensive cannot hold in this case where colossal sums of money are spent in educating and training people who are not fully utilised after their graduation. As a starting point, existing resources should be spent on reducing the right kind of manpower. It is now an acknowledged fact that ignorance is, in the long run, more expensive than education. Uganda cannot currently even send all her children to school. As discussed further in Chapter Twenty Four *(Social Services)* it is estimated that 45 percent of the children of primary school age do not go to school.

23.50 Recommendation

In line with the recommendations of the 1990 report of the Public Service Review and Reorganization Commission the Uganda Planning Commission should be re-activated and given a more specifically focused planning authority. Powers of the Commission should include:-

(a) undertaking relevant research to identify national development priorities which should take into account the aspirations and preferences of the people;

(b) giving advice to government on overall development objectives and strategies;

(c) drawing up human resources development plans for the country;

(d) guiding district and lower planning authorities in planning their development programmes and projects, and consolidating these plans into a national plan; and

(e) ensuring that environment factors are taken into consideration in any development activities, whether privately or publicly funded and whether undertaken by cultural or local governments.

Balanced Development

23.51 Imbalances in socio-economic development between the different regions, district and localities of Uganda, as well as between the urban and rural areas continues to be an issue of major concern in many parts of the country. Although it is true that, on the whole , Ugandans remain desperately poor amidst abundant resources, some areas are relatively more developed than others in terms of economic and social infrastructure, agriculture, indlll4ld and economic opportunities available.

23.52 Real or perceived disparities in socio-economic development, particularly if they tend to reflect regional and ethnic diversities, can be a hindrance to national unity and cohesion. During our tours in the country-side and in various memoranda submitted to us, strong views were expressed from areas like Karamoja, 'West Nile, Kalangala and Bundibugyo which regard themselves as disadvantaged and even exploited, on the need to redress the imbalance in development between the different areas of Uganda. The rural population in general also feels that there is an urgent need to stop what they consider their exploitation by the urban areas. They want the imbalance in allocation of resources and facilities between towns and villages in favour of the former to be corrected, more especially as it is the rural areas which support the socio-economic well-being of the country. As some have put it, the towns are Milking the villages without feeding them.

23.53 Views have been offered as to how the less developed areas can be assisted to accelerate their rate of development to catch up with the rest of the country. Measures suggested include proposals that:-

(a) the central government should fund or promote special programmes and projects in the fields of agriculture, industry, services and infrastructure to speed up development in these areas;

(b) investors should be given special incentives to invest in these areas, particularly in resource-based industries geared towards exploiting agricultural and other raw materials found in these areas;

(c) government should build or encourage NGOs and donor agencies to fund social infrastructure such as schools and health centres in these areas;

(d) there should be positive discrimination in favour of the less developed areas in financial allocation from the central government to enable them meet their development needs; and

(e) there should be decentralisation of economic activities, which many regard as a pre-condition for developing the rural areas. It has been argued ,that Kampala and other urban areas have been developing at the expense of the rural areas due to overcentralisation of government functions.

23.54 Spreading development evenly throughout the country would in any event be good for political and economic stability. It is also a hall-mark of civilization to show concern and compassion for the disadvantaged. So even those areas which are less endowed with resources than the average areas need special efforts to uplift them.

23.55 It is, however, important for all Ugandans to be made to understand that they are primarily responsible for their own development and for the development of the cOjll1try as a whole. Some of the views from the areas which regard themselves as less developed tended to show that they expected government to be the main player in the development process in these places. On the other hand, there were some views from areas considered more developed which seemed to attribute the lack of development in the needy districts as being due to lack of initiative or laziness.

23.56 Whatever the views advanced, there is need for the State to do its part to promote development in all parts of Uganda by providing infrastructure like roads, electric power, water and sanitation; and by spreading social services including education, health and welfare to the needy in society. The State should also create the right political climate and adopt appropriate policies and programmes which can promote local and individual initiatives for development. The system of government which is adopted under the new Constitution and the extent to which the decentralisation process goes down to the grassroots level will definitely have a bearing on the prospects for achieving balanced development.

23.57 Some people have contended that when considering imbalances in development, there is need to go further than just looking at regional imbalances or the imbalance between rural and urban areas. There are many social groups in society who have been marginalised in the process of development. These include the women, youth, people with disability, the peasants and the urban poor. There is need to take deliberate steps to empower these groups economically and socially.

23.58 Recommendation

(a) The State should take all necessary measures to bring about balanced development of the different areas of Uganda and between the rural and urban areas. Special measures should be taken in favour of the least developed areas.

(b) Affirmative action should be taken to enhance the socio-economic status of disadvantaged groups including the women, youth, people with disability, the peasants and the urban poor.

Sovereignty over Natural Resources

23.59 The United Nations General Assembly *Resolution on Permanent Sovereignty over Natural Resources* was passed on 4 December 1962. It affirms the right of peoples and nations to permanent sovereignty over their natural resources. Nations have the right to use their resources in the interest of their national development and for the well-being of the state concerned. It affirms, among other things, that in case of foreign investment "the profits derived must be shared in proportions freely agreed upon, in each case, between the investors and the recipient state, due care being taken to ensure that there is no impairment for any reason, of the state's sovereignty over its natural wealth and resources".

23.60 The *African Charter on Human and Peoples' Rights* similarly affirms the right of people to freely dispose of their wealth and natural resources, maintaining that *"in no case shall a people be deprived of it"* , Article 21 (1)'. Article 2 affirms that in case of expropriation, the dispossessed people shall have the right to the lawful recovery of its property as well as to adequate compensation. State parties are enjoined to exercise the right to free disposal of their wealth, individually and collectively, with a view to strengthening African unity and solidarity. They are also enjoined to eliminate all forms of foreign economic exploitation, particularly so as to enable their peoples to fully benefit from lilt' advantages derived from their natural resources. In addition to international instruments, the

23.61 There is a broad agreement in the views and proposals submitted by the people on the need to control and regulate the ownership and exploitation of important natural resources including land, water, forests, petroleum, and minerals.

23.62 The important thing to note here is that the people want natural resources to be exploited for the benefit of all the citizens, and that there should be some restrictions on foreigners and the rich grabbing these resources, especially land. Although in the development of the country, they welcome private local and foreign participation people do not want to see a few people grabbing the natural resources of the country, or carrying out development only with the short term view of reaping profits. Development must take the long term view of sustainability of resources and must be sensitive to the dignity of the citizens and the effect on the environment.

23.63 Recommendation

The Constitution should vest the ownership, control and right of exploitation of the important natural resources including land, water, minerals, oil and forests in the people of Uganda, with the State as the guarantor of the people's interests.

Economic System

23.64 Generally, the people want the objectives of socio-economic development to include promotion of economic growth, general prosperity of the country and its citizens, just and equitable distribution of income, equal economic opportunities, welfare of all citizens and human dignity. They would not like to see a few people wallowing in wealth, while the overwhelming majority live in abject poverty without adequate shelter, medical care, education and food.

23.65 The people believe that the economic system has a bearing on the realisation of the above objectives. There are three basic propositions on this matter. The first and more popular and predominant view is that there should be a *mixed economy*. By this term they mean coexistence of the various forms of enterprises, including public, private, joint ventures, cooperatives and family enterprises. The second group which constitutes a small minority is in favour of a purely *market economy*. They envisage an economic system under which development of the means of production and marketing is determined by market forces of supply and demand, and where private entrepreneurship is predominant. There is a third group made up mainly of some intellectuals who want the State and cooperatives to playa leading role in the economy. They are however few.

Investment Code:

23.66 Ugandans recognise the important role that private investment, both local and foreign, can play in the development of the country. In 1991, the National Resistance Council passed an Investment Code, one aim of which is to attract both local and foreign investors. The Code establishes the Uganda Investment Authority with the overall responsibility for the promotion, facilitation and monitoring of private investment in the country; The Authority is responsible for licensing and offering investment incentives under the Code.

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facilitation and monitoring of private investment in the country. The Authority is responsible for licensing and offering investment incentives under the Code.

23.67 According to section 13 of the Code, the Authority shall in considering an investment proposal carry out an appraisal of the capacity of the proposed business enterprise to contribute to the following objectives:-

(a) the generation of new earnings or savings of foreign exchange through exports, resource based import substitution or service activities;

(b) utilisation of local materials, supplies and services;

(c) the creation of employment opp0l1unities in Uganda;

(d) the introduction of advanced technology or upgrading of indigenous technology;

(e) the contribution to locally or regionally balanced socio-economic development; or

(f) any other objective that the Authority may consider relevant for achieving the objectives of the Code .

23.68 The code offers a range of attractive facilities and incentives to investors, inc1uding:-

(a) Approval of investment licenses without delay;

(b) exemption from payment of imp0l1 duties and sales tax on new (not more than five years old) machinery and plant;

(c) exemption from payment of corporation tax for a period of three to five years, depending on the value of the investment;

(d) exemption of a foreign investor or his or her or its expatriate staff from paying import duty on one motor vehicle, and personal and household effects;

(e) access to domestic credit;

(f) unhindered repatriation of profits for foreign investors; and

(g) protection from compulsory acquisition; and in case of acquisition, adequate and prompt compensation (within twelve months).

23.69 Investors are of course not only attracted by generous investment terms and the profits they expect to reap, but also political stability.

23.70 It has been reported that in the first ten months of the existence of the Uganda Investment Authority as at end of April, 1992, 138 applications for investments worth nearly US $400 million were received, and that investment licenses had been issued to 63 projects valued to US $168.4 million which will be invested over the next three or four years. The

Authority reports that about half of the approved projects are currently being implemented and seventeen are already in production. It reports that 40 percent of the projects are in manufacturing while, 25 percent are in services and tourism. It expect that there will be a flood of new applications fC1r investment from now on. However, complaints continue to be heard about corruption and rack of economic infrastructure for investors, problems which may be hopefully dealt with.

23.71 It is also import~lI1t to remember that foreign investments cannot be a substitute for local eff0rts. It should only supplement local initiatives. There is definitely a feeling among our people that the economy should not be dominated by foreigners, and that we should not expect too much from foreign investment.

23.72 Recommendation

In order to facilitate rapid economic development on a free, democratic and just basis the State should encourage public, private and individual economic activity.

Economic and Social Rights

23.73 In 1966, the United Nations General Assembly adopted the *International Covenant on Economic Social and Cultural Rights* and it subsequently entered into force in 1976, once it was ratified by ,a sufficient number of states. The Covenant was principally designed to rid the world of *fear* and *want.* A state party to the Covenant is obliged to take steps individually and collectively through international assistance and economic and technical cooperation to progressively achieve the full realisation of the rights recognized in it by all appropriate means, including legislative measures. The rights spelt out in the covenant include:

(i)

(a) the right to work;

(b) the right to the enjoyment of just and favourable conditions of work;

(c) the right for every person to form or join a trade union of his or her choice;

(d) the right to strike;

(e) the right to an adequate standard of living for oneself and for ones family including food, housing, and clothing and continuous improvement in living conditions; and

(f) the right of a people to enjoy and utilise fully and freely their natural wealth and resources.

23.74 In their views submitted to us the people of Uganda have raised several major concerns and made some proposals on a number of issues affecting the economic and social rights of the citizens.

23.75 The concern of our people about the poor remuneration for farmers, workers and public servants has already been mentioned. Farmers not only complain of low and delayed

payment for their cash crops but also or exploitation by middle-men, especially since the liberalisation of the economy. Public servants and workers complain about salaries and wages which are so low that they cannot meet even the most basic necessities of life like food, shelter and clothing for themselves and their families from their pay. The demand for a living wage and adequate remuneration for farmers is familiar. This is an issue which the people want to be tackled as a matter of priority.

23.76 We have also note the widespread concern and anxiety country about unemployment. The youth who graduate from the schools, universities and other institutions of higher learning are finding it increasingly difficult to find employment in the formal sector. Most of them lack the training and capital to become self-employed. Civil servants feel insecure **in** their jobs as a result of the on-going retrenchment exercise. Privatization and liberalisation of the economy also threatens to throw many people out of their jobs.

23.77 A number of people in the rural and urban areas are unemployed or under-employed. There is widespread demand that employment should be a right to be enjoyed by all, though there is realisation that the State it<;e1f cannot provide employment to everybody. It can at best provide the environment and policies that can facilitate employment in the various sectors of the economy, including self-employment.

23.78 There is concern, especially among the women, about discrimination in employment and pay on the basis of sex. On the whole women, especially in the private sector, are given few opportunities for employment and are often paid less than their male counterparts doing the same or similar jobs. There are also fewer economic opportunities for women in both the rural and urban areas. There is demand, particularly from the women, to end discrimination and inequality in economic opportunities between the sexes.

23.79 Workers complain that they are not adequately involved or consulted in decision making in their work places; even on matters which directly affect their interests and welfare. Failure to involve or consult workers often leads to decisions which go directly against their interests or which fail to get their support even when not actually against their interests.

23.80 There is widespread concern about the failure of the State to provide and facilitate the provision of adequate social services, including education, medical care and welfare needs of the people. There is a feeling that the State does not make the provision of social services a priority as evidenced by the meager State resources provided to the sector. This is a matter of serious concern as most people in Uganda, including the peasants, urban poor, orphans, widows, the aged and people with disability cannot, on their own, afford to pay for these services.

23.81 Workers and other concerned citizens express deep concern about the safety and health conditions at places of work, including factories, mines, quarries, building sites and logging operations. Workers are exposed to hazardous substances and conditions which endanger their lives and cause frequent accidents. The laws relating to' safety and health of workers at work places are not vigorously enforced.

23.82 The employment of children to perform hard and dangerous jobs, most often for very little pay, has drawn the attention of social workers and some members of the general public

These are usually children who should be in schools, The laws relating to the employment of children intended to protect their health and, welfare me not being, enforced Children are employed as domestic workers, where they, often work for long hours for little or no pay at all. They are also to be found working in factories, mines and farms for little pay. There is demand that employment of children, especially in dangerous situations, should be stopped or done only in accordance with strict conditions provided by law.

23.83 There is much concern about government control and interference in the affairs of the, cooperative unions and societies and trade unions. People complain that governments have attempted to bring these organisations under the control of the beaucracy or of political organisation in power with the aim of, among other things neutralizing them. It is felt that the role of the State should not go beyond what is necessary to safeguard the interest of the members of such bodies; otherwise they should be free to manage and direct their own affairs in accordance with democratic principles.

23.84 People have proposed that the following economic and social rights should be included in the Constitution:-

(a) the right to work so that every person who is willing and able to work should have the right to do so. To this end, the State should take all necessary steps to create economic opportunities and reduce unemployment.

(b) the right to adequate remuneration so as to include the right of every worker to a living wage and of every farmer to adequate and prompt payment for his or her produce.

(c) the right to equal treatment between women and men in employment, remuneration, Economic opportunities and social advancement.

(d) the right of every worker to join a trade union of his or her choice and of a farmer to join a co-operative society and union or any association for advancing his or her economic interests;

(e) the right of farmers and workers to strike or withhold their labour as a last resort against Injustices or exploitations.

(f) the right of children to be protected from dangerous conditions at work places and from exploitation

(g) the right of workers to healthy, safe and favourable conditions of work;

(m) The right of workers to be involved in decision making in their own places.

(i) the right to free and compulsory universal primary education and of every citizen to be afforded the opportunity to attain the highest education standard possible.

(j) the right to free or affordable and adequate medical care for every citizen, especially the needy, and

(h) the right to clean and safe water.

23.85 There is consensus that the economic and social rights should be spelt out in the Constitution. At the same time, we are mindful of the fact that the economic situations of the country would make it impossible for the people for the people to enjoy these rights immediately on the coming into effect of the new Constitution or indeed in the foreseeable future. Even countries which are economically more advanced than Uganda find it prudent not to make them enforceable rights. Nevertheless, provision of such rights in a non- enforceable form will set vitally important directions for future policy and programmes of government.

23.86 Accordingly, we are of the view that the economic and social rights be contained in the section of the new Constitution on *National Objectives and Directive Principles of State Policy* recommended in Chapter Five of this report. There are, however, some nights in this area which should be enforceable. Although they have already been the subject of recommendations in Chapter Seven *(Fundamental Rights and Freedoms),* their importance is such that they deserve further emphasis in the context of the issues considered in this chapter. They are the right to associate of workers and other economic interest groups; workers' rights to strike; children's' rights to freedom from economic exploitation; and rights of women and men to freedom from discrimination in employment and other aspects of economic activities.

23.87 Recommendation

(a) The following economic and social rights should be included in the National Objectives and Directive Principles of State Policy with the State aiming at their attainment in the shortest time possible:-

- ***(i) the right to work, which should include the right to pursue any form of economic activity guaranteed under the Constitution for the advancement of oneself and one's family;***
- ***(ii) the right to adequate remuneration, which should be paid promptly and regularly;***
- ***(iii) the right to a decent standard of living, which should include adequate food, water, clothing, housing and medical care;***
- ***(iv) the right of workers to participate in decision-making in their places of work;***
- ***(v) the right to healthy, safe and favourable conditions of work; and***
- ***(vi) the right to free and compulsory universal primary education and of every citizen to be afforded the opportunity to attain the highest education standard possible.***

(b) The economic and social rights which are enforceable should be included among the fundamental rights of individuals and groups provided in the Constitution. These include:-

(i) the right of farmers and workers to join or form economic or trade associations to protect their economic rights and interests, including farmers' associations and trade ,unions;

(if) the right to strike or withhold labour;

(iii) the right of children to be protected from exploitation and dangerous occupations; and

(iv) the right to equal treatment between women and men in employment, remuneration, economic opportunities and social advancement.

CHAPTER TWENTY FIVE

LAND

25.1 The people of Uganda regard land as perhaps the most important resource of the people and the country as a whole. This is not surprising in view of the fact that Uganda is a predominantly agricultural country, and is likely to remain so for many years to come. Because of the importance they attach to land, it has been one of the issues on which many people from all parts of the country have submitted views. The chapter first deals with the underlying principles and concerns that have emerged from the views of the people. This is followed in section two by a brief historical background to land. The third section examines alternative views offered by the people on the main issues to which they have addressed themselves. These options are evaluated to arrive at the Commission's recommendations.

SECTION ONE: IMPORTANCE, CONCERNS AND PRINCIPLES

Importance of the Issue

25.2 Land is a major factor of production alongside labour and capital. The agricultural and industrial development of Uganda will depend on, among other things, the land use and management policies adopted. It can be argued that some land tenure systems promote socio-economic development better than others. Further, sound land tenure and proper land utilization will have a bearing on environmental issues.

25.3 Land is viewed by the people -as a vital natural resource and common heritage which cannot be matched by any other natural resource. Ownership of land by the individual, family or community confers real or potential wealth, social prestige and a sense of economic security. Population growth continues to put a great deal .of pressure on land, and hence the need to look at the land issue very carefully.

Concerns of the People

25.4 Land is one of the issues on which the people have expressed a great diversity of views. It is unlikely that a consensus will emerge on the matter in the near future. This is because Uganda is a country of diversity in terms of cultural, social and economic experience and orientation. Different communities ill Uganda are used to different kinds of land tenure and policy. Each community tends to extol the virtues of the policy and land management to which it is used in relation to the other systems.

25.5 Despite the diversity of views, some common concerns and principles have emerged from the submissions made by the people. The Commission has attached a great deal of importance to the views expressed by the people "in evaluating the various options they offered. The main Concerns on land shared by all the people of Uganda include those discussed below.

Land grabbing by the rich and the powerful:

25.6 There is fear that the rich, powerful ,and well-connected people are using their wealth and influence to grab land from poor peasants, many of them being rendered landless in the process. This is of real concern as many of the people dispossessed of land depend solely on it as their source of livelihood.

Fear of foreigners taking over land:

25.7 There is concern that foreigners coming to Uganda may take overland 'from citizens, and yet Ugandans cannot do the same in other countries.

Too much centralisation of land administration:

25.8 The people were very unhappy about too much centralisation, as well as the long, costly and complicated process of acquiring title to land. This has discouraged many people from taking steps to acquire titles to their land.

Corruption in land office:

25.9 People complain that the process of acquiring land titles in riddled with corruption at every stage. This has increased the cost of acquiring titles and led to fraudulent issuance of titles. Many people say that they have simply given up trying to obtain titles to their land because of corruption in the land office.

Principles Emphasised by the People

25.10 According to the views, there is a general consensus regarding what would constitute a good land tenure policy. We discuss some of the principles under this sub heading.

Fair and equitable allocation of land:

25.11 People want a land tenure system and policy that would ensure a fair and equitable allocation of land among the citizens, while at the same title preserving its capacity to satisfy present and future generations.

Right to land:

25.12 There is agreement that every citizen should be guaranteed access to land. People regard this as very imp0l1ant because most of the people are engaged in agriculture or pastoral activities which depend on availability of land.

Balance between development and protection of peasants:

25.13 The people recognise that all categories of farmers and other developers should have easy access to land, but at the same time they want the peasants and others whose livelihood solely depend on the land to be protected from eviction.

Agriculture and other forms of socio-economic development:

25.14 People want land tenure and policy which can lead to a balance in development by opening up opportunities for agricultural and other forms of socio-economic development in the rural areas instead of concentrating development opportunities in the urban areas.

Guaranteeing use of land to investors:

25.15 It is recognised that farmers and other developers should be guaranteed continued use of land until they have made reasonable returns on their investments. In this way, they will be encouraged to make long term investments in the land.

Discouraging holding of land for prestige or speculative purposes:

25.16 People are totally opposed to the practice of holding large tracks of land for prestige or speculative purposes by some people, while serious developers or landless people are without land.

Phased introduction of changes:

25.17 It will take sometime before consensus can emerge on a uniform land tenure system acceptable to all the people of Uganda. However, in light of the views expressed by the people, we think it is time we laid the foundation upon which future generations can build, and hence the recommendations contained in this chapter advocating for phased introduction of freehold system for rural areas and leasehold system for urban areas throughout the country.

SECTION TWO: HISTORICAL BACKGROUND

25.18 Before evaluating the views of the people on this topic we shall look briefly at land tenure during the pre-colonial period; land tenure during the colonial and post colonial Uganda; the Land Reform Decree, 1975; and the Tenure and Control of Land Bill, 1990. The people's views will be evaluated in part with this background in mind.

Land Tenure during the Pre-colonial era

25.19 It is difficult to identify a single land tenure pattern for Uganda as a whole for this period. The situation may be partially indicated by reference to the customary land tenure system in Buganda as contrasted with other parts of Uganda. In Buganda, one would say that land was by and large held by the Kabaka on behalf of and in trust for the people. By about 1840, the Kabaka had effectively undermined the power of the clan heads largely by means of the power to appoint chiefs of various grades who had both administrative and military duties. In return, chiefs also got the right to use the land and produce of the, peasants under them (beer, food etc). There were at least four categories of rights of control over land. These included:-

Obutaka (Rights of Clans over land):

25.20 These rights accrued to heads of clan~ and sub-clans who were known as *bataka.* The particular land involved was viewed as clan or ancestry land, the traditional seat of the head of the clan or sub-clan who determined a right to reside on such land. Other members of the clan or sub-clan had no right to reside there but had a right after their death to be buried on such lands. *Butaka* land was spread over Buganda and as of 1911, there were 522 *butaka* estates. The *butaka* estates were held by individual heads of clans and sub-clans rather than collectively. While *butaka* tenure was not strictly collective tenure, it was also not private ownership. A *mutaka* might allocate the right to use land and receive profits from it but consent of the clan was always necessary for a *mutaka* to give away *butaka* land or any part thereof. *Butaka* land was not divided among the children of a *mutaka* when he died; rather it passed to his successor in the role of *mutaka.* The Kabaka had power to remove a *mutaka* and evict him from *butaka* land for good cause. *Butaka* land was under all circumstances not alienable to strangers.

Obutongole (Rights of the Kabaka and the Chiefs):

25.21 The Kabaka held paramount title in all the land in Buganda. He granted land to his great chiefs *(bakungu)* who were few in number and to his lesser and more numerous chiefs called *batongole.* These rights in land are collectively described as *obutongole.* The grantees had right of use in the estates attached to their chiefly offices. These rights were good during the continuance in office of the particular, chief. The *batongole* exercised the same rights towards the peasants on their lands as those exercised by *bataka* with regard to the tenants on *butaka* land.

Obwesengeze (Individual hereditary rights):

25.22 These were individual rights over land stemming from long and undisputed occupation and, or original grant by the Kabaka. They could be acquired by a chief or individual tenant. This type of tenure carried no political rights or duties like *butongole* tenure, and unlike *butongole* tenure, if the holder died, the land passed on to his heir. The holders were not subject to labour obligations like peasants.

Ebibanja (Peasant rights of occupation):

25.23 The peasants formed the majority of the population. The peasants were free to choose a chief under whom to live. A peasant got a piece of land for his undisturbed occupation under a chief of his choice who would organise for his security and general welfare while the peasant was to respect his chief, render him some tribute and occasionally work for him. It should be noted, that notwithstanding, the fact that the peasant performed various customary services; he was still subject to being evicted from his *kibanja* (plot) by the chief at any time. His right of tenure, therefore, depended on his maintaining the correct social and political behaviour. Upon his death, a peasant successor had a right to remain in occupation.

Rest of Uganda:

25.24 Aspects of the foregoing semi-feudal structure of land rights were replicated in other kingdom areas of pre-colonial Uganda, namely, Ankole, Bunyoro and Toro. The rest of pre-colonial Uganda was basically egalitarian. It would, therefore, be unrealistic to generalize about the patterns of land tenure that obtained in those parts then because conditions varied from place to place. However, some studies of the system of customary tenure have indicated certain regularities which definitely occurred elsewhere in Uganda - Acholi, Lango, Kigezi and Sebei. Generally speaking, customary tenure did recognise various rights of the individual to possess and use land subject to the superintendence of his family, clan and or community. Land was regarded as a common heritage. In essence, the following rules applied:

(a) The individual land holder had his right under customary tenure to utilise his holding as he thought best, rest or lend his piece of land for temporary purposes; pledge crops on his land but not land itself; sell land subject to the approval of the family, dispose of the land according to the customary laws of inheritance and prohibit grazing near his homestead. He could also fence his homestead.

(b) The clan or family had the rights to settle land disputes within the area of control; exercise the right to buy any land offered for sale by its members; prohibit sale of clan land to undesirable person and declare void any land transaction which had not received its approval.

(c) The general community had the following rights over land:-

(i) the right to graze communally over the whole areas but damage to crops had to be made good;

(ii) the right of free access to salt licks; watering of cattle at running or open waters and access to water from springs and other common rights.

Land Tenure in Colonial and Post Colonial Uganda

25.25 The colonial state in Uganda was built on the official philosophy of protectorate and indirect rule rather than colony, territory or direct rule. The colonial state did not introduce radical changes in the system of customary tenure in Uganda. Elsewhere on the African continent, there had been resistance from Africans to borrowed policies of change introduced by the colonialists. The dominant economic structure chosen for Uganda by the colonial masters was one of small peasant agriculture under the prevailing customary tenure. It was considered dangerous to modify customs as arbitrary imposition of change would cause a total failure of efforts to administer the local indigenous population.

25.26 However, in order to appease the local chiefs and get local Political allies in the effective administration of the country, the colonial administration introduced other land policies which could accommodate customary tenure. Thus, besides the preservation of customary tenure, mailo land tenure, freehold and leasehold tenures were introduced.

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Mailo Tenure:

25.27 The mailo system of land tenure was established under the 1900 Buganda Agreement between the Kabaka and British Government intended to maintain political order in Buganda and to allow for the peaceful imposition of colonial rule. The agreement granted square miles of land to chiefs and private landowners hence the term 'mailo' deriving from the English length-unit (mile) which was the basis of measurement in land allocations. The agreement divided the land among the crown (Queen's Government), the Uganda Protectorate Administration, the Kabaka, the Kabakas' chiefs and missionary societies. This area represented half of the estimated area of Buganda. Mailo land was divided into two categories:

(a) Official mailo and (b) private mailo.

The former were grants of land attached to specific offices in the Buganda Local Government. These lands could neither be sub-divided or sold and instead passed intact from the original land holder to his successor. Official mailo was abolished in 1967 and these estates became public land.

25.28 With regard to private mailo estates, some 1,000 chiefs and private land owners were allocated 8,000 square miles of land under the 1900 Buganda Agreement. The mailo land owner held rights in his land akin to those of freehold. He was free to sell all or part of his holding and to pass it to his successors either under customary inheritance procedures or through a will. Many mailo holders proceeded to sell off parts of their holdings. By 1963, it was estimated that the original 4,138 estates had increased to 89,089 estates as a result of sub-divisions through inheritance and sales. Similarly the average size had reduced from an estimated 789 acres per individual in 1923 to 63 in 1963.

25.29 Allocation of the original mailo holdings in the early part of the century was made without regard to pre-existing rights of occupancy and ignored the presence of peasant cultivators whose tenancy rights were recognised under customary system of land tenure. This led to some of the first difficulties of the mailo system and it became necessary to enact the Busuulu and Envujjo Law of 1928 which provided the tenant cultivators with security on land and set a limit on the fees which they were required to pay to the mailo owner. Under the Busuulu and Envujjo L1W, peasant tenants could not be forced off their holdings without a court hearing; moreover their tenancy could be passed on to the next generation. In return, the tenant was obliged to pay an annual fee *(busuulu)* for the use of land and tribute on produce *(envujjo)* for such crops as cotton and coffee.

25.30 Under the Busuulu and Envujjo Law, the tenant found himself in a more advantageous position than before. As a tenant at will under the 1900 agreement, he was liable to being arbitrarily dispossessed and his hereditary rights were not respected. The Busuulu and Envujjo Law was instrumental in preventing the development of a landless peasant class.

25.31 Another Lukiiko enactment, the Buganda Possession of Land Law 1908, prohibited a mailo owner from transferring land to a person who was not of Ugandan origin without the prior consent of the Governor and the Lukiiko. The Land Transfer Act, No.33 of 1970,

barred a non-African from acquiring any interest in land owned by an African without consent of the minister.

Freehold Tenure:

25.32 Freehold means absolute ownership of land. Outside Buganda, there were three types of freehold which were introduced:

(a) First, there were freeholds created under the Crown Lands Ordinance of 1903 from crown lands to individuals by the Colonial Government. The Crown Lands Ordinance gave the crown power to alienate land in freehold. Very few freeholds were given under this Ordinance. The Ordinance attached development conditions which were carried forward by the Public Lands Act, 1969. The State however, reserved the right to enter and inspect the adjudicated freeholds.

(b) Second, there were freeholds converted from customary tenure pilot schemes in the districts of Kigezi, Bugisu and the Kingdom of Ankole. In these schemes there was surveying and actual registration of existing customary holdings. In some areas, consolidation of fragmented plots was also carried out. Adjudication was carried out by local committees whose co-operation and local knowledge were crucial to the success of the project. The schemes turned out to be more time consuming and expensive than had been originally anticipated.

(c) Third, the Colonial Government also set up native freeholds which were grants of land under the Toro and Ankole agreements of 1900 and 1901, respectively. It was agreed that chiefs would be allocated such land under a special distribution scheme. These freeholds were similar to mailo land in Buganda. In Ankole, the result of the 1901 agreement was the demarcation of 50 square miles for private freehold and 26 square miles for official estates. In Toro, 255 square miles became private freehold and 122 square miles official estates. These freeholds were highly restricted freeholds. The allodia title was vested in the colonial power. The land could be transferred only to a native of the KingdoIi1. The terms of the tenure between the native freehold and any tenant were not freely negotiable but were fixed by the Ankole Landlord and Tenant L1W, 1947 and by Toro Landlord and Tenant Law, 1937. The effect of these two laws was effectively to curtail the powers and rights of the freeholder viz-a-viz the customary tenant on the land.

Leasehold Tenure:

25.33 A leasehold estate is an estate created inland as a result of an agreement between a lessor and a lessee to the effect that the latter will enjoy exclusive possession of the land subject to a specified and cel1ain duration in consideration of a cash payment called rent moving from the lessee to the lessor. In Uganda, there are two types of leases, the private lease and the public or statutory leases. A private lease is granted by an individual landowner to an individual or an organisation. The statutory leases are given by a public authority.

25.34 In Uganda today, public statutory leases are provided for under the Public lands Act, 1969. The leasehold system represented a major feature of the land tenure system in Uganda until the enactment of the Land Reform Decree 1975 which is considered in greater detail below.

Customary Tenure:

25.35 Under the Public Lands Act, 1969, any person is authorised to hold land by customary tenure without any grant, lease or licence from any controlling authority provided the land is not in urban area and has not been alienated.

The Land Reform Decree 1975.

25.36 The Land Reform Decree substantially changed the legal basis of land tenure in Uganda. All land was declared public land to be administered by the Uganda Land Commission. The Decree abolishes freehold interests in land other than where such interests are vested in the Commission, in consequence whereof all freeholds and individual mailos were transformed into leases of 99 years for individuals, and 199 years for public/religious and other charitable bodies.

25.37 The legal protection which a customary tenant had under the Public Lands Act, 1969 whereby, no dealings including transfer or removal from land could be effected without his consent, was removed by the Decree. The customary tenant then became a tenant at sufferance, and could be thrown out on notice at any time. However, the Decree provides that customary tenants on public land may not be evicted except under terms and conditions imposed by the commission and approved by the minister. The Decree further provides that the system of holding land by customary tenure may continue, but acquisition of new customary holdings is prohibited unless permission has been obtained. Any person who occupies land without such consent commits an offence and is liable on conviction, to a fine or imprisonment.

25.38 A customary tenant on public land does not have transferable interest in land. He may, however, transfer his improvements on the land after giving not less than three months notice to the prescribed authority. It is an offence to enter into an agreement to transfer any interest in any public land occupied by customary tenure without permission of the prescribed authority. Under the Decree, no person may occupy public land by customary tenure except with the written permission of the prescribed authority.

25.39 Under the Decree, the Busuulu and Envujjo Law, the Ankole Landlord and Tenant Law and the Toro Landlord and Tenant Law were repealed. The Decree further extends the scope of public control of land transactions. Before the Decree, land used to change hands freely among Ugandan Africans. Only land transactions between Africans and non-Africans were required by the Land Transfer Act to be effected with the consent of the minister. In addition, written consent of the Commission is now necessary before the lessee can transfer the whole of his lease for value. Under the Land Reform Decree, practically all land transactions in Uganda now need the consent of the controlling authority.

25.40 The hitherto special position of customary tenant on public land has become precarious in that he is now a tenant at sufferance. The implementation of the Decree has met considerable opposition. For example, section 2(1) which purports to abolish mailo and freehold estates has not been implemented and by and large land transactions are being conducted as if the Decree is not in place. The great majority of views received by the Commission are demanding for a repeal of the Decree. It does not, therefore enjoy support among the people of Uganda.

25.41 Recommendation

The Land Reform Decree of* 1975 *should be repealed.

The Tenure and Control of Land Bill, 1990

25.42 In 1983 Government established an agriculture policy committee for the purpose of coordinating, directing and reviewing key policies and programmes in the agricultural sector. This was to be carried out in conjunction with the Agricultural Secretariat, Bank of Uganda. A working group carried out some studies in c-consequence of which it recommended, inter alia, re-examination of the Land Reform Decree, the formulation of sound national land tenure conducive to agricultural development and a reform of the land registry.

25.43 The Makerere Institute of Social Research (MISR) was asked to carry out detailed studies on land tenure and agricultural development in conjunction with the Land Tenure Centre, University of Wisconsin. The team carried out studies and field surveys in some districts such as Luwero, Masaka, Mbale, Mbarara, Bushenyi, Kampala, Tororo, Iganga and Mukono. The studies focused on mailo tenure and customary tenure. At the end of the exercise, the team came to the conclusion that a good land tenure should have the following characteristics:

(a) It should support agricultural development through the functioning of a land market which permits those who have rights in land to voluntarily sell their parcels to those who want to extend or enter agriculture or undertake any other form of development.

(b) It should not force people off the land, particularly those who have no other way to earn a reasonable living or to survive.

(c) It should be uniform throughout the country, with the system evolving over a period of time.

25.44 In 1990, a draft Bill based on the recommendations of the committee entitled the Tenure and Control of Land Bill, 1990 was submitted to Government. The draft Bill addresses the foregoing objectives. In the first place, it seeks to introduce freehold system throughout the country with some exceptions. The leasehold system is to be retained in urban areas. Provision is also made to enable the Uganda Land Commission lease for short duration government land that is not immediately needed for the purpose it was earmarked or set aside.

25.45 The introduction of the freehold system is justified on six grounds: first, it is contended that under the freehold system individuals will have maximum protection for their rights on property; secondly, it is contended that the freehold tenure recognizes the land tenure system that has so far existed in the 'former mailo/freehold areas for many decades, a system which has worked very well for the development of agriculture as individuals have tended to show a greater willingness and ability to respond to profitable opportunities in farming and other development projects; thirdly, it is argued that the demands on government are less under freehold system as opposed to leasehold tenure this is more so in relation to the enforcement of development conditions. In that regard, it is maintained that freehold tenure will free government resources and manpower to be used in spheres ~hat contribute to the social and economic development of the nation. Fourthly, it is argued that freehold tenure confers upon the individual maximum ability to transfer land through land market. In that connection, it is argued that under leasehold, government is a party to land transactions, particularly if the lease contains conditions that restrict the use of the land whereas under freehold land transactions is an affair between the buyer and the seller. Fifthly, it is contended that freehold tenure gives farmers the greatest degree of security in their land; and finally, it is argued that freehold tenure is most likely to result in increased credit for agriculture.

25.46 Under the proposed Bill, all land in Uganda shall become public land and shall be vested in and administered by the Uganda Land Commission on behalf of the state The Commission will in turn give out grants in freehold or leasehold. The Bill seeks to:

(a) amend the Land Transfer Act, the Public Lands Act, 1969, and the Companies Act Cap. 85, with a view to imposing restrictions on acquisitions of land by non-citizens. It further seeks to amend the Land Transfer Act with a view to ensuring that churches, religious organisations and other societies including those registered under the Trustees Incorporation Act, would be obliged to seek the minister's consent before acquisition of land;

(b) repeal the Possession of Land Law, 1908 which is no longer relevant;

(c) continue with recognition of customary tenure. In order to assure security of tenure to the customary tenants, the bill seeks to re-instate section 24 (2) of the Public Lands Act, 1969, repealed by the Land Reform Decree, 1975. This is intended to re-introduce the requirement of consent of a' customary tenant before his land can be allocated by a controlling authority;

(d) abolish the district land committees established under the Public Lands Act, 1969. The functions of these committees are to be taken over by the land adjudication committees which will be set up at sub-country levels. This change is intended t() expedite the processing of land applications by inter alia taking services nearer to the people. A Lands Adjudication Tribunal is to be established at the district level for the purpose of disposing of land disputes expeditiously. The land registry is to be decentralised. It is noted that facilities already exist at regional centres for processing land registration. The decentralisation is to be extended to the district level over a period of time;

(e) re-instate power to sell land vested in a controlling authority under section 19 of the Public Lands Act, 1969, and which was repealed by section 2 (5) of the Land Reform Decree, 1975. It is proposed that leasehold titles will be automatically converted into freeholds under the new law;

(f) introduce the requirement of paying compensation for the land itself as opposed to the current practice of paying compensation only for the developments on the land. It would therefore follow that whenever the government acquires land under the Public Land (Compensation for Resumption) Act, 1965 it should endeavour as much as possible to establish the exact acreage of the customary holding; and

(g) repeal Article 126 of the Constitution. This is intended, in effect, to abolish the mailo tenure or bring in conformity with the freehold system.

25.47 Proponents of the leasehold tenure contend that the proposed law is unworkable, maintaining that the leasehold system makes it possible for the government as agent of the state to maintain some control over the use and ownership of land. The control can take the form of renewal or non-renewal of leases and the imposition of development conditions.

25.48 The proposed law is also criticised, inter alia, on account of lack of a credible empirical basis. The surveys on which the Bill is based, it is pointed out, did not cover the whole country, such as, the North and- North - East where customary tenure is highly entrenched.

SECTION THREE: ANALYSIS OF VIEWS AND RECOMMENDATIONS

25.49 The principal issues addressed by the people include ultimate ownership, forms of tenure, size of land holdings, institutional administrative framework, the introduction of land tax and acquisition of land by foreigners.

Ownership

25.50, A number of people expressed the view that land should be vested in the state which should in turn hold it in trust for all the people of Uganda. The underlying consideration for this proposal is that land is a gift from God, a common national heritage and asset, to which everyone is entitled by reason of birth and citizenship. The state has the duty to work out a clear policy that would ensure that land is fairly and· equitably distributed and put to the most profitable and economical use by those to whom it is granted. Those who advance this view propose that the state should be given the power to grant the land either in freehold or leasehold fo applicants on the basis of approved plans. A$ ultimate owner of the land on behalf of all the people of Uganda, the state should also have the power to repossess the land if it is not being used according to the development conditions attached to the grant. In addition, the State should compulsorily acquire any land that is required for public purpose.

25.51 Submission from some sections of the people addressed the issue of compensation in the event of compulsory acquisition. Many people felt that payment of compensation to the persons affected is often inadequate and delayed. In many cases, they are not offered comparable alternative places where to settle. People want the situation to be rectified. A

few people have advocated that ultimate ownership of land should belong to individuals. In this case, even the regulating role of the state would be severely restricted. Advocates of this view argue that if individuals are left free to develop, acquire or of dispose of their land according to the dictates of the market forces, there would be rapid and sustained economic development. The role of the state is viewed by such people as restrictive.

25.52 In our view, land is the common heritage of all the people of Uganda. As such every citizen of Uganda is entitled to a share in this vital and strategic resource. The State is the collective embodiment of the wishes, hopes and aspirations of the people. It should also be the guarantor of the national interest. The State should hold land in trust for the people who are the ultimate owners. This is particularly important in view of the fact that land is a limited resource on which there will be increasing pressure as the population of Uganda expands. The State's role becomes important in ensuring that every citizen· has a fair deal. We also agree that the right of the State to own land for public purposes should continue to be protected.

25.53 Recommendation

(a) The State should hold land in Uganda in trust and for the benefit and well-being of all the people of Uganda, including future generations.

(b) Water and mineral resources within the territorial boundary of Uganda should belong to the State.

(c) The government should have the right to own land for public purposes.

Land Tenure

General policy considerations:

25.54 It is necessary to adopt a land tenure and policy that can try to accommodate the wishes of Ugandans, and suits our circumstances. Any ill-planned, hastily conceived land policy resulting in massive displacement of people and the creation of a big class of landless citizens would sow the seed for future political and socio-economic unrest and upheavals. We should, therefore, put in place mechanisms for careful monitoring and evaluation of land distribution or allocation with a view to ensuring that the right of every citizen to land is not compromised. Secondly, we need to guard against the tendency of subjecting land management policy to methods which result in land degradation. The ideal land tenure and policy we adopt should address the concerns of the people and the considerations mentioned above. The recommendations contained in this chapter aim at achieving that.

25.55 Views differ oil whether or not Uganda should have a uniform system of land tenure. A number of people across the country support the introduction of a11rmiformsystemof land tenure. They argue that a unified land tenure system would, among other things, consolidate national unity and make the administration of land simpler and easily understood by the ordinary person. However, when it comes to the type of land tenure to be adopted for the whole country if we opt for a uniform land tenure system; the preferences differ considerably.,

There is considerable support in favour of each of the existing land tenure systems, namely, mailo/freehold, customary and leasehold tenures.

Mailo/Freehold Tenure:

25.56 In the central region, with the exception of Rakai and Luwero districts, there is overwhelming support for the mailo system. However mailo is not only to be found in Buganda, but also in some areas in Eastern and Western Uganda, where support for it is mixed. There is also considerable support for freehold tenure in other areas outside Buganda.

25.57 Those who support mailo/freehold tenure contend that:-

(a) the system enhances the economic value of land as it can be offered as security for loan facilities;

(b) the sense of security enjoyed by owners of mailo/freehold land encourages them to make long term investment in the land and to take proper care of the land in which they have permanent interest; and

(c) under the mailo system it is argued that even the tenants had assured security of tenure because they could not be easily evicted from the land as long as they paid their dues. It is because the mailo tenure was seen to be offering security to both the land owners and tenants that the system enjoys such strong support in Buganda. Supporters of the system go so far as to assert that the relatively more advanced socioeconomic development of the central region in comparison with the rest of Uganda is because of the existance of mailo tenure.

