The Search for a National Consensus
The Making of the 1995 Uganda Constitution

Benjamin J. Odoki
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About the Author

Benjamin Joses Odoki is the Chief Justice of Uganda. He was born in Busia District, Eastern Uganda in 1943. He received his early education in Busia before proceeding to Kings College Budo for his secondary education. He studied law at the University of Dar es Salaam where he graduated in 1969 with a Bachelor of Laws Degree. He acquired a Doctorate of laws Honoris Causa; Common Wealth University.

He worked with the Attorney General’s Chambers from 1969 as a State Attorney, until he joined the Law Development Centre as a Senior Lecturer to start the pre-admission, Postgraduate Bar Courses in 1972.

In 1974 he was appointed Director of the Law Development Centre and helped to build the legal profession after the expulsion of the Asian and British lawyers from Uganda. During this period he attended several courses abroad and was an International Fellow at the United Nations (UN) Office Geneva in 1974 and a Study Fellow at the Institute of Development Studies at the University of Sussex, United Kingdom (UK) in 1975. He was also a part-time lecturer at Makerere University.

In June 1978, Odoki was appointed a Judge of the High Court just before the overthrow of Amin’s regime in April 1979. He was among the five judges who presided over Constitutional Petition No. 1 of 1979 to determine whether the removal of Professor Lule from the office of President of Uganda was against the Constitution.

In 1981, Odoki was appointed the Director of Public Prosecutions in the Ministry of Justice with a mandate to reorganise and rebuild the department to support efforts to restore the rule of law in the country. One of his assignments was to prosecute those persons who had committed atrocities during the regime of Idi Amin. He returned to the High Court in 1984 after accomplishing his task.

Justice Odoki was elevated to the Supreme Court in 1986, as one of the first judges to be appointed or promoted by the National Resistance Movement (NRM) Government. In 1987 he was one of the three judges appointed to investigate the conduct of Justice E. Oteng and recommend whether he should be removed from office.
In 1989, Justice Odoki was appointed Chairman of the Uganda Constitutional Commission (UCC), and his contribution to the process is the subject of this book. He returned to the Supreme Court in 1993 after successfully completing the assignment.

Justice Odoki was appointed the first Chairperson of the newly reconstituted and independent Judicial Service Commission, separate from the Judiciary and not headed by the Chief Justice. During his tenure, the Commission succeeded in appointing Judges to new posts established by the new Constitution, for instance, in the newly created Court of Appeal. The Commission was given a solid foundation on which to operate effectively.

His tenure of office as Chairperson ended in November 2000. In February 2001, Justice Odoki was appointed the Chief Justice of Uganda, replacing Justice Wambuzi on his retirement. In March 2001, Justice Odoki had to start his tenure by presiding over an Election Petition by (Rtd) Col Dr Kiiza Besigye, challenging the election of President Museveni. The petition was lost by a majority of 3 to 2 of Justices of the Supreme Court. He has presided over several Constitutional Appeals in the Supreme Court which have had significant impact on the promotion of democracy, constitutionalism and the rule of law in the country.

Justice Odoki has been consulted by several countries in the structuring of their constitutional review processes, including Kenya, Rwanda, South Africa, and Swaziland. He has acted as a consultant to the Government of Uganda, World Bank and Commonwealth Secretariat on legal sector reforms, and on democracy and human rights.

He headed the first ever study on the Legal Sector Investment Programme which led to the establishment of Justice, Law and Order Sector-wide Programme (SWAP), and also the Review of Legal Education Training and Accreditation in Uganda (1995) which resulted in fundamental reforms to broaden, liberalise and improve access to legal education. He had also been a consultant on the study of the Reform of the Commercial Justice System, and Professionalisation of the Bench.

Justice Odoki has chaired and has been a member of many commissions and committees. He has chaired the Law Council, which is responsible for regulating and controlling the legal
profession, the Editorial Board of the Uganda Law Reports, and the Rules Committee of the Judiciary. He has served as a member of Makerere University Council, and Chairman of its Students Disciplinary Committee, which contributed greatly to the restoration of student discipline on the campus, from 1995 to 2000.

He is a member of several national and international organisations including the World Jurist Association, the Commonwealth Lawyers Association, the Southern African Judges Commission, the Judicial Group on Strengthening Judicial Integrity and the Permanent Court of Arbitration, the Hague.

Justice Odoki is widely travelled and has presented papers at numerous conferences. He is a prolific writer. He has published several books and many articles in local and international journals. Among his published books are: *A Guide to Criminal Procedure in Uganda; An Introduction to Judicial Conduct and Practice; A Guide to the Legal Profession in Uganda* and *Criminal Investigation and Prosecution*.

He has received several awards in recognition of his contribution to constitutional development, the legal profession and the rule of law in Uganda. Among the honours he has received are the Order of Merit awarded by Old Budonians; the Award of Merit by the Uganda Law Society and the Distinguished Jurist Award from the National Association of Democratic Lawyers of Nigeria.
Members of the Uganda
Constitutional Commission
1989-1993

The Hon. Justice Benjamin J. Odoki: **Chairman**
Professor Dan Muguwa Mudoola: **Vice Chairman**
Rev. Dr John Mary Waliggo: **Secretary**
Mr S. Wenkere Kisembo: **Assistant Secretary**

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Mr George P. Ufoyuru
Hon. Sam Kirya Gole
Acknowledgements

I want to express my gratitude to H. E. the President of the Republic of Uganda, Yoweri K. Museveni, and his Government for entrusting me with the responsibility of heading the Uganda Constitutional Commission and steering the process of making a popular and democratic constitution for Uganda. I must acknowledge the unreserved support I received from the President personally and from his Government in general during this historic process.

In particular I must thank the various ministers responsible for Constitutional Affairs with whom I worked and who endeavoured to provide political support and the needed resources for our work. Special mention must be made of Mr S. K. Njuba, former Minister of Constitutional Affairs and Mr A. K. Mayanja, former Third Deputy Prime Minister/Minister of Justice and Constitutional Affairs/Attorney General.

My gratitude is extended to all members of the Commission for the unbridled confidence and co-operation that they extended to me as their team leader. I extend my apologies to any Commissioner I may have wronged or treated unfairly. For me it was a pleasure and honour to work with each of them.

In similar vein I thank the entire staff of the Commission for the committed support they provided me during the exercise.

I am grateful to my family, particularly my late wife, Christine who was a tower of strength during the period I was in the Commission and my wife Veronica and our four children for the encouragement and support during the time of writing this book.

I must pay tribute to Kituo Cha Katiba and Ford Foundation for persuading me to write this book at this point in time and for funding the project. Particular mention must be made of Professor Julius Ihonvbere who was at the time Programme Officer at the Ford Foundation, Lady Justice Solome B. Bbosa then Chairperson of Kituo Cha Katiba, and Ms Maria Nassali, Executive Director Kituo Cha Katiba for putting this project together and for their continued support and encouragement. I thank Ms Edith Kibalama for providing research services.
I am grateful to Professor Frederick Jjuuko, the consultant to the project, for his invaluable advice, support and encouragement.

I must thank Professor John Mary Waliggo, former Secretary to the Constitutional Commission for perusing the first draft of the book and giving me very useful comments, which helped improve the book.

I wish to pay tribute to Dr Tade Aina, Regional Representative, Ford Foundation, Nairobi Office for preparing the Preface to the book and for his personal encouragement.

Lastly, I thank my secretaries for typing the first drafts of this book with dedication.

While I have received assistance from the various persons mentioned above, the various opinions expressed in this book, shortcomings, mistakes or errors which may be found are entirely my own responsibility.

BJO
December 2004
Preface

Narratives of a Constitution Maker

Many educated Africans are more conversant with the stories of constitution making in the United States of America and France than they are with those of Africa. They have read about the contributions of George Washington, Thomas Jefferson and De Tocqueville. Many Africans know about the views of Rousseau, Locke and Hobbes on the social contract and the underlying philosophical and theoretical underpinnings of their views on governance and politics. However, very few, particularly in today’s post-nationalist era, know about or have bothered to find out the thoughts and experiences of Africans on the making of their nations and the building of their polities. This is despite the extensive amount of written material that exists on the works, thoughts and practices of African leaders such as Julius Nyerere, Kwame Nkrumah, Leopold Sedar Senghor, Sekou Toure, Obafemi Awolowo, Kenneth Kaunda, Jaramogi Oginga Odinga, and others on a wide range of issues such as political independence and governance.

More significantly, the first wave of constitution-making in sub-Saharan Africa particularly in ex-British colonies came out of the series of meetings and agreements known as the Lancaster House talks. Surprisingly, few Africans know about or have read about the process that guided the making of the Independence and Republican Constitutions of their countries. Yet a recognisable key deficiency of the politics of nation-building and development in contemporary Africa has been the failure to construct a national consensus or an enduring hegemonic position around what constitutes the nation, its guiding vision, direction and charter. Whether by accident or design, the Independence Constitutions that were produced through the Lancaster House events have since been transformed and changed or have had both their letter and spirit distorted and perverted through a series of political acts such as military coups, one-party states, personal rule and other forms of authoritarianism and dictatorship. As a result, the original charters are no longer living documents – if ever they were – that provide
guidance and direction for the organisation of political and social life and the management of states. These early constitutions have either been scrapped and replaced by decrees and presidential proclamations or have become totally irrelevant in the context of wars, crises and the absence of the rule of just law that has marked the recent history of African polities and their politics.

The clamour in Africa from the early 1990s with what has been termed the second wave of democratisation therefore included the re-negotiation and reconstruction of national consensus and direction through sovereign and other national conferences and other forms of constitution-making endeavours. A key element of the second wave is the struggles for inclusion and participation of all parts and sectors of the society in the making and re-making of the constitutions. This book by Justice B. Odoki is a testimony and narrative of one such effort – the Ugandan experience. It is also an important contribution to the African and global literature on the making of constitutions, written by a person who can be considered a participant-observer.

This book tells us how a group of dedicated and committed patriots and professionals seized the time and space provided by a regime still in its reform phase and used it in spite of all the obstacles and opposition provided by several vested interests both within and outside state circles, to fashion out an optimally participatory constitution-making process in the context of the Uganda in which they lived at that time. In its very detailed narrative that in places and at times gives you the impression of a ‘how to do it’ manual, Justice Odoki tells an amazing and rich story that takes us from the selection of the Commission’s members to their organisation of their work, their logistics, travels and consultative meetings, to the discussions of substantive and legal issues, the role of vested interests, the functions and process of the Constituent Assembly (CA) and the finalisation and legislation of the document. In a carefully crafted, accessible style over twelve chapters that show a judge’s tireless attention to detail and considerable emotional restraint in what was obviously a heavily politicised and emotional situation, Justice Odoki tells the story of what he called a ‘uniquely Ugandan’ Constitution, and this is how it should rightly be in the process of democratic constitution-making. It should be the production of a living document with the
necessary vision and sufficient flexibility and capacity to provide guidance and direction for the conduct of national politics. It should also be an expression of the boundless aspirations and recognised limitations of where the people are.

This book attempts, in many ways without being ponderous or preachy, to provide us with stories about how Ugandans in the making of the 1995 Constitution, attempted to strike the difficult balances between their dreams and their national realities; the process and substance of constitution-making; and the construction of a future that recognises and respects their past. The outcome was not a perfect document and did not satisfy all parties and actors in the Ugandan political arena but it was a living document that provided hope, energy and optimism for those who hoped to operate it. This is why it is a story worth telling and a testimony worth documenting. Beneath its technical detail, lies a real testimony to a Ugandan moment of hope and real struggle with democratic possibilities and promise that some say no longer exists today, particularly because there are signs of strong currents of infidelity to the spirit that bred and nurtured the constitution-making process.

This is why in my view, this is an important book not only about process, legal and political provisions and substance but also the spirit and context of democratic reforms and transitions that often turn out to be very brief moments and episodes in the history of nation-building in Africa.

More than telling us about how Uganda made a participatory constitution, the sub-text in this book is about how we can create and ensure enduring and sustainable democratic moments through the building of relevant democratic and participatory institutions, the rooting of democratic values and culture and the creation of leadership that transcends the surrender to self-service or/and the delusion of indispensability. Enduring democratic institutions cannot be built around individuals and personalities and must transcend ethnic, religious and other forms of political and cultural identities and divisions. The Ugandan experience here shows us that this is not an easy task and that it is fraught with real and physical danger and threats to those who struggle for meaningful participatory democratic change. Nevertheless, it shows that it
can be done and above all, once achieved it must be sustained and enriched within the context of the history and conditions of existence of the citizens of the country. While all of these contain specific Ugandan elements, Justice Odoki’s book reaffirms the universal human struggle for a better society through the active construction and reconstruction of political organisation and systems in the pursuit of the welfare of all citizens.

The strength of this book that documents the Ugandan experience with constitution-making is not only in the detailed narrative of the process and its substance but also in the fact that it represents a uniquely Ugandan documentation of a Ugandan experiment. It contains within it not only the story but the hope that East Africans, indeed all Africans, can construct a participatory living constitution and more significantly, keep alive the spirit and substance of participatory democratic governance.

Tade Aina
Nairobi, Kenya
November 2004
It is a particular honour for me to have been asked to be the keynote speaker today at the launch of Chief Justice Odoki’s scholarly account of the making of Uganda’s constitution. The book we launch, *The Search for a National Consensus*, is a moving account of the events leading up to the adoption of Uganda’s Constitution of 1995. No one is better able than Chief Justice Odoki to tell this story. He is a most distinguished jurist whose reputation extends throughout and far beyond the borders of his country. He chaired the Constitutional Commission that was intimately involved in the drafting of the constitution. He is a Ugandan and he knows the trials and tribulations to which the people of his country have been exposed, first under colonialism, and later under despotic regimes. He knows his country well, the feelings of his people, the suffering they have experienced and their aspirations for the future. This is the story he tells in *The Search for a National Consensus*.

A little less than 60 years ago, representatives of governments of countries from around the world met in San Francisco to establish the United Nations. They adopted the Charter of the organisation in which they expressed their determination to reaffirm “faith in human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”. Some three years later the United Nations adopted the Universal Declaration of Human Rights, proclaiming that “the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”.

This was the beginning of a process that has gained strength over the years. Although there have been setbacks and betrayals in different parts of the world of the commitments made to promote
respect for the observance of fundamental human rights and freedoms, including genocides, brutal wars and gross abuses of human rights, substantial progress has been made over the past fifty years towards the acceptance internationally of two principles stated in the preamble to the Universal Declaration of Human rights. First, that “it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law”. And secondly, that “a common understanding of these rights and freedoms is of the greatest importance for the full realisation of the pledge” made by member states to promote universal respect for and observance of human rights and fundamental freedoms. I will come back to these two principles during the course of this address. They are foundational to constitutionalism and comity between nations on which the aspiration of freedom, justice and peace within the world depends.

The period since the end of the Second World War has been the era of constitutionalism, as more and more nations have committed themselves to the principles of democracy, to the separation of powers between different arms of government, to constitutional guarantees of fundamental rights and freedoms, and to the rule of law. Looking back, we can see that a driving force for this has been the suffering of people who have been subjects of unjust regimes and, having shaken off oppression, have been determined to ensure that this does not happen again. We saw this after the Second World War in the constitutions of Germany, Italy and Japan; we saw it after the collapse of fascism in Spain and Portugal; we saw it after the collapse of authoritarian regimes in South America; we saw it after the collapse of communism in Eastern Europe; and we have seen it in our own continent recently in Namibia, South Africa, Malawi and, of course, Uganda.

A constitution is a framework for government. It defines the institutions of the state, the power vested in them, the way in which such power must be exercised, its limits and the rules that must be observed by those in whom power is vested. But when we talk of constitutionalism we mean more than this. Constitutionalism recognises that sovereignty resides in the people of a country and that power must be exercised in their interests and ultimately
subject to their control. There are different ways of achieving this, but the essence of constitutionalism is described lucidly by Professor Louis Henkin, one of the great constitutional scholars of our time as a government according to a constitution, which declares the sovereignty of the people and derives its authority from the will of the people. It prescribes a blueprint for representative government responsible and accountable to the people through universal suffrage at periodical elections. Government authority is to be exercised only in accordance with law established pursuant to constitutional processes and consistent with constitutional prescriptions and limitations. Government is for the people but is limited by a bill of individual rights....Constitutionalism implies also that the constitution cannot be suspended, circumvented or disregarded by political organs of government, and that is can be amended only by procedures appropriate to change of constitutional character and that give effect to the will of the people acting in a constitutional mode. [Louis Henkin, *Constitutions and the Elements of Constitutionalism*, Occasional Paper series November 1993 (Reprinted 2002) pages 1-2]

A necessary consequence of this is that public authority can be legitimately exercised only in accordance with the constitution. There can be no extra-constitutional government, no exercise of public authority by any person or institution not designated pursuant to the constitution. There can be no constitution in office beyond the term for which officials were elected or appointed. [Id, page 2]

Although this is the essence of constitutionalism, the detailed structures and provisions necessary to give effect to these principles will differ from country to country. You do not buy constitutions off the shelf on the basis that one size fits all. Constitutions freely adopted are shaped by history, by the struggles out of which the constitution was born, and by the nation’s aspirations for its future. It has often been said that a constitution is the soul of the nation. The late Justice Mahomed, with characteristic eloquence, said in one of his judgments in the South African Constitutional Court that All constitutions seek to articulate, with differing degrees of intensity and detail, the shared aspirations of the nation; the values which bind its people, and which discipline its government and its national institutions; the basic premises upon which judicial, legislative and executive power is to be wielded; the constitutional limits and the
conditions upon which that power is to be exercised; the national ethos which defines and regulates that exercise; and the moral and ethical direction which the nation has identified for its future.

[S.V. Makwanyane 1995 (6) BCLR 665 (CC), para 262]

This was the task that confronted the Ugandan Constitutional Commission when it was appointed by President Museveni in February 1989. History has not been kind to Uganda. Like all colonial countries its boundaries were artificial lines drawn on the map of Africa by colonial powers, which brought together in one country people from different backgrounds, ethnicities, religions and languages. This, together with colonial depredations and the uneven development and shortage of resources associated with this, led to internal conflict. This is described sensitively and compellingly by Chief Justice Odoki.

What was probably the worst period was from 1971 until 1979, when General Amin was at the head of a military dictatorship. Chief Justice Odoki refers to this as a period “characterised by state terrorism, ethnic killing, extermination of political opponents, religious persecution, racial discrimination, and allocation of resources to his henchmen.” General Amin was driven from power in 1979, and was succeeded by President Milton Obote, who came to power through a disputed election. In turn, his regime was overthrown by a military junta which shortly afterwards, in 1986, was deposed by the National Resistance Army (NRA) led by President Museveni. There was then a rebellion in the northeast of the country by a group which came to be known as the Lord’s Resistance Army (LRA), which is still active in that region. In the northwest there was another insurgency conducted by a rebel group called the Allied Democratic Forces (ADF) which established bases in the Democratic Republic of Congo (DRC) from which it conducted raids into Uganda. These rebellions were not only the cause of instability in Uganda but also a source of considerable tension between Uganda and its neighbours in the northeast and the northwest.

Sadly, internal and external conflicts such as these, fuelled often by opportunistic interventions from outside by those in search of wealth and access to resources, have been widespread in Africa. It has been a curse that has dogged our continent for the past fifty years; a curse that has impoverished and destabilised
many countries, and has led to massive suffering of children and innocent people caught up in the conflicts that have taken place. We see that still in countries not far from where we are today. But there is a difference. The people of most African countries, and their leaders, want change. They want an end to war and poverty; they want to live in peace with themselves and their neighbours; they want growth and development. This is the mission of the African Union and the goal of The New Partnership for Africa’s Development (NEPAD). Constitutionalism is one of the building blocks for the achievement of these aspirations.

It was, however, at an earlier time against the background of the ongoing conflict to which I have referred that President Museveni’s NRM came to power, and later appointed the Constitutional Commission chaired by Justice Odoki to make preparations for the drafting of a democratic constitution for Uganda. The Search for a National Consensus meticulously tracks the subsequent course of events leading up to the adoption of the Ugandan constitution in 1995.

Reading this account, I could not help but recall what was happening in South Africa at that time. Between 1990 and 1996 we, too, were engaged in a similar exercise, first in drafting an interim constitution to provide the framework for the transition from apartheid to democracy, and then in drafting a final constitution to entrench the democracy and human rights on which our future would be built. In some respects the process we followed was similar to the process in Uganda; in other respects it was different. In some respects the outcome and constitutional structure were similar to that in Uganda; in other respects it was different. But in both of our countries there was one thing that we shared – a determination to build our future on constitutionalism and to do so in the light of our own histories and the needs of our own countries. And in the process to be as inclusive as reasonably possible so that different voices could be heard and different interests be taken into account in formulating the constitutions that were ultimately adopted.
In The Search for a National Consensus, Chief Justice Odoki writes that,

The challenge that faced Ugandans was to forget and forgive the past, to learn from their past mistakes, to embrace democratic values of
tolerance of diverse views, to cultivate the spirit of give and take and compromise, and the acceptance of majority views while respecting the views of the minority, and to agree to make a fresh start. [page 208]

I might take issue with “forgive and forget” for it seems to me to be important when we build for the future that we acknowledge and come to terms with our past. We cannot and should not forget our past; we can, however, come to terms with it, and in reading *The Search for a National Consensus* it seems to me that this is what permeated the work of Chief Justice Odoki’s Constitutional Commission. There was no attempt to forget or hide the past. It was acknowledged, and is described by Chief Justice Odoki thus:

Uganda had, in a way, come to represent the worst forms of aberrations associated with internal conflicts. It had more than its share of natural and man-made disasters. Many of the elements – tyranny, violation of human rights, genocide, state terrorism, civil war – that contribute to its specificity were also endemic in many societies and incipient in most others. The issues involved in such internal conflicts were primarily questions of political power. They manifested themselves in ethnicity, minority or secessionist claims or demands for autonomy or issues of ethnicity mixed with questions of religion. [page 201]

He identifies issues that had to be confronted. Ideological conflicts, initially having their roots in the Cold War, nationalism, and later in attempts to come to terms with market economies; ethnic conflicts in various institutions including political parties and the army; religious conflicts which gave rise to competing political parties; cultural conflicts between monarchical and non-monarchical societies; economic conflicts arising out of uneven and unbalanced development which could be traced back to colonial times, and to policies of post-colonial governments; and disputes over land, land policies and the allocation of resources. And possibly as a consequence of this, a suspicion of others, and of their motives. In describing these tensions Chief Justice Odoki emphasises that they were not of recent origin. He refers to the *Munster Report,* which made proposals for the Independence Constitution of 1962, which included this comment:

No one who examined Uganda’s political and social life could fail to be disturbed by one prominent characteristic: The unwillingness to compromise. [page 209]
The hard task of the Constitutional Commission, which had to be carried out against this background, was to promote compromise. In doing so it was mandated by the statute under which it was established “to create public awareness about constitutional issues and to seek the views of the general public by holding public meetings and debates, seminars, workshops and any other form of collecting public views” [page 48]. In effect, the work of the commission had three main components: education, consensus-building and drafting.

It embarked on a nationwide education programme to inform people of the issues. It did so through seminars, workshops, and public discussions organised by itself, and by encouraging different interest groups in civil society to do so too. It was, as Chief Justice Odoki says, “a mammoth task”. He says:

We first organised internal seminars for the Commissioners so that we could familiarise ourselves with the task and issues at hand and form a common attitude and objective. These were followed by district seminars held in all 34 districts of Uganda at the time to brief local civic and opinion leaders about the process and the constitutional issues to be addressed. After the district seminars we organised institutional seminars in schools, colleges and institutions of higher learning. At the same time we conducted seminars for special interest groups like workers, women, professionals and security agencies. [page 48]

Seminars were conducted in each of the 800 sub-counties of Uganda and the participants were asked to take the discussions further and to prepare written memoranda expressing their views on the issues that were important to them. These memoranda were then submitted to the commission and provided materials from which the committee could pursue its goal of searching for consensus.

This was not as easy as it may sound. Almost two and a half years of the commission’s work was devoted to this part of the process. There were major logistical problems relating to transport, accommodation, security and funding, and a great deal of hard work, involving not only long hours but also considerable skills in diplomacy.

The next stage was to distil the information to see where there was broad consensus and where there were material differences,
and then to address the differences in an attempt to find consensus. Consensus, according to Chief Justice Odoki,

is ... the African method of settling disputes by listening to everyone and taking into account all views. It is a painstaking exercise, which is most rewarding in the end because it produces no losers since all are winners, and promotes legitimacy and acceptable decisions. Consensus instil the qualities of patience, tolerance and compromise. [page 166]

Bearing in mind the inability in the past to secure compromises over political issues, the process was inevitably going to be a protracted one.

A striving for consensus does not mean that all must agree on the outcome. Rather, it implies a search for a way of reconciling divergent views and solutions, which if not unanimous, at least have enough support to enable the drafting process to move forward towards an outcome that is legitimate and acceptable. In South Africa we called this “sufficient consensus”, and as I understand the Uganda process, this was the goal that the commission set for itself, and was the way it functioned – hence the title of the book.

It appears that there was much on which there was a broad consensus. For instance, that there should be a democratic system of government, an independent judiciary, respect for constitutionalism and the rule of law, free and fair elections, decentralisation of powers, the proper use and control of public finance and development, accountability of leaders, and control and discipline of the armed forces [pages 182-185]. These are important framework issues which provided a solid base on which to develop the constitution. There were, however, a number of intractable issues, to which Chief Justice Odoki draws attention, which had to be confronted. These include the national language, the system of land tenure, the issue of capital punishment, citizenship requirements, the precise nature of the political system, the form of government, the role of the army in national politics, and the role of traditional leaders. In passing I would mention that though some were peculiar to Uganda’s own history, many of the same controversial issues were the subject of protracted debate in the South African constitutional negotiations.

Chief Justice Odoki says that the resolution of these controversial issues was one of the most challenging tasks that the Commission
experienced. He describes the debates, the attempt to find solutions and says that, ultimately, the recommendations made by the commission “acknowledge the absence of consensus and the need to give time for such consensus to evolve” [page 228]. The Commission sought to achieve this by proposing transitional measures and making other recommendations that left room for further debate at national level.

The Commission translated its recommendations into the form of a Draft Constitution and recommended that a Constituent Assembly, freely elected under the supervision of an independent body, be established to consider its recommendations and to adopt a new constitution. This recommendation was accepted by government and legislation was passed to make provision for a Constituent Assembly to be established. Elections were held for this purpose and a CA was constituted. The assembly agreed that it would seek consensus but where this could not be achieved the disputed issue would be put to the vote, requiring a two-thirds majority to be adopted. If the prescribed majority could not be obtained, provision was made for the disputed issue to be resolved by a national referendum. The process was thorough and the Constituent Assembly spent some 16 months over its deliberations. As matters turned out, there was no need for referenda. Although there were some differences, the Constituent Assembly agreed with most of the recommendations of the Constitutional Commission, and did so without having to resort to a referendum on any issue.

In some respects, the provisions of the constitution are open-ended and peculiar to Uganda and its history. For instance, it provides that the people of Uganda shall have the right to choose any democratic and representative political system, other than a one-party state. It mentions two specific types of political systems, that is, one in which there will be no participation by political parties and the other in which political parties will be involved.

Although the right to form and belong to political parties is guaranteed in the constitution [Article 69] and provision is made for the possibility of a multiparty political system, in which parties must adhere to principles of internal democracy in the conduct of their affairs, and account for the sources and use of their funds and assets, the constitution recognises that the initial political system
would be one in which political parties would not participate. This is known as the Movement System, which is defined in the constitution as being broad-based, inclusive and non-partisan, in which individuals stand for election on the basis of merit rather than membership of a political party.

The constitution made specific provision for the continuation of this system, which was the political system in place when the constitution was adopted, and prescribed transitional provisional provisions requiring the first parliamentary and presidential elections to be held according to this system [pages 327-329]. Political parties were thus not entitled to participate in the first elections or to support the candidacy of any candidate. The constitution provides, however, that the political system can be changed by a referendum called pursuant to a resolution supported by at least fifty per cent of the Members of Parliament, or other possibly more stringent measures, involving district councils or voters’ petitions.

An unusual feature of Uganda’s constitution is the formulation and setting out in some detail of national objectives and directive principles of state policy. These objectives and principles are to guide all organs and agencies of state, and are declared to be relevant to the implementation of policies, as well as to the interpretation of the constitution and other laws.

Although other national constitutions, such as those of Ireland, India and Namibia, have made use of the technique of recording directive principles of state policy, none are as comprehensive as those contained in the Uganda Constitution. They are dealt with in twenty nine articles, with numerous sub-paragraphs, covering an expansive field, starting by indentifying certain democratic principles of government and ending with the listing of certain duties of citizens. As the jurisprudence of the Indian courts has shown, these principles, whilst guiding organs and agencies of state, are likely also to be of particular importance to courts in deciding cases concerning the interpretation of the constitution and other laws.

I must come back now to where I started, to constitutionalism. The Ugandan constitution states specifically that the people are sovereign, and that all power and authority of the government
and its organs is derived from the people [Article 1]. It contains an extensive, enforceable bill of rights. These rights are declared to be inherent in people and not the gift of government [Chapter 4]. It declares the constitution to be the supreme law binding on all persons and all authorities [Article 2 (1)]. As a necessary corollary of this, the constitution also provides that all power of the government and its organs derives from the constitution [Article 1 (3)], that the judicial power is vested in the courts [Article 126 (1)], that courts are independent [Article 128 (1)], not subject to the control or direction of any person or authority [id], and that they must exercise their powers in accordance with the law [Article 126 (1)]. It provides a blueprint for representative and accountable government, through universal suffrage and periodic elections [Chapters 6 and 7]. Although the temporary exclusion of political parties from the democratic process may raise issues relevant to constitutionalism, the Uganda Constitution is a bold attempt to move away from an authoritarian past and to embrace constitutionalism and democracy.

The 1995 Constitution of Uganda satisfies most of the essential requirements of constitutionalism and, in particular, the requirement that there be an independent judiciary and respect for the rule of law. These are two of the pillars on which respect for human rights and fundamental freedoms can be established in domestic law – they are means of giving effect to the goals proclaimed in the United Nations Charter and in the Universal Declaration of Human Rights, that “the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”

The existence of a culture of constitutionalism and respect for human rights leads to an awareness on the part of ordinary people of the rights that they have, and of their obligation to respect the rights of others. Judicial officers have a crucial role to play in the process of developing this culture. It is appropriate, therefore, that the launch of The Search for a National Consensus should coincide with a meeting of the Southern African Judges’ Commission that is to be held in Uganda. This Association represents the judiciaries of Angola, Botswana, Kenya, Lesotho, Malawi, Mozambique,
Mauritius, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe.

The objects of the Commission include the promotion of the rule of law, democracy and the independence of the courts, and also the promotion of contact and co-operation among the courts of the region. The Commission works closely with the European Commission for Democracy through Law (known as the Venice Commission), an organ of the Council of Europe, established as a consultative body on issues of constitutionalism and democratisation. This international discourse around constitutionalism gives effect to one of the commitments made in the Universal declaration of Human Rights to develop “a common understanding of” the fundamental rights and freedoms in the declaration, which is said to be “of the greatest importance for the full realisation of the pledge” made by member states to promote universal respect for and observance of these rights and freedoms.

The history of colonialism and the failure by many post-colonial governments to put down the roots of democracy and respect for human rights has been the cause of much suffering in Africa. I referred earlier to the goals of the African Union and NEPAD, and the determination of African countries to chart a new course based on democracy and the rule of law. The goals of the Southern African Judges Commission are consistent with this purpose.

One of the principles of constitutionalism is the separation of powers. This is regarded as essential to prevent power accumulating in one centre. Experience shows that where there is absolute power, corruption and abuses of power are more likely to occur than where there are different centres of power, and where there are checks and balances in the way power is exercised. The Ugandan constitution meets this requirement by making provision for open and transparent government, and for the separation of powers between the legislature, the executive and the judiciary.

It is not the function of the judiciary to govern the country; on the other hand, the legislature and the executive are obliged to respect democracy and the provisions of the constitution from which they derive their power, and it is the duty of the courts to ensure that this is done. In a famous passage in his judgment in
Olmstead v. The United States [(1928)277 US 438] Justice Brandeis said:

   Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a law-breaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy.

Looking back on the history of our continent, and seeing at different times and places the lack of concern for human rights evinced by apartheid, military dictatorships, and corrupt regimes, I appreciate that leaders determined to exercise power without any concern for human rights and the rule of law, are unlikely to be deterred by judges who say that they are acting unlawfully. They are more likely to get rid of them, and to find other more compliant judges to take their place. But that said, the importance of judges asserting their independence, and insisting that the rule of law and fundamental human rights be respected, should not be underestimated. They provide not only a bulwark against the erosion of fundamental rights, but also a force for the promotion of a culture of respect for such rights.

   Like all who exercise public power, judges are bound by the constitutions of their countries. In our day-to-day work we are required to give effect to the provisions and values of these constitutions. In so doing we help to establish and maintain a culture of respect for human rights.

   Courts must uphold the law without fear, favour, or prejudice. If they defer to government when they ought not to do so, they fail to fulfil their constitutional duty. If they substitute their opinions for that of government where they are not entitled to do so, they undermine their legitimacy. A balance must, therefore, be struck between the different roles of the legislature, the executive and the judiciary, with each paying particular attention to the inter-relationship between them mandated by the constitution, and the deference that each owes to the other. How this is done is of particular importance to the standing of the courts, their efficacy, and the respect that their judgments command. It is crucial to constitutionalism.

   The open-ended constitution of Uganda contemplated that changes would be made, and Uganda is presently engaged in a
process of constitutional review. In The Search for a National Consensus, Chief Justice Odoki says:

Constitutionalism is a culture, a tradition which takes time to be firmly established. It has to be lived, nursed and developed. It is through constitutionalism that Ugandans will realise their vision to build a new socio-economic and political order based on the principles of unity, peace, equality, democracy, social justice and progress. [page 376]

He goes on to say:

The people of Uganda recognise that democracy is a journey and not a destination. Ugandans cannot achieve in 30 years or so, the same level of democracy and constitutionalism, which has taken the Americans 300 years to achieve. But Ugandans have made a firm commitment to embark on the journey to democracy and constitutionalism. This journey is not an irreversible process. Significant achievements have been made and Uganda may perhaps be beyond the faltering first steps. Nevertheless, challenges remain in the way, namely: weaning the political process from military influence and violence; ensuring peaceful and orderly and predictable political succession; eradicating corruption from political processes; and building viable and democratic institutions. [page 375]

The Southern African Judges Commission is glad to be meeting in Uganda at this time. We understand the difficulties to which Chief Justice Odoki refers about coming to terms with the past and in building viable democratic institutions. We face similar difficulties in our own countries. Constitutionalism is a process. Talking about that process in South Africa about two years ago, I said:

The impact of constitutionalism on law and government in South Africa is a huge canvas, many parts of which remain to be filled. Indeed, in the past nine years, we have only begun to sketch the outlines of the new legal order and an enormous amount of detailed work remains to be done. The work is never-ending, for law is not static. It evolves as responses are demanded to the changing needs of society and to the different issues that constantly arise in the complex world in which we live. The outlines are, however, sufficient to enable us to identify the contours of the picture that is likely to emerge. It is of a constitutional state in which the values of the Constitution permeate all aspects of our law.

Our Constitution offers a vision of the future. A society in which there will be social justice and respect for human rights, a society in which the basic needs of all our people will be met, in which we will live together in harmony, showing respect and concern for one
another. Because of our history there are structural impediments to the achievement of these goals. Millions of people are still without houses, education and jobs, and there can be little dignity in living under such conditions. Dignity, equality and freedom will only be achieved when the socioeconomic conditions are transformed to make this possible. This will take time. In the meantime government [I use government here to refer to the legislatures and executives at all levels of government] must give effect to its obligations under the Constitution to show respect and concern for those whose basic needs have to be met. The courts must give meaning to and apply the bill of rights and other provisions of the Constitution in the context of our history, the conditions prevailing in our society, and the transformative goals of the Constitution. The manner in which the government and the courts give effect to their constitutional obligations and in particular the way in which government action is taken and the law is applied and developed to promote the values of the Constitution have important implications for the process of transformation.

Uganda has committed itself to constitutionalism and has demonstrated that commitment by adopting a constitution that gives effect to the rule of law, entrenches human rights and freedoms and guarantees the independence of the judiciary. Uganda is now engaged in the process of constitutional review contemplated at the time the constitution was adopted. The successful completion of this process in a manner consistent with constitutionalism is important, not only for Uganda, but also for our continent. It will give substance to the objects of the African Union and will encourage support for NEPAD. It will demonstrate Africa’s commitment to constitutionalism and democracy.

For constitutionalism to take root the people of the country must be committed to its values. By treating each other with dignity, by insisting that those exercising public power do so in accordance with the constitution, by asserting their rights and respecting the rights of others, they strengthen the roots of constitutionalism and make it part of their culture. Organs of civil society, such as Kituo Cha Katiba, have a vital role to play in this process.

The Chief Justices of the Southern African Judges Commission are glad to be with you today, and join with you in congratulating Chief Justice Odoki on the immense contribution he has made and continues to make to Uganda and to constitutionalism in Africa.
I do not recall exactly whether I read about it in the papers or learnt about my appointment as Chair of the Constitution-Making Commission on radio. It was most probably from the papers. There had been no prior notification; I had not been consulted personally about my appointment.

A couple of days earlier, someone had more than hinted over the phone that my name had been considered for the position. My mind had dismissed this as the creation of the Kampala rumour mill, especially since I had been consulted on other names for the same Commission, such as that of the late Professor Dan Mudoola who eventually was appointed its Vice Chairman.

But it would be insincere to say that I was totally surprised. Looking at the possibilities within the judiciary I knew I could be counted among the possible candidates. I had heard that it had been agreed finally that the Commission would be chaired by a judge. Some of my colleagues on the bench had already served on Commissions but I had always shunned such work because I considered them too political. If I had been asked, I would have probably declined the job. I was not too happy with the appointment; I thought the exercise would be fraught with difficulties and implications. But I reassured and comforted myself with the hope that the resourcefulness and courage that a judge normally draws upon in his work would come in handy in this novel enterprise. As importantly, my family had no objection and my late wife proved to be very supportive at the time and throughout the life of the Commission.

Many of my friends, however, felt otherwise. There was a mixture of scepticism and genuine sympathy on their part. They thought that such an assignment was a very difficult and thankless job that could be accomplished only by an insider, a
Movement person, someone who had been part of the ‘struggle’. That scepticism was to endure right up to the end of the exercise. But I was just the leader of the team; a formidable team that would relentlessly and single-mindedly pursue the goal of a new constitution for the country.

Winning a match depends largely on the quality of the team selected to play the game. The team must have the capacity to win. It must be able to defeat the opposing team. Therefore those who have the responsibility to select the team must reckon with the challenges the team is bound to face and ensure that it is possessed of the skills and ability to successfully overcome them in order to be assured of victory.

The process of making a constitution was not a game but an important historic task with challenges and obstacles as well as opportunities. It had set objectives and a time frame. It had an agenda to be accomplished. The process had to be inclusive, accommodative, transparent, popular and legitimate. It was a challenge for those responsible for the selection of the team to ensure that it was equal to the task and would deliver acceptable results to the nation.

The members of the Commission were appointed by the President of Uganda in consultation with the Minister of Constitutional Affairs. The announcement of the appointment of the members of the Commission was made in February 1989. The Uganda Constitutional Statute 1988 set out the composition of the Commission, the qualifications of members and the procedure for their appointment. The team consisted of 21 members, comprising a chairman, vice chairman, a secretary and 18 other members. The only qualifications specified in the Statute were high integrity, intellectual capacity, special qualifications, expertise and experience.

I do not claim to have had much experience in constitutional law. I had studied the subject at the university like any other law student. I had also taught the subject at the Law Development Centre to the Diploma in Law students and administrative officers during the period 1972 to 1978. I had presided over some cases involving the interpretation and enforcement of the Constitution and human rights during my tenure as a judge of the High Court.
from 1978 to 1989. I had been a member of the panel of five judges of the Court of Appeal sitting as a Constitutional Court, who decided Constitutional Case No. 1 of 1979, filed by Ssemwogerere and Ssempebwa against Rugumayo and Omwony Ojwok challenging the removal of Professor Lule from the presidency. The other judges on that court were Chief Justice Wambuzi, Principal Judge Lubogo, Justice Asthana and Justice Manyindo. I had been appointed Justice of the Supreme Court in 1986 by the NRM Government and by 1989, I had acquired substantial experience as a senior judge of ten years’ standing. And although I did not have any experience in making a national constitution I had administrative, professional experience in managing legal institutions, acquired from my experience as Director of the Law Development Centre and as Director of Public Prosecutions. I had also served as Chairman of the Law Council, Chairman of the Law Development Centre Management Committee, and chaired the committee that made recommendations on the establishment of a law reform commission.

It was the experience I acquired in managing and chairing these institutions and committees that enabled me to supervise, manage, and preside over the work of the Commission efficiently. This experience included the selection and supervision of staff, budgeting and financial control, planning and implementing programmes and projects, preparing reports and formulating recommendations, drafting legislation, conducting meetings and proceedings, evaluating evidence and making findings and taking appropriate decisions in an impartial and objective manner. I had learnt how to be a good and effective team leader. But I was clearly humbled by the enormity and importance of the task in my hands because I was supposed to provide effective leadership to the Commission and give credibility to the entire constitution-making process. The future development of the country depended in a significant way on the outcome of the process.

It is a small world indeed. During my service in the various capacities I had met and worked with most of the members of the team and I was comforted to find that I knew all the ten lawyers who were on the Commission. I had also interacted with five other members who were not lawyers. I did not find it difficult to
acquaint myself with the members of the team I had not met before. We subsequently worked as a well co-ordinated and harmonious team. I found no difficulty in supervising, guiding and relating to any member of the team and none challenged my authority and decisions.

Professor Dan Muguwa Mudoola was appointed Vice Chairman of the Commission. He was a political scientist and the Director of the Makerere Institute of Social Research (MISR). He ably deputised me both administratively and intellectually. He chaired the Commission when I was absent. He also chaired the Appointments and Disciplinary Committee. He was uncompromising on the quality and discipline of staff. His outstanding contribution to the Commission was his chairmanship of the Editing Committee which prepared the Final Report of the Commission after recommendations and draft chapters of the Report had been approved by the plenary meetings of the Commission. The editing work involved the harmonisation of the text of the Report as a whole and cutting out repetitions or inconsistent parts to make it a coherent whole.

On Saturday 20th February, 1993 just as we were about to complete editing the final report, Mudoola was murdered in cold blood. He was fatally wounded and died a day later in Mulago Hospital. His son reported the attack to me and I rushed to the hospital where I found him in the Intensive Care Unit in a coma. I was devastated by the attack.

Mudoola remains one of the martyrs of the constitution-making process. The grenade attack which killed him took place at Wandegeya, a suburb of Kampala, killing him and two of his colleagues from Makerere University. They were having a drink outside a bar in the early hours of the evening when a grenade was hurled at him.

On the 24th February, I had the unenviable task of reading his eulogy at St Francis Chapel Makerere University. In the eulogy I said, amongst other things:

Professor Mudoola was affectionate, humble, tolerant, courteous and devoted to his work. He poured undeserved respect on me as he always referred to me as Mzee or Mukama wange (My boss) though we were age mates. He respected his colleagues, too, and was visibly upset when
one colleague was discourteous to another. He always drove his point home but was ready to concede or accept compromise when necessary. He was good at team work and a good team leader.

I talked about his deep understanding of the history and politics of Uganda, Africa and the world at large; his contribution in making clear many vague concepts and giving a fresh and contemporary interpretation of events, especially in Uganda. I also mentioned his pet subject of domesticating the military by integrating it in the national politics so that it did not feel marginalised. Mudoola had been much impressed with the integration of the military in the socio-political fabric of Tanzania. In his view, this provided one of the explanations for political stability there.

Professor Mudoola had also emphasised the need to build institutions for the peaceful resolution of conflicts. He attributed much of the instability in Uganda to the failure to regularise power in such a way that conflicts were resolved without the use of physical force. I also mentioned his modesty, simplicity, and generosity. All this was true. I tried to draw a portrait of the late professor which was as true to life as possible.

Mudoola will be specially remembered for insisting that at least one person with disabilities be included among the Constituent Assembly delegates. He appealed, ‘If you do this I shall be most satisfied!’ and we did; and the movement for Persons With Disabilities (PWDs) has grown stronger. Although his own right hand was atrophied, he was living proof that disability is not inability.

Mudoola cared deeply for his family and wanted to prepare for his retirement. He would say, ‘One must have a house, we are about to retire.’ He would often ask, ‘Mukama wange (my boss/sir), allow me to go out and make some money’ and he would proceed abroad on lecture circuits. It is as if he had a premonition of his impending premature death and hence the need to provide for his bereft family. Curiously, Mudoola strongly insisted on the inclusion of provisions in the Constitution intended to ensure the fair and efficient administration of the estates of deceased persons. We did include those provisions in the Draft Constitution, not knowing then that in the near future, the family of this good man would be in the situation he had tried to provide for. By the time of his death he had completed his house.
Mudoola was humble but firm when he presided or debated. He had a typical professorial image. He was the only Commissioner with a pipe. He was highly respectful towards me and was always courteous and willing to accept any assignment given to him. One such assignment was to represent me in Sigulu Islands on Lake Victoria, to hold a sub-county seminar. The journey had to be undertaken in a dugout canoe. This was a big risk for him and I appreciated the sacrifice he made. He also accompanied me on a number of seminars, for instance, in my home district of Busia.

When he presided, he was less patient with those who spent too long arguing a simple point or those who repeated arguments made by others, only wishing to be heard for the sake of the record. He was our resident expert on the military and educated us on civil-military relations and institution building. He loved quoting Samuel Huntington’s *Political Order in a Changing Society*. He published several articles in books such as *Uganda Now, Conflict Resolution in Uganda* and *Changing Uganda*. By the time of his death Mudoola had also completed writing his book *Religion, Ethnicity and Politics in Uganda*, published posthumously by Fountain Publishers in 1993.

After the requiem service, Mudoola was given a fitting burial at his ancestral home in Busoga. He is survived by his widow Irene, and four children. Two of the killers were arrested and convicted by the High Court of murder and attempted murder. Their sentences were confirmed by the Supreme Court.

The day of his death was the darkest day of the Commission. Fear gripped us all, especially as the reason or motive for his murder remained unknown. The Commission was only lucky that it had already submitted its Draft Constitution and the Report to the Government on 31st December, 1992.

The first Secretary to the Commission was Professor Phares Mukasa Mutibwa who at the time of his appointment was the Director of Research at the NRM Secretariat. He had served in the diplomatic service and taught history in various universities including Makerere University. He was responsible for setting up the Secretariat from scratch. Shortly afterwards, I joined him to strengthen the Secretariat by establishing the office of Chairman
The Team

on a full-time basis. For most of the time we were the only full-time Commissioners with offices.

Mutibwa’s first major responsibility was to prepare a timetable and programme. He was responsible for producing the first draft, containing the activities, facilities and resources needed to accomplish the programme. He was hardworking and presented well-considered proposals and reports. He enjoyed touring the country. He was very sociable and enjoyed himself when he had the time. He was an expert on the history of Uganda and the politics of the National Resistance Movement. He seems to have come into conflict with the Minister of Constitutional Affairs over the pace of the work of the Commission: the Minister thought it was too slow and considered that the Secretary needed to be replaced to expedite the work. In October 1990, Rev. Fr Dr John Mary Waliggo, a member of the Commission, was appointed to replace him although he remained on the team as a Commissioner.

Rev. Fr Dr Waliggo is a Roman Catholic priest who studied history at Cambridge and had been teaching at the Catholic University in Nairobi. He was Secretary to the Justice and Peace Commission at the Catholic Secretariat, Nsambya. He was quite a different personality from Professor Mutibwa. He was unassuming, disciplined, and a hardworking Commissioner who did a lot to expedite the work of the Commission through efficient management and through the effective supervision, and acquisition of more resources like transport and staff.

The reverend was a good communicator at seminars and a moderating and balancing influence in the discussions of the Commission. He was entirely objective and accommodative. He was uncompromising on matters of principle, and when some officials of the Commission embezzled some of the funds donated by Danish International Development Agency (DANIDA) for the completion of the exercise, he did not protect the staff but reported to appropriate authorities. The matter was investigated and the culprits were tried. At least one; the accountant, was convicted and sentenced to a prison term.

Rev. Fr Dr Waliggo will be remembered for supervising the writing of the various reports of the Commission, for ably servicing the various committees, and for his work in editing the Final
The Search for a National Consensus

Report, especially after the death of Professor Mudoola. He did a lot of research and writing in the area of human rights and political systems. He and Mr Med Kaggwa – a lawyer on the Commission – became household names from their popular weekly Luganda radio talk shows, explaining constitutional issues. I found him very dependable, respectful and ready to accept assignments. Since he was the only priest on the Commission, he was always called upon to lead us in prayer whenever occasion demanded it. Rev. Fr Dr Waliggo is now a Commissioner in the Uganda Human Rights Commission.

With the appointment of Rev. Fr Dr Waliggo as Secretary to the Commission, it was necessary to find an assistant to deal mainly with financial matters and Mr Wenkere Kisembo, a Commissioner, was appointed Assistant Secretary. The post did not exist in the Statute and therefore the appointment was administratively done by the Minister to strengthen the Secretariat and prevent the Secretary from being bogged down with financial matters.

Mr Kisembo was a retired civil servant with knowledge of public finance and accounting systems. He was directly responsible for preparing budgets and financial requirements for the Commission, approving payments and monitoring expenditure. The accounting officer was the Secretary to the Ministry of Constitutional Affairs who was not a member of the Commission. Kisembo performed well in this assignment. He exercised strict control over the disbursement of funds and accountability. He was not popular with staff on this account.

As a Commissioner, Mr Kisembo was a dispassionate person who held moderate views and was highly principled. His presentations were always mature and balanced. He was our expert on public finance and public service. He gave the Commission all the time it required and was always ready to accept additional assignments. He was very articulate, clear-minded, innovative, and very hardworking. He contributed a lot on public finance, public service and finances of local governments.

The rest of the seventeen Commissioners can be described under several categories: as lawyers, non-lawyers, and women. The non-lawyers included politicians, public servants and military officers.
The Commissioners represented various socio-political forces and interest groups in society, as well as the different regions and religions of Uganda.

I believe they also represented various political shades of opinion. There were those who were understood to belong to the Democratic Party (DP), the Uganda People’s Congress (UPC) and the Uganda Patriotic Movement (UPM). Some Commissioners were understood to be movementists and yet others were monarchists. A few were liberals and at least one was thought not to belong to any political party at all. However, once we assumed duties as the Commissioners, it was difficult to tell what opinions we each held or represented. We were all required to carry out our duties impartially and objectively and be guided only by the people’s views and the national interest. Our personal views or preferences were irrelevant: this was made clear to all of us at the beginning of our work and was insisted upon throughout the duration of the Commission.

The lawyers on the team were Mr Jonathan Kateera, Professor Edward Frederick Ssempebwa, Mr Constantine Rwaheru, Mr Jotham Tumwesigye, Dr Edward Khiddu Makubuya, Mr Justin Okot, Mrs Mary Immaculate Engena Maitum, Mrs Miria Matembe, Capt. Kale Kayihura and Mr Med Kaggwa. Mr Kateera, Mr Rwaheru, Mr Okot, and Professor Ssempebwa were private legal practitioners. Others were employed in the public sector. Dr Makubuya was teaching at the Faculty of Law, Makerere University, while Mrs Maitum taught at the Law Development Centre. Mr Kaggwa was employed as Legal Secretary to the Libyan Arab Bank, while Mrs Matembe was a member of the National Resistance Council (NRC) as woman representative for Mbarara District. Mr Tumwesigye was Director of the Legal Division in the NRM Secretariat, while Capt. Kale Kayihura was employed in the Office of the National Political Commissar of the NRA.

This was a rich diversity of experience, skills, and outlook among members of the same profession. There were those with substantial professional and practical experience in resolving legal disputes – those in private practice – and those who had experience in teaching and research and in intellectual and critical examination of legal and constitutional issues.
We had politicians who were lawmakers and knew the needs of the ordinary person – the voter – as well as government policies and programmes. The lawyers from the NRM and NRA were knowledgeable about the role of law and the constitution in advancing the Movement struggle and building a new constitutional order.

The lawyers on the team were all distinguished and experienced people. Kateera was a graduate of Harvard University and a senior advocate practising under the firm of Kateera and Kagumire Advocates (previously Hunter and Greig Advocates). He had been in private practice since he left law school. He had not worked in government or public service. His firm was one of the best in the country. I had worked with him when I was Director of the Law Development Centre where he was a part-time lecturer. He had also appeared before me in the High Court and Supreme Court. He was a very intelligent man, focused and his submissions were always brief and to the point. He was assigned to the group handling Northern Region and he carried out his assignment with commitment despite the insecurity caused by the rebel activities of Alice Lakwena’s Holy Spirit Movement and Joseph Kony’s LRA. He experienced several hardships but withstood them. He had a busy legal practice and missed some plenary sessions but we agreed that whenever I really wanted him to attend or to assign him duties he would always be available. And whenever I required him to attend to urgent and important matters he obliged. After the Commission’s work was finished, he returned to his private practice, but died a few years later, before the new Constitution was promulgated. He was buried in Lubowa Estate on Entebbe Road after a requiem service at All Saints Cathedral, Kampala which was attended by H.E. the President, and myself as well as many former members of our team. He is survived by a widow, Rose, and several children.

Mr Justin Okot was a senior advocate in private practice. I first met him in the Ministry of Justice in 1970 when he joined the Department of Public Prosecutions where I was a State Attorney. In the early seventies he was appointed Director General of East African Airways and in the mid-seventies was Managing Director of the Produce Marketing Board. After the fall of Idi Amin, he returned to private practice. He comes from Acholi in northern Uganda.
He was group leader for our team in the Northern Region. His selection as leader of the group was in part aimed at persuading the people in that region to participate in the consultation process in spite of the insecurity there. He did exceedingly well as is evidenced by the large number of people who turned up for seminars and the numerous memoranda received from them.

Mr Okot was an unassuming but articulate member of the team. He was mature and balanced, and was among the oldest members of the team. He devoted most of his time to the work of the Commission. He returned to private practice once more after our work and was subsequently appointed a member of the Constitutional Review Commission.

Professor Ssempebwa had taught at several universities including Dar es Salaam and Makerere before concentrating on his private practice in his firm of Katende, Ssempebwa & Co. Advocates, one of the biggest in Kampala. He had taught some of the lawyers on the Commission and was good at striking compromises. He was a calm and friendly member of the team with a sharp mind. He was an erudite writer and a balanced presenter. When the Vice Chairman and I were absent from a plenary meeting, he would chair it, because he was well respected by the Commissioners. He was group leader for Central Uganda where he came from: because it was felt that Buganda needed a tactful representative who understood its problems and in whom the people would have confidence as a person who understood and appreciated their cultural values and the ‘return of their things’ (Ebyaffe). He succeeded in bringing the Baganda on board and they actively participated in the process. The Commissioners found him very impressive in terms of his calmness and the articulate manner in which he made his prolific contributions. Professor Ssempebwa returned to private practice, but was later appointed to chair the Constitutional Review Commission, which has already submitted its report to Government.

Dr Khiddu Makubuya was an Associate Professor at the Faculty of Law Makerere University where he had acted as Dean of Law. He is reputed to have been the first Ugandan to obtain a first class degree at the Faculty of Law. I had worked with him before when
I was a part-time lecturer at the Faculty and later as an external examiner. I had also worked with him on the Law Council.

Dr Makubuya was full of humility and courtesy, and was friendly and always had an enigmatic smile. He was critical in his presentations and always looked at both sides of the issue. He spoke slowly and haltingly but clearly and firmly. He was good at throwing a controversial question on the floor and, as members responded to it with the vigour it demanded, he would make a tactical withdrawal until tempers had cooled down. He was the group leader for our team in north-western Uganda – the West Nile Region. It was a hardship assignment because of insecurity, poor accommodation and transport infrastructure. His team had to travel by air from Entebbe to Arua to carry out their work. He always told us what the people of Obonge, the remotest area in the region, wanted. After our work was completed, he returned to teaching and then private practice but soon joined politics and won a parliamentary seat in the 1996 general elections.

Mr Constantine Rwaheru was in private practice in Kabale before his appointment to the Commission. He was a senior advocate practising under Byamugisha and Rwaheru Advocates. He was my classmate at the Law School at the University of Dar es Salaam between 1966 and 1969. We joined the Department of Public Prosecutions as state attorneys together in 1969. After two years we were promoted to the rank of Senior State Attorney; while I was serving as Resident State Attorney Mbarara, he was Resident State Attorney in Fort Portal. I left the department to join the Law Development Centre in 1972 and soon after he left to join private practice.

Mr Rwaheru was a cool, placid and hardworking member of the team. His contributions during discussions were sound and considered. He was group leader of the team in Western Uganda. He was diligent and committed in his work. He will be distinctively remembered for his bushy white beard. He returned to private practice after the Commission completed its work. He was later appointed President of the Industrial Court, a post he held until he died a few years ago.

Mr Med Kaggwa had been a banker and was later elected to the NRC to represent Kawempe West. He thus combined political clout
with experience in law and banking. He was one of the youngest members of the Commission. He was energetic – but tended to be busy with his work in the bank before he became a member of NRC. He was soft-spoken and made contributions actively during discussions. He was responsible for raising the consciousness of the Commission on the question of the youth as an important constituency. He exhibited flexibility and balance on many issues. He will be remembered by the public for the very popular Luganda radio programmes he conducted with Rev. Fr Dr Waliggo. He was one of the members of the Commission who succeeded in being elected to the CA to debate our Draft Constitution. He was subsequently elected to Parliament and appointed Minister of State in the Office of the President. He is now a member of the East African Legislative Assembly.

Another lawyer-politician was Mrs Miria Matembe, one of the two women members of the Commission. The other woman member, Mrs Mary Maitum, is also a lawyer. These two women, different in their personality and temperament, ably represented the women of Uganda. They left no stone unturned to fight for the rights of women in the Constitution – and they succeeded. Mrs Matembe advocated gender-neutral language in the Constitution, which we did not adopt in the Draft Constitution, but was adopted by the Constituent Assembly in the final 1995 Constitution. Mrs Matembe has the combative style of a struggler, a style which she employed very effectively to drive her points home. She and Obwangor, another Commissioner, were difficult to stop until they had driven their points home. Any intervention or interruption by any member in Mrs Matembe’s presentation drew her full wrath. I had to protect her on several occasions. Her attitude was in keeping with her well-known struggle against laws and practices which discriminate or undermine the rights and dignity of women. She had called for the castration of men who defile young girls to remove their dangerous instruments. She was extremely hardworking and enthusiastic in her work and kept the team lively with her barbs against male chauvinism. She was one of the delegates elected to the CA. She was also subsequently elected to Parliament twice, and appointed the Minister of State for Gender and Integrity. She
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was later dropped from the cabinet, but was elected a member of the Pan African Parliament of the African Union.

Mrs Mary Maitum was, on the other hand, a modest and thoughtful woman who presented her arguments calmly but firmly. She was quite strong and convincing on women rights and was balanced on various issues considered by the Commission. She was almost a complete contrast to Mrs Matembe, but the two complemented each other; they worked together very harmoniously in solidarity and visibly supported each other.

I believe most members became more gender sensitive because of these two women. All the women – if not the men – in the country owe them a debt for the gender sensitive tone and content of the Constitution. Lady Justice Maitum is now a judge of the High Court and earlier worked as a commissioner in the Electoral Commission.

The non-lawyers in the Commission included the politicians – members of the NRC like Cuthbert Obwangor from Teso who had attended the Independence Constitutional Conference in London in 1961 and had been a Cabinet Minister of Justice during the Obote I Government. As the oldest member of the Commission, he was the grandfather of the Commission, as it were, given his historical experiences, had the wisdom of an old man.

Mr Obwangor was very argumentative and once on the floor was unstoppable. He was assertive, perhaps overbearing, and held a very apocalyptic view of things, warning the team against putting timebombs in the Constitution. In the end he mellowed and adopted a more collegial attitude. He used to say fondly that the Commissioners were ‘just fishers of views’, facilitators whose personal views should never bias the people. We appreciated his anecdotal rendering of Uganda’s history as well as his often very candid remarks. He was our reminder of the 1961 and 1962 constitutional consultations, from real experience. He always talked as a philosopher, referring to Socrates, Aristotle and Plato. He survived a bad accident on Masaka Road when his official vehicle overturned and was badly damaged. The legal officer travelling with him, the late Francis Kabyesiza, sustained serious injuries including losing two fingers.
Another member of the NRC was Mr Sam Kirya Gole from what is now Pallisa District. He was an agriculturist by training. He is believed to have been a member of the UPM and stood unsuccessfully for Parliament in the disputed 1980 general elections. He started well as a member of the highly team, but later his attendance deteriorated, possibly due to sickness. Efforts to get him back on the team failed and in 1991 his appointment was terminated. Mr Gole was the only member of the team who was dismissed for inability to perform his functions. At this late stage of the team’s work it was believed that a replacement would not catch up with the rest and he was not replaced. Others had left the Commission on assignment to other duties and had been replaced. These included Dr Eric Adriko and Mrs Gertrude Lubega who were among the first Commissioners to be appointed, but who were soon after appointed cabinet ministers, and Col Mugisha Muntu, who was appointed Principal Private Secretary to H. E. the President, and later became the Commander of the Army.

Other members of the team who were non-lawyers included Professor Andrew M.Otim, Professor of Medicine at Makerere University, and an expert on diabetes. Apart from looking after our health, he quickly grasped law and social science issues and was able to discuss with us on the same plane. His contribution on social services, especially health, was commendable. He will be remembered for advocating the establishment of the Health Service Commission. Professor Otim was an able group leader for Eastern Uganda.

Hajji Aziz Kasujja was a banker working with Greenland Bank. He had previously worked in the Libyan Arab Bank. We benefited from his banking and financial experience in the area of public finance, although his work at the bank seemed to take up much of his time. He was thus unable to get involved in facilitating seminars or in writing the draft. He was nominated by H. E. the President as one of the ten nominated delegates to the CA. He was eventually appointed a member and later the Chairman of the Electoral Commission, a position he has been retired from in the public interest.

Ambassador George Ufoyuru was one of the most reserved members of the team but a very hardworking one. He had worked
in the Tanzanian Audit Department as an auditor before being appointed Uganda’s Ambassador to Moscow during the Obote II Government.

He was available to undertake any assignment and made a significant contribution in the writing of the chapters of the First Report and editing of the Final Report. He also stayed on to complete the process of winding up the Commission by ensuring that all outstanding payments to members and staff were made, and that the hand-over report for the various items of equipment and assets was presented. He was knowledgeable and convincing in his presentations, which were restrained but strong. He contributed a lot on the issue of environment protection and local government, where he did much research. He now works with the Uganda Human Rights Commission.

We had two military officers: Lt Col Serwanga Lwanga and Capt. Kale Kayihura, also a lawyer. Serwanga Lwanga was the National Political Commissar of the NRA and Kale Kayihura worked under him. Again, the two were different types of personalities. Lt Col Lwanga had been the Principal Private Secretary to the President before being appointed to the Commission. He therefore had some political and military clout: he was close to the powers that be. Whenever we wanted to meet the President, we called upon him to assist, which he did with pleasure. He certainly enjoyed a special relationship with the President. He was well focused, straightforward and clear-headed. He was balanced in his views and did not have to support the NRM blindly. He always explored alternatives. He worked indefatigably and was fearless. I remember sending him to the Northern Region to collect views in areas where there was insecurity. He agreed to write several draft chapters of the Report, even in areas where he did not have special expertise. He was extremely respectful and he could not sit down before saluting me. He had a charming nature, easily mixed with others; he was impartial, candid and down-to-earth. He was a very honest person who always spoke his mind. He always shared the experiences of the NRA struggle in great detail during our breaks. He exhibited principled compromise and patriotism. He was also one of the few Commissioners who were elected delegates to the CA, in this case representing the Army. His balanced presentations in the
Constituent Assembly surprised many observers. Unfortunately, he died a few years after the Constitution was promulgated.

Capt. Kayihura was sober and soft-spoken but presented very pointed and thoughtful arguments. As a lawyer with a post-graduate law degree, he was an extremely able member of the team. He was a freedom fighter and a believer in the objectives of the Movement struggle and politics. However, he did not impose his views on any member of the team, since the working rule was that we were not on the team to promote the views and interests of those we represented, if any, but to respect the views of the people and the national interest. He returned to the army after we completed our work and rose to the rank of Brigadier and Chief Political Commissar of the Uganda People’s Defence Forces (UPDF).

The non-lawyer members of the team had become good paralegals by the time the Commission completed its task. They did not leave any issue to lawyers to handle alone. On the contrary, they enjoyed critically examining legal positions and testing them against political viability and legitimacy. We as lawyers benefited a lot from their knowledge, experience and expertise in areas of history, economy, politics, finance, public administration, the military and security agencies, ethics, religion, environment, culture and traditional institutions, to mention but a few.

The team got along harmoniously most of the time. As we worked we got to know each other better. It is true we had different backgrounds but there is no doubt there was tremendous team spirit and an extremely high degree of commitment. ‘We worked as a family.’

The team has since moved on. Sadly five of them are dead: Kirya Gole, Serwanga Lwanga, Kateera, Kisembo and Rwaheru. For some, the work of the Commission appears to have been a grooming ground for political careers. Some immediately embarked on these careers by standing for the Constituent Assembly elections. A number succeeded, others were nominated to the Assembly by the President. Those who participated in the Assembly included; Miria Matembe, Aziz Kasujja, Med Kaggwa, and Serwanga Lwanga.

Others eventually joined the Sixth Parliament established by the Constitution they helped to make. These included Miria Matembe, Khiddu Makubuya, Med Kaggwa and Mugisha Muntu.
With the establishment of the East African Legislative Assembly, one of the team, Mr Med Kaggwa, joined. Dr Khiddu Makubuya and Mrs Miria Matembe became ministers.

For others, their appointment to the Constitutional Commission marked the beginning of a career in Commissions. Some were appointed to the Electoral Commission; our Secretary is now serving on the Uganda Human Rights Commission together with others from the team. The recent Constitution Review Commission included at least two of our members, including its Chair, Professor Ssempebwa.

Others have moved on to other appointments. A Chief Justice, an Inspector General of Government, a High Court judge and former President of the Industrial Court are among our ex-Commissioners. Others resumed their careers in law, medicine and other fields.

I was the captain of this diverse team. The team manager—the Minister of Constitutional Affairs—allowed me to assign roles to my fellow players and to supervise them as the work demanded. The roles were assigned after due deliberations in plenary meetings by the team which planned the strategies together. Consensus and confidence building were the tools of management I employed. I also believe I maintained impartiality, neutrality, integrity, transparency and accountability, and treated all players with due regard and consideration. I valued each of them. I listened patiently to each one in their presentations using my skills as a judge. I gave them consideration when they had personal problems which affected their work. I promoted a spirit of give and take, and the value of compromise when conflicts and controversies arose. I was a balancing force.
Chapter 2

Getting to Work

The Structure of the Commission

The Commission was set up as a statutory body operating under the ministerial supervision of the Ministry of Constitutional Affairs. It was required to submit its report to the Minister. The Commission was not a corporation and did not enjoy financial autonomy; the Secretary for Constitutional Affairs was the accounting officer of its funds. Its independence was therefore not guaranteed by the Statute setting it up, but had later to be asserted by the Commissioners against undue political and administrative interference. This precarious status of the Commission had an adverse effect on its relationship with the Ministry, the acquisition of resources and logistical support, as well as the programme and timetable of the Commission.

