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FROM PROTECTION TO VIOLATION?

**Analyzing the Right to a Speedy Trial at the
Uganda Human Rights Commission**

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TABLE OF CONTENTS

Acknowledgement.....	ii
Summary of the Report and Policy Recommendations.....	iii
List of Acronyms.....	vi
1.0 INTRODUCTION.....	1
2.0 BACKGROUND TO THE RIGHT TO A SPEEDY TRIAL.....	2
3.0 ANTECEDENTS TO THE PROTECTION OF THE RIGHT TO A SPEEDY TRIAL IN UGANDA (1962-1995).....	8
3.1 Speedy Trial under the 1962 Constitution until 1986.....	8
3.2 The Commission of Inquiry into the Violation of Human Rights.....	10
3.3 The Inspector General of Government.....	12
3.4 The Justice Oteng Inquiry	13
3.5 The 1995 Constitutional Order.....	15
3.6 The Uganda Human Rights Commission.....	15
3.7 Speedy Trial in the Courts of Law.....	17
4.0 PROTECTION OF THE RIGHT TO A SPEEDY TRIAL BY THE UHRC.....	18
4.1 Complaints handling and resolution.....	18
4.2 Amone A. Peter v. Attorney General and Eden Otto/LC III Chairman, Awach (UHR C227/ 97).....	20
4.3 Dick Sengomwami v. Attorney General (UHRC 197/97).....	21
4.4 Walusimbi Sebagala v. Attorney General (UHRC 128/97).....	22
4.5 Cpl. Twaha Kabusera v. Attorney General (UHRC 100/97).....	23
5.0 CHALLENGES FACED BY THE UHRC.....	24
5.1 Legal Dilemmas.....	24
5.2 The Duplication of Efforts.....	25
5.3 Elastic time Frames.....	26
5.4 Unlimited Adjournments.....	27
5.5 Limited Staff for the Tribunals.....	27
5.6 Financial Constraints.....	28
5.7 Government's Reluctance to Settle Claims.....	30
6.0 RECOMMENDATIONS.....	31
7.0 CONCLUSION.....	33
8.0 SELECT BIBLIOGRAPHY.....	35

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As such, the UHRC has remarked that it “would like to deliver more and is capable of doing so, but it is inhibited by the hopeless inadequate financial provision.”¹²²

The inadequate resources imply that the UHRC is incapable of delivering its services effectively and efficiently. Such a predicament contributes to the delay and can be circumvented by the UHRC aggressively fundraising for its activities, an approach that should be combined with sound financial management. The delays in the hearings are also attributable to other government agencies that do not respond to the UHRC in a timely manner, a situation that the government should take up with the respective government agencies with a view to ensuring that the country does not indirectly violate the international commitments it has undertaken through the various ratifications, as well as be in violation of the Constitution.

¹²² UHRC, 8th Annual Report at 133.

This implies that the current trend by the AG to represent government agencies that violate the Constitution is not necessary. The responsible government officers should be held personally liable for their acts. In order to facilitate the quick payment of the damages, government would reduce a set amount of money from such officers' salaries, which would be transferred to the complainant.

7.0 Conclusion

A National Human Rights Institution plays an important role in ensuring that human rights are effectively promoted and protected. In a country that largely saw the abuse of human rights with impunity and the near-complete extinction of a human rights culture, the NHRI should play a fundamental role in building a culture of respecting and upholding human rights. However, this task may be elusive if the NHRI is viewed by the public as perpetuating injustices and leading to further human rights violations. The UHRC has received and investigated several complaints. Through its mediation processes it has in fact attempted to ensure that some matters are disposed of in a timely manner. However, most of the complaints disposed of in this way largely relate to family matters i.e. the right to maintenance. However, the other matters relating to Civil and Political Rights such as freedom from torture and which are brought against the Attorney General i.e. the government, seem to take a considerably long period of time before final disposal. Such delay may lead to the assertion that the UHRC effectively violates the right to a speedy trial.

The delay in hearing complaints at the UHRC is attributable to both internal and external factors. Internally, the UHRC lacks an effective legal and administrative regime which creates uncertainty in the duration of hearings. With a few changes in the laws and the administration of the complaint handling system, such delays in the hearing can be gradually brought to an end.

Secondly, because of the lack of a system which sifts through the complaints from the time at which they are filed, the UHRC faces the problem of receiving (and even hearing) issues over which it should not exercise jurisdiction. There is thus a need for a vetting process which determines those complaints over which UHRC actually has the mandate to hear. Externally, the UHRC is severely constrained by financial resources which do not allow it to ably execute the tasks at hand.

Summary of the Report and Policy Recommendations

This Working Paper is concerned with the extent to which the right to a speedy trial is being realized within the context of the operations of the Uganda Human Rights Commission (UHRC). It is especially concerned to provide the legal, historical and practical framework within which it is necessary to understand the right, and makes the following key observations, conclusions and recommendations:

- Although the UHRC has played a significant role in the protection and promotion of human rights in the country, it has taken unduly long to dispose of several matters before it, thereby breaching the right to a speedy trial that it is under constitutional obligation to protect.
- In Uganda, the right to a speedy trial has gone through several phases. Between 1971 and 1986, the right to a fair trial—along with a whole panoply of other rights—was abused with impunity. The establishment of the UHRC and the improved operation of the courts of law has largely reversed this situation.
- Uganda's 1995 Constitution does not provide a reasonable guide as to what constitutes a speedy trial, and only stipulates it as a right without more. However, the United Nations (UN) has interpreted the right to a speedy trial based on the circumstances and complexities of the case, and the conduct of all parties, thereby providing a more elaborated framework within which consideration of the right should be undertaken.
- As confidence in the operation of the UHRC has grown, the number of complaints received by the tribunal have increased dramatically. However, of the several matters filed in 1997, a number have only been disposed of as recently as January 2006, a period of nine years. This demonstrates that there is an inordinate length of time to dispose of some complaints.
- The predicament of delayed trials is caused by several factors, including loopholes in the enabling law, a loose reading of the UHRC's mandate, the lack of sufficient human and financial resources, and problems in collecting the evidence, including those issues associated with securing witnesses and taking their testimony.

In light of the above observations, this paper recommends the following:

- The Government of Uganda must increase its funding of the UHRC in order to enable it to effectively execute its tasks, which are severally hampered by a lack of the required resources;
- Full time Presiding Commissioners should be appointed to the tribunals;
- Errant officers within the government who commit human rights violations should be held personally liable for their transgressions;
- UHRC should develop strategic partnerships with other organizations/institutions that handle related matters in order to reduce its caseload, and build the capacity of those bodies designated with the specific mandates over a variety of issues;
- There is a need for UHRC to develop a mechanism whereby it is able to determine those cases which fall precisely within its mandate, and to direct matters over which it has no jurisdiction to the appropriate institutions and authorities.
- The Rules of Procedure governing the operations of the UHRC Tribunal should be amended to provide particular time frames within which administrative procedures are undertaken, and
- UHRC should improve its internal financial management systems.

To supplement the existing law governing the procedure of the UHRC, there is a need to amend the Rules of Procedure in order to provide specific time frames for tribunal processes. These should cover investigations, the commencement and end of proceedings and when judgments should be issued.

Such rules will go a long way in curbing the unnecessary and reckless adjournments sought and granted in the tribunals. Furthermore, sanctions should be introduced against officers who violate the above rules. For instance, fines can be levied against officers who are found to be at fault and passed on to the parties to the proceedings if such parties are not at fault.

Insufficient human resources may directly be attributed to insufficient financial resources. Resources will always be insufficient. As such, it goes without need for re-statement that the UHRC should become more proactive and aggressive in fundraising for its activities. The cause of human rights is so compelling that several people and organizations may be willing to make a minimal contribution to the cause. A shilling from a multiplicity of people and organizations can make a real difference in terms of building up the resources of the Commission and enabling it to effectively execute its mandate. The Government should also be called upon to prioritize the issue of human rights and to set aside monies that can facilitate the proper functioning of the UHRC.

Full time presiding officers should be appointed to run the tribunals on a daily basis to ensure that matters are disposed of in a timely manner. An example can be drawn from the judiciary where there are 29 High Court Judges, 54 Magistrates Grade 1 and 209 Magistrates Grade II. This number of personnel ensures that cases are disposed of between 3 to 10 months.¹²⁰ Such a situation may be applied to the UHRC with a few necessary modifications.¹²¹ Full time officers would of this nature ensure that the tribunal circuits also dispose of matters from upcountry in a timely manner.

Errant officers within the government who commit human rights violations should be made personally liable for their transgressions. Article 2 (3) of the Constitution states “All power and authority of Government and its organs derive from this Constitution...” Under this provision, no kind of work/orders (course of duty) can be interpreted to violate any of the provisions of the Constitution.

¹²⁰ JLOS at 88-89.

¹²¹ Dictated by the availability of financial and human resources.

6.0 RECOMMENDATIONS

Against the preceding analysis of the operations of the UHRC and with a particular focus on the right to a speedy trial, it is possible to make several recommendations of how best the situation can be addressed with a view to improvement. Among, them, I would like to suggest the following: It is clear that several of the functions that are executed by the UHRC are similarly carried out by other government and non-government agencies. This necessitates that the UHRC develops, maintains and abides by strategic partnerships with such institutions and organizations. Such partnerships can facilitate the exchange of information and prioritization in areas that are most crucial for each of the organizations. For instance, all matters relating to workers' rights should be referred to the Labour Office in the Ministry of Gender, Labour and Social Development.

