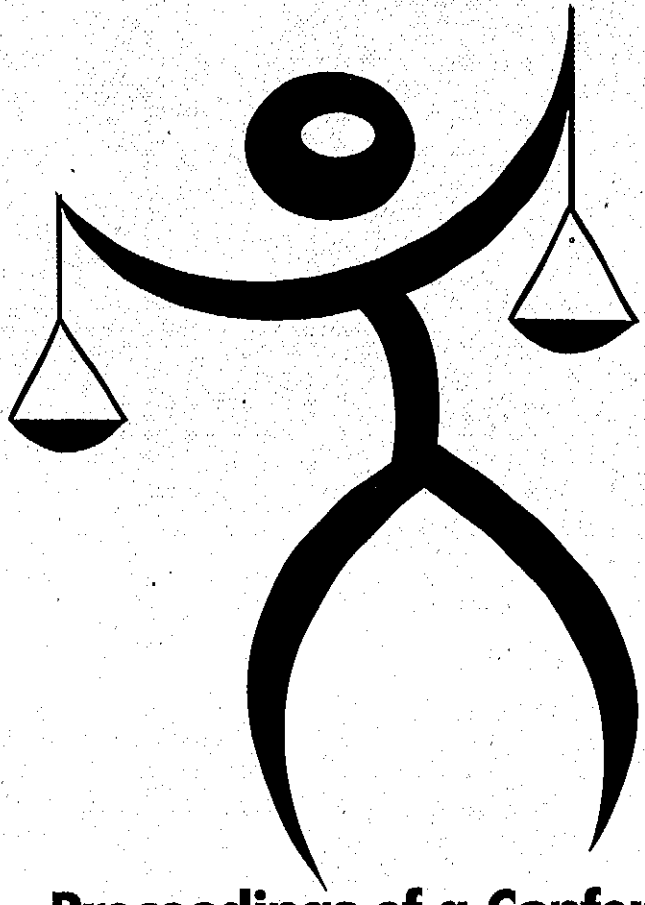
Safeguarding Human Rights in Eastern Africa



Proceedings of a Conference

FRIEDRICH EBERT STIFTUNG
Kampala Office

PART I

Safeguarding Human Rights

in

Eastern Africa

A Regional Dialogue on Institutional Arrangements

November 1999

Editors:
Viktoria Walter
Debbie Betts

Typesetter:
Canta Nsubuga

Cover Designer:
Lilyann Matovu

Printers:
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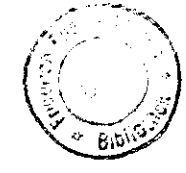

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PREFACE

This publication emerges from an Eastern African regional Conference on *INSTITUTIONAL ARRANGEMENTS SAFEGUARDING HUMAN RIGHTS IN EASTERN AFRICA*. It was organised by FES Kampala as part of its regional program which aims to establish and support dialogue and fora for discussion on important issues in the Eastern African region. The close contact which FES has established with both governmental and non-governmental bodies in the region makes it possible to use expertise from various countries and to bring together practitioners, academicians and the interested public.

FES regards the assessment and observance of the human rights situation in the region by a variety of bodies as one of the important tasks of our time. Human rights cover a wide range of issues. Democracy, social justice and solidarity are at the centre of our activities and are ultimately always regarded as human rights issues as well. Democracy is not achieved by simply holding elections at regular intervals. It requires the active and permanent participation of broad sections of the population. Individual liberties and the observance of human rights form part of the principles of democracy. The law and legislation must be applied and be accessible to everyone in equal measures.

Being a huge task, the pursuit of human rights requires commitment on the political level and the establishment of instruments, dialogue and a culture of respect for the rights of all. Ensuring and enforcing the inherent and universal human rights of all human beings is, therefore, not only a question of ethics but needs to be secured through legislation, properly equipped institutions, sound budget allocations and independent monitoring.

These are but a few of the issues which arose during the Conference which brought together 40 participants from Uganda, Tanzania, Kenya, Rwanda and Ethiopia. Participants were representing governmental and civil society organisations as well as Parliamentarians working in the field of human rights. They were discussing and exchanging views about the specific instruments put

in place in their respective and outlining recommendations for further improvement.

Given the difficult historical background as well as the economic struggles of the Eastern African countries, much has been achieved in safeguarding human rights by committed governments in collaboration with the manifold efforts of civil society during the last decade. However, there is always space for improvement and still human rights are violated in many ways. We believe strongly that the renewal of increased collaboration in East Africa and the exchange of experiences among people from the region are a valuable instrument to foster exchange and support endeavours in that direction.

We are, therefore, glad to bring this Conference proceedings to your attention which present the various contributions and discussions. This publication should serve the purpose of enriching the ongoing discussion by showing the diversity of actions taken – in form of institution building, their mandate and their performance as well as the educational, monitoring and critical assessments by civil society actors.

Learning from one another in very open-minded discussions, participants shared their experiences and discussed different models of institutional approaches to the task of safeguarding human rights. It was of particular interest to learn how the countries represented enhance and safeguard human rights – also for special interest groups e.g. women, refugees or persons with disabilities. Furthermore the question was raised which organs, institutions and actors the citizens could use to seek remedy regarding any violation of their human/civic rights.

We are thankful for all the excellent and stimulating contributions during the conference. Together with our partners and friends, FES is looking forward to further activities that strive for the betterment of the human rights situation for each and everyone and for further exchange and mutual learning.

Viktoria Walter
Editor

Fritz Kopsieker
Resident Representative
FES Kampala

THE ISSUE OF HUMAN RIGHTS IN EASTERN AFRICA – AN INTRODUCTION

MECHANISMS FOR THE PROTECTION OF HUMAN RIGHTS ARE ONLY AS GOOD AS THE MEANS OF ENFORCEMENT

Whatever different view points emerged during the Conference on INSTITUTIONAL ARRANGEMENTS SAFEGUARDING HUMAN RIGHTS IN EASTERN AFRICA regarding the efforts made by governments and non-governmental bodies to put in place institutions and legislation to protect human rights in Eastern Africa, this headline describes perfectly what participants were all to agree on, that safeguarding human rights is one of the prevailing problems in the region.

An era of political change is sweeping through the Eastern African region. It aims to bring and improve democratisation, national dialogue and reconciliation, constitutionalism, economic recovery and regeneration.

Each country in the region has its own specific heritage: Various forms of political authoritarianism or militarism, ethnic-based conflict or civil war, impoverishment and economic problems have been experienced by most of the inhabitants of the respective countries. In the context of overcoming their *'dark past'*, or even current problems of bad governance, the question of observance and enforcement of human rights and the establishment of a culture of human rights has been, and is, a major issue, as each country strives towards "good governance". *(For more details see: Roger Southall: Democratisation and Constitutionalism in Eastern Africa, in: Southall R; Kintu-Nyago; Walter V. (Eds): Constitutional Reform Processes in Eastern Africa: Proceedings of a Conference, Kampala, October 1999, Friedrich Ebert-Stiftung Kampala, Uganda.)*

The countries which participated in the conference on INSTITUTIONAL ARRANGEMENTS SAFEGUARDING HUMAN RIGHTS IN EASTERN AFRICA: A REGIONAL DIALOGUE, namely Ethiopia, Kenya, Rwanda, Tanzania and Uganda are part of the Eastern African region. Definitions

of a region are always variable, and regions may overlap: Taken from a geopolitical or a geographical point of view, or regarding the definitions of the OAU, Eastern Africa may also include Somalia, Eritrea, Djibouti and Burundi. Many of these countries are also part of other regional entities: Tanzania being a member of the Southern African Development Community is a case in point. Whatever the viewpoint, the five countries participating in the Kampala Conference willingly describe themselves as members of this region, and look at the region as a base for joint action.

Participants representing these Eastern African countries, government or state officials and members of parliament as well as political activists, came together to share their experiences and to learn from one another. Discussion was shaped by the different historical backgrounds (as well as some similarities), while a spirit of openness and willingness to learn brought focus to crucial questions. The gathering of stakeholders from the Eastern African region conversant or dealing with human/civic rights matters in their respective countries and in their different capacities established a forum for a dialogue of practitioners.

Presentations critically assessed and analysed the different human rights situation in countries of the region, and discussed the general role of society and the co-operation between government and civil society actors. The Conference drew attention to the collaboration of existing institutions and their attempts to reach out to the rural population. Participants formed working groups to take a closer look at specific questions and possibilities of networking, with the aim that the results be used to stimulate ongoing discussion in their home-countries.

The Kampala conference did not aim to discuss human rights as an academic issue, but targeted the practical experiences of those involved in processes and dialogues on issues of concern, or active in various institutions safeguarding human rights. The papers collected here represent the various positions in the discussion of how effective the institutional set-up and the political environment for human rights issues are seen to be. The various presenters do not aim for a comprehensive analysis, but rather to provide insight into the current situation and to outline the achievements and short-comings of

institutions working for an 0improved human rights situation in their respective countries.

HUMAN RIGHTS – CONTROL OF THE STATE – RESPECT OF RIGHTS BY EVERYBODY

The discourse on human rights usually distinguishes between three dimensions of human rights. Civil rights encompass protective rights such as the rights to life, to liberty and equality before the law, as well as the right to assembly and association. The more participatory social rights include the right to education, work, equal pay and social security, while developmental rights cover such issues as the rights to peace and development.

The latter has been the subject of a long-lasting (and ongoing) debate, specifically regarding the question of how these rather collective rights (such as the right to development) can be claimed (from whom?) and enforced (by whom?). However, the Second UN Human Rights Conference of 1993 in Vienna brought about the confirmation of both the Universal Declaration of Human Rights and the Vienna Declaration, the latter emphasising the right to development and the right of peoples to self-determination.

The right to development and the right of peoples to self-determination have been pushed forward by the so-called Third World Countries, who argue – in summary – that developing countries have to set different priorities ('allowing children to starve is a form of torture') and are therefore emphasising socio-economic rights of individuals and peoples *(as laid down in the Banjul African Charter of Human and Peoples' Rights, 1981).* They furthermore need to accommodate their specific cultural backgrounds. Nevertheless, the Vienna Conference made it clear that cultural or religious traditions may not serve as an excuse for human rights violations: "While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of the states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms." *(Paragraph 5, Vienna Declaration,1993).* Another important development happened in the area of women's rights. For the first time (although the Convention of Elimination of all forms of discrimination against women (CEDAW, 1979)

had been passed and ratified by many states in the early 1980s) a UN conference recognised women's rights as human rights, providing for a special rapporteur to deal with violence against women.

SOME ISSUES OF CONCERN IN THE REGION

This leads us to some of the issues of concern in the human rights situation and the institutions set up in the five participating countries. All the countries have come through different experiences, yet all claim to be moving towards increased observance of human rights in legislation and constitutions or constitutional debates, as well as in their specific settings for institutions safeguarding human rights. The countries in question are party to a number of international human rights conventions, such as the *Universal Declaration of Human Rights, The African Charter of Human and Peoples' Rights, CEDAW* and the *Vienna Declaration,* to name but a few.

These powerful instruments may soon be supplemented by the *International Criminal Court*, as the United States of America at the end of the year 2000 gave up their long-lasting resistance to its establishment. And the newly rejoined EAC countries Kenya, Tanzania and Uganda may use the provisions made in the *Treaty for the Establishment of the East African Community (1999).* This treaty stipulates "good governance including adherence to the principles of democracy, the rule of law, social justice and the protection of human rights" as one of the fundamental principles that shall govern the achievement of the objectives of the Community by the Partner States *(Article 5 d, Treaty for the Establishment of the East African Community).*

The five countries represented at the Kampala conference have undoubtedly had a commendable record in improving human rights observance over the past decade, which is appreciated by the international community as well as by the inhabitants of the region. Nevertheless, this should not lead to complacency: As participants of the Conference agreed, there is still a huge task ahead.

Human rights are the basic standards required for people to live with dignity. They are rights all people have simply because they are human beings. The idea of universal human rights was long based on the notion that individuals have to be protected from an abusive state.

Government power was to be tied in to the law and thus tempered and controlled. It is exactly this idea that has been used in the last decade all over the world and particularly in Africa by democratic movements to push their governments towards the rule of law.

Recently, however, the question is discussed (again, particularly in Africa) as to how a culture of human rights can be set up, how human rights can "come to life" in societies which lack trust in their governments and which have experienced (or are still exposed to) violence "from the neighbourhood". Violations of rights may result from cultural or ethnic prejudices, greed and jealousy, cultural beliefs or may be a result of perception of superiority of one group over another. The need for such a culture of respect for human rights emerged during discussions in the Kampala conference and it was clear that the presence of the issue on the agenda must be credited to women activists.

Children and women are for example punished as witches or used as sacrifices and men are also subject to violence on grounds of cultural beliefs. Most of these violations of human rights are usually referred to as the so-called "private sphere", and are therefore not being acted upon by the State. There is a concentration on state-sanctioned or state-conducted oppression, which takes place in the "public sphere". However, most violations of women's and children's rights take place in the private sphere to which women are relegated. Girls and women are sexually abused, raped, beaten, and even murdered on grounds of their perceived "inferiority" and because society still recognises men's rights to control women. Some of the presentations during the Kampala conference highlighted these facts and urged stakeholders also to link violations of women's rights to structural gender inequalities prevailing in their countries. At this point it has to be noted that apart from the aforementioned international and regional human rights instruments, CEDAW and women's rights in general have not yet taken centre stage in the human rights discourse of the five countries.

Action in the public sphere should therefore be complemented by educating the public and broadening the human rights discourse to include cultural practices and the private sphere. Human rights should be acknowledged to be a basic feature of everybody's life, with all taking responsibly for and actively working towards a culture of mutual respect.

To this end, one of the recommendations of the Uganda Human Rights Commission demands that "more efforts should be made by cultural leaders (...) to eliminate those practices, customs and mentalities which violate the rights of some sections of society". (*See UHRC: Annual Report 1998, p. xiii).* Thus growing awareness is requested towards the number of cultural practices hindering women from fully participating in the economic and political arenas, as well as of violence against women and girls.

Women are still regarded as property, and have limited or no rights at all to own and/or inherit land and property, on the grounds that 'property can't buy property'. Widows are still passed on to male relatives without (and against) the consent of the widow: In addition, "judicial officers, including judges, have yet to understand women's special concerns and fears... the technical nature of the entire court system, including pleas, court language, and the demeanour of mostly male judge and counsel is a hindrance to the exercise of women's rights" *(see Florence Butegwa: The Challenge of promoting Women's Rights in African Countries, in: Kerr, J. (Ed): Ours by Right: Women's Rights as Human Rights, 1993, p.55 and Esther Damalie Naggita: Why Men Come Out Ahead: The Legal Regime And the Protection and Realization of Women's Rights in Uganda, in: East African Journal of Peace & Human Rights, Vol.6, No.1, 2000, p.53).*

The discussions on land reforms in Tanzania, Kenya and Uganda, as well as the recently tabled Family Law in Rwanda have all brought to light the prevailing disparities women face, for example regarding the right to ownership. Rwanda has opened the discussion on inheritance rights, to the end that girls will be entitled to inherit property if the new law is enacted. These steps can be taken only if women raise their voices, and if they have access to media and politics, and if men take on their responsibility to work for equal rights for all. The prevailing problem of course is the need to include gender disaggregated data in official reports as well as in the discourse on human rights in general. Another critical issue in all countries is the question of access to institutions safeguarding human rights. Legal procedures are usually difficult, complex and expensive, even apart from the distance a person from the rural areas has to travel to seek legal aid and attend court.

Some of the countries have taken steps in the right direction: The 'Gacaca' community tribunals set up to deal with less serious genocide crimes in Rwanda or the opening of district branches of the UHRC in Uganda are examples of how institutions have tried to improve access to justice for the non-urban citizens. There are still many obstacles which make it difficult for rural people, and particularly rural women, to obtain their rights. The huge costs involved, the scarce distribution of courts and the complex technicalities of court matters are a few of these hindrances.

Participants of the Kampala conference described the mandate and the power of institutions as one crucial dimension for the enforcement of human rights in their respective countries. The Ugandan institutions that have been put in place, namely the IGG and the UHRC, are equipped with significant powers, and the UHRC has a mandate to recommend to Parliament effective measures to promote human rights. Both institutions see the need to do more, particularly by broadening education on human rights and by easing access to courts and to their institutions. Although its court and investigation rights are entrenched in the constitution of Uganda, the UHRC has had to face accusations of "going beyond its mandate" when acting within its mandate.

The importance of the issue of powers allocated to institutions can easily be seen in the case of the Kenyan Authority against Corruption. Although the Standing Committee on Human Rights of Kenya claims that some crucial improvements have been achieved, (for example the establishment of the committee itself), human rights violations by state organs are still prevalent, and effective instruments to prosecute and punish the perpetrators are yet to be developed.

While the setting up of the Kenya Anti-Corruption Authority was as a big step towards achieving improved respect for human rights and in the fight against graft in Kenya, in December 2000 the High Court of Kenya declared this Authority unconstitutional and therefore illegal. The ruling stripped KACA of its powers to investigate and prosecute suspects, emasculating the body and leaving it toothless. The *EastAfrican* headline expressed the opinion of many Kenyans: "Without KACA, war on graft is lost" *(EastAfrican, January 1-7, 2001, p. 11).*

Equally, as much as the Ethiopian representatives were proud to present the new achievements in the constitution building and in the plans to establish a national human rights commission, they were aware that implementation would be the real challenge. They are well aware that only experience will show whether or not the planned institutions are able to perform according to their mandates. It is only then that it will be clear whether the powers accorded will be sufficient, and whether the separation of powers will actually work. Taking into consideration the paper of the Ethiopian NGO representative during the Kampala Meeting of EAHRNET *(see page 121)*, the refusal of the Ethiopian government to consult and collaborate with the Ethiopian Council for Human Rights remains critical. There is evidently need to debate achievements and failures on a regional level, from whence activists and governments alike can draw support.

Ethiopia, joined by all other countries represented at the Kampala conference, highlighted the need for enormous and sustainable resources to be made available to ensure that human rights instruments are both working independently (under public control) and are accessible. In both Ethiopia and Rwanda reconciliation in society is of crucial importance, and there is therefore emphasis on participatory processes to gain legitimate institutions in which people can trust. In Rwanda the ethnic bias of judges has been recognised as a problem, and corruption in the judiciary is an issue which needs to be addressed in all countries.

Uganda, Ethiopia and Rwanda are involved in violent conflicts, both within and beyond their borders. They are, however, facing a mounting tide of criticism and demands for peace. There is growing insistence that governments also adhere to human rights of the people involved in these conflicts; soldiers, refugees and inhabitants of the affected regions alike. Other human rights issues of concern to both the East African and the international community include the ongoing harassment of opposition political parties (or movements) for example *Muungano wa Mageuzi* (Movement for Change) in Kenya, which are not allowed to address public gatherings, the delays in the constitutional review process and police violence towards public rallies convened by opposition or pro-reform lobby. To a greater or lesser degree opposition is obstructed in all five countries.

Harassment of the press and of opposition leaders has been reported in all countries of the Eastern African region. (See for example the report of Human Rights Watch on Uganda "Hostile to democracy", or reports on violent police action during the presidential elections in Tanzania in various newspapers of the region). Rigid sedition laws prevail in all countries, threatening the media, and the right to assemble is repeatedly and unlawfully denied.

All countries reported and discussed violations of human rights by state organs (such as police and military forces), and violation of the rights of prisoners. A number of recommendations drawn together in the group work requested parliaments to enact human rights laws and repeal outdated laws which contradict the constitutions of the respective countries. The country representatives agreed that there is need for the State to regain (or build) the credibility of its citizens in its role as protector, and in respect of those institutions put in place to safeguard human rights. Governments must earn the confidence of their people, and this demands commitment, resources, and continuous effort.

As an indicator of positive progress in this direction, participants reported that their governments are stressing the need for collaboration with organisations from civil society and with the general public to integrate human rights issues in politics and society. Such a collaboration requires the will to change, which goes beyond paying lip service to the need for change. Most country representatives regarded their governments as having the political will to respect human rights, and more and more high ranking officials are standing as role models, fighting graft, violence and inhumanity.