The three main organs of the Commission were the Office of Chairman, the Secretariat, and the plenary session meetings. The Office of the Chairman consisted of the Chairman and the Vice-Chairman of the Commission. The Secretariat was headed by the Secretary to the Commission who was assisted by the Assistant Secretary and Commissioner. It consisted of two departments, namely the Legal and Research Department headed by the Principal Legal Officer, and the Finance and Administration Department, headed by the Senior Assistant Secretary. The departments were divided into nine sections: secretarial services, establishment, transport, accounts, public relations and information, purchasing and stores, legal and research, computer, and library and documentation.

The Commission's supreme policy and decision-making body was the Plenary Session Meeting. This dealt with both administrative and technical matters. For effective planning, supervision and execution of our programmes, a standing and ad hoc committees and groups was appointed. The main standing
committees were the Finance Committee, the Welfare Committee, the Publicity Committee and the Appointments Committee. Ad hoc committees included the Programme Committee, the Editing Committee, the Drafting Committee, and the Documentation Committee. To expedite our work, the Commissioners were divided into six standing groups for conducting seminars and the collection of views. They were again divided into six groups for the purposes of analysis and study of views, the division being based on constitutional issues and the proposed chapters of the Final Report.

This chapter describes the composition, functions, programmes, method of work and contribution made by the various sections, committees and individuals, and the constraints and problems we experienced during our work.

The Secretariat
The Secretariat formed the engine for the operations of the Commission. Indeed it was the first to be established, soon after the appointment of the Commissioners. It was headed by the Secretary who was also a Commissioner. The Secretary was responsible for the day-to-day functioning of the Commission, the recording of proceedings and the writing of the Commission’s reports. It seems to me that the Secretary was made a Commissioner to give him a high profile and enough power to make him an effective link between the Secretariat and the Commissioners. He made proposals which he knew were in line with the thinking and decisions of the Commissioners and they normally accorded his proposals the greatest respect. He was also able to implement the Commission’s decisions more effectively because he understood them, having been part of the decision-making process and having had a stake in its outcome. The high status also gave him effective command over those under him at the Secretariat.

The Secretariat’s basic function was to acquire the necessary resources and provide the facilities required for the Commission to operate. The resources needed were financial, human and material. The facilities the Secretariat provided included secretarial services, office space, transport, office equipment, research assistance, publicity and public relations, information and communication,
library services and documentation of material, recording of proceedings, receiving written and oral memoranda and writing of reports, arranging tours and seminars for the Commissioners, and translating and analysing data.

The greatest challenge that faced the Secretariat was to secure the required resources in a timely manner so that it could execute our responsibilities effectively. Its efficiency and effectiveness was affected by a number of factors including its structure, volume of work, the resources and facilities accorded to it, and the relationship between the Commission and the Ministry of Constitutional Affairs. The successful completion of our work is attributed largely to the tremendous contribution made by the Secretariat to the process.

The Secretariat was given its first home at the Post Office Building, on Yusuf Lule Road (formerly Kitante Road) in Kampala. The building was at the time housing the Ministry of Constitutional Affairs, among other institutions, including the NRM Secretariat and the Prime Minister’s Office. The offices were on the 11th floor next to those of the Ministry. Basic facilities were provided – offices for the Chairman and the Secretary, a Conference Room for plenary sessions of the Commission, a typing pool, an accounts office, a general office and registry and offices for legal and research officers. No offices were provided for other Commissioners because space was not available.

The Ministry had offices for the Minister, the Secretary for Constitutional Affairs, the Under Secretary, the Senior Assistant Secretary/Transport Officer, the Senior Accountant, the Personal Assistant to the Minister, the office superintendent and the cashier, among others.

However, as the Commission became fully operational, there was a need to expand the staff of the Secretariat and to provide office accommodation for those Commissioners who did not have offices in Kampala. There was also a need to provide sufficient storage facilities for memoranda and other submissions from the public. Our offices which had been shared with the Ministry proved inadequate for this purpose. Moreover, it was also felt that the independence of the Commission would be enhanced by having its own offices, separate from the Ministry.
We identified a building in Mengo belonging to Church of Uganda and Government agreed that the Commission could rent it. Accordingly, in the middle of 1990, the Commission moved the Secretariat and all its offices to Eric Sabiti Building, Plot 151 Balintuma Road, Mengo. The building, which had been used as a school, was partitioned into offices for the Secretariat, the Chairman, Vice Chairman, Commissioners and support staff. The only facility that remained at the Post Office Building, was the conference room which also served as a library that could not be provided for in our new home. As the offices were located in a suburb, adequate security had to be provided.

The new premises provided us with the physical and administrative separation from the Ministry that we needed to promote the Commission’s independence. The extra facilities improved efficiency and the supervision of the Commissioners and staff. This was to be the permanent home of the Commission up to the end of its life in June 1993.

The Office of the Chairman

The Office of the Chairman was the next to be established after the Secretariat. The physical office was initially situated next to that of the Secretariat at the Post Office Building. I moved into it before it was adequately furnished because of the need to get the Commission started on its task. Both the Secretary and I devoted our full time to the work of the Commission. I had the basic facilities of a personal secretary, vehicle-driver and office attendants. Mrs Rosette Keronega, a senior personal secretary whom I found at the Ministry was assigned as my personal secretary. After one year my office moved to Mengo with the other Commission offices.

My main responsibilities as Chairman were to supervise and direct the work and staff of the Commission, and to preside at its meetings. My responsibilities made me executive Chairman of the Commission and I therefore had to be in control of the whole Commission including the Secretariat. In my absence, the Vice Chairman assumed my roles.

The Secretary consulted me on most of the important matters that he handled and sought my views prior to the proposals he
made relating to the Commission’s administration and work. I established a very close and friendly relationship with him. I gave him and other senior officers advice and directions whenever it was necessary. In this sense, I became a key manager in the day-to-day administration of the Commission.

My overall role was the supervision and direction of the work of the Commission. This was a taxing responsibility because Commissioners were distinguished citizens who had other important national and private assignments to undertake. But they had a difficult and historic task to accomplish within a specified time. Therefore the Commissioners had to be handled with respect and tact but also with the firmness necessary to ensure the successful completion of the assignment. Appropriate methods of work had to be devised, methods that were convenient and acceptable to them while taking into account the challenges of the task at hand.

The main strategy we adopted was to establish the spirit of teamwork so as to build mutual confidence, effective participation and a common purpose. The structures that we set up to promote team spirit included plenary sessions, standing and ad hoc committees, and technical committees or groups for internal tours.

**The Plenary Sessions**

The highest policy and decision-making body was the plenary session meeting which was attended by all the Commissioners and some senior legal officers. All important decisions were taken by the plenary. Proposals from the Secretariat and reports from standing and ad hoc committees were discussed and approved there as were the appointment of committees and assignment of critical responsibilities to the Commissioners. As a result, the plenary sessions monitored and controlled the work of the Commission because the Chairman and the Secretary took part in this decision-making process. For urgent cases, I had the power to assign duties to the Commissioners, for instance, to represent the Commission at privately organised seminars.

At the beginning of our work, we decided that the plenary session would be held once a month on the second Tuesday of the month. They lasted for the whole day, with a working lunch
served during the meeting. We called extra meetings when the
work demanded it. Thus, in the last stages of our work, for instance
during the discussion of proposals and the Draft Constitution,
plenary sessions were held throughout the week. I remember
working during holidays including Christmas holidays in 1992.

Notice of a meeting was given a week before it was due and
members were invited to suggest items for the agenda. This
normally contained confirmation of minutes and matters arising,
a briefing from me and the Secretary, reports from the field, and
the programme for the coming period.

The quorum of the meeting was one half of the members – eleven
members. There were times when we did not realise the quorum
when some members were busy elsewhere. Whenever we had
critical issues to decide, I had to make a special appeal to them
to attend. They usually obliged. When we did not form a quorum
we would sit as a committee and make recommendations to the
Commission. This was done especially when we were discussing
administrative arrangements such as programmes for our work.

The main cause of lack of quorum was basically the poor terms
and conditions of service offered to the Commissioners. Some
did not devote their full time to the work of the Commission, but
continued their full-time employment elsewhere. The Government
could not enforce their full-time commitment because it lacked
funds to pay them to make up for the loss of other lucrative
employment or business. The fact that most Commissioners were
not full time had an adverse effect on their speed and efficiency.

Decisions in plenary sessions were required by the Statute to
be determined by a majority of the members present and voting,
and in the event of an equal number of votes for and against, as
Chairman I had a second or casting vote. We did not strictly follow
this requirement because all our decisions were determined by
consensus. We never got to vote on any issue or matter in the whole
life of the Commission. I took consensus to signify majority. I did
not rule on any issue until I had given all the members or majority
of them an opportunity to give their views. It was a process which
required a lot of patience and tact. I made sure that the issue had
been discussed thoroughly, that all the members were satisfied
with their contributions and consensus had been reached before
I concluded the discussion and announced the decision, which accommodated the views of all the members. This approach applied to all decisions on both contentious and non-contentious issues. Of course, there were moments of heated arguments and failure to reach an agreement, and matters had to be postponed for further discussion. But it was easy to reach an agreement on most issues because we had already listened to people’s views and had discussed the issues raised amongst ourselves throughout our work so we knew in what direction the views of the public pointed. We had to respect the views of the people and not promote our individual preferences, even if we were experts with our own considered opinions.

It is remarkable that the entire Final Report and the Draft Constitution were both agreed upon and adopted by consensus. In fact I can say they were unanimously adopted by all the Commissioners. There were no dissenting opinions or minority reports. To date, no Commissioner has disowned any decision of the Commission or any proposal it made.

**Formulating the Programme and Timetable**

The formulation of the programme and timetable of the Commission was the first most fundamental and critical task that faced us at the beginning of our work. There was virtually no precedent to guide us. How were we to consult the entire population of Uganda and evolve a constitution based on national consensus obtained from the peoples’ views, within 24 months? How were we to persuade and empower people to participate and contribute to the process? How and when were we to obtain the resources and logistics necessary for the task? These questions revolved around two issues: methodology and resources.

Our terms of reference as contained in Statute No.5 of 1988 provided the guidelines for the methodology we adopted. The Statute also provided for the sources of funds and staff of the Commission. The challenge that faced us was to translate these provisions into a viable and effective programme capable of successfully executing our mandate in a manner acceptable to the Government and the people of Uganda.
The Commission held its first meeting on 7th March, 1989 in order to meet the Minister for Constitutional Affairs, Hon. Sam K. Njuba. The meeting was called by the Minister and attended by all the 19 Commissioners, the Secretary for Constitutional Affairs, and other senior officials from the Ministry. The purpose of the meeting was to enable the Commissioners to know each other, meet officials from the Ministry and to discuss logistics for starting the work. The Minister emphasised the importance of the process to both the Government and the people of Uganda the purpose of restoring democracy. He congratulated us on our appointment and assured us of the backing of the President, the cabinet and the political organs of the NRM. He apologised for appointing some of the Commissioners without prior consultation. He promised to effect the appointment of the remaining two Commissioners, and indicated that one of them would be a Muslim in order to balance the Commission. He asked the Secretary for Constitutional Affairs to brief us on administrative and financial matters.

The Secretary for Constitutional Affairs Mr B. N. Kamugisha briefed us about our terms of reference, the funding and accountability of funds for the Commission, office accommodation, transport arrangements, terms and conditions of service, seconding of staff, and the need to draw up a programme and timetable as soon as possible. During the discussions, we raised issues relating to hotel accommodation, library facilities, the status of the Commissioners, the meaning of working on a full-time basis when some Commissioners who were members of NRC, and terms and conditions of service, including transport, security, medical facilities and the legality of our assuming duties before being sworn in. We agreed to meet on 9th March, to plan our work. Thereafter, the Minister invited us for lunch at the Nile Hotel.

When we met at our maiden plenary session on 9th March, 1989 I informed my colleagues that the purpose of the meeting was to work out a general programme of operation to guide our work. I endorsed the idea of forming a sub-committee to work out the details of the programme. I drew the attention of the Commission to our terms of reference in Section 5 of the Statute and proposed that the programme could cover the following activities:
• Preparing the timetable.
• Stimulating awareness of constitutional issues through debates, seminars and conferences.
• Collecting views by memoranda, oral submissions, interviews, seminars or workshops.
• Discussion of views received.
• Preparing the Report.
• Drawing up the Draft Constitution.
• Printing and submission of the Report.

After a general discussion, including the need to have necessary logistics before the Commission starts work, it was agreed that a Programme Committee be set up to draw a timetable, and to look into other matters which might facilitate the work of the Commission, taking into account the matters we had discussed at our preliminary meeting. The Committee was to report by Friday 31st March, 1989. The Committee consisted of Professor Dan Mudoola, Vice Chairman (Chairman) Professor Mutibwa, (Secretary), Mr Jonathan Kateera, Mrs Mary Maitum, Dr Khiddu Makubuya, Rev. Fr Dr Waliggo, Mr Justin Okot and Professor Otim.

The Commissioners were not satisfied with their proposed terms and conditions of service which were based on civil service allowances. It was therefore agreed that a Finance Committee be set up to make proposals about amendments. The Finance Committee consisted of Dr Adiko (Chairman) Mr Constantine Rwaheru, Professor Otim, Mr Kirya Gole, Capt. Kayihura, and Mrs Byekwaso. The Committee was to submit its report to the Secretariat by 17th March for discussion by the Plenary Session on Friday, 20th March, 1989.

The Commission met on 21st March, 1989, when I was in Australia attending a conference. The finance report concentrating on the terms and conditions of service of members and staff of the Commission was presented and adopted.

On 19th April, 1989, the report of the Programme and Timetable Committee was presented to the plenary session which discussed and adopted it. Part A of the report dealt with infrastructure and logistics required; that is staff, office accommodation, and accessories. Part B dealt with the programme and timetable. The

The preparation of the programme and timetable of the Commission was completed on 21st April, 1989. I launched it on 5th May, 1989 at a ceremony held at the International Conference Centre, Kampala. It was at this function that the work of the Commission was formally launched and the general public invited for submission of views and memoranda to the Commission. The launch was attended by the press and diplomats, among others.

The original programme contained the following detailed two-year timetable:

- Familiarisation (4/5/89 - 30/8/89: 2 months)
- Publicity and memoranda (4/5/89 - 27/4/90: 12 months)
- Seminars (3/7/89 - 31/8/89: 2 months)
- Tours (4/9/89 - 31/3/90: 7 months)
- Progress report (2/4/90 - 30/4/90: 1 month)
- Data analysis (1/5/90 - 31/7/90: 3 months)
- Review of a Constitution and Comparative study of constitutions (1/8/90 - 30/9/90: 2 months)
- Discussion and drafting of a Constitution (1/10/90 - 30/4/91: 7 months).

The programme gave a detailed timetable for each activity on a weekly basis, the activity to be undertaken, the date, duration, participants and Commissioners involved. However, as will be seen later, for several reasons, this timetable could not be adhered to. The planned period of two years had to be extended to four.

The programme we created reflected and implemented the methodology of our work. This was based on four principles: wide consultation, popular participation, inclusiveness of social forces and national consensus. We had to consult all Ugandans to allow them freely make their own constitution. We had to promote the people’s free and active involvement by allowing them adequate opportunity to participate, empowering them through education and sensitisation and public discussion. The process had to be
inclusive and accommodative of views of all Ugandans without discrimination. We had to promote public debate on constitutional issues in order to generate national consensus as a basis for the new constitution. This was the first time that such a comprehensive consultative model had been employed in the constitution-making process in Uganda, and it turned out to be successful and a model for other countries.

The programme had to achieve several objectives which conformed to our terms of reference, in particular: (a) fitting it into the 24 months statutory period; (b) educating the Ugandan public about constitutional issues; and (c) inviting individuals and various social forces to freely express their views regarding major constitutional issues in Uganda.

**Reasons for failure to adhere to the Timetable**

We were unable to adhere to the original programme or work-plan and complete the assignment within the stipulated 24 months for a number of reasons. The main reason was failure to secure the necessary resources and logistical support in time. No resources had been secured or budgeted for before we started working, and we had to utilise the meagre facilities provided by the Ministry. Even after we started, financial, human and material resources were acquired only progressively due to shortage of funds. The annual budgets approved were subject to heavy cuts ranging from 30 per cent to 70 per cent. For instance, in the financial year 1991/92 the budget was cut by 50 per cent. This general financial squeeze coupled with the lack of self-accounting status of the Commission compounded the problem.

Indeed for the period June to December 1992, DANIDA had to come to our assistance and provide funds to enable us to complete our work. They granted us US $475,000 through an agreement signed between the Chargé d’Affaires of the Royal Danish Embassy, Mr Gaard Anderson and myself on behalf of the Commission, on 4th June 1992. One of the conditions of the grant was to complete the work by 31st December, 1992, which we fulfilled when we presented the Report and Draft Constitution to Government on that day.
Other crucial facilities like transport and staff were provided late, thus delaying our work, especially the internal tours which were the core of our work. I shall say more about this problem later.

As mentioned earlier, poor terms and conditions of service for the Commissioners and staff also affected the efficient execution of our task. There was a persistent appeal to our patriotism and sacrifice for the sake of national interest. But the Commissioners had family obligations to honour and could not abandon their other good income-earning engagements. In effect, most Commissioners were part time instead of full time as had been anticipated by the Statute. Poor terms also affected the morale and output of members of staff. Later the remuneration of both the Commissioners and staff had to be increased in order to promote commitment and efficiency.

Apart from the delay in providing necessary resources and logistics, our programme had to be adjusted in accordance with the experience acquired in the field. For instance, we found that people demanded more time for discussion and distribution of publicity materials to enable them to contribute effectively. Our original plan – for the participants we had educated at district seminars to go back and sensitise the people – did not materialise due to failure to provide them with the logistics they demanded.

There was insecurity in some parts of the country like the North and North-east, and therefore special arrangements were needed to cover these areas which also delayed the process. We could not afford to leave any part of the country out of the process.

The response of the public was overwhelming. We had not anticipated such a high level of participation, especially through submission of written memoranda. At the conclusion of the exercise of collection of views, over 25,000 submissions had been received. These had to be translated, typed, categorised, summarised and analysed by staff. The Commissioners had to study and discuss them all and formulate proposals from them for a new constitution. This was a formidable task which needed a lot of staff and equipment, especially computers and typewriters. Unfortunately, most of these were only secured later towards the end of our work.
Reactions to the delay in our work were mixed. Most members of the public were happy with the ample time given to them. But others blamed us, alleging that we wanted to extend the period of NRM Government in power. The donor community was generally in favour of early completion of our work so as to have a constitutional framework for the governance of the country.

When the NRM took over Government in 1986 it set itself an interim governing period of four years. In 1990 this was extended for four years. One reason for this was to give the Commission enough time to complete its work. The NRM interim period was supposed to end in January 1990 yet we started our work in March 1989. But other reasons for extending the NRM interim period included the need to complete the remaining tasks on the programme of the interim administration.

**Extension of the Term of the Commission**

In the middle of 1990, it became apparent that we would not be able to complete our work by March 1991. We decided that the Government should be informed of the progress of work and what remained to be done before we sought any extension. We decided to prepare a progress report.

The first version of our report was submitted to the Minister of Constitutional Affairs in mid-1990 but he found it inadequate because it did not include the direction of the debate, but only highlighted the activities the Commission had carried out, what tasks were remaining and the constraints experienced. We revised the report and included the matters the Minister had pointed out.

In the Report we explained what had been accomplished and what remained to be done. We discussed the status of the constitutional debate and indicated the trend of the people’s views so far received on each constitutional issue. We also highlighted issues on which a general consensus appeared to be emerging, other issues on which, so far, there was no agreement and issues that had not yet been widely discussed. We emphasised that the constitutional debate was still ongoing and that such views and evaluations as were contained in the report were still tentative.

By that time, the Commission had organised seminars and debates at district and institutional levels, encouraged different
social groups to organise their own seminars, publicised its work and encouraged Ugandans to submit memoranda. We observed that in general, a state of public opinion had been created for the population to submit their views on the process of constitution making.

In the remaining period, we stated that it was our intention to carry out internal tours, hold outstanding seminars and a national seminar, organise an essay competition, categorise the data and finally, write a report and a Draft Constitution. We estimated that these tasks would take about 18 months. This would mean that we would complete our work in June 1992.

However, the Minister wrote to me in November 1990 informing us that the Government had decided to extend the term of the Commission for one year from March 1991 to March 1992. I informed the plenary session on 6th November of the extension and the matter was discussed.

The implication of the Minister’s letter was that we were left with 17 months to complete our work. I urged my colleagues to consider this matter seriously and co-operate in every way possible in order to meet the deadline set by the appointing authority: there seemed to be an element of finality in the decision.

Members of the Commission felt that the authorities seemed to think that they were not serious whereas this was far from the truth. They observed that the completion of the work would depend to a large extent on the availability of the necessary facilities. We resolved on three matters. First, that every effort be made to complete the work within the period stipulated by the Minister. Secondly, we re-affirmed our determination to reach every Sub-county, noting that failure to meet this obligation would constitute a moral failure on our part. Thirdly, that a new programme and timetable be adopted in light of the Minister’s letter.

A new detailed programme and timetable indicating the tasks to be performed during the extension period was prepared in March 1991:

• March-June 1991: Completion of internal tours, collection of memoranda and seminars for special interest groups and marking essays.
• June-August 1991: Data analysis – categorisation of data and holding of national seminar.

However, we were again unable to complete our work by March 1992 due to shortage of the required resources and facilities for analysis of the voluminous materials we had received from the public. We needed more computers and typewriters, more research assistants to assist in categorising, translating and filling questionnaires to carry out a statistical analysis on controversial issues, more secretaries and data entry clerks, and more funds to meet allowances for the Commissioners and staff working full time. When in June DANIDA provided the necessary funds to secure the required resources, the period for completion was extended to 31st December, 1992, which deadline we adhered to.

**Transport**

Transport was one of the crucial logistics of the Commission. It was vital for undertaking the internal tours, which consisted of the educational seminars conducted throughout the country, and collection of views. In our programme and timetable, we listed the transport requirements that we needed for our work. These included 24 Land Rovers, 8 double-cabin pickups, 8 minibuses, 34 motorcycles and 702 bicycles. Each Commissioner was expected to have a Land Rover, the Secretariat was to use the double-cabin pickups for carrying the publicity materials for the seminars and memoranda collected. The minibuses were to be used by staff and participants in the seminars. The motorcycles were to be given to district supervisors. The bicycles were for the Sub-county mobilisers to prepare people for seminars and distribute materials.

However, some of these items were never provided. Neither motorcycles nor bicycles were purchased. The vehicles were provided piecemeal. When we started work, there were no vehicles available to us so we had to use our own or hired ones. After a few months, we received four Santanas (Land Rovers) which were
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distributed to the Minister, the Secretary, the Secretariat, and myself. The vehicles were extremely uncomfortable and expensive in terms of fuel consumption. The Commission did not receive any more vehicles until February 1990 when six Pajero four-wheel drive vehicles were purchased. We had requested a minimum of 11 Pajeros to enable us to embark on internal tours.

I met the President on 7th February, 1990 at State House, Entebbe to present a list of urgent logistical support we needed for internal tours. The meeting was attended by the Minister for Constitutional Affairs, the Minister of Finance, Commissioner Med Kaggwa, Head of the Civil Service, Secretary to the Treasury and Secretary for Constitutional Affairs. The list I presented contained the minimum additional transport requirements we needed for internal tours, consisting of 11 Pajeros, 6 double-cabin pickups, 2 minibuses and 702 bicycles. The President promised that all these requirements would be made available in October 1990. But he agreed to provide us with 11 Pajeros immediately to increase our stock to 15 and be able to start on our programme.

But we received only six Pajeros, making a total of 11 vehicles for internal tours. The Commissioners had to share vehicles, one vehicle for two or three of them. The problem at the time with procurement of vehicles and other imported equipment was the shortage of foreign exchange. An application had to be made to the Bank of Uganda by the Ministry of Finance for allocation of foreign exchange to purchase the vehicles. After the allocation, a letter of credit would be opened in favour of the company importing the vehicle. Only then would the company import the vehicle or release it if it was in the country.

Due to problems of foreign exchange, we decided to explore the option of buying the vehicles locally. We identified some Toyota Hilux double-cabin pickups and asked the Ministry to purchase five for the Commission and this was done in mid - 1991. The vehicles were distributed to the Commissioners for the collection of views. We also got a donation of three Land Rovers from the British Government and a minibus from DANIDA. It therefore became possible to allocate a vehicle to each Commissioner. We purchased a second minibus for staff. Because of this large fleet of
vehicles and the need to maintain them, we recruited a transport officer, knowledgeable in the maintenance of vehicles. We also asked the Commissioners to take an interest in the maintenance of vehicles and this helped with their proper care. It was also agreed that Commissioners who did not have garages or safe places to keep their vehicles, would keep them at designated places like police stations. The Commission experienced only one serious accident, on Masaka Road which involved Hon. Obwangor while he was returning from internal tours in Western Uganda. The vehicle was badly damaged but it was later repaired.

The transport problem was very serious and had an adverse effect on our work. It was not easy or convenient for Commissioners to share the few vehicles. Some Commissioners used their own vehicles, but payment for this was not always forthcoming in time. It is gratifying to note, however, that by the time we completed our work, we had adequate transport.

By the time we completed our work, ministers, permanent secretaries and members of commissions were co-owning official vehicles. When we asked to be accorded this facility, we were informed that the Ministry needed the vehicles for the next stage of the constitution-making process, namely the Constituent Assembly and so we handed over the vehicles. When I returned to the Supreme Court, the Judiciary did not have an official vehicle for me so I was allowed by the Ministry to retain the one I had been using.

**Office Equipment and Accessories**

In order for the Commission to publicise its work, educate the public, collect documents, and analyse their views, it needed the appropriate equipment, accessories and material supplies to enable the staff to process the mass of documents and submissions it produced or received. Therefore, in our programme and timetable, we included a list of the items of office equipment, office furniture, library books and accessories that we considered essential for our work.

The list of office equipment included among other things: 5 electric typewriters, 10 manual typewriters, 5 word processors, one electric duplicating machine, 2 photocopiers, 6 recording
machines, 6 public address systems, 30 filing cabinets, 6 video cameras, and 6 still cameras. Furniture included office chairs and desks, carpets, curtains, bookshelves, secretarial chairs and desks. The Commissioners drew up a list of library books, together with newspapers and periodicals and an attempt was made to stock the library with relevant books on history, political science and constitutional law.

The list of accessories included generators, fans, batteries, tapes for recording machines, films for still and video cameras, electric stabilisers, jerrycans, torches, gumboots, tents, safari beds, first-aid kits, and cooking stoves. We anticipated many of these items would be needed during upcountry tours. But as it turned out, tents, safari beds, and stoves were not provided as we stayed in hotels or lodges, rather than camping at Sub-county headquarters.

We found that our list of requirements was underestimated. For instance, we needed more duplicating machines, photocopiers, and computers. These were not forthcoming, but were eventually secured with the help of donors, particularly the British Government and DANIDA. Technology was advancing very fast, however, and computers were rapidly replacing typewriters and word processors. I remember when I was invited for a study tour in Britain I asked the British Government to purchase a duplicating machine for the Commission. It was difficult to procure one from London because I was told duplicating machines were no longer being manufactured except on special order because nobody was using them in Britain. They promised to order one for the Commission and received it. The point was that the computer and the photocopier had replaced the typewriter and the duplicating machine. Yes, we lagged behind the technological revolution.

The DANIDA funds which were made available in June 1992 were used to purchase the last instalment of equipment needed for data analysis and preparation of the Final Report and Draft Constitution. For instance, stationery, printing and binding expenses cost USD 134,500 while office equipment and consumables cost USD 86,500. During the last stages of our work, the Commission had over 10 computers, about 20 typewriters and several photocopiers. Even a container had to be purchased to
provide increased storage capacity, and a heavy-duty generator to provide constant power. These facilities all required personnel to operate them. If the capacity the Commission had at the end of its work had been provided earlier, it is possible that the work would have been accomplished within the originally stipulated time.

**Staff of the Commission**

The Commission required various categories of staff to execute its programme and to provide the support services the Commissioners needed. We required staff from various disciplines including: law, social sciences, statistics, public administration, demography, computer science, library and documentation services, secretarial services, information and journalism. We also needed drivers, messengers and security officers.

The Commission Statute provided that the Commission would utilise the services of such public officers and supporting staff as and when necessary for the efficient performance of its functions. It was provided that the Commission could with the approval of the Minister employ the services of such consultants or experts for the efficient performance of its functions, upon such terms and conditions as the Commission determined.

In our programme and timetable, we had estimated our minimum staffing requirements but these proved to be unrealistic. For instance, we had estimated six personal secretaries and ten other secretarial staff. These were too few for the volume of work, which expanded as the Commission moved into the final stages.

The fact that we could not recruit our staff and had to use seconded public officers meant that we had no choice in the senior staff who worked for us. We could only recruit staff on contract or temporary terms in posts such as data entry clerks or research assistants, which could not be filled by serving public officers.

Initially, most of the legal officers in the Ministry were seconded to the Commission. The first group to be seconded included Mr Rugadya Atwoki, Principal Legal Officer (now Judge of the High Court), Mr Amos Ngolobe, Senior Legal Officer (now Deputy Director of Public Prosecutions) and Mr Serwano Mukasa, Senior
Legal Officer Drafting (now serving as a drafting consultant in one of the countries in the Caribbean). Later other legal officers like the late Mr Francis Kabyesiza, late Ms Robina Nkojo and Ms Alex Nkonge, now with Law Reform Commission, were seconded to the Commission. These provided the backbone of the legal team at the Commission. Subsequently, research assistants, both lawyers and social scientists, were recruited. Among the non-legal research assistants appointed was Mr J. Wamala, a statistician, now with the Electoral Commission.

We set up an Appointments Committee headed by the Vice Chairman of the Commission to handle the recruitment and discipline of staff. The level of staffing varied from stage to stage of our work, depending on the tasks to be undertaken and facilities provided. At the peak of its work the Commission had 7 senior legal officers, over 30 secretaries, 20 typists, over 60 research assistants, 10 data entry clerks, 2 documentation officers, 5 translators, 1 computer expert, 2 computer supervisors, 1 transport officer, 1 public relations officer, 1 information officer, 2 documentation officers and 1 technical assistance expert from the Commonwealth Secretariat. They were, of course, a host of support staff like drivers, messengers and security officers.

The greatest number of staff was recruited around March 1992 when we embarked on data analysis when we needed so many research assistants and data entry clerks to categorise, synthesise, summarise and prepare documents for the Commissioners to study. When this exercise was over, most of the extra staff were laid off.

We did not recruit many consultants to the Commission. There was a general view in the Commission and the Government that the Constitution must be written by Ugandans and therefore the Commissioners, not outsiders, were the consultants. However, we accepted the Australian Government’s offer, of Mr Anthony Reagan, whom we designated a Research Fellow. The offer, which came through the Commonwealth Secretariat, had been made and accepted at a higher level but we did not consider him an expert, we agreed to utilise his skills and the experience he had acquired as a legal researcher at the University of Papua New Guinea. He did a commendable job in supervising research assistants in analysing
data. He also wrote some position papers on certain topics, for example, decentralisation of power, basing it on the experience of Papua New Guinea. He stayed until the Commission completed its work and contributed to the making of proposals for the setting-up of the Constituent Assembly. He returned to Australia after his contract ended.

Another consultant whose services the Commission utilised was Professor Bourne from Canada. He had advised the Ministry on constitutional options before the Commission started its work and his paper was availed to us as background literature. He returned to Uganda at a time when we were holding seminars for special interest groups. He attended the seminars for police, prisons and the army officers and was greatly impressed by the high level of debate. When I asked him what advice he could give us, he said he had none on our programme and approach. We organised a reception for him at my residence in Kololo. Canada was another of the donors that supported the constitution-making process. They donated some reference books.

When we wanted to recruit legislative experts to assist us in preparing the Draft Constitution, the Minister advised that we should use the experts who were already with Ministry of Justice, the First Legislative Counsel, Mr Makanza from Tanzania, and Mr Chinnery Hesse, Legislative Consultant from Ghana, both of whom were being funded by the Commonwealth Secretariat. Mr Makanza was unable to work with us because he was soon returning to Tanzania at the end of his contract but we were able to utilise the services of Mr Chinnery, in the drafting of the Constitution. He did a commendable job in a very short time. He had expressed fears that the job could not be done in six months, but I assured him that we could do – and we made it. Mr Chinnery is still working as Legislative Consultant in the Ministry of Justice and Constitutional Affairs.

**Terms and Conditions of Service**

Statute 5 of 1988 provided in Section 8 (2) that Commissioners would be paid allowances as the Minister in consultation with the Minister of Finance might determine. The Commission had only power to determine the terms and conditions of consultants.
and experts, but this could not be effected without the approval of the Minister. The staff of the Commission were seconded with their terms and conditions of service. Technically therefore, they were not staff of the Commission. In respect to that, we could only make proposals.

Our initial terms of service were communicated at our first meeting with the Minister on 7th March, 1989. The terms were based on rates of allowances for public officers, and had been approved by the Ministry of Finance. For instance, sitting allowance was Shs.1,500 per day. Consolidated monthly allowances was Shs.10,000 for the Chairman, Shs. 9,000 for Vice Chairman and Secretary, and Shs. 8,000 for members. Consolidated mileage allowance for those using their vehicles was Shs. 40,000. Subsistence allowance was fixed at Shs. 4,000 per day.

These terms were clearly inadequate and we sat down and made our own proposals. We appointed a Finance Committee to handle the matter. We discussed the report and proposed that the terms should be improved. Cabinet approved the proposals in August 1989. The terms and conditions of service for the Commissioners were as follows:

- **Night Allowance**: Shs. 24,000 per night,
- **Monthly Honorarium**: Chairperson Shs. 120,000; Vice Chairperson Shs. 90,000; Secretary Shs. 90,000; Commissioner Shs. 75,000.
- **Sitting Allowance, per sitting**: Chairperson Shs. 8,000; Vice Chairperson Shs. 6,000; Secretary Shs. 6,000; Commissioner Shs. 5,000.
- **Monthly Housing Allowance** for those who were not accommodated, Shs. 100,000, per month
- **Monthly Consolidated Mileage allowance** in Kampala: Shs.100,000 per month
- **Monthly Experts Consolidated Allowance**: Shs. 500,000
- **Night Allowance (abroad)**: Chairperson US. $ 300; Commissioners, US. $ 240.

Members of the Secretariat (support staff) were to get the following allowances:

- **Night Allowances for Officers and Secretarial Staff**: Shs. 24,000 and for group employees Shs. 12,000
Monthly Honorarium: Officers Shs. 50,000; Secretarial staff Shs. 35,000 and group employees, Shs. 20,000. However, the terms were still not sufficient to make the Commissioners abandon their full-time employment. Government argued that the Commissioners could not be paid like those on the Public Service Review and Reorganisation Commission because that was donor funded while ours was funded by Government.

I think the Commissioners should have been engaged as consultants and not as if they were public officers or members of constitutional commissions. The constitution-making process was a major national project which had objectives and time bound activities. It lasted a short time and therefore, Government should have accorded the Commissioners commensurate terms and conditions of service.

Towards the end of our work, when there was a need for all the Commissioners to devote their full time to the work of the Commission, the terms and conditions of service were slightly improved using part of Government counter funding to pay the increased allowances. For instance, in the last six months, housing allowance for those not accommodated by Government was increased as were honoraria and sitting allowances. Terminal benefits of 30 percent of the total honoraria were granted. There was a comparable improvement in the terms and conditions of Secretariat staff.

Indeed, the terms and conditions we ended with should have been accorded to us at the very beginning. Contrary to popular belief that we were paid a lot of money, we sacrificed much in terms of foregone income for the four years we devoted to the work of the Commission. I believe that the Commissioners showed a patriotic spirit for their motherland, given the sacrifices they made.

The Funding of the Commission
Government committed itself to funding the constitution-making exercise when it provided in Section 8 of the Commission Statute that ‘the expenses of the Commission including allowances for the Commission and staff shall be charged and issued out of the Consolidated Fund without further appropriation than this Statute.’
It seems that the Government’s intention was to guarantee adequate funding for the Commission’s programme so that it could be successfully completed within the stipulated period. However, this statutory guarantee did not achieve its intended objectives as the Commission’s budget was subjected to the fluctuations in the national budget.

The same section of the Statute also provided that ‘the funds of the Commission shall be administered and managed by the Accounting Officer in the Ministry responsible for Constitutional Affairs.’ Therefore the Commission was not self-accounting, but merely treated as a department of a ministry, with the consequential bureaucratic machinery of government.

The Ministry of Constitutional Affairs was new and a small ministry with mainly one programme – the Uganda Constitutional Commission. Most of the funds therefore were for the programmes of the Commission. This led to some conflict between the Ministry and the Commission in the management and expenditure of funds. One should understand that at the time, there was a general financial squeeze in the country as the economy was just picking up, and therefore, there was a scramble for resources within Government.

The Ministry advised us to set up a Finance Committee, which we did. I was appointed Chairman of the Committee in order to keep directly in touch with finances and monitor the progress of the work. Other members were the Vice Chairman, the Secretary, the Assistant Secretary, the Under Secretary, the Senior Accountant, and the Principal Legal Officer. The terms of reference for the Committee were to budget for the Commission, to consider variations and changes in the budget, to review and budget for savings, to determine in advance how the money would be spent, keep track of how that money was used, and generally to ensure that the funds were spent in accordance with the Commission priorities.

The first Finance Committee meeting was held on 17th May 1989 and it was agreed that we would meet monthly since the funds were released on a monthly basis. It was also agreed that once the Committee had made a decision on financial matters it should not be altered without good cause or explanation. However,
during some district seminars, the accounting officer sometimes arbitrarily reduced the funds for the upkeep of participants by 30 per cent thus causing discontent among participants and problems for the Commission.

The procedure for the Finance Committee was that whenever the Ministry received the monthly release of funds for the Commission, the Committee would be convened to consider the budget for that month in light of the amount released by the Treasury. The Committee would then allocate the funds according to the priorities of the Commission and the amount of money available. Requisition for funds would thereafter follow the usual process and the accounting officer would approve the expenditure in line with the Committee’s agreed allocation of funds. Accountability of funds would be given before a fresh allocation was made. Any balances would be carried forward. Decisions of the Committee did not have to go to the plenary unless there was a serious financial crisis and the action of the Commissioners was required.

The Finance Committee worked effectively in managing the funds of the Commission. The various estimates of expenditures for our programmes were made by the Secretariat and a list of requirements and their cost was submitted to the accounting officer after the Committee’s approval. There was, therefore, a close working relationship between the Ministry, the Secretariat and the Committee. The Assistant Secretary in the Commission was in control of expenditure, assisted by a small accounts section.

Inadequacy of funds was a major constraint on the Commission’s work. The budget for its programmes was not drawn up by the Commission but by the Ministry. In the 1989/90 financial year, the total budget for recurrent expenditure for the Commission was Shs. 500,000,000. Development expenditure was Shs. 232,000,431. In the financial year 1990/91, the recurrent budget of the Ministry Vote 012 was Shs. 1,109,998,000 of which Shs. 1,043,319,000 was for the Commission. The heaviest expenditure for our programmes was for district seminars where we had to cater for the upkeep of participants who travelled from afar for two days. The total upkeep of about 2,020 participants for all the 34 districts had been estimated at Shs. 132,545,000 with Shs. 9,465,000 to cover stationery and Shs. 181,213,600 to cover allowances for the Commissioners
and staff. However, the actual total expenditure for the upkeep of delegates in six districts of Kampala, Jinja, Kalangala, Tororo, Mubende and Mukono in October 1989 was Shs. 23,199,000, and the total expenditure for the seminars there was Shs. 46,830,000. The cost of upkeep for delegates in nine districts of Rukungiri, Rakai, Kasese, Luwero, Masaka, Kapchorwa, Hoima, Moroto and Kotido was Shs. 29,694,540 and total expenditure for the seminars there was Shs. 42,997,500. The average monthly releases to the Commission were between Shs. 40,000,000 and Shs. 50,000,000. The main problem was that the money was sometimes received late or reduced without notice, thus disrupting our programmes.

The bulk of the programme of the Commission was financed by the Government of Uganda, which must be commended for shouldering this heavy expenditure. I do not think that anyone ever envisaged the amount of money that would be spent on this process. Indeed neither the Commission nor the Government costed the process before it commenced or even after the programme had been drawn up. I suppose it would not have been possible to anticipate all the expenses we incurred. Now, there is a precedent to follow. The machinery used today for costing projects or programmes is to engage consultants to prepare a costed plan of action. We are definitely much wiser than before.

However, we must acknowledge that we had some donors who contributed in several different ways to the Commission’s funding and facilities. Some donors provided equipment like computers and typewriters, while others provided vehicles, others books or experts, and yet others financed study tours. The donors included Australia, Canada, Denmark, India, Great Britain, Germany and USA.

DANIDA provided the highest amount of money; USD 475,000. It had previously given a grant of about USD 100,000. As mentioned earlier, the funds assisted us to complete our work. However, Government had to commit itself to the payment of counterpart funding for facilities and expenses, which DANIDA was not providing under its grant.

Unfortunately, some of the funds of DANIDA were mismanaged and misappropriated by some officials in the Ministry of
Constitutional Affairs and on 23rd November, 1992 DANIDA suspended the disbursement of funds. This was after an operational audit of the funds had been carried out by their external auditors M/s Mayanja, Lwanga & Co. Auditors, Accountants and Management Consultants for the period June 1992 to 15th October, 1992, and a report submitted to DANIDA in November 1992.

The report pointed out a number of irregularities including diversion of DANIDA funds to activities outside the contract agreement without approval. There was non-accountability for advances to procure stationery items and for fuel. There was no approval for certain petty cash payments. The report was written without consulting the Commission and we submitted our objections and comments to DANIDA. A revised audit report was then prepared. Negotiations with DANIDA for lifting the embargo continued for some time until we decided to concentrate on completing the preparation of the Report and Draft Constitution with or without funds.

In order to lift the embargo on the funds, Mr Gaard Andersen, who had by then become the Ambassador at the Royal Danish Embassy gave four conditions to the Ministry. The first was that official investigations be carried out. The second was that the culprits be identified and dealt with. The third was for the Ministry to refund the amount lost or lent to it from DANIDA funds. The last was the Ministry to accept a new set-up for the management of DANIDA funds. The Solicitor General who was then the Accounting Officer of the Ministry of Justice – with which the Ministry of a Constitutional Affairs had been merged – accepted the conditions and confirmed that action would be taken as demanded.

The Auditor General was asked to carry out an official audit of the funds and he also found irregularities in disbursement and accountability. The matter was handed over to the police for investigation and two officers in the Ministry, the Senior Accountant and Accounts Assistant were prosecuted for fraud. Only the Senior Accountant was convicted and sentenced to a term of imprisonment by the Mengo Chief Magistrate’s Court.

The DANIDA account was re-opened some time in 1993. The effect of this was that the Commission experienced a financial crisis
at the most critical point in its work, namely the last two months of November and December 1992. Indeed it was self-sacrifice and patriotism of the highest order that enabled us to complete our work and submit the Report and Draft Constitution to Government on time, on 31st December, 1992.

The lesson was learnt. The Commission should have managed its own funds as we had demanded, and as DANIDA had expected. It is gratifying to note that the Commission for the Constituent Assembly was self-accounting.
Chapter 3

Internal and District Seminars

Introduction

The most distinctive feature of the constitution-making process in Uganda was the conducting of a nationwide civic education programme to sensitise the people about the process, the Constitution itself, and to promote a public debate on constitutional issues. In order for the people to actively participate in the constitution-making process, they had to be adequately prepared. The people had to know what a Constitution is, what it contains, why we were making a new one, how the Constitution was being made, and how they could contribute their views to the Commission. They also had to be informed about what would happen to their views, and how and by whom the new Constitution would eventually be adopted. The programme consisted of seminars, workshops, and public discussions conducted by the Commission or privately organised by special interest groups. It was this programme which enabled us to traverse the entire country, reaching its remotest parts in order to take the constitutional debate to the grassroots and collect views from ordinary Ugandans.

Seminars had become a popular strategy by the NRM Government for introducing new policies and reforms by enabling stakeholders and beneficiaries to understand, accept and own the changes. The Government’s principle of participatory democracy, introduced through the Resistance Council (RC) system of local government, was intended to enable every Ugandan to actively participate in affairs affecting his or her governance. During the constitution-making process, we found the RCs very useful in mobilising people to participate in seminars as well as in organising the submission of views.

Several types of seminars were conducted throughout the country for various social groups and for a variety of reasons. The Commissioners conducted most of these. It was a mammoth
task. We first organised internal seminars for the Commissioners so that we could familiarise ourselves with the task and issues at hand to form a common attitude and objective. These were followed by district seminars held in all the then 34 districts of Uganda to brief local civic and opinion leaders about the process and the constitutional issues to be addressed. After the district seminars, we organised institutional seminars in schools, colleges and institutions of higher learning. At the same time we conducted seminars for special interest groups like workers, women, professionals and security agencies.

The bulk of the seminars we organised were conducted at each of the 800 sub-counties throughout the country. It was at these seminars that we reached the greatest number of Ugandans. After the seminars, we went back to the sub-counties to collect written memoranda which the people who participated had prepared. You reap what you sow: the harvest of views from the grassroots, RCs I, II and III was overwhelming.

We also encouraged privately organised seminars to be conducted by various social forces, organisations and institutions because we wanted to promote a free and open exchange of views among the people. We did not have the capacity to reach every individual, group or part of the country. We thought it was healthy to allow civil society to play its part in conducting civic education especially for their members but also for the general public. They played a significant role in creating public awareness about the constitution and in generating a public debate on constitutional issues, not only in seminars but also through the press.

The Legal Basis for the Seminars
Statute No.5 of 1988 which spelt out our terms of reference mandated us to create public awareness about constitutional issues and to seek the views of the general public by holding public meetings and debates, seminars, workshops and any other means of collecting public views. By organising seminars, we were merely implementing our mandate.

We were given power to summon any person to appear before us to produce any document or material that would be considered relevant to our functions. It was an offence for any person to fail
to appear when summoned to produce a document or to present a false or fabricated document with intention to deceive or mislead the Commission. As it turned out, we did not have occasion to invoke these penal powers because we received genuine and widespread co-operation from the people.

**Specific Objectives of the Seminars**

In order to plan our activities in such a way that the intended purposes were achieved, we had to determine specific objectives for the seminars. The objectives also guided us in monitoring and assessing the impact of the seminars.

The first objective was to create awareness of constitutional issues among the general public throughout the country. While ordinary Ugandans already had an idea on how they wished to be governed, they did not have adequate knowledge about the various provisions, principles, structures, and organs, which were contained in the previous or current constitutions and what issues had to be considered in drafting a new one. The seminars were intended to increase the capacity of all Ugandans to comprehend the various aspects of the Constitution and the constitution-making process.

The second objective was to provide the leaders in the country with relevant education and information so that they could stimulate the debate in their respective areas and institutions. The constitution-making process was a political exercise and in politics, leadership plays a key role in mobilising, guiding, consulting and ensuring that decisions are reached.

We wanted the leaders to conduct the constitutional debate from a position of knowledge and empowerment, so that the people under them would be given adequate opportunity to discuss issues and contribute their views to the Commission.

The third objective was to encourage the people to come up with consensus or majority views on the best constitutional arrangements that could ensure lasting stability and security, democracy and development for Uganda. A constitution is a social contract between the people and their leaders and amongst themselves on how they wish to live together and be governed. And a key element in any contract is agreement between the parties.
As the lawyers put it, there must be *consensus ad idem*, a meeting of the minds between the parties. For a constitution to last, there must be general agreement by the people on fundamental values, interests and aspirations upon which the constitution is founded, and the principles, structures and organs upon which the system of governance is based. It was our intention to achieve consensus through free, open and frank discussion of constitutional issues in a spirit of give and take, tolerance of diverse views, and compromise on conflicting opinions. It was by this process that we hoped to achieve a constitution that was accepted and respected by all Ugandans.

Lastly, seminars were intended to provide us with an opportunity to receive views and submissions on all aspects of the constitution-making process. Although we had expected the people to undergo an education process on these matters before they gave their views, we were pleasantly surprised when participants preferred to give their views or opinions on constitutional issues there and then instead of asking questions or waiting to read the literature we were distributing. We could not resist recording the views of the participants during seminars, workshops and public discussions. All the seminar reports compiled formed part of the submissions of the people from which we formulated proposals for the new constitution.

**Internal Seminars**

As we have seen from Chapter 1, the team of the Commissioners was made up of people from different backgrounds and disciplines, reflecting the national diversity of Uganda. We were brought together to undertake a historic national task, a task which was to affect the entire social, economic and political fabric of the country.

But none of us was conversant with all the constitutional issues that were to be addressed, bearing in mind the country’s historical and political background. Nor were we sufficiently acquainted with one another, personally, socially or politically. It was for these reasons that we decided to organise a familiarisation programme to prepare ourselves for the task at hand and to develop the necessary rapport and single-mindedness. Internal seminars were part of the familiarisation programme.
The familiarisation period lasted for two months, from 4th May to 30th June, 1989. The familiarisation exercise served five purposes. In the first place, it enabled the Commissioners to get acquainted with the work to be undertaken. It enabled us to read as widely as possible so as to identify the essential issues that formed the background to the political, historical, social and economic problems which made a new constitution desirable. It also enabled us to know each other intellectually through informal discussions, so that we could develop a common attitude – but not necessarily common views – towards the political and constitutional problems of Uganda which a new Constitution aimed to solve. The Commissioners as a group were given the opportunity to synthesise and concretise the main issues to be tackled.

As a result of this initial capacity-building programme for the Commissioners, we were able to formulate not only the methodology of the work itself but also the essential ingredients of the questions to be put to the people while seeking their views. The preparation of the questions themselves was undertaken at this stage.

The familiarisation period ran concurrently with the internal seminars. The combination of reading as part of the familiarisation exercise with the holding of internal seminars enabled the Commissioners to start from a firm ground, with their intellectual bags and equipment securely in place. In essence, constitution-making is an intellectual, though equally a political undertaking.

During this period, we encouraged the Commissioners to study and appreciate Uganda’s historical background and the lessons that Ugandans had hopefully learnt, especially from the period after independence when destructive forces were at work. We introduced or reintroduced ourselves to historical, philosophical, political, sociological and economic works, starting from the classics up to authors of our day. A comprehensive and wide reading list was prepared by the Secretariat for this purpose and forms part of the bibliography of our main Report.

As part of the familiarisation exercise it was felt important for the Commissioners to acquaint (or reacquaint) themselves with the literature covering contemporary constitutional history and
constitutional theory. Those Commissioners who were experts in the legal aspects of this area assisted in identifying the relevant books. We also had to handle some literature on contemporary African politics, particularly on the evolution of party systems and governments that existed in Africa at the time. The relevant works were identified by the Commissioners as the exercise progressed.

In order to enable the Commissioners to acquaint themselves with some of the constitutional proposals made in the course of Uganda’s progress towards independence, a number of reports were made available. These included the *Hancock Report*, the *Wild Report*, and the *Munster Report*, and of course the 1962 Independence Constitution. We were mindful of the need to locate and study the various constitutional arrangements made between the colonial government and the pre-Independence local governments, most of which were kingdoms. These included the various kingdom agreements such as the Buganda Agreement of 1900 and the Buganda Agreement of 1955. I prepared a booklet titled *Buganda and other Kingdom Agreements*, which contained all the ‘native’ kingdom agreements.

Arrangements were made for the Commissioners to study reference materials in various libraries. Official visits were arranged to enable the librarians to brief the Commissioners on where the relevant literature was housed, to get the necessary documents and learn the procedures for accessing, using and borrowing books. The institutions concerned were Makerere University Library, Law Development Centre Library, Cabinet Library, Attorney General’s Chambers Library and the High Court Library. I was personally familiar with all these libraries but I had to go to Makerere University Library to register and obtain the documents that allowed me to use and borrow books from there. I did not borrow many books from these libraries because I had most of the basic reading materials and was generally familiar with the terrain of our work.

During the process of familiarisation, the Commissioners were encouraged to hold a lot of free consultations among themselves, sharing their experiences with one another rather than working independently. We thought that study groups could provide the Commissioners with the opportunity to know one another so as to
lead to the mature academic and professional spirit of comradeship so necessary for the accomplishment of the task that would keep us together for a period of at least two years. The period of familiarisation enabled us to co-operate, to help and educate one another so that the ‘general will’ as opposed to the ‘will of all’ would emerge at the end of the exercise.

The actual internal seminars were meant to establish a common attitude academically and intellectually towards the task before us. The aim was to enable the Commissioners to run their own discussion groups in which they chose from among themselves who would lead the discussion on a topic relevant to our work.

Since the seminars/discussions were held concurrently with the familiarisation period, one seminar was organised per week on Friday afternoons. In all, eight such seminars were held as follows:

- Professor Mutibwa led a discussion on the *Historical Background of the Political and Constitutional Development of Uganda since Independence*, on 12th May, 1989.
- Col Mugisha Muntu led a discussion on the *Role of the Armed Forces in Uganda’s Politics since Independence*, on 26th May, 1989.
- Professor Ssempebwa led a discussion on *Economic Disparities as Factors of Internal Conflicts and Financial Modalities between the Centre and the Periphery in Uganda since Independence*, on 2nd June 1989.
- Professor Khiddu Makubuya led a discussion on the *Rule of Law and Violation of Human Rights in Uganda*, on 9th June, 1989.
- Mrs Mary Maitum led a discussion on *Women and the Constitution*, on 16th June, 1989.
- Mr Justin Okot led a discussion on the *Geopolitics of Uganda*, on 23rd June, 1989.
- Rev. Fr Dr Waliggo led a discussion on *Religion and Politics: The Role of the Constitution in Safeguarding the Dichotomy of the two Institutions*, on 27th June, 1989.

The papers were written and circulated in advance so that we could discuss them without their having to be read aloud by the authors. Each paper had a discussant. Discussions were free,
lively, and informative. We listened, understood and appreciated each other's intellectual strengths. This was also the opportunity to reach out to one another emotionally and to gauge the scope of our ability to respect, accommodate and share with one another, our experiences and hopes. It was on this foundation of mutual respect and accommodation that our future relationship as a team was built, and it was a solid foundation, which never floundered.

**District Seminars**

District seminars made up the first major programme conducted to educate the public about the constitution-making process. It was a country-wide programme conducted in every district to demonstrate that the exercise was national and that we intended to reach every corner of Uganda in order to give every Ugandan an opportunity to participate in the exercise.

District seminars were intended to serve several aims. In the first place, they were intended to bring together leaders from all walks of life in the districts and sensitise them on the exercise of making a new Constitution for Uganda. The second aim was to educate the participants in all they needed to know to be fully and actively involved in the constitution-making process and to develop their capacity to pass on this information to the people they led, so that they would be fully involved in the process. Thirdly, with the help of the participants, the Commissioners hoped to discover the best ways of collecting views from the people of the district right from the village RC I to the district RC V. Finally, we expected to receive some views from the participants on constitutional issues of special interest to each district.

The organisation of district seminars required effective planning. We discussed arrangements for the seminars in the plenary sessions and agreed on the programme, participants, resource persons and the Commissioners and staff to organise them as well as the logistics needed for each one. A budget for all the 34 district seminars was drawn up, presented to the Secretary for Constitutional Affairs and approved by the Ministry of Finance.

The Commissioners were then divided into six groups A,B,C,D,E, and F with three Commissioners each. The Chairman, Vice Chairman and Secretary of the Commission were not attached
to any group but were left free to manage and supervise the programme and to reinforce any group which needed more support. Each group had a team leader. It also had several Secretariat staff consisting of a legal officer/research officer, a secretary, a technician, a security officer and a driver. It should be recalled that at this stage of our work, we had only four official vehicles and a few hired ones. Each group was therefore assigned only one official vehicle. Although some Commissioners had to use their personal vehicles.

Groups were also allocated a number of districts to cover. Sometimes, a group assisted another to conduct seminars in particular districts if that was found necessary and convenient, for instance if one group had completed conducting seminars in its allocated districts.

Each district seminar lasted two days. Before this, the participants had to be selected, and the venue for the meeting and the places for accommodation and transport for participants had to be arranged. Therefore a few weeks before the date of the seminars, an advance team of officers from the Secretariat travelled to the districts to meet local leaders and discuss arrangements with them. The officers met the district political and civic leaders: the District Administrator (DA) the Chairman RC V, the District Executive Officers, security officers and other relevant officials like information officers. The various expenses to be incurred were costed. The dates of the seminars were agreed upon and the civic leaders asked to inform and mobilise the participants to attend.

When the officers returned to Kampala, the proposed arrangements and budgets were first discussed by the plenary session and the necessary funds requisitioned from the accounting officer. Expenses covered night allowances for the Commissioners and staff, advances for fuel, stationery expenses, the cost of producing publicity materials for participants, cost of feeding participants, transport allowances for participants, accommodation allowances for participants, publicity expenses and allowances for resource persons and translators. Funds for participants had to be carried in cash as some of the money was disbursed to them on arrival for accommodation. Money for the purchase and preparation of meals for participants had to be paid in advance of the seminar to the schools or institutions which had agreed to
provide the meals. Carrying cash was risky business, and in one instance, a Secretariat official was ambushed in one of the districts in Northern Uganda, and the money was stolen.

All the participants who registered were provided with lunch, which usually consisted of matooke, rice, posho and meat. I remember in some districts the most convenient method of securing the meat was to purchase a cow or two and slaughter them for lunch. We all ate together with the participants.

Seminars were usually held at the district headquarters where basic accommodation was available for us, the staff and participants. The Secretariat booked accommodation for us and a certain number of participants who were expected to travel from the sub-counties; otherwise night allowances were given to participants to stay wherever they wanted. There were serious complaints from the participants whenever allowances were not paid in time or when they were inadequate. Tororo District was a case in point where the estimated allowances were reduced by the accounting officer, and then paid late by the Secretariat officers. Some of the participants continued to demand the balance of their money for a long time after the seminars.

In general, participants for district seminars were drawn from the district administration including the RC V Chairman and some RC councillors at lower levels. Members of the district team including the DA, heads of departments, some elders and opinion leaders, religious leaders, heads of educational institutions – that is head teachers of secondary schools and heads of higher education institutions –and members of NRC from the district were also invited. Therefore there was participation from a cross-section of the people in the district.

The general programme for the district seminars was discussed and agreed upon by the plenary session. As earlier stated, each seminar was a two-day programme. But the participants from up-country had to arrive in the afternoon of the day before in order to be in time for the seminar the following morning when they officially registered. The topics for discussion were agreed to consist of the following:
• Historical and Political Background of Uganda.
• Do we need a new National Constitution?
• Nature, Purpose and Content of a National Constitution.
• Summarised Contents of the 1962 and 1967 Constitutions.
• Guidelines for the New Constitution.
• Programme and Timetable of the Constitutional Commission.

The first three topics could be covered by resource persons selected from the districts or by the Commissioners. The last two were always covered by the Commissioners. Presentation of each topic was followed by discussions by participants and clarifications by the Commissioners. The discussions were quite serious, focused and informed. Many participants were anxious to present their opinions and views. We advised them to peruse the reading materials we had distributed and to discuss their views with others before submitting their final views to us. We also urged them to educate those whom they were leading. We encouraged each district to form a Constitutional Committee to assist in guiding the debate and formulating proposals from the district. Many districts formed such committees, facilitating a healthy debate of constitutional issues.

The typical programme of a district seminar began with the arrival of the Commissioners, secretarial staff and some participants a day before the seminar started. We would meet the local leaders and be briefed on the preparations for the seminar. On the first day, the delegates would register in the morning and an opening session would be held at 10 a.m. The session would be presided over by either a local leader from the district, for example a Minister, a member of NRC, DA, RC V Chairman, myself or the Vice Chairman of the Commission. But most of the time, this honour was left to the local leadership especially the RC V Chairman. There was always a Master of Ceremonies, one of the local leaders. If I was at the seminar, the Secretary to the Commission or the Master of Ceremonies would normally invite me to address the meeting and thereafter, I would invite the Guest of Honour to open the seminar.

The substantive programme would begin at around 11 a.m. with a presentation and discussion of one topic – The historical background of Uganda – followed by a break for lunch which was provided to all participants.
In the afternoon, the programme would start at 2 p.m. and the second topic would be discussed up to 4 p.m. The third topic would be handled between 4 p.m and 6 p.m. The following day the last two topics would be tackled in the morning and the seminar would be closed before or soon after lunch. The closing ceremony was officiated by a local leader. We wanted participants to go back home on the second day to save costs of accommodation. But where that was not possible, for example if the seminar ended late in the day, we had to allow them to be accommodated for another night.

I personally attended 10 district seminars. I was advised that the people wanted to see the Chairman in the remotest corners of Uganda. I therefore attended district seminars in Mbale, Kapchorwa, Gulu, Nebbi, Luwero, Masaka, Bushenyi, Rakai, Mubende and Mukono.

The Mbale District seminar was one of the six inaugural district seminars we organised to take place simultaneously. The other five were in Apac, Arua, Bundibugyo, Mbarara and Mpigi. These were all held on 7th August, 1989, each by one of the six groups of Commissioners. The idea was to send the message to all areas of the country that the exercise we were engaged in was national and every Ugandan in any part of Uganda, however far, would be given an opportunity to participate in the process. The Commissioners who conducted the Mbale seminar were Professor Otim, Mr Med Kaggwa and Rev. Fr Dr Waliggo who belonged to Group D.

In my opening remarks at Mbale, I said:

Today is a historic day for the people of Uganda. It marks a turning point in the politics of Uganda. Today, the people of Uganda have started participating directly in the process of making their new constitution. Today in six different districts scattered in various corners of Uganda, in Apac, Arua, Bundibugyo, Mbale, Mbarara and Mpigi, local leaders will meet members of the Constitutional Commission to chart appropriate strategies for enabling every Ugandan to participate fully in the process of making a new constitution.

This process marks a point of departure from the previous politics because for the first time since Uganda attained her independence the people of Uganda will have a chance to decide on the most suitable form of government and the constitution they want.
There had been allegations that the NRM Government had already prepared its Draft Constitution and had set up the Commission as a mere window-dressing exercise to rubber-stamp the ready made Constitution. I took an early opportunity to allay these fears. This is what I said:

I wish to assure you and the entire country that the Commission is committed to returning the verdict of the people. The Commission has been left free to operate without interference or direction from the Government. In this connection, I wish to allay fears which have been voiced in some quarters that the Government has already submitted its Draft Constitution to the Commission and that therefore the Commission may not proceed with its work with a free mind. We have received no such draft, but even if it comes, it will be considered together with the views of the people of Uganda in arriving at a national consensus.

Indeed no such Draft Constitution materialised or was discovered by those who peddled such allegations. One former director in the NRM Secretariat, Mr Onyango Odong wrote his own version which he called *Alternative Draft Constitution* and circulated after we had presented our own Draft Constitution to Government; but neither the Government nor the Constituent Assembly considered it. It is remarkable to recall that Government never prepared a White Paper on our Report, nor did it present an official Government position to the Constituent Assembly. The people were left free to make a Constitution of their own choice.

I ended my opening address by thanking the local leadership for their assistance in making the seminar a success. I urged them to continue leading the crusade in the district for broader and meaningful participation of the people in the constitution-making process. I informed them that the journey towards the new Constitution had just begun. We would succeed or fail together. I appealed to them to keep the struggle going until the final victory. There will be nobody to blame but ourselves if we lose this golden opportunity to make a fresh start for a new political order in our country, I concluded.

The seminar in Mbale was conducted successfully but we were brought to task by local leaders who asked why there was no member of the Commission from Mbale District. I could not explain this except to say that it was not possible to represent all the 34
districts in the 21 posts in the Commission. I was, of course, not convinced because some districts like Tororo had two members, Hon. Kirya Gole and myself. I therefore argued, lamely perhaps, that the two of us were representing the Eastern Region which included Mbale District.

There were some minor problems with the Mpigi District seminar. Participants had insisted on just two topics, *federal* and the 1962 Constitution. They were very suspicious of a long constitution-making process embracing all kinds of issues. I felt that Buganda as a region needed proper handling as people were agitated about the restoration of the monarchy and *Ebyaffe* (our things). I decided to concentrate my efforts in the region to give the process a high profile and the importance it deserved. I therefore attended the seminars in Luwero, Masaka, Mukono and Rakai Districts. I was able to win the confidence of the Baganda because I was fluent in Luganda and therefore it was easy to communicate directly with them.

I had my primary education in Luganda in my home district of Bukedi where Kakungulu, one of the Buganda chiefs had introduced the language as well as the missionaries. I sat my Primary Leaving Examinations in 1957 at Chadwick Memorial Primary School in Entebbe where I wrote the examinations in Luganda since the school was under the Kabaka’s Government. When I joined Kings College Budo where I studied for my Ordinary and Advanced Levels from 1960 to 1965, I was the best student in Luganda language. Our teacher, Mr Ssali, used to rebuke my Baganda classmates for being lazy and leaving a non-Muganda to beat them in their mother tongue. I was also the prefect of Mutesa House in 1965 which was known as a Royal House. Although soon thereafter I went to Dar es Salaam University where I spoke more Kiswahili than Luganda, I did not forget Luganda, because it was some sort of *lingua franca* for many Ugandan students.

Therefore it was easy for me to give my opening seminar address in Luganda, and to present my favourite topic ‘Nature and Purpose of a Constitution’. Many delegates, even my colleagues in the Commission were amazed at my fluency in the language. Language is an important element of culture and my knowledge of Luganda demonstrated that I understood and respected the Kiganda culture.
This was by and large correct. Baganda gained confidence in the process and actively participated in the exercise.

During the district seminars we experienced major problems relating to transport, hotel accommodation, insecurity and funding. The Commission only had four Santana Land Rovers which were three-door vehicles. This meant that some of the Commissioners, secretarial staff and security officers had to be packed in the back or the boot of the vehicle. The vehicles were uncomfortable and had a high rate of fuel consumption. These few vehicles were supplemented by some hired vehicles which were not always reliable. In some distant areas like Moroto, Kotido, Arua, Moyo and Nebbi, we had to use air transport, which was not easily available because we had to pay for it. We had to use water transport to reach the islands on Lake Victoria like Kalangala, Sigulu and Buvuma. The ferry or canoe boats were not always either available or reliable.

There were trying and frustrating experiences as well. On Friday 4th August, 1989, the Commissioners had planned to set off for Mbale to organise the district seminars there. But when they reached the Commission premises, no transport arrangements had been made for them at all, and the transport officer seemed unconcerned. The Commissioners, Professor Otim, Mr Kaggwa and Rev. Fr Dr Waliggo, decided to proceed to Mbale using Fr Waliggo’s personal vehicle, a pickup. Such improvising and initiative saved the day. Two days later, I travelled to Mbale in my official Santana Land Rover to join them for the seminar which opened on Monday 7th August.

The Kalangala District seminar was conducted by four Commissioners, namely Professor E. Khiddu Makubuya (team leader) Mr Jonathan Kateera, Mr Wenkere Kisembo, and Hon. Sam Kirya Gole. Kalangala District comprises the Ssese Islands in Lake Victoria which are accessed through Masaka District. Due to lack of proper accommodation in Kalangala, the Commissioners were advised to stay in Masaka and commute daily to Kalangala by ferry. In their report after the seminar, the Commissioners narrated their transport experiences:

The four Commissioners were crammed into one ‘cargo’ Santana to Masaka. We were informed that two other vehicles had gone ahead of us with the secretarial staff. When we got to Masaka on the evening of Friday, 13th October, 1989, we were informed that a saloon car had
been sent to Kampala to collect some of us. We, however, did not see nor use a saloon car for the Commissioners travel to Masaka. The Commissioners stayed the night Friday/Saturday at the Laston Hotel in Masaka.