Although the UHRC has the mandate to both protect and promote human rights, the latter function should be strategically passed on to non-governmental and other organizations (NGOs) such as Foundation for Human Rights Initiative (FHRI), Federation for Uganda Women Lawyers (FIDA), Human Rights Focus (HURIFO), Refugee Law Project (RLP), Uganda Women's Network (UWONET), Uganda Child Rights Network NGO (UCRNN) etc.

These NGOs have the capability to create and sustain within the public the awareness of the provisions of the Constitution and also to disseminate human rights knowledge to all people. This is particularly true if one considers that NGOs have a wider coverage than the UHRC. Such a strategy was in fact adopted by the UHRC during the National Civic Education Programme (NCEP) initiated for the 2005 Referendum and 2006 Presidential and Parliamentary Elections with the objective of 'promoting citizen's participation in the constitutional and democratic processes.' In its 8th Annual Report, the UHRC reported that during the implementation of the NCEP, it had five implementing partners i.e. Uganda Project Implementation and Management Center (UPIMAC), International Federation For Women Lawyers (FIDA), National Association of Women Organizations in Uganda (NAWOU), Uganda Joint Christian Council (UJCC) and MS Uganda.¹¹⁹ Such partnerships would enable the UHRC to devote its human and financial resources to its very important protective mandate (Article 52 (1) (a) and (b)).

¹¹⁷ UHRC, 6th Annual Report at 3.

¹¹⁸ UHRC, 7th Annual Report at 22.

¹¹⁹ UHRC, 8th Annual Report at 29.

List of Acronyms

GoU	Government of Uganda
ICCPR	International Covenant on Civil and Political Rights
IGG	Inspectorate of Government
JLOS	Justice Law and Order Sector
LC	Local Council
LTEF	Long Term Expenditure Framework
MGLSD	Ministry of Gender, Labour and Social Development
MTEF	Medium Term Expenditure Framework
NCEP	National Civic Education Programme
NHRI	National Human Rights Institutions
NGO	Non Governmental Organization
PEAP	Poverty Eradication Action Plan
UHRC	Uganda Human Rights Commission

1.0 INTRODUCTION

The Uganda Human Rights Commission (UHRC) was created by the 1995 Constitution and the Uganda Human Rights Commission Act to protect and promote human rights in the country.¹ Its mandate involved among others, investigating complaints of human rights violations and ensuring an appropriate remedy for complainants. When the UHRC started work on 16 November 1996 it immediately began receiving complaints from the public.² In 1997, it received 349 complaints, which increased to 919 in 1998. Though the UHRC was disposing of approximately 50% of the complaints, it did not manage to dispose of the remaining 50%.³ With an increasing number of complaints received without a proportionate number being disposed of, several matters were left pending for a considerably long period of time; in one case lasting up to nine years before final disposal.⁴

The length of time taken before the final disposal of a matter filed with the Commission raises several questions pertaining to the right to a fair hearing, particularly the right to a speedy trial. If a matter is filed in 1997 and it is only disposed of in 2006, what are the implications to the right to a speedy trial? Is justice done to the person who lodged the complaint in 1997 and has had to wait until 2006 to have the matter finally concluded? Furthermore, what are the implications of the delay to the UHRC, an institution whose mandate extends to protecting and promoting all the human rights in Chapter Four of the Constitution, which includes the right to a speedy trial? What are the causes of such delays, and finally what are the remedies for those who may be thereby affected?

The above questions are posed with in the context in which Article 28 of the 1995 Constitution on the one hand guarantees the right to a fair hearing and Article 44 states that that right is non derogable i.e. it cannot be violated under any circumstances whatsoever; and on the other hand, the institution mandated to protect and promote human rights is taking a considerably long period of time to dispose of matters, in some instances violating the non derogable right to a fair hearing and particularly the right to a speedy trial.

¹ Chapter 242 Volume 2 Laws of Uganda, 2000.

² Markus Topp at 169 (2000).

³ UHRC, 2nd Annual Report 1998 10.

⁴ *Amone Peter v. Attorney General* UHRC 227/1997.

Therefore the UHRC needs to strengthen its internal policies on financial management and adopt a zero tolerance position for any financial impropriety.

5.7 Government's Reluctance to Settle Claims

One of the most important aspects in human rights protection and promotion is the need to ensure that legal redress is granted in a timely manner once a human rights violation has been established. It is only when this is done that one can ensure the effectiveness of the mechanism to address the violation. In its 7th Annual Report, the UHRC reported that "as at 31st June 2004, the Commission had ordered approximately 784 million shillings in tribunal awards...." Out of this amount, the Attorney General was responsible for 700 million shillings. However by 2004, it had only managed to pay a meager Shs. 93 millions.¹¹⁵ Several conclusions may be deduced from this state of affairs. The immediate one is that government is financially constrained and due to the several other needs it is accordingly forced to prioritize how it spends the public purse. This argument may properly fit into government's leading policy i.e. the Poverty Eradication Action Plan (PEAP) which makes provision for financing through Medium and Long Term Expenditure Frameworks (MTEF/LTEF).¹¹⁶

The former framework provides for a funding ceiling beyond which government cannot exceed within a certain time frame i.e. three years. The other argument however may be that government's priority is not in the area of human rights. This conclusion is based on the following; when the government fails to ensure the timely settlement of the damages, the complainants lose trust in the UHRC because of its inability to compel the government to meet its obligations. With time, such complainants view the UHRC as an institution without power effectively watering down its objectives. Further, by omitting to settle claims, government is indirectly encouraging its officers to continue with their human rights violations since after all the victims have little or no recourse once the violations have been committed. How else can one understand the continuous violation of the freedom from torture by the very institutions/persons before the UHRC every single reporting period? For example, in its 6th Annual Report the UHRC reported that the complaints relating to torture were 149.¹¹⁷ These increased in the 7th Annual report to 488, and the responsible government agencies were the same!¹¹⁸

¹¹⁵See UHRC, 7th Annual Report at 29.

¹¹⁶ PEAP 2004/5-2007/8/ see also The Budget Speech for the Financial Year 2006/7.

In turn, this implies that hearings are unduly prolonged due to under funding of the activities. This situation has in turn meant that the UHRC has to heavily rely on donors to fund its activities, which is "...not sustainable in the long run because donor support is meant to supplement on those areas where Government has not been able to fill the entire gap within the Budget requests."¹⁰⁸ This fact notwithstanding, the UHRC reported that for the financial year 2004/5 donors released 1.8 billion shillings, an amount which was below the budgetary request.¹⁰⁹ A comparison of financial releases by government is vital. In the Budget estimates for Financial Year 2006/07, MOFPED approved only Shs. 2.67 Bn for the UHRC. In comparison, it released Shs. 8.46 Bn for the Inspector General of Government and Shs. 44.49 Bn for the Electoral Commission.¹¹⁰ These releases demonstrate that government is much more interested in the realization of the right to vote (participation) more than other rights in Chapter Four of the Constitution. How else can one interpret a budget allocation to a National Human Rights Institution which is only sufficient to cater for staff salaries and insufficient to undertake any activity within its Constitutional mandate.¹¹¹ Furthermore, the budget allocation to the IGG which by far exceeds that of the UHRC, also demonstrates government's mythical will to curb corruption.

Though the UHRC continuously makes claims to increase its funding, in its audit of the UHRC Price Water House Coopers highlighted several financial weaknesses within the UHRC which needed to be addressed urgently.¹¹² The financial mismanagement within the Commission led to an immediate termination of funding from its donors. For instance in its 2005 Country Report the Swedish International Development Agency (SIDA) noted that several reports had highlighted financial mismanagement, prompting allegations of corruption within the UHRC.¹¹³ It is on this basis that SIDA terminated its financial agreements with the UHRC.¹¹⁴ Although the UHRC has persistently claimed that it is under funded, it has even mismanaged the meager resources it is allocated by both GoU and the donor community; a situation that may prompt the following argument. The UHRC needs to effectively and efficiently utilize the resources currently allocated to it before it can make any further financial demands.

¹⁰⁸ UHRC, 7th Annual Report at 57.

¹⁰⁹ Id.

¹¹⁰ Budget Speech 2006/07 at 50-51.

¹¹¹ In other words paying salaries for no work!

¹¹² PWC 2005 Value for Money Audit on the UHRC See also UHRC's Press Release, 'Clarification on the story on the Uganda Human Rights Commission carried in the *Red Pepper* publication of Monday February 28, 2005; dated 1 March 2005.

¹¹³ SIDA (2005) at 18.

¹¹⁴ Id.

This working paper makes the argument that although the UHRC has played a central role in protecting and promoting human rights in the country, it has had many difficulties in ensuring that the right to a speedy trial is fully protected and realized. With use of a few illustrations, the paper demonstrates that there is a long stretch of time between filing the complaint and the point at which it is finally disposed of. Such duration is a consequence of the several challenges faced by the UHRC, which ought to be addressed to ensure that persons complaining of human rights violations do not fall into the predicament of feeling that their rights are being violated by the very institution mandated to protect them.

2.0 BACKGROUND TO THE RIGHT TO A SPEEDY TRIAL

The Right to a fair hearing is one of the rights that have been guaranteed by all of Uganda's Constitutions since 1962. Article 28 of the 1995 Constitution states that the right to a fair hearing entails the presumption of innocence, being informed of the nature of the charges brought against an accused, appearing before a court of law, being afforded adequate facilities to prepare one's defense and being tried with an offence that constituted a crime at the time of commission. The analysis in this paper will however be restricted to the right to a speedy trial. Although Article 28 (1) guarantees the right to a speedy trial, it does not elaborate any further on what this actually entails. This notwithstanding, if a matter is filed in 1997, and disposed of in January 2006, having taken a period of nine years, the issue of whether or not the right has been violated must be raised. Delayed justice is usually justice denied especially in a context where witnesses lose their memories; leave the jurisdiction of the court, evidence disappears etc. Furthermore, complainants also lose interest in the matter or they become frustrated by the delay.⁵

2.1 The International Context

General Comment No.13 of the Human Rights Committee (CCPR) states that the right to be tried without undue delay not only relates to the time by which a trial should commence but also the time by which it should end and judgment rendered.⁶ All stages of the petition must be heard expeditiously. Although the General Comment provides a useful guide, it should have gone further and stated that the time of the actual grant/ fulfillment of the remedy should also be taken into account.