HUMAN RIGHTS – AN EMPOWERING VISION OF A JUST SOCIETY

The Conference looked closely at the various types of institutions safeguarding human rights. Success in improving the human rights situation and standards in a society is achieved through:
Constitutions which enshrine human rights, provide for law enforcement and separation of powers and which are based on broad popular participation;

National Human Rights Commissions equipped with powers to investigate and monitor human rights violations as well as to monitor the fulfilment of government obligations. In the best cases such

Commissions have court powers, to revisit cases of imprisoned persons and opportunities to propose alternative forms of punishment and mediation. They are well resourced and have the right to educate the public and to give recommendations to Parliament;

Inspectorates of Government, (also known as Offices of the Ombudsperson), which investigate complaints related to the abuse of powers, injustice, corruption or unfair treatment by persons holding public office. They have powers of enforcement and the right to educate the general public on their rights.

The latter need of course to have full independence, and their establishment should not be limited in duration. They should be provided with sound budgets to perform their duties and they need to be transparent and accountable.

Other institutions which have impact, especially regarding the fight against corruption, are independent Auditors or Judiciary Commissions, such as the Ssebutinde Commission on the Inquiry into Corruption of the Police Force in Uganda. Parliamentary Committees, such as the Kenya Standing Committee for Human Rights, have an important role to play in opening up political space and preparing the way for the establishment of powerful human rights institutions. They may also achieve the same status if they gain independence and the aforementioned rights.

It was agreed that the existence of an independent vibrant civil society that is beyond state control, with organisations working in education, monitoring and advocating for human rights, is not only complementary to state organs but vital to support checks and balances in society. Civil organisations are catalysts in voicing peoples views, and should therefore be accepted as autonomous partners in collaborating for the promotion and safeguarding of human rights. However, civil society organisations should also adhere to democratic principles.
Participants of the Kampala conference shared a number of critical issues which they felt needed special attention in the future work of safeguarding and promoting human rights:

- The need for countries emerging from authoritarianism or internal conflict to emphasise the importance of human rights, the rule of law and its enforcement;-
- The need for peace as a precondition for dialogue, and the establishment of effective institutions to safeguard human rights;
- The need to create an enabling environment for human rights issues, not only through their incorporation in the countries' constitutions but also through independent and powerful institutions which can serve as safeguards;
- The full establishment of democratic principles, such as an independent judiciary, separation of powers and the rule of law, equally for everybody;
- The need to gear up the fight against corruption, especially in the judiciary and state organs such as police and security organs;
- The need for increased law enforcement, which will lead to a growing trust in the democratic institutions and will make the changes tangible that governments have achieved;
- The need for access to information, legal aid and relevant institutions for all, and not only for the urban based population, as well as less complex and less bureaucratic procedures for people to get their rights;
- The need for a broad dialogue, awareness raising and education of the population (including controversial issues) to foster a culture of respect for human rights by paying attention to and acting responsibly towards the rights of others;
- The need to be sensitive to national and African particularities, yet not allowing cultural and traditional practices to undermine human rights of people or groups of the population, such as women, children, disabled or ethnical groups;
- The need for increased collaboration between various actors in the field of human rights, specifically between governments and civil society actors and community based organisations so as to broaden the knowledge of and access to legal aid in human rights matters.

To this end, the Kampala conference made a first remarkable step: The conference brought about and initiated the idea of a regional human rights network to increase collaboration of actors and institutions concerned. The commitment of the participants to form such a regional human rights network has, through the interim steering committee seated in Kampala, led to the establishment of this new regional body. The first meeting of the Eastern African Human Rights Network (EAHRNET) in Kampala took place in November 2000. The very unique character of this network lies in the planned collaboration of governmental and non-governmental institutions. The Annexes of this publication provides the adopted Constitution of EAHRNET, together with the names of elected office bearers, contact addresses and the Plan of Action.

The creation of EAHRNET is another move forward in the promotion of human rights. Such a collaboration can empower the peoples of the region, just as the concept of human rights has done and will continue so to do.

Viktoria Walter
MA Political Science
Consultant in Development Co-operation, Kampala

THE UGANDA HUMAN RIGHTS COMMISSION AND HUMAN RIGHTS

MARGARET SEKAGGYA

The East African region has been through some volatile and troubled times. The effects of war, civil strife, economic mismanagement and poverty are all too vivid in our memories. Therefore dialogue between the stakeholders engaged in the promotion of good governance, both from the government and civil society, should be encouraged.

The Uganda Human Rights Commission has an important and crucial role to play to give true meaning to the aspirations and hopes of our people, as enshrined in the Constitution of the Republic of Uganda and other international documents to which Uganda is a party.

ESTABLISHMENT OF THE UGANDA HUMAN RIGHTS COMMISSION

The Establishment of the Commission was a culmination of many factors. The most conspicuous was the history of violence and turmoil that Ugandans have lived through, especially after independence. This was a dark and trying period, characterised by state-inspired arbitrary arrests and detentions, torture, maiming and disappearance of persons. Many Ugandans emerged from this reign of terror convinced more than ever before that violators of human rights and freedoms should not get away with these and other horrendous crimes.

The NRM government, (the government in power today), instituted a Commission of Inquiry into the atrocities and abuses carried out during the period between 1962 (Uganda's independence) and 1986 (when the NRM came to power). This Commission was headed by Justice Arthur Oder, who worked with six other Commissioners.
The Commission of Inquiry's terms of reference were, inter alia, to inquire into the following:-

(i) the causes and circumstances surrounding the mass murders and all acts or omissions resulting in the arbitrary deprivation of human life, committed in various parts of Uganda;

(ii) the causes and circumstances surrounding the numerous arbitrary arrests, consequent detentions without trial, arbitrary imprisonment and abuse of the powers of detention and restriction under the public order and security Act, 1967 (Act 20 of 1967);

(iii) the denial of any person to a fair and public trial before an independent and impartial court established by law.

The Commission produced a report of 10 October 1994 detailing a horrendous chronicle of human rights abuses. The report is available in a summary version titled *Pearl of Blood.*

The Commission made a number of recommendations, one of which was that a permanent body be established to monitor the human rights situation in the country.

As a result of that recommendation, delegates to the Constituent Assembly (the body that debated and passed the Constitution) did provide for a Human Rights Commission in the Constitution. The Uganda Human Rights Commission is as a result a Constitutional body established under article 51 of our Constitution.

The Commission according to the Constitution has the following functions:-

- to investigate, at its own initiative or on a complaint made by any person or a group of persons, violation of any human right;
- to visit jails, prisons, and places of detention or related facilities with a view to assessing and inspecting conditions of the inmates and to make recommendations;
- to establish a continuing programme of research, education and information to enhance respect of human rights;
- to recommend to Parliament effective measures to promote human rights, including provision of compensation to victims of violations of human rights, or to their families;
- to create and sustain within society the awareness of the provisions of the Constitution as the fundamental law of the people of Uganda;

- to educate and encourage the public to defend the Constitution at all times against all forms of abuse and violation;
- to formulate, implement and oversee programmes intended to inculcate in the citizens of Uganda awareness of their civic responsibilities and an appreciation of their rights and obligations as free people;
- to monitor the government's compliance with international treaty and convention obligations on human rights;
- to review cases of persons who are restricted or detained under Emergency Laws; and
- to perform such other functions as may be provided by law.

In executing the above functions, the Commission does have the powers of a court. Therefore it can issue summons in respect of persons to appear before it or to produce documents relevant to its investigations, it can question any person with regard to a subject matter under investigation, and it can compel persons to disclose information relevant to investigations, or hold those who fail to provide such information or fail to appear before it, in contempt of its orders.

COMMISSION ACTIVITIES

The Commission started work in November 1996 and immediately embarked on the task of drawing up a work plan encompassing procedures and ground rules to achieve the task ahead, including recruitment of staff to start the process and purchase of equipment.

The Commission realised that there was an urgent need to provide civic education to the population, as in the Commission's view, little or no knowledge of one's rights is little better than having no rights at all. The Commission therefore embarked on setting up District Human Rights Sensitisation seminars. These seminars targeted the decision makers, opinion leaders/elders, representatives from security organs, youth and women groups and the non-governmental organisations and community based organisations in a particular district. This country-wide programme, which started in 1997 and has so far covered one-half of the country, is due to end in the year 2000. It is envisaged that a Training of Trainers programme will then commence to train persons at

the lowest feasible administrative units. This Training of Trainers Programme is extremely important with regard to sustaining on-going programmes.

The Commission also disseminates civic education through radio programs in English and some local dialects. It also publishes a monthly magazine called *Your Rights* which is distributed to a number of organisations, libraries and individuals.

The Commission stated in its 1997 Annual report that violations of human rights by members of security organs were common. It also took note that these violations were not state inspired, but acts of individuals. However, the Commission expects the security organs to develop an internal regulatory mechanism to prevent such acts from continuing to occur.

COMPLAINTS

By the end of 1998 the Commission had received a total of 919 complaints, while by the end of October 1999 it had registered a total of 1,071 complaints. The violations alleged in the complaints, which are indicative of the violations prevalent in Uganda, mainly relate to:- deprivation of right to life, deprivation of right to personal liberty, torture, cruel and inhuman treatment and/or punishment, deprivation of the right to property, right to a fair and speedy hearing, rights of the child, rights of refugees, the right to education, freedom to associate and assemble freely, right to citizenship and other economic rights.

By way of comparison, the Commission resolved 59.02% of the complaints lodged with it in 1997 compared to 52.67% in 1998. The difference in the figures is attributed to the fact that some of the cases lodged in 1998 are either still being investigated, or are pending hearings or mediation.

Many of the complaints are against members of security organs, specifically the police, the army and intelligence organs. Private individuals have also been cited for infringing on the rights of others.

Mediation is a form of alternative dispute resolution. The Commission does not believe that each and every case should end up being decided by the commission tribunal sitting as a court. Certain cases involving disputes between members of a family or close community are settled through mediation. This it is hoped will encourage reconciliation, where a tribunal ruling would not.

THE COMMISSION TRIBUNAL

The Commission up to 17 November 1998 could not conduct formal hearings because the Rules of Procedure for this purpose were not in place. These Rules of Procedure have since been gazetted and the Commission has begun formal hearings. The Commission has completed hearing numerous complaints so far and has awarded compensation to victims of violations except in cases where the matter was referred to the DPP for prosecution or where no violation could be established.

VISITING PLACES OF DETENTION

The Commission has visited jails, including both Central Government and local administration prisons, and has encountered an appalling situation.

Most of the prisons were found to be over-crowded, with some of them housing three times the planned capacity of inmates. It was also discovered that delays in the administration of justice were a major contributing factor to congestion in prisons.

In all prisons visited, poor sanitation and hygiene were the order of the day. Prisoners complained of lack of drugs to treat various ailments. A contributing factor to sickness was the strenuous work regime that prisoners undergo. In most prisons they work on the average from 7 a.m. to 4 p.m. without breakfast and lunch, surviving on only one meal a day. Complaints of hiring out prison labour to do private work were also received.

Torture remains a common occurrence in Ugandan prisons, especially in local government prisons. Many prisoners complained of beatings meted out by prison wardens or *Katikkiros* (an inmate in charge of others).

Another lingering problem is that of incarcerating juveniles with adults. Uganda has only five juvenile remand homes, which is clearly inadequate to deal with the number of juvenile offenders. Prison authorities are therefore sometimes forced to jail adults with juveniles.

PURCHASE OF PREMISES AND DECENTRALISATION OF COMMISSION SERVICES

The Commission managed to secure a permanent headquarters, on Buganda Road in Kampala, by purchasing the premises previously rented, with the kind assistance of SIDA. However, the Commission cannot be effective if it operates only in and around Kampala. There is a need to decentralise the Commission's services, so that the wider public may be able to access the Commission and thereby make use of the services it offers.

The Commission presently has one up-country duty station in Gulu (Northern Uganda). This office will assist greatly in addressing the problems of the region, some of which are as a result of the armed conflict there. Many children have been abducted and are still captives to date. Large sections of the population are traumatised and many more live in protected camps, too afraid to live in the countryside. The number of internally displaced persons is high and it threatens to create a humanitarian crisis. The Commission's mandate and limited resources may not be sufficient to address the problems that can arise from such a crisis, but it is envisaged that the Commission will open more regional offices to address the growing need for protection against perpetrators of human rights abuse.

DEALING WITH MILITARY/SECURITY ORGANS

The Commission has not found it easy to deal with the military and intelligence organs. This was partly due to the view held by the military and intelligence organs that the Commission was bent on finding fault with them. During 1998 the Commission organised workshops for officers and men of the UPDF and members of the internal security organisation, external security organisation and the chieftaincy of military intelligence. These workshops underscored the need to establish clear channels of communication so that there is a constant flow of information between the parties. However, the Commission has thus far not been able to access military barracks, which is all the more regrettable since some persons have allegedly been held there. The Commission believes that it is in the best interest of the UPDF to allow these inspections, in order to allay the fears of some members of the public that their relatives/friends are indeed held in military barracks. It

is important to address this matter because, as detailed in *Pearl of Blood,* in the past most of the people who were killed or who disappeared without trace did so after being picked up by members of the military or intelligence organs.

Finances have also hindered the Commission from effectively fulfilling its mandate, as the Commission needs more finance to adequately achieve its mission of protecting and promoting human rights in the country. Government and the donor community have rendered support, but a lot remains to be done. A modern human rights documentation centre with e-mail and internet facilities is needed, for example. This would greatly enhance the research capability and information dissemination function of the Commission. Equipment is needed, as are the trained human resources to perform the various tasks. A counselling unit at the Commission would help victims of violence cope with trauma and stigmatisation.

It is reasonable to believe that these tasks will be accomplished in the years to come. One comforting thought though is that a foundation has been established for the promotion and protection of human rights in this country, and the challenge to maintain the momentum lies squarely on the shoulders of all Ugandans.

During this period there has been an improvement in the state of human rights in the country. One cannot fail to mention the improvement in the rights of women, the introduction of affirmative action, the freedom of the press and NGOs and the freedom of worship. With the government's respect of the right to life, enforced or involuntary disappearances which used to be the order of the day are no longer common occurrences. There have been efforts to improve the education system and more children enjoy the right to education through Universal Primary Education (UPE). Government is taking steps to eradicate poverty, and to offer economic empowerment to various categories of people, and many other areas continue to record improvements. Respect for the rule of law as evidenced by the cases filed in the Constitutional court is also a strong indication that Constitutionalism is gradually taking root in this country.

THE ROLE OF UGANDA'S INSPECTORATE OF GOVERNMENT

JOTHAM TUMWESIGYE

The Inspectorate of Government (IG) was the first national human rights institution in Uganda following the establishment of a Commission of Inquiry into Human Rights Violations between 1962-1986. However, with the promulgation of the 1995 Constitution, the Uganda Human Rights Commission was formed and the IG's Human Rights protection function has since been transferred to it. The IG's mandate currently comprises (largely) an anti-corruption agency coupled with traditional ombudsman functions. This does not, however, mean that the IG has been divested totally of the duty to tackle human rights violations. This paper will show that corruption is, broadly speaking, a violation of human rights, and in exercising its ombudsman functions, the IG protects individuals against human rights abuses by the state.

BACKGROUND

Uganda's history has been characterised by violence and gross human rights violations, mostly at the hands of state agencies and their agents. The abuses have manifested themselves in many forms: Murder, torture, cruel, inhuman and degrading treatment, arbitrary arrests, detentions without fair trial, abuse of power by state and law enforcement agents, discrimination on the basis of tribe, religion, gender, etc., disappearance of persons, massive displacements resulting from violence in the country etc. The period between 1962 and 1986 was an era when there was a general breakdown of the rule of law. All democratic principles were flouted with impunity.

The coming into power of the National Resistance Movement (NRM) in 1986 marked the beginning of the end to blatant abuse of human rights by the state without sanction. In point No. 9 of its Ten Point Programme the NRM reflected its recognition of the importance of respect for people's rights when it was stated that "...Uganda having suffered so greatly at the hands of primitive dictators, ought to play an active part in defending the human and democratic rights of the African people in

general ...". To further illustrate its commitment to the protection of human rights, four months after coming into power the NRM government established a Commission of Inquiry into Human Rights Violations committed between 1962 and 1986 *vide* Legal Notice No.5 of 1986. The IG was therefore established[1], in 1987, as the national "watchdog" institution to ensure that state agents under the NRM government did not commit the same atrocities as those committed by past regimes. The IG was established as a public office to oversee the functioning of other public offices in Uganda. In so doing its mandate included, *inter alia*, the investigation of allegations or reports of human rights violations, breach of the Rule of Law, corruption, abuse of office occasioning injustice and neglect of duty, etc. During this time the IG organised a number of workshops on human rights for various groups including the police, the prisons and women to mention a few. It also organised national integrity workshops that involved top officials in government, civil society organisations, the media, and some educational institutions, in a bid to ensure that they are strengthened as pillars of integrity in Uganda.

This remit was, however, too broad for effective implementation by the small, understaffed, under-resourced institution that the IG was at that time. It became clear that there was a need to establish a separate institution charged solely with human rights protection. Hence with the promulgation of the 1995 Constitution a new national institution with a human rights remit, namely the Uganda Human Rights Commission, was established and the mandate of the IG was modified. Article 225 of the Constitution outlines the IG functions as:

- Promotion of the Rule of Law and natural justice;
- Elimination of corruption;
- Promotion of efficient and fair governance;
- Supervision of enforcement of the Leadership Code of Conduct;
- Investigation into abuse of power;
- Prosecution of corruption related cases; and
- Stimulation of public awareness on constitutionalism and the IG.

In exercising its function the IG is composed of three directories namely the Directorate of Legal Affairs, the Directorate of Operations and the Directorate of Education and Prevention of Corruption. The

Directorate of Legal Affairs is involved in prosecuting cases investigated by the Directorate of Operations, and in providing the IG with legal advice on a wide range of issues. The Directorate of Operations undertakes the investigation of complaints received by the IG, and the Directorate of Education and Prevention of Corruption is involved in conducting public awareness programmes in the media and workshops on corruption issues countrywide. The Directorate of Education also undertakes systems studies aimed at assessing an institution's set-up, to check areas which are vulnerable to corruption.

Given the above, one question most people ask is why the IG is still referred to as a human rights institution despite the establishment of the Uganda Human Rights Commission. This question is answered below as we discuss the nature of cases handled by the IG and the relationship between corruption and human rights.

HUMAN RIGHTS VIOLATIONS AND CORRUPTION

Although the IG's remit is largely that of an anti-corruption agency, as stated in the functions outlined above, it is also clear that the IG is still a human rights institution. Most of its functions, especially those to do with promotion of the Rule of Law and principles of natural justice, and promotion of just and fair governance, show that the IG has not been divested of its human rights protection role. There is such a fine line between breaches of the Rule of Law and Human rights violations that it is sometimes difficult to determine where an allegation falls between the two. It is therefore also pertinent to begin by illustrating the relationship between corruption and human rights violations.

Corruption erodes the observance of the principles that are the very essence of democracy, such as free and fair elections, the Rule of Law, transparency and state accountability. It also undermines the legitimacy of political leaders and public institutions, making the government less able to rely on the co-operation and support of the people. When this happens, and that government insists on retaining power, the inevitable consequence is the abuse of the civil and political rights of its citizens. This picture is not new to us because many African states have

undergone some means of suppression at some point in their history, dating back to colonial times.
When a corrupt government loses the confidence of the people, it tends to violate certain fundamental human rights. Examples include detention without trial of political opponents, censorship of the press to prevent the exposure of corrupt government officials, election malpractice to ensure the survival of that government, or outright denial of the right to vote, to mention but a few.

Dieter Frisch, former Director-General of Development at the European Commission, in pointing out the negative consequences of corruption observed thus:

Corruption raises the cost of goods and services; it increases the debt of a country and carries with it recurring debt-servicing costs in the future; it leads to lowering of standards, as sub-standard goods are provided and inappropriate technology is acquired; and it results in project choices being made based more on capital (because it is more rewarding for the perpetrator of corruption) than on manpower, which would be the more useful for development.[2]

Obviously when sub-standard goods are provided to the public their rights are infringed in many ways, depending on the project under issue. For instance, provision of sub-standard building materials in a public construction project violates the right to a clean and healthy environment which is enshrined in Uganda's constitution.

In a corrupt environment, resources tend to be directed towards non-productive areas such as the police, the armed forces and other organs of social control and repression, as the corrupt seek to protect themselves and their ill-gotten wealth[3]. As pointed out, this results in the gross abuse of individuals' civil and political rights. However, the economic social and cultural rights, such as the right to education, health, and employment (to mention a few), and the third generation rights such as the right to a clean and healthy environment are also violated, especially in the provision of social services. For instance, when an institution charged with the duty that Ugandans live in a clean and healthy environment decides, on the receipt of some form of gratification, to ignore dangerous aspects pointed out in environmental

audits, it endangers people's lives and violates their right to a clean and healthy environment.