On Saturday (14/10/89) early in the morning, and in the company of the District Administrator Kalangala, we set off from Masaka to Bukakata arriving late, at around 8.30 a.m. We had been assured that crossing from Bukakata to Bugoma by ferry would take 45 minutes and the journey on land from Bugoma to Kalangala District Headquarters would take a similar time. On getting to Bukakata, and despite all assurances by the District Administrator and others, the ferry was temporarily out of order. It took two hours to fix it.

We finally got to Kalangala at about 12.30 p.m. Then we went to the District Administrator’s Office for consultations. We finally got to the venue of the Seminar – Ssese Farm School – at 1.15 p.m. We found the delegates patiently waiting for us. The Seminar started without any further ado.

The Kalangala District seminar was conducted over the weekend, on Saturday and Sunday, 14th and 15th November, 1989. On Sunday the Commissioners set off from Laston Hotel Masaka at 7 a.m. arriving at Bukakata at 8 a.m. The ferry was again temporarily out of order. After loss of valuable time the Commissioners got to the Ssese Farm School at 11 a.m. But the seminar did not start in earnest until the delegates had raised some preliminary objections which had to be disposed of. The Commissioners tell the story:

Speaking through the DES Kalangala Mr V. Ssemakula, the delegates strongly criticised the Commissioners for having slept in Masaka and not in Kalangala. After the DES, various delegates demanded the floor and it was granted to them. Several of them took great offence to the fact that those who had gone to conduct a seminar in Kalangala decided to stay in Masaka. This showed that the government had already made a constitution and that these seminars were intended to hoodwink people, etc.

It was eventually explained to the delegates that there were genuine problems of accommodation in Kalangala which forced the Commissioners to stay in Masaka. After an hour or so of letting off steam, the delegates decided that it was better to proceed with the Seminar than abandon it.

The seminar was, however, a success and was attended by 148 delegates. It was graced by the presence of the three NRC Members
namely Hon. Mutebi Mulwanira (Bujumba County), Hon. Israel Mayengo (Kyamuswa County) and Hon. Noelina Namugenyi (Women Representative/Kalangala District).

The Kalangala experience demonstrates the lack of adequate transport and accommodation facilities on the Islands. The solution is to promote more development in the district. One can understand the sensitivities of the local population regarding the refusal of the Commissioners to share their inadequate facilities; but one must also recognise the importance of ensuring that the Commissioners maintained a secure and a healthy life in order to accomplish their difficult national task. Yet, one can discern the Islanders’ basic point: if we are not good enough to host you overnight would our ideas on the constitution be found good enough?

The seminars for Karamoja Region, in Moroto and Kotido Districts also presented some interesting transport and communication problems. Karamoja is one of the remotest and most inaccessible sub-regions due to a poor transport network and insecurity caused by cattle rustling and ambushes on the main roads. The only secure option for the Commissioners was to fly to Moroto. The seminars in Moroto and Kotido districts were conducted by Hon. Kirya Gole (team leader), Mr Jonathan Kateera and Mr Wenkere Kisembo. There were four secretarial staff.

The administrative experiences the Commissioners went through were captured in their report when they returned:

We left Kampala, Nile Hotel Gardens, by helicopter on 27th September 1989 at about 10.00 a.m., and stopped in Mbale for refuelling, for about one hour. We took off again at about 12.00 noon landing at Moroto around 1.00 p.m. We booked into Mt. Moroto Hotel – a Uganda Hotels property.

Earlier we had been met by the District Administrator Mr. Kabachelor and we had agreed that we open the Seminar the same afternoon. The DA had complained about lack of communication between himself and the Commission/Ministry of a Constitutional Affairs. He pointed out that on two other occasions he had been told of the Commissioners visiting Moroto for a similar Seminar. On both occasions some of the participants had turned up and no information had been received to cancel such arrangements.

Though he had heard of our coming on radio, he had not taken serious steps to mobilise people. However, since another meeting had been
taking place during the same day, some participants were available and we agreed with him to have the seminar opened that afternoon. More participants were to be organised the following day.

So the seminar was opened that afternoon by the DA who explained the purpose of the constitutional seminars and asked the participants to take the opportunity given to them by the NRM Administration ‘to block loopholes that exist in the 1967 Constitution’. He emphasised that the Constitution should be based on the wishes of the people of Uganda and that it should safeguard their interests. The DA pledged support to the Commission in all ways possible to make the seminar a success. He declared the seminar open, although there were only 20 participants present from the nearby sub-counties.

The seminar continued the following day and was closed by Hon. Butele, Minister of State for Karamoja. The Commissioners rested on Saturday and then set off next day for Kotido with Hon. Butele and the general manager of Karamoja Development Programme, both of whom provided transport and security. They left Moroto at about 11:45 a.m. and arrived in Kotido by 2:30 p.m. They found the accommodation facilities and food quite inadequate.

The Kotido seminar was held on 2nd October, 1989 for only one day. The topics discussed were: Why have the District Seminars? Nature and Purpose of a Constitution and Uganda’s Historical and Political Background. One Commissioner presented the topic while another chaired the session. After the presentations, discussion was opened up for participants. It is surprising that the first proposal made was that cattle rustlers should face a firing squad! They also suggested that an agreement should be entered into between Uganda and Kenya to outlaw cattle raids by Turkana from Kenya. They said it was not enough to conclude an agreement between local chiefs. Thus the people saw constitution-making, perhaps mistakenly, as a direct means of resolving an endemic problem that had caused untold misery to the region.

The Commissioners had lunch at the DA’s home and departed at 4 p.m. by helicopter, eventually arriving at Nile Hotel Gardens at 5:45 p.m.
Transport and accommodation woes also afflicted the Moyo and Nebbi District seminars. The Nebbi seminar, which I attended, was conducted immediately after the Moyo seminar because the districts are adjacent and are some of the most distant and inaccessible ones by road. The Commissioners who conducted the seminar were Prof. Khiddu Makubuya, Mr Jonathan Kateera and Mr Wenkere Kisembo. The story told by the Commissioners in their report to the Commission gives a vivid picture of what took place:

In the days preceding the 29th August, 1989 (i.e. our departure from Kampala) the Secretariat assured us that we would reach Moyo and Nebbi by Charter plane. However, a few hours before departure two Commissioners were given Uganda Airlines tickets and ordered to proceed to Entebbe for the next flight to Arua. The third Commissioner had not received his air ticket yet, but he still proceeded to Entebbe along with his two colleagues. A luxury Mercedes Benz was provided for the purpose of delivering the three Commissioners to Entebbe Airport.

The three Commissioners arrived at Entebbe Airport ahead of Mr. Rugadya, Mrs. Keronega and Mr Sam Okior. The Commissioners proceeded to the VIP Lounge where they were promptly turned away. However, an official from the Ministry of Foreign Affairs took pity on the Constitutional Commissioners and intervened on their behalf with VIP Lounge attendants on account of which the three Commissioners were reluctantly allowed to access the VIP Lounge.

The flight to Arua was finally called, Mrs Keronega and Mr Sam Okior had to be left behind, with the airline insisting that we had to leave some of our team or part of the seminar material behind. Mr Rugadya opted to take all the materials and leave his assistants behind. The flight to Arua would have been totally uneventful except that only a few miles from Arua, heavy rains caused visibility problems for the pilots who announced that in case they were unable to land, the flight would have to return to Entebbe without landing in Arua. The plane circled for some time until it was possible to land. The return flight to Entebbe for that day had to be cancelled due to bad weather.

At Arua airfield, we found a double cabin pick-up from Moyo Hospital and Moyo DA's messengers waiting to escort us promptly to Moyo. We however, were better advised not to start off for Moyo at 4:30 p.m. We checked into the White Rhino Hotel in Arua for the night. The following day Wednesday, 30th August, 1989 at about 9:00 a.m we loaded our staff and luggage into the same pick-up from Moyo Hospital, boarded and started off to Moyo. We had one armed NRA soldier as our escort. The only other person besides the driver was the civilian brother of the DA of Moyo who had come to Arua to do some shopping.
Just a few miles outside Arua town, at Ombachi to be exact, we came across an NRA/Police road block. We explained that we were Constitutional Commissioners proceeding to Moyo. They asked if we could oblige by carrying a soldier to Moyo. We flatly refused. Then the soldiers said they had to check us and our luggage thoroughly. Mr Rugadya and the team leader got out, produced their official IDs and explained all about District Constitutional Seminars etc. The issue was that we had had the temerity to refuse to carry a soldier with us to Moyo. We stood firm on the issue and we were finally left to go.

We got to Moyo at 12:30 p.m. after a very rough and scaring 100 miles drive. We found that registration of the seminar had already started. Some people including Hon. Agard Didi, NRC Member (Moyo) expected the Seminar to start that afternoon. However, we had to see about accommodation first. We had information that there was an NGO Guest House in Moyo, which was the only reasonable accommodation there. We shortly learnt, however, that it was full. The D.A., Lt P. Kakonge, was of the strong opinion that since we were a Government delegation, we should stay in the Government Rest house. We checked out this facility and found that there were no beds and no bed sheets; toilets and bathroom facilities were completely inadequate. We requested the DA to explore an alternative. The three Commissioners were finally accommodated in a partially abandoned guesthouse at Moyo Hospital. In order for the Commissioners to use the said guesthouse, Mr Rugadya had to arrange for the purchase of bed sheets, a lantern and paraffin, candles, insecticide and flashlights.

Even then, the Commissioners had to sleep on reed/papyrus beds. The Hospital guesthouse had three bedrooms one of which had no door. One of the Commissioners had to live doorless for two nights. Even so, this was the better arrangement in the circumstances. Fortunately, the DA provided armed security for the guesthouse for the two days we lived there.

Two full days were lost because of the circumstances beyond the Commissioners’ control. Therefore they decided to hold a one-day seminar. Apart from the absence of suitable accommodation, the Commissioners reported:

Moyo on the face of it is a hungry district. People are just returning from exile, the last batch having come only three months ago. The best hotel in town was the Government Rest house. And there, the staple food was maize and meat.
However, the entire programme of the seminar was covered: all the topics were presented and discussed. The participants asked for copies of the 1962 and 1967 Constitutions which the Commissioners promised to send. The participants proposed that instead of wasting money going to the sub-counties, the Commission should either revise the 1962 and 1967 Constitutions instead of writing a new one, or set up constitutional committees in each district representing RC V, District Development Committee, the counties and sub-counties whose views would be deemed to be the views of the people. The participants wondered how the Commission was going to continue with its work after the NRM’s interim period ended in January 1990. They expressed deep suspicion that the Government had already written a Constitution and was now just seeking endorsement from the people. Since it was the NRM Government which set up the Constitutional Commission, the participants feared that the Constitution that emerged would be overly favourable to the NRM Government. Therefore, they suggested that the composition of the Commission should include representatives of peasants and one representative from each district. They also wanted an office in Moyo to facilitate consultation with the Commission.

During the seminar, Mr Felix Onama, former Minister of Defence in Obote I Government used the occasion to explain to Madi elders, what in his view had happened in 1966 with particular reference to the Gold Allegations of Daudi Ochieng and the arrest and imprisonment of five cabinet ministers. Mr Onama and Hon. Didi acknowledged that the Commission had made it possible to bring so many Madi leaders together so that Onama could address them for the first time since 1966 and Hon. Didi for the first time since his election victory in February 1989. The seminar was enthusiastically attended by a total of 250 delegates from all over Moyo District. It ended at 7.30 p.m.

The story of the Nebbi District seminar is equally interesting. The main problem related to transport. After the Moyo seminar, the DA Moyo gave the Commissioners transport to take them back to Arua on Friday, 1st September. They checked into the White Rhino Hotel where they found the secretarial staff they had left
behind at Entebbe Airport had arrived. They held discussions with the DA Arua, Mr Galiwango, about the holding of another district seminar. The question of how the Commissioners were to return to Kampala caused them a lot of anxiety. They narrated their experiences as follows:

The following day, Saturday 2nd September, 1989, brought a good deal of anxiety to our team. We learnt that Uganda Airlines would be making its last flight (for some time) out of Arua on Sunday 3rd September 1989. At the same time, the DA Nebbi sent two vehicles to take us to Nebbi. The Commissioners were initially of the view that if we could not be guaranteed passage out of the West Nile by other means, we should leave on the said Uganda Airlines flight of 3rd September, 1989. This meant that we should have to cancel the Nebbi Seminar. The alternatives were:

(a) Travel by road from Arua to Kampala through Moyo/Adjumani/Gulu. We then knew that Arua-Moyo road was dangerous and it had been reckless of us to travel on it in the first place. There was also some uncertainty whether the ferry was working. This alternative was, therefore, a non-starter.

(b) Travel by road, Nebbi-Pakwach-Paraa, through the park as part of a convoy; but whose vehicles were we to use in the exercise? There were so many uncertainties about this alternative that it had to be abandoned.

(c) Travel by canoe from Panyimur to Wanseko in Masindi and then by road to Kampala. This alternative was deemed to be unsafe, dangerous and uncertain.

(d) Travel by Police helicopter from Nebbi. From Arua Post Office, we rang the UCC Secretariat, the Permanent Secretary, Constitutional Affairs, the Office of Capt. Butime, but there were no answers.

(e) Travel by chartered aircraft. Mr Rugadya and the Team Leader spent two hours in an effort to trace the Assistant Co-ordinator of Lutheran World Federation (LWF) who would make a booking for our return flight in Missionary Aviation Fellowship (MAF). Eventually the Co-ordinator was found and he undertook to do the booking for our return flight. It was a five-seater plane. We were therefore constrained to leave Mr S. Okiror in Arua to return to Entebbe on the next Uganda Airlines flight.

This story shows how precarious the position of the Commissioners was in the field. Communication to Kampala was poor from such remote areas. Efforts to contact Kampala to secure a Government helicopter failed. The Commissioners were desperate and could
not proceed to the next stage of their work without being assured of their safe return to Kampala. However, after being assured of this they set off to Nebbi. Here is the story of Nebbi:

We proceeded to Nebbi by road on Sunday 3rd September 1989. Before we left Arua, the Nebbi team assured us there would be transport at our disposal in Nebbi and that despite the fuel crisis rampant in West Nile, fuel had specifically been reserved for our use. The five of us namely, Commissioners J. Kateera, S.W. Kisembo, E.K. Makubuya and two staff - Mr R. Rugadya and Mrs Keronega arrived in Nebbi at about 12.00 noon and checked into Raja Deluxe Hotel. Shortly after lunch, the Commissioners wanted to drive around to see a bit of Nebbi and while awaiting the time, we were surprised to be told that the Santana that had just delivered us from Arua was out of order and that in any event there were fuel problems. The Commissioners offered to buy fuel from ‘Opec Boys’ (illicit fuel traders) so that they could at least be driven around. Nothing worked. We finally settled for a walk around Nebbi town. In the course of the afternoon, we established contact with the Town Clerk, Nebbi, the Ag. DA Nebbi (Mr R. Aboku Erenyu) Nebbi District Woman Representative (Hon. Esther Dhugira) and the Nebbi District Constitutional Committee.

The registration started that evening of 3rd September, 1989. The seminar itself was started on Monday, 4th September, 1989. It was held in the Conference Room of the Raja Deluxe Hotel. In total, there were 230 delegates.

The programme consisted of the opening ceremony, presided over by the Chairman RC V. In the morning, two topics were presented namely, ‘Guidelines for the New Constitution’ by Dr E. Khiddu Makubuya and ‘The Programme of the Commission’ by Mr Jonathan Kateera. In the afternoon, ‘The Historical Background of Uganda’ was presented by local resource persons Mr Oketta and Mr Olobo. The other topic, ‘Why Uganda needs a new Constitution’, was presented by Mr Wenkere Kisembo. The following day, the entire morning was devoted to presentation and discussion of ‘Nature and Types of Constitutions’ by Prof. Makubuya. The seminar was closed at 1.30 p.m. by the District Executive Secretary Nebbi, Mr Kizito.

Before I take leave of the Nebbi District seminar, I should narrate my own ordeal. On the morning of 4th September, I travelled by air from Entebbe to Arua to attend the seminar. I used a Uganda Airline flight which was operating an Air Tanzania plane.
On arriving at Arua Airstrip I found no transport waiting to take me to Arua or Nebbi. I was advised to board a pickup which was being used as a taxi. Hon. Dr Ajiani, Member of NRC, was sitting in the cabin of the pickup and he offered me a seat next to him. There were other passengers on the trunk of the pick up with their luggage. Dr Ajiani paid my fare as I was a guest in the area.

I was dropped at the office of the DA in Arua to find out if any transport had been arranged for me. Enquiries were made with the RC V Chairman’s Office, the District Police Commander and the Magistrates’ Courts: nothing had been arranged, although I expected information to that effect to have been sent by the Secretariat or the Commissioners in the field.

I therefore decided to ask the authorities in the district to look for a vehicle for me to hire to take me to Nebbi. This took some time. Eventually a tipper was identified which belonged to some Government department. I was told the vehicle was available but there was no fuel. I provided money for fuel and it was bought from ‘Opec Boys’; some was put in drums for the return journey. Security was provided in the form of a few soldiers to escort me and I paid their allowances. So we set off to Nebbi in the truck. I sat in the cabin with the driver and the escorts boarded the trunk. It was a rough journey but we arrived safely. I reached Nebbi at around 3 p.m. and went straight to Raja Deluxe Hotel where the seminar was being conducted.

This is how the Commissioners narrated my ordeal:

At about 3.30 p.m. when the afternoon session was already underway, the Chairman of the Uganda Constitutional Commission the Honourable Justice B. J. Odoki arrived and joined the Uganda Constitutional Commission team. The Chairman was certainly warmly received by the team and the delegates. He explained that from Arua to Nebbi he had travelled on a tipper which was the only means of transport available for hire. While we were happy to see the Chairman, we were truly sorry that he had been forced to travel from Arua to Nebbi by these means.

After the seminar, we rushed back to Arua to ascertain the state of transport to Kampala. My colleagues were highly agitated at the prospect of having to stay in Arua indefinitely. I tried to boost their
morale by reassuring them that since I was with them everything would be fine. I was sure that Government would not allow me to stay up-country indefinitely instead of being able to visit other districts.

Our aim was to catch the MAF flight to Entebbe that afternoon but our hopes did not materialise. We had to spend another night in the White Rhino Hotel with no electricity and limited food choices.

I did not lose hope even after our failure to get the MAF flight. Fortunately, there was the last flight of Air Tanzania/Uganda Airlines on Wednesday, 6th September, 1989 which brought us back to Entebbe shortly before midday. It was a humbling experience for me and my colleagues, but I commend them for enduring the hardships and anxiety during the Moyo and Nebbi seminars.

We also experienced financial problems during the district seminars. Some were poorly financed due to arbitrary cuts in the Commission’s budgets for the seminars and also mismanagement of funds by the Ministry staff. This affected the allowances for the upkeep of delegates, who did not hide their discontent and disappointment. In some instances, like in Kalangala District, it was alleged that the Commissioners had come with lots of money and returned with it without paying it to the delegates. This was not the case: The Commissioners did not handle money.

For the Tororo District seminar, the estimate was Shs. 6 million for 790 delegates because it was a big district (now divided into three – Busia, Pallisa and Tororo). The number of delegates was reduced from 790 to 600 on the directions of the Permanent Secretary as accounting officer; the estimate for these was Shs. 5.4 million, but that was never released: only Shs. 4 million was actually received. The Commissioners resolved to cancel the seminar to avoid the kind of embarrassment they had experienced at other seminars but I persuaded them to go to Tororo and promised to look for more funds. I knew the delegates were waiting for the Commissioners and it would be disastrous if nobody turned up to explain the mishap and conduct the seminar even for one day. Tororo was my home district and I did not want my people to feel that I had intended to slight them.

The Commissioners led by Professor Otim, with Mr Kaggwa and Rev. Fr Dr Waliggo arrived in the evening and found the delegates
as well as the civic leaders agitated. There had been no resources to cater for the delegates the previous night or during the day. The officer from the Ministry who had the funds arrived very late in the evening and had to be forced to pay some money to the delegates for their upkeep. The seminar was conducted for one day on 26th October, 1989 but the delegates and local leaders demanded that, since other districts were being given two-day seminars, another, two-day seminar should be held for them. In other words they demanded parity in treatment, and their demand was accepted. The repeat seminar was held a year later, on 20th September, 1990 and lasted for two days as they had requested. The people of Tororo were satisfied.

A similar problem was experienced in Arua District, where the seminar also had to be repeated.

However, it was not all travelling, work and problems. We had moments of relaxation, socialisation and fun. Whenever I was up-country I took the opportunity to meet civic and other leaders to discuss the situation in the district and to brief them about the constitution-making process. We would have drinks or dinner with them in the evenings. The Commissioners would join me if they were free.

We would also enjoy our time together with the other Commissioners, drinking and eating together and trying to relax after a hard day’s work. Of course, we would also review our work and plan the programme for the following day. When it was safe, I used to take a short walk around the hotel gardens or neighbourhood.

The most interesting evening we had was during the Gulu District seminar which was held on 14th and 15th December, 1989. It was one of the last district seminars held. We took a big delegation to Gulu, including the Minister of a Constitutional Affairs, Hon. Sam Njuba, myself, the Secretary-Professor Mutibwa, Mr Okot, Mrs Maitum, and Capt. Kayihura. Secretarial staff included Mr Ngolobe, Mr Serwano Mukasa, Ms Anne Mugisha, Mr Olumbe, Mr Mugarura (Information Officer) and Ms Kagoro. We were joined by the Resident Minister in Gulu Hon. Betty Bigombe and Hon. Alai, a Deputy Minister. There were also other members of NRC.
The opening ceremony was officiated by Hon. Njuba and addressed by Hon. Bigombe, myself, and Professor Mutibwa. Then the substantive programme of the seminar started. Over two days we discussed topics on ‘Historical and Political Background of Uganda,’ by Capt. Kale Kayihura, ‘Why we need a New Constitution’ by Mr Okot, ‘Contents of a Constitution’ and ‘Rights of Women’ by Mrs Maitum and ‘Role of armed Forces in Defence of Democracy’ by Capt. Kayihura. The seminar was closed by Hon. Bigombe with a prayer and the National Anthem.

We stayed in Acholi Inn, a Uganda Hotels facility. Gulu District was then experiencing insecurity due to the rebel activities. In the evening I was surprised to learn that a disco dance had been organised at the hotel by the local leadership to entertain us and mark the end of the seminar. I believe Hon. Bigombe had a hand in this. Senior military officers in Gulu attended the disco. We had a great time. We drank and danced the night away. It is remarkable that in the one place where we were so worried about our security, we were treated as if we were in the safe, carefree confines of Kampala city. This gave us the confidence that despite the insecurity in the area the people of Gulu would participate in the process.

The problems the Commissioners experienced in Bundibugyo District were narrated by Professor Ssempebwa as follows:

Bundibugyo was the most trying journey. We went with Mr Aziz Kasujja and Mr Rwaheru to Bundibugyo… it was a difficult terrain and it was a rainy season. We were first offered a grass-thatched house, which also served as a restaurant for our accommodation. We said no and one government officer surrendered his house. The three of us stayed in one small room. Three beds fitted anyway. Our meals were cooked in the grass-thatched restaurant. Bundibugyo was the most trying. …I did not want to talk about it when we came back.

District seminars gave us an opportunity to publicise and popularise the constitution-making exercise throughout the country. The people learnt about the meaning and purpose of a Constitution and why a new one was being made. We were able to obtain first-hand information and experience of the social and economic conditions in the country and the burning issues that the people wanted addressed in the Constitution. We found that the issues were generally the same throughout the country.
We received suggestions as to how we should conduct the process and were assured of the people’s active participation. We were able to count on the local leadership for the mobilisation and further sensitisation of the masses. You reap what you sow. I believe we succeeded in receiving overwhelming response from the population because of the seeds we sowed during these district seminars.
Seminars for Institutions and Special Interest Groups

Preparation for Seminars
Seminars for institutions of higher learning and special interest groups were the next educational programmes conducted by the Commission. The objectives of these seminars were: to educate the participants and stimulate debate on constitutional issues; to identify in the course of debate issues pertinent to the making of the Constitution; to involve the intelligentsia in the constitution-making process; to identify issues of special concern to them; and to receive any other views relevant to the constitution-making process. The primary objective was therefore to stimulate discussion and debate and the secondary objective was to collect views.

In order to conduct the seminars effectively, we instructed the Secretariat on 23rd January, 1990, to work out preliminary studies on the modalities of conducting public debates/seminars for selected institutions and to report back on 13th February, 1990. The Secretariat identified the institutions and organisations for which seminars were to be conducted. It visited all these and discussed with their leadership the category and number of participants, proposed dates and expenses for each seminar.

On 13th February, 1990, the Commission met and discussed the report. It was decided that a Seminar Contents Committee be formed to work out how these institutional and special interest groups’ seminars and debates were to be handled.

The Committee consisted of Mrs Maitum (Chairperson), Rev. Fr Dr Waliggo, Mr Ufoyuru, Hon. Jotham Tumwesigye, Capt. Kayihura, and Professor Mudoola.

The Secretaries were Mr Serwano Mukasa, Senior Legal Officer (SLO) and Mr Ojokol, Research Assistant (RA).
The Committee presented its report to the plenary session on 20th February, 1990. The report contained proposals on the organisation of the seminars, the role of the Commissioners, categorisation of institutions and organisations, format of debate, seminar topics and duration of the seminar. The report was discussed and adopted.

The Organisation of Seminars
As agreed by the Commission, where possible there was a seminar organising committee within each specific institution or group with which the Commission liaised, to agree on the topics to be discussed and to organise the seminar. These seminar committees comprised members from the various bodies which made up the institution or organisation. The committees identified speakers and participants who were fairly representative of the social forces in the institution and the venues for the seminars.

We categorised the institutions and organisations into three groups. The first group consisted of institutions of higher learning including universities, institutions of teacher education, national colleges of business studies, polytechnics and theological colleges and seminaries. Each type of institution was handled in a way that took into account their particular characteristics and roles.

The seminars were held for two days. In the mornings formal panel discussions were followed by general discussions, and there were group discussions on selected constitutional topics in the afternoons. Resolutions, if any, were adopted by the plenary assembly. However, it was emphasised that these seminars were not for the collection of views, but that if there were resolutions made, they would be accepted.

Group two consisted of professional organisations like the legal profession and the security forces. For the legal profession, the format for debates consisted of four position papers by four experts in the field presented for discussion. These seminars covered one day. For the security forces – namely the army, police and prisons service – seminars covered two days. Papers were prepared with particular reference to the role of security forces in a free and democratic society. Some of the papers were given by members of the security forces.
The remaining professional and special interest groups formed the third group. These included organisations for women, youth and workers. It was agreed that this group be treated in the same way as the district seminars. But their special interest was given first priority and the education programme was conducted according to the standard of each group. Members of each group were encouraged to present papers or prepare views. Civil servants formed a special group. There was also a national seminar for political leaders.

The plenary discussed the proposed topics for each group and approved them, subject to allowing the freedom to modify them in consultation with the groups. The topics which were discussed during the seminars included traditional rulers, forms of government, citizenship, land, participatory democracy, human rights and women in national development.

The Commissioners’ role was to provide an input on the task the Commission had been empowered to do, what it had done so far, and what remained to be done. The Commissioners also chaired and oversaw the overall success of the exercise. They clarified issues and responded to questions. They prepared a report on the seminar and submitted it to the Commission.

We divided the Commissioners into six groups. Group A consisted of Hon. Obwangor, Mrs Matembe and Hon. Tumwesigye. It took charge of institutions in South-Western Region (Mbarara, Bushenyi, Rukungiri, Kabale and Kasese) and also the prisons service seminar in Kampala. Group B consisted of Mrs Maitum, Professor Ssempebwa and Lt. Col. Serwanga Lwanga. They conducted seminars for institutions in Central Region and also seminars for Kyambogo Polytechnic, professionals and Makerere University in Kampala. Group C consisted of Mr Rwaheru, Hajji Kasujja and Mr Wenkere Kisembo. They organised seminars in North-Western Region (Hoima, Masindi, Kabarole and Bundibugyo) and also seminars for local government, civil servants and women in Kampala.

Group D consisted of Professor Otim, Rev. Fr Dr Waliggo and Mr Kaggwa. They conducted seminars for institutions in Eastern Uganda and also seminars for the Uganda Police Force and the Uganda Law Society in Kampala. Group E comprised Mr Okot, Capt.
Kale Kayihura and Mr Kateera. They were in charge of Northern Region and also seminars for the youth and Mulago Hospital in Kampala. Group F consisted of Professor Khiddu Makubuya, Hon. Kirya Gole, and Mr Ufoyuru. They were responsible for institutions in West Nile Region and seminars for the army, the workers, Gaba National Seminary in Kampala and Bishop Tucker Theological College, Mukono.

Institutional seminars commenced on 4th March, 1990. The majority were held between March and May 1990 with some in November 1990, especially in Northern Uganda. Some seminars for special interest groups were held in April and May 1990. The last ones were held in the first part of 1991, culminating in the workers’ seminar, the Uganda Women’s Seminar on 11th June, 1991 and the political leaders seminar on 21st June, 1991.

These seminars were less expensive to run than the district seminars. The Commission did not have to pay for accommodation for most of the participants, except meals or refreshments. In some cases, as for the army and women, their organisations contributed to the participants’ upkeep. The original estimated cost of the seminars was about Shs. 63 million to cover the expenses of the participants, excluding the expenses of the Commissioners and Secretariat, which were estimated at about Shs. 40 million for four months. Every effort was made to keep within these estimates.

My Participation in Seminars
The Vice Chairman Professor Mudoola, Secretary of the Commission Professor Mutibwa and I were not attached to any group of Commissioners. Our role was the general co-ordination of the exercise, and the reinforcement of any group where additional strength was needed. I participated less in institutional seminars up-country because of the need to monitor the process from headquarters. But I attended almost all the seminars for special interest groups which demanded my presence.

I took part in several seminars for schools and colleges in Eastern Region. In preparation for the seminars an officer would be sent to the area or institution normally a few days before the due date. He would consult with the relevant schools and colleges and decide where and when the seminar would be held. Modalities for
transportation of students and provision of refreshments if any, and hiring of public address system, would be discussed. Necessary funds would be provided to cover these expenses.

A central school or college with a suitable hall would be chosen. School lorries would be used to ferry students and teachers from the selected institutions. Usually these were secondary schools and tertiary colleges. The seminar would be held for one day. Most of the topics would be introduced by the Commissioners and discussions held thereafter. The seminars would commence at about 10 a.m. and end at about 4 p.m. to enable students to be transported back to their schools. Publicity materials would be distributed.

One of the institutional seminars I attended was held in Busia for schools and colleges in Busia District. The seminar was held at Busia Secondary School. Later we held another seminar for schools and colleges in Pallisa District, at Pallisa. These seminars were under the charge of Group D led by Professor Otim. Normally all the Commissioners in the group attended unless they were otherwise engaged.

In Kampala, one of the seminars I participated in was for Makerere University. This was among the first institutional seminars to be held and took place on 17th April, 1990 in the Main Hall. I was the Guest of Honour. The seminar was attended by a cross-section of academia, administrators and students from the university community.

The Vice Chancellor of Makerere University Professor Ssenteza Kajubi presided. He welcomed us to the university and expressed his gratitude that we had found it fit to give the Makerere University Community an opportunity to participate in such an important national exercise. He pledged the university’s support for the work of the Commission.

Topics on constitutional issues like land, democracy, forms of government and human rights, were dealt with by professors from the university. Topics dealing with the constitution-making process were dealt with by the Commissioners. There were open discussions after each presentation. Both lecturers and students participated actively in the debate, which was highly intellectual. However, it was clear that not everyone was conversant with the
provisions of the past and existing Constitutions. They needed copies of these in order to be able to debate issues and contribute views from a point of knowledge.

In my opening address, Challenges of the Constitutional Agenda in Uganda, I started by congratulating the Vice Chancellor for having been appointed to that high office for the second time and opined that he might be the first person to have been twice appointed. I pointed out that he had come to Makerere at a time when the university was going through difficult times as it tried to reassert its credibility and regain its former glory as a distinguished institution of higher learning, teaching and research.

I hoped that with his experience and dynamic leadership the University would not fail to recapture its glory and stature so that it could play a leading role in the transformation and development of our society.

Most of my address dealt with the work of the Commission. I spelled out the Commission’s terms of reference, its programme and timetable and the fundamental objectives of the new Constitution. I explained each of the fundamental objectives, namely; national independence, sovereignty and territorial integrity, democracy and human rights, political institutions and peaceful change of government, free and fair elections, separation of powers and checks and balances, accountability of public officials and independence of the judiciary.

I emphasised that this was a very comprehensive and full agenda for the Constitutional Commission and indeed for the entire people of Uganda. The agenda had to be addressed seriously by every Ugandan if we were to generate appropriate consensus and produce a viable and popular constitution.

In order to reach correct solutions to the issues, I appealed to my fellow Ugandans to address the root causes of our problems, to learn lessons from our past, discuss possible solutions honestly, frankly and with tolerance, and be prepared to compromise in order to achieve the desired general agreement.

I pointed out that now was the time for all Ugandans to stand and be counted as one nation, committed to forging ahead in unity, democracy, peace, progress and justice, under one popular Constitution, freely made by themselves for themselves and future
generations. That was the time to ‘build for the future’ as the Makerere motto gloriously proclaims.

In conclusion, I said:

Let all Ugandans seize this opportunity and participate in full in the process of making a new constitution. I wish to assure the country that the exercise is proceeding successfully and that we have received tremendous support from the government and the people.

My appeal to the Makerere Community is to research and analyse all the constitutional issues that are being raised particularly the key and controversial ones and to forward to us your findings and considered opinions in memoranda or research papers. Secondly I wish to appeal to you to play a leading role in holding discussions, debates and workshops, on key and controversial issues so as to create public awareness about these issues and to share your intellectual ideas and views with the public.

Finally, I appeal to you to be in the vanguard for the creation of a new political culture of constitutionalism buttressed by democracy and the rule of law, in order to protect and safeguard the new political order which will be created by the new constitution.

Seminars for Special Interest Groups

It was necessary for me to attend most of the seminars for special interest groups because of the importance the Commission attached to these in promoting broad debate on constitutional issues and generating national consensus. Some of these groups consisted of or represented the elite or more enlightened members of society who tended to be vocal and sometimes uncompromising. The groups constituted important political constituencies which had to be accorded ample space for discourse and participation. Their discussions during the seminars tended to be well structured and presented.

We organised seminars for a broad spectrum of special interest groups including women, youth, workers, security organs, civil servants and professional organisations. I participated in the seminars for women, the Uganda Law Society, workers, the army, the police, and the prisons.

The seminar for the Uganda Law Society was held at the Uganda International Conference Centre Kampala on 20th and 21st April,
1990 and attracted a cross-section of the members of the legal profession from across the country.

I opened the seminar. My opening address was titled *Constitutionalism and the Legal Profession*. I began by recognising that the occasion was historic because members of the Uganda Law Society were meeting for the first time to discuss and deliberate upon the future of a document of profound legal sanctity, upon which the entire legal order was founded, namely the constitution. It was a historic moment, I said, because in the twenty years that I had been a member of that honourable society, I had not had such an opportunity to participate in the formulation of a new constitution, and I believed that the majority of the members of the society were in the same boat with me.

I also dealt with the role of the legal profession, the need for a homegrown constitution, the search for a liberal constitution, and the economic crisis and constitutionalism. I emphasised that the legal profession was an important social institution responsible for the delivery of legal services to society. I pointed out that by discharging this duty, the profession assisted in the maintenance of the rule of law which was vital in a democratic society. It was a well-known fact that lawyers were unpopular throughout the world because they defended unpopular causes (unpopular to the establishment, that is).

I observed that the Government had given due recognition to the legal profession in Uganda by appointing 11 lawyers to the Constitutional Commission out of a total membership of 21. I recognised this as a great achievement for the legal profession and pointed out that it challenged them to play a leading role in analysing, refining and discussing fundamental constitutional and legal issues since they were privileged to have legal training, professional experience and special expertise in the practice of law.

I outlined the problems the country had gone through which required redress through the new Constitution:

You must examine the various constitutional doctrines, structures and processes in light of the problems we have gone through and the need to devise appropriate solutions to resolve them. These problems are numerous but they include the following: threats to territorial integrity and national unity, divisive politics based on ethnic or religious differences, political instability arising out of civil wars
and coups d'etat, dictatorial and oppressive regimes which denied people democracy and engaged in gross violation of human rights, bad leadership involved in corruption and mismanagement of the economy, leading to the breakdown of the socio-economic infrastructure.

I emphasised the need for the people to devise solutions to problems that were socially relevant. I assured the participants that the Commission did not intend to import or impose constitutions or models from outside the country which were not suitable or acceptable to the people of Uganda. Our mission, I stressed, was to produce a homegrown constitution tailored to the needs of Ugandans. I quoted the words of Mwalimu Julius Nyerere, former President of Tanzania, when he said in 1965:

*We refuse to adopt the institutions of other countries even where they have served those countries well because it is our conditions that have to be served by our institutions. We refuse to put ourselves in a straitjacket of constitutional devices not of our own making. The Constitution of Tanzania must serve the people of Tanzania. We do not intend that the people of Tanzania should serve the constitution.*

I did, however, assure the participants that the Commission would undertake a comparative study of relevant constitutions to see what lessons could be drawn from them and how these could assist the Commission in drawing up a Draft Constitution in accordance with the views of the people. I informed the participants that already the Commission had undertaken study tours in West Germany, USA, UK and would soon visit India.

The second point in my paper was the search for liberal constitutionalism. I pointed out that if one looked at the basic objectives of the new Constitution as stipulated in Section 4 of the Uganda Constitutional Statute, one would conclude that they portrayed the principles of Western liberal democracy. In other words, they provided the principles of the theory of constitutionalism which were based on limited government and individual rights. I observed that, ‘The theory argues that to protect the human value and dignity of citizens, there must be, in addition to having a right to participate in government, erected substantive limits on what any government can validly do. Other notions, such as accountability of government through periodic elections, rule of law, separation of powers, impartial judicial and procedural rights, are built around these two pillars.’
I quoted Professor de’Smith who defined constitutionalism as, \[ \text{The principle that the exercise of political power shall be bound by rules, rules which determine the validity of legislative and executive action by prescribing the procedure according to which it must be performed or by delimiting its permissible content. Constitutionalism becomes a reality to the extent that these rules curb the arbitrariness of discretion and are in fact observed by the wielders of political power, and to the extent that within the forbidden zones upon which authority may not trespass, there is significantly room for the enjoyment of individual liberty.} \]

I also recalled how Professor Okoth Ogendo had referred to constitutionalism as, ‘fidelity to the principle that the exercise of state power must seek to advance the ends of society.’

I concluded by emphasising that constitutionalism demanded that once a Constitution was made, Ugandans had to become committed to observing, respecting and protecting it. I pointed out that, as it has been said before:

\[ \text{A constitution is like a marriage in other respects. It is a promise among a people to remain a nation for better or worse, boom or bust, peace or war.} \]

Lastly, I made a clarion call upon the lawyers to assume a dynamic role in society:

\[ \text{I call upon members of the legal profession to grow out of their cautious conservatism, no doubt associated with their training, and play a dynamic role in the socio-economic and political transformation of our backward society in general and in constitutional development in particular.} \]
Chapter 5

Sub-county Seminars

The Importance of Sub-county Seminars
The Commission had been enjoined to formulate proposals for the new Constitution based on national consensus gathered from the views of the people. It was the declared objective of the Government to give the people of Uganda adequate opportunity to participate in the making of their own Constitution. This was the major departure with the previous constitution-making processes, which were largely undertaken by few Ugandans on behalf of the people. By and large previous exercises in constitution-making had excluded the masses.

The Commission therefore committed itself at the very beginning of the exercise to visit not just districts and special interest groups but all the 717 sub-counties in the country. This would enable majority of Ugandans at the grassroots to actively participate in the constitution-making process. The visits would enable the Commissioners to educate the people about the Constitution and the relevant constitutional issues as well as enable them to collect views directly from the people. The sub-county level was chosen because it was deemed to be the lowest level of local administration that we could manage to reach given the time and resources we had for the exercise.

In order to enable the people at the grassroots to participate effectively, they first had to be sensitised about the constitutional issues and guided on how to prepare and submit views to the Commission. It is for these reasons that the sub-county seminars formed the core of the educational exercise.

The original plan was to tour every sub-county once to collect the views of the people. We had expected the local leaders we had sensitised at the district seminars to go back and educate the masses but we were disappointed in our expectations. The local leaders were unable to undertake the task, maintaining that they
did not have sufficient resources to do so. We, therefore, decided to sensitise the people in every sub-county ourselves, before finally collecting their views.

In the end our visits to the sub-counties, called internal tours, were conducted in two distinct stages. The first stage was the holding of education seminars throughout the sub-counties, followed by the second stage which consisted of collecting views, by oral submissions or written memoranda. Educational seminars were conducted between October, 1990 and April, 1991. The collection of views from the sub-counties was carried out from May, 1991 and completed in November, 1991.

**Objectives of the Sub-county Seminars**

In organising sub-county seminars we set out to achieve several objectives. First and foremost, we wanted to sensitise the ordinary people of Uganda on the Constitution and the process of making a new one. By so doing, we expected to bring the constitutional debate right down to the grassroots. We hoped to distribute constitutional materials including copies of previous and current constitutions so that the people could have a better understanding of the issues and thus debate them, as well as contribute their views.

A second set of objectives revolved around affording the ordinary people (wananchi) an opportunity to give their views to the Commission on the type of constitution they desired to have. In this connection, we sought to brief the people on the procedure for preparing and presenting memoranda to the Commission. We also informed the participants on the arrangements for collecting the memoranda from them at a subsequent date.

The third set of objectives was for the Commission to follow up previous and ongoing activities. One of these was an essay competition for schools and colleges which had been launched in May 1990 and whose deadline was approaching. The Commission was also to conduct seminars for schools where this was needed. Finally, the Commission took the opportunity to recover any position papers that had been presented during district seminars or institutional seminars. This multiplicity of objectives and the countrywide spread of sub-counties made these seminars the most intensive programme the Commission carried out.
Preparations for the Seminars

Touring the entire country was a mammoth task which required comprehensive preparations before the exercise could be undertaken. On 10th January, 1990, sitting in a plenary session of the Commission, we set up a Committee on Sub-county Seminars to do background research and work out the logistics and publicity requirements.

The committee consisted of Professor Ssempebwa (Chairman) Mr Okot, and Mr Ufoyuru as members. The secretaries to the committee were Mr. Ngolobe and Mr Serwano Mukasa, both legal officers. The committee made recommendations on resources required, including personnel, vehicles and transport accessories like jerrycans, towing ropes, pangas and spades to help pull vehicles out of bad roads. They also made recommendations on personal requirements like gumboots, torches, lanterns, and tea flasks, as well as cooking utensils like pressure stoves, saucepans, plates, charcoal, paraffin and eating-utensils to use in the field. Other items recommended included public address systems, first-aid boxes, contingency funds, mobilisation funds, a timetable and costs. The committee also recommended conducting feasibility studies in each district, and publicity programmes. In the end, some of these facilities were not required as we decided not to camp in tents but to stay in hotels and lodges, thus eliminating the need for cooking and eating utensils.

One of the critical recommendations the committee made was that each Commissioner should have a vehicle, and the Secretariat staff should have one vehicle per group both for efficiency and also for security reasons.

If all the requirements were available, then the whole process would be covered in three months, assuming each Commissioner covered nine sub-counties (out of a total of 717) in two weeks. The cost of the exercise would be about Shs. 225,659,460. On the other hand, if there were only 15 vehicles then each group would have one vehicle for the Commissioners and one vehicle for Secretariat officials. In this case each group would cover five sub-counties in one week and the total period needed to cover 717 sub-counties would be six months. The total cost for the entire exercise would
be Shs. 311,788,920. We adopted this second option because we only had 15 vehicles when we began these seminars.

The committee recommended that the sub-county seminars should begin on 1<sup>st</sup> March, 1990 but due to failure to provide the required logistics in time, the seminars could not start until October 1990.

Indeed on 7<sup>th</sup> February, 1990, I met the President at State House, Entebbe, to brief him about the requirements needed for the sub-county tours. We wanted to solicit his support to make sure that everything was provided in time. Others present at the meeting were the Minister of a Constitutional Affairs, the Minister of Finance, the Head of Civil Service, the Secretary to the Treasury, the Secretary for Constitutional Affairs, and Mr Kaggwa, representing the Secretary to the Constitutional Commission, who was away.

I briefed the President on the Commission’s urgent requirements to enable it undertake sub-county tours. The first priority was transport, followed by office equipment, then the accessories for fieldwork identified by our Sub-county Seminar Committee. I submitted a list of urgent transport requirements which included 27 vehicles, 34 motorcycles (one for each district) and 702 bicycles (one for each sub-county mobiliser).

It was agreed at the meeting that all the requirements be availed to the Commission by October 1990. This was because a lot of money both in local and foreign exchange was involved and could not be secured during that financial year. The President was of the view that we could carry out some work in the meantime if we got 11 Pajero vehicles, thus increasing our stock of vehicles to at least 15. However, we only got the 15 vehicles in October 1990, when we had actually commenced conducting the sub-county seminars.

The Commission held a plenary session on 27<sup>th</sup> September, 1990 when it made final preparations for the sub-county seminars. We decided that the Commission would be divided into six groups of three Commissioners each. Each group would be assigned a number of districts. By and large, the composition of the groups remained as they had been for district and institutional seminars, covering the same districts. There were only minor changes in the composition of the groups or districts covered. The group leaders
remained the same. Each group would have a Secretariat team of one legal officer, one research assistant, one secretary/stenographer, one technician, two drivers, and a police escort. Each group would have two vehicles, until each Commissioner had his/her own vehicle, and the Secretariat officials one vehicle.

The Commissioners’ groups were as follows.

**Group A:** Hon. Tumwesigye, Hon. Matembe and Hon. Obwangor, all members of NRC. They were in charge of the five districts of Mbarara, Bushenyi, Kasese, Kabale and Rukungiri, covering 125 sub-counties.

**Group B:** Mrs Maitum, Professor Ssempebwa and Lt. Col. Serwanga Lwanga were responsible for the six districts in the Central Region, covering 157 sub-counties.

**Group C:** Mr Rwaheru, Hajji Kasujja, and Mr Wenkere Kisembo. They were responsible for the five districts of Bushenyi, Kabarole, Masindi, Hoima and Mubende, covering 97 sub-counties.

**Group D:** Professor Otim, Rev. Fr Dr Waliggo and Mr Kaggwa. Conducted seminars in the districts of Mbale, Tororo, Kapchorwa, Kamuli, Iganga and Jinja, covering 159 sub-counties.

**Group E:** Mr Okot, Mr Kateera and Capt. Kayihura took charge of the six districts of Apac, Lira, Gulu, Kitgum, Soroti and Kumi, covering 135 sub-counties.

**Group F:** Professor Makubuya, Hon. Kirya Gole and Mr Ufoyuru were responsible for the districts of Arua, Nebbi, Moyo, Kalangala, Kotido and Moroto, covering 90 sub-counties.

In selecting the Commissioners for each group, every effort was made to include at least one Commissioner and one legal officer or research assistant from the region the group was responsible for, people who were familiar with the terrain and the language there.

It was agreed that at any particular time, the Chairman, the Vice Chairman or the Secretary, who were not assigned to any group, should remain in the office to ensure proper co-ordination and continuity. As it turned out, we were able to reinforce groups which were down in strength either because members were absent or because of the large number of sub-counties. The three of us formed a sort of roving group to make sure that all the sub-counties were fully covered.
During the district and institutional seminars, the participants had asked for copies of the 1962 and 1967 Constitutions. We agreed to reprint these for free distribution to the participants at the sub-county seminars as well as to the general public. We found the level of public awareness about the Constitution and critical constitutional issues low. There was also a need for the Commissioners to have a common approach in conducting the seminars. We therefore decided to prepare a ‘Catechism’ or handbook to be used during the seminars. This turned out to be the manual titled *Guidelines on Constitutional Issues*.

The *Guidelines* contained explanations of constitutional topics and issues and had guiding questions at the end of each chapter. These questions were later consolidated into a pamphlet called *Guiding Questions on Constitutional Issues*. In addition, it was decided that the procedure for preparing and submitting memoranda be specified so that it would be easy for the public to follow. We, therefore, prepared a brochure on *Preparation of Memoranda*. All this information and publicity material was to be distributed to participants free of charge. However, not everything was ready until December 1990.

Arrangements for funding of the seminars were also agreed upon. The Commissioners and Secretariat officials would be paid allowances for all the days in the month they spent in the field, which ranged from 20 to 25 days. This would ensure that there was no need to return to the headquarters for more resources during the month. The Treasury rejected the idea of giving participants at the seminars allowances or refreshments. A mobilisation fund of Shs. 50,000 per sub-county would be used for payment of translators, local rapporteurs, and security personnel, where their services were needed, as well as to meet other administrative and operational expenses.

Each group needed a public address system, and therefore, six sets of public address systems were provided. Where the Commissioners in one group split, there was an option to hire the system locally where the need arose. Each group had a first-aid box; and a radio, video camera and still camera were provided to enable proceedings at the seminar to be recorded on tape or video. A verbatim record was required from the Secretariat or a
local rapporteur identified from the sub-county. This methodology was to ensure that we were able to secure all the views recorded at the seminar. As each group had a secretary and typewriter, the seminar reports could be produced expeditiously.

Before commencing our visits to the sub-counties, we had planned to carry out inspection tours/feasibility studies. Due to lack of adequate information about facilities in certain areas, the Commissioners and secretarial staff had to visit district headquarters to discuss with district administrators and RC officials, modalities of conducting these tours. Where necessary, the inspection teams would visit sub-counties with reported peculiar problems to make an on the spot check.

The main objective of the inspection tours was to make adequate field arrangements for the collection of views. The inspection teams would specifically check on accommodation facilities at county and sub-county levels, the availability of food and water, the state of roads, the centres at which these seminars/collection of views could be conveniently held, the distances to each county and sub-county from each district headquarters. From this information, it would be possible to work out mobilisation strategies and security.

The inspection teams were also intended to establish firm contacts with resourceful people in the sub-counties where the seminars would be conducted.

Inspection tours had been planned to start in June 1990, for a period of 30 days. They had been designed to cover 32 districts in areas considered not easily accessible. Indeed some Commissioners had started conducting these tours. However, the idea was abandoned after some Commissioners criticised it and suggested that in order to save time and funds, the inspection tours should be merged with internal tours to the sub-counties. The new proposal was that the inspection tours be broadened to include educating the masses, distribution of constitutional materials, and mobilisation and organisation of constitutional committees at the sub-county level as the operational focus. It was also proposed that the internal or sub-county tours would be in two phases. The inspection tours (now education seminars) would form Phase I, with collection of views as Phase II. Each sub-county would, therefore, retain the two days previously allocated to it. Phase I would be completed
in all the sub-counties before Phase II was embarked upon, in order to give the people adequate time to study the constitutional documents and prepare their memoranda. One Commissioner observed that the new arrangement, ‘will also remove the said public anger that we are just dancing up and down like butterflies.’

The Commission agreed to these proposals. This was a major departure in the Commission’s programme. It meant that more time and resources would be required to carry out the two important stages. However, it was realised that if Phase I was given enough time, Phase II would be easier and quicker to accomplish. The programmes for individual districts would be left to individual groups and the respective district administrations to work out. It was anticipated that if the seminars started in October 1990, the two phases would be completed by October 1991. It was decided that before each group toured a particular district, the Secretariat staff, divided in six groups, should travel to each district and county headquarters to discuss the modalities of holding seminars. The details they were to check on were the same as had been suggested for the inspection tours. The reports from the feasibility studies formed the basis for arranging the programme for the seminars.

We discussed and agreed on the modalities for the collection of views because the participants had to be informed about the procedure for the preparation of memoranda and submission to the Commission. The summary of procedure was contained in the brochure on *Preparation of Memoranda*.

It was agreed that every resident in a sub-county ready and willing to attend would be free to attend the seminars. However RCI, RC II and RC III executives and chiefs would be specifically encouraged to attend. A letter would be sent to each district administrator requesting assistance in mobilising local leaders and participants.

Publicity was considered to be a vital component of the exercise. It was agreed that radio, television, posters, newspapers, mass mobilisers, administrators and NRC members be utilised. Prior announcements for seminars would be made through Radio Uganda and police radio calls. It was, however, recognised that the use of radio announcements might not be wise, especially in
areas of insurgency. It was agreed that each group would discuss and determine the strategy best suited to its situation.

The role of the media in covering sub-county seminars was discussed. It was agreed that the media be allowed to cover them but that every effort be made to impress upon those covering the seminars the importance of accurate and balanced reporting. The media would also promote publicity of the Commission’s work and methods and stimulate national public debate on constitutional issues. It would enable people from one part of the country to know what proposals had been made by people from another part of the country, and encourage them to participate.

**Organisation of the Seminars**

Each group had to draw up a programme for the entire district it was covering. In order to do this, the Secretariat officials attached to the group would visit the district headquarters before the seminar was held and discuss with the DA and other civic leaders the best method of covering the district in terms of mobilisation, accessibility, distances and physical facilities for holding seminars and accommodation for the Commissioners. These are what were called ‘feasibility studies’. Where necessary, county headquarters and some sub-counties would also be visited by the Secretariat officials to assess the situation.

The programme drawn up would indicate the dates, time and venue for the seminar for each sub-county. The programme for each sub-county would be announced on radio a few days before the date of the seminar. The programme would also be left with the district officials for distribution to the sub-counties.

As already pointed out, each group was allocated a number of districts to cover. A group had three Commissioners and at least one legal officer, one research assistant, one secretary or stenographer, one technician and three drivers. This enabled the Commissioners to cover different sub-counties on the same day.

The organisation for covering districts and sub-counties varied from one group to another. In some groups, the Commissioners covered different districts. In others, all the Commissioners in the group covered one district before proceeding to another. In this case the Commissioners covered one sub-county each separately or
two of them combined to conduct some seminars together. It was therefore a flexible arrangement dictated by special circumstances on the ground.

For instance in Group F, Mr Ufoyuru covered Kotido and Moroto Districts alone while Professor Makubuya covered Arua District alone. Kalangala District, on the other hand, was covered by both Commissioners. This approach seems to have been adopted by Group C as well.

In Group D, the Commissioners conducted seminars in one district before they proceeded to the next. Most of the time each Commissioner conducted seminars in separate sub-counties. Groups A and B appeared to have employed this approach.

Some of the districts allocated to Group E were unfortunately beset with insecurity. This was particularly so in Acholi and Teso sub-regions. The Commissioners, Mr Okot and Mr Kateera, adopted the strategy of covering one district together, as was the case of Gulu and Kitgum. But each Commissioner conducted seminars separately. In Kumi and Soroti, the group was reinforced by other Commissioners especially hailing from the region. There, due to insecurity, seminars were conducted on the basis of counties, combining two to three sub-counties. Among those who joined group E for this purpose were Mrs Maitum, Professor Otim, and Hon. Obwangor.

**Participation in the Seminars**

Participation in the seminars was open to all residents in a sub-county including RC officials, chiefs, elders, opinion leaders, professionals, public servants, farmers, traders, youths and school children, religious leaders, as well as ministers and NRC members hailing from the sub-county. RC officials from RC 1 to RC III were particularly encouraged to attend as they would assist the people to present their views in memoranda at various levels.

Attendance varied from place to place. It depended largely on the degree of local mobilisation and whether people had been notified in time of the dates and time of the seminars. Insecurity also played a significant part in keeping people away. Other factors included accessibility of the venue and the period of the year, for instance, whether it was a rainy season or planting season or even a market day.
Surprisingly, rural areas registered higher attendance than urban areas. Some areas regarded as insecure also had a higher turn-up than expected. The attendance of women was generally poor. In some areas like Karamoja, only elders mainly turned up.

It may be useful to give some figures of attendance recorded during the seminars. In Group A which covered the South-Western region, the highest number was recorded in Mijwara Sub-county, in Sembabule on 25th February, 1991 with 297 participants. This was followed closely by Ntusi sub-county with 264 participants. The lowest number recorded was 50 at Kisoro Town Hall. For Group B, which was in charge of Central Region, the highest number of 697 was recorded at Kakamulo Sub-county, in Nakaseke County, Luwero District. The lowest number was at Lubaga Division with 28 participants. Group C covered the Mid-western region. The highest number of participants here was recorded at Nyabweshesho Sub-county in Kabarole District with 302 participants. The lowest numbers recorded were 16 for both Fort Portal Municipality and Mubende Municipality.

The highest number of participants for Group D, which was in charge of Eastern Region, was 806 participants for Buhehe Sub-county in Samia Bugwe County in Tororo District and 206 at Makuufu Sub-county in Bugweri County in Iganga District. The lowest number was at Busia County in Busia town with 32 participants. Group E, which covered most areas experiencing insecurity in the Northern and North-Eastern Regions, recorded quite high figures in both Acholi and Teso sub-regions. The highest number in Acholi sub-region was 419 participants recorded in Kitgum, while the highest numbers in Teso were recorded at Kabyelobyong County headquarters with 2002 participants and at Bukedea County with 490 participants. The lowest numbers of participants were recorded in Gulu Municipality and Lira Municipality, both with only 22 participants.

Group F which covered far-flung districts in West Nile, Karamoja and Kalangala recorded some of the highest number of participants at Alerex Sub-county in Kotido District, with 495 participants. Out of this number 363 were school children. The lowest number was 34 recorded at Moroto Sub-county where those attending were mostly elders.
On the whole, we found that the numbers of participants was impressive. They were enthusiastic to participate in the process and to give their views on the new Constitution. I would estimate the total number of participants as slightly over one million, and the average number of participants per sub-county at 100.

**The Programme for the Seminars**

We agreed as a Commission that since the situation in the field varied from one group to the other, each group should adopt a method of work appropriate to its circumstances. However, we also decided that the seminar should be conducted in such a way that at the end of the day, the participants were given a bird’s eye view of the major constitutional issues, thus enabling them to participate effectively in the constitution-making exercise, including the writing of memoranda.

It was also recognised that at the sub-county level, the Commissioners would be basically collecting views in the form of oral statements and memoranda, especially from the RCs.

When we met for the first time in a plenary session after the commencement of the seminars on 6th November, 1990, we received reports from the field. It was noted that majority of the population had not heard about a constitution but that on the whole, the populace was receptive to the seminars.

It was observed that certain constitutional issues including human rights, the presidency, the army, political systems/parties, national language and traditional leaders were uppermost in the minds of people, but that the interest shown in some of these topics tended to vary from one area to the other. Problems reported ranged from rough impassable roads to general insecurity in some parts.

Although each group adopted a slightly different approach, the basic outline for a seminar adopted by all the Commissioners was as follows:

- Outlining the constitutional issues along the lines set out in the *Guidelines to the Constitutional Issues*.
- Calling on the participants to ask questions or seek clarifications on the basis of the talk given to them by a Commissioner or Commissioners.
- Clarifying or elaborating on issues raised by the participants.
The only resource persons for the seminars were the Commissioners themselves: they explained the process as well as the constitutional issues. They did not find this difficult because we had already prepared the *Guidelines*. Secondly, they had internalised all these issues during the district and institutional seminars. Some Commissioners were able to speak directly in the local languages spoken by the participants. This made the teaching easy to understand. Where the Commissioner could not speak the local language, a translator was provided. In some cases, the legal officers or research assistants accompanying the Commissioners understood the local language and this made it easy for them to record directly the views of the participants.

Each sub-county received at least three copies of each of the 1962 and 1967 Constitutions, copies of *Guidelines to Constitutional Issues* and 20 copies of brochures, *Guiding Questions* and posters. One ream of paper was also supplied with some ballpoint pens for writing memoranda.

Each seminar took one day, starting at 9.30 a.m. and ending at 2 p.m. or starting at 2 p.m. and ending at 5 p.m. They were conducted continuously from beginning to end without a lunch break so that they could close early enough to enable people return to their homes. No transport or lunch was provided to the participants but there were some refreshments for the Commissioners during the seminar. Lunch was sometimes organised after the seminar for the Commissioners and civic leaders at the expense of the Commission. The monthly cost for seminars covering expenses of the Commissioners and officials was about Shs. 45 million.

The venues chosen for the seminars were those found to be convenient for participants from the sub-county to reach. Popular venues included sub-county headquarters, schools, trading centres, community halls, hotels and even churches. Some seminars were held under trees. The availability of seating facilities especially chairs, was a major consideration because we did not want participants to stand throughout the seminar. Sometimes, where a sub-county was large and inaccessible, two venues were organised. In that event, the two seminars could be held on the same day or
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on two separate days. Public address systems were employed in most seminars where the audiences were large.

Proceedings at the seminar were manually tape-recorded by the legal officer or research assistant or personal secretary for future transcription. A report was prepared for each seminar and approved by the Commissioner in charge. The report indicated the location of the sub-county, the population in the area, the number of parishes, local dignitaries present, list of all participants and the summary of speeches and contributions made. These reports formed part of source material containing views of the people.

An evaluation form was completed by each participant at the end of the seminar to indicate to what extent the seminar had been of benefit to him or her, any problems or shortcomings experienced, and suggestions for the future. These reports helped us refine our methodology to suit the masses at the grassroots.

A Typical Sub-county Seminar
At least a day before the seminar, the Commissioners and the Secretariat officials left Kampala for the District Headquarters to review the arrangements for the seminars. In particular, they checked whether the notification of the programme to the sub-counties had been received or radio announcements had been heard. This was important to ensure that people in various sub-counties were prepared to attend the seminars. The legal officers/research assistants also tried to visit the relevant county or sub-county headquarters to assess the situation, and request the local leaders to mobilise people to attend the seminars. The Commissioners and their team normally booked accommodation in some hotel or guesthouse at the district or sub-district headquarters.

The team called on the RC III Chairman or the Sub-county Chief at the sub-county headquarters before the seminar. Early in the morning on the day of the seminar the Commission team set off for the venue. They normally arrived at around 9 a.m. ready for the seminar to start at 9.30 a.m. When a reasonable number of participants were registered, the seminar would commence.

The seminar started with the singing of the National Anthem, followed by a prayer. Then the participants were addressed by high ranking political and civic leaders present, like the NRC member, the district administrator and the RC III Chairman.
The Commissioner and his team were introduced by one of the most high ranking leaders. After the formal opening remarks, the Commissioner was invited to address the participants.

The Commissioner thanked the local leaders for the warm welcome and for mobilising the people to attend the seminar. He or she explained the purpose of the visit to the sub-county and gave a brief background to the formation of the Commission and its functions. The Commissioner explained the Commission’s programme, indicating the stages that had been completed and which ones remained. This was in order to put the sub-county seminars in the context of the oral exercise of constitution making.

The Commissioner spent about half of the time available explaining the various constitutional issues that the participants must address. Emphasis was placed on giving the historical background of Uganda, explaining the need for a new Constitution and its objectives. Then the constitutional issues which seemed to be of local relevance were given more emphasis. Where there were two Commissioners, they shared the topics. The local language was normally used at the seminar. Where the Commissioner did not speak the local language he or she spoke in English while his address was translated by a selected interpreter. Sometimes Luganda was used instead of a local language, where it was widely understood.

After the Commissioner’s talk, the session was opened for discussion, questions, clarifications, comments and views from the participants. Some participants were critical of the Government for not affording them social services or roads. Others asked questions on the process while some gave their views on the Constitution they wanted. In some areas participants were afraid to speak freely for fear of victimisation or due to insecurity in the area. The Commissioner answered or explained the questions or comments at a convenient moment. The Commissioners were discouraged from giving their personal opinions on questions on specific constitutional issues, so as not to appear biased or to have preconceived ideas. Participants were advised to give their views or proposals on how they wanted a particular issue to be resolved in the new Constitution. Indeed, many of them were too eager to
present their views there and then. They thought that this was their golden chance to be heard and be put on the record for posterity.

When it was made clear that the participants had had adequate opportunity to put their views across, the Commissioner ended the seminar by thanking them for their contributions and assuring them that their views would be respected by the Commission. He or she then urged them to read the constitutional materials left behind, in order for them to discuss key constitutional issues amongst themselves and prepare group memoranda at RC I to RC III levels or as individuals. The procedure for writing and submitting memoranda to the Commission was outlined. Constitutional committees for each sub-county were elected to spearhead the drafting of memoranda. A mobiliser for the sub-county was elected to act as liaison officer with the Commission and to assist in distributing materials and collecting memoranda.

The Commissioner also promised to come back after a few months to collect their memoranda and receive oral views after a few months. Individuals were encouraged to send their memoranda directly to the Commission.

Finally, the RC III chairman or sub-county chief made the closing remarks, followed by the National Anthem and in some cases a prayer.

The list of participants registered for the seminar was collected by Secretariat officials together with evaluation forms which the participants had completed. This was so that we could assess how the participants had benefited from the seminar.

If the seminar was in the morning, the Commission team would have lunch after it was ended in a nearby restaurant or drive back to the hotel where they were staying. If lunch was arranged near the venue of the seminar, local leaders joined the Commission team for lunch. After the seminar, the Secretariat officials normally checked on the arrangements for the next day’s seminar, and then reported back to the Commissioner. The team discussed any changes or problems anticipated in the next seminars and prepared a report of the seminar just held, containing the views of the people and any problems encountered. This would be filed with the Secretary to the Constitutional Commission. Sub-county seminar reports formed important source materials for data analysis of the people’s
views. The list of these appears in Volume 3 of the Commission’s Report, entitled, *Index of Sources*.

**Seminars which I conducted**

It was not considered necessary for me to move round the country conducting seminars at the sub-county level. I remained at the headquarters to ensure a steady flow of resources for the Commissioners so that they could undertake these intensive tours speedily and successfully. I also co-ordinated other on-going programmes like the remaining special interest seminars and officiated at privately organised seminars.

Towards the end of the sub-county seminars, it was decided that groups which had completed the exercise should reinforce others which were still in the field. Groups A and C which completed early, reinforced Groups B and E. The Chairman, Vice Chairman and Secretary reinforced Group D, which was responsible for the districts of Jinja, Iganga, Tororo, Mbale and Kapchorwa. By March 1991, only Tororo District remained for them to tour. It was expected that all the seminars would be completed by April 1991.

At the time, Pallisa and Busia had not become separate districts, making Tororo district, with 38 sub-counties, one of the largest in the country. I decided to assist in the Busia sub-district, where I come from. I offered to conduct seminars for Buhehe, Lumino and Dabani sub-counties, all scheduled for the last week of March 1991. My home is in Buhehe Sub-county and one advantage for the people would be that I could talk to them directly in our language. I did not want them to complain afterwards that they had not had sufficient opportunity to participate in the process of writing the new Constitution. Buhehe Sub-county had a population of 15,000, with 1,936 taxpayers. It had 3 parishes, 52 villages and 8 primary schools, but its headquarters was far from the main road.

Professor Mudoola, the Vice Chairman of the Commission, offered to accompany me. His view was that it was not right for me to travel alone without a Commissioner. Since others were busy with their schedules, I accepted the offer. Mr Amos Ngolobe, a senior legal officer, made the arrangements for the seminar and accompanied me with other officials from the Commission. Professor Mudoola and the Commission team were accommodated
in Busia Town while I stayed at my country home at Dakha village, in Buhehe Sub-county.

The first seminar on the programme was for Buhehe Sub-county, scheduled for 25th March, 1991 at the sub-county headquarters. On the morning of that day, we met at my residence to prepare for the seminar. We drove to the sub-county headquarters, arriving there at 9 a.m. We found only RC officials there; they reported that they did not think that many people would come due to the short notice they had been given for the meeting.

I, therefore, decided that we should meet the people in their parishes. I suggested that instead of holding a seminar at the sub-county headquarters, we should hold seminars on the same day at the trading centres in Butangasi, Bunyadeti and Sibona. We immediately sent emissaries to organise these various venues and alert the residents. Butangasi Trading Centre is next to my residence so we drove back there ourselves and asked the local leaders to organise the residents for a seminar.