25.58 Those who opposite mailo/freehold tenure point out a number of problems associated with the system:-

(a) In some areas, people have complained bitterly about absentee landlords. The situation in Kibale district which is made up of the former most counties" which were returned to Bunyoro from Buganda, is an extreme illustrations of this problem. The counties were returned to the then Bunyoro kingdom, but the owners of mailo land in the area who are mainly Baganda retained ownership of their land. The people of Kibale contend that this is a matter which must be solved by the Constitution because both the 1962 and 1967 Constitutions guarantee mailo rights.

(b) The owner of mailo land is not compelled to put the land to the best economic use. Large tracts of land lie unused and government cannot allocate it to landless people because it lacks the power to do so.

(c) It is contended by opponents of mailo/freehold tenure that the system is unfair in those who originally got the land did nothing to deserve it. The apparent security offered to the tenant is no guarantee that the tenant may not be evicted from the

Customary Tenure:

25.59 Many people from the areas where it is still practised want customary tenure to be continued. **In** these areas land is regarded as a common heritage to be used for the benefit of all the members of the society. To many people in these areas, mainly in the North and North East, the idea of individual titles to land is considered alien.

25.60 It is important, nevertheless, to point out that except for areas set aside for grazing animals and other communal activity, individuals and families in these areas do in reality own land which they can pass on to their successors or even dispose of in accordance with agreed customary or modern practices. Quite a number of people dispose of their land for monetary considerations.

25.61 The real concern of the people in areas where communal land ownership is dominant is caused by the fear that rich and powerful individuals or organisations may grab large chunks of prime land through leasing. There is a feeling of insecurity caused by the unknown. **It** should be remembered that many people in these areas are not well informed on the procedures and process of leasing land. Otherwise, in practice, many individuals and families holding land under customary tenure have something akin to free-hold tenure. The only difference is that they have no formal land titles. The exception to this practise is to be found in areas where the pastoral way of life is still dominant and where most of the land is held and used communally.

25.62 The great disadvantage of the customary tenure is that it tends to emphasise cultural values more than the economic and financial gains from the land. This retards development. Land users are not encouraged to make long term investments in the land; nor can they take as good care of the land as they would have done if they had clear titles to them. Land held under such customary tenure especially for communal use tends to suffer from neglect and consequent degradation.

25.63 Notwithstanding the disadvantages associated with customary tenure, any abrupt change in the system would cause hardships and economic and social upheavals. That is why many people have suggested that the system should be gradually changed to avoid economic, social and cultural hardships and shocks. Particular care should be taken not to render large numbers of people landless. At the same time, however, changes need to be made to encourage developers to invest in the land and bring about socio - economic development in these areas.

Leasehold Tenure:

25.64 Support for leasehold tenure is spread throughout the country, except in the central region. It is, however, the least preferred land tenure system. Those who support leasehold tenure contend that it accords with the interests of all the people as:-

(a) on the one hand it guarantees the regulatory role of the State in land transactions;

(b) on the other hand it guarantees everyone the right to apply for and be granted land in accordance with one's development needs;

(c) the State, acting on behalf of the people, should have the right to impose development conditions for the benefit and general well-being of the people as a whole. This would ensure that land is granted to those with the ability to develop it. The State would retain the right to take away land from those who lack ability to develop it and replace them with serious developers; and

(d) under leasehold tenure the right of reversion is entrenched, thus guaranteeing the ultimate ownership and controlling authority of the State on behalf of the people of Uganda as a whole.

25.65 Those who oppose leasehold tenure are mainly concerned that it gives too much power to the State on land transactions. In their view, the State intervention distorts the land market and leads to corruption. For them, land transactions should be left to market forces which would guarantee that only those with the ability to develop the land will have access to them. !hey argue that this can best be achieved in a freehold system. It is also clear that the majority of Ugandans feel that leasehold tenure does not guarantee them adequate security to the land.

25.66 There is need for a system of land tenure that can guarantee security of tenure, promote sustainable development and advance the cause of national unity. There is also need to consider the interest of the population as a whole. The system which the people prefer is that which gives them undisturbed tenure to the land. Freehold tenure would be accepted in most parts of Uganda.

25.67 In the short run, it is not possible to have a uniform land tenure system-for the whole country without disrupting the lives of the people, whatever system is adopted. In the long run, however, we consider that land should be granted in freehold in the rural areas and in leasehold in the urban areas. It would not be difficult to convert the leasehold tenures into freehold tenure. It has already been pointed out in this chapter that many customary land holdings, particularly where people practice settled agriculture, are akin to freeholds. However, customary owners of land would need to be educated over time on the need to get titles to their land. Great care should be taken to see that people are not rendered landless in the process. Special consideration should be given to land used for gazing and other communal purposes.

25.68 All land held under mailo system should, in our view, be converted into freehold. The conversion of mailo to freehold does not involve any substantive change because mailo is already a freehold tenure. The objective of our recommendation is to free mailo from the encumbrance of the *bibanja* while at the same time giving the *kibanja* owner an opportunity to convert his holding to freehold so as to have the benefits of that tenure. *Kibanja* holders should be granted freehold titles to the land occupied by them, but the former mailo owner of such land should be compensated by the *kibanja* holder for loss of the land. The amount of compensation to be paid by the *kibanja* holder should be determined by an independent lands tribunal. To ensure proper planning and development, urban land should continue to be granted in leaseholds. This is a view which is widely held by a cross-section of Ugandans.

25.69 Recommendation

(a) In regulating and managing the utilisation of land, the following factors should be taken into consideration:

(i) all people who are Legally occupying Land should be guaranteed security of tenure and enabled to register their interests and obtain certificates of titles;
(ii) there should be maximum utilisatioh of Land, while at the same time ensuring that land is equitably distributed among the people;
(iii) division of Land into uneconomic units should be avoided.

(b) In the Long run land should be granted -

(i) in free-hold in rural areas, and
(ii) in leasehold in urban areas.

(c) All land held under the mailo and Leasehold tenure in the rural areas should in the long run be converted into, freehold tenure.

(d) (i) Bibanja holders should be granted free-hold titles to the land occupied by them but government should make arrangements for compensation to the mailo owners.
(ii) The amount of compensation payable to the mailo owner should be determined by a Lands Tribunal.

(e) The system of holding Land under customary tenure should continue but the customary tenant should be encouraged to acquire title land.

(f) Parliament should have powers to make laws to give effect to the above recommendations and better management of land.

Size of Land Holding

25.70 There was overwhelming support for the idea of imposing restrictions on the size of land that can be granted -to an, individual or organisation. The main consideration is that if no restrictions are impl1sed, the rich and powerful who constitute a small minority of the population would grab land from the people using their political and economic power. Such a situation would in, turn lead to serious economic, social and political upheavals. Some people point out that there are already such problems in some parts of the country, including Kibale district where large tracts of land are owned by absentee landlords.

25.71 A very small minority of views did not favour imposition of restriction on the size of land holdings. They argue that the overriding consideration should be the ability to develop the land. This view does not enjoy wide spread support and it ignores the social and political implications of unrestricted size of landholding.

25.72 Recommendation:

(a) The size of landholding should be subject to control and limitation.

(b) In determining the size of land an individual or organisation can acquire, due regard should be paid to the following considerations;-

(i) the purpose for which the land applied for is required;
(ii) the ability of the applicant to put the land to proper use;
(iii) the size of land available to prospective developers in the area concerned; and
(iv) the interest of other people who may be affected by the grant.

(c) Parliament should make laws for regulating the size of the land to be granted to any person or authority by the Uganda Land Commission and the conditions under which land may be held.

Institutional Administrative Framework

25.73 The people want the system of land administration to be substantially restructured in order to meet the needs and expectations of the people. There is general agreement that the Uganda Land Commission and District Land Committees as presently constituted have failed to deliver services to the people in accordance with their wishes and aspirations.

25.74 The people have suggested that the restructuring of the existing structure should include;

(a) Greater decentralisation and increasing the powers of the District Land Committees.
This would mean that most of the powers vested in the Uganda Land Commission would be exercised by District Land Committees in the name of the Commission. The people want District Land Committees to have power to issue land titles without having to refer the matter to Kampala or Entebbe. This would bring services nearer to the people and expedite the process of obtaining title. People believe that decentralisation and devolution of powers would eliminate the massive corruption which has characterised land administration at all levels.

(b) People favour further decentralisation to lower levels in matters relating to the processing of applications for land title and forwarding such applications to the District Land Committee. This would reduce the costs and inconvenience which applicants have to undergo in dealing with the District Land Committee. Most of the people have suggested the establishment of Sub county Land Committees to process applications for land titles.

25.75 There is need for the Uganda Land Commission and the District L1nd Committees to work independently of any political pressure or influence as the allocation of land and administration of land generally are very sensitive matters. It is, therefore, important that members of Parliament or District Councils should not sit on the Uganda Land Commission or District L1nd Committees, so that they can be seen to be politically neutral.

25.76 It is not the responsibility of the Uganda Land commission to make policies, which is the responsibility of the government. However, once the policy has been made, the Commission should have a free-hand in carrying out its functions. The independence of the Uganda Land commission can be strengthened by, among other things, guaranteeing tenure of office for the members and making it a self-accounting body.

25.77 Recommendation

(a) ***The Uganda Land Commission should be retained in the Constitution.***

(b) ***The Uganda Land Commission should consist of a Chairman and not less than four members all of whom should be appointed by the President with the approval of the National Council of State.***

(c) ***Members of the Uganda Land Commission should be appointed for a period of five years, this should be renewable.***

(d) ***A member of the Uganda Land Commission should be removed from office by the President with the approval of the National Council of State only for inability to perform his or her functions due to physical or mental incapacity or for gross misbehaviour or misconduct.***

(e) ***A person should not be appointed a member of the Uganda Land Commission if he is a member of Parliament or District Council.***

(j) ***The Uganda Land Commission should not be subject to direction or control by any authority or person in performing its functions. It should, however, take into account government policy on land when performing its functions.***

(g) ***The Uganda Land Commission should be self-accounting and the salaries and allowances of its members should be charged on the Consolidated Fund.***

25.78 The functions of the Uganda Land Commission should not only be to allocate land, but also to advise government on land tenure system, utilisation of land, the system of registering land, and the planned and co-ordinated development of designated areas. This expanded role is necessary as the tenure system and administration of land in Uganda needs to be evolved over a period of time to meet economic and social changes in the country.

25.79 Recommendation

The Uganda Land Commission should have the following functions:-

(i) to allocate land which is not occupied or owned by any person or authority;

(ii) to regulate the use of land in Uganda as provided for in the Constitution and other laws;

(iii) *to make recommendations to government on the land tenure system, utilisation of land and the system of registering land;*

(iv) *to give advice to the Central Government, District Governments and 10wiJr level authorities on the planned and co-ordinated development of designated areas; and*

(v) *to carry out other functions as may be vested in the Commission by Parliament.*

25.80 There was consensus in the views of the people on the need to enhance the powers of the District and lower level Land Committees in the belief that this would reduce on the time and cost of obtaining land titles. In addition, the people believe that decentralisation would reduce corruption as the officials in charge of land administration would be nearer to the people who are affected by their actions. A District Land Committee would perform the functions of the Uganda Land commission in the district. There is, however, need for the Uganda Land Commission to co-ordinate the activities of the District Land Committees to ensure that they are performing their functions in accordance with the Constitution and other laws of the land.

25.81 Recommendation

(a) ***Each district should have a District Land Committee which should perform the functions of the Uganda Land Commission in the district.***

(b) ***The Uganda Land Commission should co-ordinate the activities of the District Land Committees.***

(c) ***The Composition and mode of appointments of the members of the District Land Committees should be determined by Parliament.***

25.82 The people want the procedure for acquiring land titles to be made simpler and cheaper. They believe that this can be achieved in part by decentralisation to levels below the district. Decentralisation below the district level is seen as necessary to avoid transferring red tape and corruption from the centre to the district headquarters, which in many districts are far from remote parts. There is overwhelming support in favour of effective Sub-county Land Committees made up of people who are knowledgeable on land matters. Since most people are not well-informed on the procedure for acquiring land titles, the Sub-county Land Committees should take on the responsibility of educating the people on the procedure, in addition to processing applications for land titles before passing them on to the District Land Committees.

25.83 Recommendation

(a) *There should be at every sub-county a Sub-County Land Committee which should be responsible for processing applications for land titles and forwarding such applications to the District Land Committee. The Committee should also be responsible for educating the people on the procedure for acquiring land titles.*

(b) The Composition, mode of appointment and rules of procedure of the Sub-county Land Committees should be determined by Parliament. They should, however, adopt simple methods of work which can be easily understood by ordinary people.

25.84 There is need to have mechanism for settling land disputes which shall inevitably arise. People are dissatisfied with the way that the ordinary courts settle land disputes. The courts are seen as being far removed from the people and their procedures are said to be complex, costly and time consuming. There is a demand from the people to adopt simpler, cheaper and speedier procedures than those of the ordinary courts in settling land disputes. The aim should be to settle land disputes, especially at the lower levels speedily and at the least possible cost to the litigants. This can be achieved by establishing land tribunals at various levels to deal with land disputes. There should, however, be aright of appeal to the courts of law by any person who is aggrieved by the decision of a tribunal.

25.85 Recommendation

(a) (i) Parliament should be authorised to make laws establishing Land Tribunals.

(ii) The functions of a Land Tribunal should be to decide on disputes in respect of any land registered or intended to be registered under the Registration of Titles Act or any dispute regarding compensation in the event of compulsory acquisition of land. The tribunal should aim at settling disputes speedily and at affordable cost to the litigants.

(iii) The powers and privileges of the Lands Tribunal should be determined by an Act of Parliament.

(b) (i) The Chairman of a Land Tribunal should be appointed on the advice of the Chief Justice.

(ii) A member of a Land Tribunal should hold office on such terms and conditions as may be prescribed by Parliament.

(iii) The procedure of a Land Tribunal should be determined by an Act of Parliament. It should provide for a right of appeal from the decision of a Land Tribunal to a court of law.

Land Tax

25.86 There is some support in favour of introducing land tax . It has been suggested that the least developed the land; the greater should be the tax that such landholder should pay. It is argued that if such .a tax policy on land is introduced, it would compel the holder of undeveloped land 'to put the land to productive use in order to avoid heavy taxation or sell part of it. Some people, while not opposed to the policy of taxing land altogether, are of the view that land tax should only be imposed at the time of transfer or its acquisition. Some people are totally opposed to any idea of land tax. They maintain that land should not be a taxable item.

25.87 There is need for utilizing every piece of land economically and according to approved plans and conditions. At the moment, there is plenty of land lying idle, and there is no urge on the part of holders of such land to develop it because they are not compelled to do so. At the same time, there are many people who do not have enough land, even though they may have the ability to invest in its development.

25.88 A land tax computed on a development basis is likely to compel land owners to think of all means of developing the land to avoid taxes, or to sell off the extra land which they cannot develop. It would also be an additional source of income to the government. Great care should be taken not to levy taxes on those who preserve part of their land for the purpose of protecting and conserving the environment.

25.89 Recommendation

(a) In principle land should be taxed.

(b) Idle and undeveloped land should attract higher taxes.

(c) Parliament should make laws for the imposition of taxes on land.

Ownership of Land by Foreigners or Foreign Organisations

25.90 There is near unanimous opposition among the people to the idea of giving foreigners unconditional and unrestricted access to land in Uganda. There is concern that giving foreigners or foreign organisations unrestricted access to our land would impinge on our sovereignty and deprive our own citizens of this vital resource. All over the world, land is jealously guarded by nationals as it is limited in sup-ply. It is even more vital for us to do so in an agriculturally dominant country like Uganda.

25.91 Some people agree that deserving non-citizens and foreign organisations should be granted land, but on certain conditions. Among the conditions mentioned, the following are the most common:-

(a) A foreigner or foreign organisation should only be granted land in leasehold.

(b) The foreigner or foreign organisation must show clear evidence of ability to make serious and. substantial investment, preference being given to those who apply for industrial rather than agricultural land.

25.92 We need to attract foreign investors into the country, but at the same time there is need to exercise control on the size of land that can be allocated to foreigners or foreign organisations. They should follow certain clearly laid down procedures, in addition to fulfilling the conditions outlined above.

25.93 Recommendation

(a) Any foreign investor should be eligible to apply for land in Uganda.

(b) The application for grant of land by a foreign investor must satisfy the following conditions:-

(i) The applicant must have immediate plans for putting the land to proper and productive use.

(ii) The applicant must show that if granted land he or she will develop it in accordance with an approved plan.

(iii) The application must be supported by three prominent and respectable nationals of Uganda.

(c) Parliament may make laws for the control, possession and transfer of land by non-citizens.

CHAPTER TWENTY SIX

ENVIRONMENT

26.1 The environment is a very broad concept embracing many things. For our purposes it refers to the natural conditions which sustain' and influence our lives and livelihood, including land, air, water, animals and plants. Human and other forms of life depend on the earth, its resources and the surrounding atmosphere.

26.2 Environmental degradation, in its various forms, is related to the waste and production techniques of the' wealthy nations, as well as the poverty of the developing countries characterised by the cutting of trees, "over-cultivation" of the land and poor agricultural practices in general.

26.3 Environmental issues of world-wide concern include: depletion of the ozone layer and global warming; destruction of rain forests; wasteful use of energy resources and related matters; destruction of arable land; water and air pollution; bio-diversity and bio-technology; the manufacture, testing, stock-piling and use of nuclear and conventional weapons; the dumping of industrial, nuclear and other toxic wastes; and population pressure.

26.4 In a general way, the people of Uganda are alive to the need for preserving and improving on our environment Concern for the environment was first raised during the district constitutional seminars. It is, therefore, the people themselves who put it on the agenda for the constitutional debate.

26.5 It is clear from the public constitutional debates and from the written and oral submissions received by the Commission that the overwhelming majority of Ugandans feel that environmental protection should be provided for in the new Constitution. Some mentioned specific areas which need to be addressed by both the Constitution and other laws of the land, while others have addressed the issue in a general way. However, all who agree that the issue should be addressed by the Constitution feel that it is such a matter of national importance that the Government and its agents and the people should be required by the supreme law of the land to give serious attention to the protection, preservation and enhancement of the environment.

26.6 There is a small minority which is opposed to the idea of providing for environmental protection in the Constitution for fear that environmental issues may be tackled at the expense of economic and social development of the people.

26.7 This chapter is divided into two sections. The first considers the people's concerns about the environment and the principles they believe should govern both the provisions of the new Constitution on the subject and future government policy. The second section analyses the specific issues and proposals drawn from the views submitted to us and sets our recommendations on the subject.

SECTION ONE: THE CONCERNS AND PRINCIPLES EMPHASISED BY THE PEOPLE

26.8 The need to conserve and enhance our environment is agreed on by all Ugandans. People are concerned about the state of our environment. Their main concerns and the principles they want to underlie future constitutional and legal arrangement are given below.

Concerns

Land tenure and policy:

26.9 The land tenure system and the way we manage and utilise the land' affects the environment. In practice, there are currently three land tenure system in Uganda, namely, mailo/freehold; customary, and leasehold.

26.10 The land tenure system has been dealt with in Chapter Twenty Five *(Land)* of this Report. Here we would only like to mention that according to the views of the people, an environmentally sound land policy is one which would promote sustainable development, provide security to the land user and protect the environment at the same time.

Population and human settlements:

26.l1 There is increasing concern about population pressure on land, especially in heavily populated areas of the country. Uganda has about seventeen million people, according to the Population and Housing Census of 1991. This is not considered by some people to be a. big number for Uganda, given the country's size and resources.

26.12 The environmental impact of population settlement in Uganda depends on a number of factors like rainfall, water supply, fertility of the soil and availability of economic' opportunities and social amenities. Some areas like Kisoro, Kabale, Kapchorwa, Mbale and Tororo are already experiencing acute population pressure on available land. This has a bearing on the environment because it leads to pressure on resources like land, water, energy resources and housing. It is partly pressure on land which has led some people to encroach on forest and game reserves, and to clear wetlands, and cultivate mountain tops, with dire long term consequences for our environment if the trend is not checked and reversed. There has been lack of clear government policy on what to do about people who need to be resettled from areas suffering from land pressure.

26.13 Many Ugandans are deeply attached to their ancestral lands which makes them find it hard to migrate and settle in other parts of Uganda. In addition, there is often resistance by local people to people from other parts of Uganda who wish to migrate and settle in their areas. Even people who have settled in an area for years, if not. generations, are sometimes subject to sudden and violent evictions by those who consider themselves owners of the land by reason of ancestry.

26.14 Unwillingness or inability and lack of freedom to move and settle anywhere in Uganda has resulted in population pressure and soil degradation in some areas, while there are 'areas with fertile soil and good rains which have remained relatively under-populated.

26.15 Although about 90 percent of Ugandans live in rural areas, there is a growing percentage of the population moving to urban centres. There is no doubt that a major contributing factor is the disparity and imbalance in socio-economic development of the urban and rural areas as well as the allocation of resources and opportunities which tend to favour urban centres at the expense of rural areas. The problem of urban migration, with its attendant pressure on resources and services like water and sanitation, energy, transport, jobs, housing, medical services and food, needs to be examined and tackled urgently.

26.16 The issue of urban and rural settlements should be re-examined in the light of environmental considerations with due regard for, among other things, availing land to all Ugandans, the· health and welfare of the people, recreation facilities, energy resources, water and sanitation, disposal of liquid and solid wastes, and the preservation and restoration of the natural scenery and beauty of the country and the historical and cultural sites. We should also sensitise the people on the need to enhance and enrich our natural environment through proper planning, creative architecture, land scaping, tree-planting and doing other things which improve on our environment.

Water resources:

26.17 Lack of clean and safe water within a reasonable distance of settlements in many parts of Uganda, especially in the rural areas, was of much concern to the people. It was of particular concern in areas where there is low rainfall, like Karamoja.

26.18 Studies indicate that our water resources, including surface and underground water have started to be contaminated by, among other things, harmful chemical and· mineral discharges from industry, agriculture, household wastes and untreated or poorly treated sewerage. Lake Victoria is said to be the most affected, though the extent of the contamination has not been ascertained. Experts say that ground water, too is beginning to be contaminated and that the problem is growing. Ground water is contaminated by industrial, and household discharges in urban areas, and agricultural chemicals from the rural areas, in addition to other things.

26.19 Pollution of lakes, rivers and swamps leads to the death of living organisms in the water, including fish, and to reduction in fish catches. This in turn negatively affects the livelihood of fishermen and other people who depend on fishing for a living. **In** addition, contaminated water poses' health problems to those who drink the water or come into contact with the water in other ways.

26.20 The people want clean and safe water to be provided as a right. They have suggested the digging of dams, valley tanks and boreholes, especially in arid and semi-arid areas, and the protection of natural springs and surface water to provide adequate, clean and safe water to the people- and animals and for agricultural and industrial purposes. They have further suggested that the discharge of dangerous chemicals and other harmful substances from mines , factories, farms and households, into our lakes, rivers, swamps and other sources of water should be prohibited or severely curtailed.

Energy resources:

26.21 Energy consumption has a major impact on our environment. Most people of Uganda depend for their energy on wood or charcoal. We also have a number of medium and small scale industries like tobacco curing, brick-making, bakery, and distilling both in the rural and urban areas which depend on fuel wood or charcoal for energy. Excessive dependency on wood and charcoal is leading to rapid depletion of trees and subsequent environmental degradation.

26.22 People are greatly concerned about dwindling supplies of wood and the ever-longer distances that have to be traveled to gather firewood With growing scarcity of firewood and charcoal, they. are becoming more and more expensive, especially for the urban poor. Alternative and affordable energy resources have not been developed to the extent where they can make an impact on the energy needs of the people or the environment. Many people are of the view that not enough is being done to develop alternative cheap and renewable energy resources for the country. Commercial energy in the form of electricity and paraffin is limited in supply and too expensive for the rural and urban poor.

26.23 The people have made suggestions for the diversification and conservation of energy resources. These inc1ude:-

(a) planting of woodlot to meet domestic and commercial energy needs;

(b) development and use of cooking stoves which save on energy, as well as teaching the people cooking methods which involve the use of less firewood or charcoal;

(c) diversification and development of new and renewable energy resources including wild power, solar energy, water power and biogas; and

(d) electrification of the rural areas which would save our trees from destruction.

Agricultural practices, soil degradation and desertification:

26.24 Since most Ugandans are engaged in one form of agricultural activity or another, people had a lot to say on agricultural practices and soil degradation. It is not easy to assess the extent' of soil degradation in Uganda due to lack of data. However, there is obvious evidence of soil degradation all over the country. It is caused by practices such as cultivation on hilltops and draining swamps, heavy grazing of animals in areas like Karamoja, deforestation and by strong winds and heavy floods washing off needlessly exposed top soils. Soil degradation in turn leads to reduction in crop yields, and eventually the need to apply chemical and of organic fertilizers to sustain yields. Chemical fertilizers can in turn lead to contamination of the soil. Besides, many peasants are too poor to afford fertilizers.

26.25 Soil degradation aids in the desertification process. More and more areas of Uganda are beginning to experience longer dry spells. This has led to famine even in areas like Masaka and Kabale which have hitherto been areas producing surplus food for other areas. Ugandans have on the whole been able to feed themselves. There is growing concern that

this situation may change if something is not urgently done to reverse the trend of soil degradation and desertification.

26.26 The people have suggested certain measures which they want instituted to protect the soil and arrest or reverse the desertification process. They include:-

(a) use of terracing to prevent soil erosion in hilly areas like Kabale, Kisoro, Bundibugyo, Kapchorwa and Mbale;

(b) practice of shifting methods of cultivation where this is still possible in· order to preserve and restore soil fertility;

(c) control over the use of agricultural chemicals, fertilizers and pesticides;

(d) control of overgrazing which leads to loss of top soil and desertification;

(e) declaring all wetlands to be public land and prohibiting or controlling their drainage, and reclamation of drained wetlands, where possible; and

(t) construction of dams, valley tanks and boreholes to provide drinking water for people and animals, and for irrigation, especially in dry areas of the country.

Protection of forests and tree planting:

26.27 It is not easy to assess the extent of deforestation in Uganda. What is generally known is that we have been managing our forestry resources on an unsustainable basis. People generally agree that forestry resources should be maintained on a sustainable basis. There has been considerable encroachment on forest reserves in the country over the years. It is estimated that an average of 50,000 hectares of forest and woodland were lost each year in the 1980's, and that at this rate, all of Uganda's forests will disappear by the year 2000.

26.28 The rate of deforestation is being aided by poor management practices, which, according to some studies, include the wastage of commercially valuable timber which is used as fuel wood, wasteful methods of producing charcoal by using inefficient techniques and poor saw-milling and technology. Poor management of our forest resources means that we do not make optimum use of our trees. Optimum use would mean that valuable species are utilized to get maximum economic benefits, and all parts of the tree, including the trunk, branches, roots, barks and even leaves of the tree would be put to some economic use, thus maximizing the economic value of the tree.

26.29 Some people have pointed out that more attention needs to be paid to the proper use of our forest resources, instead of always emphasising tree planting and protection of forests. Others have argued that it is wrong to always assume that whenever people come into contact with forests, they cause environmental degradation. Forests should, in the final analysis; he managed for the benefit and welfare of the people.

26.30 That is not to say that tree planting and protection of forests is unimportant. A campaign has already been launched all over the country to plant trees for fuel, timber and

replacement of trees cut down. The National Tree Planting Programme (NTPP) was launched by President Museveni at Mukujju village in Tororo district on 7 April, 1992. Hand in hand with the tree planting campaign is an attempt to educate people on better methods of managing our forests and the use of improved energy saving devices and methods of cooking. It is yet too early to asses the impact of these campaigns.

26.31 The people take the issue of proper management of our forest resources and tree planting seriously. They have addressed themselves extensively on this issue and suggested some measures to deal with the problem including:-

(a) controlling the cutting down of trees;

(b) requiring everyone who cuts down a tree to plant at least two or more trees in replacement;

(c) protecting forest reserves from encroachers;

(d) controlling charcoal burning and dealing in charcoal;

(e) encouraging people to plant individual and communal woodlot in all parts of the country to meet domestic and industrial needs for timber and fuel;

(t) controlling bush-burning; and

(g) the imposition of heavy penalties on those who encroach on forest reserves and other protected areas.

Protection and preservation of wildlife:

26.32 Many people expressed concern about the rate at which the animals in our game parks and reserves are being destroyed by poachers. Poaching in game parks and reserves has sometimes been severe, with heavy guns and automatic weapons replacing the traditional spears and bows and arrows. Park authorities have been hampered by lack of means to control and enforce anti-poaching measures and have at times even themselves engaged in poaching animals. Large areas of parks and reserves have been encroached on and used for cultivation or grating animals. Attempts to evict encroachers has often met with stiff resistance.

26.33 The people have submitted views on the protection and preservation of wildlife. They suggest, among other things:-

(a) requiring hunting to be undertaken only by those with a licence;

(b) prohibiting encroachment on national parks and game reserves;

(c) control of poaching in national parks and game reserves by strengthening the capacity of game authorities to deal with poachers;

(d) prohibition of the catching of immature fish or interfering with their breeding habits; and

(e) imposition of heavy penalties on poachers and those who encroach on national parks and game reserves.

Importation of animals and plants:

26.34 There is concern that uncontrolled importation of animals and plants from other countries may cause serious environmental problems for us. Laws regulating the importation of animals, plants and foodstuff into the country have not been strictly observed in the past. This has resulted in bringing into Uganda harmful plants and insects like the water-hyacinth which is spreading fast in our waters and threatening marine life, cassava mosaic which has devastated cassava plants in the country and banana weevils which have played havoc on our traditional food.

26.35 It has been suggested that existing laws governing the importation of plants and animals into the country and related matters should be strictly enforced, and where there are loopholes, the laws should be strengthened or new ones made to protect our country against the introduction of harmful plants, animals and insects.

Disposal of industrial and household wastes:

26.36 A few people have realized the growing problems posed by the haphazard disposal of industrial and domestic wastes in Uganda. Industrial plants and mines release toxic wastes in our lakes, rivers, land and atmosphere. There is hardly any industry or mine which has invested in equipment for cleaning up wastes. If no thought is given to the long term cost in human life and environmental degradation, we shall pay dearly for the current neglect in the not too distant future. It is important that the country sets some environmental standards to be met by local and foreign investors who wish to set up factories. There is also growing problems of disposing off domestic wastes, particularly in urban areas. This poses serious health and environmental problems, especially in slum areas. Sanitation is very poor in many homes.

Other environmental issues :

26.37 There are concerns about other environmental issues like pollution of the air and atmosphere, destruction of the ozone layer and the harmful effects of certain types of warfare weapons and methods on which only a few people have commented. People were naturally concerned mainly with what affects them most directly.

Principles

26.38 It is generally agreed that people should be central in any environmental policies and programmes; that there is need to involve the people in formulating policies and programmes affecting their environment; that environmental protection should not be done at the expense of socio-economic development; and that we should manage our environmental and natural resources in a sustainable manner for the benefit of the present and future generations.

The centrality of the people:

26.39 When we talk about protecting the environment, we are really talking about the welfare and quality of life of the people. The protection, preservation and enhancement of the environment should be viewed as essentially intended to guarantee the right to life and to promote improvement in the quality of life for all the people. Any policies and programmes which do not consider people's interests and welfare will not have their support, and will therefore not work in the long run.

People's participation:

26.40 The people have a right to be consulted and to participate in drawing up policies and programmes affecting their environment. This is the only way in which to get priorities right and to ensure success and sustainability of any measures taken for the benefit of the environment and the people. In order for the people to participate effectively, they need to be informed. There is, therefore, need for educating the people on measures which are necessary to be taken before implementation.

26.41 There is a relationship between democracy and the protection of the environment. In Uganda, the worst abuses against the environment, including large-scale poaching, encroachment on forest reserves and game parks and draining of swamps, have all occurred under dictatorial regimes.

Environment and development:

26.42 There is worry among some Ugandans that environmental concerns may override the need for economic and social development. It is generally agreed that environmental protection should not be at the expense of development and progress. However, the consideration should be to attain an environmentally friendly and sustainable development.

Stewardship:

26.43 We hold the world and its resources in stewardship for others, including the disadvantaged and those not yet born. No individual or group in our society should have the right to exclude certain sections of the people, especially the disadvantaged .and the poor from enjoying the bounties of nature, or to destroy the environment for the present and future generations.

SECTION TWO: ANALYSIS OF ISSUES AND RECOMMENDATIONS ON THEM

Constitutional and Legal Provisions

26.44 Traditionally, constitutions have not provided for protection of the environment and environmental rights. However, a number of modern constitutions, inspired by a series of international charters, covenants, declarations and resolutions, which aim at protecting the environment, make provisions for environmental protection.

26.45 The past constitutions of Uganda did not address the issue of environmental protection because it was not a serious issue in Uganda, leave alone world-wide, when they were made (in 1962, 1966 and 1967). It is only within the last two decades that the issue of protecting and preserving the environment in an all round manner has started attracting the attention of the world. Fortunately, the current debate on making the new Constitution found many Ugandans aware of the need to preserve the environment.

26.46 There are a number of laws in the country aimed at addressing specific environmental concerns. They deal with various matters, including protection, preservation and control of game and wild life, soil erosion, water and air pollution and the protection of forests.

26.47 Views and proposals submitted by the people to the Commission overwhelmingly favour inclusion of provisions for the protection, preservations and enhancement of the environment in the Constitution. It is argued that this would place the issue so high on the national agenda that no government would be able to ignore, neglect or side-step it.

26.48 In addition to making provisions in the Constitution, it is also suggested that existing environmental legislation should be enforced or strengthened. Enforcement of existing laws has been weak due to the breakdown of law and order over the past twenty years, widespread corruption and lack of logistics for enforcement. A contributing factor may also be the failure of the people to relate the laws in question to their own welfare and way of life.

26.49 The Commission understands that government is preparing comprehensive environmental legislation to provide a general framework for dealing with environmental issues. It has been suggested that specific legislation dealing with specific environmental issues not covered by existing laws should also be enacted, where necessary.

26.50 The elevation of the issue' of environmental protection to constitutional law and strengthening existing ordinary laws will not by themselves bring about the desired goals, but would serve to demonstrate a high level of national concern. The conservation and improvement of the environment will involve a number of legal as well as administrative measures.

26.51 Recommendation

(a) There should be provision in the Constitution for the protection, preservation and enhancement of the environment.

(b) There should be a review of every piece of existing legislation on the environment with a view to either expanding its scope of operation or plugging any loopholes that may be identified.

(c) Laws dealing with specific environmental issues not covered by existing laws should be enacted.

26.52 The above recommendations are based on awareness that 'the survival and welfare of the present and -future generations as well as the prosperity of this country both largely depend on our ability to use the country's limited resources sustainable and prudently.

Environment as a Human Right

26.53 The right to life is the most fundamental of all human rights. The right to life is not merely about being alive, but also about the quality of life which is closely related to the kind of environment in which people live.

26.54 A number of international instruments link environmental protection and human rights. For example, the *African Charter on Human and People's Rights* provides that all peoples shall have the right to a general satisfactory environment favourable to their development II (Article 24). The constitutions of some states provide for the right to a healthy and ecologically balanced environment and affirm the duty of the state and citizens to protect, preserve and enhance the environment. On the whole, constitutional provisions in this field tend to state general principles intended to guide action, rather than enforceable rights. This is perhaps because these rights are regarded as difficult to define and enforce.

26.55 Ugandans are clearly concerned about how the degradation of the environment is affecting the quality of their lives. Uganda is a signatory to some international instruments, including the *African Charter on Human and People's Rights,* which enjoin signatory states to treat environmental protection as a human right.

26.56 Recommendation

The new Constitution should affirm, as a general principle, that every person should have the right to an environment of a quality that permits a life of dignity, promotes development and allows for the enjoyment of physical and mental health. Every person should be entitled to a clean and safe environment.

26.57 If the right of people to a clean and healthy environment is to have meaning, then there should be mechanisms for making those responsible for polluting the environment pay for cleaning up the environment and providing redress and remedy to those affected by their action.

26.58 Recommendation

The polluter should be responsible for providing effective remedy and redress for the violation of any environmental laws and standards. Parliament should make laws regarding liability and compensation for the victims of pollution and other forms of environmental damage.

Environment and Development

26.59 There is strong support for the principle of sustainable development. The people realize that any development that does not have 2nvironmental protection and enhancement as its component is short-sighted and short-lived; In their submissions,' the people generally agreed on this point. On this, they are in agreement with universally accepted principles.

26.60 Recommendation

In order to achieve sustainable development, environmental protection and improvement should form an integral part of the development process.

26.61 Africa and other developing countries also stress the link between environment and development. The Conference of African Ministers of the Environment held in Abidjan, Cote d' Ivoire, in November, 1991, called for a new era of development strategies that combines economic growth with poverty alleviation and environmental protection.

26.62 The Abidjan Conference, in line with the *African Charter on Human and People's Rights*, also called for the legitimate right of Africans to exploit their natural resources for development purposes and argued that activities to protect the environment should not frustrate the development process. This position is in line with the declaration adopted by world leaders at the final session of the UN Conference on Environment and Development which met in Rio de Janeiro, Brazil, from June 3 to 14; 1992.

26.63 In order to get the support of all sectors of our society on preserving the environment, environmental issues must not be treated in such a way that they appear oppressive and insensitive to the needs of the poor. Alleviation of poverty and concern for the disadvantaged sections of our society must be addressed seriously when tackling environmental issues.

26.64 Environmental issues are of national concern. All measures taken for conserving the environment should be thoroughly explained to the people and all social forces should be seen to be sacrificing for the sake of a clean and safe environment. This matter needs to be addressed seriously in Uganda because measures taken for the protection of the environment often appear to the people to be irrational or insensitive to their needs. Take the issue of protecting our forests and woodland, for example, where officials sometimes issue directives and orders in complete disregard of the fact that the overwhelming majority of our urban and rural poor depend, and will continue to depend for the foreseeable future, on fuel wood and charcoal for cooking, and timber for building their dwelling huts. Evictions from forest and game reserves are often done in a manner which alienates both the affected people and the population as a whole.

26.65 There is need to take an integrated approach on environmental issues which addresses present needs and ensures that future needs are met, while at the same time protecting the environment. If this is not done, measures taken for the preservation of the environment will be seen by the people as ways of denying them basic means of survival while the rich continue to use our scarce resources wastefully.

26.66 There is concern that there should be a link between the environment and development. In fact the people who are opposed to providing for environmental protection in the Constitution argue that environmental protection might be effected at the expense of development. This concern needs to be addressed.

26.67 Recommendation

The Constitution should provide that Uganda's socio-economic development strategy should aim at achieving a balance between growth, poverty alleviation and environmental protection.

26.68 Consideration of the link between economic and social development, on the one hand, and, on the other hand, protection and preservation of the environment leads to consideration of two main issues, namely: environmental assessment of development policies and programmes; and sustainability of development. More and more countries are beginning to take into account environmental assessment of programmes and projects which are likely to have significant environmental impacts, whether of a local or a global nature. One of the most important objectives of environmental assessment is to try and ensure that sustainable development is achieved by identifying and dealing with negative environmental factors at the earliest possible planning and implementation stages. It has been suggested that every development project in Uganda should be evaluated for its environmental impact, irrespective of whether it is funded locally or through borrowing. We agree with this suggestion.

26.69 Recommendation

There should be environmental assessment of policies, programmes and projects which are likely to have significant environmental impacts, whether of a local or a global nature.

The Role of Citizens

26.70 The people of Uganda recognise that they have an important role to play individually and collectively in managing and protecting the environment. To play an effective role, they need to be actively involved at all stages in the formulation and implementation of policies, programmes and projects which affect their environment. It is vitally important for people to feel that they are responsible for their environment. The views expressed during constitutional seminars and in written memoranda from the people, emphasize the responsibility of the people in protecting, preserving and enhancing the environment.

26.71 Recommendation

It should be the duty of every citizen to conserve, protect, restore and enhance the environment, and to prevent any unwholesome interference with or destruction of the country's ecosystems.

26.72 The people feel that major decisions concerning their environment and livelihood are often taken without consulting them. They emphasize that any measures taken for the benefit of the environment can only succeed in the long run if the affected groups or intended beneficiaries are actively involved. If the people are consulted and involved it would help in, among other things, improving on decision-making and getting the co-operation of individuals, groups and communities affected by any policies programmes and projects for protecting the environment.

26.73 Recommendation

The people should have a right to be consulted when policies, programmes and projects which may affect their environment are being drawn up and implemented.

26.74 The women, youth and children need special consideration when it comes to the protection and management of the environment.

(a) In Uganda the women playa leading role as producers of food and cash crops. They are also responsible for fetching water and firewood for domestic use. They have to walk ever-longer distances to obtain the water and firewood. So their activities have a direct bearing on the environment, while at the same time they suffer from deterioration in our environment. Yet when it comes to making decisions on environmental issues they are not involved to the degree commensurate with their roles as managers of the environment, and the effect that environmental degradation has. on their lives.

(b) The youth and children will in future be affected by our decisions and actions today. If we mismanage the environment, they will be the ones to suffer in future. Yet they are hardly consulted and involved when important decisions affecting the environment are made. There is need to hear the views, aspirations and vision of the youth on the future of our environment along side the need to educate and inform them on the importance of proper management of the environment for their future and the future of the country.

26.75 Recommendation

The role of women, youth and children in management and protection of the environment should be accorded due recognition and their full participation in decision-making on environmental issues should be encouraged in order to attain sustainability.

Utilisation of Natural Resources

26.76 There is deep concern in developing countries, including Uganda, that the developed countries, international financial institutions, donor agencies and Non-Government Organizations (NGOs), may impose environmental management policies which will guarantee the industrialized countries unimpeded access to the resources of the developing countries, and deny the developing countries sovereignty over their resources. It has, for example, been suggested that tropical rain forests should become global commons, meaning that they become the common property of the world community. The real aim behind this proposal is to preserve the tropical rain forests to absorb excess carbon-dioxide released by industries and motor-vehicles in the developed countries. This and similar suggestions have been rejected by the developing counties, as shown before and during the UN Conference on the Environment and Development held in Brazil, in the month of June, 1992. We need to stress that Uganda, in common with other countries, must retain sovereignty over her natural resources, as well as the right to use them for the development of the country and welfare of Ugandans.

26.77 While the people agree on the need for the country to retain sovereignty over her natural resources and the use to which they may be put for the development and welfare of Ugandans, they also recognise that the resources should be utilised in a sustainable manner. Over-exploitation of resources in the name o(development, or with a view to getting short-term benefits cannot lead to sustainable development or protection of our environment.

26.78 Recommendation

The utilization of the natural resources of the country should be managed in such a way as to meet the development and environmental needs of the present and future generations.

Meeting the Energy Needs of the People

26.79 We have already discussed the concern of the people with regard to energy resources in Section One of this chapter. It has been suggested that Uganda should evolve a viable energy strategy for meeting the energy needs of all the people of the country from affordable and readily available sources. At the same time, however, care should be taken to ensure sustainability so that the needs of the present and future generations can be met, while at the same time protecting the environment. Any strategy that does not address present needs is bound to fail because it will not have support of the people. At the same time a short-term strategy which does not aim at sustainability and protection of the environment is self destructive.

26.80 Recommendation

All Ugandans should be entitled to readily accessible and affordable energy resources which meet their basic needs and the needs of environmental preservation.

Preservation of Uganda's Heritage

26.81 Uganda is blessed with abundant natural resources and historical and cultural monuments and sites which need to be preserved or restored. Among the blessings we have are:-

(a) a good climate, with fertile land and adequate and well distributed rainfall in most areas;
(b) a variety of biological species including animals, birds, insects, fish and plants, some of which are unique to the country. Uganda is said to have the greatest variety of biological species in Africa;
(c) beautiful and diversified scenery including mountains, valleys and plains;
(d) abundant water resources comprising lakes, rivers, waterfalls, swamps and underground water; and
(e) historical and cultural sites and monuments such as the tombs of the Buganda kings, forts and rock paintings and ruins of ancient settlements.