⁵ Human Rights Watch (2001).

⁶ Clause 9, General Comment No. 13: *Equality before the Courts and the Right to a Fair and Public Hearing by an independent Court Established by Law (Art 14); 13/04/1984.*

For instance, in its 7th Annual Report, the UHRC reported that as at 31 June 2004, it had ordered the award (by way of compensation) of approximately 784 million shillings since 1997, of which government had only managed to settle 93 million.⁷ The huge balance not settled by government represents a considerable number of people who are still seeking redress for the violations committed against them. While the judgments in their respective matters determined that human rights violations had been committed against the complainants; and probably provided some satisfaction, the actual relief sought and granted by the tribunals has never been effectuated.⁸ Such delays in settling the damages should also be taken into account in coming to a conclusion on whether or not the right to a speedy trial has been violated.

In the case of *Martin v. District Court at Tauranga*, Justice Cooke P of the New Zealand Court of Appeal stated that delay was simply one of the factors that had to be considered in deciding whether or not a trial had been conducted in line with the principles of the right to a fair hearing. The learned Justice went further and stated that all mechanisms being taken by government to address the delays in the judicial system had to be considered in arriving at the decision on whether the trial was conducted with undue delay.⁹ Without seeming to apportion any undue weight to the considerations of the right to a fair trial, delay has severe negative implications on a fair trial. In the case of *Walusimbi Sebagala v. Attorney General* (UHRC 128/97), the complainant died three years after he had lodged his complaint with the UHRC, and before his matter could be set down for hearing. The allegations of torture were dismissed largely because the witnesses relied on hearsay testimony. The death of the actual complainant implied that the witnesses who did not have access to the medical documentation had little proof of the allegations. Therefore delay may cause injustices.

Justice Cooke's assertion about the mechanisms in place though persuasive ignores the fact that some State parties are prone to undertaking ventures without fully being committed to them. For instance, Uganda has ratified several international conventions on a number of human rights matters; however it always seems to fall short when it comes to implementing such standards.¹⁰

⁷ UHRC, 7th Annual Report at 29.

⁸ UHRC, 8th Annual Report at 62.

⁹ 1995 2 NZLR 419 at 422.

¹⁰ Particular reference is made to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted in 1984 and ratified by Uganda in 1987.

First of all one needs to subtract from the above number 95 support staff (administrators, secretaries, drivers etc.) leaving only 59 staff. From this number deduct another 11 (including the Chairperson, Accounting Officer, Accountant, Planner, Public Relations Officer, Personnel Officer, Personal Assistant to the Chairperson, Assistant Public Relations Officer, Assistant Librarian, Library Assistant and the Systems Administrator) who are not directly related to the process of investigating and settling disputes.

This further reduces the available staff to the complaints resolution process to 48.¹⁰⁵ It is important at this juncture to apply this figure to the responsibilities which the Commission is supposed to undertake. The UHRC has six regional offices with headquarters in Kampala. Ideally there are about six people per regional office for the complaints resolution process. Take as an example the Gulu Regional Office, which is in charge of the following districts: Gulu, Apac, Kitgum, Pader, Lira, Adjumani, Moyo, Nebbi, Arua, Yumbe, and Pakwach. If the number of districts is applied to the six people for the Gulu Office, one can only imagine the strain placed on the human resource and infer that the delays in the process could stem from this area.

5.6 Financial Constraints

"The Government of Uganda has made budgetary allocations to the Commission for each financial year, but this has consistently been inadequate to cater for all Commission activities."¹⁰⁶ An analysis of two budgetary releases will provide a useful example. During the financial year 2003/4 the UHRC budgeted and requested Shs.10 billion, however, the government only released Shs.2.6 billion. In the next financial year, the UHRC was more conscious of the previous year's experience and requested for a lot less money, i.e. Shs.3.4 billion. Surprisingly, the government reduced even further on the prior release and only granted the UHRC Shs.2.5 billion. The under funding implies that after the UHRC has paid off its staff's salaries it has only a negligible sum of money remaining for its complaints resolution process. This situation has led to continuous pleas to both Parliament and the Ministry of Finance, Planning and Economic Development to increase the budget.¹⁰⁷ Because of this, investigations cannot be executed in a timely manner; circuit hearings never take off because both the lawyers and Presiding Commissioner are stuck in Kampala due to a lack of fuel for their vehicles and other facilitation.

¹⁰⁵ See UHRC, 7th Annual Report at 60-61 for a detailed idea on the UHRC staffing.

¹⁰⁶ UHRC, 7th Annual Report at 55.

¹⁰⁷ Apollo Mubiru, 'UHRC, Finance wrangle over cash.' *The New Vision*, 12 August 2006.

5.4 Unlimited Adjournments

As demonstrated in the *Agone* case, when the matter came up for hearing, it was adjourned several times for a number of reasons attributable to both the complainant and the respondent. Though hearings commenced in 1998, the case was adjourned until 2000 when finally all the parties to the matter could be present at the hearing. The two years of adjournments also contributed to the length of time the matter took before it could be disposed of. In the matter of *Dick Sengomwami v. Attorney General*, after securing several adjournments in order to seek instructions from the respective government department, consequent adjournments had to be denied because the tribunal realized that a lot of time was being wasted.¹⁰¹ Although ideally the discretion to grant adjournments is vested in the Judges/Magistrates/Presiding Commissioners, the discretion should not be exercised if it is likely to prejudice the complainant and unduly prolong the hearing.¹⁰²

5.5 Limited Staff for the Tribunals

The tribunals are presided over by Commissioners who also have other responsibilities in the UHRC since they are also policy makers. Inevitably this implies that they are incapable of devoting all their time and energy to matters that have been filed before the UHRC. For example, in *Cpl, Kabusera's* case the Presiding Commissioner on one of the mornings of the hearing informed the registrar that there was "a very important interview panel which had been fixed 3 months back" that had to be attended to.¹⁰³ The Commissioner hence advised the tribunal registrar that either another person be requested that very morning to preside over the matter, or it be adjourned to a future and more opportune date. The matter was consequently adjourned.

The UHRC also has very limited staff to handle complaints in a timely and efficient manner. For instance, in its 7th Annual Report, the Commission reported that it had a total of 154 staff demonstrating "a significant increase in the staffing of the Commission."¹⁰⁴ However, one needs to contextualize this number.

¹⁰¹ See the Record of the proceeding (on file with author).

¹⁰² The author was informed by the Acting Director, Legal and Tribunals (UHRC), Mrs. Patricia Achan that the UHRC is in the process of reviewing both the UHRC Act and Rules a process that will see particular time frames attached to all processes. Furthermore, the UHRC is instituting a circuit process that will last up to three weeks during which it is hoped 25 matters will be disposed of in each instance. See also Margaret Sekaggya's opening remarks at the UHRC/Basket Fund Donor Review meeting held on the 29th August 2006.

¹⁰³ This was from a note on the file written to the Registrar of the Tribunals.

¹⁰⁴ UHRC, 7th Annual Report at 61.

For instance, the existence of the UHRC has not in any way deterred the commission of further human rights violations in the country. This may partially be explained by the fact that the UHRC is grossly under funded and cannot ably execute all its constitutional tasks. This often means that its actions are also delayed due to the continuous challenges it faces. Therefore, although a State party may undertake certain measures, these may not make a substantial contribution to addressing the issues at stake if there is no commitment to the subject.

The right to a speedy trial in the United States stems from the 6th Amendment to the US Constitution. It was adopted to guarantee speedy trial in all criminal proceedings. This amendment was further strengthened by the Speedy Trial Act (1974) which put in place particular time limits for all trial processes. For instance, it provided that an indictment must be filed within 30 days from the date of arrest of any person, and thereafter trial must commence within 70 days. These provisions demonstrate that all persons within the justice system must duly investigate their matters in a timely manner and ensure that the suspect is brought before court in 30 days. Although this initial process does not mark the beginning of the trial process, it is usually followed by inordinate delays. To curb this, the Act further provides that the trial should commence within 70 (seventy) days from the day of filing the indictment. All these processes were put in place to ensure that suspects are not kept in detention for unnecessarily long periods of time.

In the matter of *Baker v. Wingo*, court noted that in considering whether the right has been infringed, the following aspects needed to be considered; the length of the delay, the reason for the delay, the defendant's assertion of his right and the prejudice of such a delay to the defendant.¹¹ This decision thereafter asserts that the delay must be looked at within a wider context. For instance, if there is delay caused by the absence of an important witness, this may not constitute undue delay. However, it is important that such a delay does not work to the prejudice of the defendant. It seems that the decision on whether or not there has been prejudice of the undue delay has to be reached after considering the peculiarity of the facts of each case. In the matter of *U.S v. Ewell*, for example, the court noted that the purpose of a speedy trial was to safeguard against undue and oppressive incarceration, minimize anxiety and also reduce the possibility of impairing the capability of the accused to defend him/herself.¹²

¹¹ 407 U.S 514.