This seminar was for Buhasaba Parish. It was held under trees beginning at around 9.30 a.m. It was attended by Professor Mudoola, Mr Vincent Mangeni, RC III Chairman, Mr Jones Ojambo Fungah, sub-county chief, Mr Peter Makenzie and Mr James Aggrey Mangeni, both district councillors. Mr Ngolobe was again in charge of the arrangements.

The Commission team was welcomed by the sub-county chief who reported that the message about the seminar had come very late. He was, however, happy that the Chairman and Vice Chairman had come to conduct the seminar in person.

I introduced members of my team and apologised for the short notice. I informed the participants about the process of writing a new Constitution and explained what a Constitution is, and why it is important. I gave a historical background of Uganda and outlined some of the issues which the people must address. These included citizenship, the army, political organisations, a leadership code of conduct and the three arms of state, land and environment.

After my talk, seven participants made long contributions on various topics. There was a great outcry against mobile police and it was suggested that they be removed because ‘their only use was
to arrest traders every morning.’ A total of 275 people attended the seminar.

We held the second seminar at Magombe church after the Mothers Union meeting in Buhasaba Parish. The Parish priest, Rev. Lamu Agram, welcomed us to the church and expressed the gratitude of his congregation for the Chairman and Vice Chairman of the Commission to come and address them. The president of the Mothers Union, Mrs Masiga, thanked the Commission for visiting them at parish level. This had enabled many of them to contribute to the constitution-making exercise, she observed.

I thanked Rev. Agram for allowing us to talk to the people on Mothers’ Day. The task of the Commission I said, was to ask the people of Uganda to contribute their views to the new Constitution. I pointed out that this was the first time that the Chairman and Vice Chairman of the Commission had travelled together to seminars at grassroots level. I called on the people to build a new foundation for Uganda by making a new Constitution. The Government had given the people of Uganda the opportunity to make their own Constitution and I, therefore, asked the people to take advantage of the offer and give the Commission good ideas on how the country should be governed.

After this introduction, we outlined some of the popular topics – the historical background of Uganda, the Constitution and its objectives, the three arms of State, and political organisations. After my talk, 14 participants contributed views. A total of 166 people attended the seminar.

From Magombe Church we drove to Sibona Trading Centre in Bulwenge Parish where we were welcomed by the district councillor, Mr Peter Makenzie. He said he was happy that they could be part of the people contributing to the new Constitution and reported that the people had been waiting for the Commission for a long time.

After introducing my team, I thanked the people for waiting so patiently for us to arrive. I informed them that Government had asked the Commission to move all over the country to get the views of the people on how they wanted to be governed. Professor Mudoola and I outlined eight issues: the historical background of Uganda, the three arms of state, human rights, citizenship,
The Search for a National Consensus

political parties, national language, economic development, and the Constitution and its objectives. Six participants made contributions, some touching on all issues. The issue of the mobile police was again raised. It was suggested that they should be removed from the area. One participant asked, ‘Soldiers and Mobile Police move everywhere in the area. When Uganda is attacked, how will the people know the enemies?’

The fourth seminar in Buhehe Sub-county was held at Bunyadeti Trading Centre for Bunyadeti Parish. We adopted a similar approach. By this time, it was approaching evening. However, nine participants made contributions.

Throughout the four seminars, we were accompanied by the sub-county chief and the RC III chairman as well as by the district councillors. At the end of the seminars, the RC III chairman, Mr Vincent Mangeni, was chosen as liaison officer for the sub-county, to liaise between the area and the Commission.

The experience of the local seminars was very exciting and rewarding, one that proved that with efficient organisation and mobilisation, we could reach more people by holding more seminars in sub-counties. A total of 806 people had attended the four seminars in Buhehe sub-county, the highest turn up in the Eastern Region. However, it was a tiring exercise which a Commissioner could not manage if he or she had to work continuously for a period of six months.

The following day, on 26th March, 1991, we conducted a seminar at Lumino Trading Centre for Lumino Sub-county. Lumino Sub-county is 16 km from Busia, towards Lake Victoria and about 5 km from my home. It had 2,109 taxpayers, 4 parishes and 55 villages. There were 8 primary schools and one secondary school. The seminar was held under a tree in the trading centre. I was accompanied by Professor Mudoola, and Mr Amos Ngolobe, the senior legal officer who also comes from the area - from Samia Bugwe County. Others present at the seminar included Mr Robert James Olajju, a cadre in the DA’s office, Tororo, Mr Nasanairi Nahami RC III chairman, Mr Leuben Mangeni, RC Vice Chairman, Mr John Makoha, Sub-county chief, and Mr David Awori, District Councillor. The RC III chairman welcomed us and said that the people were ready to contribute their views on the
new Constitution. He complained of the mistreatment of civilians by security forces. The cadre from the DA’s office introduced us to the people.

In my opening remarks, I said that I was happy to be in Lumino Sub-county and congratulated the people upon weathering difficult times. I called on them to help build the country. I assured the people that the Government had a policy of consulting the people: that was why it had set up the Commission; to ask the people how they wanted to be governed. Many of them had a wealth of experience which they should share with the Commission. Government had confidence in the people and that is why it was consulting them. I asked the people to express their views frankly and freely. Unless there was peace and stability, I cautioned, there could be no progress in the country. Professor Mudoola then greeted the people and called upon them to look for ways of bringing peace so that they could foster development.

We divided the topics between the two of us. We discussed 11 issues which included, the historical background, the Constitution and its objectives, citizenship, human rights, political systems and political parties, forms of government, safeguards for the new Constitution, the legislature/ presidency/judiciary, security organisations, land and local government. After our briefings, it began to rain and we had to take refuge in a nearby Church of Uganda hall where the seminar continued.

Twenty-one participants were given the floor to contribute. They addressed all the issues and tended to give definite views rather than ask questions or clarifications. Their proposals were well considered and progressive.

Once again, the behaviour of the mobile police came under heavy criticism. One participant said, ‘Mobile police mistreat people. The people wondered whether Uganda is independent.’ They also asked Government to build schools and not leave it to parents alone. They called for an equitable distribution of industries in many parts of the country so that people in those areas could get employment. They wanted laws to be debated at grassroots level before they went to Parliament. They wanted mvule trees to belong to landowners. They preferred multiparty politics and a well-educated president.
In my closing remarks, I expressed my pleasure that so many people had turned up for the seminar. I called on them to participate in development so that the current socio-economic problems could be solved. I stressed the need to safeguard the rights of women and children. I called on them to discuss constitutional issues thoroughly and arrive at consensus on most issues and I advised that where consensus was not possible, the majority view should be taken. I told them that they were now part of history as constitution makers.

In a vote of thanks to us, the District Councillor, Mr David Awori, was grateful for the enlightenment the people had received. He promised to encourage the people in his area to write memoranda. The RCIII Chairman, Mr Nasanairi Nahami, was chosen as liaison officer. The seminar was well attended with 169 participants. After the seminar, we returned to my residence for some light refreshments after which Professor Mudoola and the Commission team left for Busia town where they were staying.

The third sub-county we visited was Dabani Sub-county in the north of the county. The other two sub-counties were in the south so, for balanced treatment, it was important to conduct a seminar in the north as well. This seminar was held the following day on 27 March, 1991, at Dabani Sub-county headquarters, 6 km from Busia town.

The sub-county had 2 parishes, 30 villages, 7 primary schools, 1 secondary school and 1,373 taxpayers. The seminar was held under a tree. Those present included the cadre from the DA's office, Mr Sulaiman Barasa, RC III Chairman, Mrs Mariam Padere, Sub-county chief, and Mr Bulasio Lumonya, District Councillor. Professor Mudoola and I conducted the seminar. Mr Amos Ngolobe was in attendance.

The RC III Chairman welcomed us and thanked us for coming to conduct this important seminar. He promised that this unique opportunity would be well utilised. He called on the participants to be free and fair in what they said. He noted that the people were happy that they were going to be taught about the Constitution.

After introducing Professor Mudoola and my team, I informed the participants why we were visiting their sub-counties: we wanted to teach the people, discuss and advise them on how to
prepare memoranda and to get their verbal views. I emphasised that the Constitution was for everybody and that it would be the basis for governing the people.

Professor Mudoola and I outlined the following constitutional issues: historical background, the Constitution and its objectives, human rights, the executive, the army, citizenship, political parties, national language, land, the electoral system and safeguarding the Constitution.

The seminar was attended by 113 people. I understand that the RC III Chairman was chosen as liaison officer.

While we were in the middle of the seminar, I received a police message from Kampala that I should return to Kampala for urgent official duties and I did so. Professor Mudoola returned to Samia Bugwe later and conducted the seminar for Masafa Sub-county on 4th April without me. Other sub-county seminars in Samia Bugwe were conducted by Professors Otim and Mutibwa. The Masafu Sub-county seminar was the last for Tororo District.
The Importance of Publicity
Although the historical need for a new Constitution arrived at in a new way seemed self-evident, the Commission had to sell itself to the country and provide as much information as possible. We live in a political world and a Constitution should get as near to the heart of politics as it can get. In that world, nothing is taken for granted.

Publicity played a key role in promoting public awareness and popularising the process of making a new Constitution. It was intended to stimulate public discussion of constitutional issues amongst individuals and groups throughout the country. It enabled Ugandans to debate issues and contribute ideas from a point of knowledge. Through this public debate, it was intended to generate national consensus on the issues and on the most suitable framework of governance for our nation. We used publicity to explain and advertise our programmes and timetable. We also sought to guide the population on how to submit views to the Commission. It was an important public relations exercise for the Commission.

I emphasised the importance of publicity programmes in my address when I inaugurated the Commission at the Uganda International Conference Centre, Kampala, on 5th May, 1989:

The importance of publicity for the Commission needs no emphasis. The entire country must be well informed about the constitution-making process so that every citizen can fully participate in it. The public must be informed about the objectives and functions of the Commission so as to obtain maximum co-operation and response from them. They must also be educated about past constitutions and the need to review them and write a new constitution. The public must also be informed about the progress in the work of the Commission to avoid speculation and distortion of the Commission’s work. Publicity will therefore be an ongoing exercise throughout the two years and
we expect the various mass media to assist us to keep the public well informed.

For this reason, the Commission will have regular programmes on radio, T.V, and in the newspapers to educate the public as well as discuss constitutional issues.

Organisation of Programmes

We used publicity throughout the life of the Commission. To maintain the confidence and momentum of participation by the public in the constitution-making process, we had to ensure that they were informed about what was going on at each stage of our work. Publicity and information programmes included press conferences and interviews for the Chairman, panel discussions on T.V and radio, radio talk shows, press releases, comments and advertisements by the Commission in newspapers. Constitutional materials published by the Commission included other Constitutions, manuals and brochures, all intended to sensitise the people on constitutional issues. We also had special publicity materials made to encourage people to participate in the exercise. Finally, we organised an essay competition for schools and colleges throughout the country to encourage the youth to participate in the process.

As soon as the Commission was appointed, we set up a Publicity Committee to implement and fulfil the objectives of the Commission in this important area. The Committee consisted of Mr Kaggwa, Chairman, Constantine Rwaheru, Mr Okot, and Capt. Kale Kayihura as members. It was assisted by Mr F. Kabyesiza, Legal Officer, Mr Charles Busingye, Research Assistant, Mr Geoffrey Mugarura, Information Officer and later Mr Z. Kadoma, Public Relations Officer.

The specific mandate of the committee was to cultivate awareness in the public about the intentions, objectives and functions of the Commission, to create good public relations, to constantly inform the public on the progress of the Commission’s work, to educate the public, and to invite public views and constructive criticism.

Publicity work began with the launching ceremony of the Commission, which I presided over on 8th May, 1989 at the Uganda International Conference Centre. The Publicity Committee prepared
and eventually issued circulars to all newspapers in Kampala, inviting them to attend. Subsequently, the Committee drew up a programme and budget which the Commission approved. All the Commissioners were involved in the publicity campaign.

**Press Conferences**

Press Conferences were held to announce the commencement or completion of a major stage or programme in our work. At these conferences, the public would be informed about the state of the constitution-making exercise including what had been achieved and what remained to be completed. The problems experienced were pointed out. I presided over most of the press conferences, which were attended by all or some Commissioners. I held press conferences to announce, among other things, the commencement of sub-county seminars on 21st December, 1990 and the deadline for submission of views on 5th April, 1991. On each occasion a press release was issued to the press.

I gladly fielded questions from journalists, whether relating to the specific subject of the press conference or to the general process of constitution-making. There were also personal interviews specifically when a particular journalist interviewed me about the work of the Commission and on topical political and constitutional issues. I remember one such interview was conducted by Mr Sam Serwanga of the *New Vision* on 6th March, 1991. Other members of the Commission, particularly the Secretary, were now and then interviewed to clarify certain matters which appeared to be of concern to the public. Only the Vice Chairman, the Secretary and I were mandated to speak authoritatively on the Commission’s behalf. The Public Relations Officer would only issue an official statement after consultation with or clearance by any of the three of us.

Our relationship with the press was warm and smooth. The Commission enjoyed good press and we made headlines everywhere we moved. All the press conferences were open. The press interviews proceeded without incident and were not confrontational. There were probing questions of course, but far from creating hostility, they offered us opportunity to give elaborate explanations and clarifications on given issues. One did not have
to go to great lengths to prepare for them because they were set on a given subject or, in some cases, were open ended where preparation was impossible.

The media was often critical of the Commission. They used to accuse us of delaying the process in order to keep the Government in power; they spoke about the marginalisation of northern Uganda because of the prevailing insecurity and they also expressed misgivings and suspicion about a pre-conceived agenda.

Occasionally, some activities of over-enthusiastic journalists were indeed provocative. In their scramble for scoops, they employed all manner of methods to obtain confidential information from the Commission. We, therefore, had to guard against information and data being released prematurely.

Radio Talk Shows and T.V Panel Discussions
Shortly after the launching of the Commission, the Publicity Committee arranged panel discussions. Some of the Commissioners took part in television discussions which publicised the Commission, educated members of the public on its programme and made known the Commission’s plans. I opened the first panel discussion, flanked by the Secretary of the Commission, Professor Mutibwa. Many others followed regularly until the seminars began when most of the Commissioners were on the move. These panel discussions or interviews on T.V were mainly moderated by Mr Peter Mulira, a senior Kampala advocate, and Mr Kabuto Kabuye of the Ministry of Information.

Before and after major activities of the Commission, the publicity desk always made sure radio announcements were made and also that programmes were produced and aired on radio and television. Like all our activities, these were aimed at educating and informing the public about what was going on and at the same time awakening awareness and interest of the public in constitutional issues.

Many of the Commission’s activities, including district and institutional seminars, were recorded on U-Matic Tapes by Uganda Television (UTV) and others on hired video on VHS tapes. These were later aired on UTV programmes as time permitted. During the sub-county seminars, we utilised the services of District Information Officers to inform the country about our activities.
Some of the most popular programmes we were involved in were radio talk shows in local languages which enabled the ordinary people to understand and follow the process. Programmes in vernacular languages on radio were conducted in Ateso, Alur, Akarimojong, Luganda, Lugisu, Lugbara, Lusoga, Runyankole/Rukiga and Runyoro/Rutoro. The Commissioners were asked to indicate in what language they would conduct the talk shows and what topics they wished to discuss. There were problems in translating into languages that no Commissioners spoke. Programmes in English were also broadcast on T.V and radio. I was often interviewed by BBC and Voice of America. The Commissioners were encouraged to participate in the NRM programme: You and Your Government, to give the public as much information as possible on the constitution-making exercise.

The topics for the talk shows included the 29 constitutional issues identified by the Commission. Some of the most interesting shows were on ‘methods of adopting the new Constitution,’ the country-wide essay competition, and extracts from district and institutional seminar reports and papers.

Print Media
While T.V and radio programmes were going on, advertisements and announcements were run in the newspapers, especially in the English language papers and occasionally in Luganda papers. During December 1989 and January 1990, adverts were carried daily in the New Vision to remind people about the address of the Commission and invite them to submit their memoranda. It soon paid dividends as memoranda started being received by hand and by post. Some newspapers had regular columns or features on the Constitution. Among these were The New Vision, The Star, Citizen, Munno, Ngabo, Exposure, Uganda Confidential and The People.

The press played a great role in advancing our work. It publicised the work of the Commission and published many articles, comments, letters, opinions and proposals on the old and new Constitutions. This generated a healthy, informed and constructive debate on constitutional issues. A total of 2,763 articles on the Constitution were published by various newspapers and collected as views by the Commission.
Other Publicity Material

In order to popularise the constitution-making exercise, we decided to make publicity materials. These included a logo, T-shirts, posters and music (a signature tune). The Publicity Committee put the work out to tender, to select the most suitable suppliers or artists. The Commission approved suppliers or artists recommended by the Committee.

We wanted our own, distinctive logo to emphasise our independence from the Ministry or Government. The logo was intended to appear on all our official documents. It consisted of two concentric circles with the words Uganda Constitutional Commission in the outer circle, written against a background of yellow. Inside, the red inner circle was the Uganda national flag with a map of Uganda in the centre, the scale of justice and a dove carrying an olive branch. The values the logo represented were unity, peace, justice, brotherhood and prosperity.

A large poster, measuring 64 cm x 44 cm, was printed with the logo of the Commission at the top and the following message emblazoned on it:

Your participation is vital now. Contribute to the making of the National Constitution. Submit your views to:

(a) RC Chairman
(b) DA's Office
(c) The Uganda Constitutional Commission
P.O. Box 7206, Kampala.
Tel: 270164 Kampala.

White T-shirts were printed bearing the Commission logo on the front, and the words Contribute your views on the Constitution at the back. The T-shirts were mainly distributed to sub-county mobilisers who acted as liaison officers between the general public and the Commission.

We considered that music could play a key role in encouraging people to contribute their views, through entertaining and promotional tunes. In particular, we wanted a signature tune which would always be played to open our programmes. It would serve as a drum or bell calling people to pay attention to our programmes.
We asked some musicians to compose words and tunes, but they were not very impressive. We however selected one song by Peterson Mutebi with words originally in Luganda, but also translated in English. It was played on Radio Uganda and UTV to open our programmes or just to urge people to contribute their views. The basic message in the song was, it was the right and duty of Ugandans to contribute their views on the new Constitution.

The Constitutions of 1962 and 1967
An important part of our work in making proposals for a new Constitution was to study and review the existing Constitution. When we started our work, it was the 1967 Constitution as amended from time to time, including amendments introduced by the NRM Administration since 1986. There was no single document which could be called ‘The Constitution of Uganda’. Yet, we had to ascertain exactly what the Constitution was before we could study it. There was also a public demand for the current Constitution to be distributed to the people so that they could discuss it and find out what required to be reviewed or amended. We therefore had no alternative but to make arrangements to reprint the amended 1967 Constitution.

In some areas, people demanded that the 1962 Independence Constitution should also be distributed. The people in these areas wanted to strengthen their proposal that the 1962 Constitution be restored in toto or at least that the provisions which had been removed from it relating to traditional rulers, federo and mailo land be incorporated in the new one. In fact, in some areas especially in Buganda, the people did not want to hear of or see the 1967 Constitution. Their feelings were understandable given the fact that it had abolished the institutions they cherished. In areas considered to be essentially republican, the reverse was true: they had little interest in the 1962 Constitution.

The Publicity Committee recommended that 20,000 copies of the 1967 Constitution, and 10,000 copies of the 1962 Constitution be printed and the Commission accepted the recommendation. The process of tendering the work through the Central Tender Board began. It took some time for the Board to select the printers. The
bidder for the 1967 Constitution did not do a good job: he was slow and the printing was poor. However, the Marianum Press, Kisubi, who printed the 1962 Constitution did a good job, though the copies came out rather late.

The two Constitutions were printed in English only. It was not possible to translate them into vernacular languages. The copies were distributed free of charge to districts, sub-counties, institutions and special interest groups. Together with other material, they were also sent to our Embassies and High Commissions for distribution to Ugandans abroad. Materials were posted to our missions in Britain, France, Belgium, Germany, Russia, Denmark, Rome, New York and Washington DC, among others.

**Constitutional and Information Material**

In order to promote greater public awareness, the Commission felt that there was a strong need to prepare and publish simplified information material on the Constitution and constitutional issues. The Constitutions and other legal instruments were written in technical language which was difficult for ordinary people to comprehend and as we moved round the country we received widespread demands and requests for something simpler.

Therefore, on 22nd June, 1989 we set up two Standing Committees, the Seminar Contents Committee and the Questionnaire/Contents Committee. The Seminar Contents Committee comprised Mrs Maitum (Chairperson), Mr G. Ufoyuru (Secretary), Rev. Fr Dr Waliggo and Capt. Kayihura as members. Professor D. Mudoola was a co-opted member. The Committee’s terms of reference were to prepare simplified documents on the Constitution for seminar purposes. They aimed to prepare a ‘Catechism’ which could be distributed to the public and was to be ready before the commencement of the sub-county seminars. It was to contain the common message or gospel the Commission would use in sensitising the people.

The Questionnaire/Contents Committee comprised Rev. Fr Dr Waliggo as Chairman, Professor Ssempebwa, Mr Ufoyuru and Mr Tumwesigye, as members. The Committee’s function was to prepare a questionnaire to be distributed to the people for the purpose of collecting their views. The members of this Committee, however, felt that their work was essentially the same as that of the Seminar
Contents Committee and that the two should work together. From February 1990 the two committees merged.

As we saw earlier, during district seminars, the Seminar Contents Committee had prepared a standard set of materials to be distributed in a file to each participant namely: The aims of the District Seminar, The Essential Points in the 1962 and 1967 Constitutions, Why Uganda needs a new Constitution, The Uganda Constitutional Commission Statute No. 5 of 1988, The Historical Background of Uganda, The Nature and Purpose of a National Constitution, Matters which may be contained in drafting a new Constitution, Unitary or Federal System of Government and The Uganda National Anthem.

The contents of this file were translated into local languages like Luganda, Runyoro/Rutoro, Runyankore/Rukiga and Lugbara. The Seminar Contents Committee built on these documents in preparing the ‘Catechism’ which in the end came to be called Guidelines on Constitutional Issues.

**Guidelines on Constitutional Issues**

*Guidelines on Constitutional Issues* was a very comprehensive and informative handbook which explained in simple language all the major constitutional issues identified by the people and the Commission as requiring to be addressed in the constitutional debate. The book had 26 chapters and 111 pages.

In preparing the *Guidelines*, the Committee followed certain principles. They wanted to touch on almost all possible constitutional issues so that people could react on all aspects of the Constitution. They wished to write simply, so that ordinary people could understand the issues. They wished to be concise, but on most issues this proved impossible since the issues were new to most Ugandans and so required explanation. They wished to be unbiased in presenting the issues but on certain issues there had to be some guidance to the public. They wanted to have a uniform plan for each issue – definition – explanation – past constitutions – major issues – guiding questions.

The Committee discussed each topic as a Committee and came to an agreed text which was then presented to the plenary for approval. They put a lot of thinking into the best logical
arrangement of the book, with the aim of putting related issues together in a chapter or section. At the end of each chapter or section, were ‘guiding questions’ to raise the issues that people had brought up in the various constitutional seminars. The Committee thought that the more questions there were, the better the chances of guiding or animating people to offer views.

The draft chapters of the book were discussed by the Commission and approved with amendments or suggestions for improvement. Where it was felt that the expertise of the Committee needed to be reinforced on certain topics, some of the Commissioners volunteered to assist in improving the text. We wanted the discussions and explanations given in the book to remain the full responsibility of the Commissioners to avoid misleading or biased information. The 26 chapters in the book covered all the major constitutional issues.

We pointed out in the introduction to the book that the guidelines were prepared by the Commission in response to the public demand for clear guidance on constitutional issues. We further stated:

The guidelines aim at assisting Ugandans to understand constitutional issues which are normally found in any National Constitution, those contained in Statute No.5 of 1988, Section 4 which should guide views on the new constitution, and issues which have been proposed by various citizens as relevant to the Ugandan situation. The aim is to be simple and precise so that as many Ugandans as possible can adequately understand these constitutional issues and consequently be able to contribute actively to the making of the new constitution. These guidelines do not contain all possible constitutional issues. The issues left out should not be ignored by the public. Views on them are equally welcome.

We called upon all Ugandans to read and reflect carefully on the Guidelines and to use them for formulating views and preparing memoranda to be sent to the Commission. Should there be issues which people consider important but did not appear in the Guidelines, we advised them not to hesitate in raising them and making them public.

In the Preface to the Guidelines, I emphasised the objective and character of the Guidelines in these words:
The Guidelines on Constitutional Issues have been written by the Commission to guide the people further on the major Constitutional issues to which the people should address their minds in contributing their views on the new Constitution. They have been written after the Commission has received some views from the public through memoranda, seminars, debates and other discussions which have been conducted throughout the country. The Guidelines therefore do not reflect the views of the Commission on particular issues, but merely contain information which the Commission believed could be of benefit to the public in guiding and stimulating their discussion of constitutional issues and ultimate contribution of their views on the Constitution.

This is not, therefore, a consultative document containing the official views or preliminary proposals of the Commission for consideration and comment. The publication is merely a handbook or manual to guide the people in contributing their views for the new constitution.

The preparation of Guidelines on Constitutional Issues was completed in September, 1990 when about 600 copies were produced. Each group of the Commissioners was given 25 copies for distribution during seminars while the rest were distributed to NRC members. Subsequently, another 10,000 copies were printed in March, 1991 and distributed widely throughout the country.

Guiding Questions on Constitutional Issues
The Committee on Questionnaire Content was set up to make proposals on the best way to collect views from the people either orally or in written form and the procedure for preparing and submitting views to the Commission. It was anticipated at that time that one of the best methods of collecting views would be through giving the people a questionnaire to answer.

As has been pointed out, the Committee worked independently from June 1989 to March 1990, when it merged with the Seminar Content Committee. The joint Committee developed a draft questionnaire by September 1990, entitled National Questionnaire on Aspects of the New Constitution for Uganda. The five page Questionnaire had 25 questions, each question addressing one constitutional issue. The questions were open-ended.

On presenting the Questionnaire to the plenary session on 27th September, 1990, the Committee raised a few issues for consideration by the Commission. They wanted the Commission to compare its questionnaire with the one prepared in the
Guidelines on Constitutional Issues. They pointed out that when a questionnaire is too long, very few people are prepared to answer it. Secondly, when a questionnaire present the same question more than once, it becomes tedious and confusing. Thirdly, questions are usually answered on the same sheet of paper as the questionnaire, which can make the volume of the questionnaire too big.

The Chairman of the Committee further explained that there were several types of questionnaires:

- The open ended ones, which allow the respondent to offer all views he/she wants without being limited.
- The objective question type, which makes clear statements and requires the respondent to answer Yes or No or Neutral in boxes provided in the questionnaire itself.
- A questionnaire which asks only one leading question on each major topic of the Constitution.
- A questionnaire which limits itself only to the most controversial constitutional issues on which there are two sharply divided public opinions.

It was pointed out that each type of questionnaire had advantages and disadvantages which had to be weighed in order to choose the one best suited to our circumstances; taking into account the mandate we had from the people, the need to make a fast analysis of the data contained in the questionnaire and the finances involved in each type.

The following questions were raised:

- Would the questionnaires be free or sold? If they were to be free, the exercise would be costly as every Ugandan might require to have one or even demand that the questionnaire be translated into his/her local languages.
- How could the questionnaire be distributed in such a way that no fraud took place? What would be the relationship between the memoranda and the questionnaire?
- Would RCs offer both memoranda and answers to the questionnaire, or only memoranda, without responding to the questionnaire?

Finally, there was the question of how to devise a questionnaire that could be easily put into a computer for quick and exact analysis of the data. If the questionnaire was to be used in computerised data
analysis, we would need a computer expert to assist in making the format of the questionnaire.

After considering these issues, we noted that the questionnaire was fairly complex and that an ordinary person in the village might not be able to appreciate or understand it. The response was therefore likely to be poor. There was no guarantee that those who were given the questionnaire would not influence others. It would be advisable to limit the use of the questionnaire to controversial issues, a matter that would be determined at a later stage. The questionnaire should as far as possible be restricted to Yes or No answers. We thought the questionnaire could work for Ugandans who were abroad but that its use within the country would confer unfair advantage on certain sections of the population. Therefore, the use of the questionnaire would be deferred for further consideration.

When the issue of the questionnaire came up again for discussion on 27th September, 1990, the plenary session advised the Committee to review the document, in particular to consider the scope of its application, the modality/methodology of administering it, the technical personnel required and the weight to be attached to questionnaire-based data vis-à-vis data from other sources. However, no pilot test of the questionnaire was ever carried out.

However, on 6th October, 1990, the Commission took the final decision on the issue of the questionnaire. After exhaustive discussion, we decided that the questionnaire be renamed Guiding Questions. It was further decided that explanatory notes be attached to the document to indicate that questions had been extracted from the Guidelines on Constitutional Issues and that they were being distributed in order to guide the RCs in preparing their memoranda. Lastly, we agreed that 5000 copies of the Guiding Questions be printed for distribution especially to all RC IIs.

This decision was important in two respects. In the first place, it opted for the detailed guiding questions extracted from the Guidelines on Constitutional Issues. This meant that the questionnaire would not be administered by anyone. There was no obligation to complete it. One could follow the questions in preparing his or her memorandum. Secondly, the decision meant that the questionnaire was to be printed separately from the
Guidelines on Constitutional Issues, for ease of distribution, and reference.

Guiding Questions on Constitutional Issues was published in November 1990. The document was 23 pages long with 253 questions covering all the 29 constitutional issues officially listed by the Commission as forming the constitutional agenda for discussion. It was clearly stated at the beginning of the document that the guiding questions contained in this document were drawn from the Commission’s Guidelines on Constitutional Issues. It was further stated;

- The aim of the questions was to assist RCs, groups and individuals in the preparation of their memoranda to be submitted to the Commission.
- It was not necessary for each RC group or individual to answer all the questions therein contained. It sufficed to respond to those questions and issues which were found by each RC or group to be of vital importance and relevance both to Uganda as a whole and to the particular area or group.
- The public was totally free to add on the list of constitutional issues and guiding questions on any aspect which may have been left out.
- Language: In order to facilitate the work of analysing views, the Commission recommended that wherever and whenever possible, English should be used in the writing of memoranda, otherwise any indigenous language of Uganda could be used.
- Need to keep to the order of issues: The constitutional debate had so far identified 29 issues which people had to take into account when preparing and writing memoranda. It would greatly assist the Commission in the computerization of data if the number and title of each constitutional issue were to be kept by the RCs and groups in writing their memoranda.

The document then outlined in detail, the procedure for preparing and submitting memoranda from RCs. The main levels of collection of views from the grassroots were RC I and RC II. The procedure was outlined as follows:
RC I Memoranda

- The RC I Executive calls a meeting of all residents of the RC to specifically discuss constitutional issues and prepare a memorandum.
- On the fixed day, members identify the constitutional issues they want to discuss and freely offer their views and recommendations on each of them.
- The entire proceedings of the meeting are duly recorded by the Secretary or Secretaries.
- Either on the same day or another agreed upon day, the members meet again to listen carefully to the report compiled from their views and recommendations. They approve the report point by point. Thereupon the RC I Executive signs the memorandum, attached on the list of all the members who participated in the discussion and forwards the memorandum to the Chairman RC II.

RC II Memoranda

- Once the RC II Executive has received the memoranda from the respective RC Is, it calls a meeting of all the RC II Councillors.
- These Councillors listen carefully to each and every memorandum from the RC Is and agree on the common points and recommendations to put in the RC II Memorandum.
- The Executive of RC II signs the Memorandum which the Chairman RC II submits to the Constitutional Commissioners together with all memoranda of RC Is in the parish when they come to collect views at the sub-county level.

Each memorandum was required to contain the name of the RC, name of parish, name of sub-county, name of district, date of approval of memorandum, list of RCs which submitted memorandum, names and signatures of RC officials/executives, list of people or councillors who participated in the discussion and approval of memorandum and full address of the RC. Memoranda from individuals and groups had to indicate names in full, occupation, age, district of residence, sub-county, parish/muluka, RC I and full address.
The procedure for preparing memoranda was also outlined in a separate one-sheet pamphlet, printed on both sides titled *Guidelines on Submission of Memoranda on the New Constitution*. In addition to the procedure, it contained a list of the 29 constitutional issues on which views were sought. The pamphlet explained what the Uganda Constitutional Commission was, how it was set up, its functions, methodology, programme, and the objectives of the new Constitution. All Ugandans were urged to make positive contributions to the constitution-making exercise. This was a handy information pamphlet and over 10,000 copies were printed and distributed throughout the country.

We received some complaints that some of the guiding questions were suggestive, biased and unfair in that they tended to indicate what answer the Commission expected. One such question was No. 58 under the topic of Political Systems and Political Parties. Question No. 58 stated that:

*Given the history and performance of political parties in Uganda, which political system would promote peace and stability?*

This question was extracted from the chapter on political parties in the *Guidelines on Constitutional Issues*. That chapter explained the development of political parties in Uganda, the advantages and disadvantages of multiparty and one party systems, the non-party system, the political movement and the political front. After outlining the history of political parties in Uganda, which was a short one, an assessment of political parties was made in these words:

*Political parties should be evaluated objectively in the light of Uganda’s history, society and level of development. Every political system whether multi-party, one-party or non-party has advantages and disadvantages.*

This assessment came at the end of the introductory part of the chapter dealing with the historical background, before the multiparty system was considered in the book. It can be seen that the assessment influenced the first question which was asked at the end of the later chapter. In fact, the entire chapter was objectively written in a balanced manner. It did not indicate that one system was superior to the other. Indeed in the assessment we cautioned that ‘political parties should be evaluated objectively.’
In my view, the question was not biased or suggestive if it was read in the context in which it was written. However, given the fact that most people who received the Guiding Questions document may not have had the opportunity to read the chapter on political parties in the Guidelines, one can understand why some thought that the question was unfair. It certainly was not a leading question because it did not suggest only one answer. The reader was still free to give an answer or view of his or her own choice.

Secondly, the subsequent questions under the topic left no doubt that the people were free to answer the questions as they deemed fit. Questions No.59 and 60 stated:

59. What is your opinion about the NRM type of broad based political movement?
60. Should Uganda have a multiparty, one party or non-party political system?

Thirdly, there were similar questions on other topics or issues couched in the same terms. For instance, Question No.6 on the Constitution and its objectives stated:

In light of our constitutional history, what methods do you suggest for amending the constitution?

Question No.76 on Forms of Government stated:

In light of our history and the present aspirations of Uganda, what should be the best form of government for the nation?

This question related to the issue of whether Uganda should have a federal or unitary form of government. There was also Question No.101 on the legislature, which asked:

In light of Uganda’s development, should we have one or two houses of Parliament?

The intention in framing such questions was not to produce any desired answer but to remind readers to consider Uganda’s past, present and future in giving their views.

**Essay competition on the Uganda Constitution**

We considered ways in which the youth of the country could become more involved and responsive to the on-going constitution-making process. We wanted them to get to know, respect and understand their national Constitution. We decided to supplement debates and seminars in schools with an essay competition on constitutional issues.
A sub-committee, chaired by Professor Mudoola, including Rev. Fr. Dr. Waliggo, Mr. Kaggwa, Mrs. Matembe and Professor Makubuya, was set up to organise the competition. The sub-committee co-opted Mr. Akabway, Inspector of Schools in the Ministry of Education as a member.

I officially launched the essay writing competition on 24th May, 1990 in a ceremony at Speke Hotel, which was attended by the media, officials from the Ministry of Education and heads of academic institutions around Kampala. The essay competition was widely publicised on radio, T.V and in the press. The competition had four objectives. The first was to provide an additional channel to the youth in the process of making a new Uganda Constitution. The second was to stimulate their awareness, debate and discussion of constitutional issues in order to encourage them to understand their national constitution and respect it. Lastly, we wanted to get additional contributions from the youth towards the on-going constitution-making process.

Materials containing guidelines and the objectives of the competition were delivered by the Commissioners and Secretariat staff to each district in Uganda, for circulation to the schools by the District Education Officers (DEOs). The deadline for submission of completed essays to the DEOs was set for 31st October, 1990 for primary schools and 30th November, 1990 for the secondary schools.

For purposes of the essay competition, schools were divided into four categories with cash prizes for the best three essays overall in each category and also for the best from each district in each category. There was no competition for lower primary pupils who were considered too young for the exercise. Topics were selected by the Commissioners for each category. These were:

**Category A: Upper Primary from P.5 to P.7**
- What I learn from our National Anthem.
- What I would do if I became a soldier.
- How can all Ugandans live happily together?
- The advantages and disadvantages of having many tribes in Uganda.
The Search for a National Consensus

- Explain what is meant by our National Motto **FOR GOD AND MY COUNTRY**.
- What is the use of school rules?
- The kind of Uganda I would like to live in.

**Category B: Lower Secondary from S.1 to S. III**
- The qualities of a good National Leader.
- What can bring happiness to Uganda?
- Ways of removing corruption from the Ugandan society.
- What I learn from our National Anthem.
- What is good Government?
- What are the duties of a citizen?
- What I think can solve Uganda’s problems.

**Category C: Upper Secondary from S IV to S VI**
- What is a National constitution and what should it contain?
- What is good Government?
- What are the duties of a citizen?
- The Constitution and National Unity in Uganda.
- The root-causes of Uganda’s political problems since independence.
- The best geographical division of Uganda for better administration.
- What should be Uganda’s national language?

**Category D: Post Secondary Institutions**
These included University undergraduates and students of all National Colleges.
- Suggest adequate safeguards for the new Constitution.
- Discuss the strengths and weaknesses of the Uganda Constitution of 1962.
- Discuss the strengths and weaknesses of the Uganda constitution of 1967.
- Discuss the main constitutional issues in Uganda today.
- Discuss the relationship between the Constitution and economic development in Uganda.
- What rights should foreigners have in the new National Constitution?
- Should traditional rulers have a role to play in Uganda?
- Devise a suitable administrative structure for Uganda.
- Is there a case for the doctrine of ethnofunctionalism in Uganda today?
- What do you envisage as the role of political parties in Uganda?
- Make a case for a national language of Uganda.
- What should be the role of the constitution in the protection and promotion of Human Rights?
- Suggest the best form of Government suitable for Uganda.
- Discuss the need for constitutional provisions to protect the interests and rights of women.
- Discuss the nature and role of the National Army in light of the new Constitution.

The prizes ranged from Shs. 2,000 to Shs. 50,000. First, second and third prizes were awarded.

For schools, the prizes were for the best essays in each district. For post-secondary institutions, the prizes were for the best essays nationally.

Essays were to be written in English, in legible handwriting or typed, and had to be the original work of the candidate himself or herself. Candidates had to choose one topic from the appropriate category. Lengths of essays ranged from 500 to 5,000 words depending on the category. The list of prizes was as follows:

<table>
<thead>
<tr>
<th>Category</th>
<th>Prize</th>
<th>Value (Shs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A Upper Primary</strong></td>
<td>1st</td>
<td>10,000</td>
</tr>
<tr>
<td></td>
<td>2nd</td>
<td>7,000</td>
</tr>
<tr>
<td></td>
<td>3rd</td>
<td>5,000</td>
</tr>
<tr>
<td></td>
<td>Best in each district</td>
<td>3,000</td>
</tr>
<tr>
<td><strong>B Lower Secondary</strong></td>
<td>1st</td>
<td>20,000</td>
</tr>
<tr>
<td></td>
<td>2nd</td>
<td>15,000</td>
</tr>
<tr>
<td></td>
<td>3rd</td>
<td>10,000</td>
</tr>
<tr>
<td></td>
<td>Best in each district</td>
<td>3,000</td>
</tr>
</tbody>
</table>
It was observed right from the time of launching the essay-writing competition that it was a very popular exercise. It was welcomed by all, and had the prior blessing and co-operation of the Ministry of Education. The Commission was indeed urged to expand it to cover other non-student categories of Ugandans.

The response to the essay competition indicated that over 200 institutions and over 5,000 students and pupils from over 30 districts participated. The total number of essays submitted was 5,844 out of which 3,895 were from Category A: primary school pupils.

The essays were marked by a team of the Commissioners under the supervision of the Essay Competition Committee. The results of the competition were announced at a conference on 7th November, 1991 at the Commission offices in Mengo. On that day it was also announced that the presentation of prizes would be held on 17th December, at the International Conference Centre at 11 a.m. The announcement of the winners and the date of presentation were published in *The New Vision* on 21th November, 1991. The names of all the national and district essay competition winners and their institutions were listed. The announcement included our decision that the Commission would meet the transport costs for the national and district winners in each category. District winners could collect their prizes on the presentation date or at the Commission’s Headquarters in Mengo any time afterwards. Each winner had to come with proper identification documents (school
identification card and a letter from the headteacher or principal) certifying their identity.

Most of the districts participated in the exercise. Those which did not, may have been prevented by insecurity. The prize winners were widely distributed throughout the country. For instance, national winners were as follows:

<table>
<thead>
<tr>
<th>Category</th>
<th>Winners</th>
<th>Institution</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A Upper Primary</strong></td>
<td>1. Kaberya</td>
<td>Kitante Primary School</td>
</tr>
<tr>
<td></td>
<td>2. Nakalanda Juliet</td>
<td>Rubaga Girls P/S</td>
</tr>
<tr>
<td></td>
<td>3. Nandiko Margaret</td>
<td>Ombachi P/S</td>
</tr>
<tr>
<td><strong>B Lower</strong></td>
<td>1. Bageya Michael</td>
<td>Busoga College Secondary Mwiri</td>
</tr>
<tr>
<td></td>
<td>2. Jaceng Felix</td>
<td>Pakwach SSS</td>
</tr>
<tr>
<td></td>
<td>3. Kulumba Anthony</td>
<td>Kiira College Butiki</td>
</tr>
<tr>
<td><strong>C Upper</strong></td>
<td>1. Mukasa S. Ssenyomo</td>
<td>Mityana SSS</td>
</tr>
<tr>
<td></td>
<td>2. Onzu Ismael</td>
<td>St Charles Lwanga SSS</td>
</tr>
<tr>
<td></td>
<td>3. Teko Robert</td>
<td>Ngora High School</td>
</tr>
<tr>
<td><strong>D University and other National</strong></td>
<td>1. Ruteblemberwa Elizeus</td>
<td>Ggaba National Major Seminary</td>
</tr>
<tr>
<td></td>
<td>2. Tushabe Gerald</td>
<td>Makerere University</td>
</tr>
<tr>
<td></td>
<td>3. Matovu Anthony</td>
<td>Ggaba National Major Seminary</td>
</tr>
</tbody>
</table>

It is interesting to recall that among the district winners was Patience Museveni, the President’s daughter, who was then in Primary 6 at Kampala Parents School. She won the first prize in Kampala District. My young brother, Paul Fred Odoki, who was then in S.6 at Wairaka College also won the third district prize for Jinja District. It was my pleasure to hand over the prize to Patience Museveni in person at the ceremony.
At the presentation ceremony, which I presided over, I thanked all educational institutions, their principals and headteachers, the staff and students who answered our call and participated in the competition. I observed that their efforts demonstrated a great hope for the future of this country. I expressed our gratitude to the Ministry of Education, particularly the District Education Officers for facilitating the exercise.

Addressing the youth and children who had gathered, I underscored the importance of their participation in the constitution-making process:

The Commission attaches great significance to the participation of the Youth and children in the current constitution-making exercise.

The youth and children are the hope of this nation and the backbone of the new constitution that is being made. You are not only leaders of tomorrow but you have began being leaders of today through your participation.

The contribution which your essays have made to the current process cannot be over-emphasised. You have represented your fellow youth and children throughout the country. Your views on the topics we designed for you have shown us that although you are young in age, you have been able to understand the challenges and opportunities that face our nation.

I took the opportunity to recall some of the views or aspirations expressed in the essays. One of the essay topics for students from S.IV - S.V was ‘The root-causes of Uganda’s political problems since independence.’ This was a very important topic in our analysis of society because without a careful and correct diagnosis of these problems, we would not be able to prescribe the right solutions in the new constitution. What were some of the problems that the students identified?

- Superimposed colonial values on our traditional values.
- Political mismanagement by past leaders.
- Distorted education structure.
- Corruption and misuse of public office.
- Sectarianism based on religion and tribe.
- Non-national and illiterate army.
- Unworkable foreign ideologies.
- Unfair dispensation of justice and civil strife.
• Lack of a national language.
• Inappropriate constitution based on the interests of a few.
• Brain drain.
• Dictatorship.
• Rigging of elections.
• Mass poverty and hunger.
• Technological backwardness.
• Lack of recognition for the contribution of the youth and women in development.

The students who wrote in this category then went on to suggest what they considered to be a good government under the topic ‘What is a Good Government.’ These were some of their reflections:
• It should practise popular and parliamentary democracy.
• It should respect and observe human rights.
• The army should strictly follow its code of conduct.
• It should create nationalism among its citizens.
• It should have a nationalistic and honest leader.
• It should provide security to its citizens and their property.
• It should respect and follow the Constitution.
• It should observe the rule of law.
• It should equitably distribute state resources throughout the country.
• It should maintain the independence of Uganda politically and economically.
• It should maintain good foreign relations.

The students in the primary schools who participated under Category A gave their vision of ‘The kind of Uganda I would like to live in.’ What were their dreams?
• A well-developed Uganda, which is advanced in industry and technology, with a sound economy.
• It should have enough cash crops and reduce imports while increasing exports.
• A Uganda which is rich and people enjoy a good standard of living.
• A Uganda in which the Government is democratic and not militaristic.
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- A country where there is peace and security for all persons and their property, and where there are no rebel activities.
- A Uganda where there is no discrimination and ethnic hostilities.
- A Uganda where education is a priority, is a right and is free.
- Where intellectuals are fully involved in development and those outside encouraged to return and participate in nation-building.
- Where there is electricity in every part of the country, and other improved infrastructure.
- Where there is immunisation and enough medical care.
- Where children are protected from sexual abuse and child labour.
- Where the environment and wildlife are protected.
- Where the judiciary is just and administers justice speedily.
- A Uganda which deserves to be called the ‘the Pearl of Africa’.

There are no rights without corresponding duties. On the other hand our past constitutions did not include duties. We asked the students to think about this issue. In their essays on the ‘Duties of a citizen’ the students identified the following duties among others. To:

- participate in nation-building and avoid sectarian tendencies.
- respect and protect public property.
- pay taxes to Government.
- protect the environment.
- defend the nation against aggression.
- help the needy and disadvantaged.
- portray the good image of the country.
- participate in governance.
- assist in maintaining law and order.
- be honest and fight against corruption.

In conclusion, I pointed out that it was abundantly clear from our past that Uganda had had constitutions without constitutionalism. If we wanted to inculcate a culture of constitutionalism amongst us, we had to start with the youth and students. How should we go about this process?

The following ideas were suggested by the students:

- Political education should be integrated in the school syllabus and the constitution should be one of the topics to be covered.
- Copies of constitutions should be easily available in schools and colleges.
• Essay competitions should become a regular feature of the nation in order to know the constitution better, love, respect and defend it.
• School drama and debates should promote these aspects and values of the Constitution.
• Youth and children should learn to contribute to the political debate on national issues.

I finally assured all the students who had participated in the essay competition that their views would be seriously considered without discrimination, just like views of the adults.

We provided some light refreshments to the winners, their teachers and parents, to congratulate them. I could see that the students were excited and felt a sense of achievement and contribution to an important national cause. We were impressed and gratified by their performance and by the support of their teachers. The youth had spoken.

Evaluation
The objectives of our information and publicity campaign were in my view, achieved. Our programmes managed to promote a high degree of public awareness about the Constitution, its meaning, nature, purpose, content and importance in the governance of the country. The majority of Ugandans heard and knew about the Constitution. Many actually saw and read it. A public informed about governance and development issues was promoted.

The process of making the constitution was popularised through the publicity campaign. Adequate guidance was given to the people on how to submit views to the Commission. A critical mass of public opinion in support of the process was created.

Even Ugandans abroad were able to contribute their views after reading the publicity material which was sent to them through our Embassies and High Commissions.

The credibility and integrity of the Commission, the genuineness of the process and the seriousness and commitment of the government to the process were promoted. The myths that Government had a hidden agenda and that a Draft Constitution already existed were exploded. The entire population and all significant socio-political forces were persuaded to participate in the exercise of formulating their national Constitution.
The publicity programmes stimulated a healthy, free, informed and balanced public debate on constitutional issues throughout the country, which helped to promote the process of refining issues and consensus building. Points of agreement and disagreement were able to emerge. The media, both electronic and print, played a key role in disseminating information, presenting divergent arguments and opinions on constitutional and political issues and thus co-ordinating the efforts of all those who were engaged in the exercise of promoting the public debate. This led to increased public participation. The 2,763 articles on the Constitution were published in the newspapers.

The media also promoted the transparency of the process and accountability of the Commission. Both the Commission and the process were exposed to constant public scrutiny. Public criticisms of the process were published and suggestions made as to how to improve it. We took the opportunity to respond to criticisms or queries in order to maintain the integrity and legitimacy of the exercise.

Ultimately our constitutional propaganda campaign succeeded in enhancing the democratisation process through participation, consultation and consensus building. It promoted the exercise and enjoyment of basic human rights and freedoms by the population.

The publicity campaign was so successful that some Commissioners became household names. For instance Rev. Fr Dr Waliggo and Mr Kaggwa became well known through their Radio Uganda talk shows in Luganda. The profiles of the Commissioners were generally raised as national leaders.

As is expected in any national programme, we experienced some problems. Some of these were due to shortage of funds or logistics for the Commission or other institutions such as UTV and Radio Uganda. We could not record programmes regularly until we were able to buy our own recording facilities like video cameras, audio tape recorders, audio tapes and video cassettes. Once we had these, it became possible for us to record programmes which could be produced and broadcast by T.V or radio, especially where the activity took place outside Kampala. Advertisements in newspapers required payment and sometimes funds were inadequate.
The greatest problem was in my opinion, the late printing of some documents, their insufficiency in terms of quantities and the inability to translate them into vernacular languages. Most constitutional materials were published while the sub-county seminars were already being conducted so that some sub-counties received the documents late. Not enough copies of publicity material were printed to reach the majority of Ugandans. Furthermore most of them were in English and not translated into major local languages. These two factors meant that the documents did not reach most citizens. It was all due to the shortage of funds and time.

As we saw, criticisms were raised against some of the documents, in particular against the *Guiding Questions on Constitutional Issues*. My own view is that the criticism was unjustified since the questions were not formulated in isolation but as points for discussion after reading the relevant chapters.

In any case, no-one was required to complete the questionnaire or to answer the specific questions in their contributions or memoranda to the Commission. However, it is true that the questions were too long and sometimes vague or too specialised, especially when they were technical and read without the *Guidelines*. They still, however, served their purpose of guiding the people and focusing their attention on what issues to consider, discuss and contribute as their views on the new Constitution.

Although the formal publicity and educational exercise stopped around November/December, 1991 after the collection of views, the Commission continued to issue updates on its progress right until the submission of the final draft. Even then, up to its disbanding, the Commission continued to explain its final draft.

The process of information and public relations was a hectic but fruitful one. The Commission was able to make the issue of constitution-making a topical, popular and not an abstruse subject. In the end, we set the country buzzing with constitutional discussion and exchange. This was no mean feat in a world that is now fast disappearing and even hard to imagine; a time without FM radios, phone-in programmes, interactive television or *Bimeeza*. 
The latter half of 1991, beginning with the month of May, marked a most important phase in the work of the Commission. Up until this stage the Commission had been preoccupied with preparatory measures. We had also bombarded the country with information through seminars and promoted the cause of constitution-making through a constitutional publicity campaign. Now it was the turn of the people to speak and for us in the Commission to listen very hard. What the people had to say was to be preserved for posterity, not only because their views were to be incorporated into the Constitution but also because their memoranda were to be permanently preserved.

We were required by Section 5 of the Uganda Constitutional Commission Statute to ‘seek the views of the general public through the holding of public meetings and debates, seminars, workshops, and any other form of collecting public views.’ The new Constitution was to be based on the views of the people. It was to be a people’s Constitution; not a Constitution imposed by the Government, or by any one section of the population. Therefore the Commission had to gather views from all the people of Uganda and from every significant social force in the country. The people had to be given ample time to consider their positions, to organise their views and formulate them into concrete and viable proposals. Receiving memoranda and oral opinions was the most important methodology for collecting public views.

The collection of views formed the third stage of our work, after the preparation of publicity and the educational seminars. The main objective of this stage was to revisit the sub-counties and collect memoranda prepared by RCs and individuals after
the seminars and receive any oral submissions from individuals or groups in the countryside. The second objective was to finalise the collection of memoranda submitted to the Commission offices. The third objective was to conduct oral interviews with important national leaders to record their views.

Once all the views received in the form of memoranda, papers, articles or recorded on tape had been compiled and documented, the Commission would be ready for the fourth stage of the exercise: studying and analysing the views. Preparing all the material was in itself a major operation. The views recorded on tape had to be transcribed and those written or recorded in vernacular languages translated so that all the Commissioners could read them. The records of all views had to be stored and documented in a form that could be readily available to the public and posterity, especially to delegates for the Constituent Assembly who would debate and adopt the new Constitution. Therefore, this was a critical stage in the work of the Commission. It was the bedrock on which the new Constitution was founded.

**Preparation and Organisation**

As I have said in earlier chapters, the original plan of the Commission had been to visit each sub-county once to collect views from the grassroots. This plan was changed when we decided to hold seminars in each sub-county to sensitisze the people before taking their written or recorded views. That exercise was completed in April 1991. The collection exercise commenced in May 1991 and was largely completed by November the same year. We drew upon our experiences during the seminars to prepare and organise a programme for collection of submissions from the sub-counties.

The organisation of the groups remained the same: six groups of three Commissioners each revisited the districts where they had conducted the sub-county seminars. Each Commissioner covered roughly two districts. All the Commissioners handled the difficult areas where there was insecurity. By this time each Commissioner had an official vehicle. We decided that the programme for the completion of preparation of memoranda by various levels of RCs should be announced before the Commissioner visited them for collection. The programme for oral interviews of important
leaders was drawn up and it was decided that the month of July 1991 should be set aside for this purpose. The materials required for the operation were prepared and the procedure to be followed was worked out. A documentation officer was recruited to organise the documentation and classification of memoranda and other materials received by the Commission.

**Collection of Views from Sub-counties**

The procedure for the preparation of memoranda by RCs, groups and individuals had been published in our various publicity documents particularly in the *Guiding Questions on Constitutional Issues* and *Guidelines on Submission of Memoranda*. The procedure has been outlined in Chapter 5.

Before the Commissioners embarked on the programme of collection, we decided that we should guide the RCs on the timetable for preparing the memoranda. Accordingly, on 3rd April, 1991, I issued a statement which was carried in the print and electronic media. It was headed *Important Announcement from the Uganda Constitutional Commission* and stated:

Here below is the Timetable for the completion and submission of all memoranda from all levels of Resistance Councils, from various groups and individuals throughout the country.

- **On Saturday 20th April, 1991** all RC IIs who have not yet completed their memoranda are required to complete and finalise them. One copy is to be sent to the RC III Chairman or Executive before Tuesday, 23rd April. The other copy should be kept by the Chairman RC II who will present it to the Commissioners.

- **On Saturday 27th April, 1991** all RC IIIIs who have not completed their Memoranda are required to complete and finalise their memoranda. One copy is to be given to the Chairman of RC V or the executive before Tuesday, 30th April. The other copy is to be kept by the Chairman RC III who will present it to the Commissioners.

- **On Saturday, 6th May** RC Vs who have not completed their memoranda are required to complete and finalise their memoranda.
The statement also contained an announcement of the commencement of collection of memoranda – Monday 8th May, 1991. We informed the public that the Commissioners would go to the sub-county headquarters or where that was not possible to the county headquarters to collect all RC memoranda and memoranda from various groups and individuals. The Commissioners would be covering several sub-counties each day. The detailed timetable of the collection exercise would be given in the newspapers and on Radio Uganda. Memoranda from RC V would be collected on the same day as the Commissioners collected the memoranda from the respective municipal councils, where the RC V has its headquarters.

I concluded my statement with an appeal to the various local leaders and authorities to adhere to the timetable and to express their views freely in memoranda or otherwise. These were my words:

The Uganda Constitutional Commission appeals to all DAs, ADAs, DEOs in the districts, county and District representatives in the NRC, all Chiefs, RC officials and elders to ensure the success of this exercise and strictly keep to the timetable given. People of all levels and opinions are reminded that they are entirely free to express their views in their memoranda to the Commission.

The deadline for submission of views is the 30th June 1991. Let all Ugandans undertake this exercise seriously for the good of our Nation and our future.

Soon after the announcement, I received several letters requesting me to extend the period for the collection of views. The Chairman RC V Kampala asked for six months while Hon. Adoko Nekyon pleaded that Northern Uganda was still experiencing problems due to the ongoing military operation. He advised that the collection of views in that region should start in June when the situation would hopefully be calm.

On 24th April, 1991, I met the President at State House. He had called the Minister of Constitutional Affairs and I to discuss the deadline for the submission of views.

The President was under the impression that the Commissioners had not yet visited the sub-counties and therefore he had considered the period given to the people to give their views too short.
I explained that the Commission had less than a year within which to submit the Draft Constitution, which was expected in March 1992. I also explained that the Commissioners had already visited all the sub-counties, some as far back as 6 months before, and that the Commission believed that the people had been given sufficient time. Thirdly, I said that a programme had to be issued to the people as advance notice that the Commission was now going out to collect their views. I further explained that the Commission would not be too rigid and the programme would in all probability spill over into July.

The Minister informed the President that he had travelled around the country and that people were ready. The President’s concerns were answered and he blessed the collection of views exercise. This meeting with President Museveni demonstrates how he kept a close eye on the constitution-making process and his concern that the public should have sufficient time to contribute their views. I remember him telling me that we needed to allow sufficient time for the making of the Constitution in order to make it a good and lasting one; we could not go on making new constitutions perpetually.

The Commission decided that each Commissioner would draw up his or her programme and circulate it together with my statement to the area he or she was going to work in. Each Commissioner would be accompanied by a legal officer or research assistant. A contingency fund to cover miscellaneous expenses in the field of Shs. 100,000 per month would be paid to each Commission on the basis of Shs. 5,000 per sub-county.

The material for collecting views was supplied to each group of the Commissioners. They included 1,250 large envelopes, 200 polythene bags, 50 box files and 100 markers. The aim was to put the memoranda from each sub-county together and those from each county and each district separately. This would assist in the analysis and computerisation of data by sub-county.

Each envelope would contain: name of sub-county, date of collection, number of memoranda, RC official who handed over the memoranda and the name of the Commissioner who collected the memoranda.
The need for effective publicity was emphasised in order to avoid a situation where a Commissioner arrived at a sub-county to find no officials and no memoranda. The timetable for the collection had to be planned and drawn up in advance covering all the sub-counties of each group. It also had to be passed to the mass media and extensively circulated in each district. The programme and timetable were designed to enable each Commissioner to collect views from two or three sub-counties each day. To achieve this target, the trip had to be planned in such a way that wherever possible, a Commissioner would spend the night in the neighbourhood of the sub-counties planned for the following day. It was indeed to be a tight programme.

The procedure to be followed when memoranda were actually submitted to the Commissioners was agreed upon beforehand by the Commission. We emphasised the need to ensure that the memoranda were not written by a few educated people on behalf of the others, without consultation and the consent of the group. Therefore before commencing proceedings, the Commissioner had first to ascertain whether the group which had gathered was the right one.

The Commissioner would then explain the purpose of the visit, namely to collect their memoranda and receive any oral submissions. The RC III Chairman would explain how many memoranda had been received, and any difficulties that they had experienced. The group would choose the people to read the memoranda. Each memorandum would be read out aloud, and the people gathered would accept that it was their memorandum. Any discussions or amendments would be recorded by the Commissioner or a legal officer.

After this, the memorandum would be formally presented to the Commissioner who would formally acknowledge its receipt by issuing an acknowledgement form duly signed by all parties, as evidence of the memorandum’s submission and receipt. A copy of the acknowledgement form would be handed to the group or person submitting the memorandum.

The Commissioner would then thank the group for their contribution and advise that any memoranda not yet collected should either be forwarded to the district commissioner for
onward transmission to the Commission, or sent directly to the Commission’s offices.

Where time did not permit or the group had not gathered on the date announced for the collection, the Commissioner would simply collect whatever memoranda were given to him by RC officials or individuals, issue an acknowledgement form and then leave. There were cases where the Commissioner had to look for RC officials in their homes to collect the memoranda, or to appoint another date or time. Although there was pressure to conclude the exercise within the stipulated time, every effort was made to ensure that no memorandum was left uncollected.

Political and civic leaders kept us informed about the state of submission of memoranda from their areas. For instance, in October 1991 it was reported that the Rt. Hon. Prime Minister had complained about the paucity of memoranda collected from Apac District, where he came from. When we discussed the matter, a Commissioner reported that he had been to Apac District twice and had been told that there were no more memoranda to expect from there. I suggested that the Prime Minister be approached to mobilise people in Apac District who had not yet submitted views to do so. Indeed, our experience was that where the local leaders mobilised and encouraged people to give views more memoranda were collected.

In the event, we sent Lt. Col. Serwanga Lwanga to check out the situation in Apac and Lira Districts in December 1991 and to collect memoranda from the remaining sub-counties. On 5th December, 1991 he went to the office of the RC V Chairman Lira, who was also the acting district administrator. There he received memoranda from six sub-counties, which meant there was no need for him to visit these.

Lt. Col. Serwanga Lwanga then visited Apac District and found that memoranda had in fact been written and were lying in the residences of RC officials. His report is revealing:

On the same day (5th December, 1991) I proceeded to Apac and met the RC V Chairman with whom I discussed my mission to the District. There were no memoranda here save for one RC II memo from Tarofori Parish in Ibuje sub-county. I then decided to visit all the 15 sub-counties in this District that had not submitted their memoranda as expected by UCC.
In the process I discovered that memoranda had actually been written but were just lying with the various RC III Chairmen and/or officials in their residences for want of collection. Consequently I had to seek out these officials in their individual homes to get the memoranda from them.

I was informed that this state of affairs had been caused by lack of a definite date given to the people for the collection of memoranda and the very short time given to them to write these memoranda by the Commissioner who went there for the collection of memoranda. They explained that no sooner had they started writing their memoranda than they were informed that the Commissioner who had come to collect them had left. Some stopped writing while others completed writing the memoranda and in both cases kept them. Some claimed to have misplaced some memoranda from the lower RCs in the belief that they were no longer required since the Commissioner had collected the (District Resistance Council) memoranda and left.

However, Lt. Col. Serwanga Lwanga could neither refute nor confirm these claims. Such claims were more prevalent in far-flung sub-counties of northern Apac where the roads were rough and the only modern means of transport was a bicycle. We were inclined to believe Lt. Col. Serwanga Lwanga’s opinion that long distances and lack of transport probably contributed to RC officials’ failure to submit memoranda for collection at the DA’s office as the Commissioner had asked. It seems that the Commissioner originally assigned the task had made no effort to reach the RC officials in their respective areas, apart from snap visits at the sub-county headquarters, where the officials were hardly found.

Lt. Col Serwanga Lwanga was able to collect a total of 112 memoranda from the two districts, 22 from Apac and 90 from Lira. Only Ayer sub-county in Apac District did not submit a memorandum, and this could have been due to the apathy of the RC officials. This exceptional performance demonstrates the thoroughness, zeal and courage with which Lt. Col Serwanga Lwanga executed his responsibilities, under very difficult conditions.

In July 1991, we reviewed the collection exercise. We found that some districts had responded very well, and others had been quite disappointing. The Commissioners identified several factors as contributing to this scenario. It was discovered that there was apathy in some parts of the country, especially where the military
conflict had taken place. In many districts, the climax had been the sub-county seminars due to our oral culture; once the people had had a chance to express their views they considered the exercise over for them. Where the RC system worked effectively and people chose representatives to organise the exercise, the response was good. Where RCs were weak or non-existent, the results were poor. Finally, where the timetable and programme for the collection of memoranda had been discussed with the people or effectively distributed beforehand with the help of the DAs and the RC system, the results were rather good; where it was not, the results were disappointing.

We decided to take some remedial action to improve the collection of views. We made a plan to visit the DAs or contact them to ask them to receive the remaining memoranda. We also provided them with an official container for the memoranda they received. We intensified the appeal for memoranda in the various languages of Uganda on radio, T.V and in the newspapers. We agreed to send another programme and timetable to those districts which had not yet been visited, and to stick to them. We employed cadres or other suitable persons in some districts to collect memoranda for us.

Lastly, we released to the press the number of memoranda from each district so as to alert people and create positive competition.

These strategies worked and the number of memoranda received in the period between July and November 1991 improved significantly. For instance, the numbers of RC memoranda received from the Districts of Mpigi, Mukono, Mbarara and Kabale by 4th June, 1991 were 87, 103, 243, and 109 respectively. But by 10th December 1991, the numbers of RC memoranda the same districts submitted had increased to 650, 659, 476 and 306 respectively. The exponential improvement in response can be attributed to the enhanced publicity, more encouragement and mobilisation, and more time allowed for the submission of views. Therefore, while we concede that giving more time to the people to present their views delayed the process of preparing the Draft Constitution, we were satisfied that the delay was justified because the people were afforded a better opportunity to express their views.
Receiving Memoranda at Commission Offices

The submission of memoranda to the Commission had actually begun immediately after the Commission was launched. In my inauguration address on 5th May, 1989, I invited the public to submit views to the Commission:

With effect from today, the Commission hereby invites Memoranda from the public regarding the form of the constitution or any other matter relevant to our terms of reference. The memoranda should be sent to the Secretary, Uganda Constitutional Commission, P.O. Box 7206, Kampala. The memoranda can also be sent through the District Administrator’s Office or our Diplomatic Missions abroad. Receipt of memoranda will end when the process of data analysis begins after touring the entire country.

The Secretariat was responsible for receiving and documenting memoranda, whether delivered by hand or through the post office. A senior legal officer was designated to receive and register them. Later an experienced documentation officer was recruited to head the Library and Documentation Section, which was responsible for the indexing and categorisation of memoranda.

All memoranda received were acknowledged in writing. They were entered in the register consisting of counter books and given a reference number.

These arrangements ensured that no memorandum was lost or unaccounted for, and that it was easy to identify and trace each one. The acknowledgement of receipt was intended to assure the person or group who submitted the memoranda that they had in fact been received by the Commission. This was intended to build public confidence in the process.

Most memoranda were submitted to the Commission without any formal ceremony or publicity unless it was requested. Any Commissioner or Senior Secretariat Official was entitled to receive memoranda at the Commission offices. However, some important institutions and special interest groups asked for a public ceremony, which would be covered by the media. We usually obliged, partly because we thought that this would publicise the views submitted by the group but also to encourage others to present their views. District administrators and other civic leaders brought memoranda collected from the districts. Heads of Missions submitted memoranda by Ugandans abroad through the Ministry of Foreign Affairs.
I spent most of the period for the collection of views receiving memoranda from the following groups. In June 1991, I received memoranda from the Church of Uganda, the Uganda Publishers’ Association, Women in Development, and Born Again Churches. In July, I received memoranda from the Catholic Church, the Uganda Muslim Supreme Council, the Luwero Triangle War Veterans, the Foundation for African Development, Kitante Primary School, and the Orthodox Church. In August, I received memoranda from the Federation of Women Lawyers in Uganda (FIDA-Uganda), the Teaching Service Commission, Mpigi RC V, the Uganda Law Society, and Tororo RC V. Also in August, Ssabataka’s Supreme Council, Mbale RC V, Nakawa RC III, Action for Development (ACFODE), Hoima RC V and Pallisa RC V presented their memoranda to me. The last groups from whom I received memoranda, in October 1991, were from Luwero District Youth Committee, elders from Soroti District, and the NRA.