In a recent national integrity survey most people interviewed expressed the opinion that the police, the judiciary, and the education and health sectors were the most corruption-ridden sectors of our society. It may be assumed, therefore, that these sectors commit some of the most rampant abuses of human rights. Obviously some government institutions were not mentioned because people rarely come into contact with them, whereas the police, the judiciary and the education and health sectors are ones with which the public is in constant contact.

Take the police, for instance, which as a law enforcement agency is charged with the duty to protect life, property and people's rights, to preserve law and order and to enforce the laws of Uganda. The extent of the rot has recently been revealed by the (Lady Justice) Sebutinde Commission of Inquiry into corruption in the Police force. There are instances when persons with civil disputes use the police to settle them. In many cases police are paid bribes to intimidate by arrest and detention people involved in these kinds of disputes. While in police custody such people may be tortured and denied their right to liberty and right against torture and inhuman degrading treatment. The nature of arrest is sometimes in itself some form of inhuman and degrading treatment since the suspects are deprived of their clothes and shoes during arrest, sometimes in a public place, instead of at the Police Station. Because of corruption police officers are therefore often used to violate people's rights instead of protecting them. Other instances include the "loss" of files, which are usually "bought" by those incriminated by investigations, and this denies people the right to have justice done in their cases.

The judiciary, on the other hand, has the duty to administer justice while observing the principles of natural justice. They are required to administer justice to all equally without fear or favour, without delay, and giving adequate compensation or punishment where due. However, in the recent National Integrity Survey, 50% of the households surveyed in Uganda had paid bribes to someone in the judicial service system. In the registries of many courts, cases are not cause listed if the interested parties do not pay bribes, and court clerks demand bribes in

order to make files "disappear". Magistrates are bribed in order to have a judgement delivered, to dismiss a matter, or to give favourable judgements. Secretarial services in the judiciary also cost litigants money when they should not, especially for copies of judgements. It is therefore evident that corruption in the judiciary is deeply entrenched and this means, without a doubt, that the judicial services in this country hinder litigants from fully realising their human rights and having justice done in their cases.

Corruption in the social service sectors of education and health also hinders people from full enjoyment of their rights as guaranteed in international conventions and the Constitution. The education sector is, for instance, suffering from deeply entrenched corruption. In a recent survey conducted by Makerere University's Economic Policy Research Centre, only 36% of the government's contribution to primary schools reached the headmasters, and an even smaller percentage reached the beneficiaries (the pupils). It has also been revealed that teachers' salaries are sometimes embezzled/mismanaged and when teachers go on strike they interfere with pupils' right to an education. The full realisation of the right to education is therefore also hampered by corruption.

In the health sector the situation is no better, and the consequences are sometimes more serious that in any other sector. In the medical services provided by government hospitals, (which are the majority, and the cheapest for poor people), patients are asked to pay for services that should be free. For instance, one has to pay a bribe to have a doctor or nurse attend to a patient, and sometimes patients are asked to buy the medication prescribed. Corruption in the health sector can thus lead to deaths, thereby preventing a person from enjoying his or her right to health and life. The impact here is very severe, and people dread going for treatment in government hospitals when they have no money, because they fear dying as a result of the neglect of duty by medical personnel.

In describing the relationship between human rights abuse and corruption it is therefore evident that the fight against corruption is also a fight against human rights violations.

THE NATURE OF CASES HANDLED BY THE INSPECTORATE

Besides being an anti-corruption agency, the IG is also Uganda's ombudsman institution. As such it is required to receive complaints of misadministration, for instance where a public official has a duty to perform but fails to do so. Among the complaints received are cases of:

- **Non-payment of salaries and other benefits.** When someone is employed and performs the work for which they were employed, they have a right to be paid. Many of the complaints received by the IG are cases where public servants are not being paid their entitlements in terms of salaries and benefits, including terminal, retrenchment and other benefits.

- **Victimisation of people in their work places.** There are many complaints where people are victimised in public offices on the basis of their tribe or gender. Other complaints are cases where employees miss out on entitlements and promotions because they have failed to give their boss some form of gratification, (and where those who have given gratification are favoured).

- **Abuse of authority.** The complaints falling under this category usually comprise people using their positions to violate the rights of others, such as failure of police to investigate a person's complaint and bring culprits to book.

- **Conflict of interest.** These are complaints where people fail to declare a conflict of interest in a matter, and make their decisions without giving due attention to merit. This is most evident as a tender and contract malpractice.

- **Delays in service delivery.** It has constantly been revealed that a person may decide to delay delivery of a service as a manifestation of their need for gratification. This is common in many government departments where the public are served.

These are the more manifest violations of human rights that fall within the mandate of the Inspectorate. They show that corruption does have a direct relationship with human rights abuse, and as such the IG does have a role to play in the protection of individuals against human rights abuses perpetuated by public officials.

In conclusion it can be seen that the crusade against corruption is also a fight against human rights violations.

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[1]The IG was established by the Inspector General of Government Statute No.2 of 1988.

[2]In "The Effects of Corruption on Development" A paper presented to the Africa Leadership Forum on Corruption, Democracy and Human Rights in Africa, September 19-21, 1994, Cotonu, Benin

[3]The Transparency International Source Book at p.2

HUMAN RIGHTS IN UGANDA CO-STATEMENT

NORAH MATOVU WINYI

INTRODUCTION

Uganda, in the last 13 years has come a long way from a total neglect and disregard of human rights to being one of the leading countries in the region. It has clearly shown its political will to change the human rights situation. Uganda has rectified a number of international human rights documents, and has included in its Constitution a Bill of Rights which incorporates most of these rights recognised internationally.

The focus of this paper is, specifically, on the role of civil society in the promotion, protection and observation of human rights.

The state of human rights and the fundamental freedoms in Uganda is affected by a number of factors:

- **Armed conflict and instability in some parts of the country:**

  This particularly affects the northern and western parts of the country. The situation has been quiet in northern Uganda for most of this year (1999), but many children are still captured and held in camps of Kony rebels based in southern Sudan. Many people in the area are still living in displacement camps, and this curtails their movement, economic activities and social development.

  The rebel groups in western Uganda lack a sense of clear direction and leadership, but are very brutal to the people in the districts of Kasese, Kabarole and Bundibugyo. Some people have lost their lives, while others have lost all their property and life has been totally disrupted. In one incident on 8th June 1998 over 100 students were burnt to death in their dormitories at Kichwamba Technical College.

- **The abuse of powers and office by the security forces:**

  The security forces have used excessive force, at times resulting in death. Government forces have committed or

failed to prevent extra judicial killings of 'suspected' rebels and civilians; armed personnel have continued to beat up and torture suspects, often to force confessions, and arbitrary arrests and detentions are sometimes reported.

In 1998 the use by the authorities of "safe houses (unregistered and unofficial places of remand) to detain suspects was reported in the press, and there were stories of torture which have resulted in permanent disability to some of the victims. Armed personnel also sometimes misuse their weapons and harm people, who find it difficult to unleash the justice system against such officials.

- **Delays in the administration of justice:**

  Prolonged pre-trial detentions remain a major problem in Uganda. The revelations of the Commission of inquiry into the Police Force have been an eye opener to many people. In addition, police cells and prison conditions remain harsh and life-threatening. Poor judicial administration, lack of resources, a large backlog of cases and lengthy trial delays circumscribe due process and the right to a fair trial. The judiciary is not adequately funded to deliver justice quickly, and the culture in the whole sector, particularly in the upcountry districts, does not promote speedy administration of justice.

- **Discrimination against women, the disabled and ethnic minorities:**

  Despite the conducive and progressive constitutional framework on the rights of women, the disabled and other minority groups, discrimination persists. The delays in updating and making laws in line with the new constitutional order has continued to negatively affect the rights of women, children and minority groups. Their rights to food, a clean and healthy environment, education, healthcare, employment, non-discrimination and not to be subjected to outdated and harmful customs, traditions and practices continue to be violated by lack of clear legal and social remedies, for instance in cases of domestic violence, child abuse and sexual harassment.

- **Poverty:**

  Poverty is a persistent problem not only in Uganda but in the whole of Africa. It has a direct negative effect on the observance and promotion of human rights. Despite the positive responses of the economy to the stabilisation and structural adjustment measures that have been implemented since 1987, the problem of mass poverty and poor human development indicators have remained sufficiently visible. Poverty denies most people access to the basic needs of life like adequate food, shelter, education, health care and the right to development.

  A good example is the selling of votes during elections. Due to poverty many people are forced to forfeit their right to vote and participate in their own governance. They exchange their votes for material things like sugar, salt, soap, or a few shillings. A bad leader will remain in the area for five years, while the material inducements will befinished in a day or two, or at the most a week.

OTHER FACTORS

- **Corruption:**
  Corruption enriches a few and deprives many Ugandans improvement of their lives. Corruption has hindered the development and provision of social services, which are essential for the realisation of people's economic and social rights.

  Corruption in institutions like the police and the judiciary has undermined many people's right to speedy justice.

- **High level of illiteracy:**
  Observance and respect of rights begins with knowledge and appreciation of these rights andfundamental freedoms. Many people do not know their rights. Poverty also makes it difficult for rights to have meaning to the people in their daily lives.

WHAT IS THE ROLE OF CIVIL SOCIETY ORGANISATIONS IN ADDRESSING SOME OF THESE FACTORS?

Over the last 13 years in Uganda there has been a proliferation of non-governmental organisations, with over 3000 such organisations being registered (NGO Board Records - Ministry of Internal Affairs). In addition there are many voluntary self-help groups (unregistered) and religious institutions which continue to play a key role in the social and economic sectors, as well as in providing basic necessities of life and moral support for the people.

There are several reasons advanced for this development:

1. The existing environment enables people to organise into co-operative efforts in order to initiate self-reliance projects to solve their immediate problems and access resources which would otherwise not be readily available to individuals e.g. through credit schemes.

2. This is a direct response to the negative effects of the structural adjustment policies which have compounded the social and economic problems in the country.

3. People are exercising their right to organise and influence government policies and programs.

Today in Uganda there are over 45 groups which have human rights focussed activities. Their role has mainly been in the following areas:

1. **Popular human rights awareness and education:**
   Achieved through public awareness programs, paralegal training, civic education, peace and social justice programs, production of various materials for training and provision of basic knowledge on human rights.

2. **Monitoring and documentation of human rights violations:**
   The most recent development is the Foundation for Human Rights Initiative (FHRI), one of the member organisations of

HURINET (U). It launched its first report on the situation of human rights in Uganda in 1998. The NGOs act likewatchdogs for the people. Other international human rights groups like Amnesty International and Human Rights Watch, have continued to work closely with local groups to come up with comprehensive reports on human rights in Uganda or on specific aspects of rights. They are also collaborating to build the capacity of local groups to carry out effective monitoring.

3. **Research and documentation:**
To add to the body of knowledge and information, civil society organisations are actively involved in research on human rights. Currently FIDA, with a number of other organisations with the support of the UNFPA, is involved in research on domestic violence and human rights in selected districts in Uganda. Other organisations like ACFODE have carried out research on the right of the girl child to education. Sudan Human Rights Association has very useful information on the rights of refugees in Uganda, and UWONET on the effects of structural adjustments to women's rights, to mention but a few.

4. **Provision of legal aid services:**
The main legal aid providers are civil society organisations. These include FIDA (U), which has four legal aid centres in Kampala, Mbale, Arua, Mbarara and a mobile clinic in Mpigi; Legal Aid project with centres in Kampala, Gulu, Kabrole, Jinja and a mobile clinic in Masaka; Uganda Gender Resource Centres with Clinics in Mbarara, Kabale and Rukungiri; and FHRI which operates a Citizens Advice Bureau.

The above organisations provide legal aid, which includes counselling services, mediation between disputing parties, investigations, court representation, provision of legal advice in writing wills or drawing up agreements, and production of useful materials such as on the court system in Uganda, rights of an arrested person, etc.

5. **Participation in processes of policy review and law reforms:**

The main purpose for such activities is to ensure that the policies have a human rights perspective and the process of law reform is in conformity with the human rights obligations Uganda has assented to and with the constitutional frame-work. Active organisations in the field have been UWONET and FIDA (U) Ltd., which took the lead in the land reform process; DENIVA on the right to sustainable development and the Lome IV Conventions, etc.

6. **Co-ordination and Networking:**
A number of networks and coalitions have been established in the last 10 years to ensure that human rights organisations (dealing with a whole range of human rights issues) are well co-ordinated. These include:

i) **HURINET (U)** - which brings together 13 leading human rights organisations and collaborates with another 15 in Uganda and over 25 outside Uganda.

ii) **UWONET** - a coalition of 10 women groups which agreed to come together to address women's participation in leadership and politics, women's economic rights, and the effects of domestic violence and women's rights, among others.

iii) **Coalition on Domestic Relations Bill** - a coalition has been recently set up to follow up on a number of contentious issues in the Domestic Relations Bill, and to lobby and advocate for its enactment into law.

iv) **DENIVA** - which has a membership of over 450 civic groups, mainly focusing on the rights to development.

v) **Child Rights Network** - a coalition of organisations dealing with children rights. Its main achievement was the production of a shadow report to that of the government, submitted under the convention of children's rights.

vi) **Civic Education Co-ordinating Committee** – set up to co-ordinate the activities of the constitution-passed organisations with those of civic groups in the area of civic education. The bodies and civic groups also plan to develop a human rights curriculum to be incorporated in the school syllabus, particularly at the primary level. Civil society organisations have also continued to speak out against many issues, (including the deplorable conditions in prisons, the use of the death penalty, the need for the freedom and independence of the media, the abuse of children's rights, discriminative policies and practices), and have been involved in the formulation of the Community Service Bill. They have supported programmes that promote the enjoyment of social and economic rights, and generated debate on issues of human rights through the media, seminars, conferences and dialogue.

CONCLUSION

Civil society groups, though very active and dynamic in the promotion of human rights, still face some constraining factors. Most of them are small in size and they do not cover the whole country. They have limited professional staff and are donor-dependent for most of their activities. Though they plan to fulfil a complementary role to that of the government-established institutions set up to safeguard human rights, they cannot substitute the role and obligation of the state to provide safeguards for people's rights.

The need for information, training and investigation is vast. Many human rights groups have a base in Kampala and satellite centres in 2 to 3 districts. They visit the rural areas from time to time to implement specific programs, but cannot satisfy the needs of their constituents. As such the failure of the state to provide adequate resources for institutions like the IGG and UHRC to be more accessible to the people, has left the majority of Ugandans with very limited or no capacity to safeguard, defend, protect and enjoy their rights.

Civil society organisations should fight corruption and undemocratic practices in their own ranks. Those who are active in the sector should do their work in good faith, have clear goals and objectives, be

committed to the search for the truth in all cases, report objectively and above all work diligently for the good of the people.

The emergence of more rural based human rights NGOs or the incorporation of a human rights agenda in most of the programs of civil society organisations should be encouraged. The existing ones should be strengthened and supported so that a very vibrant civil society which is fully aware and has the capacity to respond and advocate on human right issues takes firm root in all parts of our society.

PROTECTION MECHANISMS OF HUMAN RIGHTS: NGO PERSPECTIVE THE UGANDA CASE

MARIA NASSALI SSEMAKULA

The Non Governmental Organisation (NGO) movement arose out of the failure of the state to yield development for its constituent communities. NGOs supplement government activity by mobilising civil society to participate in the activities and decision making that affects its daily welfare. In Uganda it is estimated that there are over 3,000 registered NGOs.

World-wide there is no universal definition of a Human Rights NGO, and it is found that limiting the definition may constrain the formation of a human rights movement. Therefore any NGO that defines itself as a human rights NGO, is deemed as such. Because of the funding priorities of the donors and the fact that all issues are human rights issues, one finds that a majority of NGOs are human rights NGOs. Most donors fund vulnerable groups, hence a majority of NGOs target women as their primary beneficiaries, whether in the area of environmental protection, reproductive health, economic empower-ment, legal representation, etc. By implication a veritable revolution of women must be taking place, but in reality this is not taken as fact. While headway has been made in the promotion of women's rights, serious challenges present themselves.

There is a large number of NGOs, and they differ in focus, priorities, and definition. For example, any NGO that promotes that right of women is confronted with the issue of gender equality, but there is no general agreement as to what this actually means, or what it should achieve. Clarification might be thought desirable, but many NGOs will avoid addressing the issues at stake if such an action is perceived as threatening to the status quo. The law has been limited, in that it does not accord women equal status either in writing or implication, but efforts to have it amended to achieve the Constitutional requirement and the inherent right of women to equality as human beings are at times frustrated.

The law is not the only social change mechanism, but when rights are violated a supportive law is needed to enforce the upholding of rights. In Uganda, the bulk of women work in the informal sector or in the home: During the public dialogue on the Domestic Relations Bill women assumed the promotion of their right as equal partners, but were subjected to the rude shock of being isolated in the cause. Many women accused FIDA(U) in being elitist in approach, and paternalistic. Even during the NGO debate there were serious disagreements as to what the Bill should contain, for example on issues of property. Most of the female politicians consider their political participation as government hand-outs (Tamale 1996) or as gifts from above rather than a right that is struggled for (Mamdani 1991), so there was caution not to antagonise the government and do what is politically expedient. Such issues continue to dominate the law making process. It is therefore not surprising that the Matembe co-ownership provision, (advocating having spouses registered as co-owners on the land on which they ordinarily reside or derive their welfare), was not incorporated in the Bill, despite the fact that it had been extensively debated on and that many of the members of Parliament thought that it had been passed as a law.

The situation is made worse by the acceptance of inferiority by the women themselves, arising out of decades of subordination. It is common to hear arguments that *a man is a man* or *it's a man's world* from women, and hence the resistance to enforce their rights out of choice. Many women are so dependent on men that it is more prudent to accept inequality and get food and housing in return.

Where women have resisted inequality and insisted on their rights they are criticised for being out of order. *"How can you take your husband to FIDA/court? He is the father of your children."* This infers that women are expected to sacrifice their rights in favour of others. In most instances rights are enforced only after the end of the relationship; during marriage women are expected to suffer pain with humility, and society praises such perseverance.

In addition the law is expensive in terms of time and money: A majority of the Ugandan people is illiterate and engages in labour-

intensive activities. Time is very valuable, and coupled with frequent adjournments of court is something few can afford. In addition the law is very technical, so the parties often feel that they are spectators in their own case.

There is an inability among women's NGOs to appreciate that the same cause is being fought. There is a tendency to be divided, rather than united into a formidable force, despite numerical strength. Many of the opponents to women's emancipation have capitalised on this factor and tried to ridicule all efforts towards it. For example one hears the argument that the rural woman does not need rights but water and firewood. This is a limited interpretation of rights aimed at dividing protagonists. Human Rights intend to promote respect for the inherent dignity and worth of each and every individual, including the basic need of all human beings for love and respect.

Further, there is the misconception of the law as an instrument primarily designed to punish wrong doers. The law is found to be adversarial, "winner takes all", and cut-throat. In African tradition many of the disputes are negotiated and blame is apportioned to all parties. Further, the whole spectrum of issues that many have related to the dispute is discussed and analysed. The focus of the law on the legal issue leaves many to think that justice may be denied. Many of the women are more comfortable using alternative dispute mechanisms to court, and consequently about 85% of cases presenting to certain NGO offices are settled out of court. In the process the client and the respondent are informed of the legal provisions pertaining to their case and are encouraged to apply these to their situation, with the aim of obtaining more sustainable solutions to their problems. In this way, rights cease to be abstract but real and applicable to their everyday lives, struggles and aspirations.

WAY FORWARD

- The participation of women in leadership positions has tremendously increased women's public visibility, giving them

collective confidence and bargaining power and underscoring the need to organise as a group. Differences between different groups must be buried in order to address the myriad of problems and to pursue common interests and goals.

- The task of achieving women's emancipation should be mainly shouldered by women, as they are the direct beneficiaries of the same. A common programme should be constructed as a basis for unity.

THE NATIONAL UNITY AND RECONCILIATION COMMISSION IN RWANDA AND ITS ROLE IN PROMOTING HUMAN RIGHTS

PEACE UWINEZA

Rwanda's Government of National Unity considers unity and reconciliation of the Rwandan people to be the basis for durable peace, security, human rights and development. It is in line with this belief that a law was enacted by Parliament on 12th March 1999 to institute the commission, whose mandate is to promote Unity and Reconciliation among the Rwandan people. This is also in line with the declarations of the Arusha Peace Accord signed in 1993.