¹² 383 U.S 116, 120; See also *Klopfers v. North Carolina* 386 U.S 213, 221.

2.2 Speedy Trial in Regional Perspective

Under the main African human rights instrument—the *African Charter on Human & People’s Rights* (ACPHR) — issues to do with the rights to a fair trial are covered in Articles 5, 6, 7 and 26. Although the guarantee of the right to a fair trial creates an opportunity for victims of human rights violations to claim redress through due process of law, these are according to Mashood Baderin, “... a rare commodity in the judicial processes of many African States.”¹³ Because of this and after much discussion, the African Commission adopted the *Principles and Guidelines on the Rights to a Fair Trial and Legal Assistance in Africa*.¹⁴ Principle 5 (on the Right to Trial Without Undue Delay) is especially important for the purposes of the present study. First, it reiterates that all persons charged with a criminal offence are entitled to trial *without undue delay*. Secondly, it offers a definition, stating that this means, “...the right to a trial which produces a final judgment and, if appropriate a sentence without undue delay.”¹⁵ Finally, the provision elaborates on those factors which may be relevant in deciding on what constitutes undue delay, including the complexity of the case, the conduct of the parties, the conduct of other relevant authorities, whether an accused is detained pending proceedings, and the interest of the person at stake in the proceedings.¹⁶

2.3 Some Definitions

There have been several attempts to define what the right to a speedy trial entails. The case of *Earl Pratt and Ivan Morgan v. Jamaica* represents an early attempt.¹⁷ On 6 October 1977, one Junior Anthony was shot dead. Three men, including the applicants, were arrested and tried between, January 10 and 15, 1979. During the trial, one vital witness for one of the accused was not examined leading to a guilty verdict. Their appeal was rejected, although the reasons for rejection were not given until after a lapse of 3 years and 9 months. When the matter was brought before the Judicial Committee of the Privy Council, it was stated that the delay of seven years before the matter could be brought before the Committee was inexcusable. It further noted that such delays would in fact constitute inhuman and degrading treatment to the accused persons. The fact that court issued its decision and only gave its reasons 3 years and 9 months later meant that the applicants could not appeal the holding. It was inexcusable that the decisions had got mixed up in files whose judgments had been already given.

¹³ See Baderin (2005) at 125.

¹⁴ Accessed at <http://www.achpr.org>.

¹⁵ Id. Principle 5 (b).

¹⁶ Id. Principle 5 (c).

¹⁷ Communication No 210/1986 and 225/1987 U.N Doc Supp No 40 at 222.

These matters all have respective specialized agencies that can handle them. As is clear from the above, the volume of these complaints inevitably affects the resources allocated to those violations that have no other specific agencies to deal with them e.g. freedom from torture, liberty, expression, assembly etc.

5.3 Elastic Time Frames

The problem of elastic time frames is not unique to the UHRC but affects the Courts of Law as well. Alluding to the seriousness of delayed judgments, Justice James Ogoola stated that, “judgments in many instances have been inordinately delayed resulting in embarrassing situations for the judiciary...”⁹⁶ In his concluding remarks in the same paper, Justice Ogoola stated that “...the right to a speedy resolution of disputes is a fundamental aspect of justice itself...” and that “delayed litigation itself may constitute a denial of justice.”⁹⁷ A delay in the conclusion of matters is indicative of the fact that matters have no defined time frames within which they must be disposed of. Rule 4 of the UHRC (Procedure) Rules states that all persons claiming that their rights have been violated “may apply to the Commission for redress...”⁹⁸ After the complaint has been lodged, there is no time stipulation on the proceedings of the matter i.e. investigations, filing papers, replies etc. The implication is that matters have no determinable time frames within which to be disposed of, inviting the process to neglect and at worse abuse and hence unnecessarily prolonging the trial. For instance, the matter of *Peter Amone* filed in 1997 was once reported by the UHRC to be pending decision, yet thereafter when the ruling was not given, the UHRC was not quite sure of the status of the matter.⁹⁹ In fact, to date the UHRC’s Annual Reports are still littered with pending matters dating back to 1997.¹⁰⁰

⁹⁶ Ogoola (2006).

⁹⁷ Id.

⁹⁸ SI No.16 of 1998.

⁹⁹ See UHRC, 6th Annual Report at 10. The status of this matter is not indicated in comparison with other matters whose status is indicated (see Table 2.2).

¹⁰⁰ For instance the 6th Annual Report indicated that the following matters filed in 1997 (pp.10) were still pending; *David Richard Senyonga v. Luwero District Administration* (UHRC 295/1997), *Peter Amone v. Attorney General* (UHRC 227/1997), *Walusimbi Ssebagala v. Attorney General* (UHRC 128/1997) etc. See also the 8th Annual Report at 63.

105 matters were all against the AG and related to violations like freedom from torture, the right to liberty, life, property etc.⁹⁰ This illustration demonstrates that most of the matters that take a considerable period are against the AG, and the explanation of the delay may not be the absence of the prerequisite laws.

5.2 The Duplication of Efforts

Both the 1995 Constitution and the UHRC Act (in line with the Paris Principles) provide for a wide mandate for the Commission. The UHRC can investigate *any* allegation of *any* human rights violation whether provided for in the Constitution or by any other national or even international instrument. In turn, this has also implied that all people alleging human rights violations can lodge their complaints with the UHRC. This mandate did not take into consideration the fact that although the UHRC could ideally deal with all kinds of violations, the government had simultaneously put in place institutions specialized to deal with such issues. For instance, the Children's Statute (now Act) of 1996 provided for a Family and Childrens Court to handle most matters related to children.⁹¹ The Land Act also provided for tribunals from the sub county level to deal with disputes arising out of land related matters.⁹² There is also a Labour Office in the Ministry of Gender, Labour and Social Development to deal with most labor-related issues.

If one for instance considers matters related to children, the complaints received by the UHRC are overwhelming. In its 7th Annual Report, the UHRC reported that it received 602 complaints related to the maintenance of children, constituting 26% of the complaints received that year, the highest number in comparison to any other violation⁹³ With these trends, the UHRC remarked that "during 2004 the increasing number of maintenance complaints reached worrying proportions."⁹⁴ These are matters that would properly fall under the jurisdiction of the Family and Children's Court. Further, the UHRC also reported that in 2004, it received 416 complaints relating to property (largely land disputes), 57 relating to remuneration, 51 relating to workman's compensation and 4 relating to work.⁹⁵

⁹⁰ Id., at 9- 17.

⁹¹ In its 7th Annual report the UHRC reported that child related matters were the most received matters i.e. 602 complaints compared to 488 relating to tortur (7th Annual Report at 22).

⁹² Chapter 227, though due to the difficulties in putting in place the tribunals, jurisdiction was consequently transferred to magistrates courts†2

⁹³ UHRC, 7th Annual Report at 22.

⁹⁴ Id., at 34.

⁹⁵ Id., at 22.

This decision however has its own peculiarities largely because of the gravity of the offence involved. Murder carries a maximum sentence of death in Jamaica (as it does in Uganda). On conviction, the delay and treatment of such people before their lives can be taken amounts to inhumane treatment as was decided in the recent Ugandan case of *Suzan Kigula v. Attorney General*.¹⁸ It is little wonder that the Judicial Committee noted that the delay from the time the accused purportedly committed the offence and the time the matter was forwarded to it was inexcusable and amounted to inhuman and degrading treatment. It is not difficult to see that when the right to be tried without undue delay is violated, the accused's right to appeal against the decision has similarly been affected. In *Morgan's* case, the execution of one of the accused had to be stopped minutes before it was carried out.¹⁹ This case underscores the importance of having a matter heard expeditiously. I should also point out that the Committee did not comment about the period before the appeal arose, implying that it could have been reasonable. The offence was committed in 1977; the matter came up for trial 15 months later and was disposed of in five days. The appeal was determined between September and December 1980.

Therefore, from the time of the purported commission of the offence until it reached the appeal level, the matter had lasted about three years. Considering the gravity of the offence, the initial time frame covered the investigations for the prosecution and preparation of the defense. It is also important to examine an instance in which the period before trial was considered. In *Clive Smart v. Trinidad and Tobago*, the applicant was arrested on 22 June 1988 for allegedly murdering one Josephine Henry.²⁰ He was convicted on 14 February 1992 and sentenced to death. His appeal was dismissed on 20 October 1994. The accused made an application to the judicial committee alleging that the delay of 44 months before trial was a violation of his right to be heard without undue delay. In this matter, the State party argued that although the trial commenced on 9 April 1990, a total of 9 adjournments had been sought, 8 of which being at the instigation of the accused party. The State Party further contended that it had a shortage of professional staff and could not ably, and expeditiously deal with the matter.

¹⁸ Constitutional Petition No. 6 of 2003 (Constitutional Court).

¹⁹ Communication No. 210/1986 and 225/1987 U.N Doc Supp No 40 at 222.

²⁰ Communication No. 672/1995, U.N. Doc. CCPR/C/63/D/672/1995 (July 30 1998).

The Committee noted that the State party had conceded that a period of over two years had lapsed between the author's arrest on June 22, 1988 and the date set down for the beginning of the trial in September 1990 and that this delay in itself constituted a violation of both Article 9, paragraph 3, and of Article 14, paragraph 3 (c).

Clive Smart's decision is a demonstration that the period taken before an accused party is brought before a court of law is important in determining whether or not the trial was heard without undue delay. The State cannot rely on excuses such as the lack of professional personnel to deny the accused person a speedy trial. It implies that State parties have to take all measures possible to ensure that accused persons are brought before the courts of law as quickly as possible. Therefore, from both the decisions of *Clive Smart* and *Earl Pratt* the period prior to the trial and that taken before a judgment can be handed down, play an important role in ensuring that the trial complies with the right to a speedy trial.