Groups normally presented their memoranda to me in my office at Mengo. The leaders of the delegation would outline some of the salient features of the proposals in the memorandum, and I would convey the Commission’s appreciation for the contribution made. Members of the press would be free to look at the memoranda in order to report accurately the views they contained. These memoranda usually contained very comprehensive and well-argued proposals, and we considered them very important because they represented a large cross-section of the people of Uganda.

**Issues addressed in Memoranda of Special Interest Groups**

I have listed above some of the special interest groups which presented memoranda to me. This list represents just a portion of the many group memoranda that the Commission received. These special interest memoranda were submitted towards the end of the exercise of the collection of views, when those who drafted them had presumably heard or read about the views of other Ugandans. We found that the views of the special interest groups were not fundamentally different from the views of other Ugandans on most constitutional issues.
However, our analysis of these memoranda showed that while there was consensus on most of the constitutional issues, there were significant disagreements on a number of others, which remained controversial throughout the constitutional debate. It was also found that some groups held varying views on certain issues. Even within the Resistance Councils, certain levels gave different views from others on some issues. For instance, the lower levels of RCs favoured the Movement political system, whereas the majority of RC Vs preferred the multiparty system.

What was striking in the memoranda was the general concurrence of ideas and views on most issues. For example, there was general agreement on the need for a comprehensive Bill of Rights and its contents, the election and term of the President, the political system, the composition and powers of Parliament, the electoral system, the restoration of traditional leaders, the independence of the judiciary, the repeal of the Land Reform Decree 1975, the restriction of citizenship to Ugandans by birth or descent or by naturalisation or registration, and the need for a national, professional and well disciplined army.

The need for a comprehensive Bill of Rights incorporating international human rights norms, and the rights of vulnerable groups like women, children and Persons With Disabilities was emphasised. Emphasis was also laid on the issues of non-discrimination on grounds of sex, prohibition of customs and traditions which degrade and undermine the dignity of women, and the right to affirmative action. Religious groups underscored non-adoption of state religion and freedom of religion and conscience. Many groups emphasised the abolition of detention without trial, the right to education and freedom of association and assembly.

There was general agreement that the President should be directly elected by universal adult suffrage for a term of five years, renewable only once. This was not only to enhance the popularity and national legitimacy of the President, but also to prevent dictatorship and ambitions for life presidency. There was divided opinion as to whether ministers should be Members of Parliament. The powers of the President were to be reduced by subjecting his political appointments and certain presidential decisions to approval by Parliament.
The majority of special interest groups were in favour of the multiparty system of government. These included political parties, religious organisations, National Government Organisations (NGOs) and professional bodies like the Uganda Law Society. Women in Development and Ugandans in London were among the groups which supported the no-party movement system. Others proposed limiting the number of political parties while others, like Ugandans in Ethiopia, supported a referendum on the political system.

Regarding the structure of the legislature, some groups supported two houses of Parliament. These included the memoranda from Orukurato of Bunyoro-Kitara, Ugandans in London and the Muslim Supreme Council. It appears this proposal was related to the one for a federal system of government. There were also proposals for proportional representation from the Democratic Party and for representation in Parliament of special interest groups, especially women. There was agreement on the need for free and regular elections conducted by an independent electoral commission through a secret ballot.

While there was consensus on the need for devolution of power from the centre to the periphery, there was no agreement on whether devolution should be based on a federal or unitary form of government. There were suggestions of a mixture of federal and unitary systems as in the 1962 Constitution, or a federal system of government on the basis of nine states, proposed by Federal Democratic Movement (FEDEMU), or 15 states as proposed by the Uganda Muslim Supreme Council.

There was consensus on the need to restore traditional rulers as cultural leaders without political powers and with their maintenance provided by the community concerned. Land and other property of these institutions were to be returned to cultural leaders.

There was also consensus on the ultimate need for a national language, but no agreement as to which of the local languages should be adopted. There were proposals for the adoption of Luganda or Kiswahili, but Kiswahili was disqualified on the ground that it was foreign and not indigenous to Uganda. There was general agreement that it was not necessary to decide the issue now but to develop several major languages from which a national language
could emerge. The languages proposed were Luganda, Runyoro-Rutoro, Runyankole-Rukiga, Ateso, Luo and Lugbara.

While there was general agreement that the Land Reform Decree 1975 which abolished freehold and mailo tenures and converted them into leasehold should be repealed, there was no agreement as to the appropriate land tenure system for Uganda. There were proposals by some for a uniform system of land ownership throughout Uganda based on freehold and leasehold, but those who valued mailo tenure wanted that type of tenure restored. Even those occupying land by customary tenure preferred it to be preserved. The need for security of tenure irrespective of the tenure system was emphasised. There were also strong proposals that land should belong to Ugandans and government should not have the power to nationalise or acquire land without payment of adequate compensation.

There was general agreement that citizenship should be by birth, descent or by registration by those who had stayed in Uganda for a long time. There was also consensus that refugees should be kept in their camps and should not be allowed to settle elsewhere.

The role of the military in the governance of Uganda remained an important issue for discussion. Opinion was divided as to whether the Army should play an active role in Ugandan politics. What was agreed upon, however, was the need to have a national, professional, well-educated and well-trained army, which would be non-partisan and disciplined to protect the sovereignty and territorial integrity of Uganda.

The need to institute mechanisms to promote good governance, transparency and accountability was agreed upon. For this purpose it was proposed to establish a Leadership Code of Conduct for holders of public office and an Inspectorate of Government to serve as an Ombudsman.

From the views expressed in memoranda of special groups it is clear that the same controversial or contentious issues emerged as from memoranda of other groups. It can also be noted that there was consensus on the majority of constitutional issues.

**Conducting Oral Interviews**

In order to give every Ugandan an opportunity to contribute his or her views on the new Constitution, we decided in May 1991...
to allow certain individuals to present their views orally. We recognised that some people find it easier to speak their views than to write them. Secondly, we wanted to ensure that all leading personalities in Uganda gave their views so that our report could be comprehensive. We knew that some of these busy people might not have time to write.

The programme for receiving oral views was drawn up and announced on radio and television. The exercise started in July 1991, and concluded with an interview with H.E. President Museveni on 13th and 14th December, 1991.

A list of leading personalities the Commission wanted to interview or receive views from was drawn up. It included ministers, permanent secretaries, heads of institutions of higher learning, heads of parastatal organisations, heads of Government departments, heads of NGOs, etc. A letter was written to all Permanent Secretaries to ask them to present memoranda or oral submissions on the aspects of the Constitution which touched directly or indirectly on the nature of their ministries. A letter to the same effect was sent to all important parastatal organisations, associations and institutions.

The procedure for receiving oral submissions was divided into three broad categories, according to the kind of people to be interviewed.

The first category consisted people who could not write – mainly ordinary citizens. These people were referred to research assistants who took down their views. The second category was of those who came with their written memoranda but wished to explain them to the Commission. These people were met by the Commissioners who happened to be at the office when the memoranda were submitted. Thirdly, the leading personalities and representatives of institutions met me, where possible with the Commissioners present. The last group consisted leaders of the nation, whom the Commission met in their own offices. As many Commissioners as were available met the national leaders, including the President, the Vice President, the Rt. Hon. Prime Minister, Vice Chairman NRM, National Political Commissar and Heads of political parties. The majority of interviews were conducted by a group of two to three Commissioners.
In most cases the list of the issues on which the Commission wished to receive views from the interviewee was sent in advance. In other cases the people interviewed were free to address whatever issues they preferred. The Commissioners only interjected to clarify views or draw attention to some critical issues.

The programme was in my view successful. We interviewed more than 25 leaders and their views were recorded both in writing and on tape. I participated in about 10 oral interviews where I led teams of the Commissioners. Those I interviewed included the President, the Vice President, the Rt. Hon. Prime Minister, the National Political Commissar and the Leader of the Democratic Party. I was able to discern the positions of these leaders on most of the constitutional issues, especially the controversial ones.

In a few instances, I conducted oral interviews of ordinary people who insisted on presenting their views to the Chairman of the Commission himself. One such case was an old woman who was brought to my office at her request. Her views consisted of one sentence in Luganda: ‘Nze njagala Bwakabaka.’ – ‘I want restoration of Buganda Kingdom.’ That proposal was pregnant with meaning because it proposed restoration of the king, the political kingdom and its institutions, the kingdom’s property, and mailo land.

**Issues Addressed in Oral Interviews by Members of Government**

His Excellency the President of Uganda and many of his cabinet ministers were interviewed between 8th August and 14th December, 1991. The interviews ended with the President who was interviewed for two days from 13th to 14th December, 1991. This interview formally closed the receipt of views from the public.

While the ostensible reason for interviewing these important political figures was to give them an opportunity to contribute, we had another reason for receiving their views: we were interested in understanding the thinking of the government of the day on certain key issues, which were at the root of formulating a viable democratic national constitution. Some of these issues were those that had proved to be contentious during the constitutional debate. While we did not expect to receive an official view of government as a whole, the views of critical members of the Government were
a good mirror of the thinking of the government of the day. I think that the Draft Constitution would not have enjoyed the general acceptance or legitimacy that it received had the views of the Government not been taken on board.

Although not all members of the Government interviewed dealt with all the constitutional issues, the result of the interviews showed remarkable agreement on most, if not all issues addressed. There was general agreement on the following issues:

- That there should be a comprehensive Bill of Rights, with rights for vulnerable groups, women and children, etc.
- That there should be no dual citizenship but those who have stayed for long in Uganda could apply for citizenship.
- That there should be an executive President who should be directly elected by universal adult suffrage for only two terms of five years each.
- That the powers of the President should be reduced by subjecting his political appointments to approval by Parliament.
- That there should be one house of Parliament elected on constituency basis.
- That elections should be regular, free and fair, conducted by secret ballot, and by an independent electoral commission.
- That the independence of the judiciary should be safeguarded and that judges be appointed on merit through an independent judicial service commission, and with approval of Parliament.
- That the movement political system should be in operation for the next 10 years before the multiparty system is re-introduced after holding a referendum to determine the political system of the people’s choice.
- That a decentralised system of government be established to devolve powers in a unitary system of government on the district basis and that the RC system should continue to exist.
- That the army should continue to play some role in the politics of Uganda until the country is politically stable. But that the army should be nationalistic, professional and well-educated.
- That it was not feasible to have a national language at the moment but that all languages should be promoted in the hope that one of them would emerge later as a national language.
• That traditional rulers should be restored as cultural leaders without participation in partisan politics.
• That the people of Uganda should have security of tenure on the land they occupy and the Land Reform Decree 1975 should be repealed.
• That the Constituent Assembly should consist of delegates freely elected by the people.

These views were in most respects similar to the views expressed by other groups and the people of Uganda as a whole. We were happy that the top members of the Government expressed themselves on contentious issues since there had been no official memoranda from the Government to the Commission.

An Evaluation
The exercise of collecting views through memoranda and oral interviews was very successful. We received a total of 3,392 memoranda from individuals and groups, and 12,377 memoranda from Resistance Councils (RCs) I, II, III, IV and V. Every major group; religious, political, professional, cultural, social and economic, presented a memorandum. Only the Uganda People’s Congress refused to submit a memorandum as a political party but many individual party members and leaders submitted their views to the Commission. Other political parties like the Democratic Party, the Conservative Party and the Liberal Nationalist Party submitted memoranda. All major religious organisations presented their views. We received memorandum from the women, youth, workers, and the Persons With Disabilities and other special interest groups. Memoranda were also received from professional organisations, government institutions and parastatal organisations. We received over a dozen memoranda from Ugandans living abroad.

Thirty-six District Councils submitted memoranda to us and only two District Councils failed to do so. All 13 municipalities submitted their memoranda. Three-quarters of all sub-counties in the country presented their memorandum, and so did one half of RC IIs in existence. We were unable to ascertain the exact number of RC Is (villages) in the country but it was believed close to one quarter of RC Is submitted memoranda. The actual number of memoranda from RC Is was as high as 9,521 which clearly demonstrated the broad participation of the ordinary Ugandans at grassroot level.
All Ugandans were given adequate opportunity to submit their views to the Commission. They gave their views voluntarily without coercion or intimidation, in a free atmosphere. We received no complaint of harassment or denial to present views to the Commission.

The submission of memoranda from the various parts of Uganda was fairly balanced, even from areas where there was insecurity. An analysis carried out soon after the completion of the collection exercise showed the following figures:

<table>
<thead>
<tr>
<th>Region</th>
<th>RC V</th>
<th>RC IV</th>
<th>RC III</th>
<th>RC II</th>
<th>RC I</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central</td>
<td>5</td>
<td>8</td>
<td>128</td>
<td>743</td>
<td>3,541</td>
<td>4,425</td>
</tr>
<tr>
<td>Eastern</td>
<td>8</td>
<td>3</td>
<td>127</td>
<td>540</td>
<td>2,058</td>
<td>2,736</td>
</tr>
<tr>
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<td>9</td>
<td>2</td>
<td>137</td>
<td>258</td>
<td>380</td>
<td>786</td>
</tr>
<tr>
<td>Western</td>
<td>11</td>
<td>3</td>
<td>172</td>
<td>682</td>
<td>3,513</td>
<td>4,381</td>
</tr>
</tbody>
</table>

It can be noted that the above figures are very comparable at RC III level, which was the centre of the Commission’s work in the countryside. Low figures in the lower levels in the northern region can be explained by insecurity. Many people gave oral views whether at the Commission headquarters or in their sub-counties. About 25 leading personalities were interviewed and their views recorded. Their views enabled us to discover the opinions of senior government leaders on various issues.

The youth who hold the future success of Uganda participated in the exercise through the essay competition in which about 5,844 essays were received and documented. The aspirations of the youth were captured in the essays. Many Ugandans expressed their views in newspapers. Their articles, comments and proposals formed another source of views for our consideration. Over 2,763 such articles were assembled.

The reports of the district seminars, institutional seminars and sub-county seminars formed another valuable source of written views. The various position papers, conference papers and reports assembled by the Commission were also valuable because of the well argued opinions they contained.
An evaluation of popular participation through the submission of views in the various forms cannot be complete without mention of certain misgivings expressed about the process. Some expressed the opinion that the process was not sufficiently comprehensive and consultative, given the armed conflict in Northern Uganda and also the lack of political freedom.

The extent of response as shown in the statistics outlined above seems to invalidate such an observation, at least with respect to the impact of the civil war on the process. I would not hazard to assess the impact of the lack of political freedom on the process, even though many Ugandans who chose to participate in the process did so. That judgment will perhaps be made more objectively and accurately with the benefit of the hindsight of history as we move further and further away from the actual events.

All the materials which contained people’s views from various sources were professionally documented through indexing and categorisation for use by the Commission during data analysis and study of views and subsequently for reference by the Constituent Assembly and posterity. These materials were later handed over to the Commission for Constituent Assembly, which established a Constitutional Resource Centre where the materials were properly stored. Indeed, the Resource Centre was consulted very often by the Delegates to the Constituent Assembly to discover the raw data from which the Draft Constitution was evolved.
Inauguration of the Commission. From left to right: Mr Justin Okot, Rev. Fr Dr John Mary Waliggo, Mrs Mary Maitum, Mr George Ufoyoru, Professor Phares Mutibwa, Hon. Justice Benjamin Odoki (Chairman), Professor Dan Mudoola (Vice Chairman), Hon. Cuthbert Obwangor, Professor Andrew Otim.

Inauguration of the Commission. From left to right: Hon. Cuthbert Obwangor, Professor Andrew Otim, Mr Justin Okot, Rev. Dr Fr John Mary Waliggo, Mrs Mary Maitum, Hon. Justice Benjamin Odoki, Professor Dan Mudoola, Professor Phares Mutibwa, Mr George Ufoyoru, Mr Sam Kirya Gole.
Professor Phares Mutibwa, Hon. Justice Benjamin Odoki, Professor Dan Mudoola.

Professor Andrew Otim explaining to the people of Soroti some of the important issues to be considered while giving views on the new Constitution.

Some of the seminar participants listening to Professor Otim.
Above: Lt Col Serwanga Lwanga (centre) listening to people’s views in Nakaseke.

Seminar participants during a short break in front of a building destroyed and looted by government forces during the bush war.
Seminars were attended by both young and old. An elder explains a point to seminar participants.

Commissioners and essay winners pose for a group photograph at the Nile International Conference Centre after the prize-giving ceremony. Centre is the Chairman of the Commission, Mr Justice Benjamin Odoki, and the Vice Chairman, Professor D. Mudoolaa.
A primary school child who gave her opinion on the vision of “The kind of Uganda I would like to live in.”

Another winner of the essay competition receiving his prize.
Former Katikkiro (Prime Minister) of Buganda, Mr Mayanja Nkangi (right), who led the Ssabataka’s Supreme Council to present their memorandum. He is flanked by Rev. Dan Kajumba, the Secretary General of the Council.

Prince Henry Wako Muloki, Isebantu of Busoga, flanked by Zibondo of Bulamogi in Busoga, reads a memorandum. They had led a 15-man delegation from Busoga.
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The Chairman, Hon. Justice Benjamin Odoki and Archbishop Wamala in a deep conversation on the occasion of presenting the memorandum of the Catholic Church in Uganda.

The Chairman, Hon. Justice Benjamin Odoki receives a memorandum from the then Head of the Orthodox Church in Uganda, Archbishop Theodoras Nankyama.

The Chairman, Hon. Justice Benjamin Odoki and Archbishop Wamala in a deep conversation on the occasion of presenting the memorandum of the Catholic Church in Uganda.

The Chairman, Hon. Justice Benjamin Odoki congratulates Mr Remmy Kasule upon his presentation of the memorandum from the Uganda Law Society.
The Chairman, Hon. Justice Benjamin Odoki, and the Secretary to the Commission, Rev. Fr Dr Waliggo (in the middle), pose for a group photograph with RC executives of various levels in Rubaga Division after presenting their memoranda.

Chapter 8

Consensus – Towards a Social Contract

Introduction
By mid-October 1991, the Commission had finished the hectic work of traversing the countryside in pursuit of the views of the people on the future Constitution and had just concluded interviewing the VIPs.

We now embarked on the more sedentary business of working on identifying the issues where consensus had been generated. This was very intensive work indeed. It involved extensive reading, thinking and analysis yet we were pressed for time. The requisite funding did not come in time and this added to the pressure because we were still pursuing the deadline of June 1992.

If there was such a thing as the single most important aspect of the Commission’s work, this was it. As the work proceeded there were no parallel activities: the Commissioners were working full time. They had to put in a full day involving intensive brainwork. As the late Professor Mudoola put it, ‘this was the moment of truth,’ was in spite of the fact that the controversial issues had been generally known all along.

The importance of this stage lay in the fact that the outcome of the work of the Commission depended on how accurately the views collected were analysed; how well the Commission had understood the thinking of the people. In a sense, therefore, the stage of identifying issues of consensus was one of confirming impressions and perceptions. It would go a long way towards confirming the authenticity and credibility of the Commission’s work.

As we have seen, the Uganda Constitutional Commission Statute required the Commission to evolve a Constitution based on national consensus. This is evident from the preamble to the Statute, which states,
WHEREAS the history of Uganda is characterised by political and constitutional instability:
AND WHEREAS since independence, Uganda has had a series of constitutions and Constitutional Instruments many of which have failed to take account or satisfy the national aspirations of the time:
AND WHEREAS in the past the people of Uganda have been afforded little or no opportunity to freely participate in the promulgation of their national Constitution:
AND WHEREAS the National Resistance Government recognises the need to involve the people of Uganda in the determination and promulgation of a national Constitution that will be respected and upheld by the people of Uganda, through the establishment of a Constitutional Commission with a view to achieving a national consensus on the most suitable constitutional arrangement for their country.’ (emphasis added).

One of the functions of the Commission was to formulate a Constitution which would inter alia ‘create viable political institutions that will ensure maximum consensus and orderly succession to government.’ Therefore, it was not only the methodology of formulating the Constitution that was to be based on the principle of consensus, but the Constitution itself had to generate and promote the principle of consensus.

Since 1996, the NRM Government had been using consensus as a method of resolving conflicts. Its main institutions for governance, especially the Resistance Councils were intended to promote unity and consensus building.

Therefore, right from the beginning of its work, the Commission was committed to formulating proposals based on the people’s consensus. But in order to discover the national consensus, all the views of the people had to be carefully studied and analysed. Each submission had to be analysed accurately and taken into consideration when arriving at the final position on each issue. Having regard to the large number of submissions that the Commission received, the exercise of study and analysis required massive resources in terms of personnel and equipment.

Statistical analysis had to be carried out to confirm issues of consensus and controversy. More staff had to be recruited and more computers acquired to facilitate the analysis of the data.

This chapter discusses the reasons for the search for consensus, the meaning of the concept of consensus in relation to
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constitutional issues in Uganda and the sources the Commission used to derive evidence of consensus. It describes the process of study and analysis of people’s views, and the criteria employed by the Commission in identifying consensus and outlines the issues on which consensus was obtained. It evaluates the importance and impact of securing consensus on these issues of the constitutional order.

The Meaning of Consensus on Constitutional Issues

Consensus is an important method in the resolution of conflicts and in the promotion of democracy and national stability. Consensus means general agreement or shared views. It signifies a meeting of minds, ideals and values. It implies a shared vision and aspirations for the future.

Dictionary definitions of consensus talk of agreement of opinion or of collective opinion. They indicate however that it does not necessarily involve 100 per cent agreement. *The Oxford Advanced Learners Dictionary*, for example, gives an example of the use of the word in the expression ‘consensus politics’ which it says means ‘the practice of proposing policies which will be given support by (nearly) all parties.’

In its day-to-day use, the word consensus usually suggests that there has been some process of negotiation and or compromise among several divergent views, usually with some giving of ground by the proponents of one or more views. Consensus is also the African method of settling disputes by listening to everyone and taking into account all views. It is a painstaking exercise, which is most rewarding in the end because it produces no losers since all are winners, and promotes legitimacy and acceptability of decisions. Consensus instills the qualities of patience, tolerance and compromise.

The Commission’s concept of consensus was derived from the Statute creating it as mentioned before, which gave it the role of developing and identifying consensus as discussed above.

Our focus was therefore upon achieving what we might term ‘general societal consensus’ or agreement. It could not mean 100 percent consensus from people on all issues—something impossible to obtain in practice. Consensus did not and could not mean unanimity.
Why the Search for Consensus

There were several reasons why the Draft Constitution had to be based on a consensus of popular views. The first is that the Statute establishing the Commission required it. As we have seen, the Preamble sets out the underlying aims and concerns of the Statute. It notes: lack of participation of Ugandans in the promulgation of previous constitutions; the NRCs awareness of the need to involve the people in ‘the determination and promulgation of a national Constitution’ respected and upheld by Ugandans and the need to establish a Constitutional Commission ‘with a view to achieving a national consensus on the most suitable constitutional arrangements’.

We were informed by the Legal Officers in the Ministry involved in the development and drafting of Statute No.5 of 1998 and who were present in the NRC when it was debated that the use of the word ‘consensus’ in the Statute was no accident. There was a clear intent that our Constitution should endeavour to transcend the divisions in Ugandan society which had contributed so much to the past political instability.

This view of the centrality of consensus to the work of the Commission was borne out by other provisions in the Statute. Significantly the Statute acknowledged that consensus on complex constitutional questions did not necessarily develop of its own accord.

Indeed, in view of the historic instability and divisions in Uganda, it would be most unlikely to develop without some assistance. Hence, the Statute envisaged that the Commission would not only identify consensus where it existed amongst the people, but would also try to coax it out of them where it was not apparent.

Sections 4 and 5 of the Statute which set out the functions and powers of the Commission did not specifically include development and identification of consensus, but pointed towards these dual roles. The powers in Section 5 included the seeking of the views of the public and the stimulation of ‘public discussion and awareness of constitutional issues.’ It was not merely a matter
of stimulating discussion to promote awareness and hence not just an educational function. Rather, it was intended to assist the development of consensus and nurture it. Seeking the views of the public by the Commission was intended to inform the Commission as to what consensus of views existed.

The centrality of identifying consensus also emerges from the functions of the Commission - under Section 5 of the Statute - which include the task of making constitutional proposals which would ‘create viable political institutions that will ensure maximum consensus.’ While the emphasis here was on the creation of institutions that would produce a societal consensus, in the long term it was difficult to envisage the creation of such political institutions without minimal popular consensus.

The second reason was that although the people as a whole might not possess detailed knowledge of constitutional law, they do have a sense of the real nature of the problems of Uganda. They are the ones best suited to identifying the principles that should apply to the organisation of governmental structures ultimately intended to serve them.

The third reason was that it seemed clear from the views of the Commissioners and from the submissions from the public that there was near unanimity on the cardinal principle that the ultimate guarantee and safeguard of the Constitution would be the informed commitment of the people. In order to achieve this commitment, the Constitution had to be based on their views.

It is through basing a Constitution on the views of the people that they are most likely to be interested in and committed to it. Therefore, consensus promoted ownership of the Constitution by the people, as well as its legitimacy.

We did not think that it was necessary to establish that we had received views from the majority of Ugandans. The consensus we looked for was determined by the content of the debate, with reference to those willing to contribute to it. As long as we had done everything possible to facilitate contributions to the debate by all sections of the public, we could surely be permitted to draw conclusions about a general societal consensus from the contributions made. Hence there was no need to count up the proportions of the population purportedly represented by the RCs
which submitted memoranda in order to be satisfied that they represented a majority of the population. It must be added that no significant portion of the population was left out in the process of collecting views. Even in respect of arcane topics such as finance and foreign relations, which attracted few contributions from the people, nobody was left out.

In this context, it could be argued that while the Commission’s power to stimulate public discussion and awareness of constitutional issues suggests a role in reconciling divergent views, there was no suggestion in the Statute that the views of a majority of the whole population had to be considered if consensus was to be identified.

A more difficult question concerned the impact of marked variations in the contributions to the constitutional debate. For instance, if the greatest preponderance of views expressed to the Commission came from the Southern part of the country and very little from the North, could it be truly said that there was a national consensus? Fortunately, the analysis of contributions did not reveal marked imbalances; whatever variations in the participation or submissions existed were analysed and explained in the final report. In our view the submissions we received were highly representative of the whole country.

**The Sources of Evidence of Consensus**

The Commission used various sources of evidence in order to identify consensus. The most important were: the observations and impressions of individual Commissioners (supplemented by those of staff) made and gathered during the public consultations; records of views expressed in both papers presented to and other contributions made by participants in seminars organised by both the Commission and other groups (institutional, district, sub-county, etc.); memoranda received (from RC I-V, groups, individuals, etc); essays from educational institutions; oral interviews; position papers delivered by the Minister of Constitutional Affairs, the Commissioners and myself; and newspaper reports.

The statistical analysis of the frequency of views expressed in the memoranda assisted the Commission in being more certain than
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it might otherwise have been about the extent to which there was consensus on issues, particularly on the more controversial ones.

It is important to point out, however, that the identification of consensus was not merely a technical computer exercise. We did not rely primarily on the computer to identify consensus: the computer simply confirmed what we had learnt and now knew. It not only merely assisted in the process of identifying controversial issues, but also in providing concrete evidence for posterity of the effort made to take into account all the views advanced.

The Formation of the Technical Committees

In order to enable the Commission to study all the views presented within the limited time available, it was necessary to establish technical committees to deal with specific themes or constitutional issues in some detail. These Committees were thematic and were therefore different from the previous committees established by the Commission. They were supposed to address the 29 different issues, which had been identified before. Apart from their positions on the themes the Committees had to supply additional information on the background and methodology used in order to provide sufficient information and context for the Commission’s report. The Committees would also supervise research and secretarial staff handling those issues. This did not mean that each Commissioner did not have to study all submissions, but it was an organisational method of ensuring that the views on each issue would be analysed comprehensively and accurately.

Six technical committees were formed with three Commissioners each. The Commissioners were given an opportunity to make two choices of the committees they preferred to serve on. The Chairman proposed the final line-up, taking into account the need to ensure that each committee was fairly balanced in terms of gender, region, political affiliation and perceived competencies and constituencies; we also ensured that there was a lawyer on each one.

Technical Committee A was chaired by Professor Mudoola. Its members were Professor Makubuya and Capt. Kayihura. The topics they were to deal with were: Background analysis of society; Methodology and Assumptions; The Need for the Constitution and its Objectives; Nation-building Process in Uganda; Common Values and National Language.
Committee B was chaired by Mrs Maitum. Its members were Mr Okot and Hon. Tumwesigye. The topics they were to study were: Citizenship; Fundamental Rights and Freedoms; Political Systems; Participatory Democracy; and Political Parties.

Committee C was chaired by Professor Ssempebwa and its members were Professor Otim and Hajji Kaggwa. Its topics were: Traditional Rulers; Forms of Government; Local Government; Electoral System; and Decentralisation.

Committee D was chaired by Lt Col Serwanga Lwanga with Mrs Matembe and Hajji Kasujja as members. It dealt with the Legislature; Executive; Judiciary; Public Service; and the Army, the Police, the Prisons and the Intelligence Organisations.

Committee E was chaired by Mr Ufoyuru with Wenkere-Kisembo and Mr Kateera as members. Its topics were: Economic Basis of the State; Public Finance; Accountability and Control; Social Services; Land; and Environmental Protection.

Committee F was chaired by Mr Rwaheru with Professor Mutibwa and Hon. Obwangor as members. Its topics were: Safeguards to and Amendment of the Constitution; Foreign Relations and International Cooperation; Inspector General of Government; Leadership Code; Review of Existing Laws in relationship to the proposed Constitution; and any other aspect of the Report that may not fall within the other Committees.

The main responsibilities of these Committees were to study and analyse views received from the people and make draft proposals on the issues which would eventually be incorporated in the Final Report and Draft Constitution. The specific terms of reference for the Committees which were discussed and approved by the Plenary Session on 8th October, 1991, were:

- To find out how these issues are treated in the constitutions of other countries and how our current laws treat them;
- To give a short historical background on each topic;
- To find out the views of the people on the issues and determine whether there is a consensus, majority view, minority view and areas of conflict;
- To make proposals and recommendations on the issues for the Final Report; and
- To make proposals and recommendations on the issues for the Draft Constitution.
The Committees were confirmed by the plenary session on 15th October, 1991.

It will be clear from the terms of reference that these Committees were to make the draft recommendations for the new Constitution which would be contained in the Report and Draft Constitution. Their task was to prepare draft chapters of the Final Report, discussing the proposals made by the people in their submissions and explaining the reasons for the recommendations or options proposed by the Commission. The recommendations by the Committee would be best understood or appreciated by the Commission after perusing the draft chapter.

Thus the process of study and analysis of views and the formulation of recommendations and preparation of draft chapters of the Final Report went hand in hand. The preparation of the Draft Constitution itself was undertaken subsequent to the discussion and adoption by the Commission of the recommendations from the Technical Committees.

To facilitate their work, each Committee was assigned a Legal Officer. Committee A was assigned Ms S. Nkwasibwe; Mr J. Wamala worked for Committee B; Ms A. Nkonge was attached to Committee C; Mr S. Wakhakha served under Committee D; Mr J. Oneka was attached to Committee E; and Mr M. Ojakol worked for Committee F.

The duties of the Legal Officers included taking the minutes of the committee meetings; co-ordinating the work of the committees; ensuring that all documents produced by the committees were typed and copies given to the Secretary; ensuring that research assigned to them was completed in time, and facilitating the work of the committees so that they kept to the timetable. Later, each Commissioner had one research assistant attached to him or her because of the heavy workload.

The Committees performed wonderfully well. Each Committee evolved a work plan and each Commissioner was assigned a specific topic on which a presentation was eventually made to the plenary. The only snag was the varying writing styles in the reports by the various committees. This was rectified by establishing an editorial committee that harmonised and standardised the different writing styles.
Study and Analysis of Views

The many sources from which the people’s views were obtained have been described in the previous chapters. They included memoranda from individuals and groups, memoranda from all levels of Resistance Councils, reports of district, institutional, and sub-county seminars, reports from privately organised seminars, essay competitions, position papers, oral interviews, and newspaper articles. The first challenge was to ensure that these documents and materials were made available to each Commissioner to study and analyse.

The task of preparing the materials for study and analysis was a mammoth one, but it had to be done and done quickly and efficiently. Everything had to be indexed and documented and all raw data had to be securely stored. Six copies of all the raw data had to be photocopied, one set for each committee. The sheer volume made it impossible for each Commissioner to have an individual set. Materials which were in local vernacular languages had to be translated into English and typed. Some memoranda from Resistance Councils I, II and III were handwritten. Those which were illegible were typed out. Views which had been recorded on tapes and video films had to be transcribed and produced as reports or submissions.

After the assembling of all the materials, they had to be categorised and summarised by research assistants according to each of the 29 issues. This was necessary to facilitate the easy and comprehensive study of the views on each issue by the Commissioners. The research assistants had to consolidate the summary of views on each issue from each category of source. For instance, there were summaries of views on each issue from every level of Resistance Council or individual memoranda. These summaries had then to be photocopied so that each Commissioner received a copy. The Commissioners perused as many memoranda as possible, especially those they considered vital. In fact, the Commissioners had to cross-check the summaries against the memoranda to ensure accuracy. The reproduction process was slow and laborious, if only because all the necessary documents were not on hand at the same time.
A summary of the main points was extracted from each memorandum or submission being perused, studied and analysed. The whole submission had to be read and internalised before any meaningful summary could be made. The points had to be extracted bearing in mind the constitutional issues and the guiding questions. The points in the views were numbered. The name of the author could be indicated in brackets at the end of his or her summarised views.

It was important to record the various ranges of options proposed by the people in their submissions. Arguments in favour or against certain options were recorded. Reasons were necessary in evaluating the arguments for competing options.

The categorisation of views was done by grouping views under relevant constitutional issues or topics. The summarised views were then filed in separate files according to each issue, to ensure that views on the same issue were assembled in one place or document. Categorisation according to issues helped the Technical Committees to pick up relevant files for study and consideration. However, each technical committee received summarised views on all issues, and it could reproduce more copies of the views on the issues under their specific mandate.

It was the responsibility of the Commission to decide which materials needed summarising and which ones did not. The decision was dictated by the quantity of the materials which the Commissioners were not able to peruse due to constraints of time. But categorisation was useful to the Commission and Committees in ascertaining the nature and extent of the views on each issue. The supervision of the exercise by the Commission was to ensure that the summarising and categorisation were not flawed or rigged by the staff carrying it out.

These summaries did not absolve the Commissioners from perusing as many memoranda as possible, especially those they considered vital. In fact, the Commissioners had to crosscheck the summaries against the memoranda to ensure they were accurate.

It was emphasised to all the Commissioners that there was a need to adopt a unity of mind in analysing Ugandan society so that at least they evolved a common vision on what went wrong and why, in order to have a unity of purpose in identifying proper solutions from the views of the people.
The Commissioners also had to adopt a common methodology in studying constitutional issues of localised consensus such as traditional leaders, cultural practices, etc. Unless this was done, the Committees would have found great difficulty in reconciling accepted local custom with national silence or lack of national consensus over such a local issue. Through discussions and the exchange of information, the Commissioners ultimately created a unity of mind and a common vision in studying and analysing views with a view to making appropriate proposals for the new Constitution.

The Technical Committees were not only responsible for the study and analysis of data but were to be the nucleus for the compilation of the Final Report. The Commissioners had to see themselves as full-time workers and around October 1991 six offices were prepared to house the six committees, as places where they could keep their materials, and where they could meet to discuss the organisation of their work and the proposals to be submitted to the plenary. Where these proved to be crowded, additional space was provided for individual commissioners or for sharing. As one Commissioner observed, “the moment of truth” had come. We had promised the people that we would consider and respect all their views and use them as a basis for the new Constitution. We could not honour this contract with the people unless we did justice to their views.

Distinguishing between Consensus and Controversial Issues

After studying and analysing the various views and summaries prepared by the research assistants, it was clear that the issues could be grouped into two main categories namely, those on which there was national consensus and those on which there were divergent views. The first category of issues was termed consensus issues while the latter category was referred to as controversial issues.

The Commission understood a consensus issue as one which received overwhelming support or rejection in all categories of sources received. An issue supported by majority views was one which received majority support in most of the categories or all
categories of sources received. A controversial issue was one, which received a majority support in some categories only, or one that had a strong minority opposition in all categories. Examples of a minority with a firm conviction, which could not be ignored, were issues of federo and multiparty politics.

What was involved in identifying Consensus

One of the first tasks in identifying consensus was to attempt to distinguish between the kind of areas where it could be argued that there was already consensus and those where there was not. Before doing so, it was important to note the distinction between general constitutional principles on the one hand and the technical details of the constitutional arrangements needed to give effect to those principles, on the other. We found that it was often the case that the views expressed in the memoranda related more to the principles than to the technical detail of how the principles should be given effect. In other cases, there was agreement on the principle, but not on the technical detail. This is not to suggest that in relation to some issues there was not also some consensus on more technical issues. Thus, for example there was consensus on details relating to presidential powers to dissolve Parliament, declare a state of emergency without parliamentary approval and on whether a husband of a Ugandan woman should be granted Ugandan citizenship. On the other hand, while there was consensus on the Bill of Rights generally, no consensus emerged on the issue of derogation of such rights.

On issues where there was already consensus there were a number of distinct categories of variations. First, there was a remarkable high degree of consensus on what the ‘agenda’ of the constitutional issues was. The agenda was identified by the Commission through its initial tours and was reflected in the 29 issues and the Guiding Questions. None of the views expressed by the public suggested this agenda was incorrect. The topics included the objectives of the new Constitution, citizenship, Bill of Rights, political system, the presidency, Executive, Legislature, Police, Prisons, Army, Judiciary, Leadership Code, Inspectorate of Government, Public Service, Social Services, Land and Environment.
Second, there were some constitutional principles where there was virtually 100 percent consensus in the views expressed. These included the general principles that should govern the new Constitution, with the eight enumerated in Statute No.5 of 1988 only being slightly expanded by some contributors and never deviated from. Among these fundamental principles were, a fully democratic system of government, free, fair and regular elections, separation of powers, with checks and balances, the basic content of human rights provisions, decentralisation of powers, participation of the people in their governance, accountability of those in leadership, independence of the Judiciary, control and discipline of the army, proper use and control of public finance, development, and the need for strong safeguards for the Constitution.

Third, there were a number of areas where there were clearly dominant views. That is, while there was not 100 percent agreement on the issues, there was clearly a preponderance of opinion well above a bare majority. A clear example was the need for a directly elected President.

It was in relation to this category, in particular, that the distinction between constitutional principles and details of the arrangements necessary to give effect to the principles arose. For example while there was a clearly dominant view concerning an elected president, there was a wide range of views about the details of what the role and powers of that office should be.

In such a situation, the Commission had to consider whether it was free to decide that it was the principles that mattered most and that it should make its own recommendations in detail in terms of the most effective constitutional arrangements despite the lack of consensus on these issues. In the event the Commission decided to determine technical details after establishing consensus on general principles.

The fourth category of issues on which there was consensus were those which, while they were commented upon by only a minority of participants in the constitutional debate, nevertheless did not involve serious controversy or divergence of views. The limited public comment on these areas was largely due to their being fields of limited interest. The prime examples were the control of public finance and foreign relations.
The fifth category of issues where there was consensus was a mixed category which belonged in part in the group where there was consensus and in part in the group where controversy existed. This was because there were a number of areas where there was agreement on major parts of key issues, but considerable divergence on others. These included:

- The role of the army, on which there was general consensus on most questions other than the issue of its direct role in governance.
- Decentralisation, on which the need for reduction in the role of the centre was generally accepted, but whether this should be done through some form of federation or through a unitary devolved system remained controversial.
- The Judiciary, where issues about the role of the jury and the possibility of a greater investigative role, remained contentious.

**Consensus on some Aspects of Controversial Issues**

There were some issues where the views were so divergent that they remained ‘either/or’ issues. These included the role of political parties and the role of traditional rulers. The role of the army in politics could be included here. These issues were generally referred to as controversial issues. They are dealt with in the next chapter.

An important point to note concerning the ‘either/or’ issues was that there were some important elements of consensus on some aspects. For instance, there was a dominant view that the past role of the army in politics had not generally been beneficial. This degree of consensus provided the Commission with some ways of resolving controversial questions.

Secondly, there were issues where there was a high degree of consensus in a localised geographical area or among particular interest groups, but which were controversial in the country as a whole. The prime example involved the role of traditional rulers, but the position of political parties might be included here if political parties are classified as an interest group. The Commission had to consider whether special weight should be given to localised consensus even where that consensus was divergent from opinion
elsewhere in the country. The Commission in fact did so in the case of traditional rulers which were popular in many areas where they had previously existed.

The third area where consensus was not clear was in relation to the details of the way in which effect ought to be given to consensus on the principles. As already noted, the question was whether the Commission would feel free to make recommendations on the detailed arrangements it believed would best give effect to consensus on the principles, despite the lack of consensus on those details. The answer to that question was in the affirmative because the Commission had in that case to operate with the data and information available on the basis of the majority or preponderance of views.

**Giving Effect to Consensus on Particular Issues**

The identification of consensus was only a starting point for the Commission. The challenge was how to give effect to it. This involved onerous and complex tasks and decisions and required the Commission to make often difficult choices. It was necessary to decide whether it would be possible, given various constraints, to give full or partial effect to the consensus on an issue. The second consideration was which of the many possible constitutional arrangements available to give effect to consensus on a particular issue were feasible in the prevailing circumstances but also what options would best serve the needs of Uganda. It was therefore important for us to agree on our analysis of the prevailing situation in Uganda.

It is worth emphasising that once consensus on an issue was clear, it was not simply a matter of automatically giving effect to it in the proposals for the Draft Constitution. The Commission had to make judgments about what was realistically implementable. This involved making assessments of a range of factors. The factors included the capacity of government to pay for the new expanded initiatives for the next 10 to 20 years; the responsibilities imposed on Uganda by international conventions to which it is a party, and the viability of particular measures given the Commission’s analysis of the political and economic situation in Uganda. It was in this context that the comparative study of constitutions of
other countries became of great importance for the way in which they had dealt with comparable constraints, and provided some guidance to the Commission.

Where constraints operated which might limit the extent to which effect could be given to consensus, it was in some cases possible to give it partial effect. For example, many of the social welfare and similar rights such as the right to education demanded by the public were to be provided for by unenforceable or partially enforceable directive principles rather than in the justiciable human rights provisions.

Hence the weighing up of the practicability of implementing particular aspects of consensus tended to overlap with the third task of choosing the best option to give effect to consensus. However, it was mainly the question of economic constraints which often impacted on the feasibility of implementing consensus.

Choosing Constitutional Arrangements that best give Effect to the Consensus

Even where the Commission was of the opinion that it was possible to give effect to consensus views, it had an important role of evaluating the range of options available to give effect to the consensus. The options chosen involved to some degree the same process of determining what was most realistically implementable, given the fiscal, political and other constraints and in light of the Commission’s analysis of the situation in Uganda. In my speeches, I always emphasised that the Commission was committed to coming out with a workable Draft Constitution based on the views of the people.

In making its choices, although the Commission had to take into account specific options and technical arrangements put forward in the memoranda, etc., it was not necessarily restricted to them. This was because the memoranda tended to deal more with the principles of what should be included and not the details. The Commission therefore felt free and indeed duty-bound to work out the best constitutional arrangements to give effect to the principles.

In addition to examining specific options put forward in memoranda, the Commission therefore looked at how the constitutions of other countries had dealt with the issues. The
manner in which such options were expressed and the experience of how those arrangements had worked in practice, gave the Commission many insights into what might be workable, but always against the background of what was most likely to be workable in the light of the realities of the Ugandan situation.

The study and analysis of other constitutions was of three kinds. The most important one was an issue by issue analysis, that is, analysis of what a number of constitutions say on each of the 29 key issues. This proved more helpful to the Commission than detailed summaries of separate constitutions.

The second kind of analysis, to supplement the first, was to provide a general understanding of the approach and underlying theory each of the constitutions used. Therefore, a concise analysis of each was needed. These summaries also identified features of special interest in the constitutions which might be helpful or a source of inspiration to the Commission in its search for ideas and opinions.

The third kind of analysis was of a more technical nature, designed to assist the Drafting Committee and officers involved in drafting the final Draft Constitution.

Once the options on each issue were finally chosen, it was helpful to find that several relevant precedents for each option had been identified.

It must be emphasised that giving effect to consensus or translating consensus into constitutional proposals and provisions was not merely a mechanical or technical matter. It was a scientific, creative, and reflective process which required the Commission not only to use the raw data but to truthfully and purposively interpret the data in order to come out with a popular and viable Constitution which was acceptable to the people of Uganda. In order to allay any fears that the Commission had not respected the views of the people, it carefully spelt out in its final report, the reasons why it believed particular views or proposals could not be implemented.

Issues on which there was a National Consensus
It has been emphasised in the foregoing discussion that we found more national consensus on views of general constitutional principles than on the technical arrangements needed to give effect to those principles. It has also been pointed out there was
some consensus on certain aspects of the controversial issues. It may well be that no issue enjoyed 100 percent support both in terms of principles or details nor was any issue controversial 100 percent in all aspects.

In the final Report of the Commission entitled *Analysis and Recommendations*, we identified the issues on which consensus had been secured and those where it had not. The reasons were given for various options proposed and the reasons for the recommendations made. In this section, I shall outline those issues on which we found national consensus and the degree of the consensus obtained.

One of the major objectives for formulating a new Constitution was to develop a truly democratic system of government which would guarantee the fundamental rights of the people of Uganda. There was general consensus on this objective and there was consensus that democracy was the best political system for the country. There was a consensus that the people should have the right to choose and change their government through free, fair and regular elections.

People wanted an accountable and transparent government which respected basic human rights and the rule of law. The details of the form of democracy or the political system remained matters of controversy.

One of the issues on which the people were largely unanimous was with regard to the need to protect and promote human rights. Consensus emerged easily due to the traumatic and sad experience of gross violation of human rights that the people had gone through in the past. The people wanted a comprehensive Bill of Rights based on international standards of human rights. They agreed that the Bill of Rights should protect the rights of women, children, Persons With Disabilities and other disadvantaged groups in society to alleviate their plight. There was a consensus that the Bill of Rights should be justiciable in courts of law and should provide efficient mechanisms for monitoring and enforcing human rights, for instance, through a Human Rights Commission.

We identified a national consensus on the need to provide for an electoral system which would guarantee free and fair elections, organised regularly to ensure periodic and peaceful
change of government and its accountability. That elections should be organised on the basis of universal adult suffrage by an independent and representative body was also agreed.

On the presidency, there was general agreement that the president should be elected directly by universal adult suffrage and that his tenure, should be limited to two terms. There was general concern that the president should be well-educated and knowledgeable about public affairs, and that he should be a Ugandan Citizen by birth or decent and be a person of high integrity. There was consensus that the powers of the president should be reduced or limited, for instance in the area of political appointments.

As regards the legislature, there was consensus that there should be one chamber which should be strong and efficient so that it could provide sufficient checks and balances on the executive and effectively represent as well as safeguard the people’s interests.

It was generally agreed that the independence of the judiciary should be guaranteed by the Constitution and that the judiciary should be the guardian of basic human rights, and constitutionalism and should therefore have powers of judicial review over the Constitution and administrative actions. There was consensus on the need to increase access to justice as well as popular participation in the administration of justice.

On separation of powers, it was agreed that the principle of separation of powers between the executive, legislature and judiciary, and the provision of checks and balances between these branches of government should be recognised in the Constitution as a means of preventing dictatorship, while ensuring that the government functioned smoothly.

There was general agreement that it was necessary to demand honesty, probity, and integrity among holders of public office and political posts, in order to create clean leadership. Institutions like the Inspectorate of Government responsible for implementation of the Leadership Code, it was agreed, were necessary for monitoring corruption and abuse of office among the leaders, and should be provided for in the Constitution.
On the right of people to participate in governance, there was consensus that this right be recognised in the Constitution for people to participate in government directly and through their elected representatives, in order to guarantee participatory democracy in the country. In this connection, the retention of the RC system was generally agreed upon.

There was general agreement that there should be decentralisation of power by devolution of power from the centre to the local areas to enable people to participate in the running and development of their areas. There was general agreement that the basic unit of local government should be the district. The form of decentralisation whether on federal or unitary system remained controversial.

On the security agencies, there was consensus that the police and prisons should be professional, disciplined, well-trained, and sufficiently funded in order to operate efficiently, and that it should have the main responsibility for internal security. The intelligence agencies should be regulated by law and accountable for their actions.

With regard to the army, there was general agreement that the army should be national, professional, well-trained and disciplined, with a code of conduct and that it should be productive in order to keep itself busy during peaceful times and for it to contribute towards its maintenance. It was the general view that the army should be under civilian control, (or domesticated) that it should defend and protect the constitutional and democratic institutions, and that its main responsibility should be to defend the sovereignty and territorial integrity of Uganda.

On national unity, Ugandans agreed that they should continue to live together in peace and harmony on the basis of unity in diversity. While the Ugandan society was a pluralistic one, there was a need to emphasise factors that would bind the people together and eliminate factors that divided them on sectarian or unprincipled grounds. The process of nation-building should
include building national institutions, promoting reconciliation and ensuring balanced development and equitable distribution of national resources.

On the issue of constitutional safeguards, there was general agreement that measures ought to be put in place to ensure that the Constitution was valued, respected, and upheld by all institutions and sectors of society so that it would not be arbitrarily abrogated or suspended as in the past. Among the measures suggested were empowering the general population through the provision of proper civic education, and democratising the means of violence by providing military training to Ugandans, building strong and viable democratic institutions, using democratic methods of making the Constitution, and writing safeguards in the Constitution to emphasise its sanctity.

The Importance and Impact of Consensus

The importance of building national consensus as the basis for the new Constitution lies in the methodology through which the new Constitution was evolved. There was a deliberate effort to make a fundamental departure in the manner in which the new Constitution was made.

That departure was shown largely through the active participation of the people in its formulation. The ultimate objective of people's participation was to enable them to agree on the most suitable framework for their governance. It was through this process that the people would identify and then agree on their common values, interests and aspirations. Consensus grew gradually throughout the constitution-making exercise.

Consensus was stimulated through public debate and concretised through the submission of views and the debate in the Constituent Assembly. Consensus was clearly a product of dialogue, tolerance of diverse views, the spirit of give and take, compromise, and respect for the views of the minority. In the process these democratic values were inculcated into the minds
and hearts of the people. These values are important for the promotion and sustainability of democracy and constitutionalism in Uganda.

The impact of consensus on the Constitution was to promote its legitimacy and acceptability to the population. It has been shown that Ugandans generally agreed on the fundamental constitutional principles upon which they wished to be governed and to live together. These principles are very important because unlike technical details, they do not easily change. They can stand the test of time.

Most of the new Constitution was based on principles arrived at through a consensus of views of the people. This has made the people have a sense of ownership over and responsibility for the Constitution. People feel that it is a Constitution of their choice, made by themselves, for themselves and that they have a duty to respect, uphold and defend it.
Chapter 9

Controversy

Introduction
Uganda is a pluralist society. It consists of over 50 language groups categorised under four major ethnic groups, namely the Bantu, the Nilotics, the Hamites and the Sudanic group. It has many languages and dialects. These ethnic groups embrace different cultural or traditional values and practices. The economic activities of the people include peasant and commercial farming both agriculture and animal husbandry, commercial trading and manufacturing, fishing, mining and tourism. The majority of the people are poor peasants. The average rate of literacy is at about 60 percent. Ugandans belong to different religions, mainly Christianity, Islam, and traditional religions.

The people of Uganda have formed and belonged to various political parties and organisations over time, the major ones of which include the Uganda National Congress (UNC), the DP, the UPC, the Kabaka Yekka Movement (KY), the Uganda Patriotic Movement (UPM), and the NRM. They have espoused varying ideologies and have different records of performance. Many of these organisations have had a share of political power at one time in Uganda’s history.

These socio-economic and political diversities which had in the past produced social conflicts and political crises within the Uganda society were not conducive to building national consensus on all constitutional issues, and it was not surprising that they generated controversy and disagreement on some of them.

In the previous chapter we explained how consensus was generated and determined and on what issues. We also distinguished consensus from controversial issues. Controversial issues were defined as those issues on which there was no general agreement or overwhelming support in most categories of the
sources of views received, but which received majority support in some categories or had a strong minority opposition in all categories. In short, the issue was supported by the majority of views but had a significant minority dissent.

The Commission had the duty to identify the controversial issues after the analysis of data, to determine the criteria for resolving the issues and to harmonise them with the consensus issues, in order to formulate proposals which would reflect or approximate the views of the people. This was clearly one of the most difficult tasks the Commission faced in developing proposals for the new constitution.

This chapter explains how controversial issues were defined and identified. It also explains the role of general data analysis, the statistical analysis of controversial issues and the role of technical committees and plenary sessions. It discusses the comparative study of constitutions, issues of controversy and how they were resolved, and the effect of the controversial issues on the proposals for the new constitution.

**Data Analysis**

The study and analysis of views was carried out at two levels. The general level was called data analysis of all views received, while the statistical analysis was specifically concerned with computer analysis of issues considered to be controversial. The purpose of data analysis was to study all the views and integrate them into a single text.

The stages in the development of the data analysis system were:

1. Classification of all views received according to the 29 constitutional topics.
2. For each of the 29 topics classification of the responses according to the 253 guiding questions.
3. Development of coding sheets in line with all the possible options according to the views received from the various respondents.
4. Training the research assistants on the techniques of data interpretations and coding.
5. Data coding and data capture.
6. Programme development, testing and data processing.

The aims of data analysis were:

1. To provide the Commissioners with files of analysed or summarised views from all sources, since they could not read all the original documents.
2. To get a feel of the areas where there was a clear consensus and areas of conflict.
3. To ensure that each memorandum or view from the people had been given ample attention and was included in the analysis.
4. To lay a basis for the comprehensive report of the Commission.
5. To arrange facts and figures which would serve as an Appendix of the Report, for example, names of contributors, dates of seminars, etc.
6. To use the post analysis to get ideas from the Commissioners on how to proceed.
7. To use the first analysis to assign legal officers and research assistants the work of comparative study on each issue in other selected national constitutions.

A Data Analysis Committee was formed on 26th June, 1991 to oversee the exercise. I was the Chairman of the Committee which included, the Vice-Chairman (Professor Mudoola), the Secretary (Rev. Fr Dr Waliggo), Professor Ssempebwa, Professor Khiddu Makubuya, Mrs Matembe, the Under Secretary (Mr Kirunda), Senior Principal Legal Officer (Mr Rugadya), the Principal Legal Officer (Mr Ngolobe) and the Computer Expert (Mr Magero).

At the first meeting of the Committee, I emphasised the need to monitor the data analysis programme which was supposed to end on 30th September, 1991. I referred to data analysis as the cream of the constitution-making process which had to be done efficiently and correctly. The Committee held weekly meetings to consider the requirements for the exercise, especially from the computer section. Two research assistants were recruited to proofread and code programmes. A computer superintendent to do routine duties such as extracting information and data validation was recruited. Three more computer-literate secretaries who were to enter information into computers were also received from the
public service. A heavy-duty generator was installed to stabilise power to ensure the continuous operation of the computer section, which had by now received over ten more computers.

Mr Magero, the computer expert, had been appointed on 2\textsuperscript{nd} May 1991, having been recruited from the Faculty of Commerce at Makerere University where he was a lecturer. His contract was for a period of 12 months.

Prior to this, in November 1990, the Commission had engaged Coopers Lybrand Associates as consultants to carry out an appraisal of the potential use of computers at the Commission. In their report dated 9\textsuperscript{th} November, 1990, the consultants identified two aspects of the Commission’s work where they considered that the use of computers could be cost effective. These were word processing and analysis of views. They recognised the likelihood of over 800 documents being typed and edited, and that word processing software could reduce the time and effort involved and also facilitate subsequent data analysis. The drafting of the new constitution would also require a word processing facility. As regards the analysis of opinions and views collected by the Commission, the consultants recommended that if a questionnaire was used to interpret these views, the use of a computerised database would offer facilities for extensive analyses of the replies. The consultants recommended the type and number of computers required, the training programme and external consultancy assistance which would be required, and the selection of preferred software and a hardware supplier.

The consultants made some recommendations on the methodology for data analysis which we found useful. They included storage and consistency of the format for extraction of information from the documents in the form of a structured questionnaire.

Their recommendations were as follows:

2.7 The collection and storage of data from all of the proposed sources is in itself a major task. There are likely to be over 1500 documents and articles to be sorted. Each document and article will then need to be retrieved in order to extract relevant information.
2.8 This extraction of relevant information will be complicated by the fact that the documents and articles will not be consistently structured. It may, therefore, be necessary to review each document and article several times to analyse and sort data in different ways. We recommend that a consistent format is used for all documents to facilitate this retrieval and review of information.

2.9 In addition, we believe that the process of data analysis will be considerably simplified by the use of structured questionnaires. A questionnaire should be completed for each meeting, memorandum, letter, article or other constitution reviewed. The questionnaire should focus on addressing all issues which will be important to the drafting of the new constitution. Answers to each question will then form the basis for data analysis. The questionnaire should be structured initially by topic with a number of questions for each topic. For example under the topic of ‘the Form of Government’ the questions could include:

(a) which type of electoral system is preferred?
(b) how should voting be carried out?
(c) should there be more than one political party? or
(d) how many terms should the President serve?

2.10 Ideally, the questionnaire should be designed prior to the sub-county visits in order to focus the Commissioners’ attention on those matters of particular importance to their ultimate task of drafting a new constitution. If this is not possible a questionnaire should be designed and matched against the minutes and resolutions of meetings and against each article, periodical and constitution reviewed. In this way, each questionnaire can be completed and the answers will form the basis for data analysis.

The Questionnaire/Coding Sheet
A questionnaire/coding sheet was developed by the computer expert and discussed by the Data Analysis Committee on 16th August, 1991. The expert explained that the purpose of the questionnaire was to develop a mode which would be widely
acceptable. It was a result of a number of Legal and Research Officers reading through various memoranda and identifying concrete suggestions. The computers would work out the frequency of responses, classify data, but not make judgments or decisions. The value/weight of memoranda would be determined by the Commissioners who would address the final data and assess its qualitative and quantitative aspects.

The fear that the information would be manipulated was expressed but the computer expert assured us that once information was entered into the computers it would not be easy to manipulate it. He advised that we should not worry about the people entering data as they had to be not only trusted but also supervised.

The Committee discussed the coding sheet and approved it with amendments. The computer expert was commissioned to prepare a coding sheet for one issue for discussion by the plenary session.

The Data Analysis Committee discussed and approved the questionnaire on 13th September, 1991 and on 19th September, 1991 the Commission discussed it in a plenary session. The questionnaire, which was numerical (quantitative) was considered of vital importance in justifying the Commission’s methodology.

During the plenary session, the computer expert explained that the coding sheet would form the basis of the Commission’s Report because the questions were extracted from the views of the people. The coding sheet was a result of questions and options obtained from the views from the reports and memoranda. The Commissioners would determine whether the questions were in line with what they wanted to discover from the views received. They would determine whether the options in the coding sheet were exhaustive. They would also determine some of the questions in the coding sheet which needed qualitative analysis in view of the quantitative responses received. Quantitative analysis was useful where the answers were either ‘Yes’ or ‘No’ or where the answers were close ended, that is those questions which had a known number of options such as forms of government or those which had numerical value such as minimum age for the president. In this way, a number of options with percentages determining bias could be obtained. Qualitative analysis, on the other hand, required the analysis to be done by the Commissioners themselves.
The computer expert called on the Commissioners to fill in any questions and options that were missing so that the computer section could have a complete document.

It was agreed that only one coding sheet be used for each memorandum. It would be necessary to know what each level of RCs or group said about a particular issue. The computer expert observed that the computer could cross tabulate further to get information on what regions or districts or women or men said about each issue. Initially, each particular memo would be identified by name, status, category or region, etc.

On 15th November a sample analysis on the issue of the presidency was presented to the Commission as a test run. The computer expert explained that some of the memoranda examined had no proposals on the presidency, and some were in local languages. The Commission emphasised that the computer could not be used to the extent of replacing the human brain in analysing views. The human touch was necessary especially for qualitative matters.

**Statistical Analysis on Controversial Issues**
The Commission decided to carry out statistical analysis on only a few issues, which by mid 1992, were still undecided or remained controversial. The issues selected for analysis were of central importance to the whole constitution-making process. They included issues at the heart of the key tensions and uncertainties which had been major causes of conflict and instability in the past 25 years. Accordingly, the public had shown itself to be very interested in all these issues, and many people had addressed themselves to the issues both in seminars and memoranda. Given the centrality of the issues, definite decisions had to be made on them if there was to be future stability.

The 12 constitutional issues on which statistical analysis was carried out were:
- Adoption of national language.
- Aspects of citizenship requirements.
- Enforcement of human rights.
- Choice of a political system.
- Provision for traditional leaders.
• Choice of federal or unitary form of government.
• Choice of electoral and voting system.
• Some aspects of the legislature.
• Some aspects of the presidency.
• Aspects of the executive.
• Aspects of the land tenure system.
• Some aspects of safeguarding the new Constitution.

The reference to ‘some aspects of constitutional issues demonstrates that only parts of these constitutional issues were controversial, consensus having been obtained on other aspects, for instance, on matters of principle. As should be clear by now, an issue might involve many sub issues and it was only those sub-issues which proved controversial, that were subjected to statistical analysis.

However, we could only statistically analyse memoranda from individuals, groups and RC I, II, III, IV and V. The seminar reports from districts, sub-counties, educational institutions, professional bodies and interest groups could not be statistically analysed. In each such report, different individuals gave differing views on the issues discussed. It was not possible to give the status of a memorandum to each individual view expressed. For the same reason; position papers, student essays and newspapers articles were left out of the statistical analysis. Therefore, the statistics obtained did not contain all the views received on each constitutional issue, but the majority views were analysed.

The main objective of the exercise was to get a general indication of the frequency of views expressed on the issue in each of the seven categories of memoranda. Because memoranda had not been written in response to a standard questionnaire, views were expressed in a variety of ways. While accuracy was the main aim, the results should not be conceived as having been based on a scientific questionnaire method. We had discarded the use of a scientific questionnaire because of potential abuses and because the Commission was not logistically in a position to supervise the filling of questionnaires. Instead, we worked backwards to arrive at the questionnaire. Our main aim in carrying out the statistical analysis was to get a general picture of where the majority and minority views were. We would then consider this together with other material before us to assist our analysis.
The statistical analysis was carried out by a staff of 48 graduates who were recruited, trained and strictly supervised by the Commission and its senior staff. Each statistically analysed issue was put in a form of a question and the various options or alternatives to the question put on the form. The staff filled out one form for every memorandum, which was checked from start to finish by the Commission.

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

Two sets of statistical data were produced. The first set offered the total number of submissions which dealt with each issue under the categories of RC I, II, III, IV, V, individual and group memoranda.

It also gave the percentage of those who commented on the issue and the percentage of those who did not. The second set of statistical tables gave a breakdown of the numbers under each district. This table covered only memoranda from RC II to RCV. It was referred to as statistics by districts. After aspects of the same constitutional issue had been shown by district, there was a page indicating statistics by region, reached by adding together the number of memoranda of those districts which existed in each former region.

The results of statistical analysis were quite interesting. In general they confirmed our general assessment of the extent and degree of controversy and where the majority opinion lay. On the issue of national language, we sought to find out whether Uganda should adopt a national language, and if so which one. There was unanimity or consensus on the need for a national language. But views were divided on whether Luganda or Swahili should be adopted. The majority favoured Swahili but the margin above Luganda was small. However, Swahili had more widespread support in Eastern, Northern and Western Uganda while Luganda
had its support mainly in Central Region and some parts of Eastern Region such as Busoga.

On the issue of citizenship, the first question was whether Uganda should allow dual citizenship. An overwhelming majority of over 80 per cent were against it. On whether Uganda should have a method for formal proof of identity for all its citizens, there was an overwhelming majority in favour (99 per cent from all category of views). There was also consensus from all views that every citizen should have a right to a passport. The majority supported non-Ugandan immigrants or refugees who had stayed in Uganda for a long period automatically to become citizens at the commencement of the new constitution. The majority of people suggested a minimum period of 30 years.

The third issue which was statistically analysed was fundamental human rights and freedoms. The results revealed consensus on the need for a permanent institution to safeguard human rights (Human Rights Court/Commission, IGG, Constitutional Court etc). There was overwhelming majority (90 per cent) that detention without trial should be abolished.

A large majority (about 75 per cent) of views opposed the abolition of the death penalty. There was also overwhelming support for the position of free and compulsory education for all children (over 95 per cent).

The most controversial issue was the political systems. The views were analysed to find out which political system Uganda should adopt and whether it should be regulated. The majority of views preferred the Movement system. The highest majorities were from RC I, RC II and RC III. Most of the support for a multiparty system came from views from RC V, individuals and groups.

A large majority of people wanted the name Resistance to be kept in case the Movement system was chosen. An overwhelming majority of people were in favour of suspending the re-introduction of the multiparty system for some time, following the adoption of the constitution. A large majority favoured only new parties to be allowed in case the multiparty system was chosen. There was consensus from the views that political parties should be regulated.

On the issue of whether traditional rulers whose positions were abolished in 1967 should be restored under the new constitution,
the majority of views were against restoration. Conversely there
was overwhelming support from most of the areas where these
institutions had existed especially Buganda, Bunyoro, Tooro and
Busoga. A large majority of the people wanted traditional rulers
to be maintained by voluntary means, and not Government. An
overwhelming majority preferred traditional rulers not to have a
political or active role in government, if restored. A large majority
of views recommended that the members of the communities
concerned and not the whole country should decide on the issue
of the possible restoration of traditional rulers.

Another controversial issue on which statistical analysis was
carried out was the form of government. The views were analysed
to ascertain which form of government was suited for Uganda,
whether federal, unitary or any other. The majority of those
who commented on the issue were in favour of a federal system.
However, almost 80 per cent of these were from Central Region. The
majority in the other three regions preferred the unitary system.
The majority of RC III and RC V also favoured the unitary system.

On the issue of the electoral system best suited for Uganda, a
large majority were in favour of single constituency as opposed to
proportional representation. A majority of views preferred lining
up instead of secret ballot as a method of voting. But a majority
of RC III, individuals and groups were in favour of secret ballot.
The majority of those who preferred secret ballot wanted it for all
elections.

With regard to the legislature, an overwhelming majority (about
98 per cent) in all categories wanted the electorate to have the
power to recall their Members of Parliament before the end of his/
her term of office on serious grounds. A large majority of views
preferred that a Member of Parliament should seek a fresh mandate
when he or she crossed the floor. A small majority recommended
that counties rather than population should be the criteria for
establishing parliamentary constituencies and therefore the
number of parliamentarians. Larger counties might be represented
by more than one parliamentarian. A large minority preferred
population as basis for determining Members of Parliament. The
majority of people were opposed to having specially elected or
nominated Members of Parliament. As regards army representation
in Parliament, the majority were in favour of such representation. The majority were in favour of special interest groups being represented in Parliament. The interest groups were women, youth, workers, and Persons With Disabilities.

The issues of the executive and the presidency were also subjected to statistical analysis. A large majority of views were in favour of all or some ministers being Members of Parliament. On the issue of whether the President should be elected, the majority preferred direct election. Those who preferred that the President be elected indirectly suggested that Parliament should conduct the election. On what should be the term of office of a President, a large majority favoured five years. As regards the maximum number of terms a President should serve, a large majority preferred two terms.

On land tenure, the majority wanted the Land Reform Decree 1975 to be repealed. The majority of views were in favour of a uniform system of land tenure. When it came to the form of land tenure preferred, the majority were in favour of freehold/mailo land followed by customary tenure. Other views suggested a combination of several forms of land tenure. On whether non-citizens of Uganda should be permitted to own land without restrictions, an overwhelming majority were against it.