Since its independence in 1962, Rwanda has been characterised by regimes which thrived on sectarian and discriminatory tendencies that culminated in the 1994 genocide. Although the 1994 genocide remains unparalleled in history, when over a million people were killed in a most inhuman fashion by fellow citizens, it was not the start of abuse of human rights in Rwanda. During the preceding 30 or more years, divisions grew from being tribal, to regional, until they reached family levels. Impunity became the order of the day, as killers were rewarded instead of being prosecuted. This resulted in massive mistrust, hatred and a drive to revenge based on ethnic lines. These are the roots of the tragedy, which still run deep, and their removal calls for the efforts not just of the commission of unity but of all Rwandan people.

THE COMMISSION

The commission consists of 12 members, appointed by a Presidential order on the advice of the cabinet. The 12 are appointed on the basis of their moral integrity, good behaviour and competence.
The commission has a mandate of 3 years, renewable, but members may be replaced, with the president's approval, in case of death, resignation, failure to execute duties or failure to live up to the criteria on which they were appointed.

The executive committee of the commission is composed of 3 people: A president, a vice president and a secretary who is also

the Executive Secretary of the Permanent Secretariat. Apart from the Executive Secretary, who runs the affairs of the commission's permanent secretariat full-time, the rest of the 12 members are free to take up any other paying job.

In order to execute its responsibilities and duties, the Permanent Secretariat has been structured into six major departments.

1. **Civic Education**
   - To set up a national school/institute for civic and political education;
   - To enforce the development of a curriculum on civic education for primary, secondary and higher institutions of learning;
   - To carry out research on the promotion of positive cultural values as a basis of education.

2. **Conflict Resolution**
   - To analyse social dynamics to detect and pre-empt latent conflict;
   - To revive traditional mechanisms of mediation;
   - To mediate in conflicts that arise at family, village, local levels, etc.;
   - To put in place a conflict monitoring centre and early warning system;
   - To train in conflict resolution.

3. **Community Based Initiatives**
   - To identify common needs and problems affecting communities;
   - To foster, promote and support groups or associations working for community based micro-projects, or vulnerable groups.

4. **Enacting a Law on Unity and Reconciliation**
   - To encourage activities that promote a peace culture;
   - To sensitise in respect of human rights;
   - To take part in drafting a law aimed at fighting sectarianism and promoting unity and reconciliation;
   - To monitor government institutions' compliance with the objectives of unity and reconciliation.

5. **Enhancing the ideology of National Unity and Reconciliation**
   - To denounce and fight all acts, writings and types of language likely to bring about discrimination of any form;
   - To monitor the upholding of the ideology of unity and reconciliation by political parties and various organisations of the civil society;
   - To design communication programmes aimed at making known actions undertaken for unity and reconciliation in the country, and to promote a new image for Rwanda.

6. **Monitoring National Activities and Programmes for Unity and Reconciliation**
   - To elaborate national guidelines on unity and reconciliation policies;
   - To promote the unity and reconciliation factor in all programmes and projects undertaken by various government departments;
   - To harmonise and follow-up on unity and reconciliation programmes set up by government institutions, local and international NGO's.

FUNCTIONS OF THE COMMISSION

i) To organise and oversee public national debates aimed at promoting national unity and reconciliation;

ii) To use all possible means to sensitise the Rwandan people on unity, and to lay it on a firm foundation;

iii) To conceive and disseminate ideas and initiatives aimed at promoting peace between Rwandan people and to inculcate a culture of national unity and reconciliation;

iv) To denounce any written or declared ideas and actions aimed at, or based on, disunity;

v) To prepare and co-ordinate a programme in the country for promoting national unity and reconciliation;

vi) To educate Rwandans on their rights and the rights of others, and to build among them the culture of respect for human rights;

vii) To communicate the views of Rwandan people to the commissions charged with the responsibility of drafting laws that will foster unity and reconciliation among Rwandans and fight disunity;

viii) To monitor closely whether government organs respect and observe the policy of national unity and reconciliation among Rwandans;

ix) To monitor whether the political parties, leaders and all the people in general do respect and observe the policy of national unity and reconciliation.

NATIONWIDE GRASSROOTS PARTICIPATORY CONSULTATION ON NATIONAL UNITY AND RECONCILIATION

The principal objective of the grassroots consultations exercise is to consult Rwandans themselves on how to steer Rwanda onto a more productive path, and to permit Rwandans to "own" their commission. All the 12 prefectures are visited, and consultative meetings held with leaders and all sorts of groups. The groups identified include:

- Community leaders, women's groups, local government officials, churches, teachers and students, medical communities, youth groups, sports associations, cultural groups, artisans and business people.

In these meetings, the issues usually discussed centre around:

- What, in their view, has led to disunity among Rwandans?
- What characterises disunity in Rwanda?
- What can be done to reverse the situation?
- What can be their role in promoting unity and reconciliation and in ensuring that it is sustained?

So far, 7 out of the 12 prefectures have been visited by the commission, and the following are some of the views of the people.

Causes of disunity cited:

- Bad leadership, which used divide-and-rule mechanisms;
- The wrong history taught over a long period of time. People were taught that historically they are different and therefore

they cannot live together, right from the colonial era;
- Impunity in the justice system, encouraged and supported by the government;
- Use of the press and media to poison people's minds;
- Corruption and nepotism;
- A culture of not speaking the truth. People have learnt to hide the truth to keep out of trouble;
- Deeply grounded ethnic differences;
- Genocide – has pushed reconciliation years backwards

Suggested Solutions:

- Research, and then teach, an accurate history of Rwanda;
- Promote good governance by giving power to the people;
- Ensure that the country's wealth is fairly shared by all;
- Fight corruption and nepotism;
- Improve on the justice system and speed up genocide cases;
- Promote civic education and educate the masses on their rights;
- Extend the application of justice beyond the passing of judgements in court. Reconciling families involved in legal cases is also necessary;
- Promote respect for human rights;
- Pass judgements fairly without considering ethnic differences;
- Fight ignorance and poverty;
- Use media, meetings, conferences, debates, etc. to promote unity and reconciliation;
- Avoid the notion of one ethnic group being the innocent victim and the other the brutal killer. Put issues in context and avoid sweeping generalisations of the problem;
- Decentralise the commission and its activities.

Concerning marginalised groups such as women, children and the disabled, Rwanda has a Ministry of Gender and Women's development, which is involved in the following areas:

- A "Women in Transition Programme" to alleviate the suffering of the many widows and vulnerable women;
- Establishing communal funds for women;
- Election of women leaders, who represent women at all levels of local and national administration;

- Formulation of a bill of law (not yet passed, but in parliament), with women NGOs and the Ministry concerned to give women the right to own property, and inheritance;
- Several NGOs serving women and promoting women issues;
- Genocide survivors' organisations, mostly promoting counselling of trauma and rape victims, encouraging women to come out and testify in court, etc.;
- Genocide survivors' fund set up by government, to support especially the most vulnerable, particularly in the field of education of orphans and medical support;
- Several NGOs addressing children's rights and issues, and disabled groups.

The Ministry of Social Affairs also administrates:

- The communal Orphans' Fund to assist other orphans
- The Burgomaster's Project, which addresses issues of orphans and vulnerable children.

ADVANTAGES TO BE TAPPED

Divided though they are, Rwandans still have a lot in common, which can be exploited to achieve lasting unity, reconciliation and peace:

- They share all the regions of the country. There is no area which can be solely identified as belonging to one ethnic group;
- They share the same language, which should both unite Rwandans, and ease the problem of communication;
- The same family clans are found across the ethnic groups;
- There is a Rwanda-wide tendency to listen to the radio and respond to meetings;
- Many associations for self-improvement have been formed, especially among women;
- There is an established pattern in Rwanda of working communally towards common goals.

Working for unity and reconciliation in Rwanda is an immense task, and so deep are the roots that the process will involve generations. Hatred and the desire for revenge are still simmering, but many express and most experience the deeper need and longing for peace and stability. Realising that violence is not the answer, a more constructive and better alternative must be found to pave the way forward for the children of Rwanda.

HUMAN RIGHTS IN RWANDA

DENYS UWIMAN

INTRODUCTION

Before detailing the situation of Human Rights in Rwanda, a reminder of the political, economic and social context is required, together with an outline of the efforts deployed as well as the results achieved in the protection and promotion of Human Rights.

HUMAN RIGHTS CONTEXT AND THE PRINCIPAL ACTORS

Rwanda's recent past, like its farther off history, is full of factors and events that may throw light on the interpretation of the current situation of Human Rights. The most determining ones being:

- A colonial system which manipulated ethnicity and encouraged the emergence and formalisation of ethnistic reflexes whose dramatic consequences were massacres and the forced exile of tens of thousands of citizens even before Rwanda attained independence (1962).
- The weight of a perverted post-colonial political system that aggravated and systematised divisions and discriminations based on ethnicity and regions. This system is responsible for the emergence of a culture of impunity that culminated in the organisation and perpetration of genocide and massacres.
- Mitigated and unequal efforts at socio-economic and cultural development, which were wiped out by armed conflicts.
- War, genocide and massacres that plunged the country into mourning, particularly between 1990 and 1994, and whose consequences were one million dead people, several hundred survivors and traumatised orphans without shelter, millions of displaced people, new refugees, and cataclysmal material destruction.

We must add to this terrible picture two great challenges:

(i) the existence of more than one hundred and twenty thousand detainees suspected of having participated in the 1994 genocide and massacres, now awaiting sentence;

(ii) the assistance needed by thousands of returnees of 1994 and 1996 currently being resettled.

- The reconstruction of the country since July 1994, included among other things, the putting into place of new institutions of good governance charged with the establishment of the rule of law as provided for by the Fundamental Law.
- The generalised poverty of the Rwandan population, the high level of illiteracy and the lack of capital for financing then country's development.
- The proliferation of arms, the movement of armed groups of "rebels" in the whole of the great lakes sub-region, resulting in insecurity that sporadically affects certain regions of the country, as well as the good relationship and exchanges between neighbouring countries.
- The existence of a civil society comprising several organisations of human rights activists, each of which advocates with a particular tonality the following:
  - the principle of equality among citizens;
  - the refusal to hold in a globalistic manner one ethnic group responsible for the 1994 genocide;
  - the right to justice and reparation for survivors of the genocide and massacres of 1994.
- A strong will by a considerable part of the Rwandan population and state organs to bring to an end the cycle of violence that has marked the history of our country.
- In contrast to an earlier wait-and-see policy in some countries which paradoxically had been closely linked with Rwanda, there is now a conspicuous wish by other members of the international community to unconditionally assist Rwanda in her endeavour to promote a culture of the respect of Human Rights along with a harmonious development of the country.

Key actors in the safeguarding of Human Rights in Rwanda include:

1. Concerned state organs, especially the judiciary, whose staff has, since 1994, been progressively reconstituted. They operate in ordinary courts and tribunals and in military tribunals, to which have been added since 1996 specialised chambers to hear cases of genocide and crimes against humanity. In addition, various administrative, civil or military organs also step in to settle cases of Human Rights abuse or other matters.

2. Local NGOs for the defence of Human Rights. These constituted the sole recourse for the public during the periods when the State and its organs were either indifferent to the violence afflicting the citizens or were its perpetrators.

3. The Rwanda National Commission of Human Rights. This was established by law No. 04/99 of 12th March 1999, and voted by the Parliament of Rwanda, in accordance with the provisions of the Peace Agreement signed in Arusha (Tanzania) in August 1993, between the Rwandan Patriotic Front and the Rwandan government of the time.

The existence of the **Human Rights Commission** finds its justification in the agonising awareness of the fact that Rwanda went through long periods of regimes characterised by massive violations of Human Rights and a culture of impunity that led to the massacres and genocide in 1994 (Preamble of law No. 04/99 of 12th March, 1999). According to that law, the Commission is independent and its duration is unlimited (Act. 2).

The Commission is composed of seven members elected by parliament (nominated by presidential decree - Act 8). Its mandate is to investigate and follow up violations of Human Rights committed by anyone in the entire territory of the Republic of Rwanda, especially by state organs (...) or by any organisation operating in Rwanda (Art 3). It also has the function to educate and sensitise the population in matters of Human Rights (Act. 4), and in order to bring the truth into full light and to identify and punish past and present cases of violation of human rights,

the investigations of the commission are not time limited.
The Commission is self accounting and elaborates its own working schemes (Act 12)

Vested with powers on 24th May 1999, the young Rwanda Human Rights Commission has set itself to refine the activities of its three-year programme. It is aligning these activities with the ideas and suggestions emitted by the population during consultations organised at district (prefecture) level, as well as with the recommendations gathered at the International Round Table which was organised by the commission and took place in Kigali from 12th to 15th October, 1999.

The Commission registers complaints from citizens and arranges to carry out appropriate investigations. Where partnership between the commission and active institutions (particularly local NGOs) in matters of human rights is concerned, both parties have expressed the wish to form a platform of collaboration, and have underscored the need to co-operate in a spirit of solidarity and mutual respect. This was expanded upon during the aforementioned Round Table.

However, considering their constraints and difficulties, the ability of NGOs to defend Human Rights cannot be heavily leaned on. NGOs came into being during difficult circumstances in the early nineties: They lost a great number of their members during the genocide and massacres of 1994, most of them experience budgetary constraints and almost all of them have their members and activities localised solely in the country's capital.

Other institutions participate directly or indirectly in the safe-guarding and promotion of Human Rights, namely:

1. The National Commission for Unity and Reconciliation, whose fields of activity include civic education. Its specific mission is to promote the values of unity and reconciliation among the Rwandan population. Such values contribute towards enhancing the respect of others, their rights and liberties;

2. The Office of the Auditor General;

3. The Interdepartmental Commission in charge of fighting corruption. Some NGOs are active both in rural and urban milieus. Their actions are often complementary or additional to those of the state in favour of economic, social or cultural rights.

The establishment of new institutions of good governance in Rwanda runs alongside the promotion of the citizens' right to participate in the management of public affairs. Thus, recently, national structures have been put into place for women's and youth representatives elected at local levels. Similarly, grassroots administrative organs have been elected to manage local problems with decentralisation, and this democratic thrust is expected to move progressively to the national level.

Finally, the Commission of legal and constitutional reforms, whose members are being nominated according to the country's fundamental law, is particularly charged with elaborating the draft of the constitution under which the country will be governed after the transition.

Most Human Rights institutions in Rwanda have decentralised services to district or even sub-county levels. Certain NGOs have local branches as well as regional or even international affiliations. (For example: The League of Human Rights of the Great Lakes Countries, or The International Federation of Leagues of Human Rights). Rwanda's Human Rights Commission is planning to open up offices in 2001 in some districts (*prefectures*). This will enable it to draw near to the population, with the result that information will reach it and get treated faster, and thus interventions into regions far from the capital will be more rapidly effected.

The relationship that exists between civil society organisations and the government is being influenced by an ever increasing consensus that Rwanda must be turned into a rule of law, notwithstanding the divergence of approach that may be apparent. Hence, there is a need to harmonise strategies and procedures, while respecting the level of competence, field of specialisation and specific mission of each actor.

Open and acute confrontations between various actors are rare, but it is regrettable that some options taken by NGOs with regards to the violation of Human Rights and the impact they exert remain short of expectation.

On the other hand, growing synergies are observed in the sector of the promotion of children's and women's rights, (particularly their economic, social and cultural rights). State projects in favour of children and youth have been prepared and/or implemented with the support of UNICEF, and realised within the Ministry of Justice and the Ministry of Internal Affairs.

It is within this framework that minors suspected of participating in genocide and massacres are being set free, with hundreds of them being placed in appropriate centres where they receive legal and judicial assistance as well as a civic and professional training.

Rwanda is collaborating with the Arusha International Criminal Tribunal for Rwanda for the handling of the crime of genocide and the crimes against humanity that were perpetrated in Rwanda in 1999.

At the time of writing, the major concerns of defenders of Human Rights in Rwanda could be summarised as follows:

- To maintain security, particularly in the north-western part of the country, and thus to remove the threat to the right to life of the civil population;
- To defend the Right to property for the refugees of 1994 and those of 1996;
- To implement reforms in the justice system. This includes original and participative approaches aimed at absorbing the exceptionally big prison population, whose conditions of detention are often precarious, if not arbitrary, and include torture;
- To continue a necessary assistance to survivors of the genocide and massacres, through the Assistance Fund for most needy survivors, which was created by the Government of Rwanda;
- To enhance institutions charged with the protection of human rights, and to promote the development of a culture that upholds such values. This should elicit a great commitment by donor countries, such that the population for Rwanda may exercise their right to justice, reparation and development.

CONCLUSION

The points analysed above aim at increasing understanding of the state of human rights in Rwanda and the challenges faced in that field.

Aware that its mission is both complex and exalted, the Rwanda Human Rights Commission, (working in close collaboration with all other interested actors), has the ambition to convert the culture of impunity into that of Human Rights.

Owing to the dramatic experience of Rwanda, and the worrying signs which persist in the great lakes sub-region, the Rwanda Human Rights commission wishes to see other defenders of Human Rights contributing to the establishment of meaningful mechanisms to prevent the conflicts and discriminations, as these are the main source of serious and massive violations of Human Rights.

In addition, and with the support of the Commission of African Rights and peoples Rights, it would be timely to consider putting into place mechanisms of rapid reaction in case of violations of Human Rights. It is only when this is done that one could talk of the efficiency of mechanisms safeguarding Human Rights. Even so, the struggle to enjoy individual and collective rights and freedom will not be won unless it is coupled with programmes for the improvement of the social, economic and cultural welfare of the citizens, particularly in under-developed countries like Rwanda.

THE ROLE OF CIVIL SOCIETY IN THE PROTECTION AND PROMOTION OF HUMAN RIGHTS IN RWANDA

FRANÇOIS BYUMA

In Rwanda organisations for the defence, promotion and protection of Human Rights began to be brought into being from about 1990, when a democratic wind was blowing from the east and when multiparty politics operated in several African countries including Rwanda.

However, at that time the dictatorial rule of the late President Habyalimana was in high gear, so precisely because of the massive violations of Human Rights by the fanatics of the regime, it was very dangerous indeed to talk about human rights.

In January 1994, six associations of Human Rights had already been authorised, and they started to denounce the massacres (which culminated in the genocide of 1994). There were also trade unions, which defended workers' rights, an association of journalists and a dozen or so religious associations.

TRANSITION

When the Government of National Unity came in to power following the victory of the Rwandan Patriotic Front, NGOs which had been affected by the torments of war and the genocide mobilised themselves for the protection of fundamental rights and liberties of man, as recognised by the national and international community.

THE MISSION OF LOCAL NGOS

From their inception, most associations involved in the field of human rights established as their mission:

- to act in favour of the protection of human rights;
- to work together so that the institutions of the country offer physical, moral and judicial protection to every individual.

ACTION TAKEN

Actions taken by NGOs in Rwanda include:

- The creation of a network of information on, and the denunciation of, the violation of Human Rights, as well as conventions on their protection;
- The circulation amongst all the strata of the population of texts about the guarantee against the arbitrary, so that the population may claim the guarantee;
- The constitution of teams of observers - people with a reputation of impartiality - to see that correct judicial procedure and protection (owed to anyone who might be accused) be respected, in political cases or otherwise;
- To co-operate with organisations concerned with finding solutions to problems of refugees, recommending that international conventions which ensure their protection be implemented;
- To work for the improvement in the treatment of prisoners in detention;
- To work for the abolishment of torture and any cruel, inhumane or degrading treatment considered to be an insult to human dignity;
- To fight against all forms of discrimination, alienation and coercive integration so as to promote the principle of absolute equality among men; the right to differ and the universality of Human Rights.

CONCRETE ACTIVITIES

Associations of Human Rights, including LIPRODHOR[1], carry out the following activities:

- Regular follow-up and field investigation of cases of violation of human rights;
- Producing reports on the situation on Human Rights;
- Denouncing the violation of Human Rights, giving support and advice to victims of violation of Human Rights;

- Follow-up of detentions in central prisons and in police and country cells;
- Legal assistance to the detained and to the victims of the genocide and the massacres of 1994;
- Constituting a Documentation and Information Centre on the proceedings of the Genocide.

These actions of protection are to be supported by actions concerning the promotion of Human Rights. Such promotions may include teaching Human Rights in seminars, workshops, conference and training sessions, organising debates or performances by mobile theatrical groups, publishing main texts on human rights, popularising through written and electronic media, etc.