26.82 There is concern among some people that not enough is being done to protect, preserve or restore these resources, assets and monuments and sites for the benefit of present

and future generations. The natural habitat of our animals and plants have been grossly interfered with through heavy poaching and encroachment on the animal parks and reserves and forest reserves, as well as by drainage of wetlands and cultivation of hill tops and mountain sides. It is estimated that 80 percent 'of the wildlife habitant has been destroyed since independence. This is a great loss to the country. In the first place, the animals and plants which are disappearing are being lost for good to the present and future generations. Secondly, some of the animals and plants provide our people and humanity as a whole with medicine, food and invaluable chemicals. Lastly, they add to the attraction of the country for tourists. Once they disappear, the tourist industry will be negatively affected.

26.83 Our historical and cultural monuments and sites have been neglected. There appears to be lack of appreciation on the part of the authorities of the important role that can be played by the sites in creating a sense of pride and belonging in the people of Uganda, as well as their potential in attracting tourists. People want historical and cultural sites to be preserved and restored.

26.84 It should be the responsibility of the central and local governments to create and develop places where our natural resources like animals, birds, insects, fish and plants can be protected. We already have game parks, forest reserves, lakes, rivers, swamps and mountains which need to be protected. If there is a need to do so we can create new game and forest reserves and take measures to protect other habitats like mountains and wetlands.

26.85 Recommendation

(a) It should be the duty of the State and citizens alike to protect, conserve and restore Landscapes, sites and monuments of historic, artistic and aesthetic value to the country.

(b) The central as well as local governments should create and develop parks, reserves, and recreation areas so as to ensure the conservation of natural resources, including animals and plants and promote the rational use of natural resources and safeguard their capacity for renewal, regeneration and the stability of the ecology.

International Action

26.86 Some environmental issues like damage to the ozone layer, acid rains, global warming, bio-technology and pollution of lakes, rivers and the atmosphere, have far reaching global implications. They therefore require the concerted action of the international community. In addition, Uganda shares many vital resources and assets with neighboring countries. These include lakes, rivers, forests and mountains. The protection and preservation of these resources and assets require co-operation with our neighbours on a bilateral or regional basis. Finally, we need to ensure that in our dealings with the international community and countries in our region, Uganda does not become the dumping ground for dangerous and harmful activities and substances, animals or plants.

(b) Environmental awareness should be promoted through the inclusion of environmental education as a subject at all levels of our education system and other appropriate means of mass sensitization.

Institutional Administrative Framework and Government Plan of Action

26.93 There is concern among some people that there is no proper co-ordination between the various institutions - government ministries and departments, non-governmental organisations and others - which are dealing with environmental issues or whose activities have to do with the environment.

26.94 The government envisages that it has an important supportive role to play ıı preserving and protecting the environment by:-

(a) promoting sustainable development through the inclusion of environmental considerations in the planning and implementation process;

(b) the establishment of strong institutional and legal framework which will enhance efforts to protect the environment;

(c) promoting programmes for extending education materials on agro-forestry techniques; and

(d) encouraging appropriate agricultural technologies for sustainable food production and reforestation programmes.

26.95 The government has launched the National Environmental Action Plan (NEAP). It has an institutional framework comprising a Cabinet Steering Committee; the National Environment Action Plan Secretariat; advisory groups made up of donors, non-governmental organisations, special consultancies; and eight task forces. The task forces are expected to spearhead study and research leading to the formation of a concrete plan of action in the fight against environmental degradation. Each of the task forces is to focus on particular aspects of environment and related matters which are categorised as follows:-

(a) policy, legal and institutional;

(b) education, research and human resource management;

(c) land management including agriculture, livestock and range lands;

(d) wetland, water resources, fisheries and aquatic bio-diversity;

(e) forests, wildlife, tourism and terrestrial bio-diversity;

(t) population, health and human settlements;

(g) mining, industry, hazardous materials and toxic chemicals; and

(h) energy and climate change.

26.96 In order to make a fair assessment of our environmental situation and thus plan accordingly, NEAP is expected to liaise closely with "front line:' people including farmers, herdsmen, fishermen, traditional hunters, miners, charcoal dealers and a cross section of people and organisations such as academicians, environmentalists, co-operatives, religious organisations and wildlife clubs. Officials of N.EAP have already started touring the country and holding seminars to get the views of the people on various environmental issues.

26.97 The approach taken by NEAP will, hopefully, result into a comprehensive, well researched and well-documented environmental strategy that will put the country on a sound footing to fight against environmental degradation. One of the problems currently hindering the fight against environmental degradation is lack of reliable data and information regarding the state of the environment in Uganda.

26.98 It has been suggested that an Environmental Protection Commission 5rould be established. The functions of such a body have not, however, been clearly defined. If the idea is taken up, the Commission could be charged with the responsibility of coordinating and implementing the national environmental action plan.

26.99 Recommendation

The Uganda Planning Commission should have responsibility for coordinating and implementing the national environmental plan of action.

International Instruments and National Environmental Laws

26.100 There are constant changes taking place in the environmental world. New discoveries are being made and remedies suggested. It is important that Uganda should keep abreast of these changes. The government should put in place mechanisms for monitoring the changes taking place. It should also undertake careful study of all the relevant international protocols, conventions and recommendations with a view to their ratification, adoption and application
if it is not against the national interest to do so.

26.101 There are a number of laws aimed at the protection and preservation of the environment on our statute books. They deal with various aspects of the environment including the preservation and control of game and wildlife, soil erosion, water and air pollution, occupational health and preservation and protection of forests. Most of the laws were made when environmental issues were not a priority, some dating back to colonial times. Many of them are no longer relevant to the present needs and challenges posed by the state of our environment.

26.102 Recommendation

Environmental legislation should be reviewed and updated to take into account present and future environmental and development needs of the country, as well as international environmental concerns .

CHAPTER TWENTY SEVEN

FOREIGN RELATIONS AND INTERNATIONAL CO-OPERATION

27.1 The subjects of foreign relations and international co-operation assume particular importance in the case of Uganda because of the geographical position of our country. As we noted in Chapter Three *(Geo-political and Socio-Economic Background),* Uganda is a landlocked country in the heart of the African continent, a factor which calls for vital geopolitical considerations to be taken into account. The vulnerability of Uganda's p0sition is a crucial factor in shaping Uganda's foreign relations and co-operation with neighbouring countries. With five frontiers surrounding us - Kenya, Tanzania, Rwanda, Zaire and Sudan we need to maintain good relations and co-operate closely with all neighbours as our relations with them have implications for our security and national development. Hence the observation that was made in Chapter Three that the new Constitution should make provision for Uganda's geopolitical need for regional co-operation. On the wider international level, we need to co-operate with other countries and international organisations to realise our goals of development, security and solidarity with the international community.

27.2 Although the subjects of foreign relations and international co-operation are always considered to involve constitutional issues, there are a number of formal matters commonly dealt with in constitutions which are of central importance in foreign relations. These include: powers of the executive and/or legislature in respect of making treaties; power to declare war on another state; recognition of representatives to and of foreign states involvement in and ceding of powers to regional or other international organisations. In addition, some constitutions set state policy guidelines which may include provision on foreign relations and international co-operation. Still others sometimes make provision on the relationships between international law and domestic (or municipal) law.

27.3 This chapter contains three sections. The first considers the historical background to Uganda's foreign relations. The second compares approaches to provisions on foreign relations in various constitutions. The third section analyses the people's views on the subject and provides the Commission's recommendations.

SECTION ONE: HISTORICAL BACKGROUND

Pre-colonial Period

27.4 Where independent and sovereign states exist, particularly when they are side by side, there must be relations and international co-operation between them. Pre-colonial Uganda was a medley of independent states which maintained permanent relations with one another. We know, for instance, that Buganda Kingdom maintained close relations and co-operation with the rulers of Karagwe, through which most visitors to Buganda and to the other kingdoms in the west passed on their way from the East African coast. Alliances were forged among rulers, so that, for example, Mwanga of Buganda and Kabalega of Bunyoro sought and obtained assistance in Lango and Acholi in their resistance against British imperialism. Foreign relations meant not only the absence of wars and tensions among states but also

meant conquest and retention of territories by the various rulers and their ability to organise militarily so as to conquer and retain territories. There were cases where neighbouring peoples resorted (as they still do) to violence rather than diplomacy; in many cases states raided one another for cattle, other forms of wealth, and women.

27.5 At a wider international level, states in the interlocutrice region were able to maintain diplomatic links with states several thousand miles away. The rulers of Buganda had relations with the Arab rulers on the eastern coast, and Kabaka Mutesa I even attempted to establish permanent diplomatic links with England when, in 1879, he sent an envoy to Queen Victoria. So determined was Mutesa I to establish a lasting link with Queen Victoria that he wanted to undertake the mission himself but was dissuaded by his chiefs from such an unprecedented undertaking. All this shows that the notion of securing alliances with other rulers so as to strengthen their states was not foreign to African rulers living in what we know today as Uganda. Indeed, the notion of dispatching embassies to their "brothers" ruling in other kingdoms was a normal way of conducting foreign policies and maintaining international cooperation for establishment of peace in the region. Such envoys were immune from any violation of their personal safety: observance of diplomatic etiquette was part of the conduct of foreign relations among the rulers.

The Colonial Period

27.6 Under colonial rule, Uganda was an appendage of Britain in the field of foreign policy, with the result that Ugandans shed blood during two major wars in Europe in 1914-1918 and 1939-1945.

27.7 There were, however, two other ways in which Uganda was affected in foreign relations and international co-operation which were destined to play a major part, after she attained her independence. The first was regional, the second international. There was, in the first place, the attempt by the colonising power to link Uganda more closely with the other three British colonies in East Africa, namely: Kenya, Tanganyika and Zanzibar. These efforts gave rise to attempts to establish an East African Federation. The first attempt generally referred to as the Closer Union - was made in the late 1920s. It was opposed by Buganda. A more orchestrated and serious attempt was made in the late 1940s and early 1950s, which again was opposed by Buganda (with the Kabaka falling partly a victim of the debate when he was deported). Although an East African Federation did not materialize, a Common Services Organisation emerged within which summits used to be held by the three colonial governors and the Resident of Zanzibar to mark out common policies in the development of the four colonies. It was from this body that the East African Community emerged which initially served the people of East Africa so well but which was allowed to collapse because of conflicts of interests among the leaders of the three independent East African countries. It was an excellent experiment in international and regional co-operation which was never allowed to prosper to full maturity. The people of East Africa, however, may seem to be more aware of the importance of this Community than many of their leaders, a position strongly reflected in the views we received from the people of Uganda.

27.8 The second way in which the colonial power had an important impact on subsequent foreign relations was that it committed Uganda to international treaties which were binding on the post-independence state. Among Such treaties were those arrived at under the United

Nations Organisations and the treaty governing use of the waters of the Nile and Victoria basins.

Post-colonial Period

27.9 Uganda attained independence with little experience in foreign affairs. It had, therefore, neither tradition nor clear cut principles and objectives to form a basis on which to conduct her foreign policy. Our independence Constitution did not contain much on the subject of foreign relations and international co-operation. Schedule 7 of the 1962 Constitution (Part II) only referred to external affairs as matters with respect to which Parliament had exclusive power to make laws and made some provisions in respect of times of war and Ugandan representatives abroad. The 1963 amendment made reference only to the recognition of treaties and agreements entered into on or after 9 October 1962. Similarly, the 1967 Constitution only refers to treaty-making, declaration of war and appointment of overseas representatives. It does not, therefore, clearly lay down what should be the principles and objectives of Uganda's foreign policy and international co-operation. This is the issue the new Constitution should address.

27.10 Although Uganda was plunged into chaos and disorder from 1966 onwards, the image of the nation abroad remained rather good and possibly dew sympathy during the 19608.' During the first four or five years of independence, Uganda pursued a cautious foreign policy. However, after 1967, the government pursued what came to be described as "a progressive and radical" foreign policy, which aligned Uganda with the then progressive African states such as Tanzania, Zambia and Guinea). With the assumption of power by Amin, Uganda's foreign policy first veered towards the West, a policy that was soon abandoned in favour of a vigorous pro-Arab foreign policy which also embraced Islamic radicalism. Amin later pursued a 'foreign policy which sounded pan-African and generally anti-imperialist.

27.11 The period of the Uganda National Liberation Front (UNLF) was too brief to offer a genuine picture of its foreign policy. The Obote II government tended to veer towards the Western powers from whom it received economic and military assistance in the war against the National Resistance Army (NRA). It is, therefore, to the period of the NRM administration that we now turn to see what it has tried to put in place in the field of foreign relations and international co-operation.

27.12 The principles and objectives that have guided the NRM's policies on this subject have been, a reflection both of the commitment to justice in Uganda 'and of its commitment to justice and peace throughout the world. Uganda currently, therefore, tends to pursue a foreign policy born out of the country's experience which is being mainly guided by the following principles and objectives:

(a) respect for fundamental rights and freedoms so as to promote the rile of law and build a just society;

(b) respect for the independence, territorial integrity and sovereign equality of all states so as to ensure the defence, sovereignty and integrity of Uganda;

(c) non-interference in the internal affairs of other states in so far as they also do not interfere in Uganda's internal affairs;

(d) promotion of all-round regional co-operation and mutually beneficial economic, technological and cultural co-operation with other countries in the effort to improve the living conditions of the people and the general development of the country;

(e) playing an active and positive role in the African sub-region, in Africa and in the world as a whole in the interests of peace and development.

(t) promoting and strengthening co-operation among and between non-aligned countries within the existing organisational framework, and particularly enhancing co-operation among less developed nations; and

(g) promoting observance of international law.

SECTION TWO: COMPARATIVE APPROACHES TO CONSTITUTIONAL PQ.OVISION ON FOREIGN RELATIONS

27.13 As we have already observed, both the independence Constitution and the 1967 Constitution had little to say on foreign relations, indeed, some submissions to us indicated that most aspects of foreign relations do not involve constitutional issues, and that nothing more was required on the subject than what was said in 1962 and 1967. Others took the view' that the relative silence of earlier constitutions on this subject had negative consequences. It is therefore useful to examine the treatment of the subject not only in our past constitutions but also in those or other countries.

27.14 It can be argued that because the 1<)67 Constitution does not provide or lay down principles and objectives upon which Uganda's foreign policy should be conducted, such policy has instead been determined mainly by the executive and more particularly the successive Presidents. Our foreign policy has therefore seen major shifts with changes .of government and even significant change of positions on issues by the same government.

27.15 Under the 1962 Constitution, article 76, on treaties and other agreements, article 77 on the declaration of war, and article 105 on appointments of representatives, are the main provisions touching on the aspect of foreign relations. Only treaty-making is dealt with in any detail.

27.16 Procedural aspects of treaty-making vary from state to state. The 1967 Constitution gives the President powers to make treaties, conventions, agreements and any other arrangements between Uganda and any other country, international organisation or body with the approval of the Cabinet, save any involving armistice, neutrality or peace, where parliamentary ratification is required.

How Constitutions of Other Countries Treat these Issues

27.23 Some States do provide specifically for their active participation in international and regional organisations. Such is the case in Ethiopia, Guatemala, Republic of Guinea-Bissau and Haiti, to mention but a few. Some go as far as prohibiting the permanent divesting, of powers by the State, apparently meaning a constitutional amendment would be required for participation in regional bodies of ~ı nature such as the European Economic Community.

27.17 A nation's relations with other countries are sometimes seen as so important that aspects of foreign policy guidelines have found expression in constitutional provisions of various states. Uganda can draw upon the experiences of other countries.

27.18 A constitution may make provisions in respect of one or more of the issues we have identified in consideration of the subject of foreign relations and international co-operation.

Principles and Objectives of Foreign Policy

27.19 Some constitutions provide guiding principles and objectives of foreign policy. This is the case, for example, in the constitutions of Egypt, Ethiopia, Equatorial Guinea and Honduras. A constitution may also provide who determines foreign policy. This is either in the hands of the President or another organ or the State. In Ecuador, the President determines foreign policy and directs international relations, while in Egypt the President, in conjunction with the government, lays down. the general policy or the State. The Ethiopian Constitution gives power to the Shengo (Parliament) to determine both domestic and foreign policy.

International Treaties, Conventions and Agreements

27.20 The vast majority of the constitutions examined merely prescribe the procedure to he followed in the conclusion and domestic ratification of treaties without expressly dealing with the situation which may arise if the procedures are not followed. The only exception, perhaps, as far as we could ascertain, is Honduras where Article 19 of their Constitution makes the issue treasonable. The issue, really, is whether or not our new Constitution should provide either for the procedures or the possible municipal and international effects of failure to follow such procedures or both.

27.21 Some constitutions provide for ratification of treaties by the President after approval by Parliament, e.g. Ecuador, Equatorial Guinea and Honduras. Ratification of treaties may also be the constitutional preserve of State organs other than the executive, as is the case in (former) German Democratic Republic, Haiti and Guinea-Bissau.

27.22 Special considerations may arise in relation to loan or foreign aid agreements. In Uganda's case, the External Loans Act gives authority to the Minister of Finance to raise loans. There is no requirement for loan agreements to be subject to ratification by Parliament, notwithstanding its general effect on the economy. Some constitutions, however, treat the issue differently. In Honduras, the National Congress has power to approve or disapprove loans and similar agreements related to the public credit, entered into by the executive branch of the State; while, in Ireland, the State is no! bound by any international agreement involving a charge upon public funds unless the terms of the agreement have been approved by DaiI Eireann (House of Representatives).

Involvement in International and Regional Organisations

27.23 Some states do provide specifically for their active participation in international and regional organisations. Such is the case in Ethiopia, Guatemala, Republic of Guinea-Bissau and Haiti, to mention but a few. Some go as far as prohibiting the permanent divesting of powers by the state, apparently meaning a constitutional amendment would be required for participation in regional bodies of a nature such as the European Economic Community.

Diplomatic Service and Recognition of Foreign Representatives

27.24 Most constitutions do provide for the appointment of ambassadors and high commissioners to foreign missions, but, like the Ugandan case, fall short of providing for guidelines in the appointment (qualifications) and removal. A few constitutions, however, provide for citizenship qualification. In EI Salvador, career diplomatic and consular representatives accredited by the State must be citizens of the State. In Zimbabwe, the President also establishes diplomatic missions. Some provide for powers of the Head of State to receive and accredit representatives of other Stales.

The Relationship between International Law and municipal Law

27.25 The accepted doctrine (the doctrine of incorporation) is that international law is part of municipal law. This doctrine is beneficial since under it municipal courts treat international law as authoritative law. Some Countries have made specific legislation incorporating certain aspects of international law, international treaties and agreements. The doctrine of incorporation has been adopted, with some variations, in the constitutions of many States. This is the case, for example, in the constitutions of the Republic of Germany, Greece, Haiti and Namibia.

SECTION THREE: ANALYSIS OF PEOPLE'S VIEWS AND RECOMMENDATIONS

27.26 Views were expressed on almost all aspects of foreign relations and international cooperation. We have categorized the views under five major themes: the principles and objectives of foreign policy and international co-operation; relations with neighbours (regional co-operation); relations, with international org:lI1isa!ions; international treaties and conventions; and the diplomatic service and receipt of envoys of other governments.

Principles and Objectives of Uganda's Foreign Policy

27.27 A number of concerns and principles for the formulation of Uganda's foreign policy were identified in the views' submitted by the people.

People should have a say in foreign policy:

27.28 There is agreement that foreign policy should not he the sole prerogative of the President or the Executive. People want to have a say in the formulation and implementation of foreign policy through public debate and their representatives in Parliament.

Safeguarding national interests and independence:

27.29 Some people want Uganda's foreign policy to he guided by and have as its objective the safeguarding and promotion of the national interests. To this end economic, political and other forms of co-operation with other countries should he determined by the needs and demands of the people. In particular, it should always be ensured that Uganda's independence and integrity are protected. The foreign policy should not be dictated by foreign countries, which also have their own interests to promote. Uganda should be free to manage and determine her own foreign affairs and relations. There is emphasis that relations and cooperation that Uganda develops with other countries should be those that assist he~ to develop.

Non-alignment:

27.30 People want Uganda to pursue a non-aggressive and non-aligned foreign policy. They emphasise that it should never support any faction fighting to over throw a government of another State. Ugandans do not want the government interfere in affairs of other countries save under the· UN flag and in accordance with UN resolutions.

Support for just causes:

27.31 Many Ugandans subscribe to the view that in its foreign relations and policy, Uganda should publicly support the cause of justice all over the world. In this connection, some suggest that the Constitution should clearly declare the country's condemnation of racism, zionism and other forms of domination and exploitation. In particular, some have argued that Uganda should continue to prohibit relations with South Africa until there are clear indications that it is prepared to dismantle its racist and oppressive policies and practices. Similar sentiments were voiced by some against Israel.

Pan-Africanism:

27.32 There are many people in Uganda who ardently support economic and political unity in Africa as the only way of realising the continent's great potential. Some want, total economic and political integration, while others advocate more loose forms of regional and continental co-operation.

Nationals' unity as a basis of foreign policy

27.33 There is realisation among many people that without national unity and identity, the country cannot conduct an effective foreign policy, nor can it earn the respect of the international community. National unity is, therefore, seen as the foundation of a successful foreign policy.

General Considerations

27.34 The views of the people on foreign policy objectives are influenced by a number or other factors. The first is determination to assert themselves as a people and a nation after decades of exploitation, domination and manipulation by a combination of external and internal forces. Second, is a sense of pride those after decades of humiliation and isolation?

Uganda should be recognized, respected by other nations and peoples as a part of the world community of nations. Third, is a realisation that Uganda particularly needs her neighbours, given her recent traumatic experiences, and that it is in her interests as well as those of the region to promote regional co-operation. Finally, IS a result of their long suffering, people are particularly sensitive about violations of human rights anywhere in the world.

27.35 We see good reason for foreign policy objectives to be included among the National Objectives and Directive Principles of State Policy discussed in Chapter Five *(Need and Objectives for the New Constitution).* As indicated in that chapter, the objectives are intended as a clear set of guidelines for government so that it acts in the interests of the people. It is just as important that government so acts in relation to foreign relations as it does with any aspect of domestic policy.

27.36 Recommendation

(a) The primary objective of Uganda's foreign policy should be the promotion of the national interest. Missions established in foreign countries should have as their prime duty the protection and promotion of the interests of the nation and of its nationals living overseas.

(b) Foreign policy should aim at protecting national sovereignty and enhancing political and economic independence of Uganda.

(c) While promoting the interests of the cOfl1/try, foreign policy should also be directed to establishing relations and co-operation with other countries on the basis of equality and mutual benefit.

(c) Uganda should strive to strengthen neighborly relations with all adjoining States and co-operate with other States n the basis of respect for .the inviolability of national sovereignty and territorial integrity of States, non-interference in internal affairs, peaceful resolution of conflicts and non-alignment.

(d) Uganda should always struggle against all forms of dependence, domination and exploitation, particularly neo- colonialism and racism.

Relation with Neighbours (Regional Co-operation)

27.37 Many people submitting views stressed the need to maintain the closest of relations with neighbouring countries. The calls for friendly relations with the neighbours came mostly from people of those areas bordering on Kenya in the East; Rwanda in the South- West; Sudan in the North; and Zaire in the North-West. Many people also expressed the need for urgent efforts to promote the revival of the East African Community.

27.38 The following specific views were expressed on regional co-operation:

(a) Uganda should promote economic, social and political ties with her neighbours. In particular, there should be close co-operation in the fields of commerce and industry. Duties on transactions across common borders should be waived. There should be

exchange of trained personnel with our neighbours. In reviving the East African Community, all Uganda's neighbours should be considered for membership, and a common currency introduced. People in the region should have the freedom to move freely across the borders. Swahili should be promoted as a regional language. There should be inter-governmental co-operation ill the region. Uganda should never be used as a base for invasion of her neighbors. Regular border meetings to discuss security, migration, trade, transport and resolution of border conflicts should continue and intensify.

(b) Cattle rustling was emphasized as a very serious problem particularly for ~he people living in border areas, especially on the North Eastern border with Kenya. There is a view that the Uganda government should enter into an agreement with the Kenya government to combat Cattle rustling. Others proposed that the OAU should establish the principle in its charter that no member State should loot its neighbours.

(c) Uganda should assist, where possible, needy countries in the region.

27.39 We recognise the special relationship that should exist between Uganda and her neighbours both because of the ethnic, social and political ties between them and also because of the imperatives of security and economic development. We are, however, also aware, that achieving this goal requires reciprocity.

27.40 Recommendation

(a) Future governments should strive to maintain close and friendly relations with our neighbours. Where tensions do arise, government should exercise restraint and should, as far as possible seek to resolve problems through consultation and negotiation.

(b) The East African leaders should put in more efforts to revive the East African Community.

(c) Visas and other restrictive travel documents, particularly within East Africa, should be relaxed in line with the objectives of the Preferential Trade Area.

(d) The State should, where it is reasonable to do so, grant asylum to persons from other countries who reasonably fear persecution on grounds of their political beliefs, ethnicity, race, religion or membership of a particular social group.

International Organisations

27.41 There were no dissenting views at all about the need for Uganda to join international organisations for the benefit of Ugandans. Stress was, however, laid on the need to ensure that the international organisations are for the benefit of Uganda. People emphasized that while we should ensure co-operation and good ncighhourliness, we should not sacrifice our hard-won independence for dubious international friendships.

27.42 The people reaffirmed the importance of Uganda's membership in such international organisations as the United Nations Organisation (UN); the Organisation of African Unity (OAU) and the Commonwealth of Nations. They also noted the importance of co-operating with the European Economic Community (EEC).

27.43 It was proposed by many people that Uganda should contribute to international peace and co-operation by giving a good example to others in settling conflicts with other states through peaceful means; condemning aggression wherever it occurs; ensuring that all acts of aggression on Uganda are referred to the OAU and the UN; resorting to force only when mediation fails; and offering its services to mediate between belligerent states.

27.44 There was a suggestion that Uganda should seek an amendment to the UN Charter by calling for a merger between the Security Council and the General Assembly, whereby all member countries would have equal vt1ting powers Oil all issues and by advocating for the removal of veto powers of some members.

27.45 A few people suggested that the UN should have the right to interfere in the internal affairs of Uganda, in case of gross violations of human rights. In addition, others have argued for a right for Ugandans to appeal to a range of international fora in case of breach of human rights they are unable to resolve internally, an issue about which 'we have made recommendations in Chapter Seven *(Fundamental Rights and Freedoms).*

27.46 There were also some people who suggest that Uganda should re-examine its relationships with international financial institutions that exploit and compound its difficult financial position.

27.47 Recommendation

Uganda should actively participate in international and regional organisations that stand for peace, well-being and progress of mankind.

International Law and Treaties

27.48 People expressed views on the kinds of international treaties and conventions to which Uganda should be, is, or can be a party; the procedures for entering treaties; the contents of international law; the position in respect of Uganda declaring war on another nation; and Uganda's boundaries.

27.49 While, there is recognition that Uganda should not breach international conventions, treaties and resolutions to which it is a party, the people at the same time demanded that international by which Uganda should he bound should not be prejudicial to her interests specifically, they demanded that Uganda should take care not to observe international law that ,J-imposes a hegemony of richer countries or ratify treaties that are prejudicial to the national Interests ,It should, however, ratify and honour all treaties geared towards world peace and Justice and the narrowing of the imbalance between the poor South and the rich North:

27.50 On the procedure for entering into international agreements, some people expressed dissatisfaction about the present constitutional position, and demanded that in making such

agreements the Executive should be subject to ultimate ratification by Parliament. They insist that the ultimate powers to commit Uganda to international obligations lie with the people's elected representatives. This matter has been discussed in Chapter Twelve *(Executive),* where we recommended that all treaties, conventions, agreements or arrangements between Uganda and any other country or between Uganda and any international organisation should be subject to ratification by Parliament, irrespective of the subject matter involved.

27.51 Questions about who should have power ill declare that a state of war exists between Uganda and any other country were also discussed in Chapter Twelve and do not require elaboration here. Further, there is agreement that no citizen of Uganda should be committed by government to participate in combat alongside or in alliance with other countries except with the approval of Parliament.

27.52 There is consensus that boundaries inl1erifJd from our colonial masters should be maintained and respected. However, the should be proper demarcations and markings of various harder points.

27.53 Lastly, there is strong support that a mechanism. for debt management should be instituted both to ensure that the country does not suffer from a heavy debt burden and that it benefits from the debts it incurs.

27.54 Recommendation

(a) All international treaties that Uganda is a signatory should constitute part of the laws of Uganda.

(b) . Treaties which have the effect of restricting or in any way affecting the Constitution should not be ratified, unless ratification (s(lone with the corresponding reservations (exception) in which the provisions of the treaty about which the exceptions are made, do /lot become part of the laws of Uganda:

Diplomatic Service and Receiving Foreign Envoys.

27.55 Diplomatic service involves both representation of the country in: other countries and protection of Ugandans living abroad and their interests. Foreign service comprises diplomatic and consular personnel engaged in representing the interests of the home government abroad. Many memoranda dealt with the appointment of such personnel, particularly Uganda's ambassadors and high commissioners.

27.56 The people in their submissions recognised the importance of missions abroad, as long as those missions are affordable, efficiently run and serve the interests of the country, and protect Ugandans residing outside.

27.57 On appointments of ambassadors all of high commissioners and how they should conduct themselves, people expressed the following views:

(a) there should be security of tenure for career diplomats which should not change with every regime;

(b) Uganda's representatives abroad should be well trained and appointed on merit;

(c) they should be appointed by the President and confirmed or approved by Parliament.

27.58 Care should be exercised in choosing Ugandan's diplomatic personnel who exhibit qualities that sustain the good name of the country. Efforts should also be made to rehabilitate and maintain missions abroad, as a number of them can hardly operate because of lack of adequate financial resources. This is partly why some of the missions cannot even look after our students when they get stranded in foreign countries.

27.59 Further, it is proposed that a Foreign Affairs Commission should be established within the Ministry of Foreign Affairs, whose functions would he to advise on appointments and removal of diplomatic personnel.

27.60 Recommendation

(a) *There should be a special Code of Conduct for diplomatic personnel designed to protect Uganda's good image.*

(b) To ensure efficiency and effectiveness in the foreign service, an institute or school of diplomacy should be established ill Uganda.

(c) On appointment of Uganda's NII'OYS *abroad:*

(i) the Preside lit should have the power to appoint, promote, transfer and remove ambassadors, High Commissioners and any other diplomatic representatives of Uganda abroad. The appointment and removal of such officers, should be subject to the approval of the National Council of State; diplomatic and consular

(ii) representatives other than honourary consuls accredited by the Republic of Uganda should be Ugandan citizens and persons of integrity,

CHAPTER TWENTY-EIGHT

SAFEGUARDS AND AMENDMENT OF THE NEW CONSTITUTION

28.1 The Independence Constitution of 1962 was suspended in 1966 by the then Prime Minister contrary to its provisions. An interim Constitution was hurriedly put in place within two months without consulting the people. The following year the Constitution of 1967 was promulgated by Parliament without ample consultation of the people. Since then, successive governments have suspended parts of that Constitution and added to it amendments which suited them without reference to the people.

28.2 In their views submitted to us, people have been quick to connect the political instability, social turmoil and violence which have been experienced in Uganda since the 1966 crisis to the manner in which successive regimes have arbitrarily dealt with the national Constitution without consulting the people. To the successive regimes, the Constitution has not enjoyed the respect, significance and a sense of sacredness which are due to it.

28.3 During the Constitutional debate, the vast majority of Ugandans expressed the belief that unless the new Constitution being made is effectively safeguarded both by the political and military leaders and by the people of Uganda generally, there would be little meaning in wasting a lot of resources, both human and financial, to its making. They contributed important proposals on the subject of safeguards and amendments of the new Constitution. The Commission is convinced that the issue of safeguards and amendment of the new Constitution is one of the most important aspects of the new Constitution. It has served as one of the important guiding principles in all the recommendations we have made on every aspect of the new Constitution.

28.4 This chapter is divided into four sections. The first discusses the importance the people attach to the subject. The second section examines the concerns expressed and the principles emphasized in relation to safeguards and amendment of the constitution. The third section assesses people's proposals on a range of safeguards for the new Constitution and gives our recommendations on them. The final section concentrates on the manner suggested for the amendment of the Constitution and offers the Commission's recommendations on it.

SECTION ONE: THE IMPORTANCE OF SAFEGUARDS IN PEOPLE'S VIEWS

Nature and Importance of Safeguards

28.5 A constitution provides the rules and principles by which the people of a country agree to be governed. Its authority comes from the people. It should embody the basic political and social values of the people and the state. It should identify the tasks to be performed by government and formulate principles according to which government functions should be performed. It provides the various organs of state with the necessary powers to enable them fulfill responsibilities effectively and efficiently. It places limits on the exercise of such powers in order to prevent any abuse of power and to protect the individual's rights and freedoms. To command people's respect and support, a national constitution should embody

their aspirations, values and visions both for the present and a better future.

28.6 Written constitutions become the fundamental law of any nation. A national constitution enjoys a completely special status to any other law and this is normally evident in at least two senses. First, as the source of power and of limits on that power of all government authorities, a national constitution obliges all people to comply with it. Whatever is done by any leader, organ of government or any other person or group should be consistent with the constitution. Anything that is inconsistent with the Constitution should be overruled. The power to overrule such acts or decisions is usually vested in the judiciary and/or any other body set up for that very purpose. The power of the judiciary or the constitutional court to review and strike down laws or decisions which. offend the Constitution is of special importance. It obliges all government organs to conform to the Constitution and defends the rights of the individuals and groups against violation by the state organs, other bodies or individuals.

28.7 The second sense in which written constitutions are considered fundamental is in the way they are usually made and the unique manner in which they are amended. In both aspects they essentially differ from other laws. They are often made' using procedures that involve wide consultation of the people or even national referenda or special representatives of the people. They are harder to amend or change because they contain the basic principles of the nation and the basic norms for all governmental institutions.

28.8 Once government authorities and the people as a whole fail to recognise the national constitution as the fundamental and sacred law of the country, that constitution has little value or none at all. A constitution which is overthrown, suspended or amended by government in ways that are contrary to its Own provisions quickly becomes a nullity. Such has been the experience in Uganda since the unfortunate precedent of 1966. The issue of safeguards, therefore, concerns the measures which can be taken to ensure the respect, sanctity and protection of the supremacy of the Constitution.

28.9 Safeguards to a national constitution can be considered under three general aspects. First, the manner in which the Constitution is made is important to its safeguard. A constitution which is made with full involvement of the people is more likely to be respected and defended than one made without consulting the people.

28.10 Second, the very contents of the Constitution form an essence of its safeguard. The power of judicial review of unconstitutional acts and decisions protects the sanctity of the Constitution. The distribution of power among the organs of state with adequate checks and balances aims at safeguarding the Constitution. The provisions on amendment procedures of the Constitution emphasize the significance of the basic law. The provisions for the defence of the Constitution bring out the special importance of the Constitution. The provision for special constitutional institutions to check the exercise of power and defend the people's human rights is another important way of safeguarding the Constitution.

28.11 Third, constitutions are -specially safeguarded by knowledge of respect, and commitment the people have for their constitution. It is through an acquired culture of constitutionalism that the Constitution can enjoy the full respect due to it.

28.12 From the very beginning of the constitutional debate people recognized and emphasized the importance of safeguards for the new Constitution. They advocated for a dramatic change of attitudes among the leaders and among themselves towards the importance of the Constitution.

Different attitudes to safeguards

2813. We identified three main sets of attitudes on the issue of safeguards in the views submitted to us. The first was a pessimistic view, very much influenced by constitutional history since independence. The basic position was that it was futile to bother with making a new constitution which would inevitably be both violated routinely by those in power and undemocratically overthrown. This was a minority viewpoint expressed mainly at the beginning of the constitutional debate. The vast majority of people were soon convinced that it was possible to have a pC1sitive change in the future and Contributed constructive ideas on that basis.

28.14 The second view was that development of adequate safeguards was the first task, and that only if there were assurances on that subject was there any point in proceeding with making the Constitution itself. Again, this view was expressed mainly in the early stages of the debate, after which most people became convinced that a major part of the answer in developing safeguards involved the proper design of the contents of the new Constitution itself, particularly in the way power was distributed.

28.15 The third view, which was expressed by the vast majority who commented on the issue, was that Ugandans are quite capable both of developing adequate safeguards as part of the constitution-making process and of making them effective after the Constitution comes into force. In order to find effective and durable remedies for our past problems, however, many people emphasized the need to reflect critically on our past history in order to identify the factors which have undermined constitutionalism and democracy. We need also to identify factors in societies with more positive experience of safeguarding their constitutions which have contributed to that experience.

Safeguards in Historical Perspective

Constitutionalism in the pre-colonial era:

28.16 The pre-colonial unwritten constitutional arrangements of the various peoples who make up present day Uganda evolved gradually in response to changing needs. These arrangements were an integral part of people's culture and traditions. As such, they were generally known by all and highly respected. To go against established custom or tradition whether by the king, chief, elder or ordinary person was a serious offence which called: for serious sanctions. Because of this fear to offend the accepted traditions and customs, tenure was a degree of relative stability in leadership out which was often disturbed by military adventures. Because of the power of customs, people usually obeyed political arrangements which in several ways were oppressive to them.

Colonial period

28.17 New constitutional arrangements were imposed by the colonial regime often through use of force. People were generally not consulted before introducing such changes. Successive changes in the colonial constitutional system were made to suit the needs and vision of the colonial power. It was only in the last ten years before independence that people were gradually consulted on the proposed changes. These colonial constitutional arrangements were generally strictly adhered to by the rulers. They were, however, foreign to the people who took little interest in them and remained generally ignorant of them.

Post-independence period

28.18 The lack of commitment of post-independence leaders to the sacredness of constitutional order is revealed by some startling facts. Within the first five years of independence, Uganda adopted three different constitutions. Since the crisis of 1966 no government has assumed power through proper constitutional methods or without being suspected of having played foul. The people generally have not been involved in decisions about constitutional arrangements since 1%2. Several regimes have violated both the clearly stated provisions of the Constitution al1lllhL: spirit of the Constitution. On several occasions, the Executive has refused to obey court orders, thus openly violating the Constitution.

28.19 As a result, the Constitution came gradually to be seen as largely meaningless and powerless. Those in power could rely on it or even use it when it suited them and ignore it in other circumstances.

28.20 The general ignorance of the constitutional arrangements among the people was a legacy of the colonial rule. The successive post-independence regimes exploited it by continuing to keep people ignorant about their Constitution. The Constitution was rarely ever discussed in the media. It was not taught in schools. Copies of it were very rare and found mainly with the law expe11s only. As a result very few individuals, civil or political organisations ever tried to refer constantly to the Constitution or to popularise it in any way. The Constitution remained a hidden document whose contents were known by only few people.

Experience of Countries Which Respect the Constitution

28.21 In their views submitted to us, several people cited examples of countries which have had long experiences of constitutional stability and where the Constitution is regarded as sacred and is very seldom changed. The United States of America was the country most referred to, having a history of a constitution that has survived two hundred years.

28.22 The characteristics which seem common in such countries of long constitutional stability were reflected on during the constitutional debate. There is usually a strong civil society which acts as a check on possible excesses by state institutions and political leaders. Power is spread among the state organs so t hat each acts as a check to the others. There is a strong sense of national consciousness and identity. Citizens manifest a sense of patriotism and commitment to the country.

28.23 In such countries, the Constitution is widely known by most people and taught in schools. Even those wishing to become citizens of such countries are required to pass a test on the constitution. The ideals of the constitution are kept alive in daily transactions and referred to constantly in the media. Citizens stand up for their constitutional rights whenever any of them becomes threatened. There are occasionally constitutional test cases usually lodged and supported by civil societies and interest groups. Such countries usually enjoy a reasonably high standard of democracy. People are given opportunity to be fully involved in government at least through regular and free elections. Any proposed constitutional change is subjected to wide-ranging public debate which may lead to decisions through use of referendum. In such countries respect for national unity usually transcends major social divisions and the culture of constitutionalism is defended and promoted. Where the above characteristics are absence or weak the constitutions rarely enjoy respect and stability.

SECTION TWO: CONCERNS AND PRINCIPLES

28.24 All the concerns expressed by the people on all constitutional issues aimed at eliminating those factors and aspects in the past which have undermined the Constitution and the culture of constitutionalism. Likewise the principles emphasized on all issues were intended to safeguard the new Constitution. We only single out some of those concerns and principles which are directly related to the specific issue of safeguards and amendment of the Constitution.

Concerns of the People

Instability and lack of National Unity:

28.25 Many people were deeply concerned that without adequate safeguards for the new Constitution there would be no assurance of the future stability they yearned for. They were convinced that without stability there could be no development. They noted that other countries have been able to successfully confront great problems in part because of the basic stability fostered by commitment to constitutional order.

28.26 There was widespread concern that national unity has been en elusive goal, with many forces at work to encourage people to look to ethnic or religious or other allegiances as more important than the nation. This was seen as a factor in behavior groups which ignore the Constitution in their efforts to get power or hold on to it even that means going against the established constitutional arrangements.

Excessive concentration of power in the executive:

28.27 People agreed almost unanimously that the 1967 Constitution had concentrated far too much power in the hands of the executive arm of government, and in particular in lit President. There were no other institutions which could effectively check on executive and presidential power. As a result, those exercising such power had little concern constitutional limits, and tended to feel free to set aside the Constitution or parts 01' lit Constitution which did not suit their interests.

Politicisation of constitutional office

28.28 Concentration of power in the executive was accompanied by a reduction in the independence of constitutional offices such as the Auditor-general, the Electoral Commission and the Judicial Services Commission. Even the independence of the judiciary was sometimes threatened in various ways, including the use of violence. Constitutional officeholders could be appointed and removed by the executive with few controls. They were not guaranteed adequate resources or even sufficient freedom from direction and control.

Militarism:

28.29 People were concerned about the early reliance of civilian authorities on military power to resolve constitutional and political disputes. The military thereby gained an unwarranted role in government and exercised excessive power. Once civilian authorities came to rely heavily on the military to remain in power, it was a relatively small step for the military to believe it could run things better on its own. Having so decided, the Constitution was seen as a minor issue to be largely ignored.

Lack of sufficient accountability of government officials:

28.30 It was noted by many that government officials, including members of security forces, have often been able to violate the constitution with impunity. In particular, where human rights and freedpl11s of people have been ignored and no action taken against offenders, the standing of the Constitution has been damaged.

Weak civil society:

28.31 It was recognized by many people that far too much power and resources were concentrated in the suite and its institutions. The ordinary person remained weak and powerless in comparison. There have not been strong and autonomous civil organisations to act as powerful checks on the state and as guarantors of constitutional stability.

Ease with which constitutions can he changed:

28.32 Quite apart from the numerous times constitutions - or parts of them - have been abrogated and suspended without lawful authority, people were concerned that it has been too easy for the government of the day {change, the Constitution. As soon as a government happens to have support of two thirds of all the members of Parliament, it is in position to change whatever suits it without regard for minority opinion. Disregard of significant minority opinions was seen as a divisive influence in a country of diverse peoples and interests.

28.33 Governments have shown little or no interest in helping the people grow to understand and love their Constitution. Knowing little or nothing-about it, people have had little interest in protecting it.

Principles Emphasized by the People

Sovereignty of the people, and suprernacy of the constitution:

28.34 People wanted assurances that in future it would be generally acknowledged that the Constitution and all authority under it derive from the people. The Constitution must therefore recognise that all authority and power in the state derive from the people. Sovereignty of the people is not to be seen as something granted by the Constitution; rather, it is the basis of the Constitution and the Constitution should give due recognition to that fact. In general, power under the Constitution must be exercised in the **interests of the people.**

28.35 It follows from the principle of people's sovereignty that the law through which the people authorize the arrangements for their governance should be accorded the highest possible respect. The people in the views submitted to us, have made it clear that they want to be assured that the Constitution is treated as the fundamental law, supreme to all other laws and to all persons. Any let which is contrary to the Constitution must be illegal. This principle should extend to acts by tile executive, the legislature and the judiciary, as well as those of other groups and individuals. It will be important that there are mechanisms for enforcing the supremacy of tile Constitution. Action should be provided for to deal with anyone who ignores the people's interests by seeking to abrogate or violate the Constitution.