The last issue identified for statistical analysis was safeguards for the new Constitution. An overwhelming majority of views were in favour of the new constitution being written in a simple language or otherwise made easily understood by all, for example, by translation into local languages. On whether military training should be availed to all able-bodied Ugandans, a large majority were in favour of military training to enable Ugandans to safeguard the Constitution.

It is necessary to emphasise a few points regarding statistical analysis. First, statistics served as a general indicator of how many individuals, groups or RCs chose to make submissions on a particular issue and the option they favoured. Statistics, therefore, helped to confirm or clarify the intentions of the people which we had already discovered from the seminars, debates, critical analysis of society and comparative study of constitutions of other countries. Statistics should not be understood as the sole or even as the main basis for our recommendations.
Secondly, on some constitutional issues, we received very many submissions, while on others we received a few. Some issues attracted more attention and interest in the general public, whereas others were of interest to particular groups, and sections of society. Besides, some issues pre-empted others. Once, for example, an individual or group expressed preference for the movement political system, they would tend to ignore all questions concerning the multiparty political system or vice versa. Our findings, however, indicated that even on issues where only a few submissions were received, the general trend they showed conformed to the observations we had made on the issue from other sources.

Thirdly, as a general principle, our recommendations followed the general trend of the statistics on each issue. Wherever they differed we gave an adequate explanation in the final report. The breakdown of statistics by districts and regions served to identify issues which were evenly or unevenly supported nationally. A good example was the restoration of traditional leaders. The total number of statistics showed opposition to restoration. When, however, a breakdown was done on district and regional levels, it became clear that Buganda was strongly in favour of the restoration of traditional leaders. Another example was the issue of a national language. Again the breakdown of statistics on district level gave a clearer picture on the areas which favoured Swahili and those which favoured Luganda. The same was true on the choice of federal or decentralised unitary form of government.

Lastly, the statistics did not indicate the numerical weight and strength of argument of each memorandum: they showed the category of the memorandum and from that the weight could be partially understood. In our analysis, we took care of the weight due to each group memorandum. Some of these group memoranda came from a section of the entire country. These included the memoranda from the women of Uganda, each of the political parties, with the exception of the UPC, each of the major religious bodies, etc. Other memorandum came from an entire region such as Buganda. All these and others were given their due significance in our overall analysis, but in the statistical analysis each group memorandum was taken as one unit, whether it came from two
individuals or from a very large group. This factor had to be taken into account in appraising the statistics.

Clearly, the final recommendations came from a combination of human and mechanical analyses. In our analysis, the arguments presented in each memorandum either for or against a particular option played a leading role. In the statistical analysis, only numbers appeared without indication of the arguments in each.

**Internal Conflicts as a Cause of Disagreement and Controversy**

One of the causes of the failure by Ugandans to reach consensus on certain crucial issues was the effect of internal conflicts which the country had experienced since colonial times. Conflict is part and parcel of the human condition and it has multiple causes some of which are obvious while others are less so. As Katz and Kahn said in *The Social Psychology of Organisations* (1978, p.18):

> The fact of conflict of being somehow involved with opposing forces – must surely be among the most common of human experiences. We recognise conflict in the opposition of wishes within ourselves in the clashes between others whom we observe and in full struggles against those ourselves, oppose. And, according to our temperament and experience, we seek it or avoid, fear it or enjoy it, call it sickness, or call it life.

Marloo argues in *That Difficult Peace* (1961, p. 16) that ‘every war is a dramatisation of man’s inner war, the externalisation of his inner conflict.’ Looking at conflict in its individual and organisational forms it can be taken to mean ‘a breakdown in the standard mechanism of decision-making so that an individual or group experiences difficulty in selecting an action alternative.’ On the other hand, viewing conflict from a social angle, Coser in *The Functions of Social Conflict* (1958, p.232) defines conflict as ‘a struggle ... in which the aims of the conflicting parties are not only to gain the desired values but also to neutralise, injure or eliminate their rivals.’ Katz and Kahn conclude that conflict is ‘the direct interaction of two or more parties (persons, groups or organisations, nations) such that the actions of one tend to prevent or compel some outcome against the resistance of the other’.

The prevalence of national conflicts within human societies has long been recognised by social theorists as an inevitable
consequence of the co-existence of large numbers of human beings in a situation limited not only partially in the geographical sense, but also in terms of the resources people require for their sustenance and survival.

Violent conflicts in young independent countries like those of Africa assume a degree of significance rarely possible in the older states of the world. For in states of this kind, politics tends to be characterised by intensive and furious intergroup rivalries which assume, at times, a life or death intensity. Groups based on party affiliations or on tribe, nationality, ethnicity, religion, region and so on defend their particular interests in the new political situation created by independence and by the departure of the colonial rulers who used to serve as umpire to keep the peace among the groups they had brought together into a single colony. In the process, rules of the political game as prescribed, for instance, in the independence constitutions – which spelt out how and when to replace leaders in power, or to extend their tenure, or to distribute the meagre resources available to the various groups – were prone to being violated, with force or violent conflict remaining as the only means available to remedy grievances. Many states in Africa like Rwanda, Burundi, DRC, Kenya, and the Sudan, Nigeria, Zimbabwe, Chad and Uganda conform to this classic statement.

Uganda had, in a way, come to represent the worst forms of aberrations associated with internal conflicts. It had more than its share of natural and man-made disasters. Many of the elements – tyranny, violation of human rights, genocide, state terrorism, civil war -that contribute to its specificity were also endemic in many societies and incipient in most others. The issues involved in such internal conflicts were primarily questions of political power. They manifested themselves in ethnicity, minority or secessionist claims or demands for autonomy or issues of ethnicity mixed with questions of religion. These conflicts were themselves the consequences of nation building, particularly in post-colonial state formations.

Rupesinghe in *Conflict Resolution in Uganda* points out that there is no general theory of internal conflict, as every conflict has its own historical setting, interacting with external factors in a
particular configuration. Harry Ekstein in the same book suggests some of the features which are characteristic of deeply divided societies as follows:

1. They all involve the use of violence to achieve goals, which may not be achieved without violence.
2. They all indicate a breakdown of some dimensions of legitimate political order, as well as the existence of legitimate political order, as well as the collective frustration and aggressive tendencies in a population.
3. They all presuppose certain capabilities for violence for those inciting internal war and certain incapacities for preventing violence among those on whom internal war is made.
4. All tend to scar societies deeply and prevent the formation of consensus for an indefinite period.

It is clear that a major characteristic feature in such conflicts is the use of legitimate and illegitimate violence.

Uganda is a pluralist society because it has many groups of various sizes, which may have different values, interests, ideas and aspirations.

According to Yoramu Barongo writing in the same book on *Ethnic Pluralism and Political Concentration: the Basis of Political Conflict*:

... applied to social and political organisations, pluralism denotes two tendencies in group relations on the one hand, depending on the characteristics of the groups involved, pluralism may result in inter-group consensus, harmony and understanding. On the other hand, the dynamics of pluralistic life may produce conflict situations leading to incompatibilities in social and political relations among groups.

The internal conflicts experienced in Uganda have been multifaceted: ethnic, religious, cultural, social, political, economic, racial, military and ideological. The degree to which each of these conflicts has affected the country has varied. There is a tendency to lump all such conflicts as ethnic conflicts especially by the media. However, ethnic, caste and group conflicts, as well as occupational conflicts and regional antagonism are all part of a multi-dimensional and complex reality. All forms of identity exist – ranging from class, ethnic, religious, tribal occupational to regional and linguistic groups. Ethnicity is therefore a dynamic concept,
which may have ethnic as well as class overtones; class and ethnic conflict may be waged simultaneously. It is for this reason that some people have defined ethnic conflicts as ‘protracted social conflicts’ characterised by such enduring features as economic and technological underdevelopment and unintegrated political systems.

Ethnic conflicts in Uganda have manifested themselves in political parties, local administration, the military, land, public service and on issues of national citizenship and development. Religious conflicts arose in political parties where the Democratic Party was predominantly Catholic while the Uganda People’s Congress was predominantly Protestant. The religious influence was so strong that the DP was referred to in a derogatory manner as Dini ya Papa (Pope’s Religion) and UPC as the ‘United Protestants of Canterbury’. The religious conflict was also caused by what the Catholics have called the dominance of the Protestants in leadership and public life and the former’s marginalisation since colonialism up to the present time. The Muslims who are in a minority (about 10%) of the population have managed to find their own level by supporting whichever group they think will protect their interests though usually aligning themselves with the Protestants, and keeping conflicts within themselves. See generally Mudoola, Religion, Ethnicity and Politics in Uganda (1993).

Cultural conflicts emerged mainly between the monarchical and the non-monarchical societies. The colonial administration and the independence constitutional arrangements struck a balance between the two groups by recognising and protecting the traditional monarchical institutions while leaving the other group to retain their cultural functions. The federal status given to kingdom areas was resented by the other areas which retained a unitary relationship with the central government. In 1966, the conflict came to a head when the Kabaka of Buganda’s palace was stormed. Kingdoms and federal status were abolished by the 1967 Constitution. The people in these areas felt a sense of injustice and continued to agitate for the restoration of the kingdoms and federal status, while the republicans were happy with the status quo.

The economic conflicts originated from both the policies of the colonial and post-colonial governments. The main conflict was
caused by uneven and unbalanced development in Uganda with the southern part being more developed than the northern part. This caused a sense of grievance to the people in the Northern Region, which the colonial administration reserved for recruitment for the military as well as cheap labour for the southern cash crop farmers and plantation owners. Hence until recently the majority of those in the army were from the north. When Museveni came to power, the position was reversed: the colonial army was disbanded and the military was dominated by soldiers from the south. (See Banugire ‘Uneven and unbalanced Development strategies and conflict’ in Conflict Resolution in Uganda (supra).

Land had been another cause of economic conflict. The colonial administration allocated land under the Buganda Agreement 1900 to the king, his royal family, and the Chiefs and in a sense dispossessed the customary occupants of the land. Although these occupants were entitled to stay on the land called Bibanja if they paid their dues (Busuulu and Envujjo), they were only tenants and could not obtain title over land without having to buy it from the landlord. Thus, they could not use it to obtain credit. In other areas like Kibaale District, the absentee landlords from Buganda owned large tracts of land, which they did not use, though the local people did not have enough. In other areas where there was no mailo but public land, the conflict was between landlords who bought large pieces of land on which squatters settled.

Hence at the centre of the conflict was the security of tenure especially for the peasants and so called squatters. The battle lines were drawn between the landlords and tenants. (See Nsibambi, A., ‘The Land Question and Conflict’ in Conflict Resolution in Uganda (supra)).

Uganda had not had serious racial conflicts until General Amin came to power as military leader. The small but enterprising Asian community, which had settled in Uganda since the colonial time, was engaged mainly in commerce and trade with some in large-scale agriculture of sugar, tea and coffee. After independence, there were policies intended to promote the Africanisation of commerce and trade, and to allow Asians to become Uganda citizens. A few took up the offer.
In 1972, Idi Amin claimed he had a dream urging him to declare an economic war in Uganda. He expelled all Asians of British and Indian origin within 90 days and allocated their properties and businesses to Ugandans. This was the beginning of the collapse of the Ugandan economy. It was not until 1982 when Obote came back in power for the second time that a decision was made to return the Asian properties to their previous owners. This was largely accomplished although it caused some resentment from the Ugandans who were occupying the properties.

The problems of economic transformation have also been a cause of internal conflict. Conflicts often arose from the consequences of the transition from pre-capitalist to the capitalist mode of production, the introduction of structural adjustment programmes, the liberalisation of the economy and the privatisation of public enterprises, reform of public service, lack of capital for investment, and poverty and corruption.

Uganda is one of the countries in Africa with the longest and nastiest experiences of military or armed conflicts. During the colonial period there were religious wars amongst the three religions: Catholics, Protestants and Muslims. Each sought to gain or regain power in Buganda. The Protestants prevailed. In 1964 there was an army mutiny to demand for better pay and other conditions of service. The mutiny was quelled but the army was not disbanded as it was in Tanzania in similar circumstances.

Since 1966, the Uganda army had an activist role in politics and was responsible for causing political instability. Obote relied on it in 1966 to abrogate the independence constitution and assume the Presidency of the country after chasing the then President and Kabaka of Buganda out of the country. In 1971, Idi Amin, who had made Obote president in 1966, decided to become president himself. His military dictatorship was unrivalled in the history of Uganda. It was characterised by state terrorism, ethnic killing, extermination of political opponents, religious persecution, racial discrimination, and allocation of resources like the Asian properties to his henchmen. In 1978, Amin invaded Kagera region of Tanzania and overran it killing inhabitants and destroying all the property in the area, apparently in revenge for Tanzania’s harbouring and support of Uganda exiles operating from there.
This led to the liberation war by the Uganda National Liberation Army (UNLA) assisted by Tanzanian Forces which dislodged Amin from power in 1979.

Obote was re-elected president in 1980 under a disputed election but he managed to rule with the support of the army. Museveni disputed the election and took up an armed struggle in the bush. In 1985, the military once again intervened in the political process in Uganda by overthrowing Obote. One of the main reasons for this coup was resentment by the Acholi ethnic group, which had a majority in the army: they objected to the appointment of a new Chief of Staff Brig. Smith Opon Acak, a Langi from Obote’s ethnic group, to replace the late Major General Oyite Ojok who had died in a helicopter crash. The Acholís considered Opon Acak inexperienced and unfit for the job when there were more suitable senior officers like the Acholi Brig. Bazilio Okello, one of the leaders of the coup, who became Commander of the Army. The Okello junta could not hold power and in January 1986, Museveni captured power with his NRA.

But no sooner had the NRA liberated the people of Uganda than the former forces started rebel activities in the northeast of Uganda, allegedly to restore democracy, but in reality to regain their dominance in the military. The rebellion in the northeast was crushed but the conflict in the north and northwest persisted with varying intensity.

The most significant of the rebel groups was the Holy Spirit Movement led by Alice Lakwena which believed in using stones and bodies smeared with oil to defeat their enemies, and its successor the LRA. The LRA led by Joseph Kony caused havoc in the Acholi region by abducting women and children, destroying homes and property, looting and robbing innocent civilians. It cut off people’s lips, noses, tongues, and ears. It caused great insecurity in the Northern Region because of its unpredictable ambushes. The LRA was able to survive with the assistance of the Sudan Government which suspected Uganda of supporting Sudan’s rebel group, the SPLA of John Garang based in South Sudan.

The insurgency in the northwestern part of Uganda which borders the DRC was conducted by a rebel group the ADF. It also raided and killed innocent civilians and looted their property.
It abducted children and burned schools. It operated in the districts of Kasese and Bundibugyo and was associated with terrorist explosions in Kampala. The ADF had used the DRC as its rear base and this made it difficult for the Uganda Army to quell the rebellion. As a result, the Uganda army entered the DRC to dislodge the ADF and maintain peace and security along its border with the DRC. Uganda had been criticised in some quarters for this action but it had justified it on the need to defend the security of its citizens. The ADF rebellion was also subsequently defeated.

Uganda has also experienced ideological conflicts. The main one was associated with the cold war based on the differences between the two major world blocs – the Western capitalists and the Eastern communists. Soon after independence, many African countries flirted with the eastern bloc because of its socialist policies. But more importantly because it was anti-imperialist and supported the liberation of Africa from colonialism. Hence many countries including Uganda started ‘moving to the left’. In 1970, Obote published his *Common Man’s Charter*, plans to introduce national service and nationalised key European and Asian firms as well as private banks. He was overthrown in 1971 before implementing his socialist programme. Obote also banned all other political parties in 1969, and hence Uganda became a de facto one party state. During Amin’s military regime, the only ideological manifestation was primitive fascism. An attempt was made to turn the country into Uganda for Ugandans only and to establish African values in dress and language, but these created more resentment and conflict.

The ideological conflicts in political and economic reforms were heightened during the Obote II regime and NRM’s administration. Under Obote II, attempts were made to liberalise politics and economy. Thus there was multiparty politics and an attempt to liberalise the economy. But while Museveni’s NRM had also liberalised the economy, introduced a free market system, it had not liberalised the politics by establishing full pluralism. Instead Museveni introduced the Movement system which was intended to accommodate all significant social forces, including political parties, to work together to rebuild the country politically and economically. His critics argued that the Movement system
operated like a one-party state, which was discarded even in the Eastern countries following the collapse of communism and the end of the cold war.

Political conflicts have contributed to the configuration of other conflicts. It has been argued that the violent conflicts bedeviling Uganda since 1966 are basically political in origin. In this connection Barongo argues, in his contribution in *Conflict Resolution in Uganda*:

Political conflicts and violence in Uganda have tended to acquire ethnic dimensions because of the excessive centralisation of power which has led the struggle to control the centre to be very intense indeed among the elite members of the ethnic groups. In this struggle, the political and military elite have tended to mobilise and use ethnic bases for resources, such as military power, in order to struggle effectively to control political power at the centre.

Political conflicts arose out of arrangements for participation, governance, allocation of resources, power sharing and respect for basic rights. Conflicts could have arisen from the form of government because of the formula for sharing of power between the centre and the periphery, which should entail the decentralisation of power and services to local centres. Conflicts have arisen because the agreed rules of the game as to acquisition and relinquishment of power have not been adhered to. The political system under which various social forces were allowed to organise could lead to conflict if it was not consistent with basic human rights. This conflict existed in Uganda because of the suspension of political party activities.

Political conflicts affected all other internal conflicts because most of them were a result of the failure to resolve the political crisis. The NRM Government’s political reforms and the new constitution were all intended to address the political crisis so that national conflicts could be resolved through constitutionalism.

It was against the backdrop of these internal conflicts that the new Constitution was being made. The challenge that faced Ugandans was to forget and forgive the past, learn from their past mistakes, embrace democratic values of tolerance of diverse views, cultivate the spirit of give and take and compromise, and acceptance of majority views while respecting the views of the minority, and agree to make a fresh start. The failure of Ugandans
to agree on some of the issues demonstrated that more time was needed to heal the wounds and promote reconciliation, common values and aspirations.

The unwillingness of Ugandans to agree on some constitutional issues was not a new phenomenon. Their unwillingness to compromise was recognised in the *Munster Report 1961* which made proposals for the Independence Constitution of 1962 as follows:

No one who examined Uganda's political and social life could fail to be disturbed by one prominent characteristic: The unwillingness to compromise. Many people in Uganda still have to learn that all government, especially democratic governance, depends on compromise and willingness to see other points of view in matters large and small. Further the very conception of a United Uganda implies the need for a wider loyalty to which local loyalties will from time to time have to give way.

**How the Commission resolved Controversial Issues**

It will be recalled that the majority of constitutional issues were resolved by national consensus (Chapter 8). However, as can be seen from the results of statistical analysis, there remained few contentious issues on which the views of the people were sharply or more or less equally divided. These included the national language, dual citizenship, the death penalty, the political system, form of government, traditional rulers, membership of Parliament, role of the army in politics and system of land tenure. In this section, I outline the arguments advanced in favour or against these positions and how the Commission resolved the issues.

There was unanimity that language can be a critical instrument for promotion of nation building. Accordingly, people lamented the lack of a language to mark the identity of Ugandans as a people, to provide a common medium of communication and to promote culture. The languages which were suggested as national languages were Swahili, Luganda, English and a combination of selected tribal languages. The inclusion of English demonstrates the confusion between official and national language, but it may signify a strong preference to English as an official language.

Luganda as a national language was mainly supported by people in the Central region and to some extent Busoga.
The main arguments in favour of Luganda were that it was spoken and understood by the greater majority of Ugandans especially from the Southern regions, that it had a well established grammar and written literature, and that it was indigenous to Uganda with personnel and literature available to facilitate its teaching. The main argument against Luganda was that it was too closely identified with a particular Ugandan nationality, an identification that could probably spark off controversies, and that it was too confined to Uganda to be of any regional or international utility.

Swahili was supported by memoranda from the Northern and Eastern regions and to a certain extent the Western region. The language was supported on the grounds that it was more widely understood among the general population, that it belongs to the Bantu family languages and can therefore be easily understood. It was further argued that it has an established grammar and qualified personnel to teach it, that it is not identified with any particular nationality which might provoke negative attitudes towards it and that it was widely spoken throughout the Eastern African Region and could therefore promote regional unity to which Ugandans aspired.

On the other hand, it was argued against Swahili that it was not as widely spoken as it is claimed to be, that it was not indigenous to Uganda, and that it would be expensive to teach by hiring teachers from neighbouring countries and importing teaching materials.

It was recognised in many memoranda that the national language issue might spark off more controversy than it was seeking to resolve and that the issue should therefore not be forced. As a compromise, it was suggested that a selected number of languages should be adopted namely Luo for the North, Luganda for Buganda and the East and Runyankole for Western Uganda. It was also suggested that all languages be promoted in different areas as far as resources permitted.

The English language, though considered alien, was generally accepted as the official language for transaction with the outside world, and as the language of learning, science and technology.

The considered view of the Commission was that whilst English should remain the official language, the time was not ripe to adopt a national language. We recommended that resources should be
availed to promote Ugandan languages in their areas with a view to allowing one of these languages to evolve into a national language. The Commission therefore adopted a compromise position which was generally acceptable to the people of Uganda.

On the issue of citizenship, the main contentious issue was dual citizenship. The issue was whether Uganda should grant citizenship to a person who was already a citizen of another country and does not wish to renounce that previous citizenship, and whether Uganda should allow its citizens who had acquired citizenship of another country to remain Uganda citizens.

Several reasons were advanced in favour of dual citizenship. It was argued that it would assist Ugandan citizens living abroad to acquire citizenship of countries other than Uganda, while at the same time allowing them to remain Ugandan citizens. This would enable them to contribute to the development of Uganda from where they were. It would also allow their children and grandchildren to enjoy dual citizenship. This argument was voiced by many Ugandans living abroad whom we met.

Dual citizenship was considered advantageous in attracting rich investors from abroad who would acquire Ugandan citizenship without losing citizenship of their countries of origin. This would be a strong incentive which would guarantee them security of investment. Dual citizenship would enable a woman or a man who marries an alien to retain citizenship of his or her country, while acquiring the new citizenship of the spouse.

It was also contended that dual citizenship enabled one to have an alternative home should there be war or unrest in the country where he or she was a citizen. Such a situation would help to reduce statelessness. Dual citizenship, it was further argued, fosters African brotherhood and co-operation among neighbouring countries. It made crossing borders easy, thus rectifying the errors of the colonial separation of the people of the same clan, tribe or ancestral origin.

The views opposed to the granting of dual citizenship were equally strong and persuasive. It was argued that dual citizenship creates the possibilities of having citizens of divided loyalties which might be harmful especially where there may be hostilities
between the countries of which a person is a citizen. Dual citizens might not be easily trusted, especially in times of war or national crises. It is for this reason that very few countries accept dual citizenship.

It was contended further that dual citizenship could easily compromise the sovereignty of the majority of the people who have only a single citizenship. This minority could take over the political and economic control of the country, especially if they are rich investors with strong economic interests abroad.

The last argument was that dual citizenship could compromise the security of the state especially in Africa where as a result of poverty, many people could be bribed to support a detrimental system or programme. For instance, people could apply for dual citizenship for wrong motives, such as spying or undermining the stability of the country.

The case against dual citizenship won the day. There was an overwhelming majority of views against it. The Commission accepted the verdict of the people and recommended that dual citizenship be rejected.

One of the controversial aspects on the issue of human rights was capital punishment. Unfortunately, not many people addressed the issue in their views. However, there were strong arguments by those who supported the retention of the death sentence and those who opposed it. The latter were mainly human rights activists. The majority of the views supported the retention of capital punishment.

In support of the death penalty, it was argued that many criminals only fear death and no other punishment and therefore if capital punishment was removed they were likely to continue committing wanton murders without much fear of life imprisonment which would be the maximum punishment. The death sentence though cruel was seen as a strong deterrent to would be murderers, thus protecting society from them. It was also argued that history has shown that as each regime came to power, prisoners sentenced to imprisonment have used the confusion to escape and again terrorise society and commit murder.

Many murders in Uganda, it was further argued, were deliberately committed by people who wanted to eliminate their
enemies or rivals and were not psychologically sick requiring rehabilitation. Such people were too dangerous to society as they could kill again. Another reason given for the retention of the death penalty was that the sentence was a clear indication that all life is sacred and the most important value in society. Therefore, whoever deliberately takes the life of another should also lose his or her own life. Lastly, it was argued that some countries which had abolished the death penalty were now considering seriously its possible restoration because of the perceived increase of murders.

On the other hand, the minority who argued in favour of the abolition of the death sentence maintained that it had never served as a deterrent in any country since potential murderers have gone ahead to commit murder whether or not capital punishment has been maintained. The death penalty was seen as a remnant of the old philosophy of an ‘eye-for-an-eye’ which could not be accepted in a modern society. It was contended further that the death penalty was not only a cruel punishment but also made human life cheap. The State had no right to carry out premeditated murder. The death penalty, it was argued, was of no benefit to anybody, the state, the family which lost a person, or the criminal who was condemned to death. It was more beneficial to replace capital punishment with life imprisonment which could bring benefit both to society and the criminal, through rehabilitation.

It was also argued that capital punishment was being gradually abolished by civilised society, and to retain it would be to continue to belong to a backward society.

After taking into consideration all the views of the people and the arguments on both sides of the issue, the Commission accepted the majority view and recommended the retention of capital punishment for very serious crimes, until public opinion changed in favour of abolition of capital punishment. In paragraph 7.122 of the final report, the Commission concluded:

We have considered the arguments of both sides with care, critically analysed the international attitude to capital punishment and especially the praiseworthy campaign of Amnesty International for the abolition of the death penalty and considered the fact that the death penalty has been abolished in several countries, including a few African countries. We have however not found sufficient reasons to justify going against the majority views expressed in submissions to us.
The debate on the most suitable form of government was characterised by a disagreement between people who supported a federal system and those who favoured a unitary system. The federal system was often associated with monarchism or restoration of traditional rulers because it was those areas where such institutions existed that had been granted some form of federal status in the 1962 Independence Constitution. This association of the federal system (or federo) with return of Ebyaffe (our things) which included the cultural institutions, their land and other properties, seized by the Obote Government in 1966, tended to bias the debate against federalism as the non-monarchial areas did not see any value in such institutions. But of course, federalism could exist without traditional rulers as it does in the United States.

However, the advocates of the federal system of government advanced various reasons to justify their demands. They argued that a federal system accommodates interests, cultures and traditions of various communities in a country and allows local initiative for development. It also stimulates healthy competition between different areas to strive for self-reliance while discouraging unnecessary jealousies and antagonism. A federal system enhances understanding and harmony and strives to achieve unity in diversity by preserving the traditions and cultures of each area.

It provides alternative centres for political power and alternates political positions to local politicians with leadership ambitions so that there is no rush to ‘capture’ the centre.

On the other hand, advocates of a unitary system argued that it promotes national unity, identity, common values and promotes stability and development for the whole country. It decreases the evils of tribalism, regionalism, sectarianism, and parochialism. It promotes development for all areas by enabling assistance to be extended to those areas without sufficient resources. It maximises utilization of scarce human resources. It is ideal for a poor country because it is cheaper.

The majority of the people of Uganda rejected the federal system of government. As I said before, it was associated with the special position of Buganda Kingdom under the 1962 Constitution and people did not want any area to claim such special status. They wanted the whole country to be under one form of government.
for peace and stability. The proposal for eight or ten federal states which would take into account the ethnic, geographical and economic considerations of the country was opposed on the ground that there was no good reason to force people into particular federal states without their clear agreement.

The existing districts had come into being as a response to people’s request and the people wanted them preserved as they took into account their identity in each geographical area and catered for the difficulties in communication. Other people appreciated the Resistance Council system whereby they had tasted power at district level and did not want to surrender it to larger units. In paragraph 8.89 of our Final Report, we observed,

Apart from Buganda, the Commission found that there are considerable ethnic and cultural differences among the people living within the boundaries of the other proposed federal states. In very many cases, such people do not want to be grouped under the proposed states. This is borne out by the historical evidence as some districts were created out of the former federal states and districts existing at the time of independence in order to diffuse [sic] ethnic and cultural tensions and conflicts. Even currently, there are groups demanding for the creation of new districts to cater for their distinct ethnic or cultural identity. To group people into states against their wishes would be to create long term problems for the country.

After reviewing the views presented by the people on the most suitable form of government, the Commission identified common basic principles which the people emphasised as a basis for decision on the form of government. These basic principles or common denominator emphasised decentralisation of power. The people wanted to be given full opportunity to participate in making decisions about matters that affected them, through direct participation and through elections to local council offices. They wanted to bring power and services closer to the people so that they could manage their own affairs. They rejected any system of appointment of local political officers by the centre. They wanted strong institutions at local level which could act as a check on the central government and allow local governments to keep their ethnic identities. They wanted a system that would ensure local control over matters of local concern, and that ensures that local authorities exercised control over financial resources
and personnel so that they would be able to manage their affairs effectively. They wanted a form of government which would reduce tensions between the different parts of Uganda by reducing imbalances in development.

In our Final Report, we acknowledged the fact that there was national consensus that the form of government should be based on decentralisation. In paragraph 9.85, of the Report, we stated,

There has been a consensus in the views expressed that the form of government to be adopted in the new Constitution should be based on the principle of decentralisation and devolution of powers and should allow and respect unity in diversity. The form should be flexible enough to cater for local circumstances and conditions, while at the same time ensuring minimum national standards and goals in local governments. It should be generally acceptable by a cross-section of society since on it depends the future development of the entire nation.

The Commission observed that the advantages of federalism could be achieved without necessarily adopting all the characteristics which aim at reproducing the entire government structure at the level of local government. We believed that it was possible to have a decentralised form of government in which the local governments were in full control of their own affairs, at least of the costs, and to the satisfaction of the majority. Such arrangements could be constitutionally entrenched to provide certainty and stability.

We concluded, in para 8.93 of our Report:

For lack of a better expression and for the sake of clarity we have called the form ‘decentralised unitary’ to mean that it stands between fully fledged federal and unitary forms of government. It is designed to combine smoothly the basic qualities of both forms while avoiding the disadvantages associated with either of them.

We therefore resolved the issue of form of government by recommending the adoption of a system of decentralisation of power which was entrenched in the constitution. The entire country would be governed under one form of government in the interest of nation building and equal opportunities for development. The system would be a highly decentralised unitary form of government with a strong participatory form of local government. The district would be the geographical and political unit which served as the basis for this form of government. The areas of competence and autonomy of the local governments would be entrenched in the
constitution to ensure stability and avoid unnecessary conflict with the central government. The decentralised form of government would at the same time devolve powers and services to the lower levels of local councils. In order to cater adequately and effectively for our cultural diversity, districts which shared common or similar cultural identities and other values would be free to cooperate as political units, in the entire area of culture and human development and to form associations or organisations to that effect (see Final Report, para.9.94).

Thus our recommendations moved more towards federalism than unitarism. Indeed the districts were to operate like semi-federal states and also had the freedom to form larger political or cultural units where they shared a common culture or identity.

Another controversial issue was the restoration of traditional rulers. The importance of traditional rulers is based on the fact that they were the basis of government and organisation in African societies from time immemorial to the advent of colonialism. They shaped the history, culture and identity of the various people’s who now make up the Ugandan nation.

The way they related to the colonisers and the emergent colonial policy towards them shaped the character of the state of modern Uganda. Throughout the colonial period, the traditional rulers played an important role in the politics of the country, the creation of law and order and in the struggle for independence. Ever since 1967 when the institutions were unilaterally abolished, they had continued to be loved, recognised and respected by the people in certain parts of the country, especially in Buganda. Other areas where traditional leaders had existed were Ankole, Bunyoro, Toro and Busoga.

The Constitutional Commission found that the majority of the people were opposed to the restoration of traditional institutions because they considered them to have been dictatorial and oppressive in the past and to have no place in a modern society which craves for democracy. The people argued that the institutions were not conducive to nation building and national unity because they encouraged people to think primarily in terms of their ethnic groups.
But those in favour of the institution argued that it was part and parcel of their cultural heritage and that those who wanted to have it should be allowed to enjoy it as part of their fundamental right to culture. They asserted that the institution could unite people in different areas and forge national unity. Traditional rulers could motivate people for development by encouraging community development and thus enhance education and economic growth. Traditional institutions could also resolve conflicts between their people, and provide peace among families, etc. Moreover, they argued, culture grows and adapts to changing values and aspirations of the people. It was for these reasons that the Commission endorsed the restoration of traditional institutions, but with cultural and developmental roles only. Moreover, as a cultural issue, it was upon those who cherished or desired it have it, to decide upon its restoration. As we observed in paragraph 19.114 of our Final Report:

It would certainly not be conducive to unity and stability to suppress the cultural desires of any ethnic group in the country unless such desires are inimical to the national interests or otherwise contrary to the basic ideals of the constitution. The cultural desires of ethnic groups should be guaranteed by the constitution subject to the above qualifications.

The qualifications or limitations were that the traditional rulers would not be involved in active partisan politics; that the government would not be responsible for their maintenance, and that nobody should be forced to pay allegiance to a traditional ruler against their will.

The issue of the political system was the most controversial issue during the constitution-making process. It arose following the capture of power by the NRM government which introduced a broad based system of government and suspended the operation of political parties. The debate during the constitution-making exercise was whether to restore multiparty democracy or retain the Movement system or alternatively have both systems. Hence the question was which political system should be provided for in the new constitution.

At first sight such a question appeared to be out of place given that during this period a democratic wave was sweeping across Africa and Eastern Europe. The only plausible political system would be an
open, competitive, pluralist, democratic system. Indeed democracy had become a universal ideal with accepted minimum essentials. However, given the traumatic history of Uganda, a cautious approach was taken in discussing the transition to democracy to ensure that democracy did not abort as it had done soon after independence. Many Ugandans took the view that democracy may take different forms depending on local conditions. It should be recognised that the NRM government had succeeded in establishing peace and stability in most parts of the country and introduced generally successful reforms leading to democratisation, popular participation and economic reconstruction. This led to the comparison between the performance of the past governments, which included multiparty governments, and the NRM government in the political and economic fields. The majority of views were in support of retaining the Movement system of government for some time until conditions were right to restore fully-fledged multiparty politics.

Several arguments were advanced in favour of political parties. It was argued that the freedoms of assembly and association were guaranteed in the United Nations Covenants and Conventions to which Uganda was a party. Freedom of association could not be effective without a right to associate in political parties. As a fundamental right, freedom of association could not be curtailed or modified by any government or by the people as a whole. Human rights were inherent in all human beings. Freedom of association and assembly were constitutive of democracy.

Secondly, it was argued that any democratic government should be based on the consent of the governed, which could best be obtained through making available to the people free choices among organised parties. Political parties kept people informed, pointed out where government had gone wrong and promoted clear alternative programmes for the electorate. This could only be achieved by organised political parties that had the support of the people and provided an alternative government in case of failure or defeat of the ruling party or coalition.

Thirdly, it was pointed out that differences between parties were not so divisive but were the essence of democracy. By participation in the competition for power, political parties provided alternatives to the people in terms of ideology and leadership, thus ensuring
that the government of the day was accountable. The fact that political parties divided people into opposing groups should not be seen as undemocratic, provided such groups acted constitutionally and within the law.

It was argued further that the abuse of power by one ruling party should not lead to the conclusion that political parties were undesirable. An abuse of something positive and valuable like democracy could not lead a country to outlaw the value itself. It was pointed out, for instance, that it was not correct to outlaw institutions like the presidency or the army merely because they had been abused in the past. What was necessary was to radically improve, reshape and regulate such institutions.

The culture of political parties takes time to take root in the people’s mentality and to be fully utilised for the good of all and for the defence of democracy. It was argued that the periods in which political parties operated - often in abnormal circumstances with a rather intolerant party in power – were not sufficient grounds for judging the value and positive contribution of political parties. In Europe and elsewhere, parties had taken over a century to be fully appreciated and to be seen as an integral part of democracy. Therefore, the same process had to be allowed to take place in Uganda.

A multiparty system, it was contended, was more likely than any other to bring development through competition to produce the best programme for the future. Every political party was motivated to be elected in government and therefore had the incentive to be developmental, to champion people’s causes, to bring development to the areas it controlled at local levels and to show the electorate through examples what it could do if elected to government.

There were strong powerful arguments in favour of the Movement system. It was argued that it met the needs of Uganda which as an African society, needed a system oriented towards consensus rather than confrontation. The syndrome of Africans always copying systems or models from the West without studying the histories of their countries and understanding their cultural institutions and processes was criticised. It was the view of those in support of the movement system that it was closer to African values of solidarity, reconciliation, seeking general consensus of
all and keeping peace and togetherness without fragmentation. The current second independence of Africa should be characterised by a new vision of Ugandans shaping their own destiny under the Movement political system, which was their brainchild and which should not be confused with a one-party system.

The second argument in favour of the Movement system was that it gave the principle of participatory democracy its highest expression. It was pointed out that the Movement system was based on the principle that politics should be inclusive, as opposed to political parties’ principle of exclusion. The future of democracy lay in empowering all the people to actively participate at all levels of decision making on the basis of equality. Politics of exclusion, of rewarding supporters through patronage, of victimising the defeated should be brought to an end. The Movement system allowed people to compete on an equal basis, stand for any post, and directly appeal to any person for support. It left no tensions of victors or defeated but rather the entire country became a winner.

It was also argued that national unity and reconciliation could best be served by the Movement system. The people highlighted the importance of state-formation, nation-building, active participation and equal sharing and distribution of resources to the needy and disadvantaged.

Most of Uganda’s past suffering was seen as having been caused by the weak nation-building process which had resulted in conflicts which had tended to be ethnic, regional and serious enough to disrupt the stability and unity of the nation. Ugandans therefore needed to cultivate a culture of mutual acceptance, tolerance and peaceful co-existence and to promote genuine reconciliation. The Movement system which had succeeded in restoring relative peace in most areas in Uganda and promoting national unity, was seen as the best system to continue nurturing this process.

The Movement system was also seen as the best equipped at that time in the history of Uganda, to foster and protect democracy and stability. This argument was based on the Movement’s record of performance since its introduction in 1986. The people were able to compare and contrast the situation in Uganda under the current Movement system with Uganda under the political party system. Many ordinary people demanded for the Movement system
to continue because it allowed them to sleep peacefully and for their children to return from exile.

It was further argued that the Movement system was the most likely to bring about equitable sharing of resources and equal development in all parts of the country. It was pointed out that past experience had shown that there existed gross discrimination in development as the party in power or the military regime chose to reward its supporters while neglecting areas and sections it conceived as enemies or non-supporters. The Movement system included all on the basis of equality.

It was also contended that the Movement system had shown it was capable of implementing the policy of reconciliation which was so essential in healing old wounds. This was accomplished through general amnesties to exiles and fighting groups and through the promotion of a policy of no revenge.

Lastly, it was argued by some people that parties in the West were based on class interests and class differences and that without a significant middle class one could not have political parties founded on such interests and principles. Accordingly, multiparty politics in Africa only gave rise to sectarianism based on primordial identities like ethnicity and religion. Therefore, the Movement system was the ideal system until such a time as the middle class emerged.

There were therefore arguments against both political parties and the Movement system. There were also views on the combination of the movement and multiparty systems which were set out and considered in the final report of the Commission.

Although the majority of views were in favour of the Movement system to operate for some time, the Commission came to the conclusion that this important issue could not be decided on in terms of either a movement or multiparty system. We found that the people of Uganda had important values they cherished in both systems and they also had serious elements they feared in both. Large sections of the population did not want the reintroduction of the multiparty system to replace completely the characteristics of the Movement system, which they cherished, nor did they wish for the adoption of the Movement system to eliminate important values of the multiparty system.
Taking into account all the above arguments and the views of the people, the Constitutional Commission recommended that both systems be adopted in the Constitution. The Commission concluded in paragraph 8.86 of its report:

The Commission has therefore interpreted the wish of the people of Uganda to be that they want both political systems to be established in the new constitution and left to the sovereignty of the people to periodically decide, through a national referendum, which of the two political systems they prefer at any particular time of their political development. Such a freedom of choice based upon the sovereignty of the people will serve as a powerful safeguard of democracy and will greatly influence and condition the manner in which each political system operates and will prevent the dangerous polarisation of views on this crucial issue. It came to the conclusion that since democracy always grows, the people of Uganda would at some future time of their democratic development clearly express through a referendum, whether they want one of the two systems to be permanently adopted. At that time, the regular referendum on the political system would come to an end through the expressed people’s consensus on the issue.

We recommended further that in accordance with the views of the majority of the people, the Movement political system would operate for five years from the commencement of the new Constitution. Those party activities which were incompatible with the Movement system would remain suspended during the period the Movement system was in operation. Principles governing the Movement system and political parties would be defined. Existing political parties were preserved.

We recommended that the establishment of a one-party system be prohibited by the Constitution.

Army representation in Parliament and participation in politics stimulated a heated discussion during the constitutional debate. Traditionally, the Ugandan army had never officially participated in politics or been represented in Parliament. It was first represented in Parliament after the liberation war of 1979. Statute No. 8 of 1980 introduced the representation of members of the army in the Parliament. By Legal Notice No. 1 of 1986, the army was represented in the NRC by 10 members.

Those who opposed army representation in Parliament argued that the concept of including army officers on the assumption that the army would not overthrow the Constitution by force
was fallacious. Experience in Uganda had shown that even if the army is represented in the legislature, it could still remove a constitutionally constituted government, as had happened in May 1980 and July 1985.

Secondly, it was argued that it was fallacious to say that the NRA should be represented in Parliament because it had removed a fascist regime because the NRM struggle included peasants and other civilians. The NRA top leadership who took up arms to fight dictatorship should leave the army and stand for election if they wanted to participate in politics. Alternatively, those who wished to contest in elections should be granted leave of absence from the army. It was argued that the military service is full time work and combining it with another job would mean that one job would be sacrificed. Therefore, the army should be contented with its cardinal duty of defending national sovereignty, territorial integrity and ensuring peace and stability for the nation.

Finally, it was contended that since the army, like the police and civil service, are part of the executive, having the army represented in Parliament would offend the principle of separation of powers between the executive and legislature, which is an essential principle of democratic governance.

Those in support of army representation in Parliament reasoned that it was likely to create stability in the country because, to avoid uninformed complaints, it was important to keep the army informed about the problems of the country and the steps being taken to solve them. In the case of NRA, it was justifiable for the army to be represented in the legislature because politicians had become soldiers (freedom fighters) and successfully fought illegitimate and non-democratic governments. Therefore, in the interim period, the army (freedom fighters) might be represented until the state had built strong national institutions that could act as alternative centres of power to counter-balance the army.

Thirdly, it was argued that those who were opposed to army representation in Parliament were also advocates of a multiparty system and feared the army being divided along party lines in Parliament. However, under a Movement political system, the army would participate actively without such fears.
The Commission found that the majority of submissions supported army representation in Parliament. The Commission agreed with this position because the army handles the means of violence and is charged with guaranteeing peace and stability, the key elements leading to development. Leaving the army out of the legislature at this point in time would be a mistake. The role of the army might not be only to legislate but also to understand and learn the problems of the country and how Government was planning to solve them. The army representatives could then explain what was happening to the other soldiers. The army representatives would always represent national interests that affect all the people, and not partisan interests.

We therefore recommended that as an interim measure, the army should be represented in Parliament by a few members who would be elected by members of the Army Council from serving officers. Parliament would review the situation after some time to see whether army representation was still necessary.

The issue of land tenure was not as contentious as the issues described above. There was general agreement that the Land Reform Decree 1975 should be repealed. The Decree had appropriated people’s land without compensation by reducing their interests in land. There was also consensus that foreigners should not be allowed to own land without restrictions. However, views differed as to whether Uganda should have a uniform system of land tenure and if so which one. Many people across the country supported the introduction of a uniform system in order to consolidate national unity and make land administration simpler and more easily understood by ordinary people. However, when it came to the type of land tenure to be adopted for the whole country, preferences differed considerably. There was support for each of the existing land tenure systems namely, mailo/freehold, leasehold and customary tenure.

Many people who responded to the issue supported mailo/freehold tenure because it enhanced the economic value of land as it could be offered as security for loans, it provided a sense of security of title and encouraged owners to undertake long term investment in the land; it assured tenants security of tenure, as they could not easily be evicted if they paid their dues.
Those who opposed mailo/freehold tenure complained of absentee landlords, failure by some landlords to develop their land, and the fact that some landowners originally got the land undeservedly, especially from the colonialists.

Leasehold tenure was supported on the grounds that it guaranteed security of tenure during the period of the lease and could provide security for loans; it allowed the state to regulate land transactions and enabled the landowner to repossess the land at the end of the lease.

Those who favoured customary tenure regarded land as a common heritage to be used for the benefit of all members of the society. To many people in some areas, especially in the North and North-East, the idea of individual titles to land was considered alien. In areas of communal land tenure, where land is set aside for grazing and other activities, there was a fear of rich and powerful individuals or organisations grabbing large chunks of prime land through leasing. On the other hand, the disadvantages of customary tenure were raised. These included emphasising cultural values rather than economic and financial gains from the land, which retarded development. It was, however, recognised that any abrupt change in the system would cause hardship and economic and social evils. This is why people suggested that the land tenure system should be gradually changed to avoid social and cultural hardships and shocks, and to ensure that many people were not rendered landless.

We found that the major concerns of the people included land-grabbing by rich and powerful people, rendering poor peasants landless; fear of foreigners taking over land; and too much centralisation and corruption in land administration. In order to address these concerns the Commission developed certain principles to guide its recommendations, including principles of fair and equitable allocation of land to all citizens; the need to guarantee every citizen access to land; protection of peasants from eviction from land while recognising that all categories of farmers and other developers should have easy access to land; formulating a land tenure system and policy that could lead to a balance in development in urban and rural areas; guaranteeing use of land to farmers and other investors; discouraging holding of land for
prestige or speculative purposes; and the phased introduction of a uniform system of land tenure of freehold in rural areas and leasehold for urban areas.

Our major recommendations therefore included the repeal of the Land Reform Decree 1975. This meant that all previous land tenure systems would be restored. While we noted the desire of the majority to have a uniform system of land tenure, we were unable to find sound and legitimate reasons to recommend only one uniform system of land tenure. We therefore recommended that all land tenure systems existing before 1975 should be allowed to operate subject to regulation by law, taking into account the concerns raised by the people during the constitutional debate.

**Conclusion**

The resolution of controversial issues was one of the most challenging tasks the Commission experienced. The failure of the people to agree on some issues was accepted as a reflection of the pluralist nature of the Uganda society, but also as part of the democratic process where people were free to hold and express different opinions.

The challenge also lay in the fact that the Commission consisted of Ugandans, and that the Commissioners reflected the countrywide divergences in the views on constitutional matters in their own views and convictions. So one had to patiently develop consensus within the Commission to find solutions to matters of controversy. It sometimes required sleeping over matters to achieve consensus within this microcosm of the country.

However, in order to formulate a national framework for governance care had to be taken to ensure that it enjoyed a broad degree of legitimacy amongst the great majority of the people and that it was viable. The Commission had therefore to take into account democratic principles of tolerance of diverse views, acceptance of majority views while respecting minority views, the spirit of compromise over conflicting positions, and taking into consideration the people’s concerns, fears, expectations, values and aspirations for the future. The Commission had also to take into account the objectives of the new constitution as laid down in the Uganda Constitutional Commission Statute 1988.
What is clear from the recommendations we made to resolve the controversial issues is that most of them acknowledge the absence of consensus and the need to give time for such consensus to evolve. Some solutions can be said to have been transitional and not final, for instance, in the case of the political system, national language, capital punishment, land tenure system and army representation in Parliament. Even recommendations on the issues of form of government and traditional rulers can be said to have left room for further discussion and development. That is why the debate on whether to adopt a federal or unitary form of government is still alive.

We took this approach because we did not want to impose our opinions or minority views on the people of Uganda. We wanted to allow public opinion to resolve the contentious issues through public debate either through the Constituent Assembly or beyond. Democracy is a journey and not a destination. It takes time to grow. By and large, our compromise solutions to the contentious issues were generally accepted by the people of Uganda because they reflected their views, values and aspirations for the future.
Final Report and Draft Constitution

Introduction
The preparation of the Final Report and Draft Constitution constituted the last stage of the work of the Commission. It followed after the analysis and study of people’s submissions and views.

The Final Report and the Draft Constitution were the final outputs as well as the outcome of our assignment. It will be recalled that we were mandated to review the then existing Constitution and make recommendations for a new one, which were to be embodied in a report and a Draft constitution. The proposals were to be formulated from the people’s views, and had to answer the objectives outlined in the Statute establishing the Commission.

This final task was the most challenging assignment the Commission faced. We knew that the overall assessment of our work would largely depend on the degree to which our proposals were viable and acceptable to a broad spectrum of the people of Uganda. As the late Professor Mudoola said at the time:

Writing up the Draft Constitution will be the ultimate test of our work.
People will not care what you went through to produce the document, but what you actually produce.

What we dreaded most was the possible rejection of the majority of our recommendations. We therefore decided to take measures to ensure that our proposals reflected the general will of the people in order to enjoy the legitimacy that was essential to guarantee their approval.

This chapter describes the process of formulating the proposals for the new Constitution, the preparation of the Final Report, and the drawing up of the Draft Constitution.

The roles of the various technical committees including the Editorial and Drafting Committees are explained, as well as the role of the plenary sessions of the Commission. The chapter concludes with the presentation of the Final Report and Draft Constitution.
The Search for a National Consensus

to the Government on 31st December, 1992, and the winding up of the Commission.

The Aims of the Report
The Final Report was the vehicle or instrument through which we were to report our findings and recommendations to the Government and the general public. We had therefore to discuss how we were going to achieve this objective. We discussed and agreed on the aims of the Report in the plenary held on 8th October, 1991.

We agreed that although the Report would be addressed to Government as the appointing authority, it would also be addressed to both the Ugandan people and the Constituent Assembly in particular. It would be as comprehensive and clear as possible. It would indicate that the Ugandan people had played their part well and that the Commission had done the work needed to reach the conclusions on the issues it was called upon to address.

Secondly, the Report would furnish the Commission’s reasons for the contents of the Draft Constitution. In order to do this, it would need to do more than simply supply the reasons why particular measures were included in the draft.

Thirdly, it would also be necessary to explain the thinking upon which the Report as a whole and therefore the Draft Constitution was based. It would set out the principles which had guided the Commission in the making of its recommendations and the methodology it had used.

Fourthly, the public in particular, would need to understand two central issues. The first was that the Commission was committed to basing the Draft Constitution upon a consensus of views expressed by the Ugandan people. Second, that the consensus was in many cases a consensus on general principles, so that in addition to identifying consensus, it had been the Commission’s job to identify the specific constitutional arrangements which could best give effect to the consensus.

Fifthly, it had to be understood that with the assistance of the views expressed to it, the Commission had to develop an analysis of Uganda’s situation. It was from that analysis that the Commission had to develop its ideas about the nature of Uganda’s
political and governmental needs and problems, and what kind of new constitutional arrangements, could help meet those needs and solve problems.

Finally, the Report would be the document from which the Draft Constitution would be prepared. It would analyse the basis for the major parts of the new constitution and how the decisions on each part were related to the Commission's broader analysis of Uganda's needs and problems.

Therefore, it was anticipated that the Report would contain at least two main sections. The first would deal with the broader analysis upon which the Draft Constitution would be based. This would cover the first five chapters. The second would analyse the constitutional issues people wanted to be covered in the new Constitution.

It was also envisaged that each chapter in the second section would discuss a major subject by considering the history of performance of Uganda Constitutions and the operation of other forces in relation to the topic or issue. The chapter would then explain the consensus of views on the issue and the detailed reasons for the Commission's recommendations. The various arguments in favour of making its recommendations would be explained in general rather than legalistic terms. The recommendations from each chapter would constitute the drafting instructions for the preparation of the new constitution.

The aims of the Report were embodied in a document entitled *The Working Structure of the Constitutional Commission's Final Report as Adopted by the Plenary of 8th October, 1991*. The document also contained the suggested contents of the Report, with 24 chapters. It included section three of the Report, which was to deal with *Chapters on consequential changes to the General Law of Uganda*. Among such laws were citizenship and immigration, special rights of the press and prisoners, reorganisation, recruitment, education and development and remuneration of security forces, family law, including the position of women and children, and environmental law.

It was anticipated that the Commission would focus on the laws that required to be changed with the coming into force of the new Constitution, as well as new laws that would need to be
made. We saw this as primarily the task of the Commission. We thought that by virtue of our work we would have gained intimate knowledge about the provisions of the constitution, but more importantly, in this regard, we could visualise the implications of the new constitution on the various existing laws and the need for altogether new laws. It would be relatively easy to identify obsolete laws such as gender discriminative laws, those that offended the bill of rights and the necessary changes in electoral laws. It was envisaged that the Commission would identify these laws after the production of the Draft Constitution. We had planned that the write-up on these laws would constitute the last chapter of our Report or indeed a separate document altogether.

However, things turned out differently. Although the Final Report dealt with the laws and the need for amendments in respect of areas such as land law reform, environment for sustainable development, the Forest Act, the independence of the Central Bank and the Bank of Uganda Act, no comprehensive treatment of the subject and no exhaustive report was made. They were scattered in the Report and no list was produced.

The exercise was abandoned because after handing in the draft, the Commission was quickly wound up. By the end of the production of the draft the enthusiasm of the Commissioners had visibly waned and they did not want to appear as if they were seeking to extend the life of the Commission under any pretext.

This was a lost opportunity because the exercise would have informed the legislative agenda after the promulgation of the constitution. As it is, between them Parliament, the Human Rights Commission and the Law Reform Commission have tackled this problem but no methodical comprehensive approach has emerged.

Section Four of the Report would contain appendices. Interestingly, the text of the Draft Constitution was proposed to be one of the Appendices, then a list of seminars and meetings, and finally statistical data derived from analysis of views received. As it turned out, these decisions were reviewed from time to time and it was decided that the Draft Constitution and the sources of views should be published as separate volumes from the Report which simply contained an Analysis of Views and Recommendations.
Preparation of the Final Report

In Chapter 8, I explained how six technical committees were formed, comprising three Commissioners each and were assigned several constitutional issues or themes for analysis and study. They were supposed to make draft recommendations for the new constitution. The committees were also to identify which recommendations were to be incorporated in the constitution and which were for implementation by other laws. In addition, these committees were required to prepare draft chapters for discussion and approval by the Plenary Session. In so doing, they were to find out the people’s views on each issue and identify issues on which there was consensus or majority views and areas of controversy. The committees were also to find out how the issues they were assigned had been treated in the existing constitution, as well as in constitutions of other countries.

The methodology of the technical committees was discussed and agreed upon by the Plenary Session of the Commission held on 18th October, 1991. It was agreed to adopt a common approach in order to ensure that the Final Report was coordinated. In order to achieve this, a number of guidelines were set. The layout of any topic studied had to be numbered in paragraphs. We had to aim at precision in all we wrote without too much elaboration, so as to produce the points identified in summary form. Before any group began work there had to be a meeting of members to discuss the approach to each topic and if possible to make an outline, before dividing the work amongst the members.

Legal officers allocated to each committee were given an intensive course for a few days to impart skills and methodology needed to handle the work assigned to them. Logistical needs for each committee were identified at the beginning to allow appropriate planning and supply.

The Commission identified the areas of consensus and controversy as well as the fundamental principles, which were generally accepted. These principles included a fully democratic system of government, free and fair elections, decentralisation of powers, participation of the people in their governance, accountability of leaders, creation of a culture of rule of law and constitutionalism, independence of the judiciary, control and
discipline of the armed forces, and proper use and control of public finance and development.

We stressed the need to adopt a common viewpoint in analysing Ugandan society, so that we could share a common vision on what had gone wrong and why, and in order to have a unity of purpose in identifying proper solutions from the views of the people.

The preparation of the draft chapters and formulation of proposals was a very elaborate process. It started as early as October 1991 during the analysis and study of views and continued until the Editing Committee took over in September 1992. While each committee had its own approach, the general pattern was as follows. The first step was for each committee to make a comprehensive outline of the general strategy on how to go about writing the report on the issues assigned to it. This involved a plan of action: the activities which would be carried out such as research, allocation of subjects, brainstorming and identification of issues. The second stage was to determine which sources of information would be relied upon. The third stage was to allocate the issues or chapters to each member of the committee. The fourth stage was to prepare comprehensive outlines of each chapter for discussion by the Committee, and later for presentation to the plenary session for discussion and approval.

The general format or content of chapter outlines included Introduction/Background analysis, basic issues to be addressed, existing laws, conventions and constitutions of other countries, views and proposals from the people, and recommendations relating to the issues identified.

Sources of reference and bibliography to be considered were added. These outlines were brief and were between two and five pages. The plenary sessions discussed thoroughly the outlines and proposed changes in form and substance, which were used by the committees to revise the outlines.

After the approval of the chapter outline, the Commissioner assigned to prepare the chapter of the Report would assemble the relevant material or sources, identify the issues, concerns, problems and proposals made in the submissions and prepare a first draft chapter. The draft would be discussed first by the relevant technical committee and revised. When it had been approved by
the committee it would be presented to the plenary session. The plenary would examine the draft chapter, discuss it and make proposals for improvement both in form and content. Each draft chapter was presented to and discussed by the plenary session at least twice. This was before they were referred to the Editorial Committee for final editing.

An important component of the draft chapter was the recommendations for the new constitution. These were formulated after considering all the sources of views, the Ugandan society and its historical background, the existing constitution and laws, and a comparative study of various constitutional provisions on the issue. The recommendations appeared in the body of the chapter as well as at the end of it.

The plenary sessions played a critical role in discussing and approving chapters and recommendations. No recommendation was approved unless it had been presented, discussed and approved by the entire Commission, in a plenary session. No doubt some of the recommendations generated heated debate and additional research and reflection. But by and large the majority of the recommendations were a reflection of the general consensus of the people’s views, and in those circumstances, the only issue was how to incorporate them in the Draft Constitution.

Many controversial issues still remained contentious within the Commission. We had to discuss them over and over again until we reached a consensus amongst ourselves. The most difficult issue to agree to was on the most suitable recommendations on the political systems. The people had recommended the operation of the movement political system for some time. But what was the nature of this Movement system and what would be its structures? For how long would the movement system continue in operation? What would be the fate of political parties? How were they to be provided for in the constitution? Would they be regulated, and if so what restrictions should be placed on them, having regard to the Bill of Rights which guaranteed freedom of association? How would a political system be changed?

The other difficult issue we faced in the Commission was how to provide for a workable relationship between the Executive and Parliament. How was the Executive to be tamed while strengthening
the independence of Parliament without causing conflict and gridlock between the two institutions? Was a completely presidential system of government suitable for Uganda? Was there a need for a Prime Minister? Should members of the cabinet be Members of Parliament? How were the political conflicts between the two institutions to be resolved? Was there a need for another chamber or institution to act as a bridge between the Executive and Parliament and establish a good working relationship between the two organs, including the resolution of any conflicts between them? This was the origin of the proposal to establish the National Council of State. What would be the powers and composition of such a body?

Other contentious issues included determining what limitations should be permitted on fundamental human rights and freedoms; what was the most suitable land tenure system; how to entrench in the Constitution functions and services allocated to local governments, without creating a federal system of government; whether to provide for the restoration of traditional rulers in the Constitution; and if so what should be their status, powers, and source of financial support; and how to provide for the transitional government from the time of adopting the Constitution to the time of the election of a new government.

It was a great feat that all the recommendations in the Final Report were approved by consensus of all members of the Commission. This was achieved through teamwork, exhaustive discussion, respect for the contribution and opinions of each Commissioner, spirit of compromise and a clear appreciation of the common objectives of the report and a unity of purpose.

My role as Chairman of the Commission at this point in time was critical in achieving compromise and consensus. All this was achieved without any pressure or influence from any quarter whatsoever, as the independence of the Commission was respected and upheld by Government.

**Format and Style of Chapters**

After the presentation of a number of first draft chapters, it was discovered that there were continuing disparities in their format. A uniform format was called for, including the length of chapters.
We agreed that for the first drafts, the Commissioners could write as much as they felt necessary. It was decided that the writers would not edit out material themselves. The material in the drafts had in any case good educational value for the others. It was pointed out that the plenary had agreed earlier that for the second drafts, the chapters would on average be between 25 and 30 pages in length, while the shorter chapters would be about 15 pages.

As regards recommendations, we agreed that they would come as conclusions at the end of each section to which they related instead of relegating them to the end of the chapter. However, it was also agreed that, for ease of reference, the recommendations would be summarised and put at the end of each chapter.

On harmonisation of the views and comments of the Commissioners on every chapter, I informed members that I had directed the Secretariat to always make available to the Commissioners all comments and views of members whenever a chapter came up again for discussion in the plenary. This was considered even more necessary when we started concretising recommendations.

During the meeting held on 2nd April, 1992 we reviewed the contents of the Report and the arrangement of chapters. The number of chapters was increased from 24 to 28, by splitting some chapters. For instance the army was removed from the chapter on security organisations and given its own chapter because of its importance. The Leadership Code of conduct was separated from the Inspectorate of Government.

The final order of chapters was:

- Methodology and Sources.
- Historical Background.
- Geopolitical and Social Economic Background.
- Nation-building Process, Common Values and National Language.
- Needs and Objectives of the New Constitution.
- Citizenship and Duties of Citizens.
- Fundamental Rights and Freedoms.
- Political Systems.
- Form of Government – Basic Principles.
• Electoral System.
• The Legislature.
• The Executive: President and Ministers.
• The National Council of State.
• The Army.
• The Police, Prisons and Intelligence Organisations.
• The Public Service.
• The Judiciary and Administration of Justice.
• Local Government.
• Traditional Leaders.
• The Leadership Code of Conduct.
• The Inspector General of Government.
• Public Finance.
• Principles and Objectives of socio-economic Development.
• Social Services.
• Land.
• Environment.
• Foreign Relations and International Co-operation.
• Safeguards for the new Constitution.

We made some comprehensive guidelines regarding the style of the Report. It was agreed that a chapter would have an introductory paragraph to indicate what was going to be said. The case for the recommendations made should then be built up in the body of the chapter. A summary of recommendations should be at the end of the chapter. Recommendations were to be underlined or put in italics.

We further agreed that the main body of each chapter should explain how the Commission arrived at a particular conclusion. The Commissioners were likened to salesmen and women trying to sell the constitution to the people at large and to the Constituent Assembly. It was better to indicate in the body of the report how the recommendations were arrived at.

The numbering system of the paragraphs would include a figure for the chapter and then for the paragraph. They were to be allowed to flow. The report was to be a legible clean document, written with flowing language in prose, with solid paragraphing. As regards capitalisation, it was agreed to write in ordinary form
using the lower case where necessary. To make the chapter easier to read, subheadings would be included to indicate subdivisions in the discussion.

We recommended that references should not be included in the Report. The method of writing used in the Munster Report and the Wild Report would be followed. The Report would not be written in an academic style with footnotes but would have sources in appendices. Some sources such as Government reports could be cited. The system of writing ‘According to …’ would be discouraged. Quotations would be kept to a minimum. Reference to the Commission would be as ‘we’. Other issues of style agreed upon concerned spelling, dates and numbers, abbreviations, hyphens and tables, among others.

Early agreement on structure, contents, format and style of the Report was crucial to producing a coherent and uniform set of chapters written by different Commissioners. This gave the Commissioners adequate guidance in the preparation of chapters and facilitated the discussion and revision of the drafts without altering the basic structure of the chapters. It also made the work of the Editing Committee in harmonising the entire Report easier.

**Philosophical Bases for Recommendations**

Constitutions are made at a point of fundamental political change in a given society. That point of departure may be signified by the attainment of independence, the end of hostilities after a war, the merger of two countries or the split of one, or the end of a successful revolution. At such a point in time, there is a cry for a fundamental change or a fresh start in the constitutional order. In order to provide a fresh start, the constitution framers must identify the root causes of the problems experienced in the old order and devise solutions which address the people’s concerns, views, values and aspirations for the future in the new constitutional order.

In Uganda, the constitution making process was started in 1988 after a protracted people’s struggle, popularly known as the ‘Bush War’ which led to the assumption of power by the NRM Government in January 1986. Indeed President Museveni on assumption of power declared that ‘this was not a mere change of guard, but a fundamental change’ in the governance of Uganda.
One of the fundamental changes was the decision to allow the people to make a constitution of their own choice. When the Commission was set up, it was mandated to consult widely the people and formulate proposals for a new constitution based on the people’s views.

Our interpretation of the mandate given to us was that we were required to formulate a home grown constitution based on the norms, values, views and aspirations of the people of Uganda. We therefore took pains to study and analyse the historical background of Uganda in order to identify the major problems that had caused the political crisis in Uganda — in other words what went wrong in Uganda. This was necessary in order to propose suitable solutions in the Draft Constitution. We identified the following problems:

- Uganda’s political development has been characterised by authoritarianism dating from the pre-colonial period and continuing through colonialism and independent Uganda, in spite of attempts to establish democratic structures.
- There are groups whose political behaviour has been historically determined and these groups tend to look on all political and constitutional developments, including the current, the constitution-making process, as exercises in power sharing or in monopolising power.
- In the absence of viable political institutions which can successfully mediate between them, groups have always tried and in many cases have succeeded in capturing supposedly national institutions such as political parties, legislatures, and security forces mainly to serve their own interests.
- Whenever groups are in positions of strength, they tend to ignore the formally established constitutional rules and attempt to dictate terms which inevitably provoke negative reactions, culminating in instability – coups d’etat, civil war and other forms of conflict.
- Uganda is characterised by conflicting political and cultural traditions ranging from monarchism, authoritarianism, and liberalism, but lacks a culture of constitutionalism.
Uganda has been adversely affected by ethnoreligious conflicts, which have usually led to sectarianism and closed communities.

There is no consensus over national values to sustain political institutions.

There are perceived ‘historical injustices’ among some groups; ‘injustices’ which many need to be seen to be set right if such groups are to feel committed to any long term constitutional settlement. (see para. 2.60 pages 55-56 of our Final Report).

After studying the views submitted to us, our own observations and analysis of society, including its culture, common history and aspirations, the past three constitutional arrangements since independence, and a comparative study of constitutional arrangements of other countries, we deduced the following theoretical or philosophical bases for formulating our recommendations:

The constitution should provide institutional mechanisms for strengthening national unity taking into account the cultural, religious, regional, gender, class, age and physical diversities of Ugandans.

While taking into account Uganda’s social, cultural and political diversities, the constitution should transcend groups with narrow interests.

The constitution should identify those residual Ugandan values which can serve as firm foundations for the new constitution.

The new constitution should make institutional provisions for setting perceived historic injustice right.

There should be efforts to provide for such a balance of social forces that no one single socio-political force or institutional structure can manipulate such resources as it has to subvert the constitution and dominate other groups and structures.

A new constitutional order should ensure that institutional structures are viable, coherent and integrated to promote a culture of constitutionalism and ultimate socio-economic and political objectives which guide future development.

There should be institutional mechanisms for ensuring transfer of power by peaceful and democratic means.
Since the NRM assumed power, institutional frameworks have been established and appear to be gaining legitimacy. There should be serious evaluation of these to see the extent to which they may be integrated into the new constitutional order.

The new constitutional order should positively come to terms with Uganda’s past and present and respond to its aspirations for the future. (See para.2.60 of the Report).

**Editing Committee and Drafting Committee**

As we progressed towards the end of our work, there was a need to form more technical committees to undertake special assignments, which could not be accomplished by the six technical or theme committees or by the Secretariat. There was a need to prepare the final edition of the Report for presentation and publication. There was a need to harmonise the various chapters into a coherent document. There was a dire need to select a committee to oversee the preparation of the Draft Constitution by drafting experts. It was also felt that another committee was required to review and streamline the recommendations contained in the various chapters.

As a result, two additional committees, the Editing Committee and the Constitution Drafting Committee, were formed by the plenary session in July 1992. A third committee, the General Purposes Committee was formed in September.