In Rwanda, the Civil Society today has no common platform of protection of Human Rights. In fact, in the aftermath of the civil strife and the genocide of 1994, local and non governmental organisations of Human Rights grouped themselves in three caucuses according to their objectives.

CLADHO, PRO-FEMMES, TWESE HAMWE and IBUKA IN CLADHO are four NGOs which had been established before the genocide - Pro-femmes and Twese Hamwe advocate for children's and women's rights, whereas IBUKA concerns itself solely with the rights of survivors of the genocide

In its noble work for the protection of human rights, the Association of Human Rights requires the collaboration of the Rwandan government. The latter gives the association authorisations, and often joins them in public marches to raise awareness of Human Rights. The government organises yearly celebrations to mark the anniversary of the universal declaration of Human Rights.

Rwandan NGOs saluted the putting into place of the two commissions which were provided for in the Arusha Peace Agreements of August 1993. These are the National Commission for Human Rights and the Commission for National Unity and Reconciliation.

Although these commissions were state-created, and are governed by a Public Institution Statute, they constitute an appropriate framework within which to collaborate with the government in the protection of

Human Rights, and their principal texts were adopted or ratified by the government. However, efforts must be pursued and intensified in order to avoid uncoordinated action, a scattering of energy and distrust on the battlefield for Human Rights. A concentration of resources for better collaboration and complementarity is greatly desired.
At the same time, the creation of a network at the regional level, fostering the exchange of experience between different countries of Eastern Africa and the Great Lakes region and with the support of the international community, would be an asset for the promotion and protection of Human Rights in a region which shares a common geographical, cultural and historical context.

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[1]Rwandese League for the Promotion and Defence of Human Rights (LIPRODHOR)

Previously known under the name of LICREDHOR (Christian League for the Defence of Human Rights), LIPRODHOR is a non-profit making association created on June 9th 1991 and approved by the Ministerial Decree No.447/05 of December 30th, 1991. The deletion of the label 'Christian' did not affect in any way the objectives this human rights organisation had set for itself at its creation:

- Act in favour of the promotion of fundamental human rights and liberties acknowledged by the international and national communities;
- Make sure that different institutions of the country offer their physical, moral, and judicial protection to every individual staying on the national territory;
- Closely liaise with national and international organisations whose mandate is to safeguard and protect human rights.

The League lost about 30 members in the genocide of April-July, 1994. Today, its membership goes up to about 150 people, with an advisory board of 4 people, a board of directors and 4 specialised commissions.

To carry out its noble mission, LIPRODHOR relies upon the commitment and demeanour of its members and works ever since its creation in collaboration with various NGOs at all levels. At the national level, it is among other things, a member-founder of CLADHO (Coalition of Human Rights Leages and Associations in Rwanda), and FORWA (Forum of Rwandese NGOs). At the regional level, it is one of the member-founder of LDGL (League of HUman Rights in the Great Lakes Region) and UIDH (Inter-African Union for Human Rights). At the international level, it is a correspondent member of the FIDH (International Federation of Human Rights) since January 15th, 1995.

With the support of its different partners, the League implements several activities and projects such as:

- Annual Reports on the situation prevailing in Rwanda's prisons in close collaboration with the International Observatory of Prisons (IOP) of which the League is a correspondent member;
- Monitoring living conditions in detention centres and communal detention facilities (cachots) since 1996, a project funded by ICCO and the Dutch Government;

- Mass education and promotion of human rights by means of an itinerant theatrical troupe known as RAFIKI, a project funded by OXFAM-Quebec, and the Canadian and Swiss Embassies in Rwanda;
- Monitoring of genocide trials through a Trial Monitoring Team or CDIPG (Documentation and Information Centre on Genocide Trials);
- Regular investigation reports published in the form of declarations on human rights violations in Rwanda;
- Organisation of training sessions and seminars - workshops all around the country targeting different strata of the population, etc.

Due to its various activities in the area of promotion and defence of human rights, its permanent contacts with the population, its strictness and independence with regard to the government as well as the commitment of its members and dedication to work that its personnel has shown, LIPRODHOR has proved to be a sure partner, and is efficient in the field of human rights in Rwanda as testified by messages of encouragement and support flowing in from different international well-known associations such as Agir Ensemble, Amnesty International Human Rights Watch, and the International Federation of Human Rights.

HUMAN RIGHTS IN ETHIOPIA – THE PAST AND THE PRESENT

MAHARI HAILU

Unfortunately, in the long history of independence of the country of Ethiopia, the issue of safeguarding Human Rights had never been raised.

For many years Ethiopia suffered under a brutal regime, known as 'Derg' which systematically and grossly abused the human and democratic rights of the people of Ethiopia.

During the Derg regime the right to be tried in court and the right of property were completely violated. The government confiscated the property of both national and foreign investors. The rights to demonstration, assembly, free speech (press) etc. were legally forbidden.

Any military personnel, policeman or political cadre of the government was licensed to kill on the spot, or imprison anybody whom he might consider suspect. Corruption sky-rocketed. The bureaucracy was the major agent of corruption. Generally, the country was changed into hell to its people.

That was the reason for the armed struggle that led to the overthrow of the Derg and creation of the modern Federal Republic of Ethiopia.

After the overthrow of the Derg regime in 1991, the first priority was to prepare a new constitution. The constitution was prepared by a representative group of Ethiopians and adopted by a constitutional assembly, which was directly elected from across Ethiopia.

Another of the major steps taken by the Transitional Government of Ethiopia soon after assuming power was the inclusion of the Universal Declaration of Human Rights in the transitional charter. This was an important milestone, as the Universal Declaration of Human Rights includes civil and political rights with economic and social rights in a single document, without categorical designation. This is significant as it shows the interdependence and indivisibility of all Human Rights and

avoids unnecessary arguments on the relative importance of some rights over others.

Subsequently, the new Federal Constitution adopted by the Constituent Assembly in 1994 brought about far-reaching and fundamental changes in the area of basic freedoms and human rights. The Constitution embodies the basic principles on which Ethiopia's body politic is founded, and has firmly provided the basis for a democratic order and for the full respect and enjoyment of human rights and the rule of law. The Constitution provides a whole chapter, and distinct provisions form articles 13 to 44, guaranteeing the protection and enjoyment of human rights and basic freedoms to the peoples of Ethiopia.

To this effect Article 9/4/ of the Federal Constitution, stipulates for the direct applicability of treaties to which Ethiopia is a party in the following manner. "All International Agreements ratified by Ethiopia are an integral part of the law of the country."

Furthermore, as regards human rights, the relevant international human rights treaties and principles Ethiopia has ratified are accorded even higher normative value as sources of interpretation of the human rights guaranties enshrined in Chapter Three of the Constitution.

To this effect Article 3/2/ of the 1994 Constitution states that the "Fundamental rights and liberties contained in this chapter shall be interpreted in conformity with the International Human Right Covenants, Humanitarian Convention and with the principle of other relevant international instruments Ethiopia has accepted or ratified."

The Constitution further builds special protection to some specified and important aspects of the principles of human rights even under a state of emergency. According to Article 93 (4) C of the Constitution, the Government is restrained from suspending or abrogating the rights provided in article 18, (dealing with the right to Humane treatment), Article 25, (right to equality of citizens), and sub-article 1 and 2 of article 39 (self-determination), in the exercise of its emergency powers. Thus, adoption of the Federal Constitution with the broad terms of both Articles 9/4 and 13/2 will have a great implication in the process of ensuring that the Federal Democratic Republic of Ethiopia undertake its obligations under International Human Rights conventions by providing effective domestic implementation legislation.

As part of that commitment, the Constitution specifically requires that parliament adopt legislation to create a human rights commission and an office of the Ombudsman, (Article 55, sub-article 14 and /5/).

On the basis of this, the House of people's representatives has been working with many countries of the world which have experience on safeguarding human rights, and as a result draft legislation is now on the way to being ratified by the House.

The violation of Human Rights in Ethiopia reached its peak during the military regime. Over a million people were killed, while others were imprisoned, tortured, exiled and even lost.

For this brutal and wild act the former military government (Derg) must be tried. To fulfil this mission a special Attorney-Generalship was established, and to date thousands of former government officials suspected of violating human rights have been tried in the court. This action may give a lesson to others who might come to power and exercise dictatorship.
Nowadays, human rights are being violated by different institutions. The police, the judiciary and the bureaucracy are the main culprits, and at present the Federal and state courts are responsible for the protection of Human Rights.

In conclusion, the adoption of the constitution, which signifies a landmark event in our History, and the subsequent ratification of the human rights covenants, will undoubtedly have a great impact on the promotion, respect and protection of the basic human rights and freedoms of our peoples.

It is understandable that because of longstanding undemocratic traditions and bureaucratic legacies inherited from the past, these high ideals and principles enshrined in our legal system may not yet have found full expression and respect. In this regard, it is imperative that all those concerned with the promotion, protection and respect of human rights make a concerted and relentless effort to ensure the full realisation and enjoyment of human rights by all persons, people and segments of our society.

HUMAN RIGHTS IN ETHIOPIA

SEMERE SESSO

An International Conference on democratic and human rights was held from 18th to 22nd May 1998. The Conference was attended by local and foreign scholars and organisations from not less than 65 countries. These experts gave the benefit of their knowledge and shared the nature of the institutions that have been created in their countries, and the reasons why one particular structure was chosen over another.

Following the symposium, Parliament committed to tabling legislation by the end of 1999 to establish a Human Rights Commission and an Ombudsman in Ethiopia.

First, the legal Affairs Committee of the House of People's Representatives contracted a team of experts to prepare a concept paper. The paper addressed in detail the issues learned from international lessons, and options for setting up the two institutions, based primarily on the result of the symposium.

The next step was a formal public consultation process. Led by the Legal Affairs Committee of parliament, hearings were held in the capital city of each of the 12 Regional States of Ethiopia. More than 3,500 representatives of local and regional government, religious and Civil Society organisations and the general public were brought to these hearings to give their opinions. Through this process the concept paper was examined and discussed at various forums by the representatives of a cross-section of the population.

In addition, a special meeting of more than 300 representatives of non-government organisations located in Addis Ababa was convened for the same purpose.

The issues that were dealt with in both the consultative meetings and the draft legislation that resulted include:

- Nature of the duties, functions and authority of the institutions in question in their investigative, promotional, advisory and/or executorial roles;

- Jurisdiction of the contemplated institutions,
- The envisaged institutions' working relationships with parliament, government organisations, the judiciary, the media, civic organisations, etc.;
- Enforcement mechanisms;
- Independence and operational autonomy of the foreseen institutions and their officers;
- Ways and means of ensuring impartiality, fairness, equity and effectiveness in the functions and dealings of the planned institutions;
- Qualifications, mode of selection/appointment, term of office, and basis/procedures for dismissal of the chief executive officers of these institutions;
- The institutions' independence in the area of human resources/ personnel management;
- Funding and budgeting and the institutions' independence in these areas;
- Accessibility and working procedures of the institutions under consideration, including modalities or submission of the requests by the public for the intervention of any one of these two organisations, and
- Accountability of and reporting arrangements for the envisaged institutions.

Ways of building these institutions so that the unique character of Ethiopia would be reflected in their operations was also covered: Ethiopia is a Federal system, and the regions/states reflect the principle ethnic groups found in Ethiopia. Not surprisingly, the recommendations were unanimous that the utmost should be done to appoint commissioners who would work in each of the regions in the languages of the region.

Following the consultative process, a special meeting of the legal committee was held. A number of international experts - including

the special advisor to the UN Human Rights Commissioner and former Ombudsman - were invited to help design the draft legislation. Representatives of the NGO meeting in Addis Ababa were also invited, and played an important part in the deliberations.

On June 28, the resulting Bills to establish a Human Rights Commission and an office of the Office of the Ombudsman were submitted to the House of People's Representatives.

The Bills propose regionally-based institutions that would have the power to review and comment on virtually all complaints - the major difference between the two institutions being that the Ombudsman jurisdiction would be narrowed to reviewing administrative actions of government. All actions at any level of the Federal system could be reviewed, however. Following the advice received, the power of both institutions will be the power to make recommendations, which should give them very wide latitude to be critical.

One key follow-on role that the legal committee is already preparing to play in the next few years is to oversee what governments actually do to implement the recommendations that the two institutions will make.

The consultative process was second in scope only to the constitutional consultations of 1994. Ethiopia has its share of sceptics both outside and within the country who question the sincerity of the government for democratic reform. One effect of the consultation process followed is that the citizens and the international community have seen the deep level of commitment to consultation and building human rights institutions in Ethiopia. It is a fundamental commitment of the government and of the constitution that human rights will be respected and protected.

HUMAN RIGHTS SITUATION IN KENYA

WILLY MUTUNGA

INTRODUCTION

In Kenya, as indeed in most African and Third World countries, the face of human rights one sees is one of unmitigated human rights violations. That the whole gamut of human rights are violated is no longer an issue of debate. What lacks in the debate about human rights violations is an analytical and critical discussion of the root causes of these violations. There are analyses that focus on the role of the state in the violations, but the entire private arena, be it the market or the family, is left out of these discussions. Where the root causes are discussed and clearly identified, invariably the solutions tend to reflect a mix-up of falsehoods, half-truths and truths.

The other face of human rights that is rarely seen and rarely glorified is the growing culture of **resistance** to human rights violations. Few human rights organisations monitor and document this resistance to human rights violations, and very few glorify it. The Kenya Human Rights Commission has undertaken this task from the margins since January 1999, yet it is this resistance culture that will guarantee respect for human rights. It is this resistance culture that human rights organisations ought to focus on, but this crucial focus does not let the state off the hook.

It is these two faces of the human rights discourse that can give a holistic picture of the issue of human rights violations. It is possible to argue that there is a conceptualisation of human rights discourse and its violations that reflects these two faces.

THE CONCEPTUALISATION OF HUMAN RIGHTS

The human rights corpus reflects variations of liberal democracy[1], and the historical analysis of the human rights corpus confirms this position as well[2]. For exploited societies the invocation of some of the values of liberal democracy was central for the struggles for self-determination, independence and equality, and generally for mobilising the people of these societies to agitate against oppression, foreign domination and

exploitation. This "revolutionary", transformative character[3] of some of the values of liberal democracy has been seen as politically positive[4] and as providing serious weapons for struggles against the "absolute and benevolent dictatorships"[5] of the third world. The foreign history, nature, content and culture of the human rights corpus has, therefore, not made it irrelevant in exploited societies[6]. This relevance of the human rights corpus has resulted in calls for its genuine internationalisation and multiculturisation[7].

The critique of the human rights corpus remains important for human rights movements in the world and more particularly in exploited societies. "Human rights talk constitutes one of the main elements in the ideological armoury of imperialism"[8]. The agitation for all rights, therefore, must attack conceptions of property within the capitalist idiom and address issues of substantive justice that fundamentally affect the way wealth and other resources are redistributed.[9] This agitation must spearhead fundamental and radical changes in the so-called new world order, a world order that reflects an international economic system that is the root cause of all human rights violations. This critique, therefore, agitates for the right to revolution if there is to be a world without human rights violations.[10]

This theoretical terrain does not have the consensus of all human rights movements. Their strategies and activities, however, are located at the different points on this terrain. There are national and international networks and lobbies that rarely discuss politics, and the issue for rights movements in the coming century will be whether they will spearhead the people's struggles for survival. If this challenge is undertaken then reconceptualisation of human rights has to be constantly undertaken as the global environment becomes more oppressive and exploitative.[11]

THE FACES OF HUMAN RIGHTS VIOLATIONS IN KENYA

A The Face of Violations

The Kenyan State has never denied that there are violation of human rights in Kenya. What it has done is to issue a series of rationalisations for the violations: The issue of lack of resources; actions by agents of the state in violation of laid down authority; individual citizens taking the law into their own hands; the global situation and others *ad nauseam.*

So what is this picture? What are these violations? They include the lack of land and food; the persistence of poverty and hunger; the denial of the rights to education, clean water and clean environment; the denial of the right to health, the right to work, the right to clothing; the denial of the freedoms of assembly, movement, association, expression, information and press; the denial of freedom of worship; the lack of free and fair elections; the lack of freedom of conscience and academic freedom. There are violations in the social and cultural arena as well. The cancer of corruption is a denial of the whole gamut of human rights. One can go on and on. These violations have been documented by national and international human rights groups. They have been documented by governmental organisations. One of the key violations of human rights in Kenya is the denial of the right to organise. It is also part of the Kenyan discourse now that there is recolonisation, a more serious degree of violations than during the colonial period.

The separation of powers that is the hallmark of any liberal democracy applies only in theory because of the authoritarianism of the executive. Institutions have lost their independence and what are national banks or national corporations but institutions where the national wealth is stolen and plundered. Both national and international individuals and institutions have been the source of massive drainage of resources from the country.

Whatever infrastructure one talks of, be it economic, intellectual, political or other, is in danger of extinction. The debate as to whether Kenya is or is not a failed state is part of a reflection on the massive violations of human rights.

The fundamental and basic right to security needed for survival and existence is constantly threatened by insecurity caused either by bandits, criminals, the police, private armies and a state that is unable to guarantee the right to property and life. The so-called ethnic clashes, which have been politically motivated, are proof of the fact that the state is unable to protect the lives of all citizens. With all the machinery of violence at its disposal one wonders why the state is unable to deal decisively with acts of banditry, cattle rustling, drug dealing and other crimes.

B The Face of Resistance

History records that resistance to human rights violations can be traced to pre-colonial times. What is discussed here are the developments of the current decade, the decade of multi-partism. Through their struggles Kenyans rejected the one party dictatorship and its violations of human rights. Though weak, parliament has done a good job in the agitation for the protection of rights. The opposition political parties have undertaken the campaign against corruption with some degree of success, in particular in the arena of exposing corruption. The civil society, oppressed, intimidated and silenced during the one party dictatorship is now rather vibrant and growing in strength, resisting any oppression encountered in the implementation of its projects. The organised sectors of civil society have been crucial players in the struggle for human rights, for example, the professionals and NGOs, and religious civil society. The organisations of the people are still struggling for a space to operate amidst oppressive colonial and neo-colonial laws.

Kenyans, mostly those living in towns, rarely look over their shoulders. Although the culture of fear still pervades the rural areas, we have witnessed strikes by teachers, doctors, nurses, rice farmers, tea and coffee farmers, wheat farmers and there will be many more. Students at universities have resisted the dictatorship of the university administrations (the state will tell you that the students are organised by the pro-reform groups, as if students are children!). Students in schools, colleges and polytechnics have also resisted the denial of their rights. The youth and the women's movements, though embryonic, are in ascendancy. People with disabilities are agitating for their rights.

If one wanted to reflect on the degree of resistance to the denial of the freedom of the press, one needs to study the struggle by the cartoonists to exist. Their history in this decade has been one of innovation and consistent struggle for more space to express themselves. Now cartoonists embody the greatest expression of the struggle for a free press in Kenya.

One can also state that the enjoyment of these 'bourgeois' freedoms has enabled Kenyans to discuss economic, social and cultural issues. One of the great examples of this argument is the struggle by the rice

farmers in Mwea. As long as their freedoms of speech, association, movement and assembly were denied, the farmers lacked the right to organise against their exploitation and virtual slavery at the hand of the National Irrigation Board and its national and international financial institutions. For the ordinary Mwanachi/Mlalahoi in Kenya the bourgeois categorisation of rights does not exist because the right to survive and to a decent livelihood encompasses all rights. In the struggle to survive the Mwananchi/Mlalahoi prioritises all rights and demands their fulfilment.

DIVERSE CONCLUDING POINTS

- The courts of law remain the key organs for the protection of human rights of the citizens. The dependence and corrupt nature of the institutions of the judiciary have called to question the role of courts. Now human rights NGOs exist to agitate for the rights of the citizens, mainly by monitoring and documenting violations and calling upon the state to respect rights.
- Human rights NGOs are set up under the NGO Co-ordination Act 1990 which allows those NGOs that are registered to operate under mandates stated in their constitutions. Their powers are subject to the co-ordination (read control) of a state organ called the NGOCo-ordination Board with an Executive arm called NGO Co-ordination Bureau. As a matter of comparison, it is often argued that the Kenyan statute is less draconian than the Ugandan one, although Kenya borrowed her statute from Uganda. The Standing committee for Human Rights is an ad hoc committee set up by the government to monitor and document human rights violations. There have been commissions of inquiry that have dealt with the issue of human rights violations.
- The Governmental Organisations used to shun the Non-governmental ones, (which have been seen by the state as oppositional), but this attitude is slowly changing. Partnerships may be forged in the future once these governmental bodies operate as autonomous and independent institutions.
- The struggle by the Standing Committee for Human Rights for its legislative and political independence is a striking example of an

agitation to form such institutions. Once successful, this committee will have the same status as the ombudsperson or the state constitutional structures now popularly known as human rights commission. Such institutions will definitely form part of the institutions that a new constitution will create.