Though the above judgments specifically deal with cases in which the time frames involved were relatively long, it is difficult to place a particular time frame within which a trial should be conducted and completed. In fact, in all the above decisions the Judicial Committee has seemed to make its conclusions based on the peculiarities of the respective cases.

This argument is further supported by the European Court of Human Rights which decided in *Gelli v. Italy* that the duration of the trial has to be assessed in light of the particular circumstances of the case, the criteria set down by the law, the complexity of the case and the conduct of both the accused and the authorities in dealing with the matter.²¹ In this case the accused had escaped from prison and it took the authorities 4 years and 1 month to re-arrest him. Court noted that this period could not be taken into account in deciding whether or not he had been accorded the right to a speedy trial. However, the court concluded that when the judgment was not delivered between 1985 and 1991, this constituted undue delay on the part of the State.²²

²¹ Application No. 37752/97.

²² See also *Pelissier and Sassi v. France* Application No. 25444/94 on the application of the conditions pertaining to reasonable time.

Consequently, the AG decides to seek adjournments until the respective government departments respond to the office, a position that contributes to the prolonged delays. On the other hand, when one considers the matter against private individuals, the duration is shorter e.g. the matters of *Swaibu Were v. James Ludhozi, N. Kaduyu v. George Mugisha, Edinasi Baguma v. Stephen Baguma* etc., lasted between one and two years before final disposal.⁸⁶ This comparison demonstrates that though private individuals are responsive to the UHRC, this is not true when it comes to government agencies. Such challenges certainly contribute to the undue delays in the Commission disposing of matters.

5.0 CHALLENGES FACED BY THE UHRC

5.1 Legal Dilemmas

There seems to be a trend in the legal evolution of institutions in Uganda that would support the suggestion that the government first puts in place an institution, and follows with the requisite legislation. A simple illustration of this point will suffice. In 1986, the government put in place the Office of the Inspector General of Government. The requisite statute was assented to two years later in 1988.⁸⁷ When the UHRC was provided for by the 1995 Constitution, there was a need to enact supporting legislation to enable the institution to properly function. However, the law governing the institution was only enacted two years later.⁸⁸ Furthermore, the UHRC's Rules of Procedure were only gazetted in 1998.⁸⁹ This meant that though the UHRC commenced work in 1996, there were a number of legal hurdles that could not enable it to hold tribunal hearings. Therefore, the matters that were brought before it between 1996 and 1998 could not be set down for hearing in the tribunals. Since such matters were not being heard, they either had to be settled by way of mediation or by amicable settlement, or they had to be shelved pending enactment of the requisite legislation.

This argument may only be true for those matters filed before the legislation came into force. There are several matters filed between 1998 and 2003 that were still pending before the UHRC by 2003. For example, in its 6th Annual Report, the UHRC reported that 151 complaints had not been disposed of. Of these, 146 had been filed after 1998.

⁸⁶ UHRC/J/7/02, UHRC 194/02, UHRC 87/03.

⁸⁷ i.e. 8th April 1988 (Inspector General of Government Statute No.2 of 1988).

⁸⁸ The commencement date for the UHRC Act was 2 May, 1997.

⁸⁹ UHRC, 2nd Annual Report at 19.

4.5 Cpl. Twaha Kabusera v. Attorney General⁸⁴

The complainant was arrested on 7 October 1996 by the Military Police on allegations of illegal possession of a firearm. He was subsequently detained and tortured. His complaint was lodged with the UHRC on or about 3 July 1997 and judgment was given on 23 November 2004, seven years later. The complaint was investigated by the UHRC on 21 July 1997 during which it was discovered that there were possible human rights violations. Hearings commenced sometime in 2003.

As stated in *Gelli's* case, the complexity of the case is relevant in determining the justification for the delay. In *Kabusera's* case, the complainant was transferred from Makindye Military Police Barracks, to Mbuya Military Barracks, then to Mulago Hospital and finally back to Mbuya in a bid to ensure that the UHRC could not locate him. While in Mbuya, the UHRC notwithstanding its wide constitutional mandate could not progress any further without permission from the Army. When the UHRC finally found the complainant, it reported on 21 July, 1997 that the room in which the complainant was found seemed, "improvised and must have been a store for medical treatment, some of which were still stored there."⁸⁵

In considering the delay, the period during which the UHRC was moving around military barracks tracing the complainant cannot be taken into account because the delay was caused by factors beyond its control. As elaborated upon by *Gelli's* case, the period of Four years and 1 month during which the complainant was hiding from the authorities could not be considered in computing the delay. The same complexity may be applied to Kabusera since for a while he was being hidden away from the UHRC by the military authorities. When the UHRC came across the complainant and he was subsequently taken to a gazetted place of detention i.e. Luzira maximum prison, the UHRC could no longer be impeded in its functions. When the complainant was set free from Luzira, the UHRC could no longer claim any complexities. On the other hand, the army having proved illusive in this matter was not responsive to the UHRC's request to answer allegations. In turn, this would imply that the Attorney General could not get instructions from the army and thereby had to seek the several adjournments in the matter. All the above-cited matters have a similar respondent i.e. the Attorney General. As already indicated, the Attorney General (AG) seems to have difficulties in receiving instructions from the respective government agencies. As such, the AG is not in position to make a determination whether the matter should be settled amicably or should be defended.

⁸⁴ UHRC No.100/97

⁸⁵ UHRC Investigations Report 21 July, 1997.

3.0 ANTECEDENTS TO THE PROTECTION OF THE RIGHT TO A SPEEDY TRIAL IN UGANDA (1962-1995)

3.1 Speedy Trial under the 1962 Constitution until 1986

The 1962 Constitution followed the termination of the colonial regime. According to Upendra Baxi the colonial regime, was 'marked by the law and politics of violent exclusion.'²³ It is on the basis of the colonial violations and developments on the world scene after 1945 that could probably explain the human rights emphasis in Uganda. In 1945, the United Nations adopted its founding Charter against a history of violence, which had also witnessed the massive abuse of human rights. Article 1 (3) of the UN Charter states that one of the purposes of the United Nations was '...promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction...' The Universal Declaration on Human Rights (1948) (UDHR) followed the UN Charter and made provision for an array of rights including the right to protection of the law.²⁴ It is against this background that the 1962 Constitution contained a full chapter (Chapter Three) on fundamental rights and freedoms. Article 24 provided for the right to a fair hearing (then known as the secure protection of law) and particularly for someone to be tried within a 'reasonable time' by an independent and impartial court. The enforcement of the substantive rights enshrined in Articles 17 to 29 was left to the High Court.²⁵

The events between 1962 and 1966 provided a severe test to Chapter Three of the Constitution, particularly with respect to the rights related to a fair trial. The political tensions of the time inevitably had dire consequences for human rights generally but also with respect to the right to protection of the law in particular. In the matter of *Grace Stuart Ibingira and others v. Attorney General*.²⁶ The applicants were arrested on 22 February 1966; warrants under the Deportation Act (Cap 308) were issued a day later on the 23.rd An application for a writ of *habeas corpus* was made on the 7 March 1966. The matter was heard and disposed of by the trial judge on March 14, 1966 rejecting the application. The appeal was finally allowed on July 14, 1966. Applying the principles referred to in determining whether the hearing was speedy or not; the matter lasted approximately five months up to the final determination. To this extent, the trial was heard within a reasonable time.

²³ Baxi, 2000.

²⁴ See Articles 7 and 10 of the UDHR.

²⁵ Article 32 1962 Constitution of Uganda

²⁶ [1966] EA 445.

Thus, a matter that had commenced on 22nd February was ‘finally’ disposed of on the 14th July 1966 after approximately five months. The trial was reasonably speedy, but one has to be mindful of the following; Section 3 of the Deportation Act required that the intended deportee had to be summoned before court to show cause why the order of deportation should not be issued under Section 4. None of these procedures seemed to have been followed in this case, necessitating an application for a writ of *habeas corpus*. Thus, although the matter was heard expeditiously, the law was not followed thereby violating the principles stated in *Gelli’s* case.

When the 1962 Constitution was suspended, a new (interim) Constitution was adopted in 1966, which was followed by the 1967 Constitution. The 1967 Constitution contained Chapter Three on the protection of fundamental rights and freedoms of the individual. Article 8 (2) (a) provided that all individuals shall enjoy fundamental rights and freedoms, which included life, liberty, security and protection of the law. The right to protection by the law was a provision that was also contained in the 1962 Constitution. Though Article 8 was couched in mandatory terms i.e. ‘Every person in Uganda *shall* enjoy the fundamental rights and freedoms...’ it is not clear whether this meant that the right was non-derogable as is currently the case under the 1995 Constitution. Article 15 of the 1967 Constitution provided that ‘... any person charged with a criminal offence ...shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.’

This provision was a duplication of the very terms of the 1962 Constitution i.e. reasonable time; leaving it to the courts of law to determine what would be ‘reasonable’ in each instance. For the enforcement of the above rights, Article 22 provided that any person who alleged that the provisions of Article 8 to 20 had been contravened/were likely to be contravened would apply to the High Court for redress. This position was similar to the one under the 1962 Constitution. On the whole, though trials before 1971 were heard expeditiously, the provisions of the law in some of such matters was not followed to the letter, as was the case in *Grace Stuart Ibingira*.

When Idi Amin took power in 1971, he cited 18 reasons for his *coup d’tat* among which was the continued “unwarranted detention without trial for long periods of a large number of people...”²⁷ However, no sooner had he taken power than people started to disappear.