The general terms of reference of the Editing Committee were:

1. To ensure that the Report is one coherent intelligible unit, reflecting all details related to the summary recommendations on which the Draft Constitution will be based. The structure and style should be consistent throughout;
2. To ensure that there is a well argued case to the Constituent Assembly and the general public. The argument should be done in a convincing way and with clarity. The Editing Committee should try to foresee all possible objections and respond to them convincingly;
3. To check and ensure that the Commission has complied with its terms of reference as set out in the Statute generally, and in particular, Section 4 of Statute 5 of 1998.
The specific terms of reference of the Editing Committee were:

1. To edit the draft chapters for the final report;
2. To rearrange and organise the chapters;
3. To prepare an introduction for the Report;
4. To prepare a list of contents for the Report including appendices;
5. To draw up an executive summary of the Report;
6. To present the final drafts to the Plenary Session for approval.

Members of the Editing Committee were Dr Mudoola (Chairman), Rev. Fr Dr Waliggo, Mrs Matembe, Major Kayihura, Professor Mutibwa, Lt. Col Serwanga Lwanga and Mr Ufoyuru. It was agreed that in the absence of Dr Mudoola, Rev. Fr Dr Waliggo would chair the Committee.

The procedure to be followed by the Editing Committee was also outlined. The Committee would determine the material for the appendices and make sure that the text avoided plagiarism and overreliance on statistics. It was advised to work out a model chapter to guide its members. The technical committees were required to finalise their chapters and hand them over to the Drafting Committee. Draft chapters would then be distributed among the members of the Editing Committee for editing. Once a chapter had been finalised it would be handed over to the chairman of the Committee with a copy to the Secretary to the Commission. Once a fair copy had been typed and proofread, it would be handed over to me and that would be the completion for that particular chapter.

The Drafting Committee consisted of myself as Chairman, Professor Ssempebwa, Mrs Mary. Maitum and Mr Rwaheru as members. It was agreed that in my absence, Professor Ssempebwa would chair the Committee.

The terms of reference of the Committee were:

1. To decide on the form, language and layout of the Draft Constitution;
2. To interpret and discuss recommendations of the plenary as the basis for drafting instructions;
3. To generally guide the drafting team on policy matters;
4. To present the drafts to the plenary for approval.
We agreed that we would draw drafting experts from the Ministry of Justice which already had a Tanzanian and a Ghanaian. The plenary stressed that experts should not change the format of the work of the Commission and that the drafting team should be loyal to the Commission.

The proposed Recommendations Committee was abandoned. Its role of streamlining and harmonising the tentative recommendations in the various chapters and drawing up a summary of recommendations was assigned to the Editing Committee. The responsibility of liaising with both Editing and Drafting Committees in the drawing up of proposals in the report and instructions for the draft was left to the two Committees, which were asked to consult each other to ensure that the two Committees were properly coordinated.

Instead of the Recommendations Committee, a General Purposes Committee was formed. This Committee was to cater for the remaining tasks which did not fall under drafting and editing. These tasks included:

- Assisting to reorganise and proofread the source materials.
- Supervising and proofreading materials coming from the computer.
- Assisting in the rewriting of some of the draft chapters.
- Assisting the Secretary to organise and carry out necessary research for draft chapters and to ensure that the Commissioners collectively had the ultimate responsibility for whatever was finally produced.

The membership of this third committee consisted of the Commissioners who were neither on the Editing Committee nor the Drafting Committee. Subsequently the Secretary of the Commission wrote to each member of this Committee assigning him or her work. For instance, one member was to proofread the chapter on Human Rights and also proofread some RC III Memoranda, which had been typed out. Another member was asked to work out the structure of the Human Rights Commission and also proofread group and individual memoranda. Another member was assigned the task of identifying problems peculiar to each district, for example, the Banyarwanda question, the Rwenzururu question, and the plight of pygmies. Another was asked to review a previous paper on the Karamoja question.
Constitutional Models

The word ‘constitution’ is derived from the verb to ‘constitute’ which according to the *Shorter Oxford Dictionary* means, among other things, ‘to set up, ordain, appoint, frame, form, make up or compose’. The term constitution therefore literally means the action of constituting, framing or establishing something. A national constitution is defined in the same dictionary as ‘The system or body of fundamental principles according to which a nation, state, or body politic is constituted and governed.’

A constitution has been variously described, but in my view it can be defined as a set of basic principles and laws upon which a state is organised and which establishes the major organs of government, defines their functions and powers and the relationship amongst them, and sets out the rights and duties of the citizens.

A national constitution therefore has political and legal dimensions. In political terms, a constitution is the basic decision of a people on how it wants to live. It has been described as a socio-political framework by which the polity defines who gets what, when and how. It is said to define ‘political space’ and the relationship between the state and its citizens. It is a kind of ‘power map’ and charter of government. It can be described as a social contract or covenant between the state and its subjects on the manner of the exercise of state power. In legal terms, a constitution is the fundamental and supreme law of the country. It is the basic law from which all other laws derive their validity. Accordingly a constitution is regarded as having legal sanctity or being sacred. It follows therefore that a constitution represents the deepest norms and ideals by which the people govern their political life.

In formulating the Draft Constitution, we had to bear in mind the nature and purpose of a constitution in general, and the objectives of the new constitution for Uganda. In general a constitution serves several important functions. It sets out the principles and values upon which the state is organised and governed. It provides a foundation for orderly government by defining and limiting the powers of government agencies, and establishes checks and balances amongst the three arms of the state. A constitution acts like a peace treaty and lays down agreed arrangements between
conflicting socio-political groups or interests in order to restore peace. A constitution is an important democratic instrument. It is a viable instrument of democratisation. It provides peaceful means of resolving social conflicts instead of resorting to violence and armed conflict, and peaceful means of changing of government. Finally a constitution safeguards basic human rights and freedoms of the people which are inherent and inalienable through a Bill of Rights. In the case of Uganda Section 4 of the Uganda Constitutional Statute 1988, sets out the aims and objectives of the new Constitution. The objectives were, among others, to:

- Guarantee the national independence and territorial integrity and sovereignty of Uganda.
- Establish a free and democratic system of Government that will guarantee the fundamental rights and freedoms of the people of Uganda.
- Create viable political institutions that will ensure maximum consensus and orderly succession to Government.
- Recognise and demarcate division of responsibility among the State organs of the Executive, the Legislature and Judiciary and create viable checks and balances between them.
- Endeavour to develop a system of Government that ensures people’s participation in the governance of their country.
- Endeavour to develop a democratic, free and fair electoral system that will ensure true people’s representation in the legislature and other levels.
- Establish and uphold the principle of public accountability by the holders of public offices and political posts.
- Guarantee the independence of the judiciary.

In addition to the above objectives, the constitutional debate identified four more goals, which the new constitution should serve. These were to:

1. Restore peace, security and stability in Uganda;
2. Foster unity and national consciousness amongst the people of Uganda;
3. Promote socio-economic development and social justice amongst the people of Uganda; and
4. Promote regional and international cooperation and the maintenance of peace and security in the world.
In framing the Constitution various models or forms may be used to articulate agreed values, ideals and principles. A country may choose a presidential system of government instead of a parliamentary one. Under the presidential system, the three organs of the government are sharply separated by observing the doctrine of separation of powers which keeps each organ in its own sphere of responsibility. Thus, the president and ministers are not Members of Parliament. The president is normally elected nationally and is generally accountable to the people. A good example is the United States. The opposite is the parliamentary system or Westminster model where the chief executive, the prime minister is a Member of Parliament and so are the ministers, and all are collectively responsible to Parliament. The president or head of state carries out ceremonial duties only. Examples are found in Uganda’s 1962 Constitution and the – unwritten – Constitution of the United Kingdom.

A country may adopt a republican form of constitution or a monarchial one. Republicanism rejects rule by divine, inherited right or by a king or queen, and advocates that sovereignty lies with the people who have the right to choose their leaders. On the other hand, a monarchical constitution recognises kings or hereditary rulers as national leaders, in most cases as heads of state. Examples of monarchial constitutions are found in the United Kingdom, Malaysia, Scandinavian and the Benelux countries.

A country may choose a federal or unitary constitution. In a federal constitution, the powers of government are divided between the central government and the constituent governments or states in such a way that each constituent part is legally independent within its own sphere. The legislatures of federal and state governments have powers to pass laws in specified limited areas. Each legislature is sovereign in its own areas though its powers are limited. But neither is subordinate to the other; both are coordinate. This is sometimes referred to as dual sovereignty. Examples can be found in the United States, Canada and Germany.

A unitary constitution is almost the opposite of a federal one. Under a unitary constitution, the state is organised as a single unified government and constituent districts hold power at the discretion of the central government. The central government is
therefore supreme and there are no subsidiary sovereign bodies. But the country is normally divided into local units, which are given some functions to carry out in matters affecting the people directly. Examples of unitary constitutions are the 1967 Uganda Constitution, and the constitutions of France and Ghana.

It is also important to recognise the distinction between rigid and flexible constitutions. The classification refers to the mode of amending a constitution. A constitution is rigid where it is difficult to amend, for instance, by requiring a referendum or two-thirds majority of votes in Parliament. It is flexible if the method of amendment is easy by requiring a simple majority. A constitution may be both rigid and flexible depending on the importance attached to the various provisions. Procedures for amendment harmonise stability and change so that the constitution retains its basic structure, ideals and authority, while recognising and embracing change and development for its own preservation and for the good of the society it serves.

These models are not watertight, and it is possible for a constitution to embrace various elements from several models. Moreover, it is important to study how a particular constitution operates in practice as there may be differences between its letter and its application in practice.

Therefore in drafting the constitution comparative study of constitutions of other countries was crucial to enable us to choose the appropriate models, principles and provisions. This was necessary notwithstanding the fact that no two constitutions are the same, and that Uganda’s new Constitution was to be a homegrown one. It must be recognised that the contents or model of a particular country may be dictated by the history of its country and its political problems. It may also be influenced by the cultural and traditional values of the people. A constitution must inevitably be influenced by the contemporary views and aspirations of the people. The new constitution had to address all these and related issues.

We did not choose a particular constitutional model for the Draft Constitution. We aimed basically at a model that suited Ugandan society. We therefore borrowed from various models, including the 1962 and 1967 constitutions of Uganda. We generally adopted
the presidential system and a unitary form of government, with decentralisation.

We also adopted a republican system of government though we recognised the existence of traditional and cultural institutions. That is why Uganda is a republic. The amendment of the Constitution was made more rigid with some provisions requiring a referendum and all of them requiring two-thirds majority in Parliament in order to amend them. The model nearest to our Draft Constitution would be the Ghanaian Constitution of 1992 or the Namibian Constitution.

**Drafting the Constitution**

Formulating the Draft Constitution was one of the most intellectual and professional contributions I made to the constitution-making process. Although I did not draft it all by myself, my input and supervision were critical. I was not only the Chairman of the Commission but also the Chairman of the Constitution Drafting Committee. I decided that we had to present the Draft Constitution by the end of 1992. We were still experiencing inadequacies in operational resources. We had exceeded the two years initially allowed us to complete our work, and we had had several extensions, the last being from June to December 1992. I decided to stick to the deadline in order to maintain confidence and credibility in the constitution-making process.

The main problem was lack of adequate time and resources to complete the work. It was not until June 1992 that DANIDA agreed to offer a grant to the Commission to complete its work by December 1992. By June we had not completed formulating recommendations or the preparation of the draft chapters. We had not even started formulating the Draft Constitution. It will be recalled that the Drafting Committee was formed in July but did not start work until September.

The Drafting Committee was joined by two drafting experts from the Ministry of Justice, Mr I. Makanza, then the First Parliamentary Counsel, and Mr L. J. Chinnery Hesse, legislative drafting expert. Mr Chinnery Hesse had earlier participated in the drafting of the Constitution of the Fourth Republic of Ghana which had been completed on 31st March, 1992 and approved by
referendum on 28th April, 1992. The experts joined the Committee in October 1992. They expressed fear that it might not be possible to complete drafting the Constitution within three months, a period which may not be adequate to complete drafting an average Act of Parliament. I assured them that I believed that it was possible. I drew on my experience of writing judgments which convinced me that three months was enough time to complete a judgment, however complicated. I considered the Draft Constitution to be the judgment of the Commission, based on the evidence from the people and our own findings.

In order to allay their fears, I promised that members of the committee would prepare most of the first drafts of the constitution, and the experts would only redraft them in legislative language and synchronise the various chapters. The experts emphasised the need to have clear drafting instructions as contained in the recommendations as soon as possible.

The Drafting Committee held its first meeting on 7th October, 1992. It was also attended by the drafting experts. At the meeting we received the experts' comments, decided on the method of work, assigned responsibilities to members, and agreed to provide office accommodation, secretarial services and stationery for the drafting experts. Two legal officers attached to the Committee, Mr Rugadya and Ms Nkonge were to assist the drafting experts, and also act as a link between them and the Committee.

At the same meeting the drafting experts noted that the recommendations had not been properly collated. We decided to divide the recommendations amongst ourselves in order to collate them and supervise their drafting. It was also noted that some recommendations were not entirely final and this called for clear and final decisions to be made by the Plenary on these issues before they could constitute drafting instructions.

The Drafting Committee produced a list of chapters of the Constitution, which was approved by the Plenary. The list of chapters was:

- The Constitution
- The Republic of Uganda
- National Objectives and Directive Principles of State Policy
- Citizenship
• Fundamental Rights and Freedoms
• Representation of the People
• Executive
• Legislature
• The National Council of State
• The Judiciary
• Finance
• The Public Service
• Local Government
• Defence and National Security
• Inspectorate of Government
• Leadership Code of Conduct
• Land and Environment
• General and Miscellaneous
• Amendment of the Constitution
• Transitional Provisions.

In addition to these, there was a Preamble before Chapter One.

We decided to start drafting with the major or controversial chapters. The first four chapters were the Executive (7), the National Council of State (9), the Legislature (8) and Representation of the People (6). Our strategy was that once these core chapters establishing the framework of government had been settled, the remaining chapters would be easier to draft. By 27th October, 1992, these chapters had been completed and were ready for discussion.

The procedure for drafting a chapter was as follows: The Drafting Committee allocated a chapter to a member and he or she produced the first draft on the basis of final recommendations approved by the Plenary Session. The draft chapter was then discussed by the Committee and the necessary revisions made. After the Committee had approved the draft chapter, it was handed to the Drafting Experts to rewrite it in legislative language.

After the draft by the drafting experts had been discussed and approved by the Committee, it was presented to the plenary by the Chairman of the Committee for discussion. The drafting experts then revised the draft chapter and presented it again to the plenary for discussion and approval. On average the Drafting Committee discussed the draft three times and the Plenary Session at least twice. The drafting experts divided the chapters between
them. However, Mr Makanza’s contract expired before the work was finished and he had to leave the country in October 1992. The whole burden of drafting the Constitution then fell on Mr Chinnery Hesse.

The next set of chapters we drafted were Fundamental Rights and Freedoms (5), the Judiciary (10) Local Government (13) and Citizenship (4). Our target was to complete them by the middle of November 1992. We anticipated that the remaining nine chapters would be short and easy to draft. These were to be completed by end of November 1992.

The process of drafting was laborious, as it required research, drafting, typing, revision, discussion and typing once again. We had to fill in gaps in the recommendations, explain some and streamline others. We had to modify some recommendations without distorting them. In this respect we had to work closely with the Editing Committee through consultation and exchanging documents.

Due to fear of leakage of completed drafts which we considered sensitive, it was agreed that the Senior Principal Legal Officer would keep the drafts. The Commissioners would be able to pick them up from him to read them at the Commission premises and would always return them to him. They were not to be photocopied or taken off the premises. Eventually each Commissioner got a copy and then took responsibility for it. The Commissioners were encouraged to send comments to the Drafting Committee after perusing the drafts. We found these comments useful and we took them into consideration.

On 13th October, 1992, the plenary discussed the format and style of the Draft Constitution. The draftsmen were in favour of a simple style. The ideas in the draft must be in a precise form and members recommended a short and simple document that could be understood by a majority of the people. They preferred the language in the constitutions of Germany, USA, and Tanzania. An issue was raised as to who should determine what goes into the constitution since some constitutions are long while others are short. It was pointed out that the Drafting Committee could not discard what had been endorsed by the Plenary. But it was also observed that not all recommendations could fit in the constitution, and that
the decision as to what was to be left out would be taken by the Drafting Committee not the drafting experts. The general consensus of the Committee and Plenary was that the Constitution should be precise, concise, a simple and short but comprehensive document.

Towards the end of our drafting exercise, I was assigned to draft the Preamble, the first chapter on the Constitution and the second chapter on the Republic of Uganda.

These were the opening provisions of the Draft Constitution and so had to be very attractive but meaningful. I adopted a very simple, clear and concise style of drafting, which produced very short chapters; the shortest in the draft. The draftsmen did not alter much of what I had drafted and it was eventually approved by the Drafting Committee and the plenary session. There are many other chapters which I assisted in shortening, to make the Constitution less bulky.

Why then did we in the end produce a long Constitution? There were several reasons. The first was that we wanted an original Constitution and therefore we sought to include many new ideas and provisions, which we thought, would address Uganda’s unique historical experience and aspirations for the future. Secondly, we had promised the people that all their views would be incorporated in the constitution. For this reason we endeavoured to ensure that as many constitutional proposals as possible were included. Thirdly, we did not want to leave any issue hanging in the air or vague. We sought to have all these issues to be clearly provided for in the constitution to avoid problems of interpretation and implementation. Fourthly, we included transitional provisions which are sometimes left for schedules. Finally, I think we wanted to give the Constituent Assembly all the possible scenarios and alternatives for the delegates, so that the delegates could decide which options were the most suitable and viable provisions; or if they failed to agree, could submit the issues to the people for a decision through a referendum. We knew we were not the final authority on the most suitable constitutional framework. The Constituent Assembly and the people had the final say and we fully expected that the Draft Constitution would be reviewed and shortened.
However, the Constituent Assembly did not succeed in shortening the Constitution substantially. The Draft Constitution had 314 articles, 20 chapters, and 4 schedules. The Constitution finally adopted by the Constituent Assembly has 19 chapters, 287 articles, and 7 schedules. The number of chapters and articles would have remained the same if the Constituent Assembly had not removed the National Objectives and Directive Principles of State Policy — Chapter 3 in the Draft Constitution, with 32 articles — from the body of the text and placed it at the beginning.

The Constitution compares in length favourably with the Constitution of the Republic of Ghana 1992, which has 26 chapters and 299 articles, with another 37 articles of transitional provisions in the First Schedule. But it compares unfavourably with the Constitution of the Republic of Namibia, which has 21 chapters, 148 articles and 8 schedules. Another comparison one can make is with the Constitution of the Republic of South Africa 1996, which has 14 chapters, 243 articles, and 7 schedules which include Transitional Arrangements, and appears to be slightly shorter.

Submission of the Report and Draft Constitution to Government

Towards the end of 1992, we met the President at State House, Entebbe to brief him about our progress and the major recommendations we had made in the Report, as reflected in the Draft Constitution. The President was generally satisfied with the recommendations and believed that they reflected the views of the people.

We informed the President of our intention to hand over our Report and Draft Constitution on 31st December, 1992. He accepted our request to receive the Report. However, we pointed out that the Report might not fully be edited by that date although the Draft Constitution would be ready. It was suggested that if the Report was not ready we could submit the Draft Constitution and a summary of recommendations, and present the Report later when it was ready. The possibility of postponing the date for submission of the Draft Constitution and Report was mooted but I discounted it as I was convinced that further extension would damage the credibility of
the constitution-making process. I also rejected a suggestion to submit the Report later as I considered that the Report was crucial in explaining our recommendations and the contents of the Draft Constitution. It was my view that the Report was more important than the Draft Constitution because the Report was the mother of the Draft Constitution.

The future of the Commission after the submission of the Report was also discussed with the President. Section 10 of Statute 5 of 1988 stipulated that the Commission would cease to exist on the presentation of the Report to the Minister. How, then, were we to finalise editing the Report if we were to cease being Commissioners? Secondly, who would guide the Constituent Assembly in interpreting the Draft Constitution and explaining our recommendations? His Excellency (H.E.) the President was of the view that the Commissioners should be in place for future consultation as they were the best witnesses to the process. But the Minister was of a contrary view. Eventually it was agreed that time would be allowed for the Commission to wind up its work after handing over its Report.

After returning from State House, I urged my colleagues to work hard to complete the editing of the Report so that it could be submitted together with the Draft Constitution. This stand led to panic in the Commission. The Commissioners and staff knew we had to beat the deadline: both the Report and the Draft Constitution had to be ready by the end of the year. The Draft Constitution needed only typesetting and printing. A printing expert was commissioned to advise us on the quickest way of printing both documents. The Report was rather bulky and we agreed it should be in two volumes, one with the Report itself, the other containing sources of the people’s views. We decided to print these documents ourselves to prevent leakage of the information.

The final chapters of the Draft Constitution were presented to the plenary sessions on 23rd, 24th and 26th December, 1992 and approved article by article with amendments. They had all been collated and compiled into one volume, which was supplied to each Commissioner before the discussion and approval. These dates indicate that we had no Christmas holiday in December 1992. But in one way we were happy that we were going to celebrate
the New Year with a new baby. The final corrections and revisions were incorporated during the remaining days before the Draft Constitution was presented to Government.

I remember that we spent long hours in our computer room proofreading the three documents: Vol. I: Analysis of Views and Recommendations, Vol. II: The Draft Constitution of the Republic of Uganda and Vol. III: The Index of Sources and Views. Many of our staff spent the last two nights in the Computer Room, to produce the documents. I had never experienced such a hectic time in my life.

We had expected that we would present our Report and Draft Constitution to the President in Entebbe. We agreed to hand over the Report to the President instead of the Minister of Constitutional Affairs in order to give it the importance it deserved. However, a day before the appointed date, we were informed that the hand-over would take place at Mbarara, some three hundred kilometres away from Kampala. The time for the journey cut into the time available to us for printing but we managed to print enough copies for presentation to the President.

It was in the morning of 31st December, 1992 that we all gathered in our Conference Room in the Ministry of Constitutional Affairs, in the Postal Building, to sign the Draft Constitution. All the Commissioners signed the Draft Constitution indicating their approval. It was a glorious and memorable moment for all of us. We all congratulated each other. I thanked all the Commissioners and the Secretariat staff for their invaluable contribution, commitment, sacrifice and the spirit of tolerance and compromise in which they had all worked.

Soon after signing the Draft Constitution and the other volumes of the Report, we set off to travel to Mbarara where we presented the Report and Draft Constitution to H. E. the President of Uganda, Yoweri Kaguta Museveni. The ceremony was conducted in Mbarara District Council Hall, in the presence of the First Lady, Janet Museveni, the Third Deputy Prime Minister and Minister of Justice, Constitutional Affairs/Attorney General Hon. A. K. Mayanja, the Minister of State for Constitutional Affairs, Hon. S. K. Njuba, and some local leaders. Some Commissioners were unable to travel to Mbarara due to logistical problems, but more than two-thirds of the Commission attended the ceremony.
At the ceremony, I read a statement entitled *General Introduction to the Report of the Uganda Constitutional Commission* in which I outlined the major recommendations we had made. This statement was in the nature of an Executive Summary and was attached to the Report. The President thanked the Commission for a job well done and promised to hold free and fair elections for the election of delegates of the Constituent Assembly to debate and approve the Draft Constitution.

As soon as we handed over the Report and Draft Constitution to the Government, our recommendations became public. We were able to distribute copies of my statement to government institutions, foreign missions, and civil society, including the press. We did this to allay public fears that the Draft Constitution would be tampered with by Government before publication. We were unable to distribute immediately copies of the Report and Draft Constitution because we had only produced a few copies for presentation to Government.

We left Mbarara quite late and arrived in Kampala just before midnight to witness the end of 1992 and the dawn of 1993. We had given the people of Uganda a New Year present – the Draft Constitution. What a historic moment on which to end the year!

**Winding up the Commission**

Although we had presented the Report and Draft Constitution to Government on 31st December, 1992, we knew that we had to complete some remaining tasks in order to wind up our work honourably. Accordingly, we met soon thereafter, on 5th January, 1993, to plan how to accomplish these tasks. We were thirteen Commissioners at the plenary meeting.

In my communication from the Chair, I paid tribute to all the Commissioners and the staff of the Commission for successfully completing the exercise and handing over the Draft Constitution and the Report on schedule. I saluted the Commissioners for the commitment and dedication they had shown during the whole period of constitution-making. I appreciated their patience and patriotism while working under very difficult conditions, especially during the previous three months when everybody worked so hard but without receiving any money at all, as DANIDA had frozen
the grant account for the Commission. I observed that it would no longer be said that the Commission was holding the nation at ransom as had been claimed. Work had been done and the target accomplished even without money. The Draft Constitution and the Report had been submitted to the President promptly as scheduled.

I welcomed back the Commissioners from Mbarara and informed my colleagues that the response from the public, the Government and the international community had been good so far. I observed that handing over of the documents to Government marked the end of probably the most memorable year in the lives of the members. I once again congratulated them for a job well done and for having beaten the deadline.

I reminded members that the documents handed over had been prepared in a great hurry. They had not been properly edited and had a number of errors. There was therefore, still work to be done to edit them. It was important to complete this work so that the printing of the documents either by Government or by a private firm could start. I asked the members to work out a strategy for completing this part of our work so that the Commission could properly wind up.

The members were happy to note that the President had appreciated their efforts. They however felt that some people in the Government were not doing enough to facilitate their work. They pointed out that it would be difficult to do proper editing work if funds continued to be unavailable. The members also paid tribute to the entire staff of the Commission who had worked so tirelessly to complete the exercise in time. They thanked the Secretary for spearheading the Secretariat and overseeing them through the entire constitution-making process.

Special gratitude was extended to Professor Mutibwa who, as the first UCC Secretary, laid the groundwork for the Secretariat.

The Secretary, Rev. Fr Dr Waliggo, also thanked the Commissioners for having successfully completed the work. He paid tribute to the Secretariat staff for the amount of work they had done. He appreciated that many of them had spent nights at Mengo working. This category included the computer staff, the research experts, the publishing expert, legal officers and research assistants; and
even tea-girls who kept the staff supplied with tea throughout those nights.

The Secretary requested members to be tolerant of each other as the Commission wound up. Some degree of impatience had been noted especially during the hectic days of completing the Report. The Commissioners had worked together for four difficult years and they should endeavour to end amicably. He pleaded that the cooperation and openness which had guided members through thick and thin should endure to the very end. Trying to apportion blame for the woes of the Commission would be divisive and counterproductive. He appealed to members to remain firm and committed as success was already in sight.

The Secretary briefed the members about the financial position and reported that DANIDA had frozen its account because the Ministry had diverted some money from the account without proper authorisation, and some funds had been misappropriated. The Ministry had agreed to refund the missing funds and to prosecute the culprits. The Ministry did not have any funds from the Government; hence the financial crisis.

The members supported the efforts made by the Secretary to ensure proper financial accountability and transparency. I informed members that I had expected DANIDA to release the money as the Commission had fully cooperated with the auditors. And since we had completed our work, I would insist that Government meets all outstanding obligations as it had the primary duty to fund the exercise.

After these preliminary observations, we discussed the programme for completing the remaining tasks:

- Completing the editing of the Report for publication.
- Correcting printing errors in the Draft Constitution.
- Completing compiling sources of People’s Views.
- Completing typing, proofreading and binding memoranda and other views for reference.
- Preparing inventory of the Commission properties and handing them over to the Ministry.
- Preparing a hand-over report to the Ministry.
- Making arrangements for payment of outstanding dues to the Commissioners and staff.
• Making arrangements for printing the Draft Constitution and Report.
• Giving publicity to the Draft Constitution.
• Deciding on the preservation and storage of a Constitutional materials.

The Editing Committee continued with its work and was strengthened by three more Commissioners. Since the draft chapters had been approved and the Draft Constitution formulated on the basis of the recommendations contained in those chapters, the Committee could not reopen any issue or change the substance of the Report. Its duty was to ensure that all the chapters were written in the same style and to incorporate changes made during plenary sessions. The Committee was to correct typing errors, factual errors on years, figures or historical facts or omissions. All the chapters were presented in numerical order and approved during March and April 1993 by Plenary Session.

The Editing Committee was also commissioned to prepare an introduction to the Report to serve as the Executive Summary. There was already a working draft, which I had read at the ceremony of the handing over the Report and Draft Constitution to the President. The introduction was to summarise what each chapter contained in order to prepare the people for what to expect in the Report.

It was agreed that the introduction would contain information on the need for a new constitution; establishment of the Commission; terms of reference; methodology; concerns and aspirations of the people; areas of consensus and areas of controversy; summary of findings and acknowledgements. The introduction was written and approved by the plenary as an integral part of the Report.

The Drafting Committee was given the task of ensuring that the recommendations were in harmony with the Draft Constitution. Some Commissioners were asked to prepare a Bibliography to include in the Report and they did so. The Draft Constitution was left almost intact as nothing of substance was corrected except for printing mistakes. It was the first document of the Commission to be printed by the Ministry and was distributed to the public before we wound up our work.

There was a debate as to whether we should include the statistical analysis in the Index of Sources, and it was agreed that
only a summary be included without an explanation. The Index included the names of various persons and organisations who submitted memoranda to us and the list of seminars conducted by the Commission. We approved all these documents before they were sent for publication.

However, before we completed editing the Report, tragedy struck the Commission. Professor Mudoola, who was the Vice-Chairman of the Commission and also the Chairman of the Editing Committee, was murdered on 22nd February, 1993. He died at Mulago Hospital following injuries he sustained in a grenade attack. The Commission was devastated. Professor Mudoola had attended his last plenary session on 8th January, 1993 and I had last seen him alive when he chaired the Editing Committee on 18th February, 1993. When we met for our plenary session on 16th March, 1993 we observed a moment of silence in his memory. Questions of the security of the Commissioners were raised and it was decided to improve security arrangements for the Commission.

Another issue we had to decide upon was which institution would have the custody of the constitutional materials we had collected and compiled. We discussed this matter in one of our last meetings on 11th May, 1993. The questions of multiplication of copies of memoranda and the sensitivity of the Commission’s documents, for instance, its plenary minutes, were raised.

It was emphasised that the reason for proper storage of materials was to keep the materials for posterity for research, confirmation to the public that the process was not rigged, and for use by the Constituent Assembly. We agreed that six copies of typed memoranda be distributed to the following institutions: Ministry of Justice Library for Government; the Secretariat—also for the Constituent Assembly, National Archives, Makerere University, High Court, and Parliamentary Library.

We also agreed that the originals be kept in the National Archives and photocopies of originals be distributed to the Constituent Assembly Secretariat and Makerere University. Our own confidential documents would be kept in the National Archives with a time embargo. Confidentiality here referred to such matters as letters of reprimand say for neglect of duty, correspondence with the Minister or donors and personal administrative files that
had nothing to do with the content of the draft report. But each Commissioner would be given an update-bound copy of all minutes of plenary sessions. Computer diskettes and cassettes as well as newspapers would be kept by the Ministry.

We agreed that the Secretary would write an administrative hand-over report. The list of inventory would not form part of the report, but would accompany the handing over of all property of the Commission to the Ministry. The Commissioners were requested to cooperate, and the property was handed over without any problem. It was up to the Ministry to arrange for the proper storage of the materials and property.

Finally, we agreed that the handover be made on 28th May 1993. We agreed that there would be no formal ceremony but only a hand-over of the Report, and the property to the Ministry.

We were unable to publish the Report ourselves but the Ministry did so after some time. We were also unable to publicise our Report and Draft Constitution by explaining our recommendations because we did not have the resources to do so. However, I addressed a number of workshops and meetings at which I explained the recommendations in the Draft Constitution. For instance, I addressed the Uganda Journalist Association Press Discourse held at Speke Hotel, Kampala on 17th February, 1993 at which I responded to some of the public reactions to the Draft Constitution, and also explained the proposals for the adoption of the Constitution.

Our outstanding dues were paid only after we had wound up the Commission. But it was a great relief to have finally completed our historic assignment. I believe we did so with honour and with appreciation by the people of Uganda.
Chapter 11

The Constituent Assembly and Beyond

Introduction
The manner in which a constitution is finally adopted by the people is very important in demonstrating its legitimacy, popularity and acceptability. A constitution which is imposed on the people cannot form the basis of a stable, peaceful and democratic governance of the people. To command loyalty, obedience, respect and confidence, the people must identify themselves with it through involvement and a sense of attachment. A good and viable constitution should be generally understood and accepted by the people.

The involvement of the people in constitution-making is therefore important in conferring legitimacy and acceptability to the Constitution. It should also be mentioned that such a democratic and popular method of evolving a constitution serves to explode the misconception commonly held among African leaders that the power to govern means the power to make a constitution. The right to change a constitution should remain with the people, just like the right to elect their leaders.

The view that a constitution should be adopted by a Constituent Assembly especially elected for the purpose of discussing and adopting the Constitution is supported by Professor B. O. Nwabueze in his book, *The Presidential Constitution of Nigeria (1981)*, who argues:

“Since a constituent assembly can reflect the popular will only in an approximate sense, it is necessary that its mandate in this respect should be specifically conferred through an election especially organized for that purpose and at which the people are made clearly to understand that they are voting to authorize the adoption on their behalf of a Constitution.

Whatever its symbolic advantage may be, any process by which an existing legislative assembly without prior popular mandate resolves
The issue of which body would discuss and adopt the new Constitution was hotly debated throughout the period of the Commission’s work and immediately after. The legal position at the time was that the existing NRC and the National Army Council would participate in the process of discussion and adoption of the new Constitution, presumably with other additional representatives. This was contained in amendment to Legal Notice No. 1 of 1986, which stated:

The National Resistance Council and the National Resistance Army Council shall participate in the discussion and promulgation of the Constitution.

This provision was made after the Constitutional Commission was set up but before the then members of the NRC were elected. It was therefore assumed that the members of the NRC had been mandated to adopt the new Constitution. Those against this provision contended that the current members had lost their popular mandate by extending their period in the legislature without the consent of the electorate. Another reason against the existing NRC debating the Constitution was that the Council consisted of many members who had not been elected but had been nominated by the President or had been historical members from the ‘bush days’. It was also pointed out that the elected members had been elected not by direct popular mandate but by electoral colleges. The majority of the people therefore wanted freshly directly elected delegates with a special mandate to discuss the Constitution.

This chapter explains the process of the adoption of the new Constitution, the rationale for establishing a newly elected Constituent Assembly to debate it and the proceedings of the Assembly that led to its adoption. The chapter also outlines the recommendations of the Constitutional Commission contained in its Interim Report on Adoption of the New Constitution, submitted in December 1991. The chapter concludes with the challenges that faced the transitional Government in implementing the new Constitution in order to transfer power to a democratically elected government.
The Constituent Assembly and Beyond

Interim Report on Adoption of the New Constitution

Early in 1991, the Minister of Constitutional Affairs, Hon. S. K. Njuba asked the Commission to comment on aspects of the procedures to be used to adopt the proposed new Constitution. The main concern at the time was the question of the possible composition of a Constituent Assembly. At its plenary session on 8th March, 1991, the Commission considered the subject with reference to the views from the public received up to that point, and subsequently submitted a written report to the Minister.

At the time of that initial report, we had yet to receive the major part of the material containing the views of the public. This is because the formal collection from all parts of Uganda of written memoranda on the constitutional issues was launched in May 1991 and concluded in October 1991. It was in this period that we received the majority of memoranda and oral submissions, totalling at the time approximately 20,000. Many submissions dealt with the adoption processes either directly or indirectly.

It should be observed that the innovative and wide-ranging manner in which many submissions dealt with the adoption issues extended the terms of discussion beyond those covered by the Commission’s Interim Report and necessitated an Interim Report on the people’s views on the issues. The Minister expressed the desire and willingness to study the Commission’s assessment of the people’s views. Accordingly, we prepared the Interim Report and submitted it to the Minister in December 1991.

The Report had three objectives. First, it summarised the people’s views on the adoption processes so as to identify the areas of consensus as well as majority and minority views on various aspects of the issues. Secondly, it offered the Commission’s assessment of those views and its consequential recommendations. Finally, it communicated to the Minister and through him to the Government the views of the people on the critical question of how the new Constitution should be adopted.

The issue of the procedure for the adoption of the new Constitution had been raised in our Guiding Questions on Constitutional Issues published in November 1990. Several questions in the Guide asked the people on how it could be ensured that the new Constitution was regarded as a people’s Constitution...
and on the composition and selection of members of a Constituent Assembly.

We subjected the views expressed on the issue in seminars and memoranda to a statistical analysis, which produced statistical data on the frequency of support of various options, and was summarised in Appendix I to the Interim Report.

We identified several principles, which the people emphasised should apply both to all stages of the constitution-making process and the contents of the new Constitution. These were the principle of participatory democracy by all social forces throughout the process; the principle of an effective safeguard for the new Constitution through its popular debate and adoption so that the people would love, respect, uphold and defend what was adopted; and the principle of freedom of information and speech throughout the constitution-making process, so that all social forces were encouraged to air their views openly and contribute to the debate of the future fundamental law of the nation.

We emphasised these principles in paragraph 27 of the Interim Report:-

In general it is essential for the future of the Nation that all social forces - including the Government, the Army, political parties and all other institutions and pressure groups – respect these principles throughout the entire adoption process. Any methods of adoption of the new Constitution, which are not consistent with them, should be avoided. In particular, care is required to avoid the possibility of domination by sectarian and opportunist interests which are likely to lead to unprincipled compromises at the expense of the interests and the desires of the people for a peaceful future.

As to which body should adopt the Constitution, there were several options proposed. These included the existing NRC, existing NRC while sitting with other representatives, a newly elected NRC, or a newly constituted body established solely for the purpose of debating the Draft Constitution, usually called a Constituent Assembly.

The majority of views were against the NRC adopting the new Constitution. Some of the reasons against the NRC option were:

- The NRC was not an appropriate body to represent the people’s views on the new Constitution because it had many historical and nominated members who were not elected.
• As then composed, the NRC did not represent adequately the interest groups that people wished to be represented on a body debating the new Constitution.
• Some of the current elected members of the NRC might no longer be enjoying the popularity and support of those who elected them, having failed to keep in touch with and adequately represent their electorates.
• The argument as to the lack of a specific mandate of the NRC to debate the Constitution was also given by some in favour of a new body.
• Other submissions argued that the NRC was elected abruptly with little time for voters to reflect on the suitability of candidates, with no campaigning permitted and above all representatives being elected indirectly by only a few voters acting as electoral colleges on behalf of the mass of the people.
• Those who strongly disapproved of the queuing method of voting as being undemocratic and supported only the use of secret ballot regarded the method used in the NRC elections as having been unfair.
• It was also submitted by some that the marked variations in the size of the population of the electorates (counties vary from under 10,000 to over 350,000) had made the representation of the people in NRC based on counties so uneven as to be unfair.

The establishment of an entirely new body mostly referred to as a Constituent Assembly was proposed by many people. The reasons given included:
• A body whose main task is to debate the Draft Constitution would have a clear mandate from the people for the task and is likely to enjoy the confidence of the people more than a body which included debate of the Constitution as just one of its many tasks.
• Newly elected members of a Constituent Assembly were expected to be near the people and to articulate their views better than the existing NRC and might well be selected by the people on quite different criteria from those they might use to select an NRC representative.
• A new body focusing solely on the Constitution and widely representative of the people and major interest groups would give the new Constitution more legitimacy in the eyes of the people than a Constitution debated by the NRC.

**Commission’s recommendations for the Constituent Assembly**

In paragraph 48 of the Interim Report, we stated:

The majority of the submissions to the Commission which have explicitly addressed the issue of the adoption processes support the Constituent Assembly option. It is also consistent with the overwhelming emphasis on participatory democracy in the submissions from the people and their emphasis on the need to adopt the new constitution in a way that differs from the non-participatory methods used for adoption of all past Ugandan constitutions.

We concluded in paragraph 54 by recommending:

In the light of all these considerations, the recommendation of the Commission is that the majority view on this issue should be given effect through the establishment of a Constituent Assembly to debate the Draft Constitution prepared by the Uganda Constitutional Commission.

This recommendation was made in order for the new Constitution to enjoy a wide degree of acceptability among the politically significant forces, for all social forces to participate in the process of adopting the Constitution to dispel fears of manipulation or rigging and to establish a permanent basis for the new Constitution’s legitimacy. We recommended that the Assembly should consist of:

• Newly elected representatives of the people per county and municipality: 167
• Additional elected representatives from counties with large populations: 33
• The Chairmen of District Resistance Councils: 38
• Representatives of specified interest groups and social forces: 41
• Women Representatives per district: 38
• Government ex-officio members: 5
• Government nominees: 5
• Ex-officio members of Uganda Constitutional Commission (without voting rights): 3

**Total: 330**
The interest groups to be represented should be:
• Religious bodies (Catholic Church, Church of Uganda, Orthodox Church, Born Again Churches and Islamic Faith): 10
• The National Resistance Army: 10
• Political parties which participated in the 1980 elections: 10
• Youth: 5
• Workers: 5
• The Disabled: 1

Total: 41

We gave reasons why various special interest groups should be represented in the Constituent Assembly. Women representatives were included in order to redress the gender imbalance and give a voice to women, who though represented in the NRC, were still a disadvantaged group. Women representatives would keep the women actively involved in the discussion and approval of the Constitution.

The ex officio members of Government and nominees, who included the Attorney General, Minister of State for Justice and Constitutional Affairs, the National Political Commissar and the Director of Legal Affairs in the NRM, were to facilitate the Constituent Assembly and bring into the Assembly the wishes and views of the Government, and to act as the link between the Assembly and the Head of State.

Religious bodies play an important role in several sectors of society. They were included because they participated actively in the constitution-making process and had a positive role to play in the Constituent Assembly. Political parties were to be represented in the Constituent Assembly because they had been active actors on the political scene since the 1950s. They still commanded considerable influence, and they could add considerable legitimacy and make a major contribution to the new Constitution.

The youth formed an important section of the nation. They had been actively involved in the constitution-making exercise and they should be given the chance to defend it. They were to be represented because they were usually marginalised whenever they competed with adults, in any type of elections.
The workers had also been marginalised for a long time, yet they were an important group. Their support for the Constitution was very much needed. They had actively participated in the constitution-making process and possessed valuable experience, which could enrich the discussions of the Constituent Assembly. It was therefore desirable for them to be represented.

The army (NRA) had to be represented in the Constituent Assembly because it had played a leading role in bringing about the peace and security that had enabled the exercise of making a new Constitution possible. The ten representatives would be nominated by the Army Council.

We recommended the inclusion of Chairpersons of District Resistance Councils for a number of reasons. The majority views highly recommended the inclusion of RC officials in the Constituent Assembly. We were of the view that the RCs would be adequately represented by the district chairmen who were the leaders of the people in the districts. They had been political heads since 1992 and had just been elected. Their presence in the Constituent Assembly would effectively represent the districts as political units. They would also be able to keep their entire districts involved in the discussion and approval of the Constitution.

Finally, the inclusion of the Chairman, Vice Chairman and Secretary of the Uganda Constitutional Commission (without voting rights) was intended to provide the necessary link between the body which had collected and analysed people’s views and made the Draft Constitution, and the members of the Constituent Assembly who were to discuss the draft.

We recommended that Government should prepare and introduce into the NRC a Bill for a Statute to establish a Constituent Assembly to freely debate and adopt the Draft Constitution and an independent body to organise the elections for the Assembly. We recommended that the Draft Constitution should be distributed widely among the people and debated by various levels of the RCs in order for people to amply discuss it and comment on it before it was tabled in the Constituent Assembly. Wide distribution of the Draft Constitution was also to enable representatives in the Assembly debate it aware of the views of the people they represented. We recommended that members of the NRC should
not be precluded from standing for elections to the Constituent Assembly.

We recommended further that people should be encouraged to comment on the Draft Constitution both before and during the sitting of the Constituent Assembly. For this purpose, public seminars and discussions should be promoted in the national interest. The debates of the Constituent Assembly should be widely publicised on both radio and television and receive the widest possible coverage in all other mass media.

We recommended that the revision of the Draft Constitution should be carried out on a continuous basis while the Constituent Assembly sat and in accordance with voting by the Assembly, so that the final draft would be ready to be adopted by the time the Assembly was dissolved.

It was our recommendation that issues found to be highly controversial by the Constitutional Commission and which the Constituent Assembly was unable to resolve be identified by the Assembly and submitted to a general referendum of all Ugandan voters.

As regards the method of election of delegates to the Assembly, we recommended universal adult suffrage instead of using electoral colleges. Finally, we recommended that voting for elected members of the Constituent Assembly should be by secret ballot, and that the Electoral Commission should ensure that these elections are free from rigging.

The Draft Constitution Simplified

In the middle of 1993 after winding up the Constitutional Commission and returning to the Supreme Court, I felt a need to simplify the Draft Constitution in order to promote its wider dissemination. I also wanted to see that the Draft Constitution was translated into major vernacular languages to enable the ordinary Ugandans who were not literate in English to read and discuss it. The wide dissemination of the draft would also enable the voters to elect delegates on the basis of issues or provisions contained in the draft.

I approached the Canadian High Commissioner to Uganda resident in Nairobi and requested financial assistance to enable us to simplify the Draft Constitution and translate the simplified
version into six local languages. The High Commissioner agreed and provided funds in two phases, the first for the simplification and the second for the translations.

The project was called the Draft Constitution Simplification Project, and was administered by the Law Development Centre, Kampala.

I formed a Simplification Committee under my chairmanship, which consisted of the following members.

• Hon. Lady Justice M. Kireju: Judge of the High Court
• Rev. Dr J. M. Waliggo: Former Commissioner/Secretary UCC
• Mr G. P. Ufoyuru: Former Commissioner, UCC
• Mrs M. Maitum: - Former Commissioner, UCC
• Mr A. Twinomujuni: Director, Law Development Centre.

The Committee was responsible for preparing the simplified version of the Draft Constitution. Every effort was made to retain the basic elements and principles of the original draft.

The booklet, whose title was *The Draft Constitution Simplified* consisted of twenty chapters, which corresponded with the Draft Constitution. It had 44 pages.

In the introduction to the booklet, I observed:

The main purpose of publishing the simplified version has been to make it easily understood and available to the general public most of whom would find the Draft Constitution difficult to understand. This is necessary to enable the people participate better in the process of discussing proposals contained in the Draft Constitution as well as in the election of delegates to the Constituent Assembly. It is aimed at enabling the majority of Ugandans to appreciate the contents of their fundamental law and to contribute meaningfully to the process of democratisation in the country.

It is hoped that this publication will provide quick and easy reference and access to the contents of the Draft Constitution to all Ugandans irrespective of their station in life.’

Each chapter of the Draft Constitution was summarised in a few numbered points or paragraphs. It started with a summary of the core principles in the chapter.

For instance, the heading of Chapter One of the Draft Constitution entitled *The Constitution* was described in the simplified version as *The Supreme Law*. The chapter was summarised in a few words:
'The Constitution is the Supreme Law of Uganda. All powers to make laws come from it. Everything done must be in agreement with it'. Chapter Two which is headed The Republic was simplified to read Our Country. The words at the top read: 'Uganda is a Unitary Republic consisting of Districts'.

The booklet was published in October 1993 by the Law Development Centre and was distributed free to the public. Copies were sent to the Headquarters of the Local Administrations for distribution to the RCs. Other copies were sent to government departments, institutions of learning, NGOs, and many were distributed to candidates for the Constituent Assembly elections.

Soon after the publication of the Draft Constitution Simplified, we embarked on making arrangements for translating it into six major local languages: Luganda, Luo, Runyankole/Rukiga, Runyoro/Rutooro, Ateso and Lugbara.

We commissioned translators from the Department of Languages at Makerere University who did a commendable job. This was a major breakthrough in the process of constitution-making and indeed in democratisation in general as the contents of the Constitution had never been translated into local languages nor had it been disseminated so widely in the country. The translators were:

- Mrs Kasalina Matovu and Mr A. Kiriggwajo for Luganda.
- Mr J. Okot for Luo.
- Ms Byakutaaga for Runyoro/Rutooro.
- Mr C. Oriikiriza and Ms I. Kyomuhendo for Runyankore/Rukiga.
- Mr K. Oluka and Mr H. H. Okurut for Ateso.
- Mr R. Bayo for Lugbara.

The vernacular titles were quite interesting. For instance, the Luganda version was titled Ebbago Lya Semateeka Efunze. The Ateso Aigirunet Naka Ikisila Na Itapapamta. The Luo was Pen-Cik Ma Gicoyo Macego-cego Pi Alara and Runyoro Rutooro Ekihandiiko Ekyorobiibwe Kya Konsitityushoni Etakaliimiibwe.

In order to assist the public in understanding certain key words and phrases, a glossary was included at the end of each translation. Some of the words defined included the executive, legislature, judiciary, constitution, consolidated fund, accountability of public funds, human rights, citizenship, democracy, local government,
and decentralisation. The glossary gave the vernacular translation of the English word or expression.

We followed the same methodology in distributing the translated booklets as for the simplified version although more emphasis was laid on the RCs where the majority of the people who did not understand English lived. We published over 30,000 copies of the English simplified version and about 20,000 copies of each of the translations.

The public found the booklets very useful because they brought back to the people our proposals in the Draft Constitution based on their views. The public was able to participate in the discussion of the Draft Constitution from a point of knowledge. The booklet filled an important gap created by the inaccessibility of the actual Draft Constitution to the public.

**The Constituent Assembly Statute 1993**

The Government accepted most of the recommendations we had made in the *Interim Report on Adoption of the New Constitution* and published a Constituent Assembly Bill. It was debated and passed despite stiff opposition from some members of NRC who feared to stand for the elections to the Constituent Assembly. The main differences between our proposals and the statute related to the composition of the Assembly. Chairmen of District Councils and representatives of the Constitutional Commission were rejected.

The Constituent Assembly Statute 1993 established a Constituent Assembly whose functions were to scrutinise, debate and prepare a final draft of the Constitutional text prepared and submitted to the Minister, by the Constitutional Commission, and to enact and promulgate a new Constitution for Uganda.

The total number of delegates to the Assembly was 288 and consisted of 214 directly elected delegates from electoral areas, 74 representatives of interest groups including 39 women, 10 military officers, 2 trade unionists, two members from each of the four political parties, 4 youths, one disabled person and 10 delegates appointed by the President.

The Assembly had a Chairman and a Deputy Chairman nominated by the President and elected by the delegates of the Assembly at its first sitting presided over by the Chief Justice.
The Statute also established a Commission for the Constituent Assembly consisting of a Commissioner for the Constituent Assembly and two Deputies, appointed by the President on the advice of the Cabinet. The functions of the Commissioners were to organise and conduct elections for the Constituent Assembly to administer the Constituent Assembly and to conduct any referendum required under the statute.

The Commissioner and his two deputies were duly appointed. Mr Steven Akabwai, a former career teacher, was appointed Commissioner. The Commission had offices at Ruth Towers, Kampala, and took over most of the properties of the Constitutional Commission.

**The Referendum Statute 1994**

The Referendum Statute 1994 was enacted in March 1994. It provided for the submission of the questions to the electorate for determination by referendum.

The Minister was given power, if satisfied that it would be in the public interest to do so, with approval of the Legislature, to direct the holding of a referendum either throughout Uganda or in any area of Uganda specified in the order on any question or series of questions specified in the order.

A referendum would also be held if it was required by any law. Any question submitted to a referendum would be framed so as to require no other answer than yes or no.

All persons who were registered to vote for public elections would be eligible to vote in the referendum. All referenda were to be conducted by the Electoral Commission. The Minister was given powers to make regulations prescribing the manner of conducting the referendum.

The Act was made in anticipation that certain constitutional issues during the Constituent Assembly would be submitted to referenda. But in the event no referendum was found necessary to resolve any constitutional issue.

**Elections for the Constituent Assembly**

The Commission for the Constituent Assembly demarcated constituencies, and registered voters. The elections were to be
held on a non-partisan basis. This meant that every candidate was elected on his or her own individual merit, not on political affiliation. Use of political party, tribal or religious affiliations or other sectarian grounds was prohibited. Campaigning was on the basis of candidates’ meetings organised by Returning Officers in each parish in an electoral area. The objective of the meeting was to enable all candidates to meet together and address voters and answer questions from them. Public rallies and public demonstrations in support of candidates were not allowed at candidates’ meetings. But distribution of posters and pamphlets by candidates was allowed.

The Commission for the Constituent Assembly and a number of accredited organisations carried out civic education for voters. The major shortcoming in the election campaign was the use of colossal sums of money by candidates dictated by demands from the voters who expected to gain financially from the elections. The candidates were prepared to spend large sums of money as an investment for the next round of parliamentary elections.

Judith Guest decried this worrying practice when she wrote in *From Chaos to Order: The Politics of Constitution-making in Uganda* (1995, p.90):

> The voters took a type of mercenary rationality not unknown to previous Ugandan elections. While alarming to many, this was more of a rational calculus than the response to strictly sectarian appeals that plagued past elections. It carries its own problems. Persons elected because of the depth of their pockets may not be best equipped to discuss and decide constitutional issues.

The elections were held in March 1994. Local and international observer groups were invited by the Government to monitor the electoral process to ensure that the elections were free and fair. The international observers came from 18 countries and organisations. The overall assessment by the observers was that despite some administrative weaknesses like the failure to adequately display registers, the electoral process was free and fair and that the results reflected the democratic choice of the people of Uganda. The elections represented an important step towards democracy.

The Organisation of African Unity (OAU) Report made the following conclusion about the elections:
All international observers were of the opinion that even though there were some inadequacies and minor violations of the electoral laws, the elections were administratively well conducted and that the conduct of the elections was done in an open and fair manner. This is remarkably so considering the background of the 1980 reportedly rigged elections. There was no evidence of a deliberate and systematic attempt to influence the outcome or alter the results of the elections. The calm atmosphere that prevailed on polling day and the extraordinarily good behaviour of all concerned encouraged people to vote and was the factor that underpinned the high turnout. Generally, the elections can be considered as a reflection of the political choice and aspirations of the people of Uganda. ‘The high sense of participation shown by Ugandans is highly commendable.’ (See Report of Constituent Assembly Election 1994, 1995, page 332)

Nelson Kasfir writing in From Chaos to Order (supra p. 148) observed:

The Constituent Assembly elections could lay claim to being the most free and fair Uganda’s nation-wide elections since independence. But the elections also posed a challenge by adding a transitional stage in the struggle for power and the return to democracy that will be concluded with the elections to a new Parliament under the rules set by the Constitution produced by the Constituent Assembly. At stake are the questions whether the National Resistance Movement (NRM) will be the dominant political force in the years to come and if it is so whether it will radically restructure Ugandan politics as it had promised when it emerged triumphant in 1986 from its five year guerrilla campaign to overthrow the government.

Judith Guest posed another challenge to the delegates of the Constituent Assembly; that is to be prepared to compromise in order to produce a Constitution which was widely accepted:

The recently concluded Constituent Assembly elections represent another hopeful step in Uganda’s progress towards a democratic political system. The political outcome of the elections poses some thorny issues in terms of the next steps in a democratic transition; however it remains to be seen whether the delegates to the CA can devise a productive method of interacting based on compromise to produce a constitution that will be perceived widely as legitimate. (op.cit p.90)

The NRM had more than two-thirds of the delegates in the Assembly. On the whole the quality of delegates and debate was high. There was a mixture of both old and young politicians as well as persons who merely wanted to participate in the discussion
and adoption of the Constitution for historical reasons. There were some members whose contribution was however minimal due to the nature of the subject matter.

The delegates were sworn in on 12th and 13th May, 1994 by the Chief Justice. The delegates thereafter elected a Chairman and Deputy Chairman from among five candidates nominated by the President. The Chairman was Mr James Wapakhabulo, a lawyer and a Minister in the NRM Government. The Deputy Chairperson was Professor V. Mwaka from Makerere University. The Assembly commenced business after it was officially opened by the President of Uganda on 18th May. The President handed over to the Chairman the instruments of the Constituent Assembly, which included the Draft Constitution and the Report of the Constitutional Commission.

Proceedings of the Constituent Assembly

The Assembly prepared and adopted its rules of procedure. The quorum of the Assembly was agreed at half the members. The Constituent Assembly would sit for 32 hours a week. Decisions by the Assembly were to be by consensus as far as possible. Where consensus was not obtained the matter would be resolved by voting. The motion would be carried if it obtained the support of not less than two-thirds of the delegates voting. The matter was regarded as contentious if the motion was supported by the majority of voting delegates, but did not obtain the required two-thirds. A contentious matter would be referred to the Minister who would present it to the nation for resolution through a national referendum. Most of the issues were resolved by consensus or voting and only two issues proved contentious. These were the provisions relating to the Movement political system and the referendum on political systems and the question of holding presidential and parliamentary elections on separate days. The first issue was resolved after delegates supporting the clauses on the Movement and referendum on political parties to be deleted and the presidential and parliamentary elections to be held on the same day failed to get a majority on both issues. They walked out of the Assembly – and then returned. The second issue was resolved after delegates had been sent to their constituencies for consultation. On both issues Movement supporters won the day.
The Constituent Assembly established several committees to facilitate its work. The most important were the Business Committee and the Legal and Drafting Committee. The latter dealt with the content and text of the Constitution and assisted in the wording and synchronising of constitutional amendments during the debate.

The debate went through several stages. The first was the general debate where each of the delegates addressed the Assembly. This was intended to heal wounds of the past, minimise mistrust, build confidence between delegates and lay a foundation for reconciliation, mutual respect and consensus. The second was the consideration stage where the Constituent Assembly began the main task of debating the Constitution chapter by chapter. Initially all the discussions were planned to take place in the plenary session. But it was soon realised that the plenary session were too slow and this necessitated the formation of five Select Committees to handle specific chapters of the Draft Constitution and to submit reports to the general plenary for consideration. This strategy greatly expedited the work of the Assembly.

Some caucuses were formed to organise support for various positions in the Draft Constitution. The main ones were the National Caucus for Democracy (NCD), the NRM and the Buganda Caucuses.

NCD became the principal platform for the immediate restoration of multiparty politics. The NRM caucus was committed to blocking such immediate restoration and advocated for no party (Movement) politics for the time being. The Buganda caucus was intended to restore federalism and consolidate monarchism in Buganda. NCD sought to ally with Buganda on federalism, but this failed because of divergences within the groups.

After 16 months of debate, the Constitution was enacted by the Constituent Assembly on 22rd September, 1995. It was promulgated by the Constituent Assembly in the presence of the President and the members of the National Resistance Council on 8th October, 1995. It is gratifying to note that more than 80% of the Draft Constitution was adopted. I attended the function as a judge fully robed and my contribution was recognised by the President. But the Constituent Assembly did not have the benefit
of official representation of the Commission. The Commission could have presented the proposals in order to guide them. Nor did they have any white paper or Government position on the Draft Constitution. These omissions could have contributed to the acrimonious debates that took place thus prolonging the process of adoption of the Constitution.

The major changes made by the Constituent Assembly to the Draft Constitution included the deletion of the chapter on the National Council of State, moving the National Objectives and Directive Principles of State Policy from the main body of the Constitution to the beginning, the rejection of the President having a running-mate as Vice President. The Constituent Assembly also made new contributions: the establishment of more Constitutional Commissions, the establishment of a new Court of Appeal and an independent Judicial Service Commission, and the vesting of all land in the citizens of Uganda.

It must be observed that the process of making the new Constitution was long, comprehensive and expensive. The process was people-driven and popularised by the Constitutional Commission and Constituent Assembly. It was a learning process and a time to listen to one another and cultivate a democratic culture. It was a healing process as well as a process of nation building. It served to generate national consensus on the most fundamental but contentious issues that had caused social conflict in the country. It offered an opportunity to the people to find viable means of resolving these conflicts through constitutionalism. The process advanced the democratisation of the country by enabling most Ugandans to participate in shaping their destiny and in providing an institutional framework for peaceful co-existence and development. Its achievements far outweighed its failures despite the failure to resolve some outstanding controversial issues. The process may be one of the most unique features to last beyond the Constitution itself. Nevertheless, the making of a popular Constitution is likely to be one of the greatest legacies that the NRM Government will leave behind.
Managing the Transition to a Democratically Elected Government

The greatest initial challenge that faced the Government in the implementation of the new Constitution was the organisation of the presidential, parliamentary and local government elections to return the country to democratic rule after a long period of disenfranchisement. It must be observed that the Constitution gave the mandate to the NRM Government to manage this transitional process. Government managed to discharge this mandate honourably by conducting free and fair election in accordance with the new Constitution at the risk of losing power. This was the litmus test for the viability and legitimacy of the Constitution and the commitment of the Government to democracy and constitutionalism.

Elections are an indispensable prerequisite for democracy. The Constitution vests all power in the hands of the people who must be governed through organs created by the Constitution and only with their consent. In this connection, Article 1 (4) of the Constitution provides:

The people shall express their will and consent on who shall govern them and how they should be governed through regular free and fair elections of their representatives or through referenda.

As Judith Guest has observed (op.cit. p.90):

An election addresses the issue of periodic reaffirmation of or alteration in the representation of the public in the institutions of policy making and governance. Elections confer legitimacy on governments by providing a chance for the citizenry to alter the composition of the government. They can also provide channels for citizen input on policy issues directly, through referenda, or in the extreme case to alter the nature of the government itself, through constitutional exercises.

The new Constitution preserved the NRM Government as the transitional Government and it was to remain in power from the coming into force of the new Constitution until a new government was elected in accordance with the new Constitution. The Government was required to exercise its functions with such modifications as to bring them in conformity with the new Constitution. The Government was mandated to make laws to establish an Interim Election Commission whose composition, appointment and functions were to be in conformity with the new Constitution, to make interim laws for elections, and tribunals for determination of disputes and appeals.
The NRC enacted the necessary legislation to operationalise the Constitution and regulate the organisation of the elections. These were Presidential Elections (Interim Provisions) Statute 1996 and the Parliamentary Elections (Interim Provisions) Statute 1996. The two elections were to be held separately.

The NRC enacted the Constitution (Consequential Provisions) Statute 1996 (No. 12 of 1996) in May 1996. The objective of the Statute was to make provision for necessary and practical measures for giving effect to the Constitution pending the election of a Parliament and a president under the Constitution.

The Statute provided that pending the appointment of new Commissions, or Constitutional offices, in accordance with Article 272 of the Constitution, there would be an Interim Judicial Service Commission, and an Interim Human Rights Commission, with the composition provided for in the Constitution. The members of the Interim Electoral Commission and the persons holding office as Inspector General of Government and Deputy Inspector General of Government immediately before the coming into force of the Constitution would continue to hold office. The existing Leadership Code would continue to apply until a new one was enacted, and would be enforced by the Inspectorate of Government.

Also saved and continued in force were existing institutions and bodies, pending cases before the courts and pending matters before any authority.

Until the assumption of office of the first President elected under the Constitution, the President was given power, to amend or modify any law in existence immediately before the coming into force of the new Constitution, for the purpose of bringing that law into conformity with the Constitution. The President had to do so by statutory instrument made with the approval of the Legislature.

The Judicature Statute 1996 (No. 13 of 1996) was also passed in May 1996. Its objective was to consolidate, revise and amend the Judicature Act, 1967 to take account of the provision of the Constitution relating to the Judiciary. It specifically provided for the composition of the superior courts of Judicature, namely the Supreme Court, the Court of Appeal/Constitutional Court and the High Court, their jurisdiction and the law applicable.

The Constitution prescribed the manner in which the President would be elected, the qualifications for the office and the procedure
for nomination. Article 193 (10) provides that the ‘election of the President shall be by universal adult suffrage through a secret ballot.’ The Presidential Elections (Interim Provisions) Statute 1996 (No. 3 of 1996) was enacted in February 1996.

The Statute laid down the qualifications for candidates, and provided that the election of the President should be by universal adult suffrage through a secret ballot using one ballot for all candidates at each polling station. The procedure for nomination of candidates, the method of public campaigning and security and facilitation of candidates were provided for. The procedure for announcing results and for challenging results in the Supreme Court was laid down in the Statute.

Three candidates were nominated as presidential candidates, namely Yoweri Kaguta Museveni, Muhammad Kibirige Mayanja and Dr Paul Kawanga Ssemogerere. They were all provided with equal facilitation of transport and funds for general expenses as well as equal time for campaign and use of public media in an attempt to level the ground. Candidates were given 39 days to campaign by holding meetings or joint meetings if arranged by the Electoral Commission. Each candidate made a serious and national campaign. The multipartists joined hands to support Dr Ssemogerere. Later it was said that the cooperation between Dr Ssemogerere’s DP and Dr Obote’s UPC may have cost Ssemogerere votes in Buganda. But it may have won him seats in the North.

The presidential election was held on 9th May, 1996. Turn-out was very high, estimated at 79 per cent of the registered voters. The election was won by President Museveni with 74.3 per cent of the votes. Dr Ssemogerere received 23.6 per cent and Kibirige Mayanja 2.1 per cent. The election was viewed by both local and international observers as free and fair and there were no petitions against the successful candidate. The President was sworn in on 12th May, 1996. At his swearing in ceremony, President Museveni declared that he had largely delivered the fundamental change promised at his assumption of power. What was needed was to consolidate the achievements made during the previous 10 years and to consolidate the institutions so that they become permanent and unshakeable. He returned to his popular theme of building institutions rooted in the soils of relevant societies:
In all the mature democracies of the world today democratisation is an ongoing process and not an event. Democratic institutions have developed within the soils of the successful democracies over a long period of time and have never been overnight implants from elsewhere. I therefore call upon all people of good will to give Ugandans the opportunity and the time to develop democratic institutions that suit their political and socio-economic conditions, institutions that can ensure security, peace and prosperity and deliver good governance.

The next task was to organise parliamentary elections. The Constitution prescribed the composition and the different modes of appointing each category of Members of Parliament. There were directly elected members to represent constituencies to be elected by universal adult suffrage and by secret ballot. The representation and manner of election of women representatives for each district, and the members of representatives of the army, youth, workers, persons with disabilities were to be determined by Parliament.

The NRC decided that the army would have 10 representatives, workers three and five each for the youth and persons with disabilities. The procedure for the election of these special interest groups was prescribed by the Minister of State for Constitutional Affairs. They were to be elected by their respective named organisations.

In order to provide for the conduct of parliamentary elections, the Parliamentary Elections (Interim) Provisions Statute 1996 (No. 4 of 1996) was made in February 1996. It provided, in accordance with Article 264 of the Constitution, for the establishment of an Interim Electoral Commission, its composition, appointment and functions. It also made interim provisions for parliamentary elections and made other provisions to give effect to Article 264 of the Constitution.

The Interim Electoral Commission in existence immediately before the commencement of the Statute under the Interim Electoral Commission Statute 1995 (No. 5 of 1995) was to continue in existence subject to the provisions of this Statute and would be deemed duly established for purposes of Article 264 of the Constitution. The Commission consisted of a Chairperson and five other members appointed by the President with the approval of the Legislature. The members of the Interim Electoral Commission were to continue in office in the corresponding offices until
the appointment of the first permanent Electoral Commission. The Commission had a Secretary who was to be a public officer appointed by the Commission on the advice of the Public Service Commission. The Commission was to be self-accounting.

The functions of the Commission included:

- To ensure that free and fair elections were held.
- To organise and conduct elections and referenda.
- To demarcate constituencies.
- To ascertain and declare results.
- To compile voters’ registers.
- To determine election complaints.
- To formulate and implement civic education programmes relating to elections.

Qualifications of Members of Parliament were laid down. The procedures for campaigning, voting and counting of votes and declaration of results were provided in the Statute. The Commission had to appoint returning officers for each electoral district. The returning officer had the power to appoint presiding officers for each polling station.