- The routes to the Mwananchi/Mlalahoi have been accessed by the government of the day, the ruling party, religious groups and NGOs. Recently the opposition political parties have had limited access. It seems that access to the grassroots is available as long as the messages that reach the grassroots do not contend with the messages of the government and the ruling party. Human rights organisations have recorded the violence visited on those whose messages are different. It is hoped that a democratic constitution-making process will open the entire population to the debate of different ideas, a positive development in a country that is seeking a national consensus on many issues.
- Civil society should continue to act as a check and a balance on the state and its international backers, so that ultimately a society without human rights violations will exist. Civil society should hold definite political views, and must reflect the values and be the change it wants seen in society if it is to claim the high moral ground. Civil society must review its position on the principle of non-partisanship so that it is not neutral to dictatorships and human rights violations. It must act as a nursery for clean politics, alternative political leadership and a champion of survival for all the people of the world.

  Civil society is not homogenous: Some actors in civil society work hand in hand with government while others do not. If the government's vision is that of the civil society, naturally it will receive the support of the civil society.
- The growth in vibrancy of the civil society has been reflected by the growth of interest groups, particularly those of women and of people with disabilities. The youth movement was strong in 1977,

flagged, but is now picking up again. The labour movement has been asleep for a while but signs of its revival are clearly on the horizon. The laws for registering these organisations still reflect state control.

- Human Rights NGOs have been modelled on their international counterparts in the west. After emphasising the primacy of monitoring and documenting political and civil rights, many of these organisations are now accepting an integrated approach in agitating against human rights violations. Quite what this strategy of integrating the whole gamut of human rights means is still the subject of debate.

Lastly for the East African region the burning issues are security and the basic needs of all people. Survival for our countries, the broader region, the continent and the entire world is what like-minded people in human rights movements ought to discuss. That should be the life-nerve of the human rights movement.

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1. Makau wa Mutua, The Politics of Human Rights: Beyond the Abolition Paradigm in Africa, Michigan Journal of International Law (Vol. 17, No.3, 1996) 591 at page 6000.

2. Makau wa Mutua, The Ideology of Human Rights, Virginia Journal of International Law (Vol. 36, 1996), 589; Joe Oloka-Onyango, Beyond the Rhetoric: Reinvigorating the Struggle for Economic and Social Rights in Africa, California Western International Law Journal (Vol.26 No.11995)1.

3. Issa Shivji, The Concept of Human Rights in Africa (Dakar: Coderia Book Series, 1989), vii; 4-6

4. Mutunga, Constitution-Making from the Middle: Civil Society and Transition Politics in Kenya, 1992-1997 (Nairobi: Mwengo/Sareat, 1999), Preface. Shivji, Op.Cit. page 72: "...the new always partakes of what is good and meritorious in the old.

5. Some of the systems in the third world are comparable in some respects to the feudal systems of Western Europe. Although these systems are supposed to operate the Westminster model liberal democracy the institutions of governance, in particular the Presidency, is comparable to the monarchies of Henry VII or Louis XIII! Recently distinctions between the old dictators (old in age as well) and the young dictators well versed in Marxist-Leninist rhetoric have brought the categorisation of absolute and benevolent dictatorships. Whether Museveni, Zenawi and others still remainbenevolent dictators while Moi and Mugabe remain absolute dictators is a game of political rationalisation that East and Central Africans are engaged in.

6. Makau wa Mutua, The Ideology of Human Rights, Op.cit.; Makau wa Mutua, Hope and Despair for a New South Africa: The Limits of Rights Discourse, Harvard Human Rights Journal (Vol.10, 1997) 63: Yash Ghai, Human Rights and Asian Value, Public Law Review (Vol. 9, No. 3, September 1998) 168; Mutunga, Op.cit. Preface.

7. Makau wa Mutua, The Ideology of Human Rights, Op.cit.

8. Issa Shivji, Op.cit. vii; see Chapter 2 for a comprehensive critique.

9. Shivji, Op.cit. notes that rarely is it appreciated by human rights advocates that the right to private property is an economic right of powerful vested national and international interests that is core to violations of the rights of others. See also Maku wa Mutua, Hope and Despair for a New South Africa, Op.cit. at page 112: "Nowhere is the use of the rights language more poignant than in the protection of property interests in the Constitution, in the preservation of rights and privileges of the apartheid security forces, judiciary and bureaucracy, and in the so-called reform programs relating to land and other resources. The protection of these interests through the new constitutional order in effect binds the ANC and robs it of any ability to carry out major reform."

10. Issa Shivji, Op.cit. pages 70-72 provides building-blocks of this re-conceptualisation of human rights in Africa: "It must be thoroughly anti-imperialist, thoroughly democratic and unreservedly in the interest of the 'people'." Human rights must be an ideology that mobilises people in their struggle against imperialism and compradorial classes in the national states. Rights must denote means of struggle, not simply legal rights. The strategy of human rights activism is to "expose and resist, with the view ultimately to overcome, the situation which generates human rights violations."In sum, "what is being suggested for the new perspective is an ideological and theoretical break with the dominant discourse on human rights."

11. It is very clear that the debate to integrate rights since the declaration of Vienna in 1993 is being pursued rigorously by the international human rights movement. Perhaps what this crusade is all about is the promotion of "welfarism", social democracy and state intervention in the economy to mitigate the harshness and the ruinous dictates of the market. What needs to be discussed in the issue of integration of rights is the Swedish system and how that has impacted on the global market, besides the domestic impact in Sweden itself.

HUMAN RIGHTS SITUATION IN KENYA CO-STATEMENT

MARTHA MUGAMBI

INTRODUCTION

It is a notable feature that no country in the world is free from human rights violations. Institutional mechanisms are therefore established as a response to this need. Human rights violations have characterised the development process in Kenya in the colonial period and after independence. The era of the single party system up to 1992 witnessed what has been described as a growing culture of human rights violations. Since the advent of multi-partism, there has been a turn-about towards acceptance by the state and its agencies that human rights are fundamental rights which must be recognised.

In pursuance of the ideals of human rights, NGOs and other stakeholders within the civil society have spearheaded reforms that take into account the values, aims and needs of all members of the society. The overall picture in Kenya indicates that the process of building a democratic society where the rights of all will be respected and protected irrespective of considerations of creed, colour, ethnicity or political affiliation is gradually gaining ground. It is in recognition of this process that organisations to safeguard human rights, notably the Standing Committee on Human Rights SCHR (K), were established.

SCHR was also set up in line with Article 17 of the Universal Declaration of Human Rights, Article 14 of the African Charter and the Kenya Constitution chapter V Section 70-86. The Committee was formally constituted and gazetted in June 1996, deriving its powers from its appointing authority, which is the Presidency of the Republic of Kenya, as empowered by article 23(1) of the Constitution of Kenya.
The economic reforms adopted since 1986 under the rubric of Structural Adjustment Programmes (SAPs), as stipulated in Sessional Paper No.1 of 1986 on Economic Management for Renewed Growth, were to set the economy on an accelerated growth path. The SAPs

have had considerable adverse effects on low-income groups in general, and on the rural poor. While arguments of economic efficiency have dictated the rationale of implementing SAPs, the benefits have not been equitably shared.

Development experts have in the past emphasised that models of development based on state control of production, trade, prices and the allocation of resources are not sustainable. The serious distortions such control creates lead to inefficiency, loss of competitiveness and corruption. On the other hand, the pursuance of economic reform through an unregulated market is a fundamentally flawed reaction. This strategy, which has been the centrepiece in the SAPs-oriented approach, has failed to secure growth, leading to the increasing inequality, poverty and deepening social divides that have crated ethnic conflicts in Africa today.

In pursuance of the goals of equality and social justice, Kenya became a signatory to the resolutions of the World Summit on Social Development in 1995. This means that Kenya is committed to the goals and targets adopted in the Summit. Amongst these are Eradication of Poverty, Universal Education, Health for All and Integration of disadvantaged people to the development process.

In February 1999, Kenya launched the National Poverty Eradication Plan to bridge the gap between National Development Plans and the imperative to address the needs of the poor. Amongst other needs are the promotion of consensus building for participatory development, and the mobilisation of resources to achieve pro-poor growth and service delivery. The basic entitlements and the rights of full citizenship are preserved in the form of the Charter for Social Integration. The Charter provides the enabling political, economic and legal environment for poverty reduction. The Charter also spells out pro-poor strategies that emphasise that all individual citizens have the right to literacy, health, freedom from preventable disease, sufficient food and clean water for maintenance and well being, and freedom from injustice or physical and mental harm. Communities have both the rights and the responsibility to organise for their own development and thus to complement Government effort.

The charter also includes a commitment to rights and standards in official work, a time scale for Government to take action against disadvantaged and unacceptable working conditions, governance for social integration, and a national campaign to publicise people's rights and social standards.

The prevalence of human rights abuses, increased corruption and mismanagement of resources in Kenya has compelled the Government to constitute an Anti-Corruption Authority and appoint an Economic Recovery Team.

The appointment of the standing Committee on Human Rights (K) is part of the Government reform process to address human rights violations, to receive public complaints and petitions, to carry out investigations and to make necessary recommendations to the appointing authority. Due to this noble task, the Standing Committee on Human Rights (K) has requested representation in the current Kenya Constitution Review process, so that its input should be incorporated.

ANSWERS TO QUESTIONS RAISED

1. On the issue of the present situation of human rights in Kenya:

   - The Judiciary does not have exclusive rights to protect human rights. The Courts of Law have other competing interests and may therefore not have the necessary capacity to protect human rights.
   - The constitutional reform and ongoing democratisation processes that have influenced human rights recognition are vital measures to safeguarding human rights.
   - Kenya is committed to United Nations Conventions such as Elimination of all forms of Discrimination Against Women (CEDAW) -1984, Convention on the Rights of the Child (CRC) - 1989 and African Charter on Human and People Rights1986.

2. Both government and NGOs are involved in organisations that offer remedial measures for violations of human rights. Notable among them are the International Chapter of Jurists, Kituo Cha Sheria, the Kenya Human Rights Commission, the Federation of

Women Lawyers (FIDA) and SCHR (K). The SCHR (K) is currently seeking to secure autonomous status, and a Human Rights Bill has been drafted for presentation in Parliament. Under the proposed Bill, the Committee will assist courts under clause 18, for example either by direct inquiry and investigations of alleged violations of human rights or on referral from the courts.

3. The Standing Committee on Human Rights is the mandated organ established to safeguard human rights violations. The committee derives its powers from its appointing authority, which is the Presidency of the Republic of Kenya as empowered by Article 23 (1) of the Constitution of Kenya.

   The Standing Committee on Human Rights (K) is an independent institution empowered through its terms of reference to investigate complaints of alleged injustice, abuse of power and unfair treatment of any person by a public officer in the exercise of official duties. It investigates alleged violations of fundamental rights and freedoms as set out in the constitution. It is also mandated to educate the public and raise public awareness on individual and collective rights.

4. On the issue of actors working together, there has been mistrust between NGOs and Government agencies, although this hostile environment is changing and actors are gradually building consensus on common approaches and sharing.

5. It is recognised that when the standing committee is granted legal statute it will assume the functions of ombudsperson. The civil society, including national women NGOs, has proposed the creation of a Gender Commission.

6. On the issue of institutions reaching out to the rural population, ever since the re-introduction of multi-partism, the democratic environment has been gradually expanding. There is increased public freedom, more openness in approach to issues and a liberal media. NGOs and CBOs have been involved in outreach programmes in human rights awareness, amongst other tasks. Through these programmes, information and knowledge have

been packaged to facilitate wider dissemination. Notable of the packages are booklets, pamphlets, posters and brochures. SCHR publishes a Newsletter "*Haki Zetu*". Although this Newsletter is printed in English, arrangements are underway to publish it in the national language, *Kiswahili*. SCHR is also making arrangements to consult other agencies and to develop a curriculum on human rights education.

7. Working hand in hand: Civil Society can work with the Government:

- They share the same values and aims, but differ in procedure;
- The government, through mandated organisations, investigates violations of human rights, implements programmes or recommends to other institutions on the course of action;
- Civil society advocates.

BENCHMARKS IN MEETING THE NEEDS OF SPECIAL INTEREST GROUPS

There are significant benchmarks such as the 1999 Bill to create a Gender Commission. A Task Force was set up in 1993 to review biased laws against women (which focus on personal laws) and legal pluralism, which relates to marriage, divorce, burial, adoption, succession, inheritance, upbringing of children, custody and other related matters. The 1999 Political Parties Bill also recognises the principle of Affirmative Action in political participation and decision making. The involvement of the Youth has been lukewarm although they are major stakeholders of the next millennium.

Additional

Further key areas of discussion should include:

- Joint training programme - national and regional;
- Interventions in support of the Beijing Platform for Action;
- Strategies for enhancing civic education;
- Government support to Human Rights institutions.

HUMAN RIGHTS SITUATION IN KENYA CO-STATEMENT

OKECH-OWITI

This brief statement does two things. First, it presents the general outlines of the human rights situation in Kenya with regard to the legal framework and practice, partly on the basis of the discussion issues suggested for the conference. Secondly, it comments on *some* of the specific positions taken in the leading paper.

1.0 THE CONCEPT OF 'HUMAN RIGHTS'

1.1 Looking at the policy and legal framework within Kenya, one sees a concept of human rights which begins and ends with political and civil rights in their very strict sense. Even this limited concept is further hemmed in by ambiguous exceptions which the state and the courts have interpreted liberally to the benefit of the state.

1.2 Within the national legal regime, Chapter V (Sections 70-85) of the *Constitution of Kenya* provides a fairly limited concept of 'human rights' in Kenya. It defines 'human rights' as 'fundamental rights and freedoms'. These are limited to:

- right to life (section 71);
- right to personal liberty (section 72);
- protection against slavery and forced labour (section 73);
- protection from inhuman treatment (section 74);
- protection from deprivation of property (section 75);
- right against arbitrary search or entry (section 76);
- right to secure protection of the law (section 77);
- freedom of conscience (section 78);
- freedom of expression (section 79);
- freedom of association and assembly (section 80)
- freedom of movement (section 81); and
- protection from discrimination (section 82).

1.3 There are derogations from these rights which are provided for in the very Constitution. These include:

- **in respect of the right to life:** Anything done in defence of life or property, or in order to effect an arrest or prevent an escape or suppress a riot, insurrection or mutiny, or prevent commission of a criminal offence;
- **in respect of the right to personal liberty:** Anything done in connection with or in respect of a judicial process, or for the purpose of a minor's education or welfare, or of the care of a person of unsound mind, a drug addict or a vagrant;
- **in respect of protection from slavery and forced labour:** Labour required in consequence of a judicial process, of a person in lawful custody in the interests of hygiene, of those in the disciplined forces, and during situations of emergency;
- **in respect of protection from deprivation of property:** Compulsory acquisition which is necessary in the interests of defence, public safety, order, morality and health, and town and country planning, or for the promotion of a public benefit, provided this is reasonable, and full and prompt payment of compensation is assured;
- **in respect of the protection against arbitrary search or entry:** Anything done in pursuance of a lawful judicial or governmental authority; or for the purpose of promoting other people's rights, or in the interests of defence, public safety, order, morality and health, town and country planning, and the use of natural resources for the public benefit;
- **in respect of the freedoms of conscience, expression, assembly and association, and movement:** Anything done for the purpose of promoting other people's rightsand freedoms, in pursuance of a judicial process, and in the interests of defence, and public safety, order, morality and health, and
- in respect of sections 72, 76, 79, 80, 81 and 82: anything done when Kenya is at war, or under the Preservation of Public Security Act (Chapter 57, Laws of Kenya).

These derogations limit further the enjoyment of the rights.

1.4 This concept of 'human rights' is even more limited when compared to that found in the regional and international legal regimes, namely the Organisation of African Unity (OAU) *Charter of Human and People's Rights (CHPRs), 1981*, and the United Nations (UN) *International Covenant on Civil and Political Rights (ICCPR), 1976*, and the UN *International Covenant on Economic, Social and Cultural Rights (ICESCR), 1976*. Broadly, these instruments define 'human rights' beyond the political and civil rights contained in the Kenya Constitution to include:

- the right to work in an equitable and satisfactory environment, with equal pay for equal work;
- the right to health (physical and mental);
- the right to education, and participation in the cultural life of the community, and the protection of community morals and traditional values by the state;
- the duty of the state to provide assistance to the physical and moral health of the family;
- the right of the aged and disabled to the necessary protection; and
- the so-called third generation rights - that is, the right to self-determination, to permanent sovereignty over natural resources, to economic, social and cultural development, to national and international peace and security, and to an environment conducive to development.

1.5 What then should be our working concept of 'human rights'? The concept of 'human rights' has progressively expanded as social life has become more and more complex. We think that it must be defined to include all those elements of a human being's life which are determined by natural attributes, and the relationships formed with other members of the community and the state. It must be wide and comprehensive enough to cover economic, political, social, cultural, moral-ethical, and even certain aesthetic elements of a person's life in society.

1.6 Although ordinarily 'human rights' are seen mainly in the context of 'individual' rights, it is important that our concept situates these in the context of group or 'communal' rights. This is an important point, because there may be occasions on which an individual's 'human rights' are abrogated or violated for the benefit of the wider community. An obvious example is where the 'individual' right to property is abrogated in order to provide infrastructure or social amenities for a community. This is evidently a very delicate balance in some respects. But the point has to be noted.

1.7 In this context, it is also important to distinguish between 'state rights' and 'communal rights'. One of the common reasons used by states to abrogate fundamental freedoms, for example, is *state security*. In situations where the state is mainly run by and for the benefit of a minority group (whether defined by social class or otherwise), 'state interests' are not necessarily equivalent to 'communal' ones. In our view, the security of the state does not necessarily ensure the security of the rest of society. In fact, very often, the security of the state is achieved at the expense of citizens' freedom.

1.8 It is also important to point out that we have so far not developed special protection for women or youth, or vulnerable sectors like persons with disabilities, in our concept of human rights as incorporated in the Constitution. However, there are plans to pass a Children's Act which incorporates the provisions of the United Nations Convention on the Rights of the Child and to amend laws to recognise the provisions of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women. The shape these will take will become clear once Bills are introduced into Parliament.

2.0 INSTITUTIONAL FRAMEWORK FOR SAFEGUARDING AND PROTECTING HUMAN/CIVIL RIGHTS

2.1 Governmental

2.1.1 At the government level, a Kenyan whose human rights have been violated has recourse to two main types of institution, namely the administrative and the judicial or quasi-judicial. The

use of administrative state structures - government departments, the provincial administration and the 'disciplined' forces - is itself limited by the fact that these institutions are, in fact, the most notorious perpetrators of human rights violations.

2.1.2 No special judicial institution has been established in Kenya to deal specifically with human rights violations, but the High Court - the highest original court - has been given direct jurisdiction (under section 84) over violations of human rights as defined under the Constitution of Kenya. Critical analyses of the behaviour of this court invariably conclude that it has not been effective in safeguarding the human rights of Kenyans, especially where the state is the perpetrator. This is usually attributed to the general lack of independence, particularly from the executive arm of the state. Other - subordinate - courts may also deal with violations of human rights (as widely defined herein), but their powers are limited geographically, and in terms of subject matter and the kind of remedies they can provide.

2.1.3 The only quasi-judicial institution that 'deals' with human rights violations is the government-established Standing Committee on Human Rights (SCHR). It collects and analyses instances of human rights abuses and makes a report thereon. However, it has no power to implement its recommendations; it has no power to punish perpetrators or to compensate victims of human rights of violations. Its chair has been heard to seek the capacity to act on human rights abuses, but this has not been provided.

2.1.4 Citizens have long asked for the establishment of the office of Ombudsperson. The Attorney-General originally ignored the suggestion. However, he is reported on more than one occasion to have talked of a government plan to establish one. A parliamentary motion has been passed urging the government to establish the office. But this has not been implemented.