Distribution of power among institutions which act as checks on one another:

28.36 The people submitting views on the issue agreed that the national government should be composed of a number of institutions each with clearly delimited power and all of which act as checks on one another. No single institution should have sufficient power to unlawfully and unconstitutionally dominate and silence other institutions.

28.37 The constitutionally recognised institutions of government should extend beyond the three traditionally recognised organs of state (legislature, executive and judiciary) to other specialised and independent bodies. Any body carrying out responsibilities which could be politically sensitive should be given constitutional protection so that it cannot be interfered with for political reasons. Such bodies should include the Electoral Commission, the Judicial Services Commission, and many others discussed in other chapters of this Report.

Decentralisation of power:

28.38 People generally agreed that spread of powers and resources to local governments at the district and lower levels should enable them to be powerful enough to act as a check on any tendency towards abuse of power both by the central government and by government officials working in rural areas.

popular participation transparency and accountability:

28.39 Government would be under more pressure to deal with the people in accordance with the Constitution and more accountable for its actions if people were able to participate fully in their own government. Hence people wanted to see local level governments continue to operate to the village level but with increased powers, responsibilities and resources. They

Also wanted guarantees of regular and fair elections from the village to the national levels.

28.40 The principle of transparency and accountability of leaders was seen as especially important. It should act as a deterrent to violations of the Constitution being committed and ensure that appropriate action is promptly taken where violations do occur.

Politically aware and responsive military:

28.41 People were agreed in their views that the military should remain subject and subordinate to civilian control. To achieve that aim, it was seen by many as necessary that the military should be politically aware and sufficiently educated so that they are conscious of the dangers of both militarization of society and their being manipulated by unscrupulous leaders. Such awareness should assist them to fully respect the Constitution and limit their roles to the duties given to them by the Constitution.

Encouragement of strong civil and political organisations:

28.42 If there is to be a strong civil and political society which can act as an adequate counter - balance to the power of the State institutions, everything possible needs to be done to encourage the emergence of strong civil and political organisations. Such organisations are likely to emerge gradually as democracy and especially the freedom of association become fully understood and promoted and people become fully committed to the defence and enhancement of human rights and freedoms.

Strict limits on amending the Constitution:

28.43 The virtues of rigid as opposed to flexible constitutions were fully debated by people over the past four years. The vast majority supported the need for strict procedures on constitutional amendment. The new Constitution, having evolved from people's active participation, it should not be tampered with lightly. Rigid amendment procedures would ensure that constitutional amendments come only when they are really needed and have been carefully evaluated. In particular, they should also ensure that significant minority opinion is given careful consideration.

28.44 Having participated in the making of the new Constitution, people should be fully involved in the consideration of proposals 10 amend it. At the very least, there should be wide and extended public debate. In matters of major controversy, it may even be necessary to consult the people's representatives at lower levels (e.g. in district councils) or even to hold national referenda.

Popularising the Constitution and the Duty to defend it:

28.45 Few principles received as much Ctll11ment in people's views on safeguards as that of popularization of the Constitution. People felt they had learnt much through the four - years debate about the role of constitutions. They wanted to be assured they would never again be kept in ignorance on such issues. They wanted to be fully informed about and educated on the final contents of the new Constitution, so that they could understand it, and be aware when it is being threatened or violation.

28.46 It was also strongly suggested by many people that all citizens should have a duty to defend the Constitution. They should be encouraged to do all in their power to prevent its undemocratic overthrow and its violation in other ways. In order to carry out such a duty, every citizen, especially those of school age, should be taught the Constitution and the ways they are expected to use in defending it.

SECTION THREE: ANALYSIS OF PROPOSALS ON SAFEGUARDS AND RECOMMENDATIONS

28.47 In this section we evaluate and offer recommendations on those issues related to safeguards of the new Constitution on which we received substantive views and proposals from the people. Such issues include:

(a) processes for preparing and adopting the new Constitution;

(b) sovereignty of the people and supremacy of the Constitution;

(c) contents of the new Constitution with particular reference to distribution of power among State institutions;

(d) fostering a strong civil and political society;

(e) popularising the constitution;

(t) defence of the constitution by the people; and

(g) fostering political will to uphold, respect and defend the constitution.

Preparing and Adopting the New Constitution

28.48 The manner in which constitution is made can act as an important safeguard. Experience in many countries shows that constitutions made by one person or by narrow groups controlling national power do not last. As a Constitution concerns the government and rights of every person, every group and individual should have a right to be involved in deciding its contents. That participation is a vital first step in giving effect to the principle of popularization of the new Constitution and empowering people to defend it. Full popular participation in the making of a constitution should result in a people's constitution which will tend to command respect even from would-be dictators, who will be concerned at the prospect of strong opposition to any attempt to tamper with the people's wishes.

28.49 In this regard, it must be remembered that there are two main stages to the constitution-making process. The first has been the consultation with the people to produce draft Constitution. The second is the formal debate of the draft Constitution and adoption of the final version. The issue of safeguards needs to be borne in mind throughout the entire constitution-making process.

28.50 As discussed in Chapter One *(Methodology and Sources),* the Statute establishing the Uganda Constitutional Commission required it to develop a draft Constitution based on the consensus of views. That chapter also demonstrates the efforts the Commission has gone to in order to ensure the widest possible popular consultation. Among other things, that consultation sought to educate the people about constitutions and constitutionalism; elicit views from all sections of the people and to reconcile opposing positions with a view to developing a consensus; and ensure that the people generally both understood the constitutional issues and were committed to the views they submitted to the Commission.

28.51 It needs to be emphasized here that all people in Uganda were asked to 'contribute views and that the response was overwhelming. The search for a consensus was conducted in an open atmosphere, with a vigorous free press operating. No single social force was able to dominate or determine the agenda or the direction of the debate. The fullest range of ideas and proposals were discussed in the widest possible range of fora. The outcome, which is represented by our recommendations in this Report and the draft Constitution reflects the diversity and complexity of the views of all the people.

28.52 We believe that this Report all in the draft Constitution embody the aspirations, visions and political and social values of the people of Uganda in so far as we have been able to ascertain them. If the fil1al Constitution as adopted retains those basic principles and values, that factor alone should he a major contribution to the prospects of the new Constitution standing the test of time.

28.53 Recommendation

The people of Uganda should always be consulted and involved in any major constitutional process.

Debate and adoption of the new Constitution:

28.54 Having participated in the first process of evolving a draft Constitution, people want their full participation assured in the process of formal debate and final adoption of the new Constitution. This principle advanced by people's views has several important implications.

28.55 The first is that people should be given full opportunity to examine and comment upon the draft Constitution prepared by the Commission and the Commission's Report generally. Every effort should be made to ensure sufficient copies of both documents and possible translations in local languages and summaries of them made available to the people. This is the only way people can see how both documents reflect their views and aspirations. People should be able to contribute to public debate Oil the draft Constitution. They should be able to choose their representatives or delegates to debate the draft Constitution with ample knowledge of the draft Constitution.

28.56 The second implication is that the body to officially debate the draft Constitution should be as full representative of the people as possible. To this end, the Commission submitted an Interim Report to government in December 1991 concerning the official debate and adoption of the Constitution. We recommended in that Report a new body, the Constituent Assembly, composed mainly of directly elected delegates plus representatives of

some interest groups to carry out those roles on behalf of the people.

28.57 The third implication is that where the people's representatives in the Constituent Assembly cannot reach a reasonable degree of consensus on matters of controversy in the draft Constitution, the issue should be referred back to the people for a final decision. This can be done through a referendum. In this way, the people can be satisfied that decisions on all major issues concerning the contents of the new Constitution originate with them. We recommended so in the mentioned Interim Report.

28.58 The unprecedented degree of involvement of the people in the constitution making process to date has ensured that people generally believe that a democratic constitution can only emerge from themselves. We are convinced that this belief is the strongest safeguard of a national constitution. This belief once sustained and encouraged by proper action should in turn foster people's preparedness to later defend the Constitution.

Sovereignty of the People and Supremacy of the New Constitution

28.59 We have already discussed the closely related principles of sovereignty of the people and supremacy of the Constitution. They are the ultimate basis for all safeguards and so should themselves be enshrined in the Constitution.

28.60 As to sovereignty of the people, it is necessary that the principle be given due recognition not only by a bare statement but also by provisions that give it full effect. As to the bare statement, it should make it clear that state organs should not take to themselves powers which the Constitution does not clearly vest in them, for the people retain ultimate power. As to provisions which give effect to the principle, the powers of the people to recall elected representatives and the reference of matters of controversy to decisions of the people in referenda are important examples.

28.61 Turning to the question of supremacy of the Constitution, it must be clearly provided that the Constitution is superior to all other laws and customs, and that all acts of the executive and other governmental bodies must be consistent with it. As discussed in Chapter Sixteen *(Judiciary)*, the courts, and in particular the High Court, should be given responsibility for ruling on questions as to the interpretation and application of the Constitution. In doing so, the court will be determining whether or not the supremacy of the Constitution has been challenged, intentionally or otherwise. The courts should have clear powers to make rulings on the issues and to make orders preventing continuations of breaches and providing for other remedies where breaches. of the Constitution have occurred.

28.62 In carrying out their vitally important roles in relation to the Constitution, the law courts should seek to give full effect both to the spirit and the letter of the Constitution. In so doing, they will find the people's expressed concerns and the principles they have emphasized and contained in our Report particularly useful. This Report together with the documents containing the original submissions of the people should be made use of by the judiciary in aspects which concern it.

28.63 Recommendation

It should be enshrined in the Constitution that:-

(a) *All power of government is derived from the people of Uganda, who should be governed only through their will and consent.*

(b) *The State and its organs derive their power and authority from the Constitution, which in turn derives its authority from the people who consent to be governed under terms agreed on in the Constitution.*

(c) *The people should reserve to themselves all power and authority which they have not delegated to the State and its organs.*

(d) *The Constitution is the supreme law of Uganda which should be obeyed and upheld by all people and authorities in the country.*

(e) *If any law or custom does not conform to the Constitution, the Constitution should prevail, and the other law or custom should not apply to the extent that it does not conform to the Constitution.*

(j) *As recommended in Chapter Sixteen, the judiciary should have responsibility for interpretation and application of the Constitution, and this role should be clearly understood to require the courts to rule upon the constitutionality of acts of the legislature, the executive and other governmental bodies.*

(g) *In interpreting the new Constitution the Report of the Uganda Constitutional Commission should generally always be taken into account.*

28.65 Our recommendations in many chapters seek to distribute power widely, not only among' the traditional organs of government but also among new centres of power, both in the central government and at other levels. Further, our recommendations about the main organs of government (legislature, executive and judiciary) and other constitutional institutions (Electoral Commission, Human Rights Commission etc.) are intended to ensure that while every organ and institution enjoys an appropriate degree of independence and powers it is also subject to checks by other organs and institutions. The principle of checks and balances has been used to safeguard the new Constitution.

Contents of the New Constitution

28.64 The views submitted by the people show that they believe strongly that the contents of the new Constitution should safeguard it in many ways. Our recommendations in the chapters have sought to reflect these views. 'There is no need here to repeat the discussion and recommendations made elsewhere in the Report. It is, however, important to highlight the ways in which our recommendations are intended to contribute to the safeguarding of the new Constitution. We do so now by commenting briefly on some of our previous recommendations which have a direct bearing to safeguards.

Special Institutions for Protection of the Constitution

28.66 We have *sought* to foster political neutrality of important constitutional offices by special recommendations. They include proposals for financial independence and guaranteeing of resources to them and their protection from direction or control by any

authority or person. The constitutional offices and institutions we have recommended are powerful means of safeguarding the Constitution.

28.67 Among such institutions with special responsibilities in respect of protection of the Constitution, we have recommended a Human Rights Commission which would have a major responsibility in seeking to minimise violations of human rights and in dealing with those violations which do occur. The same emphasis has been put on the Inspectorate of Government and the Leadership Code of Conduct both of which have essential roles in promoting the highest standards of leadership which include adherence and commitment to the Constitution. In carrying out their major roles of promoting transparency and accountability of public leaders, they would be safeguarding the sacredness of the Constitution.

28.68 The Constitution can be effectively safeguarded by the President whose recommended oath clearly includes the duty to defend and abide by the Constitution. The entire judiciary under the Chief Justice is entrusted with the duty to safeguard the Constitution. The recommended National citizenship and Immigration Board, the Electoral Commission, the Judicial Service Commission, the Land Commission, the Uganda Audit Commission, the Public Service Commission and the Teaching Service Commission each has a duty to safeguard the aspects of the Constitution which are directly under their control.

28.69 Our recommendations on decentralisation and devolution as contained in Chapter Eighteen *(Local Government)* are based on the principle that a constitutionally entrenched system of local government creates strong centres of power at the local level. This can then act as effective checks on tendencies towards dictatorship and absolutism at the centre. Devolution of powers to elected bodies down to the village level has shown by the experience of the RC system to be a vitally important factor in promoting participatory democracy which people regard as essential to the safeguarding of the new Constitution.

28.70 A constitutionally guaranteed participatory democracy is so important to the safeguards of the Constitution. People who maintain a vital role in their own governance are much more likely to have a deep commitment to the constitutional order that provides them that role than people who see government as a remote authority. The Constitution becomes popularly understood and the object of their defence whenever they feel it is threatened. It is this principle of participatory democracy which led to recommendations giving people the power of recall of their representatives who perform u unsatisfactorily y and to the regulation of political parties.

28.71 One major general worry expressed in people's views was that the Armed Forces, unless strictly controlled, may any time decide to overthrow the constitutional order. Such a concern is very serious and supported by past experience. In our recommendations, we have emphasized the need to define the role of the Armed Forces and their subordination to civilian control. At the same time we have recommended the representation of the Army in parliament in order to integrate it in society. The recommendations in Chapter Fourteen *(The Army)* are all designed to domesticate it and imbue it with national values and aspirations which can only the achieved through a culture of constitutionalism.

28.72 Recommendation

The Constitution should provide that all security organs should at all times be answerable to the civilian authorities chosen or appointed in accordance with the Constitution.

Implementing the New Constitution

28.73 The recommendations we make in this Report go far beyond the contents of the Constitution. They include proposals for laws needed to implement the Constitution as well as other new and revised laws and policies. Some of the recommended implementing laws are so closely linked with the Constitution that unless they are passed soon after the adoption of the new Constitution, the Constitution will not take full effect. In the interests of safeguarding the Constitution, such laws should be passed as soon as possible after the new Constitution has come into effect. Important examples of such areas are our recommendations on the Electoral Commission, the direct election of the President, the regulation of the political parties and the full democratisation of the Movement. The Constituent Assembly should address the issue of taxing the time within which such laws which enable the Constitution to assume full powers should be passed.

28.74 A ;similar urgent action should be taken to make laws which give full effect to the institution of Inspectorate of Government, Code of Conduct, Human Rights Commission and others. Appointments to such institutions once passed should be done within reasonable time.

28.75 Recommendation

The new Constitution should require that the first appointments to major constitutional institutions and offices be made within six months of the constitution coming into effect.

28.76 We discussed the need to consider seriously the legal status of the implementing laws. We found examples of countries such as France and former French territories where laws which are closely connected with the Constitution are given a high degree of entrenchment. They are not easily changed or modified by a simple majority of members of Parliament. They are called "organic laws" because they are organically connected with the Constitution itself. We make no formal recommendation .on this issue but it is an area which demands serious reflection.

28.77 The promotion of autonomous civil organisations of women, youth, workers, farmers, . Professional and cultural and other groups which include political organisations has been identified as one of the powerful ways of safeguarding democracy and the Constitution. Such organisations and groups should always be conscious and responsible in protecting the constitutional order agreed upon by the nation generally. Groups should be formed for the promotion and safeguard of the various aspects of the Constitution. It-is only in this way that the new culture of constitutionalism can like root among the citizens of the country.

28.78 There is need to protect the role of the religious bodies and non-governmental pressure groups in creating awareness among the people and defending their constitutional rights. Such groups should also be empowered to bring action on behalf of individual persons, groups or communities whose rights are violated, but who are unable to defend themselves.

28.79 Recommendation

Any person or group of persons may petition the, relevant organs and institutions on behalf of any individual, group or community whose rights and freedoms are violated. The person or group lodging the petition need not have own interest or rights directly affected.

Defence of the Constitution by the People

28.80 The defence of the Constitution featured prominently in the views of the people. They want the duty of citizens to defend the Constitution to be specifically stated so that whoever attempts to abrogate or unlawfully modify it should be met with civil and passive disobedience. Many views also express the need for a provision empowering the people to forcibly remove whoever goes against the Constitution or attempts unlawfully to abrogate or modify it. There have also been suggestions that unlawful abrogation of the Constitution should be regarded and treated as high treason which should be severely punished. If the people are, for one reason or the other, powerless to resist or punish a person or group which unlawfully abrogates the Constitution, they should retain the right to punish whoever interferes with the observance of the Constitution when they have regained their power to do so.

28.81 The underlying principle here is that the people should reserve the right to resist the abrogation or unlawful changes to the Constitution. It follows that whoever takes part in any activities for resisting any person or group attempting to overthrow the Constitution should be absolved of any guilt and may be compensated for any punishment he or she may have suffered.

28.82 Recommendation

There should be constitutional provisions that:-

(a) It is prohibited for any person or group of persons to take control of the government of Uganda, unless it is in accordance with the provisions of the Constitution.

(b) It should be a treasonable offence for any person or group of persons to suspend or overthrow or abrogate the Constitution or any part of it unlawfully, or to attempt to do any such acts. Any such an act or attempt should be severely punished.

(c) Where a person or group of persons succeed in forcibly and unlawfully interrupting the observance of the Constitution, the observance of the Constitution should be re-established as soon as people are ill a position to restore the Constitution and all those who took part or willingly assisted in interrupting the observance of the Constitution should be punished in accordance with the provisions of the Constitution and other laws made under it.

(d) All citizens of Uganda should have the right and duty:

(i) to defend the Constitution in general, and to resist any person or group of persons seeking to subvert or overthrow the constitutional order; and

(ii) to do all in their power to restore the Constitution after it has been unlawfully suspended, overthrown or abrogated.

(e) Any person who resists the unlawful suspension, overthrow or abrogation of the Constitution should be considered blameless before the law, and if he or she suffers any punishment or loss as a result of such a resistance he or she should be entitled to reasonable compensation when the constitutional order is restored.

Military Training

28.83 People have been articulate in their demand to demystify the gun. Oppressive military regimes have taught a lesson Jo people to know the techniques and skills of self-protection. The current military training courses have popularised the need to acquire military skills. Such skills can be used to defend the constitutional order.

28.84 Recommendation

All able-bodied Ugandans of adult age should be given military training.

Popularising the new Constitution

28.85 In the last analysis, it is the people themselves who can effectively safeguard their Constitution. In order to be able to do that they need to be empowered with political knowledge, patriotism and mechanisms to decide on their governance. The Constitution should be translated into their local languages and made available to them. Conscientisation courses should be given on the Constitution to awaken their obligation to defend it.

28.86 Recommendation

There is need to constantly educate the people to know the provisions of the Constitution, and their rights and duties.

A free press:

28.87 A free and vigorous press has an important role to play in informing people of their rights and obligations. It acts as a barometer of public opinion. In exposing wrong-doings, including the violation of the Constitution by individuals, groups or organs of State, it arouses interest and determination in people to defend the Constitution. A press, however, which is not free or responsible may be used to destroy the established democratic order.

28.88 Recommendation

There should be an independent, responsible and free press in Uganda, subject only to those *restrictions which are necessary in a free and democratic society.*

Study of the Constitution:

28.89 The need for political education which includes the study of the Constitution, human rights and democracy has been emphasised in many views. Many people feel- that the Constitution should make such study obligatory in all educational institutions, from primary schools to institutions of higher learning.

28.90 Recommendation

Human rights education and a culture of constitutionalism should be actively promoted in all institutions and made part of the curriculum at all levels of education.

Language of the Constitution:

28.91 Many people are of the view that the new Constitution should be written in a language which is easy to understand. They believe that this will make it easy for the ordinary person to understand his or her constitutional rights and obligations. This makes it easier for them to protect the Constitution. The Uganda Constitutional Commission has endeavored to answer the wishes of the people by producing a draft Constitution which is in as simple a language as can be possible in a document of this nature.

The Political Will to Respect, Uphold and Defend the Constitution

28.92 The making of a Constitution is one thing, but the political will to respect, uphold and defend it is another. The experience of Africa and Uganda in particular shows that constitutions are overthrown by political leaders or the security forces or a combination Of both when they feel that the constitutions stand in the way of realising their ambitions arid interests, or g~ way of settling political disputes when the normal procedures appear bothersome or unlikely to favour them. The safeguards against politicians and security forces overthrowing the new Constitution should be the manner of choosing and checking" on political leaders and the method of selecting training, motivating and controlling members of the security forces. It also depends a great deal on the building of a culture of constitutionalism and the rule of law in Uganda.

28.93 Recommendation

There must be a conscious effort by al/ organs of State, institutions and individuals promote and develop a culture of constitutionalism and the rule of law in Uganda.

28.94 Many people were emphatic in their views that should the people be unable for one reason or the other to stop their Constitution from being abrogated or unlawfully -suspended and where they have no power to restore democracy, then they must look beyond their borders for help. They have suggested that in such a hopeless situation, there should be a right to seek assistance from international and regional bodies like. The OAU, the Commonwealth, the UN, the International Court of Justice or any friendly country, -to restore democracy and restore constitutions order.

28.95 We sympathise with the sentiIll~llts h~hilld the above suggestions, but we have to point out that there are legal and procedural difficulties that m:IY not permit direct intervention by international organisations or b()lli~s. Tile best that the international organisation or community can do may be to apply diplomatic pressure. It is, therefore, doubtful whether a constitutional provision empowering the citizens to appeal to international organisations and bodies can be tl1forceable. Such :lJlpC;i!, Illlwevt:r, puts pressure on government from the foreign press and public opinioll. ıı ı Ihis way it m:IY be effective.

28.96 Bearing in miml the expt:ril:llcc or \.'llilstitution:t! history in this country, we agree in principle with the people that they should have a right of appeal to the international community, especially where Illassivl: vio!:itioll of human rights is involved, in case they feel powedess to do anything by themselvl:s.

28.97 Recommendation

Any individual, group or cOI71multity should be free to have access to regional, continental and intematioltal iltstitlltiolts dealiltg with breaches of humall rights and freedoms if it is impossible to get justice ill the COIll/tIY.

SECTION FOUR: ANALYSIS OF PROI'()~i\LS ON AMENDMENT AND RECOMMENDATIONS

28.98 The procedure for amending a Constitution is an important safeguard for the Constitution. The procedure may be rigid or flexible. It is rigid if it makes it difficult to alter the Constitution and flexible ir it m,i!(l:s it l::lsy to change the Constitution. Sinte a Constitution is the basic decision of a people Ull how they wish to live together and on which their system of governance is foullded, il Sllllli!d command a high degree of permanence and sanctity. Yet society is in a perpdual slatl: or motion and change. The Constitution must keep abreast the changing socio-political cOllditions of the country. This can be achieved through judicial interpretation but mor~ importalltly through amendment procedures. his, therefore, necessary for the Constilutioll to provide realistic provisions for its amendment which can adequately cater for cOllstitutiollal st:lbility and for the necessary changes.

28.99 Owing to the experience the people of Ugailda have gone through in the last 30 years, they strongly expressed in their views that they would like to see more constitutional stability and steady constitutional development ill the future. Most of them have expressed a preference for a rigid Conslitution which C:lI1llot be amended by one person or a small group of people without the consent of tht: majority of the people. The people no longer wish to see hasty or too frequent amendmellts of their basic law.

28.100 The major reasons given in people's views for preferring a rigid Constitution inclu~ed the following:

(a) a Constitution which is easily allK.! fl:~qliellily amended loses the sense of sacredness and the respect due to it;

(b) frequent chal~ges in the COlnstitlilioll usually bring political and constitutional instability;

(c) a flexible Constitution usually undermines the growth of a culture of constitutionalism since such a Constitution cannot ilL: usefully studied in schools due to frequent changes;

(d) once people are not assured th:tt the principles under which they have chosen to be governed will remain int:lct, thL:Y :Ire likely to lose interest in their Constitut on.

28.101 Therefore, it is not surprISing Ih;11 thl: majority of people proposed that the Constitution should be amended through ;(n:llional referendum. Others proposed that the alterations should be effected by a two-thirds m:ljority of Parliament with the approval of twothirds of the District Councils. Some pellple were satisfied with only two-thirds majority of Parliament. There were also propos:t1s for periodic review of the Constitution after a specified period of between 1 () to 25 ye:trs. They were virtually no views recommending the extreme positions that the provisions of the Constitution should be unalterable or that they should be amended by a simple m:tjority in Parliament.

28.102 We agree with the views of the people that Parliament should have power to amend the Constitution but Ih:)t the prt)cedure for amending the Constitution should be rigid. Constitutionalism can better be secured if the procedure for amending the Constitution is made more demanding than for ordinary legislation. Secondly, since the people have participated in making the new Constitution which ret1ects their values, wishes, interests and aspirations, it should not be ch:mged without consulting them. They should continue to be involved in the evolution, growth ami development of the Constitution. Thirdly, there is a need to take the greatest care ami serious consideration before amendments to the Constitution are made. They should not be effected merely to meet political expediency. Proposals for amendment should be published and the puhlic given adequate opportunity to debate them.

28.103 Recommendations

Parliament should have power to amend the Constitution by way of addition, vanation ***or*** *repeal, according to the procedure laid dOWIl in the Constitution.*

Amendment by Referendum

28.104 We accept in principle that the procedure for amel'1ding the new Constitution should be rigid in order to promote a culture of constitutionalism, to protect the supremacy of the Constitution, and to s:tfeguard the sovereignty of the people and the stability of the country.

28.105 Amendment by referendum would satisfy the above objectives and it would provide one of the highest forms of rigidity or el1trenchm~nt. It would ensure that amendments receive the popular approval of the population. However we think that submitting every proposed amendment to a referendum may be too cumbersome and expensive, and it may even be too difficult to obtain popular approval of desiled constitutional charyges. This procedure, therefore, ~hould be restricted ıı ı a feW' I1'lOst fundamental or controversial provisions of which the people SIHlllllll"l1ave the final say. These include provisions on the supremacy of the Constitutillnand· lhe Plllit,ical system. The provisions declaring the supremacy of the Constitution ar(!.. tile fllundatiol1 of constitutionalism and the entire constitutional order. They are basic to tile character and status of the Constitution and should

not be altered without the consent of the people.

28.106 The provisions on the political system the basic to the new political order. They have been the most hotly debated and they have serious implications for the democratic governance' of the country. The people should have the ultimate power to decide on how they should be governed.

28.107 Recommendation

The following provisions in the Constitution should not be amended unless the proposed amendment has been approved by a national referendum:-

(a) provision on the supremacy of the Constitution;

(b) provisions on referendum Oil political system;

(c) provisions prohibiting and -party state.

Amendments Requiring Approval of District Councils

28.108 People in their views emphasised another method of involving the people in the amendment of the Constitution by requiring, approval or consent of the District Councils after Parliament has passed the amendments. Through this method the people in the districts being represented by their local leaders share with the national Parliament the responsibility of effecting fundamental changes in the Constitution. It is a procedure which is common in federal constitutions. It promotes national acceptance of amendments and may also protect minorities. We agree with this method which can greatly promote national unity while at the same time adequately catering for our diversity.

28.109 The provisions which should be governed by this method of amendment include those guaranteeing the people their sovereignty, and those providing for the defence of the Constitution. The people should be involved in the alteration of these provisions to prevent the government of the day disregarding the Constitution or the people. The provisions describing the character of the State of Uganda, its form of government, its districts, capital and official language should not be amended without the approval of the districts because they have an interest in these provisions which affect their well-being. Other provisions which should require, approval of districts include those on human rights and freedoms, representation of the people, the executive, the National Council of State, the judiciary, local government, defence and national security, taxation, traditional leaders, and amendment of the Constitution.

28.110 Recommendation

Provisions in the Constitution relating to the following matters should not be amended unless a Bill seeking to amend any of them has been passed by a vote of not less than two thirds majority of all members of parliament and it has been ratified by the District Councils of at least two-thirds of the districts of Uganda:

(a) the sovereignty of the people;

(b) the defence of the Constitution;

(c) representation of the people - establishment and independence of the Electoral Commission and the right to vote;

(d) the Republic - form of government;

(e) the boundaries of district;

(f) the territorial boundaries;

(g) the Capital of Uganda;

(h) executive authority of Uganda;

(i) election of the Preside lit;

(j) term of office of the President;

(k) removal of President;

(1) declaration of war;

(m) emergency powers of the president;

(n) the National Council of State;

(0) human tights;

(p) Local Government system;

(q) authority to raise armed forces;

(r) taxation;

(s) *amendment of the Constitution;*

Amendment by Absolute Majority

28.111 Most of the provisions of the Constitution should be capable of being amended by Parliament alone provided the prescribed majority is realised. There would be provisions which deal mainly with the structural formation of the state institutions and not the foundation, or human social values of the socio-political order. A special majority of two thirds of all members of Parliament should he required to pass a constitutional amendment. Such amendments, however, should not be done in a hurry. People should be informed of any proposed amendment and allowed time to discuss it through the media and offer their

views to their elected members of Parliament.

28.112 Recommendation

A Bill for an Act of Parliament to amend any provision of the Constitution other than those requiring referendum or approval by District Councils should not be passed unless it is supported by at least two-thirds of all the members of Parliament.

Certificate of Compliance:

28.113 It is necessary that before the President assents to a Bill amending the Constitution, there i~ evidence that the stringent procedure set out in the Constitution has been complied with. The Speaker should certify that Parliament has complied with the requirements and the Chairman of the Electoral Commission should certify compliance with the requirements for referendum and District Councils.

28.114 Recommendation

A Bill for amendment of the Constitution should be assented to by the President only if the Speaker of Parliament or the Chairman of the Electoral Commission have certified compliance with relevant provisions of the Constitution concerning the passing or approval of the amendments.

28.115 In order to provide a culture of constitutionalism and give effect to the recommendations we have made in this chapter, including the duty of citizens to defend the Constitution, and to include the study of the Constitution in the education curriculum, it -is necessary that regular reviews of the Constitution, which include updated amendments, should be made available to people.

28.116 Once the new Constitution is finally adopted, then the important duty of all the people of Uganda and in particular of the leaders will be to know and respect it, safeguard and defend it for lasting stability, peace and democracy in Uganda.

CONCLUSION

SUMMARY OF RECOMMENDATIONS

This section brings together the guiding principles and observations contained in the introductory chapters of the Report which assisted the Commission in assessing constitutional issues. It also gives the summary of recommendations found in all the chapters of the Report. These recommendations are the basis for the draft Constitution we have submitted to government. Other recommendations which are not included in the draft Constitution are to be used in amending existing laws in accordance with the new constitution and in making new laws required to give effect to the provisions of the new Constitution. For easy reference we give the paragraph reference number in brackets and italics at the end of each guiding principle and recommendation.

GUIDING PRINCIPLES AND OBSERVATIONS

CHAPTER TWO: HISTORICAL BACKGROUND

1. From this historical background, we can make observations about the nature of our past problems which should be borne in mind in the current constitution-making process:

   (a) Uganda's political development has been characterized by authoritarianism dating from the pre-colonial period and continuing through colonialism and Independence, in spite of attempts to establish democratic structures.

   (b) There are groups whose political behaviors have been historically determined and these groups tend to look on all political and constitutional developments, including the current constitution-making process, as exercises in power sharing or in monopolising power.

   (c) In the absence of viable political institutions which can successfully mediate between them, groups have always tried and in many cases have succeeded in capturing supposedly national institutions such as parties, legislatures, and security forces mainly to serve their own interests.

   (d) Whenever groups are in positions of strength, they tend to ignore the formally established constitutional rules and attempt to dictate terms which inevitably provoke negative reactions, culminating in instability - *coups d'etat,* civil war and other forms of conflict.

   (e) Uganda is characterised by conflicting political and cultural traditions ranging from monarchism, authoritarianism, and liberalism, but lacks a culture of constitutionalism.

   (t) Uganda has been adversely affected by ethno-religious conflicts which have usually led to sectarianism (ll1d closed communities.

   (g) There is no consensus over national political values to sustain political institutions.

   (h) There are perceived "historic injustices" among some groups, "injustices"

which may need to be seen to be set right if such groups are to feel committed to any long term constitutional settlement. (2.60)

2. A new Uganda constitutional order should take into account the following observations about future directions based on its historical background:

3 (a) The Constitution should provide institutional mechanisms for strengthening national unity taking into account the cultural, religious, regional, gender, class, age and physical diversities of Uganda peoples.

(b) While taking into account Uganda's social, cultural and political diversities, the Constitution should transcend interests of narrow groups.

(c) The Constitution should identify those residual Ugandan values which can serve as firm foundations for the new Constitution.

(d) The new Constitution should make institutional provisions for setting perceived historic injustices right.

(e) There should be efforts to provide for such a balance of forces that no one single socio-political force or institutional structure can manipulate such resources as it has to subvert the Constitution and dominate other groups and structures.

(t) (i) The new Constitutional order should positively come to terms with Uganda's past and present and respond to its aspirations for the future. (2. 61)

(g) A new Constitutional order should ensure that institutional structures are viable, coherent and integrated to promote a culture of constitutionalism and ultimate socio-economic and political objectives which guide future development.

(h) . There should be institutional mechanisms for ensuring transfer of power by peaceful and democratic means.

Since the NRM assumed power, institutional frameworks have been established and appear to be gaining legitimacy. There should be serious evaluation of these to see the extent to which they may be integrated into the new Constitutional order.

CHAPTER THREE: GEO-POLITICAL AND SOCIO-ECONOMIC BACKGROUND

3. The constitution-making process should and has taken into account geo-political and socio-economic features of Uganda. Important features which influence nation building and the establishment of systems and institutions need to be considered in framing the new Constitution:

(a) Uganda is small and landlocked, surrounded by potentially powerful neighbors and contains the source of the Nile. This geographical position is sensitive and vulnerable. To safeguard sovereignty, the new Constitution should provide for adequate self-defence policies.

(b)

(c) Government needs to develop a policy of regional cooperation.

Ethnic and religious diversity are dominant features of Ugandan society. This diversity is not incompatible with national aspirations and nation-building and can be a basis for the gradual emergence of a strong nation. Throughout history, nations and empires, have been formed out of social diversity. The present tribes of Uganda were trans-ethnic political and social entities before colonialism. Societies become cohesive or divided depending on the

Politics of those who lead them.

(d) The institutions and systems of governance that we evolve must be sensitive to this diversity. For governance to gain legitimacy, all social groups must feel they belong to and are involved in it. The new Constitution must ensure social participation. Differing social perceptions of governance must be accommodated. The peculiarities of communities should not be suppressed as long as they do not go counter to the essential principles of democracy and human rights.

(e) The principle of decentralizing political and economic decision-making to local communities should guide the new Constitution. Under the present constitutional arrangement the destinies of the people are determined by a hierarchical and highly centralised power apparatus. This should end. Great societies such as the Soviet Union and Yugoslavia have broken up in part at least because the centre wielded too much power insensitively.

(f) The Constitution should provide an institutional and policy framework that facilitates the exploitation of Uganda's rich economic potential. Safeguards must be put in place to ensure population and ecological balance.

(g) The country is destined to industrialize. History shows that industrialization can have negative effects. Mechanization of agriculture can dispossess and impoverish peasants. There are others. Steps should be taken to counteract them. Economic development must be people-centred. The people must be capacitated to exercise the real power of decision-making and to be actively involved in all aspects of development.

(h) The people must be protected against usurpation of their rights and powers by the State, State agencies, developers or through such organisations as a State-controlled co-operative movement and trade unions. These latter should be freed from State manipulation and unnecessary bureaucratic regulation, so that they can emerge as autonomous associations of working people who come together to assert their specific interests.

(i) The rising problem of urban poverty and general destitution in the urban areas must be addressed. We should not allow it to grow into an "inner city/town" problem, which could explode into riots or other expressions of protest against bad living conditions. The distribution of wealth must also be addressed. We must avoid situations as in Latin America where 3 percent of the population own about 99 percent of the land and property.

(j) The historical economic imbalances, between the rural and urban areas and also between the regions should be redressed.

(k) Indigenous enterprise is still weak. There is need for continued, but rationalised, State direction and participation in the economy. (3.73)

CHAPTER FIVE-= NEED AND OBJECTIVES FOR A NEW CONSTITUTION

4. Guiding Observations

(a) Only by establishing the principle of constitutionalism can peace and progress be assured.

(b) We need a new Constitution to which people have sufficient commitment to enable it to effectively control political action, governments and governed and to domesticate major political and socio-economic crises. (5.17)

5. Our analysis has assisted us to draw conclusions and develop principles relevant to the making of a new Constitution.

3.

(a) The Independence Constitution of 1962, while appreciated by some, is not likely to adequately respond to the present aspirations of Ugandans.

(b) There are certain principles from the 1962 Constitution which should guide the new Constitution:

(i) The principle that a good Constitution is a product of compromise which, albeit to a limited extent, shaped the independence Constitution, is an important guiding principle for the current process;

(ii) The principle of decentralisation of governance which underlies the "federal" arrangement established by the 1962 Constitution should guide the establishment of real democratic governance under the new Constitution; and

(iii) Human rights and social justice inadequately provided for in the 1962 Constitution must be central concerns and shape central components in the new constitutional order. (5.26) The rationalization of the executive, particularly the fusion of the presidency and the prime minister ship;

6.

6. The 1967 Constitution, whether in its original or variously amended forms, cannot provide a basis for lasting stability and development. However, there are some aspects which should be taken into account in the new Constitution:

(a) The principle of broad-based power sharing both at the level of national government and in the form of popular participation in the Uganda National Liberation Front (UNLF) government and the National Resistance Movement (NRM) government, which has been identified by many people as a mechanism that could end the endless power struggles that Uganda has experienced; and

(b) The provisions relating to the control of the armed forces, appended to Prodamation Legal Notice No.1 of 1986, which provide a basis on which the armed forces, which in the past have caused untold suffering, can be domesticated. (5.32)

7. On the basis of people's views and our discussion in this section, we conclude that the new Constitution should pursue the following objectives:

(a) establishing a firm basis for peace and stability;
(b) sovereignty of the people;
(c) consensus politics as the basis for decision-making;
(d) a free and democratic system of governance;
(e) a decentralized system of governance based on popular participation;
(t) regular, fret; and fair elections;
(g) public accountability of leaders;
(h) separation of powers and checks and balances as the basis of government;
(i) independence of the judiciary and effective administration of justice;
(j) protection 1of the security and dignity of the individual and groups and of other human rights
(k) promotion and consolidation of national unity and national consciousness;
(l) promotion of socio-economic development;
(m) national independence and territorial integrity; and
(n) fostering regional, African and international co-operation. (5.72)

7.

SUMMARY OF RECOMMENDATIONS

CHAPTER FOUR: NATION-BUILDING PROCESS, COMMON VALUES AND NATIONAL LANGUAGE

1. National Language

Major languages in Uganda should be promoted. In the court of time one or more of them will emerge as the National Language. English should remain the official language. (4.27)

2. Equitable Allocation of Resources Through Democratic Institutions

(a) Provisions should be made for ensuring that resources are equitably allocated in order to wipe out perceived or real injustices entertained by some groups.

(b) The Constitution should nurture and promote a culture of mutual appreciation and tolerance at all levels.

(c) Constitutional provisions should be made for promoting a positive ethos among leaders.

(d) Education is one of the critical instruments for nation-building and should be so constitutionally defined to assist in attaining its objective.

(e) Whilst values and symbols of Ugandan diverse cultures should be respected, there should be respect for national symbols and efforts should be made to cultivate "national" values that may promote nation-building.

(f) Human rights and freedom of expression should be promoted and enshrined in the constitution and made to enhance the nation-building process.

(g) Constitutional provisions, defining the family as one of the basic units for providing the nation-building process, should be made with particular regard to the sanctity and rights of the family, rights and obligations of children. (4.47)

CHAPTER FIVE: NEED AND OBJECTIVES FOR THE NEW CONSTITUTION

3. (a) National objectives and directive principles of state policy which are consistent with the recommendations in the following~ chapters should be included in the draft Constitution in respect of the following matters:

i) sovereignty of the people;
ii) a state based on democratic principles;
iii) national unity and stability;
iv) national sovereignty, independence and territorial integrity;
v) defence of fundamental rights and freedoms;
vi) protection of the family;
vii) protection of the rights of women;
viii) Protection of rights of widows;
ix) protection of the disabled;
x) protection of the aged;
xi) promotion of a culture of constitutionalism;
xii) accountability of leaders to the people;
xiii) recognition of the right to development;
xiv) Involvement of the people in development;
xv) positive role of the State in development;
xvi) balanced and equitable development;

(xvii) Sovereignty over natural resources;

(xviii) international and regional co-operation;

(xix) rights to education

(xx) rights top health services;

(xxi) rights to clean and safe water

(xxxii) rights to decent housing

(xxiii) provision of pensions and retirement benefits;

(xxiv) ensuring food security and nutrition;

(xxv) machinery to deal with natural disasters;

(xxvi) development of cultural and customary values

(xxvii) preservation of Uganda's heritage;

(xxviii) protection of the environment;
(xxix) promotion of environmental awareness
(xxx) sound foreign policy objectives; and
(xxxi) establishing duties of a citizen.

b) The national objectives and directives principles of state policy should guide all government bodies and citizens. In particular the judiciary should be guided by them in applying or interpreting the constitution and other laws. Government bodies should be guided by them in their policy decisions.

c) The inspectorate of Government should monitor government's conformity with these objectives.

d) The president should make an annual report to parliament and to the people on steps taken to realize the national objectives and principles.

e) Civil organisations should ensure that there is a planned and gradual realisation of these objectives.(5.80)

CHAPTER SIX: CITIZENSHIP

4.Citizens of Uganda by Birth, Descent and Registration

The following persons persons should be recognized as citizens of Uganda:

(a) Every person who, on the commencement of this Constitution, is a citizen of Uganda by birth or by registration

(b) Every person born in Uganda whose parents or grand parents are or were members of any of the indigenous communities living within the borders of Uganda as of 1st February, 1926 and the off spring of such person;

(c) Every person born in Uganda after the commencement of the new Constitution one of whose parents or grandparents is or was a citizen of Uganda;

(d) Every person born outside Uganda before or after the commencement of the new constitution one of whose parents or grandparents is or was a citizen of Uganda at the time of his birth

(e) Every person legally and lawfully registered as a citizen of Uganda after the commencement of the new Constitution.

(f) Every person who after the commencement of the new Constitution is entitled to apply for citizenship and is duly registered as a citizen;

(g) A woman married to a Uganda citizen is entitled to become citizen on application;

(h) A man married to a Ugandan citizen is equally entitled to become citizen on application, provided he has an intention to permanently reside in Uganda;

(i) A person below the age of. eighteen whose father or mother acquires Citizenship of Uganda by registration IS by the Virtue of that acquisition a citizen of Uganda;

(j) A person, below the age of eighteen, who at the coming into force of the new Constitution is a person whose father or mother acquired citizenship of Uganda under the law then in force, is a citizen by virtue of that acquisition. (6.56)

5. **Role of Parliament**

(a) Parliament may make provision for the acquisition of citizenship of Uganda by. persons who are not eligible or who are no longer eligible to become Citizens of Uganda under the provisions of the Constitution.

(b) Parliament may also make provision for giving preferential treatment to citizens of neighbouring countries and citizens of those countries which are members of any international organisation to which Uganda is a member or with which Uganda is in association, on a reciprocal basis.(6.58)

6. Dual Citizenship

The new Constitution should reject dual citizenship. (6.69)

7. National Citizenship Card

A national citizenship card should be instituted and issued under law to every Ugandan citizen as formal proof of identity.(6.71)

8. The Right to Passport

(a) Every Ugandan citizen should have a right to a passport to move freely out of and enter Uganda as he or she wishes.

(b) The process of issuing passports should be simplified so as to cater for all Ugandans without any discrimination.