²⁷ Republic of Uganda, 1994 at. 24.

The complainant was arrested on allegations of malicious damage to property and subsequently tortured by the arresting police officers. From the facts, the matter does not seem so complex as to warrant processes that could have caused the same kind of delays in the hearings as was the situation in *Gelli’s* case.

4.4 Walusimbi Sebagala v. Attorney General⁸¹

The complainant was arrested on 17 March 1997 on suspicion of engaging in rebel activities in western Uganda. He was consequently detained and tortured while in detention, and only released one month later, whereby he filed his complaint with the UHRC. The matter was set down for hearing on 18 March 2002, five years after the complaint was lodged and one year after the complainant’s death. When the hearings started, the deceased’s widow and sister were his only witnesses largely submitting hearsay, which is generally inadmissible.⁸² It is little wonder that when the judgment was read on 22 February 2005, the Presiding Commissioner had this to say, “Although one may easily be persuaded to believe the testimony by the wife, it is all hearsay...in the premises the complainant and the witnesses have failed to prove torture of the complainant while he was in detention.”⁸³ During the hearing, the complainant’s widow alleged that her husband had been severely tortured; however, she had lost all the requisite medical documents or any other evidence to prove her claims at the hearing.

This matter lasted 8 years before it could be disposed of. The duration from the principles enunciated above was unreasonably long. During this delay, the complainant met his death and could not therefore as the person who suffered the violations testify before the tribunal. This left only his wife to testify. The wife’s testimony was largely hearsay and hence failed to prove that the respondents had violated the complainant’s right to freedom from torture. Furthermore, over the period of the hearing, all the medical documentation was lost making it difficult for the tribunal to only act on the testimony of the deceased’s wife.

⁸¹ UHRC 128/97

⁸² Section 59 Evidence Act Chapter 6 Laws of Uganda.

⁸³ See Presiding Commissioner C.K Karusoke’s judgment.

delay notwithstanding the adjournments sought, given the fact that adjournments are matters for the discretion of the presiding officer. Furthermore, even when the tribunal requested that written submissions be made in 2000, the tribunal seemed not to have followed the matter up administratively to ensure that the written submissions were made within the prescribed time. This would imply that the tribunal even when granted wide powers of a court of law under article 53 of the Constitution, .. —is reluctant to invoke them, to the extent that its orders can be violated at will i.e. to the extent that written submissions were made four years from their due date! There was also a further delay of two years after the submissions were made before judgment could be delivered. This delay to deliver a judgment not only compounds the original human rights violation but also develops into an injustice of its own. Such delay justifies the need for the adoption of particular time frames within which judgments should be rendered.

4.3 Dick Sengomwami v. Attorney General⁷⁹

The complaint revolved around the issue of freedom from torture. It arose on 5 July 1997 and was filed at the UHRC on 10 July 1997. The matter came up for hearing sometime in April 2002, five years after it had been filed. A ruling was given on 3 November 2004, seven years after it had been lodged. It is clear from the time of lodging the complaint that there was undue delay in bringing the matter before the tribunal and final disposal of the matter. *Gelli's* case noted that the question of undue delay depends, *inter alia* on the complexity of the case and the conduct of both parties to the trial. In *Sengomwami's* matter the Attorney General had to seek several adjournments to receive instructions from the particular government department (in this case the Uganda Police Force) implicated in the violation. The reluctance by the department may be interpreted to mean that though the institution was aware that its employees were involved in a human rights violation, the matter was not given utmost attention/seriousness, This would be an argument at odds with the mandate of the department i.e. to enforce the laws of Uganda.⁸⁰ It is clear that the alleged perpetrators were reluctant to assist their legal representative to defend the matter or even to settle it amicably, thereby contributing to the delay. However, the matter was not so complex as to have taken five years before it could be placed before the tribunal. The facts were that the complainant hired a taxi to drive him back to his house in Bweyogerere. He had a disagreement with the driver resulting in the destruction of the taxi's windscreen.

⁷⁹ UHRC 197/97

⁸⁰ Section 4 (1) (c) Police Act Cap 303.

It is therefore a little difficult to discuss the right to a speedy trial during the period 1971 to 1986, given the fact that human rights were generally abused with impunity. For instance, during Idi Amin's regime several people disappeared and were never again seen alive e.g. Frank Kalimuzo (Makerere University Vice Chancellor), Benedicto Kiwanuka (Chief Justice), W.W Kalema, Yekosofati Engur (the latter two both ministers), and several other prominent and less well-known individuals.²⁸ All the disappearances were executed against the backdrop of the assurances of the right to protection by the law well stated in the 1967 Constitution.

In sum, while it is clear that all Uganda's constitutions after 1962 guaranteed the right to protection of the law; this right was violated with impunity especially after 1971. The regimes of the day from Amin to Obote II were much more interested in preserving themselves in power and hence resorted to extra judicial killings, among other violations. One commentator has noted that "the greatest disservice Obote did to his country was to return to power undemocratically in 1980."²⁹ Consequently, when Yoweri Museveni took over power in 1986, his government faced the immediate challenge of ensuring that the violations that had occurred prior to 1986 did not recur. It is in this context that the office of Inspector General of Government was set up with the mandate of among others protecting and promoting human rights in the country. Simultaneously, the government also set up a Commission of Inquiry to look into the violations of human rights that had occurred since 1962.

3.2 The Commission of Inquiry into the Violation of Human Rights

When the National Resistance Movement/Army took over power on 26 January 1986, the country had witnessed several human rights violations under prior regimes. The violations that had occurred in the pre-1986 era were largely those relating to life, torture, and property and among others. In the NRM's Ten Point Programme considerable emphasis was placed on the restoration of the security of the person and property the respect for human rights.³⁰ Legal Notice No.5 of 1986 instituted a Commission of Inquiry on 16 May 1986. The inquiry was required to look into the violations of human rights that had occurred between 1962 and 1986 and to make the necessary recommendations.³¹ The inquiry submitted its report on 10 October 1994 having taken approximately eight years within which to compile its findings.³²

²⁸ *Id.*, at 566.

²⁹ A.B.K Kasozi, quoted in Kanyeihamba (2002) at 202.

³⁰ See, the Ten Point Programme of the National Resistance Movement in Museveni (1997) at 217.

³¹ See Republic of Uganda, 1994, *op.cit.*, at 1.

³² Largely attributed to shortage of funds and the vast scale of the exercise. *Id.*, at 16.

It is important to state at this point that the inquiry was not set up to protect and promote human rights under the NRM period of governance, as this mandate was passed on to the Office of the Inspector General of Government (IGG).

After hearing several alarming testimonies and receiving various pieces of evidence pointing to the massive violation of most human rights, the inquiry recommended that the new constitution of Uganda should have a complete Bill of Rights and “mechanisms for their protection, respect, observance, promotion and enforcement.”³³ As alluded to earlier, several people had disappeared, been tortured and detained without trial. In this regard, the inquiry recommended that there should be a permanent human rights commission with a wide mandate to inquire into any instance of human rights violation.³⁴ The Government of Uganda was further urged to ratify the International Covenant for Civil and Political Rights (KCPR) and its Optional Protocol, which guaranteed among others, the right to a fair hearing.³⁵ It also submitted proposals to the Uganda Constitutional Commission expressing the need to ensure that all people and organs of the government ensured the observance of human rights. The proposals particularly highlighted the need to protect rights such as the right to a fair trial, the right to life, liberty, and human dignity etc.

This inquiry was important for it brought to the fore a new regime under which human rights protection would not only be carried out by the Courts of Law as had been the practice before 1986, but would also be overseen by an independent national body whose mandate was to exclusively protect and promote human rights in the country. The creation of a National Human Rights Commission would be in line with the Paris Principles.³⁶ The inquiry also created an opportunity for all Ugandans to appreciate the nature and gravity of the human rights violations that occurred after 1962 and also give an idea of the circumstances surrounding these developments. It was an opportunity to embark upon the creation of a human rights culture in the country and ensure that all Ugandans aware of pre-1986 events would have the duty to protect and promote human rights. However, Amnesty International noted that the aim of the inquiry was to “unite the country which, in practice, amounted to granting an undeclared amnesty for many human rights violators, ranging from new ministers in the new government to ordinary soldiers.”³⁷ As stated above, the mandate of the

³³ Id., at 582.

³⁴ Id.

³⁵ Id., at 593.

³⁶ Adopted 20th December 1993.

³⁷ Amnesty International (1989) at 12.

4.2. The Case of Amone A. Peter v. Attorney General and Eden Otto/ LC III Chairman, Awach⁷⁶

In its decision in the above matter, the UHRC Tribunal noted as follows, “This is a complaint which has unfortunately remained unconcluded for a long time...decision was to be given on notice but due to unexplained oversight the file remained unattended to until the complainant reminded the Commission. It is appropriate to offer apologies...for this undue delay...”⁷⁷ The complaint arose in 1989 when the NRA/UPDF occupied the complainant’s land without the payment of adequate compensation. The complaint was lodged at the UHRC on 12 September 1997 and judgment was read on the 1 January 2006. The complaint hence took approximately 17 years before its conclusion, and may take even more time before the complainant finally secures the awarded damages from government. One though has to inquire into the circumstances under which this complaint took so long before achieving final disposal.