2.2 Civil society and non-governmental organisations

2.2.1 The 'unorganised sector' of civil society has generally reacted to human rights violations in a spontaneous way through boycotts (not attending government functions; not delivering produce to government bodies; up-rooting commercial agricultural produce), demonstrations, peaceful or otherwise, administrative complaints, filing cases in court, and reporting to human rights organisations.

2.2.2 The organised sectors, including non-governmental and religious organisations, have addressed violations through collecting, compiling and disseminating information on human rights abuses; monitoring human rights abuses; lobbying and advocacy; speaking against human rights violations and putting pressure on government departments to investigate and act on human rights abuses; demonstrations; filing cases on behalf of the victims, and sensitisation, education and training. The Catholic, Protestant, Islamic and locally established religious organisations have been fairly vocal and active in identifying and condemning human rights violations. Non-governmental organisations (NGOs) like the Kenya Human Rights Commission; Release Political Prisoners; International Federation of Women Lawyers (FIDA) (Kenya); Kituo Cha Sheria/Legal Advice Centre; People Against Torture and other human rights and civic and legal education bodies have also played a significant role in addressing violations, and in pushing for a more democratic and human rights-friendly constitutional environment.

2.2.3 One sector which is rarely mentioned in human rights discourse is the community-based organisation (CBO) sector. CBOs, both informal and formal, are the main tools for social conscientisation, organisation and action at the grassroots level, particularly in the rural areas. The Standing Committee has gone round the provinces collecting information, but this is mainly done in the towns. Otherwise, it advertises and waits for reports. NGOs are also mainly based in towns, although attempts are being made to carry out activities in the rural areas and among grassroots communities in general. Some civic/legal education NGOs are educating/training grassroots communities and establishing

grassroots networks, while some human rights organisations are setting up monitoring mechanisms in grassroots communities. But CBOs act as the main link between the 'outside' institutions and grassroots communities, and will probably become the most important players at this level, given the opportunity and resources.

2.2.4 More directly, there is a need to focus more on grassroots communities through self-education strategies. There is a need to empower CBOs to carry out human rights education and monitoring, and to take both administrative and politico-legal action against violations.

2.3 Collaboration

2.3.1 Historically, there has been very little consultation and collaboration between the government and civil society on issues of human rights violations and how they can be addressed. The typical situation is that civil society, especially its organised sectors, sees the government as being singularly responsible for human rights violations. Its level of contact with the government has been accusatory in character. In the eyes of civil society, government, because it is itself responsible for human rights abuses, is not honest in its condemnation of, and action on, human rights abuses.

2.3.2 The government, on the other hand, has developed the tendency to deny or (rarely) grudgingly accept the accusations in specific instances, promising action which is rarely seen to be taken.

2.3.3 There are also major differences in how the two 'sides' regard human rights abuses (what these are and who is responsible), and how they should be addressed. However, there is a growing realisation that addressing the problem may require more dialogue and some form of collaboration at the level of investigation, monitoring and action, as well as creating a human rights-friendly environment. Indeed, now there are NGOs which are carrying out programmes in these areas in collaboration with, or with the tacit support of, the government.

3.0 SOME ISSUES FOR DISCUSSION

3.1 There are issues which need further discussion. These include:

- clarifying the concepts of 'human rights' and 'abuses' or 'violations' in the East African context;
- developing an East African regional charter and establishing regional institutions;
- collaborating and networking across countries in creating a human rights-friendly environment;
- learning from each other on mechanisms for monitoring, and taking action against, human rights abuses.

4.0 SOME COMMENTS ON THE LEADING PAPER

(See Willy Mutunga, p.64)

4.1 Conceptualisation of 'Human Rights' and 'Violations'

4.1.1 We are, essentially, at one in our conceptualisation of human rights. It is only a broad-based and people-centred concept of human rights which can assure citizens the best framework for both individual *and* communal development. The liberal-democratic concept of human rights has proved too limiting. Under it, economic exploitation and subordination of collective rights to unbridled individualism has thrived and actually limited the enjoyment of the very democracy it advocates.

4.1.2 This having been said, it is still important to stress the specific importance of political and civil rights in the current context. This is because the existence of these rights provides the democratic environment within which citizens can actively and effectively participate in contributing to or making decisions on substantive (economic, social, cultural and moral-ethical) justice.

4.1.3 One other point, it is important for us to tackle human rights violations in their entirety. A very high level of violations of political and civil rights of women, children and people with disabilities takes place precisely within the 'private arena'. A concept of 'violations' which does not take account of these itself violates the

interests of a large percentage of the population. Indeed, in terms of human rights discourse, some of these violations may actually have a source which may *not* be connected with the capitalist socio-economic formation except in an indirect way. Patriarchy, for example, is not a social trait of capitalist origin, although capitalism has taken advantage of its historical existence to rationalise gender-based exploitation and oppression.

4.2 'The face of violations' (p.65)

4.2.1 In line with the broad-based concept of 'human rights', the discussion on violations presents 'faces of violations' which include economic, social, cultural, political and civil abrogations. This is as it should be. It may well be that seeing human rights violations in this form makes the task of dealing with them appear monumental, if not impossible. But it is only such a framework of violations that can allow a comprehensive approach in tackling them.

4.2.2 We point out in passing that the 'faces of violations' discussed do not include those found in the 'private arena', despite their social significance as indicated above. The comprehensive concept of human rights adopted in the presentation demands an equally comprehensive treatment of the 'faces of violations'.

4.3 'The face of resistance' (p.67)

4.3.1 Human rights analyses of resistance to violations rarely look at the struggles by ordinary citizens on a day-to-day basis as part of resistance. There is rarely a connection made by analysts between farmers boycotting the delivery of maize or coffee, the picking of tea or the growing of pyrethrum and resistance to human rights violations. To our mind, this understanding of resistance is important to avoid equating resistance *only* with the organised activities of the middle class and their organisations, or the organised sectors of civil society, important as these may be. In any case, the 'faces of resistance' of ordinary citizens themselves express the *culture* of resistance and provide the basis upon which the 'more organised' forms can become socialised.

4.3.2 We do not believe that there has ever been a time in the history of resistance when civil society was 'silenced'. Attempts have always been made to silence civil society, but civil society has generally adopted different forms of resistance as opposed to abandoning the struggle and becoming 'silent'.

4.4 'In lieu of conclusion: Answers to questions raised' (p.74-76)

4.4.1 We are in agreement with most of the positions taken in this section of the paper. We would, however, like to make four bold statements in respect thereof:

- Although it is possible to argue that 'access to grassroots communities is available as long as messages that reach the grassroots do not contend with the message of the government and the ruling party', it should also be noted that a number of organisations and groups have developed methodologies which have enabled them to access grassroots communities even with 'anti-government messages' without jeopardising their work, even in the difficult period before the slight opening up of the democratic space.
- The concept of civil society as a homogenous and faultless entity in respect of human rights violations is a false one. Even as we address violations of human rights by the state, we must be sensitive to violations by and within civil society. We agree entirely that 'Civil society must reflect the values...if it is to claim the high moral ground.'
- Although the labour movement has been less effective in the near past, and especially as compared to the period of colonialism and that immediately after, it has not actually been 'asleep'. The state, having anticipated the importance of this movement in social resistance, intervened to neutralise the leadership particularly. But both undercurrents of, and open, resistance to violations have been recorded all the time. Conscientisation and better organisation will help galvanise the potential strength for more effective action.

- Finally, the struggle for human rights has become a global one. The East African region must coalesce its efforts as part of this global struggle.

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HUMAN RIGHTS AND HUMAN RIGHTS INSTITUTIONS IN TANZANIA

HAMIDA HASSAN SHEIKH

THE STATE OF HUMAN RIGHTS IN TANZANIA

The Bill of Rights is a recent development in Tanzania. It was only in 1984 that the Union Constitution was amended to include a Bill of Rights and "Duties".

It is generally accepted that the existence or absence of the following factors are yardsticks to measure the respect and protection of Human Rights in Tanzania.

1. **Separation of powers and functions of the organs of the state.**
   The functions of the three organs of the state are blurred by the Constitution, which was created during the single party era.

2. **The rule of Law and the independence of the judiciary.**
   The judiciary is the basic institution for the protection of human rights in Tanzania. This fact creates many problems because:

   a) Access to Courts

   The High Court is the only court which has the jurisdiction to hear Human Rights cases, and unfortunately it sits only in very few towns. In fact, a High Court zone is comprised of huge territories made of several regions, e.g. the High Court of Dar-Es-Salaam caters not only for Dar-Es-Salaam and the Coast Region, but also the Morogoro Region.

   b) Legal Representation

   Legal representation is beyond the means of most people. Legal Aid services are available only in a few places, (mostly in Dar-Es-Salaam, Arusha and Mwanza).There is usually a long waiting list of people waiting for Legal Aid, and in most cases (except for homicide cases) legal aid is not provided by the

Government. It is only provided by a few NGO's such as the Tanganyika Law Society, TAWLA, SUWATA and UDSM Legal Aid Services. The costs of support services are often donor funded.

c) Delayed Justice

In spite of the great efforts and progress made by the judiciary to lighten the case load, (e.g. through the introduction of the ADR system and computerisation of the judiciary), there is still a huge back-log of cases. Justice is delayed to such an extent that quite often the very reason of taking the matter to court is defeated and therefore justice is denied.

d) Independence of the Judiciary

In spite of the progress made recently, a lot of effort is still necessary to assure the independence of the judiciary. For example, the fact that judges are appointed by the President of the Republic puts the independence of judiciary in question.

e) Equality before the Law

It is the opinion of many people throughout Tanzania (who participated in the TLS Constitutional Project) that there is no equality before the law because:

i) Corruption in the law enforcement institutions distorts the dispensation of justice
ii) Since legal representation is available only to the few who can afford it, those who cannot afford legalrepresentation are disadvantaged
iii) The law favours the Government, Public Corporations and Administrative bodies vis-à-vis the members of the public, for example:
   a) The Government Proceedings Act requires that a person give the Government a three months notice period before suing the Government while the Government is not required to give notice before suing anyone.
   b) Proceedings against the Government can only be conducted in the High Court, which is not easily accessible to most people.

   c) The Government has a huge number of lawyers and legal experts, whereas most Tanzanians cannot afford legal representation.
   d) Even when a person does manage to secure a judgement and decree against the Government, the Government rarely settles the decretal amount. It is not legal to attach Government property in the execution of a decree, so many find it futile to sue the Government.
   e) Because judges are appointed by the president, (the Head of the Executive), there are many allegations that the judges tend to favour the Government cases.

3. **A Political System of Democracy:**
Democracy and human rights are inseparable. Many believe that both require a foundation of belief and a foundation of development, and that in the absence of democracy, human rights are in peril. The Tanzanian democracy is still very young and fragile, a fact proven by the multiplicity of election petitions that have been filed since the advent of the first multi-party elections.

4. **A constitution which contains not only a strong Bill of Rights but also a well established law enforcement and Human Rights Institution:**
Since the "Kisanga Commission" and the "White Paper" the Constitution is in the process of being reviewed. Many civil societies and NGOs, as well as the Bar Association of Tanzania, the TLS, are actively involved in various Constitution Review Projects, with the common objective and goal that the final results will help to produce a Constitution that is truly a people's Constitution.

5. **Public awareness and education in Human Rights:**
The Tanganyika Law Society (TLS) Constitutional Project has confirmed that large numbers of the population are still not very aware of their human rights. Even among the educated elite, few people have seen, let alone read, the Constitution of the United Republic of Tanzania.

Of more concern is the fact that the law enforcement institutions such as the police and (lower) courts of law are not very familiar with fundamental rights and freedoms. However, the last few years have seen an increase in Human Rights and legal literacy campaigns and sensitisation efforts spearheaded by NGOs such as TAMWA, TAWLA, TLS, etc., (through the media, seminars and publications), as well as by the Judiciary.

6. **Abolishing the 40 oppressive laws mentioned in the Nyalali Report:**
Unfortunately, most of the 40 notoriously oppressive laws, for example the Presidential Detention Act, still exist. It is hoped that the new constitution will finally abolish them once and for all.

7. **Passing of laws in conformity with the international conventions of Human Rights that Tanzania has acceded to:**
For various reasons, the country is lagging far behind in passing the Human Rights laws it needs to conform with the UN conventions on Human Rights.

8. **The Gender Dimension:**
   a) Rights of Women are adversely affected by the omission of the word "sex" in the definition of what is prohibited discrimination in Article 13 of the Constitution.
   b) Since women are the poorest amongst the poor and less aware of their rights, they have less access to courts and other law enforcement institutions.
   c) Family law, especially on matters of inheritance is still covered by the *sharia* and customary law, often to the disadvantage of women.

The AIDS crisis has left many young widows and orphans with inheritance problems. Even where there is a will left, obtaining letters of administration in courts is a long complicated process. It usually takes more than 6 months to obtain letters of administration.

THE PRESENT LEGAL SITUATION IN TANZANIA

i) The Bill of Rights is contained in part III, in Articles 12 to 24 of the Constitution. Unfortunately, the Bill of Rights is very narrow, and fails to include many rights currently universally recognised, e.g. rights of children, the handicapped and the aged. Moreover, most conspicuously in the definitions of discrimination and equality, the Constitution is silent on equality of the sexes. Some say it was a deliberate omission by the framers of the Constitution to avoid conflicts between the Constitution and customary law and *sharia* on the equality of gender issues.

Moreover, there are many claw-back clauses within the Bill of Rights itself and in the other parts of the Constitution, for example in Article 25 to 31 which derogate the rights guaranteed by the Bill of Rights.

ii) The basic law for enforcement of Human Rights in the Act. No. 33 of 1994. This Act provides the procedure for enforcement of Constitutional basic rights and duties, and for related matters. Unfortunately this law has met with a lot of criticism from the country's intellectuals, especially lawyers, because of its weakness.

   a) Certain legal formalities and procedures have to be observed by the petitioner, which would normally be beyond the ken of the average (who is usually legally unrepresented) Tanzanian;
   b) Only the High Court has the jurisdiction to hear petitions under this act, and yet the High Court is the least accessible court to the masses;
   c) The Registrar of the High Court has the discretion to admit or not to admit a petition, which restricts the access of court;
   d) A petition made under the Act requires a High Court composed of three judges. As it is, even where only one judge is needed to compose the High Court there is a backlog of cases, so one wonders how it would be where the law requires three judges to sit to hear one case;

e) The Act does not mention damages/compensation (if any) to be paid to the petitioner;

f) The scope of the Act is limited because the Act covers only rights mentioned in the constitution.

HUMAN RIGHTS INSTITUTIONS

A) The Judiciary

As stated earlier in this paper, the main institution for the protection of Human Rights in Tanzania is still the judiciary.

B) The Permanent Commission of Enquiry (PCE) - The OMBUDSMAN

is established under the Constitution. Its Primary function is to investigate complaints related to the abuse of powers, injustice, corruption or unfair treatment by persons holding Public Office.

Weaknesses of the Commission:

i) The Commissioners are appointed by the President of the Republic, who retains the power to stop any enquiry;

ii) The PCE reports to the President, the Chief of the Executive, the very organ whose abuse of power or administration it is supposed to investigate. Thus it is not seen to be a very independent body;

Iii) The PCE lacks enforcement powers;

iv) The proceedings of the PCE are conducted "*in camera*", and the person complained against is not allowed to cross-examine the witnesses against him.

v) The Commission is not well known, and is not easily accessible to the average Tanzanian;

vi) It is believed by most Tanzanians that transparency, through publication and dissemination of the Commission's findings and reports, would greatly enhance its effectiveness;

vii) Most of all, it is felt that the PCE would be more effective and credible if it had enforcement powers;

viii) In spite of all the above mentioned weaknesses and the constraints of operating under a very tight budget, the PCE has successfully investigated many complaints. It does not have enforcement powers like the ordinary courts of law, but its recommendations to the President have helped to secure justice for many people who have availed themselves of its services.

C) The Need for a Human Rights Commission

1. A Human Rights commission has not yet been established in Tanzania, but there has been a continuing public demand for the establishment of one.

2. The general opinion is that it should be a legislative creature, preferably embedded in the constitution itself.

3. It should be an institution that is not only independent and able to administer its functions and the law without fear or favour, but also independent and having powers of enforcement.

4. It should have a good legal framework, so that the structure and functioning of the Commission would be accessible to all sectors of society and allow informal, rapid, inexpensive resolution of complaints. It should also reflect the Tanzanian culture of settling disputes by way of arbitration, conciliation or mediation.

5. It should also be charged with the duty of promoting and Improving community awareness of human rights, the Human Rights Institution and the remedies available, so as to create and sustain a culture of human rights for all in the country.

6. Many Tanzanians are of the opinion that the Human Rights Commission should be accountable to the public (the constituency it serves) and report to parliament (not to the Executive like the PCE does at present), and that its Commissioner should be elected by the public.

7. A Human Rights Institution would be a complementary mechanism to the judiciary.

OMBUDSMAN AND THE CRUSADE FOR PROMOTION AND PROTECTION OF HUMAN RIGHTS IN TANZANIA

JOSEPH F. MBWILIZA

There are various ways and means in which human rights may be protected and enhanced within the framework of law and social behaviour in a given society. As noted by one writer "...The human rights situation in a given country is composed of many elements, some of these are not matters of law, and the constitution can only be one of the elements in the situation". (Ian Brownie, 1971)

Only one needs to cite the case of the United Kingdom to illustrate Ian Brownie's point.

Although Tanzania did not have a Bill of Rights in its constitution until 1984, that did not and does not mean that the question of human rights was not central in its policies and legal framework. In his first post-independent address to the United Nations General Assembly on 14th December 1961, the First President of Tanzania, the late Mwalimu J.K. Nyerere said: "The basis of our action, internal and external will be an attempt, an honest attempt to honour the dignity of man...we shall try to use the Universal Declaration of Human Rights as a basis for both our external and internal policies" (Nyerere, 1966).

Few would doubt Tanzania's record in living to that promise and the extent to which the Universal Declaration of Human Rights has continued to influence our domestic and foreign policies.

THE PERMANENT COMMISSION OF ENQUIRY AND HUMAN RIGHTS IN TANZANIA

The Permanent Commission of Enquiry was formed in 1965 following recommendations made to the Government by a Presidential Commission on the Establishment of a Democratic One-Party State in Tanzania. As an Ombudsman it is primarily concerned with probing issues of maladministration. However, experience all over the world has shown that in the course of probing issues of maladministration an ombudsman often comes across issues of human rights or matters involving civil liberties of individuals (Linda, 1993).

As far as the experience of the Permanent Commission of Enquiry is concerned, the following aspects of human rights have been encountered and dealt with: Arbitrary arrests, arbitrary detention, harassment and mistreatment by Law enforcement agencies, mistreatment of inmates, discrimination at work places and delivering social services, pension and retirement benefits, delay of cases in courts of law and tribunals, citizenship matters, inheritance and harassment of women and men due to their sexual orientation, etc.

In short, complaints are received which raise issues concerning civil and political rights on the one hand, social, economic and cultural rights on the other.

Besides remedying such complaints which touch on the civil liberties of individuals, the Commission also performs the role of educating the general public on issues of human rights through public meetings. This is important because people have to be made aware of their rights and the role of the Commission as the oversight institution mandated to promote respect for human rights in our country.

Another promotional function which the Commission performs is to educate public officials on the importance of observing human rights and administrative fairness when they exercise their official duties. This function is normally carried out through seminars and workshops organised by the Commission in collaboration with local and international organisations such as the Human Rights Unit of the Commonwealth Secretariat, Raoul Wallenberg Institute of Human Rights. The latest in the series of such Seminars and Workshops was organised in 1997 jointly with the Commonwealth Secretariat. Participants were drawn from a broad spectrum of professions and officials.

The Commission also advises the Government and public authorities on laws, regulations or administrative practices which are unfair, oppressive or which violate rights of individuals, with a view to correcting or amending the law, regulation or practice.

Although the High Court has been vested with exclusive jurisdiction to deal with cases of violation of fundamental rights embodied in the

constitution, quite unfortunately not every individual has the power and means to seek judicial remedy. Legal technicalities and the costs involved are the major constraints which keep the doors of justice closed to the ordinary citizen. Legal aid is mainly restricted to urban areas, just as is the case with High Court Registries. The situation poses a challenge to the Permanent Commission of Enquiry, which has to deal with human rights in a limited situation.

The government has already noted this problem/challenge and is working on it. It is hoped that a solution will be found in the near future.