(c) The passport control office should be decentralised to the districts for easy access and speedy delivery.

(d) Corruption and inefficiency should be thoroughly eliminated from the passport control offices.

(e) The information concerning application for passports and the forms for new or renewal of passports should be made available 10 the languages the majority of people understand. (6.73)

9. **Recommendations on Conditions and Requirements for Registration as Citizen**

(a) The minimum age for application for registration as a citizen should be eighteen years of age.

(b) The minimum period of continual residence in Uganda before a non-citizen can apply for registration should be five years.

(c) The applicant should be able to speak and understand either the official language or the national language or one of the indigenous languages in the country.

(d) An applicant for registration should be:

(i) of good character, law-abiding, cooperative with local people;
(ii) of sound mind; and
(iii) able to contribute to the development of self, family and the nation.

(e) Any person, who has been proved guilty of treason or has a criminal record or has behaved in a manner which is detrimental to the interest of Uganda should not be granted registered citizenship.

(t) The candidate applying for citizenship should have the recommendation and signatures from at least five members of the resistance council I executive (RC where he or she resides and where he or she works.

(g) On being granted citizenship the applicant should make an oath of allegiance to the country, its Constitution and laws. (6.76)

10. **Citizenship for Husbands, Wives and Adopted Children**

(a) The same laws and procedures through which a foreign woman married to a Ugandan husband receives citizenship on application should apply to a foreign man married to a Ugandan wife.

(b) Similarly a foreign child legally adopted by a Ugandan guardian or guardians shall be granted citizenship automatically when he or she reaches the age of 18.(6.78)

11. **The Body to Process and Approve Applications for Citizenship**

(a) A body to be known as the National Citizenship and Immigration Board should be established for the processing and approval of registration of citizenship applications, and control of immigration.

(b) The Board should consist of not less than seven members known for their high integrity and administrative skills. They should be appointed by the President for a term of five years which can be renewed. The Chairman should be an outstanding Ugandan with proven experience in public affairs and the Chief Immigration Officer should be secretary to the Board,

(c) The duties of the Board should include among others:

12. Necessary Education

13.

One of the duties of the state should be the education of all Ugandans as to the meaning of citizenship and related issues as found, in our law and the international laws and conventions.(6.83)

14.The Law on Refugees

Uganda's laws on Refugees should be amended to correspond to the UN Definition of a refugee and also to include peoples from other countries in addition to those from Rwanda, Burundi, Zaire and Sudan. *(6.90)*

14. **Stateless Persons and New Attitudes**

8.

(a) The new laws of Uganda should give a permanent solution to the stateless persons who may be found in the country.

(b) People must be fully educated to desist from considering and suspecting Uganda citizens to be foreigners and from making any derogatory remarks to that effect.

c) The attitude among some Ugandans which marginalizes Ugandan citizens who live at the orders and share a cultural heritage with tribes across the borders should be fully eliminated by education.

(d) Ugandans of Rwandese origin and culture have the same right to their language and culture within Uganda as any other indigenous tribe of Uganda. (6. 98)

15. Aliens/Immigrant"

a) Uganda, just like all other countries, is bound to admit aliens in accordance with the laws and conditions set for admission.

(b) An alien should come to Uganda legally and lawfully and be duly registered as such at the border entry points.

(c) An alien should be subject to the Constitution and laws of Uganda. Uganda has the right to Reserve certain rights, such as voting, ownership of land, etc, to citizens only.

(d) Aliens have an obligation to pay all taxes unless they are in the diplomatic service.

(e) Aliens should be exempted from service in the Armed Forces. During war, however, they can temporarily be co-opted to serve in the local police force.

(f) An alien has a right of protection by -his or her national State, although the latter is not duty bound to exercise it.

(g) An alien's vested rights should be protected by his or her country of residence. This, however, does not- prevent Uganda from passing laws which meet the international standards, but give special advantages to the citizens.

(h) An alien owes temporary allegiance and obedience to the state of Uganda and may be charged with treason.

(i) A State in which an alien resides should have the power to expel or deport him/her. The grounds for such action, however, and the manner in which it is done must not only be just and humane but also seen to be so.

An alien should not be deported to a country where his or her person or freedom would be endangered because of his or her race, religion, nationality, political views or other *grounds.(6.100)*

16. Recommendations on Special Categories of Refugees and Immigrants

(a) Refugees who have lived in Uganda for a minimum of twenty years and wish td become Ugandan citizens, should on application, be granted citizenship.

(b) Every person who has legally and voluntarily migrated to Uganda and has been living in Uganda continually for at least the last twenty years should, on application, be granted citizenship.

(c) For the smooth implementation of this process all non-citizens of the above two categories should be required to register with their RC.1and RC.2 Chairmen, and should receive the registration application forms from the RC.2 Chairman.

(d) Government may require each applicant for registration to be recommended by not less than 5 members of the Re.1 where the applicant was born and brought up.

Government should ensure that this exercise is undertaken efficiently and completed within one year after the commencement of the new Constitution.

(1) **In** order to put into effect the recommendations above, it is necessary that government amends the Control of Alien Refugees Act, Cap. 64, which carries provisions to the effect that the period spent in Uganda as refugee does not constitute "residence" in Uganda.

(g) Once registered as citizens, those refugees living in special settlements should be free to settle anywhere in Uganda with the assistance of both central and local government.

(h) On being registered as citizens, the former refugees and immigrants should officially renounce the citizenship of their country of origin ·and take a public oath of allegiance to Uganda. (6. *104)*

17. Action on Those Who May Have Obtained Citizenship Illegally

(a) Those refugees and immigrants who may have obtained Ugandan citizenship or passports illegally should be required to re-apply for citizenship through the official channels once they fulfill the conditions contained in the previous recommendations.

(b) Government should declare an amnesty for a specific period which should prevent or nullify prosecution of those who voluntarily apply anew for registration.

(c) New immigration laws should provide serious penalties for anyone who attempts to receive or actually receives citizenship illegally or through doubtful means. (6.107)

18. On Special Settlement for Refugees

(a) The Commission recommends a healthy and positive attitude on the part of all Ugandans toward refugees, an. appreciation of their situation and contribution and social interaction with them as fellow human beings whose dignity and human rights should be protected and upheld.

(b) The office of UNHCR should have a policy to identify refugees and, together with government, to provide them with identity cards and keep an accurate record of their numbers.

The refugees who wish to live, in special settlements should be free to do so. Those who wish to settle among the population should be facilitated to do so through the cooperation and negotiation of government, UNHCR office and the leaders of the local *population. (6.110)*

19. Duties of Citizens

(a) The following patriotic duties should apply so that every citizen shall be duty bound;

(i) to love the country as his or her motherland, to be loyal to it and to promote its good image and wellbeing;

(ii) to honour and respect the country, its special official symbols and to protect and defend public property;
to work unceasingly for peace and national unity; and
to defend the nation at all times and to undertake military or national service in accordance with the laws.

(b) The following democratic duties should apply so that every citizen shall be duty bound:

i) to uphold and defend the Constitution and the just laws of the country; to
ii) participate in governance, promote democracy and the rule of law;
iii) to respect and promote the rights of others;
iv) to register for voting; and
(v) to accept to serve on the jury when called upon.

(c) The following developmental duties should apply, so that every citizen shall be duty bound:

(i) to engage in gainful employment for the development of self, family, common good and the nation as a whole;
(ii) to pay all taxes required by the laws of the country;
(iii) to promote social justice and participate in community service programmes and projects;
(iv) to protect and restore the environment and prevent any unwholesome interference with or destruction of the country's ecosystems.

20. The duties of citizens should form part of the civic, social, cultural and political education in the school curriculum at all levels. They should also be taught and explained to people of all levels using the methods most appropriate to each section of society.(6.112)

CHAPTER SEVEN: FUNDAMENTAL RIGHTS AND FREEDOMS

21. The Bill of Rights in the New Constitution

(a) General provision on recognition, enforcement and enjoyment of rights:

(i) All the fundamental rights and freedoms of individuals and groups as contained in the new Constitution must be respected, defended and

promoted by the State, all its organs and agents, all public and private Institutions and all groups and individuals.

(ii) The rights and freedoms contained in the new Constitution should be enforceable by the courts of law at all levels, and other institutions and organs provided for in the new Constitution.

(iii) In the enjoyment of the rights and. freedoms as contained in the Constitution no person should prejudice the rights and freedoms of others or the public interest.

(b) Freedom from discrimination:

No person should be discriminated against in the enjoyment of his or her rights and freedoms or in any way on the grounds of gender, race, colour, ethnic origin, religion, political opinion, social or economic status or any other ground.

(c) Right to equality:

Men and women should be equal before the law in all spheres of political, economic, social, educational, cultural and other public areas of life and all laws, customs and traditions opposed to equality are to be made unconstitutional.

(d) Basic rights and freedoms:

Every person should enjoy the fundamental rights and freedoms of the individual namely:

(i) the rights to life, liberty, dignity, respect, equality, security of person and of property and the equal protection of the law; and

(ii) the freedom of conscience and thought, of creed or religion, of expression and press, of assembly, of movement and of association; and

(iii) the rights to privacy of the home or family, correspondence and communication; and

(iv) the rights to participate in government, to education, culture, work, social security and to an adequate standard of living.

f) Protection of the right to life:

The right to life should be scrupulously and strongly protected, guaranteed and promoted. This right includes the right to security of person, family and society as a whole from any enemy of life, whether from Within or from outside. No life should be taken or death sentence imposed except in the manner prescribed by law.

(f) Protection of liberty:

The right to personal liberty should be inviolable. It should only be interfered with in accordance with the strict procedures established by law and in particular no person should be arbitrarily arrested or detained. Personal liberty should always be protected, guaranteed and promoted for the good of every person in Uganda.

(g) Respect for human dignity:

The dignity of all persons should be inviolable. No person should be subject to torture or cruel, inhuman or degrading treatment or punishment. Human dignity should be protected without any discrimination whatsoever.

(h) Freedom from slavery and servitude:

Every person should be free from slavery and servitude. No person should be required to perform forced labour outside the law.

(i) Right to a fair trial:

In the determination of their civil rights and obligations or any criminal charges against them, all persons should be entitled to a fair hearing by an independent, impartial and competent court, tribunal or institution established by law.

(j) The right to property:

All persons should have the right to property and no person's property should be taken away by the State without adequate, prompt and reasonable compensation.

(k) Protection of the right to privacy:

All persons should have the right to privacy of the home, family, correspondence and communication. This right should not be interfered with save in accordance with a law which is necessary in a free and democratic society.(7.104)

22. **Derogation of Human Rights**

(a) The enjoyment of the rights and freedoms in the new Constitution should be limited only by the requirement to respect the rights and freedoms of others, the demands of public interest and morality and the need for law and order in society.

(b) Exceptions which are considered important for the guidance and protection of rights and freedoms should be included in the Constitution to make it very clear that besides those exceptions, no person or law can infringe on those rights.

(c) None of the exceptions or limitations of the rights should ever deny or negate the essential content of the right itself nor should it aim at any particular individual or group. It should be of a general application, and apply only where clearly necessary.(7.108)

23. Human Rights and Freedoms During a State of Emergency

(a) The declaration of a state of emergency and government operations during an emergency should always be controlled by clear provisions of the Constitution which have emanated from people's submissions.

(b) During a state of emergency Parliament may restrict such constitutionally guaranteed rights and freedoms contained as the Constitution permits provided such measures are reasonably justifiable for the purpose of dealing with a state of emergency in a free and democratic society and do not go beyond what is considered absolutely necessary nor beyond the period of declared emergency.

(c) Administrative detention during an emergency should be a remedy of last resort, when the provisions of the law cannot sufficiently deal with threats to national security.

(d) An emergency should be proclaimed only when there is a serious and demonstrable threat to national security which cannot be dealt with in any other way.

(e) Where a person is restricted or detained under a law made for the purpose of a state of emergency, the following should apply:

(i) He or she should within twenty-four hours of the commencement of the restriction or detention, be furnished with a statement in writing specifying the grounds upon which he or she is restricted or detained.

(ii) The spouse, or other available next-of-kin, of a person restricted or detained should be informed of the detention or restriction within 72 hours and should be permitted access to the person at the earliest practicable opportunity.

(iii) Not more than 30 days after the commencement of his or her restriction or detention, a notification should be published in the National Gazette and in the national mass media stating that the person has been restricted or detained and giving particulars of the provisions of law under which the restriction or detention is authorized and the grounds of the restriction or detention.

(iv) The detainee should be given full opportunity to promptly consult with a lawyer of his or her choice, and should have the right to be represented by that lawyer.

(v) The rights of a detainee to fair and humane treatment during detention, and in particular to protection against torture, should be fully secured.

(vi) A detainee whose right or rights have been violated or who has been unlawfully detained should be entitled to damages from the state and officials who have abused his or her rights.

(f) Nothing contained in the new Constitution should permit a derogation from or suspension of the following rights during a state of emergency:

(i) the rights to life, fair trial, human dignity and treatment and the children's rights; and

(ii) a person's right to protection from discrimination, forced labour and slavery.

24. Detention Without Trial

(a) Detention without trial should be prohibited by the new Constitution and all laws of the country.

(b) Administrative justice and the right to a fair trial as contained in the Constitution should apply to all people and situations.

(c) The provisions provided for during emergency situations should always be adhered to in detaining any person in a state of emergency.

(d) It should be the duty of the State to improve information gathering, education of detective personnel and provision of adequate security measures which will make detention without trial unnecessary.(7.119)

25. The Right to Life and Capital Punishment

(a) Capital punishment should be retained in the new Constitution.

(b) Capital punishment should be the maximum sentence for extremely serious crimes, namely murder, treason, aggravated robbery, and kidnapping with intent to murder.

Summary of Recommendations

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(c) It should be in the discretion of the courts of law to decide whether a conviction for any of the above crimes deserves the maximum penalty of death or life imprisonment.

(d) The recent inclusion of rape and defilement of young girls among crimes that deserve a death penalty should, in our view, be reconsidered by Parliament and a final decision preceded by a nation-wide debate on the issue.

(e) Anyone accused of a crime which carries a maximum sentence of death should be provided all necessary legal aid for his or her defence by the State.

(f) The issue of maintaining the death penalty should be regularly reviewed through national and public debates to discover whether or not the views of the people have changed to support its abolition.(7.123)

26. Freedom of Association

Every person should enjoy the freedom of association, which should include freedom to form and join associations, societies or unions, including trade unions, political parties, cooperative unions and non-governmental organisations in order to protect, promote and guarantee the enjoyment of all human rights. This right, however, should be subject to restriction or limitation as is permissible and desirable in a free and democratic state.(7.129)

27. Freedom of the Press and Other Media

(a) The freedom of expression which includes freedom to research, receive, hold and impart opinions, information and ideas without interference should apply to all individuals, groups and the media.

(b) The freedom of information for the public and the media should include having access to any government document which has not been classified. Classified documents should be automatically declassified and made accessible after a maximum of 20 or 30 years as Parliament may decide.

(c) There should be no restrictions on the establishment of newspapers, publications, radio stations or television stations other than the normal legal requirements of registration. Neither the State nor any individual or organisation should exercise a monopoly of ownership or utilization in the area of the media.

(d) The press should have the right to protect the source of its information if the source gave that information ıı confidence, unless it is established in court that disclosure is necessary in the national interest.

(e) The safeguard of national security or other interests in any publication and information should always be balanced with the requirements of public interests.

(f) There should be no banning of a newspaper or media body without a court order made for a reason justifiable in a democratic society.

(g) There should be no seizure of documents or information from a newspaper or media office, or media personnel, without a court order.

(h) The public should enjoy the right to reply in the media if they have been the subject of unbalanced criticism.

(j) The family law should clearly indicate the principles to be used in determining which parent or other interested party should keep the children of a marriage in case of dissolution of marriage or in case of the death of one of the couple.

(k) Poor or destitute families should be specially cared for by the State and society.

(i) There should be family courts, ideally at the village, parish, sub-county and district levels, to deal with family cases in view of reconciliation and dispensation of justice.

(m) Family property especially the home and land, should be sold only with the consent of the members of the family.

(n) Marriage laws should be revised in accordance with the provisions of the new Constitution and the general recommendations of this report and through consultation with women and men and religious and cultural leaders. (7.138)

30. Rights of Women

(a) Women should be accorded full and equal dignity, and the same respect and status of persons as men are accorded In all the laws of Uganda.

(b) Women should have an inherent right to equal involvement and treatment with men in all aspects of public life. This right should include equal opportunities in political, economic, social and cultural decision-making and activities. They should enjoy equal opportunities in education, employment and promotion, and should be entitled to equal pay for equal work

(c) Women should have a right to an adequate share of the property of their deceased husbands. Daughters should have equal rights with sons in sharing the property of their deceased father or parents.

(d) Women should have the right to affirmative action for the purpose of redressing the unjust imbalance created by history and traditional customs. Such action should be instituted in the political, educational, employment and economic fields

(e) Laws, cultural practices and customs which are against the dignity, equality, welfare or interests of women should be prohibited by the new Constitution, the laws of the country and the relevant cultural groups in the country.

(f) The rights of women, whether as single mothers or separated spouses, to look after their children should be protected by law in the best interest of the child and of both parents.

(g) The State should take all appropriate measures to form the social and cultural patterns of conduct of men and women in order to eliminate prejudice against women and emphasize attitudes of equality of sexes. National educational policy should take full account of the values and attitudes of equality of the sexes.

(h) In view of the importance of motherhood to the nation, maternity leave should be extended for the interest of the mother and the child. Prostitution which dehumanizes women and turns them into tools of sexual enjoyment by men should be prohibited and severely punished.

(j) Stricter laws should be put in place to protect women from rape and sexual harassment.

(k) The law enforcement institutions should specially ensure that all the rights and freedoms constitutionally guaranteed are equally enjoyed by women without any discrimination. Non-governmental organisations should be encouraged to champion the protection and promotion of women's rights and equality.

(i) Women's organisations and movements should be empowered to monitor the process of advancement :)f women to full equality and to the effective realisation of their rights as spelt out in the Constitution and the laws of the country. They should put pressure on government and Parliament to honour all conventions on the rights of women and to revise all laws in accordance with such conventions. (7.141)

31. **Rights of Children**

(a) Children should have a right to respect as persons from the moment of birth, and rights to acquire nationality or citizenship and to know their parents, except in very rare cases specified under the law.

(b) Children should have a right to parental love and care, protection and family education in all that a normal child should learn and know Children should not be separated from their parents against their will, except when so decided by courts of law or competent authorities, in the best interest of the child.

(c) Children should have a right to enjoy most of the rights and freedoms of individuals enshrined in the Constitution, with the Exception of any rights reserved for adults of eighteen and more years of age.

(d) Children should have rights to medical care, immunization against diseases and free medical treatment by the State whenever parents cannot afford to pay.

(e) Children should have a right to grow up in an environment of family, community and nation which is conducive to general development of their talents and potentials.

(f) Children should have a right to education. Primary education should be compulsory for all children of primary age in Uganda. The State should Endeavour to make it free for all children.

(g) Children should be protected from economic exploitation and shall not be employed before the age of eighteen. The conditions in which children work must respect their age, health or physical, mental, spiritual, moral and social development.

(h) In every district there should be juvenile courts to try juvenile offenders who should be assisted by competent people to reform their lives, such offenders should be kept separately from adult offenders. Reformatory schools should offer special education and training which can assist identified children to improve themselves and become useful to society.

(i) The State, working together with religious institutions and other nongovernmental organisations should give special protection to orphans and neglected children and provide for their care, welfare and education.

(j) In all actions and policies concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities

or legislative bodies, the interests of the child should be the primary consideration.

(k) Children, whether born within or outside marriage, should have a right to equal treatment in the family and by the State and society as a whole.

(i) Children should be protected by the State and society from sexual abuse, harassment, exposure to pornography, night-clubs, discos, alcoholic drinks, dangerous drugs, inhuman and degrading punishment and exploitation of any type.

(m) Every child should have a right to seek redress from family courts and/or local council courts against cruelty or neglect of parents or guardians.

(n) Every child should have a right to food, shelter and clothing. If parents cannot provide them, it should be the responsibility of the State and society to do so.

(o) The State should undertake all appropriate legislative, administrative and other measures for the implementation of the rights of children in their fullness.

(p) The duties of children should include:

(i) to love their parents, be obedient to them, respect them and assist them in the family;
(ii) to accept to be educated by their parents and teachers in order to become responsible citizens; and
(iii) all other duties of a citizen which are not reserved for adults only.(7.145)

32. Rights of the Handicapped and Disabled

(a) The handicapped and the disabled should have the right to respect and human dignity which should be recognized by the State and society.

(b) The handicapped and disabled should enjoy the same fundamental rights and freedoms as other persons with the few exceptions clearly provided by law, especially with regard to persons with mental disability or illness.

(c) The handicapped and disabled should always be encouraged by the State, through affirmative action, to realize their full mental and physical potential. Affirmative action is especially required in relation to education, employment and representation.

(d) The handicapped and the disabled should have a right to special care and concern from the State and society and special protection of law against all possible exploitation and marginalization. (7.147)

33. The Rights of Worker's

(a) The rights of workers and employers to form autonomous associations and unions should be recognized.

(b) The rights of workers, to belong to unions of their choice, to collective bargaining and to strike should be recognized.

(c) The right of workers to representation in decision-making in matters which affect them should be guaranteed. Representatives of government, employers

and workers should discuss employment policy and seek to resolve conflicts through consultation.

(d) Workers should have a right to healthy, clean and safe conditions at work.

(e) Workers should have a right to a living wage which can support them and their families to live an adequate standard of life.

(f) Workers should have a right to adequate rest and periodic holidays and to an adequate pension on retirement.

(g) Workers should enjoy all the rights guaranteed in all workers' charters of rights which Uganda has signed and ratified.
(7.149)

34 Rights of Minorities

(a) Minorities in Uganda, be they cultural, religious, political or economic should be protected to enable them to enjoy all the fundamental rights and freedoms provided for in the new Constitution.
(b) Minorities should be entitled to the right to their culture and ecology and to their dignity as a people.

(c)State should make laws to safeguard minorities in their person-hood, institutions, property, labour, cultures and environment

(d) Minorities should have a right to be fully involved in deciding the priorities in the development of their lives, beliefs, institutions, land and other resources, both economic and spiritual.
(e) Minorities should have a right to participate actively in their own governance and to be politically represented at various
levels through programmes 0f affirmative action.

(f) The right of minorities to ownership and possession of land should be respected in special ways and effective safeguards
provided wherever the land of the original occupants is taken for a national project or for resettlement of other peoples.

(g)In making national plans and programmes the views of minorities should always be taken into account so as to avoid oppressive dictatorship of the majority. The electoral system should take account of representation of minorities, especially at the local levels of government.

(h) All citizens should be educated to respect minorities, to recognise their right to exist and to enjoy all the rights and freedoms they are entitled to. (7.51)

35. Right to Personal Liberty

(a) An arrested person should have the right to be informed at the moment of arrest or immediately afterwards of the cause of his or her arrest.

(b) An arrested person should have the right to be humanely treated and his or her person respected.
(c) An arrested person should have the right to a fair and speedy and public trial according to law.

(d) The right of habeas corpus, which requires the law enforcement authority to produce the prisoner and show reason why he or she is detained should always be protected. (7.153)

36. Granting of Bail

(a) There should be reasonable grounds before any person is arrested.

(b) Provision for grant of bail to accused persons should be maintained in the 111:W Constitution, and bail should not be refused without proper justification.

(c) Any accused person who has been on remand for a period of 16 months for capital offenses and 8 months for other offenses, and has not been committal for trail should be entitled to automatic release on bail unless the court decides there are substantial grounds for a continued remand.(7.156)

37. Right to a Fair Hearing

(a) Every person who is charged with a criminal offence should be presumed to be innocent until guilt is established in accordance with law.

(b) Accused persons should not be compelled to give evidence at trial except :IS provided for by a law which takes account of the need to protect the rights of accused persons in a free and democratic society.(7.161)

38. Burden of Proof

The burden of proof should always lie on the prosecution in criminal matters save in relation to exceptional issues which are likely to be only in the knowledge of the accused person where he or she may have the burden of proving particular facts. (7.165)

39. Standard of Proof

The standard of proof in criminal cases should continue to be beyond reasonable doubt.(7.167)

40. Conduct of a Trial and the Right to a Fair Trial

(a) Every person who is charged with a criminal offence should:

(i) be given adequate time and facilities to prepare his or her defence;
(ii) be able to appear before court or to be represented by a lawyer of his or her choice; and
(iii) have the right to examine witnesses who testify against him or her.

(b) A person should have a right to be tried by an impartial court, whose officials are not prejudiced against the accused person.

(c) The penalty imposed in criminal matters should not be severer than the maximum penalty set in law for such an offence. (7.169)

41. The Rights of Prisoners

(a) Once sentenced a 'prisoner should have a right to sufficient food, water, fresh air, ample space, adequate bedding, clean atmosphere and being treated as a human being.

(b) Prisoners should have a right to be visited by relatives, a lawyer, religious personnel and friends.

(c) Prisoners should have a right to submit complaints against prison officials for any unjust treatment before an impartial personnel or committee.

(d) Prisoners should have a right to quick and adequate medical examination and treatment.

(e) Prisoners should be assisted to develop their talents and skills while in prisons. They should be engaged in productive work for the nation and should be integrally rehabilitated to become responsible citizens.

(f) The conditions within prisons should be fit for human habitation and of such a standard as is set by the law.(7.171)

42. Uganda Human Rights Commission

(a) An institution to be known 'as the Uganda Human Rights Commission should be established.

(b) The Uganda Human Rights Commission should be composed of a Chairman and no less than three other members. The Chairman should be appointed from among the justices of the Supreme Court, or judges of the High Court or from persons qualified to be justices or judges. All members should be appointed by the President subject to approval by the National Council of State, and:

(i) members should be Ugandan citizens, with academic competence, high moral integrity, special competence and expertise in the field of human rights and a demonstrated commitment to human rights;

(ii) the balance of Uganda's diversity and of both sexes should be taken into account; and

(iii) the Chairman and half of the members should be appointed for a term of six years which can be renewed once. The other half shall be appointed for a period of five years renewable, in order to maintain continuity of membership.

(c) The Commission should have at least the following functions:

(i) to monitor and enforce compliance with the bill of rights as contained in the Constitution;

(ii) to hear and investigate either on its own initiative or in response to complaints by any party, all or any allegations of violation of human rights by any person, group or public organ.

iii) to provide legal measures for the protection of human rights of all persons in Uganda;

v) to take and/or provide for preventive measures against human rights violations;

v) to provide legal and other forms of aid to support enforcement of human rights;

(vi) to attempt, where possible, to arrive at settlements between parties involved in disputes on rights;

vii) where it is satisfied that human rights violations have been committed, to determine the appropriate remedial action to be taken and order accordingly;

viii) to review systematically existing government policy and respect towards human rights and to suggest improvement;

(ix) to report on a regular basis to Parliament the results of its investigations and recommendations;

(x) to publish for the public an annual report on the state of human rights in Uganda and publish regular reports of its investigations, findings and general work;

(xi) to determine charges brought against perpetrators of violations of human rights, and in case of finding breaches to have occurred to impose penalties;

(xii) to monitor and review State legislative compliance with existing human rights law and to ensure that all new legislation and administrative measures comply with the fundamental rights and freedom contained in the Constitution;

(xiii) to advise government on the acceptance of any international instrument on human rights and to monitor and ensure Uganda's compliance with its international obligations in the field of human rights;

(xiv) to give advice on human rights implications of any policy or legislation proposed by government;

(xv) to grant effective remedies to proven victims of violation of human rights which shall include: monetary compensation, symbolic compensation; property restitution; review of appointments, dismissals, promotions or reinstatement; release from prison with or without conditions; and any other remedies provided by law; and

(xvi) to enhance knowledge and respect for and enforcement of human rights using all types of· media, programmes of education, information, conscientisation and research.

(d) **In** order to fulfill its functions, the Human Rights Commission should have the following powers:

(i) to appoint its officers and employees and fix their terms and conditions of service;
(ii) to establish its own rules of procedure and working methods which should be in accordance with natural justice and transparency;
(iii) to issue subpoenas and hold formal hearings;
(iv) to demand and obtain all documents, information and necessary assistance from any department, bureau, office or agency in carrying out its functions;
(v) to visit and inspect all or any jails, prisons, detention and remand centers or facilities whatsoever;
(vi) to enter and inspect any premises, vehicles, containers or any other place deemed relevant for the fulfillment of its duties;
(vii) to receive information relevant to its work from any source;
(viii) where necessary, to grant immunity from prosecution to vital witnesses;
(ix) to try, acquit or convict suspected perpetrators of human rights violations;
(x) to penalize persons, bureaux, .departments and offices, which do not cooperate with or are guilty of contempt of the Commission; and
(xi) to set up offices, outposts or branches anywhere in Uganda.(7.178)

43. Independence of the Uganda Human Rights Commission

(a) We recommend that in the performance of its duties in accordance with the: Constitution and the law made under it, the Uganda Human Rights Commission should not be under the direction of any person or authority.

(b) A member of the Commission should be removed by the President only if found to be incapable of performing his or her functions or guilty of misbehavior and only after a committee of judges appointed by the Chief Justice has made a recommendation for removal.

(c) The Commission should be self-accounting, its administrative expenses, salaries and allowances to be a charge on the' Consolidated Fund.

(d) The Commission should appoint its own staff and set their terms and conditions in consultation with the Public Service *Commission.(7.180)*

Access to International Fora

44. Every citizen should have a right of appeal to the relevant continental and international fora for the redress of any violation of human rights having first either exhausted all national enforcement institutions or being denied access to them or being fully convinced on reasonable grounds that no action can be taken by those institutions. (7. 184)

45. (a) Uganda should sign and ratify the conventions it has not yet signed, especially the ICCPR.

(b) Uganda should sign protocols and special provisions which allow its individual citizens to lodge complaints of violation of human rights to the OAU Commission of Human Rights and to the UN in respect of matters contained in such protocols and provisions. The State should be obliged to respond to such complaints.

(c) Uganda should be committed to make regular reports in respect of the conventions it has ratified. Such reports should be the responsibility of the Attorney-General. Each such report should be made public in Uganda and the Uganda Human Rights Commission should have a duty to put pressure on government to comply with this obligation.

(d) The Uganda Human Rights Commission should educate the public on the requirements for such complaints and the procedures involved and should provide the public with the relevant addresses of such fora.(7.189)

46. **Education in Human Rights**

(a) The study of human rights and freedoms should be incorporated in the educational policy and syllabus at all levels of education.

(b) The members of government organs, especially the Army, the Police, the Prison Services, the intelligence organisations and the public service should undergo human rights education as an essential requirement for their employment and promotion.

(c) The Uganda Human Rights Commission working together with all institutions and organisations committed to protection and promotion of human rights should diffuse human rights education to all Ugandans, using the most appropriate methodologies to reach each category of people.

(d) Important public organs such as the Army, Police, public service, etc. should each have a human rights desk to monitor the performance of that organ in the field of human *rights. (7.19I)*

47. The Role of Non-government Organisations in Human Rights Protection and Promotion

(a) The government should explicitly recognise the importance of religious and non-governmental organisations in the protection and promotion of human rights.

(b) Whenever possible such organisations should be represented on structures that monitor performance of human rights, especially in the areas of their specialisation.

(c) The Uganda Human Rights Commission should work closely with the NGOs in order to bring human rights education to the grass roots level.

(d) Courts of law, the 100, the Uganda Human Rights Commission and other enforcement institutions should allow genuine NGOs both to initiate human rights complaints proceedings before them and to intervene, where necessary, in human rights litigation.

(e) NGOs should receive courses in human rights education; develop solidarity among themselves; avoid any unnecessary political interference; concentrate on the function of information gathering, evaluation, dissemination of human rights education; organise advocacy to stop abuses and secure redress; provide legal ,aid services, scientific expertise and humanitarian assistance where necessary; lobby national and international decision-makers for the protection of human rights; embark on education, conscientisation and empowering of people through provision of updated knowledge on human right; and assist to make government and all public organs accountable to the people and transparent in their work.(7.193)

48. **Free Legal Aid Service**

(a) Free legal aid services should be gradually extended to persons whose fundamental rights and freedoms are alleged to have been violated especially by State organs.

(b) The Uganda Human Rights Commission should find ways to set up free legal aid services in the field of human rights.

(c) NGOs should also assist in providing free legal aid services to persons in need of them. (7.196)

49. **Enforcement Institutions of Human Rights for Specific Groups**

(a) Enforcement institutions for each special group discussed elsewhere in this report should be set up with the involvement of the people concerned and should be assisted to protect and promote the rights of the people in the special categories concerned.

(b) The Uganda Human Rights Commission should undertake a study of the necessary institutions and advise them on structures that can be effective in the achievement of the protection of rights. (7.199)

CHAPTER EIGHT: POLITICAL SYSTEMS

50. Evaluation of the One-party System

(a) A one-party political system should not be an option to be considered by the Constituent Assembly in the discussion on the new Constitution.

(b) Neither Parliament nor any other authority should have power at any time to impose a one-party system on the sovereign people of Uganda. (8.78)

51. **Evaluation of the Combined System of Movement and Political Parties**

(a) The option of a combined system of movement and multi-party working together but at separately defined levels of society is practically unworkable and should not be considered.
(b) The values the advocates of a combined system aim at preserving should be considered in relation to either a movement or a multi-party political system. (8.84)

52. General Evaluation of the Preferred Political Systems: The Movement and the Multiparty

(a) Both the movement political system and the multi-party system should be enshrined in the new Constitution to provide the people of Uganda with the right and freedom to choose either of them through a national referendum.

(b) Such a right should be exercised on behalf of the people of Uganda before the promulgation of the new Constitution by the members of the Constituent Assembly with a two-thirds absolute majority.

(c) Should the members of the Constituent Assembly fail to achieve the two-thirds majority on the issue, a national referendum should be held to decide the national system by a simple majority of those who will have voted.

(d) In accordance with the views of the majority of people who addressed the issue in submissions -to the Commission, the movement political system, as .defined in the Constitution, should operate for five years from the commencement of the new Constitution. Those party activities which are defined in the new Constitution as incompatible with the movement system should remain suspended during the period the movement system is in operation.

If the procedures in the preceding paragraphs result in provision for a movement system being included in the final Constitution adopted by the Constituent Assembly, then after five years a national referendum should be held to decide by simple majority whether people wish the movement system to continue or if they want the multi-party system to fully operate.

(f) The operation of either political system thereafter shall depend on a periodical decision of the people through a national referendum.(8.93

3. **The Evaluation of the Movement System**

The name of the movement should change from the National Resistance Movement to *Uganda National Movement.* This change will indicate to all people that it is for them and is renewed in accordance with their views.
(b) The movement should include all people, work for the benefit of all and regard all people as equal.
(c) The movement should be under the control of the people and there should be no power vested in anyone or any organ to expel any person from the movement.
(d)The movement should at no time be permitted to become a political party or to govern as under a one-party state, a system people have unanimously rejected.

(e) All posts at all levels of the movement should be contestable by any Ugandan citizen through free and fair elections.

(f) The movement should be democratic in all other aspects of its operation and organisation, accountable to the people and transparent in its operation.

(g) There should be no posts in the movement or any of its organs of government reserved for "historical" member or members.

(h) Any secretariat or body of similar nature associated with the Q10vement would be open for all, and any political education conducted by it .should also be open to all ideas.

(i) There should be no set of rules or constitution for the movement other than what is provided in the new Constitution and the laws of Uganda.

The programme for the movement should come from the people.

U) The movement should co-exist with political parties which it should not have power to ban or restrict more than what is provided for in the new Constitution or the laws emanating from the Constitution.

(k)

(l) Among the movement's principal aims would be the defence of human rights and democracy, promotion of national unity, accountability and development.

(m) The movement should work strictly under the new Constitution which it must respect, defend and promote.

(n) The movement should always work under a local-based government system operating at levels from the village upwards in order to ensure that all major national diversities and sections of society are actively involved in the reshaping of the nation.

(0) Parliament should pass a law regulating the activities of the movement and establishing posts within it based on the characteristics as recommended.

(p) The Resistance Council system under the new name of local councils should be a permanent feature of local government from the village to the district level. (8.97)

54. **Evaluation of the Multi-Party Political System**

(a) Old or existing political parties should be left to exist but required to conform to new regulations.

(b) Old or existing political parties should re-examine seriously their past performance in the light of people's criticisms and be willing and courageous enough to conform to people's aspirations.(8.103)

55. **Number of Parties**

(a) There should be no legal requirement limiting the number of political parties. Any political party which fulfils the registration requirement as are stipulated by law should be registered. (8.106)

(b)

56. Regulation of Parties

(a) Political parties in Uganda should be regulated by law in the aspects defined in the new Constitution.

13.

The (b) enforcement of legal regulation of parties should be carried out by an independent body, namely the Electoral Commission, and by the law courts of Uganda.(8.110)

57. Aspects of Political Parties to be Regulated by Law

The following aspects of political party establishment procedures and operations should be regulated by a law in accordance with principles laid down in the Constitution.

Registration

(a) Any organisation which operates as a political party should be duly recognized and registered as a political party by the Electoral Commission or such other independent body as shall be legally established for the purpose of conducting elections.

(b) Prior to registration, a political party should furnish the Electoral Commission with a copy of its constitution and manifesto together with the names of its national officers or leaders and:

(i) its constitution should clearly show its commitment to the respect and defence of the national Constitution, independence, sovereignty of the people, supremacy of Parliament, principles of democracy, respect for human rights and democratic governance in its internal organisation; most of the party's

(ii) founding members must be ordinarily residents in Uganda and must all be citizens of Uganda;

the party's leaders and members should not be of one tribe or religion; the party should have organised branches in at least two thirds of the districts of Uganda;

(v) the party's name, emblem, motto or any other symbol should have no sectarian connotation and should not convey the impression that the party's activities are confined to only one part of Uganda or to one section of the people;

(vi) party members should have a right to seek redress for grievances, discrimination or oppression within the party by reference to special organs of the party or the ordinary courts of law; and

(vii) all political parties should have their headquarters in the national capital, Kampala;

(c) A party's leader and all members of its national executive should be persons who qualify to be elected as members of Parliament or eligible for other public office under the Constitution.

(d) The executive committee and any other party organ of any political party at the national, district and lower levels should be democratically elected at regular intervals not exceeding five years.

(e) The local branches of every political party should have their autonomy respected so as to enhance participatory democracy.

(f) All Ugandans who are eligible to vote may become members of a political party of their own choice.

(g) A member of the Public Service or Armed Forces should not be a member of a political party but may resign from the Public Service or the Armed Forces to contest as a candidate on a party ticket.

(h) A prospective political party whose application for registration has been rejected by the Electoral Commission may appeal to the High Court before three judges whose decision should be final.

(i) A political party should renew its registration within three months from the date of general elections and failure to renew shall result in forfeiture of the right to continue to operate as a political party.

Finances of Political Parties

(a) Within thirty days after registration, every political part>:, should submit to the Electoral Commission a statement of its assets and liabilities as of the date of registration.

(b) Within three months, or ninety days of the commencement of each year, a registered political party should submit to the Electoral Commission a statement of its accounts, covering the period from 1 January to 31 December of the previous year, audited by an auditor approved by the Electoral Commission.

(c) The Electoral Commission should give instructions to political parties regarding the books or records of financial transactions which they should keep. The Electoral Commission should examine all such books or records on a regular basis.

The Electoral Commission should submit to Parliament, a yearly report on accounts and balance sheet of every registered political party.

(d) Any citizen of Uganda should be entitled, on payment of a fee prescribed by the Electoral Commission, to inspect or be given copies o the audited accounts of any political party filed with the Commission.

(e) Each and every political party which takes part in elections should submit to the Electoral Commission an account of its election expenses audited by an auditor approved by the Commission. This should be done irrespective of the political party's performance in the

(f) recent elections.

Conduct of Campaigns

(a) It should be the duty of the State to provide equal opportunity to all political parties to present their programmes to the public by ensuring equal access to State-owned media of mass communications.

(b) A common platform should be encouraged for all candidates in a constituency to present themselves and their programmes to the electorate and to respond to questions.

(c) All political parties should be entitled to equal treatment by all public authorities.

(d) Parliament should furnish the Electoral Commission, the public and the political parties with a Code of Conduct to be followed in campaigns and elections.

(e) Individual members of political parties and political parties as institutions which do not follow the Code of Conduct should be strictly dealt with according to the law.

(f) Parliament should enact a law providing guidelines on election procedures, donations, financial and other contributions to political parties and set limits if necessary.

(g) Political parties which violate the Constitution destroy the peace of the nation and act against the rule of law should be proscribed in accordance with the Constitution and the laws of the country.

Duties of Political Parties

(a) Political parties should educate their members on the Constitution and the rights and obligations of citizens and how to defend them.

(b) Political parties should do all in their power to see to it that there is no breach of the peace or any other illegal act committed by their supporters during election campaigns and at all other times.(8.J28)

58. The Freedom of Association

(a) Every person should be free to form and/or to join any civil organisation or association of his or her own choice for the protection and promotion of his or her interests, the interests of the group and of the common good.

(b) Such civil organisations and associations should enjoy their autonomy, without any undue interference by the State, which alone can ensure the realization of their objectives and the democratisation of s0ciety.

(c) All such organisations and associations should conform to the Constitution, the objectives of national policy and the laws of the country.

(d) The public laws and regulations on the registration and full operation of these (evil organisations and associations should be simple, democratic, nondiscriminatory and intended to support and respect the freedom and autonomy of those institutions.

(e) Promulgation of any legislation deemed necessary in the public interest should not impair or diminish or in any way negate the essential content of the freedom of association.(8.130)

CHAPTER NINE: FORMS OF GOVERNMENT

59. Democratic Principles

The following democratic principles should be the basis of any future government in Uganda:

(a) Governmental authority should derive from the people and be exercised in the name of the people. All public offices and all acts of government should accordingly be under the authority of the people.

(b) Government at all levels should be by the consent and for the benefit of the people as a whole. As much as possible, the ordinary people should be afforded opportunity to participate actively in policy formulation and implementation and generally to take charge of their destinies.

(c) Government must always arise out of, and be a product of regular, free and fair electoral processes, in which the people of Uganda are able to participate actively. As much as possible, composition of government should be broadly representative of the diversity of the country.

(d) It should be the principal duty of government to protect and promote democratic principles, and the rights, freedoms, dignity and welfare of individuals, groups and the nation as a whole. (9.9)

60. **Concerns and Principles**

(a) As the organ of state most representative of the people the supremacy of the legislature must be recognized in the areas of responsibility vested in it by the Constitution, especially those of law-making and ensuring the accountability of the executive arm of government.

(b) At the same time, there is a need for a degree of separation of powers and personnel of the main organs of state, especially for the judiciary.

(c) Power should be spread among a number of constitutional institutions which can act as checks on authoritarian trends.

(d) The independence of constitutional office holders such as the Inspectorate of Government, Human Rights Commission, Electoral Commission, Audit Commission, Judicial Service Commission and Public Service Commission needs to be guaranteed.

(e) There is a need for institutions and procedures which encourage consultation and cooperation between organs o state and minimize the risk of deadly conflicts and impasses. (9.24).

61. A **Decentralized Unitary Form of Government**

(a) Uganda should continue to be a republic that is having its head of state democratically elected by the people of Uganda.

(b) The entire country should be governed under one form of government for the interests of nation-building and equal opportunities for development.

(c) The new Constitution should provide for a highly decentralized unitary form of government, with a strong and participatory form of local government provided for in accordance With the principles and recommendations set out 111 our discussion of local government (Chapter Eighteen).

(d) The district should be the geographic and political unit to serve as the basis for the form of government in the new Constitution.

(e) The areas of competence and the autonomy of the local governments should be entrenched in the Constitution to ensure stability and avoid unnecessary conflict with or interference from the central government.

(f) The decentralized form of government should at the same time devolve powers and services to the lower levels of local councils as recommended in Chapter Eighteen (Local Government).