The matter came up for hearing on 19 November 1998 and was adjourned because neither party was present at the initial trial. It was subsequently adjourned three times thereafter either because one of the parties was busy elsewhere or because there was a need on the part of the Attorney General to inquire into the matter. All parties were ready to proceed on 25 April 2000, when the complainant’s witnesses were examined. Between 1997 and 2000, the matter was at a stand still. After hearing both sides, the UHRC required the parties lawyers on both sides to submit their written submissions by 4 December 2000. Interestingly enough, the complainant’s submissions were only submitted on 6 August 2004, four years after they should have been and judgment was given two years thereafter!⁷⁸ This matter demonstrates that both sides were partially responsible for the undue delay in finally disposing of the matter. *Amone’s* case presents several issues. The matter arose in 1989 and was filed at the UHRC in 1997. The UHRC Act states in section 8 (3) that the UHRC’s jurisdiction is limited to human rights violations that arose after 1995 i.e. after the promulgation of the 1995 Constitution and the creation of the UHRC. Therefore, the UHRC’s jurisdiction over this matter is questionable Three adjournments were sought over the three years i.e. between 1997 and 2000. However, these adjournments alone could not explain the duration before the actual hearings could commence.

In fact, the Judicial Committee of the Privy Council in *Clive Smart’s* decision notes that a delay of two years before a matter is heard amounts to undue

⁷⁶ UHRC No.227 of 1997.

⁷⁷ See *Amone* judgment at 1.

⁷⁸ It appears though that the changes in lawyers could have partially contributed to this delay.

One also needs to recall that the 143 complaints left pending in 1997 could probably have been in the advance stages of resolution and were therefore resolved in 1998. This is an assumption that could drastically reduce those complaints filed and resolved within 1998. Alternatively, the above figures could also demonstrate that the more complaints UHRC received the fewer it managed to resolve.⁷⁰ Since the Commission was only resolving half the number of complaints, received, and yet continued receiving new complaints, this inevitably meant that complaints would take a reasonably long period of time before their matters could be finally disposed of.

The UHRC's 2001-2002 Annual report noted that the investigation of complaints in a timely manner remained a challenge and that, "the number of cases pending is alarmingly high and will grow."⁷¹ It is clear that if the complaints were increasing in number and resolution rates declining, such a predicament was bound to arise. In a self-assessment of its performance, the UHRC reported that it had managed to resolve at least 2,145 cases since 1997 out of a total of 4,853 cases lodged over the same time frame, meaning in effect that 2,708 complaints were pending filed as far back as 1997; demonstrating that by 2002, half the matters received by the UHRC over the period between 1997 and 2002 had never been concluded. By September 2004, the UHRC still had five matters filed as far back as 1997. A period of 7 years had lapsed without a clear indication of the final date of completion.⁷² I have restricted my consideration to only those matters filed in 1997. However, if one expands the time frame to 2000, it will be evident that there are several matters (53) that have been before the UHRC for at least four years and are still pending.⁷³ Of the five matters filed in 1997, only 2 of them were resolved in 2004,⁷⁴ i.e. *Sengomwami* and *Cpt. Kabusera's* cases.⁷⁵ At the time of writing, the other cases are still pending. Below, I take a closer look at four of the matters filed in 1997 to give an understanding of the duration involved in disposing of them.

⁷⁰ Though it had managed to resolve 59.02 % in 1997 when it received 349 complaints, this percentage reduced to 52.67 % in 1998 when the complaints increased to 919.

⁷¹ UHRC, 6th Annual Report at 36.

⁷² *Peter Amone v. AG* (UHRC 227/1997), *David Richard Senyonga v. Luwero District Administration* (UHRC 295/1997), *Walusimbi Sebagala v. AG* (UHRC 128/1997), *Cpt. Twaha Kabuseera v. AG* (UHRC 100/1997), *Sengomwami Dick v. AG* (UHRC 176/1997).

⁷³ UHRC, 6th Annual Report at 13- 17.

⁷⁴ UHRC, 7th Annual Report at 27.

⁷⁵ *Ibid.*, at 73.

inquiry was to look into the human rights violations that occurred before January 26, 1986, and not after that date. By implication, one would think that the ordinary courts of law continued as avenues for settling allegations of human rights abuses. However, the Office of the Inspector General of Government (IGG) was created to look into violations of human rights. The IGG's office however also had the important task of ensuring that corruption was brought to an end which may also have links to human rights protection. As put by the former Inspector General of Government, Jothan Tumwesigye, most of the functions of the IGG show that that office "has not been divested of its human rights protection role..." due to its linkages with corruption.³⁸

3.3 The Inspector General of Government

Though the Office of the Inspector General of Government (IGG) was created under the leadership of Augustine Ruzindana in 1986, the Statute establishing it was only passed in 1987 and assented to on the March 19, 1988.³⁹ Section 7 of the law charged the IGG with the "duty of protecting and promoting the protection of human rights and the rule of law in Uganda..." This duty particularly required the IGG to inquire into the violation of human rights committed by any person in public office particularly relating to the right to life, detention without trial, the right to a fair trial, freedom from torture and the right to property. To ensure the fulfillment of the above duty, the IGG was granted powers under section 8 to conduct investigations into allegations of human rights violations. The respective areas into which the IGG had to particularly look were indicative of the trauma Uganda had gone through over the past several years. However, it is important to point out that there was an assumption by the framers of the statute that human rights violations could only be committed by State actors, an assumption that would later be proven erroneous.

The IGG had a wider mandate. Section 7 required the office to eliminate and foster the elimination of corruption and the abuse of office. This was an area which the office seemed to emphasize much more than that of protecting and promoting human rights.⁴⁰ For instance, Amnesty International noted that the IGG was "...more effective in pursuing cases of corruption than in systematically investigating complaints of human rights abuse...the department had not carried out a single investigation of an alleged extra judicial execution...even though Amnesty International,

³⁸ See Tumwesigye (1999).

³⁹ Inspector General of Government Statute No.2 of 1988.

⁴⁰ See Oloka-Onyango, 1993.

among others, had submitted details of a number of such cases.”⁴¹ Amnesty International reported that this was due to the fact that both the IGG’s office and the Commission of Inquiry into the Violation of Human Rights in Uganda anticipated a more permanent body whose mandate would be to protect and promote human rights.⁴² However, an examination of subsequent developments in Uganda would lead to a somewhat different explanation. Though the current government’s fight against corruption is abysmal, it still seems to have a resolve to fight it much more than it does with respect to human rights violations. For instance, during the Constitutional Review Commission process chaired by Professor Frederick Ssempebwa and which run from 2001 to 2004, government submitted a proposal that the Uganda Human Rights Commission be merged with the Office of the IGG. The reason for this preference for a merger according to the official explanation was to ‘reduce costs to the government’.⁴³ That objective would be achieved by the rationalization and merging of the many bodies which had been set up by the Constitutions. Furthermore, the UHRC reported that “as at 31 June 2004, the Commission had ordered approximately 784 million shillings in tribunal awards as compensation to various individuals and organizations for violations of human rights...but government had only managed to pay a meager 93 million shillings...” pointing to the ‘seriousness’ with which the government takes the human rights situation in the country.⁴⁴ I am thus more inclined to the argument that notwithstanding the mandate of the IGG and its creation in 1986, government from that time onwards has been much more inclined to fight corruption than it has been devoted to ending human rights violations. With this in mind, it is a difficult task to have only a discussion about the right to a speedy trial under the IGG since the body only partially pursued this aspect of its mandate.

3.4 The Justice Oteng Inquiry

The Judicial Tribunal of Inquiry into the conduct of Mr. Justice Emmanuel A. Oteng provides a concrete example in the case of Uganda of circumstances that would give rise to a violation of the right to a speedy trial.⁴⁵ Legal Notice 4 of 1987 instituted the inquiry with the objective of inquiring into the conduct of the judge in delaying trials and delivering judgments.

⁴¹ Amnesty International op. cit., at 22.

⁴² Id.

⁴³ Makubuya, 2004 at 78 ff.

⁴⁴ See, UHRC, 7th Annual report, at 29.

⁴⁵ Republic of Uganda (1988) at 47.

4.0 PROTECTION OF THE RIGHT TO A SPEEDY TRIAL BY THE UHRC

Every year, the UHRC presents an annual report of its activities to Parliament as required by Article 52 (2) of the 1995 Constitution. In its protection mandate the UHRC receives complaints concerning human rights violations, which are settled either through the tribunals process or through mediation, processes that may finally lead to redress. Over time, the UHRC has received several allegations of human rights violations. Some of these matters have been amicably disposed of. For instance the UHRC through its mediation processes has disposed of several matters. In its 7th Annual Report, it reported that in 2004 it successfully mediated 404 complaints.⁶⁴ However, there are those that are still pending due to a variety of reasons. Though mediation is largely done in matters relating to family affairs specifically the maintenance of children, the UHRC reported that it “saves time and resources of both parties.” Though some matters mediated by the UHRC last about four weeks, the 6th Annual Report also demonstrated that there are mediations that take up to one year.⁶⁵ For example, the 6th Annual report indicates that several matters were still undergoing mediation, which had been filed as early as 2002.⁶⁶ Though the UHRC has adopted some measures to reduce the period taken to dispose of a matter, several matters still take a relatively long period, a fact UHRC alluded to in its 7th Annual report as follows, “...some of the cases disposed off in 2004 were filed as far back as 1997...”⁶⁷

4.1 Complaints Handling and Resolution

In its 1998 Annual Report, the UHRC reported that it had registered a total of 919 cases as compared to the 349 received in 1997.⁶⁸ Of the complaints received in 1998, the UHRC managed to resolve 484 cases, leaving 435 pending. However, one must recall that of those cases received in 1997 about 143 were also left pending.⁶⁹ These figures demonstrate that in both 1997 and 1998 the UHRC only managed to resolve a little over 50 % of the matters that were filed before, pushing the rest of the pending matters over to the next reporting period. Therefore, almost half of the complainants before the UHRC in 1997 and 1998 did not manage to secure a remedy during the reporting period in which they filed their matters.