POLITICAL AND JUDICIAL COMMITMENT IN TANZANIA TO THE BILL OF RIGHTS

FATMA A. KARUME

INTRODUCTION

The United Republic of Tanzania has been in existence since the Union of Tanganyika and Zanzibar in 1964. Tanganyika and Zanzibar gained independence from British Colonial Rule in 1962 and 1963 respectively, and in January 1964 Zanzibar experienced a popular revolution against Sultanate rule. Therefore, it is arguable that the foundations of Tanzania lie in the ideals that Africans have a right to self-determination, self-rule and freedom from domination. However, these ideals, which spearheaded the nationalist movement in Tanzania, were never entrenched in any manner within the Constitution of the United Republic of Tanzania either post independence, revolution or the union. Tanzanians' fundamental human rights were not recognised by the state until 1985, some 21 years after the union of Tanganyika and Zanzibar.

This paper seeks to analyse political and judicial commitment in Tanzania to the Bill of Rights past and present.

INTRODUCTION OF THE BILL OF RIGHTS IN TANZANIA

The 5th Amendment of the Constitution of the United Republic of Tanzania 1977 introduced the Bill of Rights into the Constitution, more than 2 decades after independence. The Bill of Rights is contained in Part III of the Constitution and it recognises human and civil rights under the broad titles "the right to equality", "the right to life", "the right to freedom of conscience" and "the right to work". However, the Bill of Rights is not simply a celebration and recognition of individual rights but it also imposes restrictions to these basic rights in the form of "duties to society" and "limitations upon and enforcement and preservation of basic rights, freedoms and duties".

As the purpose of this paper is not to analyse the shortcomings of the Bill of Rights, they shall not be dwelt upon, except in so far as to say

that economic considerations and the one party system have had a considerable influence on the drafting of the Bill of Rights. As a result, the limitations which form an intrinsic part of the Bill of Rights do not curtail an individual's right to property to the same extent that they curtail an individual's right to freedom of association. The political system which was prevailing in Tanzania at the time when the Bill of Rights was being debated and passed as law, was the one party system which had been entrenched in the political conscience of the country since its introduction in 1965, therefore it is not at all surprising that article 30(2)(e) of the Constitution provides as follows:-

> *"It is hereby declared that the provisions contained in this Part of this Constitution which set out the basic human rights, freedoms and duties, do not invalidate any existing legislation or prohibit the enactment of any legislation or the doing of any lawful act in accordance with such legislation for the purposes of:- imposing restrictions, supervising and controlling the formation, management and activities of private societies and organisations in the country"*

Despite the limitations to the Bill of Rights, "equality", "life", "freedom of conscience" and "work" are no longer privileges granted by a benevolent State, but rights which can be demanded by the individual in Tanzania.

HISTORICAL RESISTANCE TO THE BILL OF RIGHTS

The fact that Tanzania did not have a Bill of Rights until recently is not a historical accident or, as one might imagine, an oversight by the leaders of the nationalist movement during independence. On the contrary, the lack of a Bill of Rights in the Constitution after independence was the outcome of a hard fought battle, won by TANU, the party which ruled Tanzania after independence.

It was normal practice that former British colonies would be armed with a Westminster modelled Constitution, which invariably included a Bill of Rights, before they were set loose on the road to independence and self governance. However, in the case of Tanganyika (as it then was), a Constitution was imposed without the benefit of a Bill of Rights. In order

to exclude the Bill of Rights from the Constitution, the TANU leadership, which was the main nationalist power in the negotiations for independence from British Rule, put forward several arguments against the introduction of a Bill of Rights.

Amongst the arguments against the Bill of Rights propounded by TANU, was the fact that a Bill of Rights is neither a guarantee to the protection of fundamental human rights, nor is it the only means of ensuring the protection of human rights. TANU cited Britain, the colonial master seeking to impose the Bill of Rights on independent Tanganyika, as an example of a country where human rights are not entrenched in a Bill of Rights but are protected by means of the separation of state powers and the Rule of Law. This argument was reiterated upon attainment of independence in Government Paper (No.1 of 1962) on "Proposals for a Republic", which stated that *"the Rule of Law is best between the executive and the judiciary, but by independent judges administering justice free from political pressure"*. Therefore, TANU would ensure the protection of fundamental individual rights by the Rule of Law, through entrenching the independence of the Judiciary by means of security of tenure for the judiciary and lack of political interference.

THE RULE OF LAW IN TANZANIA BEFORE THE BILL OF RIGHTS

In an ideal world, there certainly would be no need for a Bill of Rights because the Executive would not abuse the rights of individuals, but Tanzania like most countries around the globe was and is not ideal. Nevertheless, the Executive in Tanzania claimed that it would guarantee the protection of the rights of individuals through the Rule of Law, which system has been effective in Britain. The Rule of Law alone, without entrenchment of fundamental human rights in a written Constitution, has been effective in the promotion and protection of human rights in Britain for the following reasons:

a) traditionally the judiciary has not shied away from making law where necessary;
b) there is a clear separation of powers, between the Executive, Legislative and the Judiciary.

The Rule of Law without the support of a Bill of Rights was tested very early on in the life of independent Tanzania. In *Hatimali Adamji v. EAPT Corporation Law Reports of Tanzania, 1973, Case No.6*, an Asian civil servant alleged before the High Court that his employer, the EAPT Corporation, was pursuing discriminatory policies by rendering him redundant in favour of an indigenous African. The High Court did not uphold Adamji's claim because the Constitution of Tanzania did not prohibit discriminatory practices. This decision was most unfortunate, particularly given the history in Tanzania of the Executive's resistance to the Bill of Rights. The judiciary manifested a clear reluctance to make laws, even if the said laws were fundamental human rights recognised by civilised nations. Therefore, this decision amounted to a judicial pronouncement to the citizens of Tanzania that the Judiciary will not entertain claims against the Executive based on abuses of human rights, which are not recognised by the Constitution. So the vicious cycle commenced.

On 28th January 1964, 3 days after British Marines had put down an army mutiny, the Government formed "The Presidential Commission on the Establishment of a Democratic One-Party State", whose mandate was to recommend a structure for the establishment of a one-party state in Tanzania. In 1965, an Interim Constitution was adopted which formally made Tanzania a one-party state. There was now a drastic change in the political scenario in Tanzania, in that all members of parliament were from henceforth members of TANU. A member of parliament was vetted by the National Executive Committee of TANU, and at general election was generally opposed by another TANU member. Therefore, the most popular TANU member out of the two proposed by the party won the seat.

The one-party system had the effect of legitimising the complete control of both the Executive and Legislative branches of powers by one party, namely TANU, and after the 1977 Constitution CCM. Therefore, unlike the British model, the distinction between the Executive and the Legislative in Tanzania was to put it mildly, very hazy and it is arguable that the Legislative was not independent from the Executive but controlled by the Executive. Under these circumstances, the Rule of Law alone did not prevail as a guarantee of human rights.

In 1967, as a result of the Arusha Declaration, the Executive started to nationalise banks, insurance companies, businesses, farms and buildings belonging to individuals. It was not until after the commencement of the nationalisation policy that the Legislative passed a law retroactively legalising nationalisation. Despite the fact that the Executive had asked for the law to have retroactive effect, the Legislative did not question the proposed law but passed it without hesitation. In 1983, the Executive started using its immense powers under the 1962 Preventive Detention Act, to detain without bail, individuals considered to be "economic saboteurs", despite the fact that at the time when the detentions commenced there was no offence of "economic sabotage" in Tanzania. However, a month after these detentions commenced, the Legislative came to the aid of the Executive by passing the Economic Sabotage (Special Provisions) Act, 1983. This act was passed in one day, and as usual had retrospective effect, despite the fact that it usurped the powers of the Judiciary by forming special tribunals to try those charged with economic sabotage and there was no appeal from a decision of the tribunal. During the one-party state system, the role of the Legislative in Tanzania deteriorated to a rubber stamp organ used by the Executive to legitimise its ideological policies. Consequently the Rule of Law deteriorated still further.

A pertinent question to ask is how did the independence of the Judiciary fare under these circumstances? It is arguable that the Judiciary soldiered on. However, without the necessary laws there was a reluctance to recognise fundamental laws for fear of being accused of usurping the role of the Legislative, or to face an Executive that went so far as to use its influence over the Legislative to nullify decisions of the Court, so the Rule of Law suffered.

After independence, the Chieftain System was abolished in Tanzania and the Paramount Chief of Chaggaland sued the Government for compensation for loss of his office. The High Court awarded him damages amounting to 1 million Tanzanian Shillings. Immediately following the High Court decision, the Legislative passed The Chiefs (Abolition of Office: Consequential Provisions) Act 1963 with the usual haste and retroactive effect, which nullified the decision of the High Court by prohibiting the enforcement of a court decree awarding compensation to a Chief for loss of Office.

Consequently, the Rule of Law as the champion of human rights in Tanzania was eroded and not effective for the following reasons:

a) The judiciary in Tanzania has always been comfortable applying laws which are already in existence, even at the risk of facing the wrath of the Executive, but it has never been keen making laws where none exist. Therefore, the fact that there were no written laws recognising and protecting fundamental human rights meant that individuals could not call upon the Judiciary to safeguard these fundamental human rights.

b) The separation of powers between the Executive and the Legislative was blurred by the one-party system in Tanzania. The Legislative became a rubber-stamp institution to pass laws which would further the economic and political ideology of the Executive.

c) The Legislative has consistently used its powers to support the policies of the Executive, on occasion going so far as to override lawful decisions of the Judiciary retroactively.

POLITICAL SUPPORT FOR A BILL OF RIGHTS

On the eve of Mwalimu Nyerere's departure from the presidency in Tanzania, there was a sudden tide of political support for the introduction of a Bill of Rights within the Constitution. The hierarchy of the ruling party, CCM, was not prepared to allow an unknown and untested leader the immense powers enjoyed by Mwalimu Nyerere, for fear of being the unwitting victim of widespread abuses. In addition, the abandonment of "Ujamaa", tthe introduction of liberal economic policies and the need to attract foreign capital meant that protection of private property featured high on the Executive's political agenda.

The answer to CCM's fears and hopes was embodied in the Bill of Rights.

THE RULE OF LAW AND THE BILL OF RIGHTS

On the heels of the Bill of Rights, which was introduced by Act No.15 of 1984, was the "Constitution (Consequential Transitional and Temporary Provision) Act No. 16 of 1984". Act No. 16 must be read in conjunction

with Act No.15 and came into operation on the date of the commencement of that Act. Section 5(2) of the Act No. 16 provides as follows:-

> *"Notwithstanding the amendment of the Constitution and, in particular, the justiciability of the provisions relating to basic rights, freedoms and duties, no existing law or any provision in any existing law may, until after three years from the date of the commencement of the Act, be construed by any court in the United Republic as being unconstitutional or otherwise inconsistent with any provision of the Constitution"*

Finally, the Constitution of the United Republic identified and protected fundamental human rights upon which the Judiciary could be called upon to consider. Tanzanians were no longer asked to rely upon the principle of the Rule of Law, which had in the past proved to be ineffective against the excesses of the Executive and the Legislative. However, despite the fanfare accompanying the Bill of Rights, the Government retarded its effect by a further 3 years. In reality, Tanzania did not have a Bill of Rights until 1988, when questions pertaining to adherence to the Bill of Rights were justiciable by the Judiciary.

During the 3 years in which the operation of the Bill of Rights was effectively suspended, the Government did not review the existing laws in Tanzania with a view of amending or repealing those considered unconstitutional. In fact, in 1987 the then Attorney General Lubuva D.Z., in an address to the University of Dar Es Salaam Law Society, made it clear that the Government had no intention of amending or repealing unconstitutional laws, but preferred aggrieved individuals to test the constitutionality of the laws before the Judiciary. In essence, the Judiciary was being awarded the immense task of checking the exuberance of the Executive and Legislative, past, present and future. It must be said that the Judiciary in Tanzania did not abdicate this responsibility now that it was given a tool, in the form of the Bill of Rights, for its task.

CASE STUDIES OF JUDICIAL INTERVENTION

Rev. Christopher Mtikila v. The Attorney General High Court, Civil Case No. 5 of 1993 at Dodoma (Unreported)

This case involved a petition by the Rev. Christopher Mtikila, a human rights activist and political campaigner against the Attorney General, challenging diverse laws. Mtikila challenged the validity of the Eighth Constitutional Amendment of 1992, which introduced amongst others article 39(1)(e) of the Constitution. Art. 39(1) provides as follows:

> *"A person shall not be entitled to be elected to hold the office of President of the United Republic save only if:-*
>
> *(a) he is a citizen of the United Republic by birth in terms of the citizenship law;*
>
> *(b) he has attained the age of forty years;*
>
> *(c) he is a member of, and a candidate nominated by, a political party;*
>
> *(d) he is qualified to be a Member of Parliament or a Member of the House of Representatives."*

Mtikila argued that the above-cited amendment was unconstitutional in that it derogated from the fundamental right within Art 21(1) of citizens to participate in the Government of the country. Lugakingira J in the High Court agreed with Mtikila's argument and stated that *"The message (in the amendment) is: either you belong to a political party or you have no right to participate"*. The Court then went on to draw distinctions within the Constitution, noting that there are rights within the Constitution, which are fundamental rights, one of which was the right to participate in government. *"It is the fundamental rights, but not their restrictions, that this Court is enjoined to guard jealously..... I declare and direct that it shall be lawful for independent candidates, along with candidates sponsored by political parties, to contest presidential, parliamentary and local council elections."*

Consequently, the Court held that an amendment to the Constitution was itself unconstitutional and there was an indication that the Court

considered the rights contained in the Bill of Rights as fundamental, although not immutable. The Court had finally been given a weapon with which it could stop abuse of the Legislative, and Lugakingira J referred to the Court, *"as guardian and trustee of the Constitution and what it stands for"*.

Pumbun and Another v. Attorney General and Another [1993] 2 LR.C 317

This was an appeal to the Court of Appeal from a decision of the High Court in which the Appellants' suit against the Government was stayed on the ground that they had failed to obtain the necessary permission to sue the Government from the Minister of Justice. Section 6 of the Government Proceedings Act provides as follows:

> *"Notwithstanding any other provision of this Act, no civil proceedings may be instituted against the Government without the previous consent in writing of the Minister."*

The Appellants had sought permission from the Minister to institute a suit to recover damages for trespass, assault and conversion from the Government, but the said permission was withheld for no apparent reason. The Appellants commenced the suit without the requisite permission and in the High Court, the Attorney General asked that the suit be stayed on the ground that the requisite permission had not been obtained. The Appellants argued that s. 6 of the Government Proceedings Act was unconstitutional on the grounds, amongst others, that it derogated from the right to equality before the law under article 13(1) of the Bill of Rights. In a much criticised decision, the High Court held that:

> *"Considering that the Government Proceedings Act No. 40 of 1974 was properly enacted by Parliament as stipulated in article 97 of the Constitution of the United Republic of Tanzania, it is sound law and does not infringe the provisions of article 13 or article 108 of the Constitution"*

The Court of Appeal held that the High Court's decision was *"In our view ...., to say the least, a very superficial way of dealing with the issue which was before the court. For the fact that s. 6 was duly enacted by a competent legislature is no answer to the question whether that section is valid or not as against the Constitution"*. Section 6 was held to be unconstitutional for offending against the right to equality before the law, and the Court of Appeal held *obiter dictum* that the Government of Tanzania is not more equal than the citizens of Tanzania, and the Constitution and laws of the Country are as much applicable to the Government as to the citizens. Finally, Tanzanians could sue the Government without first getting permission from the same Government to commence the legal proceedings.

However, it was not long until the Executive attempted to cushion the blow of this decision by asking the Legislative to amend the Government Proceedings Act. As is usual in Tanzania, Parliament complied without much ado and an amendment was passed which provides that an individual can only commence legal proceedings against the Government, 90 days after the Government has been served with a notice of the proceedings. The result is not to completely nullify the decision of the Court of Appeal in **Pumbun**, but to limit its effect. The reaction of the Government to this case is evidence of the fact that it cannot accept that, before the law, it is equal to the citizens. As with so many other laws in Tanzania, this amendment shall probably remain in force until an individual finds it a big enough nuisance to expend finances and energy in order to challenge it.

CONCLUSION

The Judiciary has shown a willingness to safeguard the Bill of Rights from abuse, but on the other hand it is evident that the Executive does not seriously hold to its obligation to safeguard the fundamental rights provided by the Bill of Rights. The Executive has failed to establish and implement a policy aimed at identifying and, where necessary, amending those laws which have been rendered unconstitutional by the introduction of the Bill of Rights. Instead, the Executive has abstained

from this obligation, despite the fact that the Bill of Rights was brought into existence by the ruling party. As a result of this abstinence on the part of the Executive, the burden of identifying and amending those laws contravening the Bill of Rights rests squarely on the shoulders of the individual citizen.

In the event that individuals fail to challenge the unconstitutionality of a law, either as a result of impetuosity or ignorance, the said laws continue to exist with the evident consequential detriments.

DECLARATION

We the representatives of governmental and civil society organisations in Eastern Africa,

1. Hamida Hassan Sheikh, Tanzania Women Lawyers Association (TAWLA)
2. Prof. Joseph Mbwiliza, Commissioner of Permanent Enquiry at the President's Office
3. Fatma Karume, Zanzibar Mkono of Company Advocates, Dar-Es-Salaam
4. Dr. Willy Mutunga, Executive Director Kenya Human Rights Commission
5. Martha Mugambi, Commissioner, Standing Committee on Human Rights
6. Okech-Owiti, Senior Lecturer, Faculty of Law, University of Nairobi
7. Denys Uwimana, Rwanda Human Rights Commission
8. Peace Uwineza, Commission for Unity and Reconciliation Rwanda
9. Francois Xavier Byuma, Liprodhor
10. Hon. Seso Semere, MP, Legal Committee , Ethiopian Parliament
11. Hon. Mehari Hailu, MP, Legal Committee, Ethiopian Parliament
12. Margaret Ssekaggya, Chair Uganda Human Rights Commission
13. Constantin Karusoke, Uganda Human Rights Commission
14. Faith Mwondha, Uganda Human Rights Commission
15. Jotham Tumwesigye, Inspector General of Government – IGG
16. Christine Mugerwa, Inspector General to Government – IGG
17. Hon. Winnie Byanyima, MP, FOWODE
18. Captain Wacha, UPDF, Human Rights Desk
19. Erastmus Turuhakua, Human Rights Complaints Desk at Police Headquarters
20. Norah Matovu Winyi, Human Rights Network - Uganda (HURINET)
21. Margaret Rubaire, Human Rights Network - Uganda (HURINET)
22. M. Nassali Ssemakula, Uganda Association of Women Lawyers FIDA(U)
23. Margaret Kalule Uganda Association of Women Lawyers – FIDA(U)
24. Prof. Oloka Onyango Faculty of Law, Makerere University

25. Prof. Charles Bwana Head of Department of Political Science, Makerere University
26. J.K. Zirambazimbule , Uganda Prisons Aid Foundation
27. Mary Kabogoza, Foundation for Human Rights Initiative
28. Sheila Muwanga, Foundation for Human Rights Initiative
29. Ernest Niyongira, Centre for the Treatment and rehabilitation of Torture Victims – ACTV
30. Safia Nalule, Disabled Women's National Organisation – DWNRO
31. Dr. Rebecca Nyonyintono, African Network for the Prevention and Protection against Child Abuse and Neglect – ANPPCAN
32. Hilda Tomanya, ACFODE
33. Jaqueline A. Mugisha, Uganda Gender Resource Centre

Meeting at the International Nile Conference Centre Kampala, Uganda on November 1st to 3rd 1999, agree as follows:

1. That we hereby establish the Eastern Africa Human Rights Network;
2. That the Network membership shall be open to all human rights governmental and civil society organisations in the Eastern Africa region;
3. That the network shall be co-ordinated by a steering committee to be elected at the next consultative meeting;
4. That we hereby establish a constituency representative task force composed of seven persons from Uganda to:
   - 4.1 Develop constitutional principles for both the network and the steering committee to be tabled at the next consultative meeting,
   - 4.2 Develop the agenda for the next consultative meeting,
   - 4.3 Develop a draft strategic plan for the network to be tabled at the next consecutive meeting;
5. That the task force shall convene a meeting of the network not later than the beginning of February 2000;
6. That each country here represented shall designate one person to act as the contact person to the task force;
7. That we dedicate ourselves to the protection and promotion of human rights in the Eastern African region through an inclusive and participatory process.

Agreed this 3rd Day of November, 1999, Kampala-Uganda