(g) To adequately and effectively cater for our cultural diversity, districts which share common or similar cultural identity and other values should be free under the new Constitution to cooperate, is political units, in the entire area of culture and human development and to form associations or organisations to that effect. (9. (4)

CHAPTER TEN: ELECTORAL SYSTEM

62. Representative Democracy

(a) The Constitution should guarantee every adult citizen an adequate and equal opportunity to:

(i) participate in the conduct of public affairs either directly or through freely chosen representatives; and

(ii) vote for and be elected to public office at genuine, periodic and free elections.

(b) The Constitution should provide that it is the duty of the State to formulate and implement policies and programmes that would afford an adequate and equal opportunity for every citizen to take part in the political life of the country. *(10A6)*

63. Voting

Voting in national elections should be on the basis of universal adult. *(10A8)*

64. Electoral system

(a) The single constituency method of representation should be retained for parliamentary and district level elections.

(b) The winning candidate in such an election should be required to obtain an absolute majority of the votes cast. if no candidate obtains more than half the votes in the first ballot, there should be a second ballot to choose between the two candidates who have obtained the highest number of votes in the first ballot. *(10.75)*

65. Electoral Commission

(1) Establishment and membership

(a) There should be an Electoral Commission consisting of a Chairman and not less than two and not more than six other members appointed by the President with the approval of the National Council of State.

(b) The Chairman of the Electoral Commission should be a Justice of the Supreme Court or a Judge of the High Court or a person who is qualified to be appointed a Justice or Judge.

(c) Members of the Commission should be persons of high integrity and administrative ability.

(d) The members of the Commission should hold office for a period of seven years, and their appointments may be renewable for one term only.

(e) **If** the appointment of a member of the Commission is being renewed, it should be done at least three months before the first term expires.

(f) The members of the Commission should not hold any other paid public office while serving on the Commission.

(g) The salaries and allowances of the Commissioners should be determined by Parliament with a view to ensuring that they are commensurate with their responsibilities and status.

(h) If a member of the Commission is temporarily unable to perform his or her duties or dies the President should, with the approval of the National Council of State, appoint a person who has the qualifications to be appointed a member, of the Commission, to act in place of the member until he or she is able to resume his or her duties or until a new person is appointed to fill the vacancy.

(i) A member of the Commission may be removed from office by the President only if a Committee appointed by the Chief Justice finds the member to be incapable of performing his or her functions due to physical or mental incapacity, incompetence, gross misbehavior or misconduct. (1 *0.83)*

66. **Functions of the Electoral Commission**

The Electoral Commission should be a permanent body which should perform the following functions:-

(a) ensure the holding of regular, free and fair elections;

(b) organise, conduct and supervise regular, free and fair public elections (both national general elections and by-elections) and referenda and may also be given responsibility by law to conduct elections for local governments;

(c) demarcate constituencies according to the provisions of the Constitution and other laws made under it;

(d) compile, maintain and where necessary revise the voters' register; hear and

(e) determine elections complaints arising before polling;

(t) formulate and implement educational programmes for the democratisation of Ugandan society;

(g) register political parties; and

(h) perform any other functions as may be conferred upon it by Parliament. (10.88)

67. Independence of Electoral Commission

In order to secure the independence and impartiality of the Electoral Commission, the, Constitution should provide that in the exercise of its functions, the Commission should not be subject to direction or control by any person or authority.(10.90)

68. Resources of the Electoral Commission

The Constitution should provide that Government should as fat as practicable provide the resources and facilities necessary to enable the Electoral Commission to perform its functions effectively. *(10.* 92)

69. Officers and Staff

The officers and staff of the Commission should be appointed by the Commission in consultation with the Public Service Commission.(10.94)

70. Reports of the Electoral Commission

The Electoral Commission should make a report on each national general election which should include details of alleged malpractices and how these were dealt with

by the Commission and should present the report to Government within one year after the elections. (10.98)

71. **Constituencies**

Counties and sub-counties should be the basic constituencies for parliamentary and district council elections respectively. However, density of the population of such units should be taken into account so that those with large populations are divided into two or more constituencies that would be as nearly equal to the population quota as possible.(1 *0.1 05)*

72. Timing of Elections

(a) The Electoral Commission should ensure that elections are held at times fixed in advance and notified to the public.

(b) General elections for members of Parliament should be held:-

i) within the last three months of the term of the current Parliament; or
ii) if Parliament is dissolved; or
iii) if Parliament resolves by majority of more than two-thirds of all its members that there should be a general election.

(c) In the event of Parliament being dissolved before its term has ended, elections should be held within sixty days after the dissolution.

(d) If the seat of a member of Parliament falls vacant when the remaining period of the term of the current Parliament exceeds six months, a by-election should be held within sixty days after the seat has fallen vacant.(10.113)

73. **Nomination of Candidates**

(a) The electoral law should provide that nominations can be lodged during a period of thirty days before polling.

(b) To minimize chances of manipulation, a standard test for the nomination of candidates should be set for all the candidates and administered by an impartial official like a magistrate.(10.115)

74. **Registration of Voters**

(a) The Constitution and the electoral law should provide that every qualified citizen has a duty to register as a voter.

(b) The Electoral Commission should be provided with adequate resources to prepare and maintain an accurate register of voters for each constituency.

(c) The Electoral Commission should be charged with the responsibility of educating the public about their duty both to register and to subsequently provide details of any changes in their particulars, including changes of residence, that would affect the *register.(10.120)*

Election Campaigns

75. There should be free campaigning in elections, to be regulated only by Act of Parliament.(10.127)

76. (a) Candidates should be required to declare their assets under the Leadership Code to ensure that they operate within their financial capabilities.

(b) The law should regulate foreign funding for political parties.(10.133)

77. (a) All candidates in an election for public office should be afforded equitable access to and use of public facilities and media.

(b) All Presidential candidates should be given equal time and opportunity on State owned media to present their policies and programmes to the electorate.

(c) The electoral law should make it an offence and a corrupt practice to unfairly use or employ government personnel and facilities for the purposes of campaigning.(10.136)

78. **Method of Voting**

(a) Voting in presidential, parliamentary and district council elections as well as referenda, should be by secret ballot.

(b) The electoral law should require that the same ballot box is used for all candidates in a constituency. The box should be placed in the open rather than a closed booth.

(c) There should be clear symbols and/or photographs against each candidate's name to assist illiterate voters.(10.143)

79. **Counting of Votes and Announcement of Results**

(a) The presiding officer at a polling station should arrange for the counting of the votes at the station as soon after the close of polling as possible. The votes cast in favour of each candidate should be recorded.

(b) A candidate may be present in person or send an agent to be at the polling station throughout the period of voting, the counting of the votes, and declaration of the results.

(c) The presiding officer, the candidates or their representatives or agents, should sign a declaration naming the polling station and showing the number of votes cast for each candidate and copies of the declaration should be available to all candidates or their agents. The presiding officer should announce the result there and then at the polling station before sending the result to the returning officer. *(10.* 147) ,

80. **Redress of Election Grievances**

(a) A person who is not satisfied with the decision of the Electoral Commission regarding complaints about conduct of an election prior to polling may appeal to the High Court. If the person is not satisfied with the decision of the High Court, he or she may appeal to the Supreme Court, which will give the final ruling.

(b) If the matter about which a person is aggrieved is connected with demarcation of electoral boundaries, the person dissatisfied with the decision of the Electoral Commission may appeal to a tribunal consisting of three persons appointed by the Chief Justice. The Electoral Commission should be obliged to accept the decision of the tribunal. If the aggrieved person is not satisfied with the decision of the tribunal, he or she may make an appeal to the Supreme Court, whose decision will be final. *(10.153)*

81. **Referenda**

An issue which is put to a referendum should be decided by a majority of all the votes cast in the referendum. *(10.163)*

CHAPTER ELEVEN: LEGISLATURE

82. Title of Legislature

The legislature under the new Constitution should be called Parliament. (1l.47)

83. Structure of Parliament

Parliament should consist 0f one House. (11-.49)

Composition of Parliament

84. Members to represent the general population:
Parliament should be composed mainly of directly elected representatives of the people, elected in accordance with the Constitution. (11.52)

85. Members to represent interest groups:

(a) Women, youth and workers should have the following special representation in Parliament:
(i) fifteen women representatives elected by a representative and democratically elected national women's organisation, taking into account the need to ensure representatives come from a range of districts and from different regions of Uganda;

(ii) five youth representatives elected by representative national youth

organisations; and
(iii) Three worker's representatives elected by representative national' worker's organisations.

(b) The special representation should continue until such time as the represented groups are more fully and fairly integrated into Ugandan society, and Parliament should from time to time review the necessity of such special representation.

(c) Parliament should prescribe the procedure for the election of the representatives of interest *groups.(11.61)*

86. Representation of the Army:

The Armed Forces of Uganda should be represented in Parliament by ten serving officers elected by the Army Council. (1I.65)

87. No Specially elected or nominated representatives:
There should be no provision for members to be nominated to Parliament by the President or nominated or elected by any political party. (11.67)

88. Qualifications and Disqualit1cation of Members

a) A person should be qualified to stand for election to be a member of Parliament if he or she:

(i) is a citizen of Uganda;
(ii) has attained the age of twenty-five (though the age requirement for youth representatives should be eighteen);
(iii) IS a registered voter;
(iv)has a minimum educational achievement of Ordinary Level Certificate, or any equivalent level adopted under the national education system;
(v) in case of a candidate for election as a representative of a constituency (but not those representing the Army, women, youth and workers):

-is a resident in the constituency in question and has some tangible interest in the constituency;
-has been living in Uganda for a period of not less than twelve months preceding the election.

(b) A person should not be qualified to become or remain a member of Parliament if he or she:

i) is of unsound mind;
(ii) has been adjudged or otherwise declared bankrupt under any law in force in Uganda and has not been discharged;
(ii) is or has been under a sentence of death or one of imprisonment exceeding six (6) months or more, without an option for a fine, imposed by a competent court;
(iii) is a member of the Electoral Commission (or any other body involved in administration of electoral processes), a public servant or a member of a district, municipal or other local government councilor a traditional leader within the meaning of the Constitution; or
(v) is otherwise disqualified by or under any other law of Uganda. (ll.72)

Ceasing to be a Member of Parliament

89. A person should cease to be a member of Parliament if he or she:

a) ceases to be a citizen of Uganda;

(b) is recalled by his or her electorate under the provisions of the Constitution; or

(c) is convicted of an offence involving moral turpitude;

(d) resigns by notice in writing under his or her own hand to the Speaker; or

(e) is recommended by the tribunal administering the Leadership Code of Conduct, for removal from office for serious violation of the Code; or,

(f) leaves the political party for which he or she stood as a candidate; or, if elected as an independent member joins a party, as provided below;

(g) is absent from fifteen sittings, a period when Parliament is sitting continuously without either authorization from the Speaker or satisfactory excuse; or

(h) is expelled by vote of Parliament having been found guilty of contempt of Parliament following investigation by the appropriate committee of Parliament; or

(i) the High court is satisfied, on application, that any of the circumstances referred to 10 sub-paragraphs 11.72(b-) above, have arisen.(ll.74)

90. A person who has been sentenced to death, or imprisoned for more than six months, or convicted of an offence involving moral turpitude should again be qualified at the

Conclusion of a period of ten years from the end of the sentence, or upon being pardoned, or upon conviction in question being quashed by a court or tribunal of appeal. (11. 75)

91. Oath of Allegiance

All members of Parliament should take an Oath of Allegiance. (11.77)

92. The Speaker of Parliament

(a) The following recommendations should apply to the office of Speaker:

(i) Following a general election, the newly elected Parliament should at its first meeting and before transacting any other business elect from among its members a Speaker and a Deputy Speaker.

(ii) A person should not be qualified to be Speaker or Deputy Speaker if he or she is a minister or deputy minister.

(iii) Parliament should be presided over the Speaker and in his or her absence by the Deputy Speaker. In the absence of both, Parliament should elect one of its members to preside.

(iv) When the office of Speaker falls vacant, the Deputy Speaker should take over, pending the election of a new Speaker which election should take precedence over all other business of the Parliament.

(b) The Speaker or Deputy Speaker should vacate office if:

(i) A resolution for his or her removal signed and seconded by members of Parliament is addressed to the Clerk of Parliament and is subsequently supported by two-thirds of all members.

(ii) He or she resigns by notice in writing under his or her hand addressed to the Clerk of Parliament.

He or she ceases to be a member of Parliament.

He or she is appointed to be a minister or deputy minister or to any· other public office.

(c) The functions of the Speaker should include:

(') chairing meetings of Parliament;

di) responsibility for coordination of the work of Parliament and overall direction of staff of its staff; and

(iii) such other functions as provided by the Constitution or other law.'

(d) The Speaker should have precedence over all persons other than the President and Vice-President, and should act as President in the absence of the President and Vice-President. (11.83)

93. Staff of Parliament

There should be a Clerk to Parliament and as many other officers serving it as are necessary for carrying out its functions effectively. (1l.85)

Accountability of members

94. Right of recall

(a) The registered voters of a constituency and the bodies electing representatives of interest groups and of the Armed Forces should have a right to recall their representative from Parliament before the expiry of the term of Parliament.

(b) Parliament should prescribe the grounds for and the procedures to be followed in exercise of the right to recall a member of Parliament, but in any event the grounds should include physical or mental incapacity to represent the people.

(c) Recall procedures should be initiated against a member if a petition to the Electoral Commission requesting recall of the member and stating that the people have lost confidence in the member on one of the prescribed grounds for recall is signed:

(i) in the case of a member representing a constituency, by at least one third of the registered voters of the constituency; and

(ii) in the case of a member representing an interest group or the Armed Forces, by a third of the body that elected the member. .

(d) Upon receipt of a petition under paragraph (c) the Electoral Commission should make inquiry into the matters of complaint and if satisfied as to the grounds and the number of voters signing the petition should declare the seat in question vacant and a fresh election shall then be arranged.

(e) Upon completion of the recall process, a member who is recalled should not be eligible to stand for the next election in the constituency, either the by-election held in respect of the vacancy created by the recall or the general elections (if the recall is Completed within six months of the due date for a general election}. (11.92)

95. Crossing the floor

Any member of Parliament wishing to move from one political party to another or who joins a political party after having been elected as an independent candidate, should first resign and seek fresh mandate, save that in situations involving the merger of political parties or formation of coalition governments involving two or more parties, these requirements should not apply.(1l.94)

96. Application of' the Leadership Code of Conduct

The Leadership Code of Conduct provided for in this Constitution shall apply to all members of Parliament. (1l.96)

97 Powers and Functions of Parliament

Parliament should have the following powers and functions:

(a) to make laws for the peace, order and good government of Uganda, for the well-being and development of the country, in accordance with the provisions of the Constitution;

(b) to effectively represent. the people in the spirit of national unity? with the members being guided In the performance of their duties by the objectives of the Constitution, public interest, good will and conscience, and at all times conducting themselves with dignity and respect;

(c) to protect the Constitution and uphold the democratic governance of the nation; to

(d) impeach the President in accordance with the provisions of the Constitution; to

(e) amend the Constitution in accordance with the provisions of the Constitution;

(f) to review the programmes and performance of the executive arm of government;

(g) to review and approve revenue and expenditure measures initiated by the President, in accordance with the Constitution; and

(h) to promote a culture of commitment to fundamental rights and freedoms; and

(j) To carry out such other functions as may be conferred upon it by the Constitution and the laws of Uganda. (1l.98)

Organizing the Work of Parliament

98. Quorum, voting and passing laws:

(a) The quorum of Parliament shall be one third of all members.

(b) Voting in Parliament should be governed by the Rules and Standing Orders made by Parliament which should among other things provide for the following:

(i) Subject to any other provisions of the Constitution, any question for discussion in Parliament should be determined by a majority of votes of those members present and voting.

(ii) The person presiding in Parliament should have neither an original nor a casting vote and if upon any question the votes are equally divided the motion shall be lost.

(Hi) The rules of procedure may prevent any member who has a pecuniary interest in the matter before Parliament from voting on it.

(c) Laws should be passed where a Bill has been approved by vote of Parliament and assented to by the President in accordance with the Constitution, but if presidential assent is withheld, in respect of any Bill, Parliament should have ultimate authority to pass it into law, in accordance with recommendations made in respect of the presidential powers (see Chapter Twelve).

(d) Any member of Parliament should have the right to introduce a bill into the House, and upon request should be provided policy and other advice by relevant technical agencies of government and drafting assistance from the office of the Attorney General.

(e) The power of Parliament to initiate and. deal with Bills concerning financial matters should be limited in accordance with the Constitution.(1l.05)

99. Standing committees

(a) Parliament should appoint standing and other committees as it considers necessary for carrying out its work, and in particular committees on the following subjects:

i) procedures, discipline, privileges and welfare of members;
ii) planning, agriculture, the economy and development;
iii) defence and security;
iv) finance and public accounts;
v) constitutional and human rights matters;
vi) public utilities;
vii) social services and welfare;
viii) international and regional co-operation; and

(ix) decentralisation.

(b) Composition of the committees should be as follows:
(i) Members should be elected from amongst the members of Parliament at the commencement of the first session of Parliament, with members indicating their preferences for committee membership in order of priority through notice in writing to the Speaker.

(iii) The number of members of each committee should be determined by Parliament.

(iii) The Speaker should appoint chairpersons of committees in accordance with their competence and in the order of preference indicated by members.
(iv) Subsequently, any member who has served longest on a committee should be the chairperson of that committee, subject to willingness to serve.
(v) No member should serve on more than two committees.
Ministers and deputy ministers should not be eligible for committee membership.
(c) The functions and duties of committees should be as determined by Parliament and should include:
(i) discussion of Bills relevant to the committee's area of competence laid before Parliament and to initiate any such Bill

(ii) assessment and evaluation of programmes and activities of government and governmental bodies inclusive of all bodies in which government has an interest) relevant to the committee's area of competence;

(iii) research of issues relevant to their respective fields; and

(iv) to report to Parliament on the performance of their functions and or any subject relevant to their functions;
(d) In carrying out its functions, a committee should have the following powers:

(i) to call any minister, any other person holding public office and private individuals to submit memoranda or appear before the committee.

(ii) to co-opt or employ qualified people to assist it in discharge of its duties.

(iii) to enforce the attendance of witnesses and production of documents. (11.107)

100. Language to be used in Parliament
A member may take part in the proceedings in Parliament using the official language or any language adopted by the Parliament either as a national language or as a language of parliamentary *debate. (11.109)*
Length of Terms, Summoning Meetings, Number of Sessions and Dissolution

101. Term of Parliament:
(a) Parliament should have a term of five years.
(b) The normal term may be cut short by a vote of Parliament.
(c)The normal term may be extended for a period not exceeding one year when there exists a state of emergency or a state of war but only when the circumstances are such as to prevent a normal election from taking
Place. *(11. 112)* -

102. Summoning of Parliament:

(a) The first meeting of Parliament after a general election shall be summoned by the President to begin within a maximum of 30 days after the general election.

(b) It should be the responsibility of the Speaker to summon meetings or Parliament at other times, normally in accordance with the minimum of Parliament at the previous meeting, but otherwise as required by the members under paragraph (c) and in any event so as to comply with the requirements for the minimum number of sessions required in each year (below).

(c) A meeting should be called by the Speaker within 21 days of receiving a request in writing signed by a minimum of one third of the members of Parliament. *(11.114)*

103. Minimum number of sessions:

Parliament should sit for at least one session during each calendar year, to commence and terminate on such dates as it may from time to time determine, but in any event the period between sessions should be less than twelve *months. (1l.116)*

104. Dissolution of Parliament:

Parliament should be dissolved only at the expiry of its normal term, with the President taking the formal steps to dissolve *it. (1l.118)*

CHAPTER TWELVE: EXECUTIVE

105. Presidential Executive System

(a) The President 8ho-:.l'I be directly elected and should not be a member of Parliament.

(b) The President should have executive powers as the head of government. (12.46)

15.
Presidential Elections

106. A presidential candidate should be sufficiently educated to be able to carry out the functions of the Head of State and of Government. One should have attained a minimum qualification of secondary education which at the moment means senior six. (12.48)

107. The minimum age for a presidential candidate should be 40 years.

A presidential candidate should be a citizen of Uganda by birth, and should have been resident in the country for a period of at least twelve (12) months prior to the election. As to the other personal qualities of the candidate plus disqualifications we recommend that the candidate should have the same qualifications as those of the members of Parliament.(12.51)

108. Modalities of presidential elections:

(a) In order to qualify to stand as a presidential candidate, a person should have the support of 1000· qualified voters from each of two-thirds of the districts of Uganda.

(b) A person should be declared to be a winner in a presidential election only if he or she has won an absolute majority of the votes cast.

(c) Where there are more than two candidates and no candidate obtains an absolute majority, then a second or run off election should be held within 30 days after the previous election.

(d) The candidates for the second or run-off election should be the two candidates that obtained the two highest results at the previous election.(12.56)

Declaration of results and questioning of validity:

109. Within 24 hours of ascertaining the results in a presidential election the Electoral Commission should declare the winner to be the elected President of Uganda.(12.58)

110. As evidence of seriousness, a person who challenges the validity of a presidential election be required to show that he has the support of at least 500 voters. (12. *60)*

111. Oath of Office

Before assuming office, the President should subscribe to the presidential oath and the oath of allegiance to be administered by the Chief Justice or a Justice of the Supreme Court or a Judge of the High Court (12.62)

Presidential Powers and Functions

112. The exercise of the major powers of the President should be subject to checks and balances, and this principle is given effect in relation to, among other things, the following:

(a) major constitutional appointments, by recommendations in Chapter Thirteen;

(b) senior appointments in the state services, by recommendations in Chapter Seventeen;

(c) the prerogative of mercy, in Chapter Seventeen; and

(d) command of the Armed Forces and declaration of war, in Chapter Fourteen.(12.65)

113. Powers and functions in respect of the legislature.

(a) The newly elected Parliament should be summoned by the President to elect a Speaker and Deputy Speaker provided that thereafter the powers to summon and prorogue Parliament should vest in the Speaker.

(b) The President should, at the beginning of each session of Parliament and before dissolution of Parliament deliver to Parliament a message on the state of the Nation.

(c) The President should, within 30 days after a Bill is presented to him, either;

assent to the Bill; or
return the Bill to Parliament with a request that the Bill or a particular provision of the Bill, be reconsidered.

(d) Where the President fails to do either of those things within a period of 30 days, he or she should be deemed to have assented to the Bill at the expiration of that period and that Bill should become law.

(e) Where the President withholds his assent and the Bill is passed by Parliament by two-thirds majority for the second time, the Bill should become law and the assent of the President should not be required.(12.70)

Powers and functions in respect of· States of emergency

114. If the President is satisfied that a state of emergency exists in which all or any part of Uganda is threatened by war or external aggression, or in which the security or economic life of all or any part of Uganda is threatened by internal insurgency or natural disasters such as flood, famine, earthquakes or events of a similar kind then:

(a) In consultation with the National Council of State and the Security Council, the President should have power to declare a state of emergency for 90 days.

(b) A proclamation of emergency should be laid before Parliament as soon as practicable as and in any case not later than 14 days when Parliament is sitting and within 30 days when Parliament is not sitting.

(c) A state of emergency may be extended by Parliament for up to six months at anyone time, provided the extension is supported by votes of at least half the members of Parliament.

(d) Upon being satisfied that the grounds on which the proclamation of a state of emergency was issued have ceased to exist, the President or Parliament should revoke the proclamation, but a parliamentary decision to revoke a declaration should be supported by at least half the members of Parliament.

(e) The President should have no legislative powers during a state of emergency, but should do all in. his or her power to deal with the situation subject 10 any law passed by Parliament III respect of the emergency, and should submit regular reports to Parliament on steps taken to deal with the emergency. (12.76)

115. **Power to make treaties**.

(a) The President or a person authorised by him may make treaties, conventions, agreements or other arrangements between Uganda and any other country or between Uganda and any international organisation or body in respect of any matter.

(b) A treaty so made by the President or any person so authorised should be subject to approval of Parliament.

(c) Any treaty, convention, agreement or other arrangement which relates to armistice, neutrality or peace should be subject to ratification by Parliament signified by resolution of the Parliament.(12.78)

116. **Restrictions on other roles**

The President should not hold any public office other than those conferred upon him or her by the Constitution and in particular, should not hold any ministerial *portfolio.(12.80)*

117. Immunity from Prosecution

The Constitution should provide for immunity of the President from suit and prosecution in any court of law while still President. When, however, the President leaves office he or she shall be personally liable for civil and criminal acts committed while in office and the time of limitation should not begin to run until the President has vacated office.(12.83)

118**. Privileges and benefits**:

(a) The president should not hold any other public office of profit.

(b) The president should receive reasonable salary, allowance, gratuity and other benefits.

(c) Parliament should prescribe other benefits and privileges of the President. (12.86)

119. **Retirement benefits**

(a) A President should receive reasonable pension and gratuity and other retirement benefits, as Parliament may determine.

(b) The pension and all other retirement benefits payable to the President should be available to him or her on resigning his or her office. This will serve as an inducement for the President to resign when it is in the public interest for him or her to do so. (12.88)

120**. Term of office**

(a) The President should hold office for five years from the date upon which he or she enters office.

16.

(b) The President should be eligible for re-election for another term of five years. The

(c) President should be restricted to serve two terms only after which he or she would be ineligible for re-election.(12.92)

121**. Removal and Impeachment**

The President may be removed from office on the following grounds:-

(a) Abuse of office or action in willful violation of the Presidential Oath or the Oath of Allegiance or any other provision of the Constitution.

(b) Misconduct and/or misbehavior which:

(i) brings or is likely to bring the office of the President into hatred, ridicule or contempt or disrepute;

(ii) is prejudicial or inimical to the economy or the security of the State.'

(c) If he or she is incapable of performing the functions of his or her office by reason of incompetence or physical or mental incapacity.

(d) The procedure for impeachment of a President should be as follows:

(i) not less than one-third of the total number of the members of Parliament should give written notice signed by each of them to the Speaker of Parliament that they intend to move a resolution in Parliament for the removal of the President from office on a charge that he or she has willfully violated the Presidential Oath or any other provisions of the Constitution or has been guilty of misconduct or misbehavior in terms of (b) above;

(ii) the notice should set out particulars of the charge;

(ii) the Speaker should forthwith cause a copy of the notice to be transmitted to the President;

(iv) the Speaker should direct the Chief Justice to constitute a tribunal composed of three Supreme Court judges to investigate the allegation and report to Parliament;

(v) the resolution should be· moved in Parliament within 14 days after the report of the tribunal is received by the Speaker;

(vi) the President should have the right to appear and be represented by a lawyer of his or her own choice during the consideration of the resolution by Parliament; and

(vii) if, after consideration by the Parliament, the resolution is passed by the votes of not less than two thirds of all the members of Parliament, the President should cease to hold office.

(e) The procedure for removal of a President on grounds of physical or mental incapacity should be as follows:

(i) not less than one-third of the total number of members of Parliament should give written notice signed by each of them to the Speaker of Parliament that they intend to move a resolution in Parliament for the removal of the President from office on the grounds of his physical or mental incapacity;

(ii) he notice should set out 'Particulars of alleged incapacity;

(iii) the Speaker should direct the Director of Medical Services, to set up a Medical Board composed of five qualified eminent medical specialists to examine the President and make a report to Parliament; the President should be informed of

(iv) the notice of resolution; and

(v) if, after consideration by Parliament, the resolution is passed by the votes of not less than two thirds of all the members of parliament, the President should cease to hold office.(12.96)

122. **The Office of President Becoming Vacant**

(a) Whenever a President dies, resigns, or is removed from office, the Vice-President should assume the office of President for the unexpired term of the deceased President with effect from the date of the death, resignation or removal of the President provided that if the unexpired period is more than two years, the Electoral Commission should be required to organise a

(b) presidential election within one year from the date he or she assumes office. The incumbent President should be in office until the day his or her term expires and hand over to the new President whose term of office shall also commence on that day.

(c) The President may by writing under his or her hand, addressed to the Chief Justice, resign his office. His or her resignation will take effect the moment the letter is received by the Chief Justice.(J *2.100)*

123**. The Vice-President**

(a) Each presidential candidate should name a person who should become the Vice-President in case he wins the election and that person shall then be duly nominated as a candidate,

(b) Where a presidential candidate is declared to have been elected President, the person named by him as the candidate for the post of Vice-President should automatically become Vice-President.

(c) The Vice-President should not hold any other cabinet portfolio.

(d) The Vice-President should have the same qualification as those of the President and should be removed or resign in the same manner as the President.

(e) In case of the office of the President falling vacant, the Vice-President should assume the duties and functions of the President. If the period is more than two years before a general election, the Electoral Commission will organise general elections for a new President.

(f) When the Vice-President assumes the office of the President, he or she should appoint a qualified person to the office of Vice-President subject to approval by Parliament.

(g) In case the office of Vice-President falls vacant, the President should appoint a qualified person to the office subject to approval by Parliament.

(h) Where both the offices of President and Vice-President fall vacant the Speaker of Parliament should assume the office of the President for not more than six months and the Electoral Commission should organise a general election of the President. When the Speaker of Parliament assumes the office of the President he or she should relinquish the office of Speaker.

(i) The Vice-President should receive such salary, allowances and retirement benefits as Parliament may prescribe.(12.106)

124. **Council of Ministers or Cabinet**

(a) The President should have power to appoint ministers and deputy ministers from either among members of Parliament or from other persons qualified to be elected to Parliament.

(b) Ministerial appointments should take account of expertise, gender, regional and religious balance.

(c) Ministers who are not members of Parliament should participate and enjoy all privileges of Parliament except that they shall not vote or hold any parliamentary office.

(d) Members of Parliament who are appointed as ministers should continue to represent their constituencies in parliament.

(e) Ministers should not hold any parliamentary office. (12.119}

125. **Size of the cabinet:**

(a) The Cabinet should be composed of the President, Vice President and ministers.

(b) Cabinet ministerial posts should no be more than twenty one. The

(c) maximum number of deputy ministers should be twenty one.

(d) Ministers and deputy ministers should be appointed by the President and approved by Parliament or its committee. (12.123)

Qualifications

126. Any Ugandan who qualifies to be a member of Parliament should also qualify to be a Minister and a Deputy Minister.(12.126)

127. **Tenure of office of ministers**:

(a) The office of the minister or deputy minister should fall vacant if:

i) a new President assumes office;
ii) he or she resigns from office;
iii) he or she dies; or
iv) the President so directs.

(b) Parliament may by resolution supported by not less than half of all its members pass a vote of censure in a minister or deputy minister, provided that:

(i) the notice of motion is signed by not less than a third of all members of Parliament;
(ii) before a motion for the vote of censure is moved, a minister shall be given not less than seven days notice,;
(iii) the minister may appear during the debate to be heard in his or her defence.

(c) Where a motion of vote of censure is passed by Parliament the minister should either resign or the President should dismiss *him. (12.130)*

128. **The Attorney-General**

(a) There should be an Attorney-General who should be the principal legal adviser to the government who mayor may not be a Minister.

(b) The Attorney-General should be appointed by the President subject to parliamentary approval.

(c) In order for the Attorney-General to be an effective adviser who is sensitive to government policy, he or she should be entitled to attend both the Cabinet and Parliament.

(d) The functions of the Attorney-General should be:

8?) provision of legal advice to government.
to formulate laws on important policies of government and give legal. opinion on behalf of the government;
(iii) to draw and peruse agreements, contracts, treaties, conventions and documents by whatever name called to which government is a party or in respect of which government has interest; and
(iv) to represent government in courts in legal proceedings to which government is a party.

(e) The office of the Attorney-General should fall vacant:

i) if a new President assumes office;
ii) if the holder of the office resigns; or
ƒiii) if the President so directs.(J 2.137)

CHAPTER THIRTEEN: NATIONAL COUNCIL OF STATE

129. National Council of State

There should be a body called the National Council of State established by the Constitution. (1 3.42)

130. Composition

The membership of the National council of State should be as follows:

(a) The President;

(b) The Vice President;

(c) The Speaker and the Deputy Speaker of Parliament; Ten

(d) ministers appointed by the President;

(e) One member of Parliament from each of the districts elected by the respective district councils from among the members of Parliament from that district provided that such members are not ministers when elected by the district council and are replaced should they subsequently become ministers;

(f) Five women members of Parliament elected by Parliament. (13.48)

131. Role and Functions

The National Council of State should have the following functions:

(a) To provide advice to the President on the exercise of executive powers and functions and on policy proposals initiated by the Executive.

(b) To act as a link between the Executive and Parliament' endeavoring to establish good working relationships, promote consultation between them and resolve conflicts between them.

(c) Approval of appointments by the President to such offices as the Constitution requires, but this role shall be carried out only by the Parliaments members on the NCS, sitting as a special parliamentary committee, without participation of the President or other members of the Executive.

(d) Such other powers and functions as may be given to it by Parliament.(13.54)

132. A referendum should be available in case of an impasse between the President and the legislature which cannot be resolved through the NCS.(13.58)

133. The Consultation and Conflict Resolution Roles

The following provisions should be the basis for, the NCS in carrying out its consultative and dispute settlement roles:

(a) Whenever the President is of the opinion that there is such a disagreement between the Executive and the Parliament as threatens to disrupt the smooth running of government, he may refer the issue involved to the National Council of State.

(b) After deliberations, the National Council of State may:

give advice to the President as it deems fit; or
refer the issue to Parliament for discussion making suggestions about resolving the matter, and the Parliament shall then be required to advise the President of its position by resolution.

(c) If the President refuses the advice of the National Council of State, he should communicate his intention to Parliament to make the issue over which there is disagreement a national issue to be resolved by a referendum.

(d) A referendum under paragraph (c) should be held within 60 days of th~ President's decision, unless the President and Parliament resolve the matter before the expiry of that period.

(e) The President and the Parliament should be bound by the result of the referendum, provided that:

(i) The President may resign and fresh presidential elections held if he or she does not accept the outcome;

(ii) Parliament should stand dissolved and fresh elections held if it does not accept the outcome. (13.60)

134. **Special Provisions on Disputes on Annual Budget Bills**

If the subject of disagreement between the Executive and Parliament includes the passing by Parliament of the annual Appropriation Act, notwithstanding the disagreement, Parliament should pass a vote on account to enable Government operations to be financed for a Period not exceeding six (6) months.(13.62) .

135. Internal Operations of the NCS

The NCS should determine its own procedures, provided that:

17.

(a) The President (or in his absence, the Vice-President) should chair the NCS, except in the case of sessions where the NCS considers appointments, in which case it should be chaired by the Speaker (or in his absence the Deputy Speaker).

(b) The President, Vice-President and Ministers should not attend when the parliamentary element of the NCS sits as a special committee of Parliament to consider nominees for presidential appointments.

(c) The members of the NCS may be paid such allowances as the Parliament may from time to time determine. (13.65)

CHAPTER FOURTEEN: ARMY

136. **The Nature, Character and Functions of the Army**

(a) Uganda should have a national, professional, disciplined and patriotic army

composed of citizens whose main role should be to defend national independence and territorial integrity and guarantee peace and stability for people, It should serve national and never partisan interests.

(b) The duties and functions of the armed forces should be:

18.

(i) to defend national independence;
(ii) to preserve the country's sovereignty and integrity;
(iii) to guarantee peace and security for the citizens;
(iv) to lend co-operation in emergency situation or public disaster;
(v) to engage themselves in programmes for the development of Uganda; to
(vi) relate harmoniously to civilian population; and
(vii) to be committed to the Constitution and to promote fundamental human rights and the national objectives.(14.48)

137. Name of the Army

The name of the army should be the Uganda Armed Forces.(14.51)

Size of, the Army

138. The government of the day should from time to time review and determine the size of the army depending on needs (such as the security situation) and the economy of the country.(14.57)

139. Defence policy should emphasize internal peace and stability and also encourage resolution of external conflict through negotiation to ensure that the standing army is of the minimum affordable size.(14.59)

Recruitment, Qualifications and Training

140. (a) Any general and voluntary recruitment into the army should be done in all districts of Uganda. While a district or tribal quota system may not be practicable, steps should be taken to ensure that dominance of the army by a certain tribe or ethnic group or origin is avoided.

(b) Recruitment should be based purely on merit. All recruits should be citizens of. Uganda, over eighteen, years of age of good character and have the minimum educational qualifications of Pnmary Leaving Certificate.

(c) Only Uganda citizens should serve in the army. Non citizens may only serve as short-term experts or instructors. (14.66)

141. (a) **In** addition to military training; human rights studies, constitutionalism, and political economy should be added to the Armed Forces syllabus.

(b) The government should endeavour to establish military academies for training members of the Armed Forces. (14.69)

142. Mandatory National Service and Military Training

(a) There should be compulsory military training and national service for every able bodied Ugandan in accordance with the law.

(b) The defence and security of the country should be the responsibility of every citizen of Uganda.

(c) Military service should be the honourable patriotic duty of the citizens of Uganda.

(14.73)

143. Command

(a) The President should be the Commander-in-Chief of the Uganda Armed Forces.

(b) As a Commander-in-Chief, his or her powers should include power to:

(i) grant commissions in the Armed Forces; and
(ii) appoint the Commander of the Armed Forces subject to approval by the National Council of State.

(c) **In** exercising operational command the President could be advised by the National Security Council whenever practicable but the President should not be bound by the advice. (14.78)

144. Discipline and Control

All soldiers should be taught the Military Code of Conduct which should be vigorously enforced. (14.81)

145. Military courts

(a) Military courts and disciplinary tribunals should exist in army units and security organs.

b) The field court martial should be abolished in order to give the accused a fair and just trial by giving him or her time to prepare his or her defence.

(c) All members of the army and the members of the military courts in particular should be educated about military law and members of military courts in particular should be educated about military law and members of military courts should receive introductory courses in administration of justice before any court starts its duties.

d) Any soldier convicted of a capital offence should have the right to appeal to the Supreme Court.(14.90)

Promotions, Terms and Conditions of Service

146. The criteria for promotion in the army should include: good conduct; exemplary performance; professional training; and availability of vacancies in the establishment.(14.92)

147. (a) Members of the army should receive reasonable pay and other conditions of service.

(b) The retirement age for army personnel should be 40 years for nonprofessionals and 50 years for professionals. Sixty years should be the compulsory retirement age. Those who retire from active service should be posted to the reserve force for a period of three years. On retirement, or case of death, gratuity and pension should be promptly paid to the pensioner or next of kin as the case may be.

(c) A committee to be known as the Armed Forces Service Board should be set up to advise the Army Council on appropriate terms and conditions of service for army personnel and advise on promotions. The Board should consist of:

148. Organisation of the Army

The air force, marines, air defence and infantry should all be under the overall command of the Commander of the Armed Forces.(14.100)

149. The Army Council

(a) There should be a council known as the Armed Forces Council which should comprise of the following:

i) the President as the Chairman; the Minister of Defence;

(ii) the Commander of the Armed Forces;

(iii) the Principle Secretary for Defence; and

.

(iv) not less than five serving officers, as prescribed by Parliament.

(b) The functions of the Armed Forces council should be:

(i) to advise the, President on all matters relating to the establishment, command, control and administration of the Armed Forces; and ,

(ii) to give professional advice on military strategies and defence policy in general.(14.107)

150**. Role of Parliament**

(a) No person should raise an army without authority of an Act of Parliament. Parliament should make laws for organisation, recruitment and administration of the Armed *Forces. (14.109)*

(c) Parliament should make laws for organisation, recruitment and administration of the Armed Forces. (14.109)

151. National Security Council

(a) There should be a National Security Council composed of:

i) the President as Chairman;
ii) the Minister of Defence;
iii) the Minister of Internal Affairs;
iv) the Commander of the Armed Forces;
v) the Commissioner of Prisons;
vi) the Inspector-General of Police; and
vii) the Director-General of Intelligence Organisations.

(b) The functions of the Council should be:-

i) to review the security situation in the country from time to time and advise government on appropriate measures to promote national stability and security;

ii) to ensure co-ordination of operations of various forces in the country in order to avoid clashes of interests or conflict among forces;

iii) to create and promote understanding among the forces; and
iv) to advise the President on national security matters and on the appointment of the Director-General of Intelligence Organisations. (14.111)

152. **Army Participation in Politics and Parliament**

Soldiers should be free to exercise their voting rights and those who want to contest elections should resign their offices and contest. (14.113)

153. The Army in Production

The army should engage in productive projects aimed at self reliance. It should endeavour to participate in national development and social service programmes which are beneficial to the economy of the country. (14.117)

154. International Military Co-operation

Uganda should encourage military co-operation among African countries, especially those of East Africa, in fields like creation of air forces, air defence and production of military armaments. Once other countries have accepted the idea, Parliament should prescribe the nature and mode of co-operation. (14.119)

155. Involvement of the Army in Other Countries' Conflicts

The State should endeavour to encourage the settlement of international disputes by peaceful means. The President should with the approval of Parliament, send troops for peace keeping in other countries when requested by United Nations or O.A. U. (1421)

156. Declaring War

(a) The Constitution should provide that Parliament may by resolution supported by at least two thirds of Its members authorize the President to declare that a state of war exists between Uganda and any other country.

(b) If the urgency of the situation is such that it is not practical to obtain Parliamentary approval in advance, such approval should be obtained as soon as is practicable. If Parliament is sitting at the time of the declaration, approval should be required within fourteen days of the declaration while otherwise the maximum period should be thirty days. (14.123)

CHAPTER FIFTEEN: POLICE, INTELLIGENCE ORGANISATIONS AND PRISONS

A. **The Police Force**

157. The Uganda Police Force

The Constitution should provide for a national police force called the Uganda Police Force and Parliament should have power to legislate in respect of the other police forces. (15.i8)

Functions of the Police Force

158. (a) The Constitution should provide for the following functions for the Police Force:

VII

(i) upholding and protecting the Constitution;
(ii) protecting life and property;
(iii) preserving law and order;
(iv) enforcing laws and regulations;
(v) Preventing and detecting crime;
(vi) apprehending and prosecuting offenders; and
(vii) Serving as a military force when Uganda is at war.

(b) Parliament should have power make laws on the organisation, administration, recruitment, discipline and further functions of the Police Force. (15.21)

159. (a) In executing their duties police officers should be mindful of their duty to treat the suspect in accordance with the law without humiliating or degrading the person.

(b) In addition to government being vicariously liable for civil damages, a police officer who exceeds or abuses power in the course of duty should be punished for arbitrary and unauthorized acts under the criminal law.

(c) Human rights studies should be part of the syllabus in police training, and officers who breach rights of citizens should be the subject of severe disciplinary action in addition to being open to damages actions, as discussed in Chapter Seven of this Report.

(d) A police bond should only be given in consultation with the RC II and local chiefs. (15.26)

160. **Political Control of the Police Force**

(a) The Inspector-General of Police should not be subject to control or direction of any person or authority in carrying out his or her functions.

(b) The President may give directions in writing to the Inspector-General of Police on matters of general policy concerning maintenance of security, public order and public safety, but only after consultation with the National Security Council.(15.31)

Command of the Police Force

161. (a) The Inspector-General of Police and his or her Deputy should be appointed by the President on the advice of the Police Council and with approval by the National Council of State.

(b) The IGP and his or her Deputy may be removed from office by the President for good cause or in the public interest with the approval of the National Council of State. (15.35)

162. The Police Council

(a) A Police Council should be established with the Minister of Internal Affairs as its Chairman and other members including the Attorney-General, the Inspector-General of

Police and such other police officers as Parliament may prescribe.

(b) The functions of the Police Council should be to advise government on policies concerning

recruitment, training, development, equipment, management, terms and conditions of service

and other matters relating to operation and administration of the Police Force.(15.38)

163. Size of the Police Force

(a) As the economy improves, government should strive to establish a police post in at least every sub-county.

(b) The numbers of police officers should be determined by government from time to time taking into account such factors as facilities, training and expertise of officers, population concentration, economic capacity and type and prevalence of criminal activity. (15.40)

164. Recruitment

(a) Recruitment into the Police Force should be undertaken nation-wide in all districts and given wide publicity.

(b) Recruitment should be on merit, with minimum qualifications being Ugandan. citizenship, eighteen years of age, Ordinary Level in education and character references from local authorities.(15.44)

165. Timing

(a) Para-military units should be created by the national government under the command of the Inspector-General of Police whenever the need arises.

(b) Such units should be equipped adequately with helicopters, gunships, armoured personnel carriers etc. They will meet the demand from the majority of the submissions that internal policing in Uganda should be left entirely to the Police Force. (J5.48)

166. Dealing with corruption

(a) A department of inspectorate should be established in the Police Force with the duty to check on police activities.