⁶³ Id.

⁶⁴ UHRC, 7th Annual Report at 32.

⁶⁵ UHRC, 6th Annual Report at 21.

⁶⁶ Id., at 17.

⁶⁷ Id., at 27.

⁶⁸ Id., at 9.

⁶⁹ Id., at 10.

Therefore, some violations from 1986 to 1995 had to go without redress.⁵⁹ The creation of the UHRC was a culmination of several processes that commenced in 1986. Uganda had also complied with the Paris Principles, which required States to establish independent national institutions to protect and promote human rights. The UHRC, which embarked on its mandate on November 16, 1996, today boasts of six offices in Mbarara, Fort Portal, Gulu, Soroti, Jinja, Moroto and Kampala. It also has auxiliary offices in Kumi, Soroti, Moroto, Kotido, Nakapiripit, Kitgum, Pader, Gulu and Lira.

3.7 Speedy Trial in the Courts of Law

Both the 1962 and 1967 Constitutions provided for the enforcement of fundamental freedoms through the courts of law particularly the High Court. This position was also adopted by the 1995 Constitution. Article 50 (1) of the 1995 Constitution states that any person who claims that a fundamental or other human right has been infringed or threatened with infringement is entitled to apply to a competent court for redress. Under the *Fundamental Rights and Freedoms (Enforcement Procedure) Rules* of 1992, such applications are made to the High Court. However, some cases involve matters of interpretation of the Constitution, necessitating that both the infringement and interpretation are referred to the Constitutional Court.⁶⁰

Courts of Law have also been affected by prolonged trials contributing to the case backlog. In its Criminal Base line Survey, the Justice Law & Order sector (JLOS) reported that in 1999 each High Court Judge had a caseload of 417 cases with a backlog of 248 cases.⁶¹ Chief Magistrates' caseload was 929 cases and a backlog of 423 cases.⁶² The caseload and backlog notwithstanding, the report stated that it took a High Court judge at least 10 months to complete a single case whereas it took a Chief Magistrate about 5 months to do so.⁶³ It is important to note that unlike the UHRC that receives matters concerning human rights violations, courts receive all kinds of matters probably explaining the caseloads and backlog, Notwithstanding both the case and backlog, the report highlights the fact that the High Court and Magistrates Court take a reasonably short period to dispose of matters if applied to the definition of the right to a speedy trial used above.

⁵⁹ The Mukura incident is a notable example. On the July 11, 1989 government soldiers rounded up 60 men and locked them up in a train wagon suffocating them to death. Only one soldier i.e. Cpt. Geroge Oduch was imprisoned for five years for failing to execute his duties! See The *New Vision* 'Mukura ghosts are not resting in peace.' June 24, 2006.

⁶⁰ See Article 137 and *Attorney General v. Major General David Tinyefuza* Supreme Court Constitutional Appeal No.1 of 1997.

⁶¹ JLOS, 1999 at 89.

⁶² Id.

The inquiry considered a number of cases allocated to the Judge and concluded that there was undue delay in disposing of them.⁴⁶ The inquiry noted that in the case of *Kigozi v. Attorney General* the delay "was in these circumstances inordinate and unreasonable." The matter had taken five years largely because of the failure to fix dates on which the matter could be heard and finally disposed of.⁴⁷ The inquiry also considered the matter of *Kitariko v. Katama*. Though this matter was as a result of the 1980 parliamentary elections, it had not been disposed of by 1987, having taken the whole term of Parliament and witnessed two *coups d' tat* in the interim.⁴⁸ In fact the inquiry noted that the "...long delay defeated the object of the petition and went against the letter and spirit of the provisions of the law which were intended to protect the interests of justice..."⁴⁹

The inquiry did not seek to define exactly what a speedy trial was. However, one may draw conclusions from the duration and the reasons for the delay. Both matters dragged on for a period of five years and there was no reasonable justification for the delay. In *Kigozi's* case for instance, although there were several attempts to fix the matter for hearing, this never materialized into hearing and concluding the matter. The failure to hear the matter seemed to have been caused by lapses in communication between Court and the respective lawyers in the matter. However, one has to also note that the Judge was involved in hearing other matters e.g. *Kitariko's* case. That notwithstanding, the delay of five years under the circumstances was inordinate and unjustifiable.

In *Kitariko's* case, several adjournments contributed to the delay in disposing of the matter. The inquiry noted that the "...main cause of the delays in the hearing of this petition was the numerous and unnecessary adjournments that were granted by the Judge."⁵⁰ Therefore, though adjournments may be sought and granted, the presiding judges have to ensure that they are not unnecessarily granted as they contribute to the continuous delays in matters. Therefore, a judge has to satisfy him/herself that an adjournment does not prejudice one of the parties before it can be granted. In this case, the petition continued until after 1985, when the term of the Parliamentarian being challenged had in fact lapsed.

⁴⁶ *Blasio Kigozi v. Attorney General* HCCS 672/80, *Robert Kitariko v. Twino Katama* HC Misc Petition No. MKA 2/81.

⁴⁷ ROU 1988 at 44-47.

⁴⁸ Id., at 50-59.

⁴⁹ Id., at 58.

⁵⁰ Id., at 61.

3.5 The 1995 Constitutional Order

The Constitutional Commission was established in 1986 with the objective of reviewing the Constitution, making suggestions as to a draft Constitution that would be subsequently debated upon by the Constituent Assembly with a view of finally coming up with a new Constitution to replace both the 1967 Constitution and Legal Notice No.1 of 1986.⁵¹ The objectives included “to find out how the people of Uganda wanted to be governed,”⁵² and putting in place a democratic system that would guarantee the fundamental rights and freedoms of the people of Uganda.⁵³ After deliberation by the Constituent Assembly, a new Constitution was adopted on October 8, 1995, a day before the date on which Uganda achieved its independence. The new instrument contained a wide array of provisions. Chapter Four—the main section of the Constitution with which I am concerned—covered an extensive range of rights including the civil and political as well as some economic, social and cultural rights. Chapter Four commenced with Article 20 (1), which stated that fundamental rights were inherent and not granted by the State, in order to remove the impression that had been created by earlier regimes. All persons, organs and agencies of government were required to respect and uphold the “rights and freedoms of the individual and groups.” Article 44 stated that there were four non-derogable rights i.e. freedom from torture, freedom from slavery, the right to a fair hearing, and the right to an order of *habeas corpus*. To ensure the protection and promotion of the above-mentioned rights, a national human rights institution in the names of the Uganda Human Rights Commission (UHRC) was created.

3.6 The Uganda Human Rights Commission

Though several human rights instruments had been adopted in Uganda, human rights protection had largely been left to the courts of law for enforcement. For instance, under both the 1962 and 1967 Constitutions, enforcement was done by the High Court.⁵⁴ In 1993, the General Assembly of the United Nations adopted the Paris Principles Relating to the status of National Institutions.⁵⁵ These principles were designed in order to ensure that States parties put in place National Human Rights Institutions (NHRIs) whose roles at the national level would be “in promoting and protecting human rights and fundamental freedoms and in developing and enhancing public awareness of those rights and freedoms.”⁵⁶ The principles required

⁵¹ The enabling statute was promulgated in 1988.

⁵² Museveni (1997) at 194.

⁵³ Kanyeihamba., *op.cit.*, at 249.

⁵⁴ See Article 32 (1) of the 1962 Constitution and Article 22 (1) of the 1967 Constitution.

⁵⁵ GA Resn.48/134 of December 20, 1993.) accessed at: <http://www.ohchr.org/english/law/parisprinciples.htm>.

⁵⁶ See Preamble to the Paris Principles.

that the NHRIs would have as wide a mandate as possible to consider any human rights issue with the following responsibilities *inter alia*; submitting to government or any other body advice on any matter intended to improve the protection and promotion of human rights, persuading government to ratify international human rights treaties, and the dissemination of human rights information.

Furthermore, for NHRIs with a quasi-judicial function, the principles provided the following guidelines; the amicable settlement of disputes, parties had to be informed of their rights, and the remedies available to them, and making recommendations pertaining to certain laws particularly if such laws affected human rights. Most importantly for the purposes of this discussion, the principles provided the UHRC with the power of “hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law.” The Paris Principles were important in the creation of NHRIs. They provided the basic framework within which such institutions would function i.e. the role, composition and methods to be applied in adjudicating allegations of human rights violations. These principles guided the formation of the UHRC

The UHRC was created by Article 51 with its mandate spelt out in Article 52. The UHRC was required to investigate human rights violations, visit places of detention, establish continuing programmes of research, education and training, and to monitor government’s compliance with international treaty obligations. To enable it carry out the above functions, it was granted the power to issue summons requiring the attendance before it of any person to question them in respect of any matter under investigation, to require the disclosure of any information and to commit persons for contempt of its orders.⁵⁷ If satisfied that there was a human rights violation it could order the release of any detained person, the payment of compensation or any other legal redress. Article 53 (4) prevented the UHRC from investigating matters pending before courts of law or other judicial bodies, matters involving dealings between the Government of Uganda and other foreign governments, matters relating to the exercise of the prerogative of mercy, and violations arising before the coming into force of the 1995 Constitution.⁵⁸ This last limitation is most interesting. Since 1986, there had been no effective human rights institution to look into allegations of violations apart from the Courts of Law.

⁵⁷ Article 53 of the 1995 Constitution.

⁵⁸ Section 8 (3) UHRC Act. Further Section 25 of the Act placed a general limitation on any complaints that would be brought after five years since the alleged violation occurred.