(b) There should be a strict code of conduct for the Police Force which, among other things should include: respect for human rights; commitment to one's duty and nation; obedience and respect of civilian authority; and honesty. (1 5.52)

Criminal Investigation Department (CID)

167 The period after detention or arrest within which a suspect must be brougi1t before a court should be 72 hours. (J5.55)

168 More qualified people, preferably lawyers, should be recruited and trained in prosecution and CID work. There is need to train and equip the CID personnel to professional standards in order to meet the challenges of the job. (15.58)

169. **Creation of a Police Service Board**

(a) A Police Service Board should be established consisting of: the Inspector General of Police as chairman; the Deputy Inspector-General of Police; a representative of the Public Service Commission; and two prominent citizens appointed by the President on the advice of the Police Council.

(b) The functions of the Board should be recruitment of police personnel, and confirmation of appointments, promotion, disciplining and review of their terms and conditions of services, and carrying out any similar functions related to the Uganda Police Force previously exercised by the Public Service Commission.(15.61)

170. **Local Government Police**

(a) There should be provision for locally controlled government police, with the national Police Force providing technical advice, support and training to the local government police.

(b) Common standards in police establishments nation-wide should be maintained by requiring common minimum recruitment criteria and by provision of police training through national institutions.(J5.69)

171. **Relationship between the Police Force and the RCs**

For the Police Force to gain respect among the people, it should act professionally and also coordinate with the local authorities,(J5.7J)

B. **Intelligence Organisations**

172. Necessity for Intelligence Organisations

Because intelligence organisations have become so important for modern government and because their operations need to be carefully regulated to ensure protection of people's rights the Constitution should both provide for their existence and limits on the way they operate.(J5.84)

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173. Nature and Functions of Intelligence Organisations

The functions of intelligence organisations should be to gather and evaluate information concerning the security, .defence, foreign relations and economic performance relevant to national interest. Emphasis should be put on detecting and countering espionage and other threats by foreign intelligence services or internal saboteurs. (I5. (3)

174. Organisation and Control

(a) There should be a single intelligence organisation under the supervision of a Director-General of Intelligence who should be appointed by the President on the advice of the Security Council subject to approval of the National Council of State.

(b) There should be an Intelligence Council with functions to advise the President on State security policy, terms and conditions of service of employees of intelligence organisations and the formation and administration of a code of conduct for intelligence officials.

The composition of the Intelligence Council should be as follows:

(c)
i) the President who should be the Chairman;
ii) the minister responsible for security;
iii) the Director General of Intelligence;
iv) the Director of Military Intelligence;
v) the Director of Special Branch; and
vi) any other person appointed by the President.

(d) Parliament should legislate concerning the organisation, powers and functions of the intelligence organisation.(15.96)

175. Relationships with other Security Organisations

There should be a code of conduct spelling out the limitations applying to the conduct of all intell1gence personnel among which should be the followll1g:-

(j) no officer or employee of an intelligence organisation should take action directly against or affecting any person about whom intelligence is collected;

(ii) no officer or employee of the intelligence organisation should have power to arrest, detain or

confine any person by virtue only of being an officer or employee of an intelligence body;
(ii) no officer or employee should pose publicly that he or she is an intelligence officer; and
(iv) officers and employees of an intelligence organisation should always respect the rights and freedoms of people. (15.102)

C. **The Prisons Service**

176. **Prisons as a Constitutional Issue**

The new Constitution should establish the Prisons Service. (15.111)

177**. Organisational Framework**

(a) There should be a Commissioner of Prisons responsible for administration of the prisons Service, supported by a deputy, both to be appointed by the President after consultation With the Prisons Service Council and subject to approval of the National Council of State.

(b) There should be a Prisons Service Council comprised of:

i) the Minister of Internal Affairs who should also be Chairman;
ii) the Attorney-General;
iii) the Commissioner of Prisons; and
iv) not more than three members appointed by the President with approval of the National Council of State.

(c) The functions of the Prisons Service Council should be to advise the President on policy concerning prisons, appointment of the Commissioner and Deputy Commissioner and such other matters as Parliament may determine.

(d) A Prisons Service Board should be established which should consider appointment, promotions and discipline of prison officers below the rank of senior superintendent of prisons and carry out other functions previously carried out by the Public Service Commission. The Prisons Service Board should be composed of:

i) the Commissioner of Prisons who should also be chairman; the
ii) Deputy Commissioner of Prisons;
iii) a member of the Public Service Commission; and
iv) two prominent citizens appointed by the President on advice of the Prisons Service Council.

(e) The Prisons Act should be amended to provide in more detail for the functions of the Prisons Service, Prisons Council and Prisons Service Commission. (15.120)

17tt The Local Prisons Service

Prisons should be established at county and sub-county levels to be operated by prisons services under control of local authorities at district level. (15.123)

179. Training

Government should endeavour to provide prisons warders and officers with courses that will equip them with knowledge of law, human rights and various technical skills which can in turn be passed on to the inmates.(15.127)

180. Improvement of Prison Conditions

The people's proposals for improvement of prison conditions set out in this chapter should form the basis for an agenda of action by both government generally and the Prisons Service in particular.(15.129)

CHAPTER SIXTEEN: PUBLIC SERVICE

181. Managemel1t of Public Service

(a) The Ministry of Public Service should handle overall management and efficiency of the public service on behalf of government.

(b) An independent Public Service Commission should handle personnel matters concerning appointments into and advancement within the public service. (16.55)

182. **The Public Service Commission**

(a) The functions of the PSC should include:

(i) to advise the President' in making appointments to high ranking constitutional and other offices, in accordance with law;
ii) to appoint, promote, discipline or dismiss other civil servants;
iii) to review the terms and conditions of service of public officers; and
iv) to review the Standing Orders and Regulations, training and qualifications and all matters connected with management and development of public service and advise the government.

(b) The PSC should be answerable to Parliament in performance of its duties and should submit annual reports to Parliament. (16.58)

183. **Appointment, Qualifications and Disqualification of Members of PSC**

(a) Members of the PSC should be appointed by the President but subject to approval by the National Council of State.

(b) The PSC should be composed of the Chairman and eight other members two of whom may be appointed as deputy chairmen.

(c) The members of the PSC should be people of high integrity and good character with wide experience but should not include members of the public service, or members of Parliament, district councils or executive bodies of political parties.

(d) A member of the PSC who fails to perform his or her duties or is guilty of misconduct should be removed by the President on the advice of the National Council of State. (16. 62)

184. Tenure of Office

The members of PSC should serve for a period of four years and should be eligible for re-appointment, but half of the first members should be appointed for a lesser period, so as to ensure the terms of members terminate at different times, thereby providing some continuity of membership.(16.64)

185. The Teaching Service Commission

The TSC should perform similar functions to those of the PSC in regard to teachers and should be subject to composition requirements similar to those recommended in respect of PSC. (16.66)

186. Creation of New Offices in Public Service or Teaching Service

The President in consultation with the relevant service commission or committee may create new offices in the public or te8ching services of Uganda. (16.69)

187. Decentralisation or Functions of PSC and TSC

The PSC and TSC should decentralize their functions to district service commissions appointed by district councils, but which should not include members of Parliament, district councils or political party executive bodies. (16.72)

188. **Appointment of President's Personal Staff**

(a) The President should have power to appoint and remove his or her personal staff.

(b) The salaries, allowances and discipline of such staff should be guided by Public Service Commission Standing Orders. (16.74)

189. **Management of Ministries and Departments**

(a) There should continue to be persons appointed to head departments, who should have a role similar to that provided in Article 67 of 1967 Constitution, so that such a person should be the administrative head of the ministry or any government department, with functions which should include:

(i) organizing and ensuring the smooth running of the department or ministry;
(ii) advising the minister, as required, on the operation of the department or ministry;
(iii) ensuring implementation of government policies; and being responsible for accounting for government moneys.
(iv)

(b) The name given to heads of departments should be changed from permanent secretary to "principal secretary.

(c) The principal secretary should be appointed and may be removed by the President in consultation with the PSC.

(d) Those who may not have risen in the ranks of the traditional civil service but have relevant management skills and experience may be appointed to positions of principal secretaries. (16.80) .

190. Transfers and Training of Public Servants

(a) Government should establish a Human Resources Planning and Development Department in the Ministry of Public Service with responsibility for organizing training of public servants.

(b) Government should establish a staff college for senior civil servants and should rehabilitate the few existing ones for junior officers.

(c) Transfers of public servants should take into account domestic considerations, for proposed transferees.(16.87)

Retirement Age

191. Powers to retire public servants in the public interest should be exercised by the PSC or in case of constitutional office by the President in consultation with the PSC.(16.92)

192. The retirement age for public servants should remain as it is, namely, with voluntary retirement at the age of 55 years and compulsory retirement at the age of 60 years.(16.95)

193. Pension

(a) Every civil servant should receive a reasonable pension taking account of salary and length of service.

(b) To qualify for pension, an officer should have served for a continuous period of not less than ten years.

(c) Government should devise appropriate means-to ensure that pensioners receive their pensions regularly and promptly.

(d) Pensions should be reviewed regularly to take account of inflation and should not be taxed. (16. 98)

194. Parastatals

(a) Members of Parliament or holders of political offices including executive members of political parties should not be appointed on management boards of parastatals. -

(b) Members of management Boards of parastatals should be appointed by the executive from among prominent citizens who have relevant experience and knowledge.

(c) All vacant jobs in parastatals should be widely advertised and interviews conducted publicly by the management board in consultation with the PSC or any other relevant service commission.

(d) Parastatals should continue to be answerable to the Parliament that sets them up. An annual report from the management board should be presented to Parliament.

(e) There should be a parliamentary committee on parastatals that will monitor the performance of the parastatals and also vet or approve management board members of parastatals. (16.106)

195**. Involvement of Public Servants in Politics**

(a) Public officers should not hold offices in political parties, and those who want to contest for political offices should resign their offices.

(b) Under a Movement political system civil servants could participate in RC system at a lower level from RC I to RC III.

(d) Under a multi-party political system, civil servants should refrain from active political campaigns. (16. *110),*

CHAPTER SEVENTEEN: JUDICIARY AND ADMINISTRATION OF JUSTICE

196**. Independence of the Judiciary**

(a) In the performance of its functions, the judiciary should be independent and subject only to the Constitution and the law.

(b) It should be obligatory for all citizens and other entities to obey court decisions and enforce them whenever necessary.

(c) All judicial officers should be adequately facilitated and remunerated so that their performance is exemplary and. is not c0'mpromised in any way. The salaries of judges should be fixed by law. The security of tenure of judges should be guaranteed by the Constitution. (17.44)

197. The Court Structure

(a) The Constitution should establish the Supreme Court as the highest court of appeal.

(b) The Supreme Court should have supervisory powers over all courts and any other adjudicating authority and may issue orders and directions for the purpose of enforcing or securing the enforcement of its supervisory powers. It should also have appellate jurisdiction in respect of all cases heard by the High Court inclusive of cases which can be the subject of appeal to the High Court.

(c) The Chief Justice should preside over the Supreme Court and should be head of the judiciary in Uganda.

(c) The Supreme Court should consist of the Chief Justice, Deputy Chief Justice and a minimum of five other justices

(e) Three justices should constitute a quorum of the Supreme Court in any ordinary case.

(f) Five justices should constitute a quorum of the Supreme Court in any case of a constitutional nature.(17.47)

198. Hierarchy of the Judiciary and Responsibility for its Administration

(a) The Chief Justice should, as the head of the judiciary, be responsible for the administration and supervision of the judiciary.

(b) The Deputy Chief Justice should assist the Chief Justice in the administration of the Supreme Court and carry out any duties as may be assigned to him or her by the Chief Justice

(c) The Principal Judge should assist the Chief Justice in the administration and supervision of the High Court and subordinate courts and should carry out such functions and duties as may be provided under any law, but he or she should not be a member of the Supreme Court.

(d) The Chief Registrar should be the chief administrative officer of the judiciary He or she should be assisted by such registrars as may be provided for by the Judicial Service Commission. (17.55)

Appointments, Qualifications and Tenure

199 (a) The Chief Justice and the Deputy Chief Justice should be appointed by the President subject to approval by the National Council of State

(b) The justices of the Supreme Court and the judges of the High Court should be appointed by the President on the advice of the Judicial Service Commission and subject to approval by the National Council of State.(17.61)

200. (a) A person should qualify to be appointed a Chief Justice if he or she is a citizen of Uganda and has served as a justice of the Supreme Court or a court of similar jurisdiction, or has been an advocate before such a court for a period of at least ten years.

(b) A person should qualify to be appointed a Deputy Chief Justice if he or she is a citizen of Uganda and has served as a justice of the Supreme Court or a judge of the High Court, or a court of similar jurisdiction, or has been an advocate before such a court, for a period of at least ten years.

19.

(c) A person should be qualified to be appointed as a justice of the Supreme Court if he or she has served as a judge of the High Court or a court of similar jurisdiction, or has practised as an" advocate before such a court, for a period of at least ten years.

(d) A person should be qualified to be appointed a judge of the High Court if he or she has served as a judge of a court of similar jurisdiction or has practised before such a court for a period of not less than seven years.(17.66)

201. Justices of the Supreme Court and judges of the High Court should be able to retire with full benefits at any time after turning sixty (60) years of age while the compulsory retirement age should be seventy (70) years for a justice of the Supreme Court and sixty five (65) years for a judge of the High Court.(17.69)

202. Removal of Members of the Judiciary

There should be constitutional provision to guarantee the tenure of office of the members of the judiciary, consisting of the following:

(a) members of the judiciary should only be removed from the bench, on the report of an independent tribunal;

(b) a justice of the Supreme Court and a judge of the High Court should not be removed from office except for proven misbehavior or incompetence on ~rounds of inability to perform the functions of his office arising out of infirmity of the body or mind;

(c) a justice or judge may be removed from office by the President after the Judicial Service Commission has determined that there is a prima facie case and advised the President to set up a tribunal consisting of three judges of the High Court or Supreme Court to investigate the matter and make recommendations to the President, and the President should act in accordance with the recommendations of the tribunal; and

(d) a complaint seeking the removal of the Chief Justice or the" Deputy Chief Justice on account of inability to perform his duties or incapacity arising out of infirmity of body or mind should be lodged with the President. The President in consultation with the National Council of State should appoint a tribunal of three justices of the Supreme Court or judges or former judges of a court of similar jurisdiction to investigate the case, and the tribunal should furnish the President with the report of its findings with advice on the course of action to take and the President should act in accordance with the recommendation of the tribunal. (17.71)

203. The Judicial Service Commission

(a) An independent Judicial Service Commission should be established. (b) The

Commission should be enlarged to consist of the following:

i)· the Chief Justice, who should also be Chairman;
ii) the Principal Judge;
.Iii) the Attorney-General;
iv) three prominent lawyers elected by the Uganda Law Society; v) a prominent citizen who is not a lawyer; and
vi) two members of the Public Service Commission.

(c) Members of the Commission other than those holding their posts ex officio should be appointed by the President subject to the approval of the National Council of State.

(d) Members should serve for a period of four years subject to renewa1.(17.77)

204. The following should be the functions and duties of the Judicial Service Commission:

(a) to advise the President on appointment and removal of justices of the Supreme Court and judges of the High Court other than the Chief Justice and the Deputy Chief Justice, subject to the provisions of the Constitution;

(b) to appoint all other judicial officers and determine their terms and conditions of service, in consultation with government;

(c) to discipline judicial officers (other than justices of the Supreme Court and judges of the High -Court);

(d) to devise programmes to educate the people about the law and administration of justice;

(e) to receive and consider people's complaints concerning the legal system; and to monitor the administration of justice in the country and tender advice to the

(t) concerned authority. (17.80) ,

Terms and Conditions of Service not, the Judiciary

205. Members of the judiciary should be accorded terms and conditions of service commensurate with their status and responsibilities. Their remuneration should be adequate and fixed by law and should not be altered to their disadvantage while in service.(17.82)

206. A retired justice or judge should enjoy retirement benefits similar to the terms and conditions of a serving justice or judge.(17.84)

207. Financial Autonomy of the Judicially

(a) The judiciary should be given financial autonomy. Funds in the form of a grant should be determined by parliament and should be released directly' to the judiciary on quarterly basis. The judiciary should also be allowed to utIlise the revenue col1eGted by it so as to enable it reduce the persistent problem of lack of funds for the administration of justice.

(b) All court fees and fines should be revised to take account of inflation.

(c) All irregularities in collection of court revenue should be rectified.(17.86)

208. **Constitutional Interpretation**

(a) The High Court, constituted by three judges, should have jurisdiction to deal with cases involving interpretation or application of the Constitution.

(b) Other courts and tribunals before which a constitutional issues of a substantial nature arises should' be required to refer the issue to the High Court which should be required to deal with the issue promptly.

(c) An appeal should lie to the Supreme Court from the High Court's decision on a constitutional matter, and the Supreme Court should be required to deal with the matter promptly.

(d) The High Court should, subject to appeal to Supreme Court, be given constitutional power to declare null and void any legislation or executive act found to be unconstitutional. (17.92)

209. **Other Aspects of Jurisdiction**

(a) Parliament should make laws as it may deem appropriate and consistent with the Constitution, in connection with power, composition and jurisdiction of the Supreme Court.

(b) In addition to adjudication of cases in accordance with the law and dealing with criminal trials, the courts should be required to order compensation and restitution for victims of crimes, and should promote reconciliation among the parties in order to promote justice.

(c) In the execution of their duties the justices, judges and magistrates should be required to be impartial and neutral and all persons should be equal before the law and all law enforcing agents should apply the law without fear or favour.

(d) Where a case before a court has not been properly investigated, the judge should order further investigations before an acquittal based on lack of evidence is made.

(e) The judge or magistrate should be actively involved in cross-examining the witnesses during trials in order to ensure that substantive justice is obtained.

(f) Court procedures should be simplified, particularly the technical rules. The role of the lawyers in disputes should never be allowed to defeat the principle of equality before the law.

(g) In cases where the court is of the view that the accused person will suffer injustice if not represented by a lawyer, it should order that the State provides legal representation for the accused at the expense of the *State.(17.100)*

Popular Justice: Resistance Committee Courts

210. (a) RC Committees should continue to exercise judicial powers, as should the committees of any new or modified local government system established in accordance with the recommendations of Chapter Eighteen of this Report.

(b) RC courts should be renamed Local Council Courts according to the level of the Councils.(17.119)

211. RC III committees may be given power to try minor criminal cases but in that case they should not exercise powers of arrest as is currently provided in the RC *Statute.(17.i2l)*

212. There is an urgent need to educate RCs on their judicial functions. The Statute providing for their judicial powers should not only be availed and explained to them but also translated into languages they understand at a local level. The efforts so far made by the NRM Secretariat in this direction fall far too short of people's expectations and resources should therefore be availed to ensure that people are properly educated on this aspect of the RC work.(17.124)

20. **213.** The government proposal to do away with magistrates courts Grade II and III should be implemented, and the former magistrates made available as resources to the RC courts to provide advice, improved records and improved supervision.(17.127)

214. The law should be amended to allow execution of orders of RC courts to be made by the RC III courts, and eventually by other RC courts if administrative resources are sufficient to enable them to take on such work.(17.131)

215. There should be a right to appeal from an RC III court to either a magistrate Grade I or a chief magistrate, and appeals may lie from either of those to the High Court, but only with leave.(17.134)

216. The power to supervise RC courts should be given to chief magistrates and magistrates Grade 1.(17.136)

217. The Jury

(a) There should be a jury system in all criminal cases for all courts from magistrate Grade I to the High Court. The Jury should consist of nine (9) people.

(b) There should be a jury system in civil cases where both parties agree or where the Court so decides.

(c) In all civil cases where there is no jury, the court should be constituted by a judge or magistrate together with assessors.

(d) It should be the duty of every adult citizen to serve on the jury. Parliament may make laws on the numbers and selection of members of the jury in each court, and those government officials or legal professionals who may be exempted from jury service, such as ministers, members of Parliament, members of armed forces and security organs on active service and lawyers.

(e) In relation to the verdict of jury:

21. (i) the verdict should be communicated by the jury to the presiding judge or magistrate who should announce it to the court;
(ii) a unanimous verdict should be, binding on the judge or magistrate;
(iii) in a capital offence the verdict' should be unammous; and

(iv) in cases other than capital offences a majority verdict of seven or more should bind the judge or magistrate.(17.149

218. **Specialised Tribunals**

(a) Consideration should be given to establishing special family courts once funds and facilities are available.

(b) Any court dealing with marriage disputes and family and children's issues should normally sit in closed session to enable parties and witnesses to speak freely. (17.160) .

219**. Legal Aid Schemes**

(a) There should be legal aid scheme where people unable to afford advocates' fees can go for legal advice or counselling.

(b) Government should either establish a department of legal aid in the Attorney General's chambers or establish an independent institution to assist people who cannot afford legal representation.

(c) NGOs and the legal profession should be encouraged to establish and support voluntary and non-governmental legal aid schemes.(17.168)

220. The Director of Public Prosecutions.

(a) The office of DPP should be entrenched in the Constitution as a public office.

(b) The DPP should be appointed by the President on recommendation of the Public Service Commission subject to approval of the National Council of State.

(c) To be appointed DPP, a person should be qualified to be appointed a judge of the High Court of Uganda.

(d) The main powers and functions of the DPP should be:

(i) to institute criminal proceedings against any persons or authority in any court with competent Jurisdiction other than a military court;

(ii) to take over and continue any criminal proceedings instituted by any other person or authority; and with permission 'of the court, to discontinue at any stage before judgment is delivered any such criminal proceedings instituted by the DPP or by any other person or authority.

(e) The powers conferred upon the OPP may be exercised by him or her in person or officers in his or her department subordinate to him or her.

(f) In exercising the powers and performing the functions conferred upon him or her by the Constitution, the OPP should have regard to the public interest in justice and the need to prevent abuse of legal process but should not be subject to the direction and control of any person or authority.

(g) The prosecution should pay expenses of prosecution witnesses. The court should continue to pay expenses of other witnesses. (17.178)

221. **Administrator General & Public Trustee**

The office of the Administrator General should be decentralized at least to district level to enable the people finalise their matters within the district instead of traveling to Kampala.(17.181)

222. **The Prerogative of Mercy**

(a) The President upon advice of the Advisory Committee on the Prerogative of Mercy should have powers to grant pardons to any person convicted of any offence and to give reprieve and respite and to remit, suspend or commute any sentence passed by any court or other authority.

(b) The Advisory Committee on the Prerogative of Mercy should consist of:

the Attorney-General who should be its chair-person;
three prominent citizens· of high motal standing, appointed by the President, subject to approval by the National Council of State;
one member appointed by the President after nomination by the Uganda Law Society, subject to approval by the National Council of State.

(c) The members of the committee should serve for a period of three (3) years subject to renewal. (17.186)

223. **Education on the Law and Reform of the Law**

(a) The Constitution should provide for a Law Reform Commission, which should consist of a chair-person and six other members appointed by the President subject to approval of the National Council of State, all of whom should serve four year terms with eligibility for reappointment.

(b) The chair-person should be a justice or judge or a person so qualified, and should serve on a full-time basis.

(c) Two of the members should be non-lawyers with experience and qualifications relevant to the Work of the Commission and, in view of the fact that women are particularly disadvantaged by the current law should also include at least one woman.

(d) The Law Reform Commission should examine our laws on a continuous basis, to ensure that they are: in conformity with the Constitution; relevant and appropriate for contemporary society; reflect the wishes, values and aspirations of our people; in conformity with international conventions and instruments on human rights which bind Uganda; and comprehensible and intelligible to the ordinary citizen by rendering them in simple, straight forward language. In particular, the Commission should review existing offences under the Penal Code and other criminal legislation and offences recognised by various customary legal systems of the country, with a view to removing those that are not appropriate to our current circumstances.

(e) The Commission should promote development of new areas of law and new or more effective methods for administration of justice to ensure that the law and its administration remain responsive to Uganda's changing needs.

(f)The Law Reform Commission should report to the Attorney-General and through him or her, to the Parliament, with reports on particular subjects provided from time to time, and an annual report on its activities. (17.197)

224. It should be the duty of the judiciary, the Law Reform Commission, the Judicial Service Commission and law enforcement agencies to develop programmes to increase people's awareness of the law and the administration of justice and of the people's rights under law.(17.200)

CHAPTER EIGHTEEN: LOCAL GOVERNMENT

225. Principles for the System of Local Government

(a) The following principles should be followed in decentralizing power to local government:

(i) a system should be put in place to ensure that the transfer of powers, functions and responsibilities from the central to the local governments is done in a smooth and coordinated manner;

(ii) the aim should be to decentralise to all levels of local government, from the district to the villages;

(iii) each local government unit should have sound, reliable and adequate financial resources to enable it perform its functions effectively;

(iv) appropriate measures should be taken to enable local government units to plan and initiate and implement policies, programmes and projects on matters affecting the inhabitants of their areas;

(v) persons in the service of local governments should be under the effective control of local authorities; and

(vi) as far as practicable, local governments should have powers to oversee and evaluate the performance of persons employed by the central

Government who work in their areas, and to monitor the implementations and performance of central government projects and services in their areas.

(b) The system of local government should be based on democratically elected councils and political leaders at every leve1.(18.74)

226. **Constitutional Guarantee**

Any constitutional amendment by Parliament which affects the system and principles of decentralisation of local government should be ratitied by at least two thirds of all the districts of Uganda. (18.76)

227. Change of Name

The name" Resistance" should be dropped, and instead the councils and committees operating from village to district level should be called local councils and committees. The village, parish, sub-county and county/municipality councils and committees should be referred to as local council 1, local council 2, local council 3, local council 4 and local councils (LCI, LC2, LC3, LC4, and LC5) respectively. The district council may be referred to as either LC5, or the district council (18.79)

228. The District as the Basic Unit of Decentralisation

The district should form the basic unit of local government, and Parliament should have powers to make laws to create administrative units below the district leve1.(18.82)

229. **Numbers and Boundaries of Districts**

(a) Uganda should be divided into the districts, counties, sub-counties, parishes and villages existing immediately before the new Constitution comes into effect.

(b) Parliament should have power to make laws altering the boundaries of or creating new districts and lower administrative units, but with the agreement of the affected districts or lower level units.

(c) Any measure for altering boundaries of or creating new district or lower level administrative units should be based on:

(i) the necessity for effective administration and the need to bring services Closer to the people;
(ii) the ecunol11ic viability of the area; and
(iii) other criteria such as means of communication, geographical features, Population l density and the desire of the people concerned. (18.90)

230. **The District Government**

(a) The district Council Should he the supreme political organ in the district, with Powers to make policies pass laws and supervise the activities of the administration within the district.

(b) The district council should consist of:

one person from each electoral area within the district directly elected by universal adult suffrage through secret ballot: and

(ii) two women representatives elected by each county council to represent the county. (18.98)

231. **Qualification of a District Councilor**

The minimum qualifications for a district councilor should be that a person:

(a) has ability to read and write;

(b) has a clean record, in the sense of not having been convicted of an offence involving moral turpitude; and

(c) is ordinarily resident in the area he or she wishes to represent.(18.l00)

232. Demarcation of Electoral Areas

A district should be divided into electoral areas based on sub-counties so that each sub-county is represented by at least one councilor, and larger population sub-counties are divided in such a way that the number of inhabitants in each area is as nearly equal to the population quota for the sub-counties in the district as possible. However, variations may be made in the population quota depending on the means of communication, geographical features and the density of the population. (18.l05)

233. Timing of District Council Elections

(a) A district council should be elected for a term of three years.

(b) Elections for district councils should be held so as not to coincide with the elections of members of Parliament. The details should be worked out by law and in consultation with Electoral. Commission.(18.l08)

234. **Right of Recall of Members of District Councils**

The mandate of a district councilor may be revoked by the electorate only on serious grounds, according to law enacted by Parliament. The grounds for recall should include the following:-

(a) that the councilor has abandoned the policies and programmes for which he or she was elected;

(b) that since he or she was elected, the councillor has consistently behaved in a manner unbecoming of a district councillor; and

(c) that he or she has abandoned or neglected his or her duties.(18.111)

235. Political Head of the District

(a) There should b.; a district chief executive for every district council who should be elected from among the members of the council with an absolute majority required where there are more than two candidates contesting.

(b) The district chief executive should be the political head of the district and should:-

i) chair meetings of the executive committee of the district;
ii) oversee the general administration of the district;
iii) co-ordinate the activities of the lower councils; and

(iv) co-ordinate the relationship between the district and central government with a view to ensuring proper exercise of powers, responsibilities and functions.(18.115)

236. Chairman as Speaker

There should be a chairman of the district council elected from among the elected members of the Council who should be the speaker of the council.(18.117)

237. The Executive Committee of the District Council

Districts should be free to establish executive offices under the District Council, but the executive should include:-

(a) The district chief executive;

(b) Secretaries elected by the district council on the recommendation of the district chief executive from among the members of the council to be in charge of:-

i) finance and development planning;
ii) security;
iii) social services, including education, health, social welfare and social infrastructure;
iV) land, natural resources and environment;
v) agriculture, livestock and fisheries; and
vi) women and youth.

(c) A district council should be free to decide on the number and title of additional members of the district executive committee and additional services that a committee may undertake in the district.

(d) The executive committee may co-opt any person to attend its meetings but a co-opted person should not have the right to vote .

(e) The district executive committee may be removed by a two-thirds majority vote of the district council.(18.119)

238. The District Development Committee

(a) A district should have a district development committee composed of the district executive committee and heads of civil service departments in the district, and chaired by the district chief executive.

(b) The district development committee should be responsible for initiating and coordinating development plans, and monitoring and evaluating the implementation of development plans, programmes and projects in the district. It should be answerable to the district council.(18.122)

Finances of the District Government

239. Local governments should be given powers to increase their sources of revenue and vary rates of taxation. Sources of revenue should include graduated tax, rates, rents, market dues, fees and fines, interest on investment, royalties and licenses which have been traditionally collected by them, and in addition those they collected before 1967 (such as fishing license, land rents and premiums, royalties on minerals, parks and tourism, crop cess and cattle license).(18.133)

240. Local governments should be made responsible for collecting taxes like road licenses, corporation tax, sales tax, excise duty, road tolls and agricultural export tax on behalf

of the central government, and they should retain a share of these taxes in accordance with a formula to be worked out by financial experts and mutually agreed on between the central and local governments.(18.135)

241. A formula for sharing revenue between the central and local governments should be worked out, taking into account each district's size, population, number of primary schools, and health units, length of feeder roads, agricultural productivity and revenue potential. This should be done in such a way as to assist the least developed districts, but at the same time motivating those districts which contribute more to central government revenue.(18.137)

242. Grants from Central Government

(a) The system of block grants to the districts should continue, but should be implemented as originally intended.

(b) Due to the importance people attach to the issue of balanced development, there should be a constitutional provision empowering the President to declare a district to be needy, with the approval of the National Council of State. Any district so declared should, in addition to grants extended to all districts, be entitled to a catch-up, non-conditional grant, the details of which should be determined by Parliament from time to time.(18.140)

243. Loans

23.

A local government should have powers to raise domestic or foreign loans subject to the approval of Parliament. Such loans should be guaranteed by the ministry responsible for finance. (18.142)

244. Investiments

Local governments should have power to make investments, provided that for medium or large projects as defined from time to time by Parliament, they should do so in consultation with the Uganda Planning Commission.(18.144)

245. Sharing Revenue Below District Level

District Councils should work out formulae for sharing with sub-counties the revenues originating from the sub-counties. There should be strict accountability for the funds retained in the sub-counties.(18.146)

Management and Control of Local Government Funds

246. Every district government should have a district treasurer who should:

(i) be appointed by the district service commission for such period and upon such terms and conditions as the district service commission may determine;
(ii) be in charge of the day to day management of the finances of the district government, in conjunction with the DES; and
(iii) have relevant qualifications and experience in financial management or accounts. (18.148)

247. Regular Auditing of Accounts

Due to the importance attached to the regular and timely preparation and audit of accounts:

(a) district governments should be required to prepare their accounts and have them audited within six months after the close of the financial year; and

(b) the audited accounts and reports on them should be laid before the district councils for scrutiny not more than nine months after the close of the financial year.(18.150)

248. **District Finance and Accounts Committee**

(a) Every district council should elect a district finance and accounts committee from among its members. It should be chaired by the secretary in charge of finance.

(b) The district finance and accounts committee should be responsible for:

(i) identifying sources of funds and planning for their collection and for utilization of resources;
(ii) advising the district council on collection and allocation of funds to different departments and units in the district or to lower councils within the district;
iii) monitoring and control of expenditure of funds;
iv) advising the district council on general financial matters;
v) scrutinizing the audited district accounts and reporting on them to the district council; and
(vi) instituting measures to instill discipline and control corruption and abuse of office by elected officials and public servants in the district. (18.152)

249. **Personnel for District Governments**

(a) A district service commission should be established in each district and given the authority and powers to act independently in many matters relating to members of the civil service working In the district.

(b) The district service commission should consist of a chairperson and four members all of whom should be appointed by the district executive committee with the approval of the Public Service Commission. They should:

(i) hold office for a period of four years, but should be eligible for reappointment for another term of four years; and
(ii) be persons of high integrity and moral standing.

(c) A member of a district service commission may be removed from office by the district executive committee with the approval of the Public Service Commission. The grounds for dismissal should include:-

(i) inability or failure to discharge the functions of office due to physical or mental incapacitation or any other cause; and
(ii gross misconduct and misbehavior;

(d) The powers of the district service commission should include appointment, promotion, transfer and discipline of staff directly employed by .the local government. It should also exercise control and discipline over staff seconded by the central government, subject to the approval of the 'Public Service Commission.

(e) Members of the district service commission shall be paid by the district council such remuneration as may be approved by Parliament.(18.158)

250. **Relations between the Central and Local Governments**

(a) The central government should be responsible for the following functions: and services; (schedule to the Constitution);

24.

i) arms ammunition and explosives;
ii) defence, security and maintenance of law and order;
iii) banks, banking, promissory notes, currency and exchange control;
iv) taxation of incomes, profits and such taxation as arises by way of implementation of services on the exclusive lists;
(v) citizenship, immigration, emigration, deportation, extradition and passports;
(vi) copyrights, patents and trade marks and all forms of intellectual property; incorporation and regulation of business organisations;
Vii) land, mines, minerals and water resources and the environment;
viii) national parks, as may be prescribed by Parliament;
ix) national monuments, antiquities, archives and public' records as prescribed by Parliament;
(x) public holidays;
(Xi) foreign relations and external trade including the control of prices and customs and duties as Parliament may deem' appropriate;
(xii) making national plans for the provision of all services, including those to be run by the local Government;
(xiii) any matter incident8l to the services mentioned on this list;

(b) A district government should have powers to provide any services or perform any functions which are not reserved for the central government and which it has the 8bility and interest to provide or perform.(18.162)

251. Flexibility in Power Sharing

26.

(a) Decentr81is8tion of services and functions should be implemented in phases, depending on the ability of districts to take over the provision of services designated as district responsibilities.

(b) The central government m8Y transfer some of the functions and services reserved for the centre to a local government if it is considered necessary or convenient to do so. The National Council of State should approve such transfers.

(c) The central government and a local government may, by mutual agreement, share in the provision of certain functions and services which are reserved for the central government or within the powers of local government to provide. (18.166)

252. The Central Government Representative

(c) The Central Government Representative should be appointed by the President, subject to the approval of the National Council of State.

The central government representative should be responsible for

(i) coordinating the administration of central government services in the district·
(ii) advising the district executive committee on matters which affect the relationship between the district government and the central government;· and
(iii) generally overseeing the relationship between the district and central government.

(d) The Central Government Representative should not be involved in the direct administration of the district.(18.168)

253. Administration of Districts by the President

(a) The President should have power, in extraordinary circumstances, to take (IVI'I the administration of a district. The National Council of State should approve such action on the part of the President.

(b) The following should be the circumstances under which the President may take over the responsibilities and functions of a district government:

(i) where there has been a specific request for a take-over by district council by a vote supported by two thirds of all the members or law council;

(ii) when a state of emergency has been declared in the district as a result of national calamities, riots or other situations; and

(iii) if a situation arises which makes it impossible or extremely difficult a district government to carry out its responsibilities and functions.

(c) The President may appoint any officers or persons he considers fit ıtı administer the district whose administration he has taken over.

(d) Unless parliament approves a longer period, the President should not take over ı the administration of a district for a period exceeding ninety days;

(e) If circumstances make it impossible to restore a district administration six months after the president takes over its responsibilities and functions, fresh elections should be held for a new district council, provided that the unexpired term of the current council is more than twelve months.(18.173)

254. No Power for Minister- to Suspend

The power of the Minister of Local Government to suspend a local council or is committee should be abolished as it no longer serves any useful purpose.(18.175)

255. Decentralisation below the District Level

(a) In order to make local councils more democratic, councilors at all levels should be elected directly by the voters.

(b) Voting below the district level should be by lining up behind the candidate or his agent, or through other open methods of voting such as show of hands.

(c) A local council should be free to decide that council elections should be by secret ballot, provided that not less than two thirds of the members of tıll' council support it. The Electoral Commission should be consulted for its views on the matter.

(d) If a council decides on secret ballot, then the method should he used from tıll' next general election to the council.

(e) If a council which has adopted the secret ballot wishes to revert to the open method voting, it may do so any time after consultation with the Electoral Commission. (18.182)

27.

28.

29. Organised Meetings for Campaigns

In addition to other lawful ways of canvassing for votes, there should be organised meetings where all candidates are required to appear and address the electorate.(18.185)

257. The election to local Councils should be organised according to the political system in operation at the time, while taking into account the need to keep the local communities united in the achievement of their objectives and aspirations.(18.189)

258. V oters' Register

Every village should be required to have a voter's register. A person should only be allowed to register in one village.(18.191)

259. Political and Civil Education

In order to strengthen the councils, and committees, political and civic education should be strengthened to make people aware of their rights and responsibilities.(18.193)

260. (a)

Relationship between Local Councils and Chiefs

Chiefs should remain civil servants in their local administrations. They should be appointed by the district service commission in consultation with the people.

(b) The role of chiefs should be to:

(i) implement government policy; and
(i) ensure the observance of law and order in the area.(18.196)

261. Relationship between Local Council and Police

There is need for the police and the local councils to co-operate and appreciate the role of each other in the maintenance of security law and order. They should be educated on their respective roles. (18.198)

30.

262. Local Council Committees below District Level

a local council (other than a district council) should have a committee which should include:-

a) chairman;
b) general secretary;
c) secretary for security;
d) secretary for social services;
e) secretary for development and finance;
f) secretary for women and youth; and
g) such other positions as the council decides are necessary in the light of local *needs.(l8.200)*

263. Right of Recall

The electorate should have power to recall an elected representative to all councils and committees below the district level on/any of the following grounds:-

(a) for abandoning the policies, and programmes for which he or she was elected for

(b) behaving consistently in a manner which is not befitting of a representative of the people; and

(c) for abandoning or neglecting his or her duties. (18.202)

264. **Financial Resources for Councils below District Level**

Every level of local council should be given power to raise revenue to pay for services identified by the people in their areas. The district council should ensure that the revenue raised is used for the purpose for which it is raised, and that the local people are not over burdened with taxes and Levies. (18.205)

265. Urban Authorities

Apart from Kampala City Council, the municipalities and towns should fall under tilt district councils of the districts in which they are found. However, they should continue to perform the functions and provide the services which they have been providing, with the necessary modifications which take into account their changed status.(*18.2(8)*

266. **The Role of Parliament in Local Government**

Parliament should have power to make laws on local government, especially for the purpose of giving effect to the provisions of the Constitution, and in order to:

(a) implement the principles outlined in this chapter;

(b) regulate the limits of allowances to be paid to members of the councils; prescribe

(c) the procedure for conducting elections to councils;

(d) enable local councils to make laws and regulations and other instruments for the administration of the areas which fall under their jurisdiction;

(e) provide, with appropriate modifications, for the system of government at district level to apply to the lower levels of local governments;

(t) prescribe the procedure by which the electorate may exercise their right to recall an elected member of a council; and

(g) prescribe the qualifications for persons who may contest for elections to a council. (18.211)

CHAPTER NINTEEN: TRADITIONAL LEADERS

267. **EstaEstablishment of Institution of Traditional Leaders**

(a) The institution of traditional leader should exist where the members of a region, ethnic group or district concerned express the desire to have it.

(b) It should be established in accordance with the respective cultures, customs traditions, wishes and aspirations of the people concerned and subject to the provisions of, the new Constitution.

(c)A traditional leader should not play any role in the politics and governance of both the central and local governments. The functions of a traditional leader should be restricted to purely cultural and developmental roles.

(f) A traditional leader who opts to join central or local government politics or takes up office in either government should first resign from his office of traditional leader and renounce his title. He should automatically forfeit all benefits and privileges attached to his office. (19.115)

268. Titles

It is the right of the people concerned to give such titles and names to their respective traditional leaders as their cultures and traditions require.(19.117)

269. Allegiance

Neither the indigenous people of a region or district which has a traditional leader nor those from outside that region or district should be compelled to adhere to local traditions and cultural practices or to pay allegiance to the traditional leader.(19.119)

270 Maintenance

(a) The costs of maintenance and upkeep of a traditional leader and his office should not be the responsibility of government, either central or local.

(b) No person should be compelled to contribute to the costs of maintenance or upkeep of a traditional leader. (19.121)

271. Relationship between Traditional Institutions and Government

The proper relations between the government and the institution of traditional leaders will be realized when each institution keeps to the roles given to it in the Constitution.(19.126)

272. Privileges of Traditional Lenders

(a) A traditional leader, fully recognised and officially instituted by his people In accordance with the customs and traditions should have the following privileges:

i) entitlement to a diplomatic passport;
ii) exemption from direct personal taxation;
iii) freedom from compulsory acquisition or taking of possession of property held in his personal capacity.

(b)Whenever there is a dispute between government and a traditional leader personally or the institution itself, both parties should constitute a council of equal representation to decide the dispute peacefully and amicably. (J9.128)

273. Traditional Practices and Customs

Customs, practices or traditions relating to a traditional leader but which detract from the rights of any person~ as contained in the Constitution should be abolished.(19.138)

274. **Election and Removal l of Traditional Leaders**

Subject to the ideals and provisions contained in the new Constitution, the election, appointment, succession and removal of a traditional leader, the organisation of the institution and if necessary its abolition should be solely left to the customs, practices and usages of the community concerned.(19.133)

275. Assets of Former Traditional Rulers

(a) The property and assets which belonged to the institution of traditional ruler in his official capacity before 1966 should be returned to the institution where the people concerned want the institution to be re-established.

(b) The estates which belonged to the institution of a traditional ruler in his official capacity before 1966 should likewise be returned to the institution, once the people concerned want it re-established.

(c) Government should contribute to the maintenance of traditional sites and places of national importance and which preserve our heritage. The revenues from them should however, contribute to the upkeep of the traditional institution where it is re-i institution by the wish of the people concerned.

(d) Government should negotiate with the representatives of the institution to determine the properties, assets and estates which should be returned and the mode of that return once the people concerned have demanded the restoration of the institution. Government, both central and

(e) local, <fan voluntarily contribute to the maintenance of' the institution of traditional leaders either through donation or granting it assets which bring in revenues or both. (19.138)

276. **Buganda**

The institution of Kabakashjp in Buganda should be officially re-instated.(19.140)

276 Other Former Kingdoms

(a) The former kingdoms of Ankole, Bunyoro and Toro, and the territory of Busoga, may have the institution of traditional leaders only when the people concerned have clearly expressed the wish to have them.

(b) Other ethnic areas which did not have the institution of traditional leaders in the 1962 Constitution but which may in the future want to have it would be free to establish it in accordance with the expressed wishes of the people concerned.

(c) The institution of a traditional leader described in this chapter should be understood as meaning the former kings and Kyabazinga whose status was included in the 1962 Constitution and any other traditional leader of an entire ethnic group in Uganda, recognised by the people of his total area of influence.(19.142)

CHAPTER TWENTY: LEADERSHIP AND A CODE OF CONDUCT FOR LEADERS

278. Establishment of Leadership Code of Conduct

There should be a Leadership Code of Conduct provided for in the new Constitution.(20.65)

279. Definition of Leader

(a) The definition of leaders covered by the Leadership Code of Conduct should include the following:

i) The President;
ii) The Vice-President
iii) Ministers, Deputy Ministers and Assistant Ministers;
iv) Members of Parliament;
v) All holders of Constitutional Offices;
vi) Heads of government departments including the security forces;
vii) Heads of local government departments;
viii) Judges and magistrates;
ix) Senior officers of institutions of higher learning;
x) Senior officers of parastatal organisations;
xi) Members of district councils.

(b) Parliament should have power to prescribe addititl14'll categories of people to whom the Leadership Code of Conduct applies.(20.88)

280. Duties and Responsibilities of Leaders

(a) The duties and responsibilities of leaders shall be prescribed by Parliament and shall include:

(i) The duty to conduct themselves both in the official, public and private lives in accordance with the provisions of the law, and the provisions of the Leadership Code of Conduct in particular;

(ii) The duty to seek achievement of the National Objectives and Directive Principles of State Policy;

(iii) The duty to ensure that as far as is within their lawful powers their spouses, children and any other persons for whom they are responsible including nominees trustees and agents also conduct themselves in accordance with the law and with relevant provisions of the Leadership Code of Conduct, and do not do anything which could give rise to doubt about the leaders' compliance with the Code;

(iv) The duty to publicly disassociate themselves from any business activities or enterprises of any of the persons referred to in (iii) above; The duty to disclose their interests in contracts with government, government bodies or enterprises; .

(v) The duty to declare their assets, incomes and liabilities and those of their, spouses at least once in every period of twelve months while remaining a leader find for a period of two years after ceasing to be a leader.

(b) Leaders should be prohibited from engaging or conducting themselves in certain acts or omissions which shall include those provided for in the Leadership Code Statute (No.8 of 1992) and in addition all leaders covered by the Code should be prohibited from:

(i) doing or failing to do an act where professional misconduct is involved

(ii) doing or failing to do an act that diminishes the value of public property;

(iii)In the case of elected leaders, failing or neglecting to honour pledges made at a fundraising event.

(c) Senior leaders should, unless they notify and get the consent of the authority responsible for administration and enforcement of the Code, be prohibited from:

(i) holding a gainful directorship in a public company other than one where the nomination is made by government;

(ii) engaging in other gainful employment; or

(Iii) accepting loans, (20.113)

281. Supervision and Enforcement of the Leadership Code

(a) The Leadership Code of Conduct should be supervised and enforced by the Inspectorate of Government, or such other authority as Parliament may determine, and it should receive annual disclosure statements, and should monitor observance of the Code.

(b) The -Code should provide that action recommended against a person found to have breached the Code must be taken by the relevant authority within a certain period, after which the recommended penalty should take effect automatically.

(c) There should be limits set out in the Code on the period for for which a person can be suspended from office for breach of the Code.

(d) There should be provision in the Code for a person who is dismissed from office for breach of the Code to be prohibited from holding public office for a period of at least five years.

(e) There should be provision for imposition of a fine as a penalty for breach of the Code.

(f) The Code should provide that action under the Code may be taken in respect of breaches even after a person ceases to be a leader.

(g) Members of the Inspectorate of Government or such other authority as is made responsible for supervision and enforcement of the Code should submit their annual disclosure statements to the Principal Judge, who should also deal with allegations of breach of the Code by such persons.

(h) Parliament should prescribe the procedures to enforce the Code and 111 particular shall make provisions for:

(i) the duties, functions, procedure and powers of the Inspectorate of Government;
(i the lodging against the complaints of alleged or suspected breach of the Code;
i) the investigation of cases of alleged breach of the Code; determination of such cases by the investigating authority; prescribing penalties or other consequences that may result from a lawful determination of breach of the Code;
ii i) the disposal or temporary control of the assets or income of a leader to whom the Code applies;
iv) the creation of offences under the Code by leaders, and other persons <ind
v) prescribing penalties for such offences. *(20. 130)*

(vi)

(vii)

CHAPTER TWENTY ONE: INSPECTORATE OF GOVERNMENT

282. Establishment of the Institution of InspectOl'ate of Govemment

The Institution of the Inspectorate of Government should be enshrined in the' Constitution in accordance with subsequent recommendations made in this chapter.(21.80)

283. Name of the Institution

The name of the office of the Inspector-General of Government should be changed to I nspectorate of Government.(21.83)

284. Composition

The Inspectorate of Government should be comprised of an Inspector-General of Government and at least two Deputy Inspectors .... General, with Parliament having power to provide for such additional deputies as' may from time to time be required.(21.85)

285. Appointment

The Inspector-Gelleral of Government and Deputy Inspectors-General should be appointed by the President with the approval of the National Council of State.(2l. *90)*

286. Full Time Office

The members of the Inspectorate should not hold any other paid position or other public *offices. (2l.92)*

287. Qualifications

(a) To be eligible for appointment to the offices of Inspector-General of Government pr Deputy Inspect0fs-General a person should be a citizen of impeccable moral character and proven integrity with wide experience and clear competence and caliber in the management or conduct of public administration.

(b) Either the Inspector - General of Government or at least one of the Deputy Inspectors - General should be a person qualified to be appointed as a judge of the High *Court. (2l.96)*

288. Term of Police and Security of Tenure

(a) The Inspector-General of Government and Deputy Inspectors-General should serve for terms of four years and should be eligible for reappointment.

(b) The Inspector-General of Government and Deputy Inspectors-General should be removed from office by the President with approval of the National Council of State only for inability to perform the functions of the office due to physical or mental incapacity or other cause or for misconduct or misbehavior. (21.102)

289. Independence of the Inspectorate

The Inspectorate of Government should be independent in the performance of its functions and should not be subject to direction or control by any person or institution but should be subject only to the Constitution and the law, and should be responsible to Parliament in terms of funding and provision of reports, in accordance with. subsequent recommendations. (2l.l07)

290. Adequate Resources

There should be provision to ensure that adequate resources are available to the Inspectorate to enable it to carry out its duties and functions effectively and in particular, the Inspectorate should:

(i) control its own budget funding which should be appropriated by Parliament separately from the normal annual budget appropriation; and be assisted by government to whatever extent is necessary to ensure it is able to engage such

(ii) qualified staff to enable it discharge its duties and functions effectively.(21.l22)

291. Duties, Functions and Powers of the Inspectorate

(a) The duties and functions of the Inspectorate should be the following:-

(i) eliminating and fostering elimination of corruption and abuse of public office;

(ii) fostering the .improvement of the work of public offices and in particular eliminating unfair and/or discriminatory practices or procedures from them;

(iii) protecting and promotion of the rule of law as it relates to administration and in particular to ensuring principles of fairness and natural justice apply in public administration;
(iv) enforcing of the Leadership Code in accordance with the provisions of this Constitution and the Leadership Code of Conduct Statute;
(v) monitoring of observance and compliance by government or any of its institutions of the National Objectives and Directive Principles of State Policy to be contained in the Constitution.

(b) In the light of our recommendation for establishment of a Human Rights Commission, there is no necessity for the Inspectorate to have a role in relation to promoting protection of human rights.(21.123)

292. Extent of Jurisdiction of the Inspectorate

The jurisdiction of the Inspectorate should extend to such officers or leaders as Parliament determines whether employed in public or not, and may include institutions, organisations or enterprises as Parliament may prescribe. (21.127)

293. **Investigations by the Inspectorate**

The Inspectorate may initiate an inquiry into any matter relating to its duties and functions either on its own initiative or on complaint made to it either by a person affected by the subject matter of the complaint or by some other person. (21. 133)

294. Remedial Powers

(a) Subject to the provisions of the Constitution and the law in respect of the Inspectorate, the Inspectorate should have power to hear and determine cases and enforce its orders involving corruption or abuse of office.

(b) Appeals against a finding of the IGG under clause (a) above should be to the Supreme Court.

(c) The Inspectorate should have such powers, rights and privileges as are vested in the High Court for purposes of carrying out its functions under the Constitution. (21.139)

295. **Reports of the Inspectorate**

(a) A report on the performance of its functions should be submitted by the Inspectorate to Parliament at least once in six months.

(b) The report should include such recommendations in respect of matters dealt with by the Inspectorate as it considers necessary and such other information as Parliament may require.

(c) A copy of the report should be provided by the Inspectorate to the President.

(d) A copy of any material in such a report dealing with the administration of any local authority should be provided by the Inspectorate to that authority.(21.142)

296. Accessibility of the Inspectorate to the People

(a) The Inspectorate may establish branches at district or other administrative levels as it deems fit for the better performance of its duties and functions.

(b) The Inspectorate may hold sittings and hearings at any place in Uganda.

(c) The Inspectorate should stimulate public awareness about the values of constitutionalism in general and the activities of its office in particular through any media and other means it deems appropriate.(21.146)

CHAPTER TWENTY TWO: PUBLIC FINANCE

Revenue and Expenditure Authorization

297. The Constitution should provide that the power to raise revenue and authorize expenditure should lie with Parliament.(22.32)

298. Role of Parliament

(a) Parliament should set out the general policy framework on which loans and aid may be negotiated and received.

(b) All agreements in respect of international and domestic loans and aid should be submitted to Parliament for scrutiny and approval. Parliament should approve among other things, the terms and conditions of the loan, and the purpose of the loan. (22.57)

299. **Consolidated Fund**

(i) The Consolidated Fund should be retained in the Constitution.
(ii) All revenues or monies raised or received by the government should be paid into the Consolidated Fund, except where Parliament specifically authorizes the creation of special Funds.
(iii) Where Parliament authorizes the creation of a special Fund apart from the Consolidated Fund, the President should report or cause a report to be made on the use of the fund to Parliament in a manner to be prescribed by Parliament.
(iv) No taxes should be imposed to raise revenue for both the Consolidated Fund and district treasury funds, without the authority of Parliament.

(b) No withdrawals should be made from the Consolidated Fund, except to meet expenditure that is charged upon the Fund by the Constitution or as provided for by Appropriation Act or any other law.

(c) The President should be given powers to authorize withdrawals from the Consolidated Fund to cover expenditure for a period of four months, or until the budget is approved by Parliament, whichever comes first.

(d) (i) Parliament should have powers to authorize the President to create a Contingency Fund to meet expenditure in respect of urgent and unforeseen situations; and
(ii) where any advance is made from the Consolidated Fund a supplementary estimate should be presented as soon as possible for the purpose of replacing the amount so advanced.

(e) The salaries of constitutional office holders and others who may be specified by the law should be charged directly on the Consolidated Fund.(22.66)

300. Management of Public Funds

(a) There should be a constitutional provision that:-

(i) the minister and permanent secretary should be jointly and severally accountable to Parliament for public funds under their ministry;

(ii) any minister or holder of political office in any ministry or department or institution of government who directs an accounting officer or any other officer to apply or use public funds contrary to the law and government financial regulations should be responsible for any loss or damage arising out of the directive, irrespective of whether the holder of political office who gave such directive is out of office at the time the discovery is made.

(b) Any accountant who fails to advise his or her permanent secretary correctly on the use of public funds should be liable to the same extent as the permanent secretary for any loss or damage arising out of the negligence or wrong advice.(22.75)

301. The Uganda Audit Commission

(a) The Uganda Audit Commission should be established by the Constitution.

(b) The Uganda Audit Commission should be composed as follows:-

(i) a Chairman;

(ii) a deputy Chairman; and

(iii) not more than three other members.

b) (i) The Chairman and other members of the Uganda Audit Commission should be appointed by the President with the approval of the National Council of State for a period of 5 years.

(ii) The appointment of any member of the Uganda Audit Commission may be renewed for a period of 5 years. No person may serve on the Uganda Audit Commission for more than 10 years.

(iii) No person should be appointed Chairman of the Uganda Audit Commission unless he or she has a recognised qualification in accountancy or financial management and has experience of not less than 10 years in the relevant field.

(iv) No person should be appointed a member of the Uganda Audit Commission unless he or she has a recognised certificate in accountancy or financial management and has experience of not less than 7 years in the relevant field.

(v) A member of the Uganda Audit Commission should be removed from the office by the President with the approval of the National Council of State only for inability to perform his functions as a result of physical or mental incapacity or for gross misconduct and misbehavior or any other cause that would make the member unfit to remain in the Commission. .

(d) (i) The Chairman of the Uganda Audit Commission should be responsible for the

(i i) management of the Commission and control over its staff; The Deputy Chairman of the Uganda Audit Commission should assist the Chairman in the performance of his or her functions and perform other functions as the Chairman may assign.

(e) The functions of the Uganda Audit Commission should be:-

(i) to approve any withdrawals from the Consolidated Fund;

(ii) to audit the accounts of all offices, courts and authorities of the government of Uganda;

(iii) to audit the accounts of all local governments and authorities which get grants or funding from the government of Uganda or receive taxes as authorised by Parliament; and

(iv) prepare a yearly repolt on the audited accounts and submit a report to Parliament within six months after the close of the financial year.

(f) The Uganda Audit Commission'should, subject to the Constitution, carry out its functions without receiving any directives or control from any person or authority.

(g) In the performance of its responsibilities the Uganda Audit Commission should have:-

(i) adequate resources, facilities and competent and qualified staff to enable it to carry out its functions effectively;

(ii) powers to call for, examine or inspect any books, records, returns, vouchers and other documents relating to any accounts falling under its jurisdiction.

(h) The funds for financing the activities of the Uganda Audit Commission should be charged on the Consolidated Fund.

(i) No law should be enacted for the purpose of placing any entity of the government of Uganda or any local government or authority outside the jurisdiction of the Uganda Audit Commission.

The Accounts of the Uganda Audit Commission should be audited and rep0l1ed on by an auditor appointed by Parliament.(22.81)

302. Annual Budget

In order 1'0 provide Parliament with enough time to scrutinise the estimates of revenue and expenditure and make necessary rectifications and modifications to them, the President should be required by the Constitution to present or cause to be presented the annual budget before Parliament not later than 15 days after the start of the financial year.(22.84)

303. Finance and Public Al:COlmts Committee

(a) The Public Accounts Committee should be replaced by a Finance and Public Accounts Committee which should be a standing committee of Parliament.

31.

(b) The functions of the Finance and Public Accounts Committee should be to:

(i) receive and scrutinise the audited accounts and reports of the Uganda Audit Commission;

(ii) receive quarterly reports on the accounts of the current financial year from the Uganda Audit Commission;

(ii) make independent inquiries and investigations into the management of government revenue and expenditure;

(iv) ensure that government ministries, departments and institutions are accountable to the legislature for the funds they administer;

(v) check that funds are being used for the purposes for which they are allocated;

(vi) advise the government on the distribution of revenue between the central and district governments;

(vii) advise the government on the formulae for making grants-in-aid to districts; and

(viii) advise government generally on national financial matters.

(c) The Finance and Public Accounts Committee should be responsible and. accountable to Parliament.

(d) The Finance and Public Accounts Committee should be provided with;

(i) adequate and competent staff and sufficient facilities, resources and funds to enable it to carry out it functions effectively; and

(ii) enough powers to carry out investigations and to examine witnesses, and documents in discharging its responsibilities.(22.90)

304. Bank of Uganda

(a) The Constitution should establish the Bank of Uganda as the central bank of' Uganda which should be the only authority to issue Uganda currency.

(b) The functions of the Bank of Uganda should be to:-

(i) promote and maintain the stability of the value of the currency of Uganda;

(ii) regulate the currency system in the interests of the economic progress of the country;

(iii) encourage and promote economic development and the utilization or the resources of Uganda through the effective and efficient operation of a banking and credit system.

(iv) do all such other things that would promote the aims and objectives for which the Central Bank is established.

(c) There should be a Governing Board of the Bank made up of the Governor, Deputy Governor and not more than five other members.

(d) The Governor and other members of the Board should be appointed by the President with the approval of the National Council of State. The Chairman of the Board should be appointed by the President with the approval of the National Council of State from among the members of the Board.

(e) The Governor and other members of the Board should hold office for five years, and may be re-appointed for only one more term of five years.

(f) The remuneration of the members of the Board should not be reduced while they continue to hold office.

(g) The members of the Board should be removed from office by ·the President with the approval of the National Council of State only on grounds of gross misconduct, misbehavior, or inability to perform their functions due tel physical or mental incapacity.

(h) In exercising its functions, the Bank of Uganda should be guided by monetary and fiscal policies formulated by the government, but it should otherwise not be subject to direction or control of any person or authority in the day to day performance of its responsibilities.(22.94)

CHAPTER TWENTY THREE: PRINCIPLES AND OBJECTIVES OF SOCIO-ECONOMIC DEVELOPMENT

305. **Development as a Human Right**

(a) Development should be a fundamental human right.

(b) All development efforts should be directed towards ensuring the maximum social, economic and cultural well-being of the people.

(c) Necessary measures should be taken to ensure that women play an active role in the development process. (23.31)

306. The Role of Citizens in Promoting Socio-Economic Development

(a) All necessary steps should be taken to involve the people in the formulation, implementation and evaluation of development policies and programmes affecting them.

(b) Every citizen should have the duty to contribute positively to the development of self, the family, the community and the country. (23.35)

307. The Role of State in Promoting Socio-Economic Development

It should be the duty of the State to stimulate agricultural, industrial, technological and scientific development through appropriate policies and the enactment of appropriate laws.(23.39)

308. The Need for Planned Development

In line with the recommendations of the 1990 report of the Public Service Review and Reorganization Commission, the Uganda Planning Commission should be re-activated and given a more specifically focused planning authority. Powers of the Commission should include:-

32.

(a) undertaking relevant research to identify national development priorities which should take into account the aspirations and preferences of the people;

(b) giving advice to government on overall development objectives and strategies;

(c) drawing up human resources development plans for the country;

(d) guiding district and lower planning authorities in planning their development programmes and projects, and consolidating these plans into a nation~ plan; and

(e) ensuring that environment factors are taken into consideration in any Development activities, whether privately or publicly funded and whether undertaken by central or local governments. (23.50)

309. Balanced Development

(a) The State should take all necessary measures to bring about balanced development of the different areas of Uganda and between the rural and urban areas. Special measures should be taken in favour of the least developed areas.

(b) Affirmative action should be taken to enhance the socio-economic status of disadvantaged groups including the women, youth, people with disability, the peasants and the urban poor.(23.58)

310. Sovereignty over Natural Resources

The Constitution should vest the ownership, control and right of exploitation of the important natured resources including land, water, minerals, oil and forests in the people of Uganda, with the State as the guarantor of the people's interests. (23.63)

311. Economic System

In order to facilitate rapid economic development on a free, democratic and just basis the State should encourage public, private and individual economic activity. (23.72)

312. Economic and Social Rights

(a) The following economic and social rights should be included in the National Objectives and Directive Principles of State Policy with the State aiming at their attainment in the shortest time possible:-

(i) the right to work, which should include the right to pursue any form of economic activity guaranteed under the Constitution for the advancement of oneself and one's family;
(ii) the right to adequate remuneration, which should be paid promptly and regularly;
(iii) the right to a decent standard of living, which should include adequate food, water, clothing, housing and medical care .
(iv) the right of workers to participate in decision-making in their places of work;
(v) the right to healthy, safe and favourable conditions of work; and
(vi) the right to free and compulsory universal primary education and of every citizen to be afforded the opportunity to attain the highest education standard possible.

(b) The economic and social rights which are enforceable should be included among; the fundamental rights of individuals and groups provided in the Constitution. These include:-

(i) the right of farmers and workers to join or form economic or trade associations to protect their economic rights and interests, including farmers' associations and trade unions;
ii) the right to strike or withhold labour;
iii) the right of children to be protected from exploitation and dangerous occupations; and .
(iv) the fight to equal treatment between women and men in employment, remuneration, economic opportunities and social advancement. (23. 87)

CHAPTER TWENTY FOUR: SOCIAL SERVICES

313. Education

(a) The right to education should be a constitutional provision with requirements to the effect that:

(i) the State should promote compulsory universal primary education;
(ii) every, person in Uganda should be afforded equal opportunity to attain the highest education standard possible.

(b) Consideration should be given to introducing free education at all levels starting with primary education. This should be done in phases depending on the economic situation of the country. In the meantime, in order to free government resources to assist needy students, those who are in a position to meet the cost of higher education should be made to meet at least part of the cost of their education.

(c) Where districts are able to do so, bursaries should be re-introduced to assist students who find difficulties in raising fees.

(d) The terms and conditions of service of teachers should be substantially improved in order to retain teachers and attract new recruits to the teaching profession. Untrained teachers should gradually be replaced by trained ones. (24.29)

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314**. Health Services**

(a) The Constitution should provide:-

(i) for the right to health care for the population; and
(ii) that all persons, especially children, should be entitled to immunization against preventable diseases.

(b) The State should take all necessary measures in collaboration with nongovernmental organisations and other agencies to ensure the provision of medical services to the population at a cost that is fair and affordable.

(c) Every effort should be made to bring medical services closer to the people. (24.37)

315. **Water**

(a) The entitlement to clean and safe water for every person should be provided for in the Constitution.

(b) The Constitution should provide that the State should take all possible measures to:

(i) prevent or minimize damage and destruction to water resources resulting from pollution or other causes; and
(ii) promote public awareness of the need to manage water resources in a balanced and sustainable manner, for present and future generations.

(c) Government should make an effort to provide or facilitate the provision of clean and safe water in the shortest possible time to every person within reasonable walking distance. (24.39)

316. Shelter

There should be a provision in the new Constitution that the State should facilitate the availability of decent and affordable housing to all citizens.(24.41)

317. Employment

(a) The Constitution should provide that recruitment to public offices should be open to all Ugandans on the basis of merit.

(b) The Constitution should out-law discrimination in employment and remuneration on the grounds of sex or disability.

Priority should be given to Ugandans in employment. Non-citizens should only be employed in public service when there is no Ugandan qualified for the job.

(d) Government should take necessary measures to gradually realize the target of paying a living wage to those in paid employment. (24.49)

318. Social Security

(a) There should be a constitutional .provision for the State to make laws for the adequate and regular payment of pensions and other forms of retirement benefits for workers.

(b) The establishment of a pension or any other social security scheme should be done in consultation with the contributors and intended beneficiaries, who should have a say on matters pertaining to the contributions, management and benefits of the scheme.

(c) The feasibility of establishing a comprehensive scheme or schemes providing health care, education, old age pensions, disability allowances and shelter should be looked into with a view to gradually catering for the whole population.(24.59)

319. Social Infrastructure

(a) The State should establish or promote the establishment of basic social infrastructure.

(b) In view of limited State resources, the people themselves should regard it as an important duty to set up basic infrastructure on a self-help basis to supplement the efforts of the State and non-governmental organisations.(24.6.1)

320. Food Security

(a) Due to the importance of food, the right to adequate and nutritious food should be provided for in the Constitution.

(b) The State should ensure availability of food for every citizen by encouraging improvements in methods of production, preservation, storage and distribution of food.

(c) The State should take steps to inform the people on nutrition through formal and informal education, mass media and other appropriate means. (24.68)

321. Civil Disaster

The Constitution should require the State to put in place effective machinery for countering any hazard or civil disaster or any situation resulting in serious disruption of the lives of people inclusive of floods, earthquakes, volcanic eruptions, plagues and drought.(24. 7])

322. Socially Vulnerable Persons

The Constitution should provide that the disabled and handicapped persons should be provided with sufficient facilities and amenities to enable them to live a respectable, dignified and productive life and to enable them realize their full mental and physical potentials.(24.74)

323. Non Governmental Organisations

(a) The people concerned should have a say in the drawing up, implementation and evaluation of the programmes and projects of NGOs from which they are intended to benefit;

(b) The activities of the NGOs 'should be geared towards achieving self-reliant and sustainable development for their intended beneficiaries; and

(c) The activities of the NGOs should not undermine the sovereignty of the country, and that they should operate in accordance with law and with their stated aims and objectives. (24.N)

324. Religious Foundation Bodies and NGOs

(a) The government and the laws of Uganda should give explicit recognition to the importance of religious foundation bodies and NGOs in providing social services. In particular, the right of foundation bodies to establish, maintain control and manage education, health and welfare institutions should be recognized by the Constitution, provided they conform to national standards and laws.

(b) Governments should resist the temptation of treating foundation bodies and NGOs as opponents or equally the temptation to co-opt them.

(c) Government should be prepared to work, where appropriate, in collaboration with foundation bodies and NGOs ..

(d) Government, foundation bodies and NGOs should together develop machinery to assist in the exchange of experience, expertise, and personnel.

(e) The entire field of social services should not be seen as the arena of governments only. These belong, first, to the people, second, to the
Institutions working among people, and third, to government which oversees the betterment of the entire society.

(f) Foundation bodies and NGOs should not be restricted or discouraged from receiving funds from abroad, as these are for the benefit of the people of Uganda. (24. 85)

CHAPTER TWENTY FIVE: LAND

325. Land Reform Decree

The Land Reform Decree of 1975 should be repealed. (25.41)

326. Ownership of Land

(a) TI1e state should bold land in Uganda in trust and for the benefit and wellbeing of all the people of Uganda, including future generations.

(b) Water and mineral resources within the territorial boundary of Uganda should belong to the State.

(c) The government should have the right to own land for public purposes.

327. Land Tenure

(a) In regulating and managing the utilization of land, the following factors should be taken into consideration:

(i) all people who are legally occupying land should be guaranteed security of tenure and enabled to register their interests and obtain certificates of titles;

(ii) there should be maximun1 utilization of land, while at the same time ensuring that land is equitably distributed among the people;

(iii) division of land into uneconomic units should be avoided.

(b) In the long run land should be granted -

(i) in free-hold in rural areas, and

(ii) in leasehold in urban areas.

(c) All land held under the Mailo and leasehold tenure in the rural areas should in the long run be converted into freehold tenure.

(d) (i) Bibanja holders should be granted free-hold titles to the land occupied by them but government should make arrangements for compensation to the Mailo owners.

(ii) The amount of compensation payable to the Mailo owner should be determined by a Lands Tribunal.

(e) The system of holding land under customary tenure should continue but the customary tenant should be encouraged to acquire title land.

(f) Parliament should have powers to make laws to give effect to the above recommendations and better management of land. (25.69)

328. Size of Land Holding

(a) The size of landholding should be subject to control and limitation.

(b) In determining the size of land an individual or organisation can acquire, due regard should be paid to the following considerations;-

(i) the purpose for which the land, applied for is required; the
(ii) ability of the applicant to put the land to proper use;
(iii) the size of land available to prospective developers in the area concerned; and,
(iv) the interest of other people who may be affected by the grant.

(c) Parliament may make laws for regulating the size of the land to be granted to any person or authority by the Uganda Land Commission and the conditions under which land may be held.

329. Institutional Administrative Framework

(a) The Uganda Land Commission should be retained in the Constitution.

(b) The Uganda Land Commission should consist of a chairman and not less than four members all of whom should be appointed by the President with the approval of the National Council of State.

(c) Members of the Uganda Land Commission should be appointed for a period of five years, which is renewable.

(d) A member of the Uganda Land Commission should be removed from office by President with the approval of the National Council· of State only for inability to perform his functions due to physical or mental incapacity or for gross misbehavior and misconduct.

A person should not be appointed as a member of the Commission if he is a member of Parliament or District Council.

(f) The Uganda Land Commission should not be subject to direction or control by any authority or person in performing its functions. It should, however, take into account government policy on land when performing its functions.

(g) The Uganda Land Commission should be self-accounting and the salaries and allowances of its members should be charged on the Consolidated Fund. (25. 77)

330. Functions of the Uganda Land Commission

(a) The Uganda Land Commission should have the following functions:-

(i) to allocate land which is not occupied or owned by any person or authority;

(ii) to regulate the use of land in Uganda as provided for in the Constitution and other laws;

(iii) to make recommendations to government -on the land tenure system, utilization of land, and the system of registering land;

(iv) to give advice to the Central Government, District Governments and lower level local authorities on the planned and coordinated development of designated areas; and -

(v) to carry out other functions -as may be vested in the Commission by Parliament.(25. 79)

331. District Land Commission

(a) Each district should have a District L1nd Committee which should perform the functions of the Uganda Land Commission.

(b) The Uganda Land Commission should co-ordinate the activities of the District L1nd Committees.

(c) The composition and mode of appointments of the members of the District Land Committees should be determined by Parliament.(25.81)

332. Sub-County Land Committees

a) There should be established at every sub-county a Sub- county Land Committee which should be responsible for processing applications for land title and forwarding such applications to the District Land Committee. The Committee should also be responsible for educating the people on the procedure for acquiring land titles.

(b) The composition, mode of appointment and the rules of procedure of the Sub county Land Committee should be determined by Parliament. They should, however, adopt simple methods of work which can be easily understood by ordinary people. (25.83)

333. Land Tribunal

(a) (i) Parliament should be authorised to make laws establishing Land Tribunals.

(ii) The functions of a Land Tribunal should be to decide on disputes in respect of any land registered or intended to be registered under Registration of Titles Act or any dispute regarding compensation in the event of compulsory acquisition of land. The tribunal should aim at settling disputes speedily and at affordable cost to the litigants

(iii) The powers and privileges of the Lands Tribunal should be determined by an Act of Parliament.

(b) (i) The Chairman of a Land Tribunal should be appointed on the advice of the Chief Justice;

(ii) A member of a land tribunal should hold office on such terms and conditions as may be prescribed by Parliament;

(iii) The procedure of a Land Tribunal should be determined by an Act of Parliament. It should provide for a right of appeal from the decision of a land tribunal to a Court of law.(25.85)

334. **Land Tax**

(a) In principle land should be taxed.

(b) Idle and undeveloped land should attract higher taxes.

(c) Parliament may make laws for the imposition of taxes on land. (25.89)

335. Ownership of Land by Foreigners or Foreign Investors

(a) Any foreign investor should be eligible to apply for land in Uganda.

(b) The applications for grant of land by a foreign investor must satisfy the following conditions:-

(i) The applicant must have immediate plans for putting the land to proper and productive use.

(ii) The applicants must show that if granted land they will develop it in accordance with an approved plan.

(iii) The application must be supported by three prominent and respectable nationals of Uganda.

(c) Parliament may make laws for the control, possession and transfer of land by non-citizens.(25. 93)

CHAPTER TWENTY SIX: ENVIRONMENT

336. Constitutional and Legal Provisions

(a) There should be provision in the Constitution for the protection, preservation and enhancement of the environment.

(b) There should be a review of every piece of existing legislation on the environment with a view to either expanding its scope of operation or plugging any loopholes that may be identified.

(c) Laws dealing with specific environmental issues not covered by existing laws should be enacted. (26.51)

337. Environment as a Human Right

The new constitution should affirm, as a general principle, that every person should have the right to an environment of a quality that permits a life of dignity, promotes development and allows for the enjoyment of physical and mental health. Every person should be entitled to a clean and safe environment. (26.56)

338. Action Against Polluter

The polluter should be responsible for providing effective remedy and redress for violation of any environmental laws and standards. Parliament should make laws regarding liability and compensation for the victims of pollution and other forms of environmental damage. (26.58)

339. Environment and Development

In order to achieve sustainable development, environmental protection and improvement should form an integral part of the development process. (26. 60)

340. Need for- Balance

The Constitution should provide that Uganda's socio-economic development strategy should aim at achieving a balance between growth, poverty alleviation and environmental protection.(26.67)

341. Constant Assessment

There should be environmental assessment of policies, programmes and projects which are likely to have significant environmental Impacts, whether of a local or a global nature.(26.69)

342. Duty of Citizens

It should be the duty of every citizen to conserve, protect, restore and enhance the environment, and to prevent any unwholesome interference with or destruction of the country's ecosystems. (26.71)

343. Duty to Consult People

The people should have a right to be consulted when policies, programmes and projects which may affect their environment are being drawn up and implemented. (26.73)

344. Role of Women, Youth and Children

The role of women, youth and children in the management and protection of the environment should be accorded due recognition and their full participation n decision-making on environmental issues should be encouraged in order to attain sustainability. (26. 75)

345. Utilization of Natural resources

The utilization of the natural resources of the country should be managed in such a way as to meet the development and environmental needs of the present and future generations. (26.78)

346. Meeting the Energy Needs of the People

All Ugandans should be entitled to readily accessible and affordable energy resources which meet their basic needs and the needs of environmental preservation. (26.80)

347. Preservation of Uganda's Heritage

(a) It should be the duty of the State and citizens alike to protect, conserve and restore landscapes, sites and monuments of historic, artistic, and aesthetic value to the country.

(b) The central as well as local governments should create and develop parks, reserves and recreation areas so as to ensure the conservation of natural resources, including animals and plants and promote the rational use of natural resources and safeguard their capacity for renewal, regeneration and the stability of the ecology.(26.85)

348. International Action

(a) Uganda should co-operate with other countries, international organisations, regional organisations and other relevant bodies to conserve protect and restore the global environment.

(b) The State should take the necessary steps to prevent and regulate the transfer or importation into Uganda of any activities, substances, plants or animals that may harm the environment or endanger human health.(26.87)

349. Environmental Awareness

(a) Public awareness and participation in environmental protection and preservation should be facilitated and encouraged by making information concerning the environment widely and easily available. All such information in possession of government and its agents should be made accessible to the people.

(b) Environmental awareness should be promoted through the inclusion of environmental education as a subject at all levels of our education system and other appropriate means of mass sensitization.(26.92)

350. Institutional Arrangements

The Uganda Planning Commission should have responsibility for co-ordinating and implementing the national environmental plan of action. (26.99)

351. International Instruments and National Environmental Laws

Environmental1egislation should be reviewed and updated to take into account present and future environmental and development needs of the country, as well as international environmental concerns. (26.1 *02)*

CHAPTER TWENTY SEVEN: FOREIGN RELATIONS AND INTERNATIONAL CO-OPERATION

352. Principles and Objectives of Uganda's Foreign Policy

(a) The primary objective of Uganda's foreign policy should be the promotion of the national interest. Missions established in foreign countries should have as their prime duty the protection and promotion of the interests of the nation and of its nationals living overseas.

(b) Foreign policy should aim at protecting national sovereignty and enhancing political and economic independence of Uganda.

(c) While promoting the interests of the country, foreign policy should also be directed to establishing relations and co-operation with other countries on the basis of equality and mutual benefit.

(d) Uganda should strive to strengthen neighborly relations with all adjoining States and co-operate with other States on the basis of respect for the inviolability of national sovereignty and territorial integrity of States, non-

interference in internal affairs, peaceful resolution of conflicts and non alignment.

(e) Uganda should always struggle against all forms of' dependence, domination and exploitation, particularly neo-colonialism and racism. (27.36)

353. Relation with Neighbours (Regional Co-operation)

(a) Future governments should strive to maintain close and friendly relations with our neighbours Where tensions do arise, government should exercise restraint and should; as far as possible, seek to resolve problems through consultation and negotiation.

(b) The East African leaders should put in more efforts to revive the East African Community.

(c) Visas and other restrictive travel documents, particularly within East Africa, should be relaxed in line with the objectives of the Preferential Trade Area.

(d) The State should, where it is reasonable to do so, grant asylum to persons from other countries who reasonably fear persecution on grounds of their political beliefs, ethnicity, race, religion or membership of a particular social group. *(27.40)*

354. Uganda and the International Organisations

Uganda should actively participate in international and regional organisations that stand for peace, well-being and progress of mankind. (24.47)

355. International Law and Treaties

(a) All international treaties that Uganda is a signatory to should! Constitute part of the laws of Uganda.

(b) Treaties which have the effect of restricting or in any way affecting the Constitution should not be ratified, unless ratification is done with the corresponding reservations (exceptions) in which the provisions of the treaty about which the exceptions are made, do not become part of the laws of Uganda :(27:54) .

356. Diplomatic Service

(a) There should be a special Code 6f Conduct for diplomatic personnel designed to ensure they serve Uganda and Ugandans resident abroad.

35.

(b) To ensure efficiency and effectiveness in the foreign service, an institute, or school of diplomacy should, be established in Uganda.

(c) On appointment of Uganda's envoys abroad:

(i) the President should have the power to appoint, promote, transfer and remove ambassadors, High Commissioners and any other diplomatic representatives of Uganda abroad. The appointment and removal of such officers, should be subject to the approval of the National Council of State;

(ii) diplomatic and consular representatives other than honourary consuls accredited by the Republic of Uganda must be Ugandan citizens and persons of integrity (27.G07)

CHAPTER TWENTY EIGHT: SAFEGUARDS AND AMENDMENT OF THE NEW CONSTITUTION

357. Consultation and Involvement of the People

The people of Uganda should always be consulted and involved in any major constitutional process. (28.53)

358. Sovereignty of the People and Supremacy of the New Constitution

It should be enshrined in the Constitution that:-

(a) All power of government is derived from the people of Uganda, who should be governed only through their will and consent.

(b) The State and its organs derive their power and authority from the Constitution, which in turn derives its authority from the people who consent to be governed under terms agreed on in the Constitution.

(c) The people should reserve to themselves all power and authority which they have not delegated to the State and its organs.

(d) The Constitution is the supreme law of Uganda which should be obeyed and upheld by all people and authorities in the country.

(e) If any law or custom does not conform to the Constitution, the Constitution should prevail, and the other law or custom should not apply to the extent that it does not conform to the Constitution.

(f) As recommended in Chapter Sixteen, the judiciary should have responsibility for interpretation and application of the Constitution, and this role should he clearly understood to require the courts to rule upon the constitutionality of' acts of the legislature the executive and other governmental bodies.

(g) In interpreting the new Constitution the Report of the Uganda Constitutional Commission should generally always be taken into account. (28.63)

359. Supremacy of Civilian Authority

The Constitution should p1io.vl'de that, all security organs should at all tip1es be answerable to the civilian authorities chosen or appointed in accordance with the Constitution. (28.72)

360. Implementing the New Constitution

The new Constitution should require that the first appointments to major constitutional institutions and offices be made within six months of the constitution coming into e effect. (28. 75)

361. Defence or Human Rights

Any person or group of persons may petition the relevant organs and 'institutions on behalf of any individual, group or community whose rights and freedoms are violated. The person or group lodging the petition need not have own interest or rights directly affected, (28. 79)

362. Defence 0r the Constitution by the People

There should be constitutional provisions that:-

(a) It is prohibited for any person, or group of persons to take control of the government of Uganda, unless it is in accordance with the provisions of the Constitution.

(b) It should be a treasonable offence for any person or group of persons to suspend or overthrow or abrogate the Constitution or any part of it unlawfully, or to attempt to do any such acts. Any such an act or attempt should be severely punished.

(c) Where a person or group of persons succeed in forcibly and unlawfully interrupting the observance of the Constitution, the observance of the Constitution should be reestablished as soon as people are in a position to restore the Constitution and all those who took part or willingly assisted in interrupting the observance of the Constitution should be punished in accordance with the provisions of the Constitution and other laws made under it.

(d) All citizens of Uganda should have the right and duty:

(ii) to defend the Constitution in general, and to resist any person or group of persons seeking to subvert or overthrow the constitutional order; and

(ii) to do all in their power to restore the Constitution after it has been unlawfully suspended, overthrown or abrogated.

(e) Any person who resists the unlawful suspension, overthrow or abrogation of the Constitution should be considered blameless before the law, and if he or she suffers· any punishment or loss as a result of such a resistance he or she should be entitled to reasonable compensation when the constitutional order is restored. (28.82)

38.

363. Military Training

All able-bodied Ugandans of adult age should be given military training.(28.84)

364. Popularizing the new Constitution

There is need to constantly educate the people to know the provisions of the Constitution, and their rights and duties. (28.8o)

365. Responsible and Free Press

There should he an independent, responsible and free press in Uganda, subject only to those restrictions which are necessary in a free and democratic society. (28.88)

366. Promotion or Human Rights Education and Constitutionalism

Human rights education and a culture of constitutionalism should be actively promoted in all institutions and made part or the curriculum at all levels of education. (28.90)

367. A Political will to Respect, Uphold and Defend the Constitution

There must be a conscious effort by all organs of State, institutions and individuals to promote and develop a culture of constitutionalism and the rule of law in Uganda. (28.93)

368. Any individual, group or community should be free to have access to regional, continental and international institutions dealing with breaches of human rights and freedoms if it is impossible to get justice in the country.(28.97)

369. Power of Parliament

Parliament should have power to amend .the Constitution by way of addition, variation or repeal, according to the procedure laid down in the Constitution. (28.103)

370. Amendments Requiring a National Referendum

The following provisions in the Constitution should not be amended unless (1)[proposed amendment has been approved by a national referendum:-

(a) provision on the supremacy of the Constitution;

(b) provisions on referendum on political system;

(c) provisions prohibiting a one-patty State. (28.107)

371. Amendments requiring Approval of District Councils

Provisions in the Constitution relating to the following matters should not be amended unless a Bill seeking to amend any of them has been passed by a vote of not less than two-thirds majority of all members of Parliament, and it has been ratified by the District Councils of at least two-thirds of the districts of Uganda:

(a) the sovereignty of the people;

(b) the defence of the Constitution;

(c) representation of the people - establishment and independence of the· Electoral Commission and the right to vote;

(d) the Republic - form of government;

(e) the boundaries of district;

(f) the territorial boundaries;

(g) the Capital of Uganda;

(h) the executive authority of Uganda;

(i) Election of the President;

(j) term of office of the President;

(k) removal of President;

(l) declaration of war;

(m) emergency powers of the President;

(n) the National Council of State;

(o) human rights;

(p) Local Government system;

(q) authority to raise armed forces;

(r) taxation; and

(s) amendment of the Constitution. (28.110*)*

Two-Thirds of all Members of Parliament

A Bill for an Act of Parliament to amend any provision of the Constitution other than those requiring referendum or approval by District Councils should not be passed unless it is supported by at least two-thirds of all the members of Parliament. (28.112)

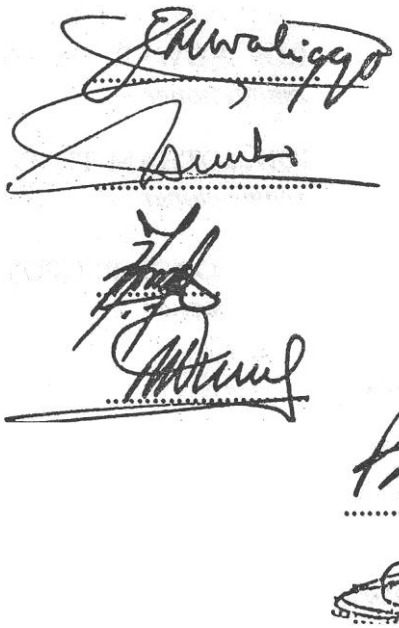
373. Official Certification of Bills on Amendment

A Bill for amendment of the Constitution should he assented to by the President only if the Speaker of Parliament or/and the Chairman of the Electoral Commission have certified compliance with relevant provisions of the Constitution concerning the passing or approval of the amendments. (28.114)

Commission

Signed at Kampala this 31st day of December ,1992

THE HON. JUSTICE BENJAMIN J. ODOKI
Chairman



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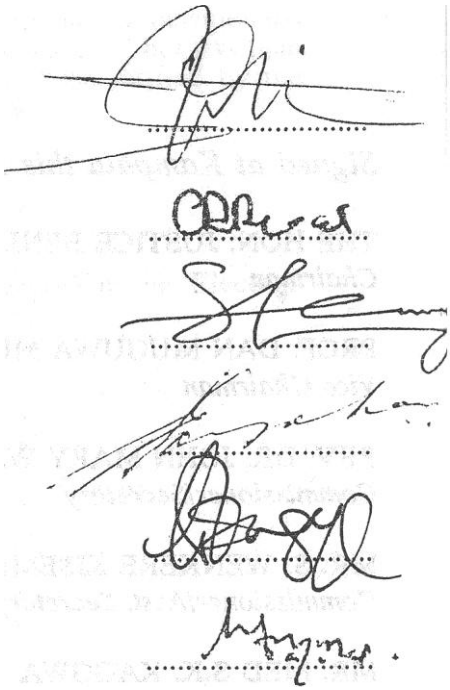

APPENDIX II

BIBLIOGRAPHY

PART I

A. GENERAL BIBLIOGRAPHY

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