The country was divided into 214 constituencies for directly elected members, and there were 39 electoral colleges for women. The elections were held on the basis of the no-party system based on individual merit. There were 862 candidates for the 214 constituencies. The campaign period was 45 days and was based on joint meetings. The elections were held on different dates for different special interest groups. The turn up was high. Although the elections were generally free and fair, there were allegations of intimidation by candidates or their agents, use of abusive language and ferrying of supporters from one point to another. The international observer group noted some shortcomings on polling day including canvassing by individual candidates, lack of screens around ballot marking tables thus affecting secrecy, illegal cards, and some district officials actively supporting particular candidates especially in the Northern and Western regions, but they concluded:

The elections we observed from 24th to 28th June were transparent. Despite the deficiencies that we have outlined the International Observer Group believes that true parliamentary elections mark a further positive step within the transition process in Uganda.
Local Government elections formed the last stage in the electoral process to return the country to democratic governance in accordance with the new Constitution. These elections were conducted over a period of nine months from August 1997 to April 1998. The elections were the first major activity undertaken under a permanent Electoral Commission set up in November 1996. They were conducted after the enactment of the Local Governments Act 1997.

The election process was not the same for all units of local government. Secret ballot was used for the higher level, namely for District/City and Municipality chairpersons and councillors other than for special interest groups, and lining up for the election of chairpersons and councillors of units of sub-county level and below.

Organising such elections throughout the country was a big achievement by the Electoral Commission. It had to carry out the demarcation of electoral areas, training officials, voter education and updating of voter registers. The total number of polling stations and candidates was very high. Elections were successfully conducted in 97% of the electoral areas. As a result of the problems experienced during the elections, the Electoral Commission made very good recommendations which deserved serious consideration by the Government. They included:

- Parliament should establish a Parliamentary Sub-Committee on electoral reform to consider matters relating to reforms in the electoral system and to enable the expeditious enactment of legislation which gives effect to reforms considered necessary;
- Government should introduce a bar-coded national identity card or voter card with owner's photograph to avoid double registration and impersonation at registration and voting;
- Candidates with qualifications assumed to be equivalent to Advanced level certificates should submit their certificates to UNEB for verification before nominations;
- Candidates proved by court or the Electoral Commission to have been involved in electoral malpractice should be disqualified from standing for elections; and
- Voting for councillors to Local Governments including women councillors should be by secret ballot.
Some of these recommendations were accepted by Government and used to improve the electoral laws and processes. Other problems targeted by the recommendations still dog the electoral process.

The first responsibility of the elected President was the appointment of his cabinet, consisting of a vice president and cabinet ministers with the approval of Parliament. The Constituent Assembly had rejected the proposal in the Draft Constitution to have a Vice President elected as running mate of the President. The Constituent Assembly had also modified the proposal in the Draft Constitution limiting the number of Cabinet Ministers and Ministers of State to 21 in each case, and included a clause enabling the President to increase the number with the approval of Parliament. The proposal to limit the number of Ministers was a reflection of the views of the people who did not want a large Cabinet. The President however asked Parliament to increase the numbers and his request was granted. Parliament approved the nominated Ministers apparently without strict screening of candidates. The number of Ministers appeared too large.

The President was required by the Constitution to appoint members of certain constitutional offices within six months of his election. He appointed with the approval of Parliament members of the Uganda Human Rights Commission, the Electoral Commission, the Inspector General of Government and Deputy Inspector General of Government and the Judicial Service Commission. I was appointed Chairperson of the Judicial Service Commission for a period of four years. The President had to ensure that all his political appointments met the constitutional requirement that ‘the composition of Government shall be broadly representative of the character and social diversity of the country’ as required by paragraph II (iv) of the National objectives and Directive Principles of State Policy.

The President then embarked on implementing his election manifesto. The key elements in the manifesto included the modernisation of Uganda through industrialisation and democracy, the modernisation of agriculture and education. These programmes were a follow-up of the policy of liberalisation of the economy
through macro-economic reform and privatisation as the engine of growth. Uganda’s economy had been growing at an average rate of 6 percent as a result of these bold economic reforms.

One outstanding achievement of the President’s manifesto was the Universal Primary Education (UPE) Programme which introduced free primary education for four children in each family and doubled the number of children going to school. Education was vital not only for modernisation but also for the sustainability of democracy.

**Laws implementing the Constitution**


The Movement Act was enacted in August 1997. It was intended to make provision for the Movement political system pursuant to Article 70 of the Constitution. The Act establishes the organs of the Movement and regulates their operation. The organs consist of the National Conference, the National Executive Committee, the Secretariat, and lower organs under the Movement which include District, Division and Municipal, Sub-county and Town council Movement Committees, Parish and Village Movement Committees.

The composition of the National Conference includes the Chairperson, the Vice Chairperson, the National Political Commissar, all Members of Parliament, all members of every District Executive Committee, the Chairpersons of all Division, Municipality, Sub-county and Town Council Movement Committees; representatives of women, the youth, workers, Persons with Disabilities; representatives of Uganda People’s Defence Forces, Uganda Police Force and Uganda Prisons Service; all Resident District Commissioners, representatives of the Private Sector, and representatives of the Veterans’ Association.
The Chairperson and Vice Chairperson of the National Conference are elected by the National Conference. The functions of the National Conference are laid down. They include to initiate, formulate and evolve national consensus on key political, economic and social policies in Uganda; to mobilise the people, to ensure optimal participation in political, economic and social policies in the country, to advise on and review implementation of key national policies; to advise Parliament and the Executive on the policy of the movement, making such recommendations as it may think fit, promote national unity and solidarity, and review the implementation of Government programmes and make appropriate recommendations on them to the Executive and Parliament.

The Chairperson is the head of the Movement and Chairperson of the National Conference and National Executive Committee. The National Conference ordinarily meets once in every two years. Expenses of the meetings are borne by the Government.

The National Executive Committee of the National Conference consists of the Chairperson, the Vice Chairperson, the National Political Commissar and most of the representatives of the various organisations represented in the National Conference, but in reduced numbers. Some of the organs of the Movement like Sub-county, Parish and Village Movement Committees are not represented on the National Executive Committee.

The functions of the National Executive Committee include to initiate policy and other measures considered by the National Conference, to deal with policy matters on behalf of the National Conference and to be responsible for the day-to-day affairs of the Conference. The National Political Commissar is the Secretary of the National Executive Committee.

The National Political Commissar is the head of the Secretariat. The Secretariat has a number of Directors and Deputy Directors as the National Executive Committee may establish within the Secretariat. The Secretariat may have such staff as the National Executive Committee may appoint.

The roles of the Secretariat include giving effect to the decisions of the National Conference and the Executive Committee, being responsible for national mobilisation of the people, and providing administrative and Secretariat services to the National Conference and Executive Committee. The Movement’s funds consist of monies
appropriated by Parliament, as well as grants and donations within and outside Uganda, given with the approval of the Minister of Finance. All assets and property of the organs of the Movement are deemed to be assets of the State.

The term of the members of Movement organs is five years from the first meeting of the National Conference. The Movement Act has effect only when the Movement political system is in force in Uganda.

It has been argued that the Movement is a political organisation save in name because it has all the attributes of a political party. It is further contended that the Movement is a one-party organisation not a political system and therefore it is not a democratic political system as envisaged in Article 70 of the Constitution. The Movement system is further criticised as being non-inclusive nor broad-based and poised to monopolise political space and power as a permanent political system. The argument borders on contending that the Act is a violation of basic human rights especially the freedom of association and is therefore inconsistent with the Constitution.

Indeed, Dr P. K. Ssemwogere and Others v. Attorney General, Constitutional Petition No. 5 of 2002, the Constitutional Court held that the Movement is a political organisation. It is interesting to note that the Movement has since transformed itself into a political organisation and registered as such. The future of the Movement Act remains to be seen.

The Local Governments Act 1997 was made in March 1997. The purpose of the law was to amend, consolidate and streamline the existing law on local government in line with the Constitution; to give effect to the decentralisation and devolution of functions, powers and services; to provide for the decentralisation at all levels of local governments; to ensure good governance and democratic participation in, and control of, decision-making by the people; to provide for revenue and the political and administrative set up of local governments; and to provide for the election of local councils.

The objectives of the Act are to give full effect to the decentralisation of powers, responsibilities and services at all levels of local governments; to ensure democratic participation in and control of decision-making by the people concerned; to establish
a democratic, political and gender-sensitive administrative set-up in local governments; to establish sources of revenue and financial accountability; to provide for the election of local councils and to establish and provide for the composition of interim councils.

The Act provides that the system of local governments shall be based on the district as a unit under which there shall be lower governments and administrative units. The local government in a district rural area consists of a district council and sub-county councils. The local government in a municipality consists of a municipal council and municipal division councils. The local government in a town is the town council. A city is equivalent to a district. Local governments are bodies corporate.

Two or more districts may in accordance with Article 178 of the Constitution cooperate in the areas of culture and development, and for the purpose of the cooperation, form and support councils, trust funds or a secretariat.

The Act lays down the local government set-up. The council is the highest political authority within the area of jurisdiction of a local government and has legislative and executive powers to be exercised in accordance with the Constitution and the Act.

The composition of various district councils is laid down. The District Council consists of the district chairperson, one councillor directly elected to represent an electoral area, two councillors, one of whom must be a female youth, representing the youth in the district, two councillors with disabilities, one of whom must be a female representing Persons With Disabilities, and women councillors forming one-third of the council such that the councillors elected shall form two-thirds of the council.

Each District has a Speaker and Deputy Speaker elected by the council from among members of the council. The district has a Chairperson who is the political head of the district, and is elected by universal adult suffrage through a secret ballot. The functions of the chairperson include presiding at the Executive Committee meeting, monitoring the general administration of the district and implementing decisions of the council. The chairperson also coordinates and monitors government functions as between the district and the Government. The chairperson has a duty to abide by, uphold and safeguard the Constitution and the laws made by
the district and to endeavour to promote the welfare of the citizens in the district.

The District Executive Committee consists of the Chairperson, the Vice Chairperson and such number of secretaries, not exceeding five, as the council may determine. At least one of the offices of secretaries must be held by a female. Secretaries are nominated by the Chairperson and approved by the council.

The Act lays down in Section 30 functions, powers and services of a local government council. The services which are excluded from the jurisdiction of local governments are listed in Part I of the 2nd schedule to the Act. The functions and services, a local government is required to perform are specified in Part 2 of the second schedule to the Act.

The composition and functions of lower local government councils are also set out in the Act. A district council has power to make laws not inconsistent with the Constitution or any other law made by Parliament which power shall be exercised by the passing of local bills into ordinances by the council and signed by the Chairperson. After the local bill has been passed by the district council, it must be forwarded to the Attorney General through the Minister to certify that the local bill is not inconsistent with the Constitution or any other law before the Chairperson signs the law. Thereafter the ordinance must be published in the Gazette. Lower councils have power to make by-laws.

Each District Council has an independent Public Service Commission which is responsible for appointing persons who hold public offices in the District Councils. A district has a Chief Administrative Officer (CAO) appointed by the District Service Commission. The CAO is the head of the public service in the district, head of administration in the District Council, and also its accounting officer.

The Act contains financial provisions relating to local governments. It establishes the Local Government Finance Commission and sets out its composition and functions. The Commission consists of seven members nominated for appointment by the President. It has a Chairperson and Vice chairperson, and a Secretariat.
The functions of the Commission include advising the President on matters concerning the distribution of revenue between the Government and local governments and the allocation to each local government of money out of the consolidated fund; considering and recommending to the President potential sources of revenue for local governments; dealing with disputes between local governments over financial matters and tendering advice relating to the parties involved, the Minister of Local Government and the Minister of Finance, as may be necessary.

The Act sets out the local governments’ budgetary powers and procedures, revenue and accounting regulations, power to levy taxes, grants from the Government, borrowing powers, percentage of revenue to be retained or distributed to lower councils, audit of accounts and district tender board. There are detailed provisions governing election to the various levels of councils. Elections are organised by the Electoral Commission, every four years.


The Land Act was enacted in July 1998. The Act amended as well as consolidated the law relating to tenure, ownership and management of land. Article 237 (9) of the Constitution had required Parliament to enact such a law within two years of the Constitution’s coming into force. The Article provided:

(9) Within two years after the first sitting of Parliament elected under this Constitution, Parliament shall enact a law -
(a) regulating the relationship between the lawful or bona fide occupants of land referred to in clause (8) of this Article and the registered owners of that land;
(b) providing for the acquisition of a registrable interest in the land by the occupant.’

Article 237(8) had been controversial in the Constituent Assembly since it sought to give security of tenure to lawful or bona fide occupants of mailo, freehold or leasehold land against the landlords, many of whom were absentee landlords. The conflict between the interests of the landlords and the tenants was not fully resolved in the Constituent Assembly, and it was ordained in
the Constitution that the relationship and incidents of ownership would be defined by a law enacted by Parliament.

Both the Constitution and the Land Act were intended to create far-reaching reforms in land laws with a view to facilitating and expediting development. Uganda does not have a land policy but the law reform process was predicated on three major principles, identified by the Constitutional Commission:

1. That a good land tenure system should support agricultural development and overall economic development through the functioning of a land market which permits those who have rights to voluntarily sell their land, and for progressive farmers to gain access to land.

2. That a good land tenure should not force people off the land, and instead the land system should protect people’s rights in land tenure and ensure social justice, as enshrined in the Constitution.

3. That a good land tenure system should ensure sustainable utilisation of land as a resource and protection of the environment. In the background was also the Movement Government policy of correcting the wrongs of the past emanating from the 1900 Buganda Agreement.

To achieve the above objectives, the Land Act set up various institutions to manage land and settle disputes. The District Land Boards were to hold and allocate land not owned by any person and to facilitate the registration of interests. The Parish and Urban Land Committees were to assist the District Land Boards in processing applications. The Act defines the various land tenures and ‘lawful occupant’ and ‘bona fide occupant’. These were referred to as tenants by occupancy and were given rights to enjoy security of tenure on payment of nominal annual ground rent of one thousand shillings (now about half a US dollar). Such a tenant is free to apply to the registered tenant for a certificate of occupancy or may exercise the option to purchase his or her interest. Persons holding customary ownership on former public land may apply for a certificate of occupancy or to convert their interest into freehold. In handling these applications consideration must be given to the rights of women, children and Persons With Disabilities.
A land fund was established to finance loans to tenants by occupancy to acquire registrable interest, to enable Government to purchase land for acquisition by tenants, and to assist others to purchase land. This fund has now been set up and has started receiving applications.

Land tribunals were set up at District, Urban and Sub-county levels to replace magistrates’ courts and local council courts in resolving land disputes. A more efficient, cheaper, speedier and more accessible system of settling such disputes was considered imperative. Each tribunal consists of three members. The Chairman of the District Land Tribunal must be a qualified lawyer.

The jurisdiction of District Land Tribunals includes determination of disputes relating to the grant, lease, repossession, transfer, or acquisition of land by individuals, the Uganda Land Commission, or other authority; determining disputes relating to compensation paid for land acquired by Government; and determining other land disputes within their jurisdiction. The members of the tribunals are appointed by the Chief Justice, on the advice of the Judicial Service Commission. The Chief Justice also makes rules for their operation.

The main problem with the implementation of the Land Act is that it has established too many institutions which government is finding difficult to finance. There is consensus on the need to review the Act and work on this has been in progress for some time. A Land (Amendment) Act 2003 has already been passed by Parliament.

The Presidential Emoluments and Benefits Act 1998 provides for the salaries, allowances and other benefits of a President and Vice President in accordance with Articles 106 and 108 of the Constitution. The salaries and benefits of the President and Vice President are specified in schedules 1 and 2. A former President is entitled to the benefits specified in the 3rd schedule if he or she is not removed from office in accordance with Article 107(1) of the Constitution. Certain disqualifications for entitlement to the benefits are also specified. These include not being ordinarily resident in Uganda, engaging in and being convicted of subversive activities, or having been convicted of embezzlement of public funds, or engaging in extra-judicial killing. A former Vice President
is not entitled to these benefits, but Parliament was given power by resolution to make such adjustments as may be necessary to accommodate any person who acts temporarily in the office of the President or Vice President.

The Ratification of Treaties Act 1998 provided for the procedure for ratification of treaties in accordance with Article 123 of the Constitution. The Act specifies which treaties were to be ratified by Cabinet and which would be ratified by Parliament after the Attorney General has certified that implementation required amendment of the Constitution. However, all treaties ratified by the cabinet are required to be laid before Parliament as soon as possible.

The Referendum and other Provisions Act 1999, was enacted in July 1999. Its object was to make provisions for the holding of referenda in pursuance of the provisions of Articles 74 and 76 of the Constitution; to give effect to Articles 255, 259 and 271 of the Constitution; to cater for any other referendum required to determine any matter; to cater for a change in the political system by petition of district councils and a resolution of Parliament under clause (2) of Article 74 of the Constitution and to repeal and replace the Referendum Statute 1994.

The validity of this Act was however successfully challenged in the Constitutional Court, in Ssemogerere and Another v. Attorney General, Constitutional Petition No. 3 of 1999 on the grounds that the method of voting used was contrary to the provisions of the Constitution and that it was passed without a quorum in Parliament. The Act was declared null and void for being inconsistent with the Constitution.

The Referendum (Political Systems) Act 2000 was enacted to replace the impugned Act. A referendum to determine the political system was held in accordance with the Act. The people overwhelmingly chose the Movement Political System.

Parliament also enacted the Other Political Systems Act in January 2000. This makes provisions for Political Systems to be proposed in addition to the Movement political system and the multiparty political system provided for in Article 69 of the Constitution.
The Act provides that no political system shall be accepted as any other democratic and representative political system for the purpose of Article 69 (2)(c) of the Constitution for being proposed for voting, at a referendum under Article 74(1) of the Constitution or for the purposes of a resolution of Parliament under Article 74(2) unless that political system has, upon a petition, been approved by Parliament before the referendum in question or the parliamentary resolution under Article 74(2) of the Constitution.

Any other democratic and representative system is defined as a democratic and representative political system, which is different from the Movement political system and the multiparty political system within the meaning of Articles 70 and 71 of the Constitution respectively.

Petitions for approval of other political systems are addressed to the Electoral Commission and supported by not less than one hundred other persons registered as voters on the national voters’ register. After the Commission has verified the petition, it is submitted to the Minister for Constitutional Affairs who lays it before Parliament, which approves it by resolution and then it is published in the gazette.

The democratic criteria, which the political system must meet before it is approved by Parliament, are that the system:

1. empowers and encourages the active participation of all citizens at all levels in their governance;
2. provides access for all the people of Uganda to leadership positions at all levels;
3. provides for the election of a government, which shall be broadly representative of the national character and social diversity of the country;
4. provides for all political and civic organisations aspiring to manage public affairs under the proposed system, including the organs of the political system to conform to democratic principles in their internal organisation and practice;
5. differs from existing political systems already accepted in or for the purposes of Article 69 of the Constitution.

It is difficult to envisage what forms such other political systems would take, but this would constitute a ‘third wave’ in the politics of Uganda. A combination of some of the elements of the
Movement and multiparty political systems has been mooted. It was considered by the Constitutional Commission, but found unworkable.

This outline of laws implementing the Constitution, demonstrates the initial challenges that faced the Government and Parliament in implementing the Constitution. Making appropriate laws needed as much negotiation, consultation, and consensus building, as did the formulation of the Constitution. This is largely because many of the issues Parliament was resolving had been contentious in the Constituent Assembly and had been left for Parliament to consider and resolve. But the making of these laws also proves the point that a constitution only sets out the general framework and principles of government. It does not contain detailed structures and rules to promote governance and development.

The fact that these laws were passed by Parliament demonstrates the growing democratic culture of constitutionalism, good governance and the rule of law, which are the foundations of a constitutional state, which was ushered in by the new Constitution.

Yet a lot remains to be done: developing a legal framework to implement the Constitution is a lengthy process. It involves not only the making of new laws but also the review of laws existing prior to the new Constitution, in order to bring them in line with the new one. The latter is largely still an outstanding task.
Chapter 12

Uniquely Ugandan: The 1995 Constitution

Introduction
The new Constitution of the Republic of Uganda was adopted on 22nd September, 1995.

In the previous chapters, I have given a detailed account of the process of making the 1995 Constitution of Uganda. The process was unique in that neither Uganda nor any other country I am aware of had gone through such a lengthy, comprehensive and participatory exercise in formulating its constitutional order. Both the breadth and quality of consultation by the Constitutional Commission and the quality of representation and debate in the Constituent Assembly were unequalled in the history of this country and elsewhere. The constitutional issues that were to be resolved were intricate, controversial and all encompassing, and the manner in which many of them were resolved, was equally unique and breathtaking.

The uniqueness of the process influenced the contents of the Constitution and in turn produced a unique output. The Constitution introduced many innovations which did not exist in the previous three Uganda Constitutions, and which are rarely found in constitutions of other countries. This outcome was inevitable because the objective of formulating a new Constitution for the country was to produce a constitutional framework based on the views of the people of Uganda and one which reflected their values, norms and aspirations for the future. It was a constitution which was to be home-grown and socially relevant, addressing their historical past and their developmental goals and challenges, not a copy-cat constitution of another country. In this connection, the people of Uganda agreed with the views of Mwalimu Julius Nyerere, former President of Tanzania, when he declared in 1965:
We refuse to adopt institutions of other countries even where they have served those countries well because it is our conditions that have to be served by our institutions. We refuse to put ourselves in a strait-jacket of constitutional devices not of our own making. The constitution of Tanzania must serve the people of Tanzania. We do not intend that the people of Tanzania should serve the constitution.

President Yoweri Museveni, while addressing the African Leaders Forum, in Kampala, in 1991, emphasised the importance of ideological independence and the need for political institutions to be rooted in the social conditions of the people. He observed:

However the movement for democracy will not be consolidated if it annexes itself to extra-continental models, on the basis of the usual flunkeyism. In order not to pollute African democratic movement of which NRM was one of the earliest manifestations, we must emphasise ideological independence. This process which we are establishing must fight relentlessly for democracy. It was the love of democracy that took some of us to the bush to fight dictatorship. Democracy is a good form of governance; but it should take many forms. The basic elements which I referred to earlier hold true to all forms. My suggestion is that while not compromising these basic elements, the people should be allowed to choose the forms to suit their own specific circumstances.

In this chapter, I discuss what innovations were introduced by the new Constitution; new both to the constitutional orders of Uganda and Africa as well as to countries outside Africa. I explain how the Constitution is different from the three previous Ugandan Constitutions. I give reasons to justify those innovations. I shall finally assess the impact of the innovations on the constitutional order.

The innovations introduced in the Constitution include:

- A statement of the vision of the Constitution in the preamble and national goals and directive principles of state policy.
- A declaration of national goals and directive principles of state policy to guide state agencies in governance.
- Recognition of the sovereignty of the people as the source and repository of political power and authority and their right to choose their leaders and be governed only with their consent.
- The introduction of measures to safeguard the constitutional order and promote constitutionalism by making it a duty of state organs, leaders, and citizens to protect the Constitution
at all times, to respect its supremacy, and by outlawing coups d'etat, and requiring all able bodied citizens to undergo military training to defend the Constitution. The amendment of the Constitution is made rigid.

• A liberal and comprehensive bill of rights guaranteeing the universally recognised fundamental rights and freedoms to all persons and disadvantaged groups in Uganda, and establishment of effective institutions and processes for the protection and enforcement of basic human rights.

• A redefinition of citizenship by specifying the indigenous communities from which citizenship arises and by allowing non-Ugandans who have lived in Uganda for a long period to acquire citizenship. The duties of citizenship are also laid down.

• The introduction of two or more political systems consisting of movement and multiparty systems, or any other democratic system with a right reserved to Ugandans to decide from time to time the political system they desire to be governed under, through referenda.

• The introduction of a popularly elected President with constitutional limitations on the term of office and on the exercise of executive powers.

• The establishment of a strong and independent Parliament with powers to provide checks and balances on the executive and promote the principle of separation of powers.

• The strengthening of the independence of the Judiciary with financial autonomy and the establishment of the Court of Appeal as the Constitutional Court with powers of judicial review, and an independent Judicial Service Commission, separate from the Judiciary.

• The introduction of a decentralised democratic system of local self government with functions, powers and services which are devolved to local government entrenched in the Constitution with sources of funds provided for.

• The recognition and restoration of traditional institutions with cultural and developmental roles only, without political powers.
• The vesting of all land in the people and not the state to hold in accordance with the Constitution and laws and the provision of security of tenure to bona fide and lawful occupants, with special land tribunals to resolve land disputes.
• Provisions to protect and preserve the environment were introduced.
• The domestication of the military by defining the characteristics of the army, its structure, composition and roles, and civil-military relations and the representation of the Army in Parliament.
• The establishment of institutions to promote good governance, accountability, probity and administrative justice including the leadership code and the Inspector General of Government.
• The creation of a host of politically neutral zones in the form of constitutional commissions to provide independent, professional and expert service and advice on public service appointments, elections, human rights, ethics and integrity and national planning.

The Vision of the New Constitution
The new Constitution was intended to promote a fundamental change in the politics of Uganda and to give the country a fresh start. A key element of the fundamental change was the return of the country to a democratic and constitutional path. In order to realise this change, the new Constitution had to portray a new vision for the country.

In general, a vision is a statement of long term goals that identifies the challenges implied by those goals and proposes a set of strategies to meet them. In another sense a vision is a manifesto by the people on what direction they want the development of their country to take. It portrays an ideal state of being at a future point and what kind of society the people want to create. A vision must be forward-looking, progressive, prophetic, idealistic, speculative and even romantic. But it must also portray a realistic credible and attractive future for the country.

In formulating the vision of the new Constitution, we took into account several factors. We were guided by the objectives of the Constitution as spelt out in Section 4 of the Uganda Constitutional
Commission Statute, 1988, and other objectives identified during the constitutional debate. We were alive to the constitutional issues which formed the constitutional agenda. We considered the historical background and political experience Uganda had passed through from pre-colonial times, through colonial and post colonial periods to the current time. We referred to the country’s social and cultural background and the state of the economy. We paid special attention to the views of the people and their aspirations for the future.

The vision we portrayed in the Constitution also considered the current status of the country as a platform for its formulation. The vision provided a snapshot of the desirable future. It portrayed a future shared and cherished by the entire population. It reflected national consensus. It was intended to jumpstart the development process by marshalling natural resources and people’s energies towards its achievement. We proposed a vision which would enhance national pride, dignity, hope and a sense of purpose. Above all we desired to have a vision which symbolised national unity.

The vision of the new Constitution was incorporated mainly in the Preamble and the National Goals and Directive Principles of State Policy. But the entire Constitution reflects the vision the people had for their country. The Bill of Rights in Chapter Four of the Constitution is of special significance in expounding this vision because a bill that guarantees fundamental rights and freedoms is the heart of the Constitution.

In the preamble to the Constitution the people of Uganda recalled their history which had been characterised by political and constitutional instability. They recognised their struggles against the forces of tyranny, oppression and exploitation. They declared their commitment ‘to building a better future by establishing a socio-economic and political order through a popular and durable national Constitution based on the principles of unity, peace, equality, democracy, freedom, social justice and progress.’ They recognised that they were exercising their sovereign and inalienable right to determine the form of governance for their country, and that they had fully participated in the constitution-making process. They noted that they had established a Constituent Assembly to
represent them, and debate the Draft Constitution, and to adopt and to give them and their descendants the Constitution of the Republic of Uganda, which was adopted on 22\textsuperscript{nd} September, 1995.

The vision statement can be summarised as ‘Building a better future by establishing a socio-economic and political order, based on the principles of unity, peace, equality, democracy, freedom, social justice and progress’.

A subsequent study, the National Long Term Perspectives Study Project, conducted in 1999, recommended that the country’s vision should be, ‘Prosperous people, Harmonious Nation and Beautiful Country’. (See Vision 2025, Vol.1 p. 75 MFPED 1999). Although this vision statement is more romantic, its effect and goals are the same as those contained in the preamble. It captures and consolidates the various principles upon which the constitutional vision is based. The vision of the Constitution is unique: no past Uganda Constitution contained any similar vision. It also differs significantly from visions of other constitutions, where they exist.

I wish to emphasise the importance of the eight principles or goals which constitute the vision namely; unity, peace, equality, democracy, freedom, social justice and progress. The goal of promoting unity is critical to nation-building in a country consisting of different ethnic groups, with different languages and religions, brought together as one nation by the colonial administration.

No development could take place unless the people accepted one another and were prepared to live together in unity with diversity. The principle of national stability is emphasised in Paragraph III of the National Objectives and Directive Principles of State Policy.

The promotion of peace and stability is an important goal for the new Constitution. In a country that had experienced political and constitutional instability for three decades, the importance of peace and stability cannot be over-emphasised. Militarism and insurgency had devastated several parts of the country. Even at the time of writing the Constitution some parts of the country did not have the peace and security enjoyed in most parts of the country. Peaceful resolution of conflicts was a major goal for the new Constitution. As it has been said, peace is not merely the absence of war, but the presence of justice.
Paragraph III of the Directive Principles of State Policy also contains provisions dealing with peace. Article 79 of the Constitution mandates Parliament ‘to make laws on any matter for peace, order, development and good governance of Uganda’. The principal function of the Uganda People’s Defence Forces under Article 209 is to maintain peace and security in the country by preserving and defending the sovereignty and territorial integrity of Uganda.

The principle of equality is an important innovation in the vision. It underscores the international crusade for human rights, especially the principle of non-discrimination on inadmissible grounds, especially sex, and the need to promote gender equality. Past Ugandan Constitutions did not prohibit discrimination on the grounds of sex. The Bill of Rights goes to great lengths to guarantee human dignity and equality as fundamental rights and to provide for affirmative action to redress any imbalances created by history, tradition or culture.

The establishment of a democratic system of government that would guarantee fundamental rights and freedoms was an overriding goal for the new Constitution. Genuine democracy had eluded the country for a long time as it had experienced dictatorship, gross violation of basic human rights and political instability.

Democracy has been defined as a government of the people by the people and for the people. It is a form of government in which the people in a given country have the power to govern themselves either directly or through their representatives. Democracy is therefore fundamentally rooted in the proposition that political authority is anchored in the will of the people.

Enduring democratic systems are characterised by meaningful political participation and peaceful competition, protection of basic human rights, lawful governance and strong democratic values. These democratic values are tolerance of diverse opinions, political compromise, acceptance of majority rule and respect for minority rights, supremacy of civil authority over the military, and peaceful resolution of disputes. The pillars of democracy are therefore, sovereignty of the people, government based on consent of the governed, majority rule, minority rights, guarantee of basic human
rights, free and fair elections, equality before the law, due process of law, constitutional limits on government, social, economic and political pluralism, and values of tolerance, pragmatism and co-operation.

While democracy is now almost a universal ideal especially following the collapse of communism in the Soviet Union, the end of the Cold War, and the democratic wave blowing across Eastern Europe and Africa, the forms of democracy are based on the local socio-economic and political conditions prevailing in each country. What remains universal is the substance, the core elements, and not the forms.

Paragraph II of the Directive Principles of State Policy sets out a number of principles for the promotion of democracy. Some of the principles included are: popular participation by the people in their governance; equal access to all positions of leadership, decentralisation and devolution of functions and powers to the people, and political and civic organisations that conform to democratic principles in their internal organisation. These principles are emphasised in Chapter 1 of the Constitution, which provides for the sovereignty of the people, the supremacy of the Constitution, and the defence of the constitutional order. Provisions are made in several parts of the Constitution for the formation and organisation of political organisations and parties to promote their programmes and canvass for support and for holding free and fair elections. These political organisations together with other political institutions like the Executive and the Legislature must ensure orderly and peaceful change of power. In addition the institutions must be viable and must promote maximum consensus on governance of the country.

The Constitution recognises the separation of powers and the exercise of checks and balances amongst the three major organs of the state namely; the Executive, the Legislature and the Judiciary. Constitutionalism and the rule of law are maintained by an independent judiciary, which has the power of constitutional interpretation and judicial review of administrative action.

Institutions to promote good governance, transparency and accountability in public office are provided for in the Constitution.
These include the Leadership Code and the positions of Inspector General of Government and the Auditor General. These institutions also promote democracy by making public officials and political leaders hold their positions in trust for the people and be accountable to the people in their conduct and execution of that trust.

The principle of freedom encompasses the principles of equality and democracy, but is much broader. Freedom is the power to act, speak, or think without externally imposed restraints. It includes the right to believe in what one wants, to hold one’s own ideas and opinions and to express those ideas in public. It is sometimes synonymous with liberty, which is the right to exercise one’s rights as guaranteed under the laws of the country. Freedom can be classified under political freedom, religious freedom, personal freedom, press freedom, academic freedom, and so on.

All these and other freedoms are guaranteed in the Bill of Rights. We shall discuss these freedoms later on in this chapter.

Uganda is a country of diversity in terms of its people, their social economic backgrounds and settings, their cultures and traditions, their beliefs and religions and their political opinions and aspirations.

These diversities have created disparities, conflicts, marginalisation, exclusion and a sense of deprivation in some sections of society. The diversities have been heightened by the three major problems of underdevelopment, namely; ignorance, poverty and disease.

The promotion of social justice is one of the strategies used to resolve these diversities and inequalities that undermine stability and harmony in society. However there is no acceptable definition of social justice. It has been allowed to float in the air as if everyone will recognise an instance of it when it appears. Despite the vagueness of the phrase, it seems that the general understanding of social justice is the creation of a fair and equal society where everyone matters. It refers to equitable access to resources and the benefits derived from them. Social justice can also be seen as a system that recognises inalienable rights and adheres to what is fair, honest and moral.

The Directive Principles of State Policy in paragraphs V to XXII contain detailed provisions relating to the promotion of social
justice in the areas of fundamental rights, gender balance and representation of marginalised groups, the right to development, balanced and equitable development, social and economic rights, food security and nutrition, among others. Paragraph XIV specifically provides that ‘the State shall endeavour to fulfil the fundamental right of all Ugandans to social justice and economic development, …’

The last principle which constitutes the vision of the new Constitution is progress. The word ‘progress’ was used instead of the word ‘development’, but in my view they are synonymous in the vision. Progress, like development, implies a positive qualitative and quantitative improvement in the human conditions of the people as well as the significant growth of the country’s economy; and one of its important goals is the transformation of society.

At Independence, politicians asserted that political independence was hollow without economic independence, and they were right. Since then, few countries in Africa have been able to build sustainable economies, first due to the colonial distortions, then followed by poor economic policies and management, political instability, the absence of democracy and good governance.

Therefore, economic development has remained a major goal for any government and its people in Africa, including Uganda. The various pragmatic looking economic and fiscal policies and reforms introduced by the NRM Government had started bearing fruit and had significant influence on the vision of the new Constitution.

Paragraphs IV, IX to XIII, XV to XVIII of the Directive Principles of State Policy, contain provisions relating to the right to development, the role of the state in development, balanced and equitable development, protection of natural resources, social and economic objectives, food security and nutrition, natural disasters, preservation of public property and heritage and environment protection.

There are other provisions in the Constitution geared to the promotion of economic development. These include Chapter 9 on Finance, Chapter 15 on Land and Environment, and Chapter 11 on Local Government. Some specific strategies include the creation of an independent central bank, under Article 162, and a National Planning Authority under Article 125 of the Constitution.
In summary, it can be said that Ugandans wanted to create a country that is united, free, democratic and accountable; a country with shared common ideals and goals; a country that is peaceful, stable, safe and secure; humane, tolerant, caring and compassionate, and a country that is prosperous, productive, innovative, modern and self-reliant.

**National Objectives and Directive Principles of State Policy**

National objectives and directive principles of state policy are non-enforceable policy directives which are nevertheless fundamental in the governance of the country. They are in the nature of instructions issued to future legislative, executive and judicial and other public agencies for their guidance. They differ from fundamental rights which are enforceable and justiciable. Directive principles have been referred to as ‘aspirational rights’. They have also been described as ‘The conscience of the constitution’.

National objectives and directive principles are meant to serve several purposes namely; to make the state more responsive to social needs; to organically link the state and society; to define the role of society; and to identify the duties of the state and the purposes for which power is to be exercised.

Past Ugandan Constitutions – and many other modern constitutions — did not contain national objectives and directive principles of state policy. Following the examples of Ireland and India however, they are becoming popular in African countries, for instance, the constitutions of Nigeria, Ghana and Namibia all contain directive principles of state policy. However, the content of the principles in each constitution differs and the objectives and principles contained in the Ugandan Constitution are unique to the country. National Objectives can be described as broad goals or ideals to be achieved, and the directive principles as the measures for achieving those goals. But both the goals and principles are integrated and give a clear vision of the direction in which the country should develop. They were included in the Constitution to safeguard the basic values and fundamental policies agreed upon by the people to guide future governments.
In the report of the Constitution Commission, we identified several objectives and principles which the new Constitution should pursue, in paragraph 5.72, on page 97-98, as follows:

- establishing a firm basis for peace and stability,
- sovereignty of the people,
- consensus politics as the basis for decision-making,
- a free and democratic system of Government,
- a decentralised system of governance, based on popular participation,
- regular, free and fair elections,
- public accountability of leaders,
- separation of powers and checks and balances as a basis of Government,
- independence of the judiciary and effective administration of justice,
- protection of the security and dignity of the individual and groups and other rights,
- promotion and consolidation of national unity and national consciousness,
- promotion of socio-economic development,
- national independence and territorial integrity; and
- fostering regional, African and international cooperation.

The national objectives and directives principles of state policy were originally placed in Chapter 3 of the Draft Constitution. Although the principles were not enforceable, they were nevertheless guidelines to the state and its people. The Constituent Assembly decided not to make them part of the main body of a Constitution, but as founding principles, placed at the beginning. This is unique because most constitutions have principles as a chapter, in order to give them political and legal authority as fundamental goals upon which the constitution is founded, and which should guide future governments. The experience in Uganda shows that their position in the text has not affected their importance since they are highly respected and are usually referred to by courts in interpreting the Constitution.

Indeed Paragraph I of the principles provides for their implementation as follows:
The following objectives and principles shall guide organs and agencies of the state, all citizens, organisations and other bodies and persons in applying or interpreting the constitution or any other law, and in taking and implementing any policy decisions for the establishment and promotion of a just free and democratic society.

The President shall report to Parliament and the Nation at least once in a year; all steps taken to ensure the realisation of these policy objectives and principles.

These are very strong provisions, which appear to make the objectives and principles binding though they are not strictly speaking part of the enforceable provisions. In other constitutions, there is a direction that the principles are not enforceable, as in the Indian and Namibian constitutions. It seems to me that although these principles may not be legally enforceable in Uganda, they have moral and political force and significance in guiding governmental actions and programmes and in holding government accountable. If they were intended to be legally binding or justiciable, they would have been retained as a chapter in the constitution.

The directive principles are categorised into four objectives, namely; political, social and economic, cultural and foreign policy objectives, and duties of citizen. Political objectives contain principles on democracy, national unity and stability, national sovereignty, independence and territorial integrity, protection and promotion of fundamental and other rights and freedoms, role of government and people in development, and protection of natural resources. Social and economic objectives include those objectives relating to social justice, recognition of the role of women in society, etc.

The directive principles provide that the state shall be based on democratic principles which empower and encourage active participation of all citizens at all levels in their governance. All the people of Uganda must have access to leadership positions at all levels. The composition of government shall be broadly representative of the national character and social diversity of the country. All political and civic associations aspiring to manage and direct public affairs shall conform to democratic principles in their internal organisations and must retain their autonomy in pursuit of their declared objectives.
On national unity and stability, the directive principles provide that all organs of state and people of Uganda shall work towards the promotion of national unity, peace and stability. Every effort shall be made to integrate all the peoples of Uganda while at the same time recognising the existence of their ethnic, religious, ideological, political and cultural diversity. There must be established and nurtured institutions and procedures for the resolution of conflicts fairly and peacefully.

The directive principles require the state and citizens of Uganda to endeavour at all times to defend the national sovereignty, independence and territorial integrity of Uganda. The state and citizens are also required to endeavour to build national strength in political, economic and social spheres to avoid undue dependence on other countries.

In order to promote and protect human rights, the state is required to guarantee and respect institutions responsible for protecting human rights by providing them with adequate resources. The independence of non-governmental organisations which protect and promote human rights, must be guaranteed and respected by the state. The state is required to ensure gender balance and fair representation of marginalised groups on all constitutional and other bodies. The state is also required to make reasonable provision for the welfare and maintenance of the aged.

The distribution of powers and functions as well as checks and balances provided for in the Constitution among the various organs and institutions of Government shall be supported through the provisions of adequate resources for their effective functioning at all levels.

The principles relating to the protection and promotion of fundamental human rights include the right to development and the role of the state and people in development. In order to facilitate rapid and equitable development the state is required to encourage private initiative and self-reliance. As regards the role of the people, the state must take all necessary steps to involve the people in the formulation and implementation of development plans which affect them.

The state is required to give the highest priority to the enactment of legislation establishing measures that protect and enhance
the right of the people to equal opportunities in development. In
furtherance of social justice, the state may regulate the acquisition,
ownership, use and disposition of land and other property.

The state is further required to promote balanced and equitable
development by adopting an integral and coordinated planning
approach. The state must also take necessary steps to bring about
balanced development of the different areas of Uganda and between
the rural and urban areas. The state should take special measures
in favour of the development of the least developed areas.

Among the general social and economic objectives, are included
principles directing the state to endeavour to ensure that all
Ugandans enjoy rights and opportunities and access to education,
health services, clean and safe water, work, decent shelter, adequate
clothing, food, security, pension, and retirement benefits. The state
is required to recognise the significant role that women play in
society, and to recognise the right of persons with disabilities and
to respect human dignity.

One of the educational objectives requires the state to promote
free and compulsory basic education. Individuals, religions
bodies and other NGOs are free to found and operate educational
institutions. Other rights to be promoted by the state are protection
of the family, provision of basic medical services, clean and safe
water, food storage, and measures for dealing with natural disasters.
There are provisions requiring the state to promote cultural values,
accountability and environment, which are dealt with later in this
chapter.

The last category of directive principles relates to foreign policy
objectives. These are an innovation because most constitutions do
not deal with foreign policy. Paragraph XXVIII of the Principles
provides that the foreign policy of Uganda shall be based on the
principles of:
• Promotion of the national interest of Uganda.
• Respect for international law and treaty obligations.
• Peaceful co-existence and non-alignment.
• Settlement of international disputes by peaceful means.
• Opposition to all forms of domination, racism, and other forms
  of oppression and exploitation.
The Directive Principles end with the duties of a citizen because the exercise and enjoyment of rights and freedoms is inseparable from the performance of duties and obligations. The duties enumerated require one to be patriotic and loyal to Uganda, to engage in gainful work for the good of the citizen, family and common good, to promote responsible parenthood, to foster national unity and live in harmony with others, to promote democracy and the rule of law, and to acquaint oneself with the provisions of the Constitution and uphold and defend the Constitution and the law.

A Liberal and Modern Bill of Rights

Human rights are the rights of individuals in society. Every human being has or is entitled to have legitimate, valid and justified claims upon society to various goods and benefits. Fundamental rights and freedoms of the individual are inherent and not granted by the state. They exist independently of the state. They do not derive from any constitution but are antecedent to the Constitution. Human rights are fundamental because they spring from the inherent worth of the human person and are necessary for his or her dignified existence, autonomy and integrity. This does not mean that they are absolute nor that they can never be abridged for any purpose in any circumstance. Human rights are now generally accepted as universal values. Universalisation has brought about acceptance, at least in principle and rhetoric, of the individual human rights by all societies and governments and is reflected in national constitutions and laws. They are the foundation of justice, peace and development in any society and in the world.

As the former UN Secretary General, Boutros Ghali said,

… Human rights issues at the universal level bring us face to face with the most challenging dialectical conflict ever; between identity and otherness, between myself and others. They teach us in a direct straightforward manner that we are at the same time identical and yet different. Thus the human rights we proclaim and seek to safeguard can be brought about only if we transcend ourselves, only if we make a conscious effort to find our common essence beyond our apparent division, our temporary differences, our ideological and cultural barriers.

Ugandans have suffered gross violation of human rights in the past 30 years. Idi Amin’s regime of murder and terror cannot be forgotten. Many innocent people lost their lives and property
during the bush war in 'Luwero Triangle'. Violation of human rights caused some of the national conflicts that Uganda has experienced. The abuse of basic rights by Amin resulted in the liberation war and his overthrow in 1979 and Museveni launched the bush war because the rights of the people to choose their leaders in free and fair elections had been denied.

During the constitution-making process, the people considered the topic of human rights the most important issue which affected them directly and indirectly. Post-independence governments had an appalling record in the area of human rights. The people wanted human rights to be the foundation of the Constitution so that it was seen and understood as a human rights document. The Bill of Rights would also be the basis for evaluating the performance of government.

The Bill of Rights in Chapter Four of the new Constitution is liberal and comprehensive and incorporates all the rights and freedoms enshrined in the International Bill of Rights. It declares that fundamental rights and freedoms of the individual are inherent and not granted by the state. The rights and freedoms enshrined in the Bill must be respected, upheld, and promoted by all organs and agencies of Government and by all persons. Rights and freedoms are enumerated, generally without ‘claw back’ limitations which in the past gave power to the state to unduly limit the enjoyment of these rights, especially on grounds of public order, defence or national security. The Constitution only imposes a general limitation on the person not to prejudice the rights and freedoms of others or the public interest while enjoying his or her rights. But public interest must not permit any limitation of the enjoyment of the rights and freedoms prescribed in the Bill of Rights beyond what is acceptable and demonstrably justifiable in a free and democratic society.

Apart from the usual basic rights and freedoms included in a Bill of Rights such as freedom of assembly, association, demonstration, religion, the press and other media, there is academic freedom, the right to education, the right to participate in government, right of access to information in possession of the state, and the right to administrative justice.
The Bill of Rights includes specific rights for women, children and Persons With Disabilities. It has abolished discrimination against women and prohibited all laws and customs which undermine the dignity and status of women. It imposes a duty on the state to take affirmative action in favour of groups marginalised on the basis of gender, age, disability and any other reason created by history, tradition or custom for purposes of redressing imbalances which exist against them.

The Bill of Rights also recognises the rights of minorities to participate in decision-making processes; the right to culture and the right to a clean and healthy environment. These rights are in addition to the usual civic and political rights and social, cultural and political rights enumerated in the Universal Declaration of Human Rights.

Among the significant innovations in the Bill are the abolition of detention without trial, the right to legal representation for persons accused of offences carrying a death sentence or life imprisonment, and limitation on the period one can be detained or remanded before trial. The Bill contains provisions relating to a state of emergency which safeguards against misuse of emergency powers. Parliament must approve the declaration of a state of emergency. The rights of detainees must be respected. The detainee must be informed of the reason for detention within 24 hours, the next of kin must be informed, the name must be published in the Gazette, and he or she must be allowed to consult a doctor or lawyer. The Human Rights Commission has been given the responsibility to review every month, cases of persons who are restricted or detained and to order their release or uphold their restriction or detention.

Certain rights cannot be derogated from even during a state of emergency. These include freedom from torture, cruelty, inhumane or degrading treatment or punishment; freedom from slavery or servitude, the right to a fair hearing, and the right to an order of habeas corpus.

The main agencies for promoting and enforcing the protection of human rights include the courts, the Human Rights Commission, and civil society. Any person who claims that his or her fundamental rights have been infringed can apply to a competent court for redress. Article 50(2) provides that, any person or organisation, may
bring an action against the violation of another person’s or group’s human rights, thus liberalising the rule of *locus standi* to facilitate public interest litigation. This provision is useful in enabling civic organisations like NGOs to defend the rights of the disadvantaged.

The Uganda Human Rights Commission was set up for the first time by Article 51 of the Constitution to provide an efficient machinery for the promotion and protection of human rights. The Commission was given broad and strong powers to investigate complaints of human rights violations, to order the release of any person or award compensation or any other redress. It has therefore set up a Human Rights Tribunal to determine complaints, and give the necessary redress, having been given the powers of the High Court. The Commission has powers to visit jails and places of detention and can release a detainee or make recommendations on the conditions of inmates. The Commission has the function of creating public awareness in the citizens of Uganda of their basic rights and obligations and also an awareness of the provisions of the Constitution. This is the responsibility of conducting civic education on human rights and the Constitution to create a culture of constitutionalism and human rights. Another of its important functions is to monitor Government’s compliance with international, treaty and convention obligations on human rights.

The Commission has taken its mandate seriously and embarked on implementing its constitutional functions. It has received and investigated hundreds of complaints involving violation of human rights including freedom from torture, cruel, inhuman or degrading treatment, right to liberty and freedom from unlawful detention, violation of rights of workers, violation of rights of women and children, right to property and right to a fair hearing, among others. These complaints were received at both the headquarters and at the regional offices of the Commission. The Commission processed the complaints and made recommendations to the appropriate authority for rectification while other complaints were heard and disposed of by the Human Rights Tribunal.

The Human Rights Tribunal is a quasi-judicial organ of the Commission which hears and determines complaints and makes orders granting appropriate remedies, including compensation. The Tribunal is presided over by a Commissioner and has a lead
counsel from the Commission. It uses mediation and reconciliation to expedite the process which is the quickest and most effective way of handling complaints of human rights violations. The Tribunal uses national, regional and international jurisprudence in interpreting its jurisdiction. This simpler, cheaper and speedier means of enforcing human rights has become very popular among the poor who find the ordinary court process slow, costly and complicated.

The Commission has been vigilant in visiting places of detention including remand homes, police cells, prisons and quasi-military installations in order to assess the conditions of inmates and to make necessary recommendations. An important intervention was in the case of safe houses where criminal and political prisoners were being detained illegally, especially by the security forces because the houses had not been gazetted as places of detention. As a result of this intervention the use of safe houses was abandoned.

The responsibility of conducting civic education and creating public awareness among the citizens about the Constitution, and their rights and obligations is a broad and important one in creating a culture of human rights and constitutionalism. The Commission has provided human rights education and training to various targeted stakeholders and organised various workshops for the police, prisons, UPDF and the youth, among others. A Constitutional Day is held every year in October to commemorate the promulgation of the 1995 Constitution, with a conference that critically examines Uganda’s progress towards constitutionalism.

The Commission has prepared human rights education manuals for the police and UPDF to promote a human rights culture in the security organs. It publishes a number of publications including a journal, *Your Rights*, to discuss human rights issues and disseminate human rights information to the public.

A joint Civic Education Coordinating Committee was formed under the auspices of the Commission to bring together other stakeholders involved in civic education like the Electoral Commission, the Judicial Service Commission and human rights NGOs, to promote coordination, cooperation, and communication amongst the organisations. One of the projects proposed by the Committee was the introduction of human rights education in
primary and secondary schools and the preparation of appropriate syllabi.

Lastly, the Commission has continuously monitored Government’s commitment to human rights and its compliance with international treaty and convention obligations on human rights. It has largely succeeded in urging Government to ratify many international human rights instruments to which it is party. It has also conducted assessment visits to internally displaced persons (IDPs) in camps, refugee camps, and other places of detention to monitor conditions there.

On the whole, the Commission has maintained its independence and attained national and international credibility as one of the few effective Human Rights Commissions in Africa. It has attracted substantial donor support, and is now housed in its own building in the centre of Kampala. In my view, it has fulfilled the vision and role it was envisaged to play. An unpopular proposal by Government to merge the Commission with the Inspectorate of Government has been abandoned. This augurs well for the future of the Commission which has recently launched its Corporate Plan 2004-2009.

It is generally accepted that the human rights record in Uganda has improved. Instances of detention without trial, extra-judicial killings, state terrorism, and oppression of disadvantaged and weak members of society have largely been brought to a halt. On the other hand, the protection and promotion of human rights by disadvantaged groups has been enhanced. For instance, affirmative action has greatly promoted the status and rights of women who now enjoy gender equality which has enhanced their role in public life and in socio-economic and political development generally.

**Two Political Systems as a Basis for Democracy**

The issue of the most suitable political system to be adopted in Uganda was hotly debated by the people, the Commission and the Constituent Assembly. This was due to the people’s experience of democracy or its absence in Uganda. The second factor was the introduction of the no-party Movement system by the NRM Government in 1986 which had become largely popular with the masses. I have already alluded to the arguments for or against the
multiparty and Movement political systems in Chapter 9.

Taking into account all the arguments and the views of the people, the Constitutional Commission concluded on page 211 of its Report,

The Commission has therefore, interpreted the wish of the people of Uganda to be that they want both political systems to be established in the new constitution and left to the sovereignty of the people to periodically decide, through a national referendum, which of the two political systems they prefer at any particular time of their political development. Such freedom of choice based upon the sovereignty of the people will serve as a powerful safeguard of democracy and will influence and condition the manner in which each political system operates and will prevent the dangerous polarisation of views on this crucial issue. It came to the conclusion that since democracy always grows, the people of Uganda would at some future time of their democratic development clearly express through a referendum, whether they want one of the two systems to be permanently adopted. At that time the regular referendum on the political system would come to an end through the expressed people’s consensus on the issue.

The new Constitution therefore provided under Article 69 for the recognition of both the Movement political system and the multiparty system as well as any other democratic and representative system. The Movement system is defined in Article 70 as ‘Broad-based, inclusive and non-partisan’ and must conform to the following principles:

• Participatory democracy;
• Democracy, accountability and transparency;
• Accessibility to all positions of leadership by all citizens;
• Individual merit as a basis for elections.

Parliament was given power to create organs under the Movement system and to define their roles. Parliament defined those organs under the Movement Act. The right to form and belong to political parties was guaranteed by Article 72. The principles which the multiparty political system must conform to were also spelt out in the Constitution for the first time under Article 71. These are:

• every political party shall have a national character;
• membership of a political party shall not be based on sex, ethnicity, religion or other sectional divisions;
• the internal organisation of a political party must conform to the democratic principles enshrined in the Constitution;
members of the national organs of a political party shall be regularly elected from citizens of Uganda in conformity with the provisions of paragraph (a) and (b) above and with due regard for gender;

- political parties shall be required by law to account for the sources and use of their funds and assets;

- no person shall be compelled to join a particular party by virtue of belonging to an organisation or interest group.

The Constitution gives the people of Uganda the right to choose and adopt a political system of their choice through free and fair elections or referenda, under Article 69. Such a referendum can be held under Article 74 on request by a resolution supported by more than half of the number of Members of Parliament; or if requested by a resolution supported by the majority of the total membership of each of at least one half of all District Councils; or if requested, through a petition to the Electoral Commission by at least one tenth of the registered voters from at least two-thirds of the constituencies for which there are directly elected representatives. The system may also be changed by the elected representatives in Parliament and District Councils by resolution of Parliament supported by two-thirds of all Members of Parliament upon petition to it supported by not less than two-thirds majority of the total membership of each of at least half of the district councils.

The existing political parties were preserved by Article 270 but certain activities were suspended until a law is made regulating political parties. These activities were opening party branch offices, holding delegates’ conferences, holding public rallies, sponsoring or campaigning for candidates in public elections or carrying out activities which interfere with the Movement system. This was done under Article 269 which was not popular with multiparty activists and has been referred to as ‘a clog on the Constitution’. It was argued that this article conflicted with Article 29 which guarantees freedom of association and assembly, among other freedoms.

The Constitution ordained in the transition provisions under Article 271 that the first presidential, parliamentary and local government elections after the promulgation of the Constitution would be held under the Movement political system. A referendum
would be held in the last month of the fourth year of the term of Parliament to determine the political system the people of Uganda should adopt. A referendum on political systems was held in 2000 and the Movement system was overwhelmingly chosen by the people. Subsequent referenda can be held to determine the political system in accordance with Article 74.

Parliament has power under Article 73 to regulate the financing of political organisations. Parliament also has power to prescribe regulations under which any political organisation may exist when another political system has been adopted by the people. Such regulations shall not exceed what is necessary for enabling the political system adopted to operate. Subsequently, Parliament enacted the Political Parties and Organisations Act to regulate the operation of political parties while the Movement system is in force. The Act imposed restrictions on political parties which were challenged in the Constitutional Court, in *P.K. Ssemwogere v. Attorney General, Constitutional Petition No.5 of 2002*, which upheld some of the objections. The political parties want all restrictions removed and are agitating and litigating for opening up of the political space to enable them operate freely. Government has agreed in principle to allow full political pluralism by adopting a multiparty system of government, and this is one of the reforms which will be implemented as part of the Constitutional Review during the political transition.

**A Free and Fair Election System**

Elections are the highest level of expression of the general will of the people. They symbolise the right of the people to be governed only with their consent. The people have the right to make and unmake governments, as is provided in Article 21 of the Universal Declaration of Human Rights 1948:

> The will of the people shall be the basis of the authority of government. This will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

An election should therefore be a mechanism whereby the choices of a political culture are made known. The choices should be expressed in ways that protect the rights of the individual and
ensure that each vote cast is counted and reported properly. An electoral process which fails to ensure the fundamental rights of citizens before and after the election is fundamentally flawed.

An electoral system is important in resolving political conflicts between different groups contesting for power. In this connection, it is still the best method for popular participation in governance, peaceful competition, choice of leaders, and peaceful transfer of power. The ballot must replace the bullet as a means of changing leaders.

Failure to hold elections regularly or at all or holding flawed elections has been a major cause of political instability and conflicts in Uganda. In 1966 Parliament extended its term for five years after the abrogation of the Independence Constitution. Obote paid the price by being overthrown by Amin in 1979 and the people of Uganda paid a higher price by being brutalised by Amin’s regime of murder and terror for eight years. In 1980, Museveni and his NRM/NRA went to the bush after highly disputed Parliamentary Elections of 1980 allegedly ‘stolen’ by Obote and his UPC party functionaries. It was during these elections that the then Chairman of the Military Commission, Paul Muwanga decreed that no one except him would be allowed to announce the results of the election.

One of basic objectives of the new Constitution therefore, was to develop a democratic, free and fair electoral system that would ensure true people’s representation in the legislature and at all other levels of governance.

The Constitution emphasises the importance of elections in its very first Article 1(4) which recognises the sovereignty of the people, when it declares that:

The people shall express their will and consent on who shall govern them and how they should be governed through regular free and fair elections of their representatives or through referenda.

The main provisions on elections are contained in Chapter 5 of the Constitution, on the Representation of the People.

Under Article 59, every citizen of Uganda aged 18 years and above has a right to vote. It is the duty of every citizen of Uganda of voting age to register as a voter for public elections and referenda. The state is required to ensure that all citizens qualified to vote,
register and exercise their right to vote. Parliament is required to make laws to facilitate citizens with disabilities to register and vote.

The Constitution in Articles 60 to 62 establishes an independent Electoral Commission with several functions which include: organising, conducting and supervising elections and referenda, demarcating constituencies: compiling, maintaining, revising and updating the voters’ register; conducting civic education necessary to enable voters to know their rights; and registering political parties. The independence of the Commission from interference and direction from any quarter is guaranteed by the Constitution. The Commission consists of a Chairperson, Deputy Chairperson and five members appointed by the President with the approval of Parliament. The members of the Commission must be persons of high integrity and proven competence and enjoy security of tenure. Elections are expensive to organise and therefore Parliament is required by Article 66 to ensure that the Commission is granted adequate resources and facilities to enable it perform its functions effectively. The Commission is made a self-accounting institution and civic education is necessary to enable voters know their rights and funds are charged on the Consolidated Fund.

Gerrymandering, which was in the past used by certain candidates to carve out constituencies in a manner favourable to them has been largely eliminated by following local administrative units, thus ensuring equitable representation for various ethnic groups, big or small. In this connection, Article 63 of the Constitution provides that Parliament shall prescribe the number of constituencies and that each constituency shall be represented by one Member of Parliament, but that in demarcating constituencies, the Commission shall ensure that each county is represented by one Member of Parliament. Subject to this requirement, constituencies are determined by the population quota.

The Constitution has introduced measures to ensure that the elections are free and fair by providing a level playing field for all candidates, ensuring that the elections are transparent at all stages and devoid of rigging. In this connection, Article 57 provides that the Electoral Commission shall ensure that elections are held at times fixed and notified in advance to the public. No candidate in an election shall be denied reasonable access and use of state-
owned communication media. All presidential candidates must be given equal time and space on the state-owned media to present their programmes to the people. Parliament is given power to make laws regulating the use of public resources and institutions during election campaigns. Both the Presidential Elections Act and the Parliamentary Elections Act restrict the use of state resources during elections.

Voting at a public election or referendum must be done by secret ballot using one ballot box at each polling section for all candidates in an election and for all sides in a referendum. This measure was introduced to prevent rigging: where each candidate has his or her own ballot box this could be easily converted or interfered with in favour of another candidate. Immediately after the close of the poll, the presiding officer must proceed to count the ballot papers of that polling station and record the votes cast in favour of each candidate or question. A candidate is entitled to be present in person or through representatives or polling agents at the station throughout the period of voting and counting of the votes and ascertaining of the results of the poll.

The results of the election in that polling station must be announced there and then by the presiding officer at that polling station before communicating them to the returning officer. This must be done after the presiding officer and the candidates or their representatives have signed a copy of a declaration stating the polling station and the number of votes in favour of each candidate or question. An issue for determination by a referendum shall be taken to be determined by a majority of the votes cast at the referendum.

These detailed provisions are intended to ensure that elections are free and fair, and that the entire election process is conducted in an atmosphere free of intimidation, bribery, violence, coercion or anything intended to subvert the will of the people.

The election procedures guarantee the secrecy of the ballot, the accuracy of the counting and announcement of results in a timely fashion. It must be emphasised that political actors and leaders must be prepared to accept and abide by the results of elections and lose gracefully.
The debate over which type of electoral system should be adopted went in favour of the single constituency system as against proportional representation. It was argued that the system of proportional representation while it accommodates minorities and encourages coalitions, was unfamiliar to the people and was likely to result in many small parties which make unstable coalition governments. The single constituency system was preferred because it enabled voters to choose candidates for their areas and to form stable majority governments. But such a system can also form minority governments. However, the advantage of sharing power under the proportional representation system needs to be explored further in Africa, to ameliorate the effect of the ‘winner take all’ majority system.

Uganda is a country which is now suffering from election fatigue. There are too many elections held on separate days from national to local level. The Presidential and Parliamentary Elections currently held on separate days could be held on the same day to save money and time. The local government elections which have several tiers at district, sub-county, parish and village levels could also be held on the same day. Similarly, elections for special interest groups like women, youth, workers and Persons With Disabilities could be held on the same day.

Some of the shortcomings in the electoral process include the commercialisation of elections and the prevalence of election violence. Elections are now too costly to candidates because of bribing voters with money, sugar, soap and salt, among others. This means that only the rich may stand a chance to win elections, which is a pity. The other problem is violence perpetrated during campaigns not only by security agencies but by the candidates themselves and their supporters.

The Electoral Commission has so far not been able to compile an accurate and efficient national voters’ register and this has led to problems of ghost voters, underage voting, multiple voting, prior ticking and denial of the right to vote for those whose names do not appear on the register. These have now become usual grounds for challenging election results in courts of law and many of these petitions have succeeded. It is hoped that the photographic voter register now being introduced will prevent the re-occurrence
of these electoral malpractices which undermine free and fair elections.

The restriction on some activities of political parties has had some effect on campaigning strategies and sponsoring of candidates on party lines, but all candidates for both Movement and political parties are given equal opportunities at joint candidates’ meetings. Candidates have to stand on individual merit under the Movement system which is currently in operation following the choice of that system by the people in a referendum on political systems held in 2000.

In general, the electoral system has been fair, transparent, accommodative and able to advance the democratic process. International observers have generally endorsed the general elections held in Uganda as expressing the general will of the people despite some of the flaws I have indicated above. They have enabled the people of Uganda to choose and change leaders peacefully.

**A popular but tamed President**

As it has already been pointed out in Chapter 8, the people of Uganda preferred a presidential system of government to the ‘Westminster model’. The parliamentary system was found unsuitable because of the problems associated with a split executive; this may lead to confrontations as happened in Uganda when, in the 1966 crisis, the 1962 Constitution was unilaterally abrogated by the prime minister who then took over power as the president.

The 1967 Constitution which effectively replaced the 1962 Constitution had elements of both Parliamentary and Presidential systems because both the President and Members of the National Assembly were Members of Parliament. The leader of the Party with majority members in the National Assembly became President and formed the Government, without standing for elections. Executive powers were concentrated in the President.

The President had power to dissolve the National Assembly any time, or to declare a state of emergency. The members of District Councils were subject to appointment and dismissal by the Minister of Local Government.
In the Final Report of the Constitutional Commission we observed at page 319:

From the people’s submissions, there is overwhelming support for the concept of a democratically elected president who should be the Head of State of Uganda. This concern for a directly elected head of the executive emanated from the people’s experience of both colonial and independent Uganda. Many lamented the fact that the Presidents of Uganda did not have a mandate supported by a popular vote of the people. Our own observation is that the people want direct participation in the election of their leader and also prefer to have a President who commands a national following and not one whose support is based on a particular region, group or force.

We therefore recommended that Uganda should have a directly elected President who represents all Ugandans and is accountable to them. The Constituent Assembly adopted the recommendation. We gave the rationale for the Presidential system of government as follows:

The main arguments that were advanced for a system similar to a Presidential one are that it ensures greater separation of powers between the executive and the legislature, and an effective system of checks and balances. According to the people, it would help in removing what they perceived to be pressures exerted on the legislature to approve the decisions of the executive. While we have not recommended a purely presidential system, we tend to agree that some separation of power should improve performance of the executive as well as the legislature.

How has the executive been tamed in the new Constitution? The President for the first time is now directly elected by the entire population. His election can be challenged in the Supreme Court. The term of office is five years, limited to two terms of office only, under Article 105. The size of the cabinet is limited by the Constitution to 21 Cabinet Ministers and 21 Ministers of State and can only be increased by resolution of Parliament. There is a Vice President who is appointed by the President with approval of Parliament, and he/she is a member of the cabinet. The Vice President deputises for the President.

The President is not a Member of Parliament but has power to veto legislation, which can then be overridden by Parliament. Presidential appointments including ministers, judges, holders of constitutional offices and ambassadors have to be approved by
Parliament. Other actions of the executive which need approval of Parliament include international agreements, loans and the declaration of war or state of emergency.

However, Ministers remain Members of Parliament if they are elected Members of Parliament and those who are not elected members become ex-officio Members of Parliament without voting rights. The reasons for this arrangement were to enable the executive to interface and negotiate with Members of Parliament to avoid conflict and deadlock and to enable the President to choose those whom he found suitable and capable. It was also found precarious for someone to give up his or her seat in Parliament when appointed as a minister – he or she could be dropped any time from a ministerial post. There is a strong view that ministers should not be Members of Parliament as this offends the principle of separation of powers. It is also argued that ministers do not have time to look after their constituencies and if they have, they advantage their constituencies with resources to the detriment of other areas.

As can be seen, the separation of powers is not complete since part of the executive sit in Parliament. However, this has not affected the system of checks and balances imposed between Parliament and the Executive. On a number of occasions, Parliament has refused to approve appointments or loan agreements. On other occasions Parliament has censured ministers for alleged mishandling of public affairs or for corruption and recommended their removal, and the President has obliged. Parliament has also refused to pass some bills until the President has modified them or given a satisfactory explanation. This has made it necessary for the President to take pains to meet Members of Parliament to negotiate and convince them to accept his proposals or policies.

The Constitution lays down elaborate procedures for impeachment of the President by Parliament under Article 107. The grounds for removal include: abuse of office or wilful violation of the oath of allegiance and the presidential oath or any provision of the Constitution; misconduct or misbehaviour; or physical or mental incapacity.

The process is initiated by a notice signed by not less than one third of all Members of Parliament and submitted to the Speaker.
The Speaker is required to transmit the notice to the President and the Chief Justice. The Chief Justice must constitute a tribunal comprising three Justices of the Supreme Court to investigate the allegation in the notice and report to Parliament whether or not there is a _prima facie_ case for the removal of the President. The President is entitled to appear at the proceedings of the tribunal and to be represented by a lawyer or an expert.

If the tribunal determines that there is a _prima facie_ case for the removal of the President, then if Parliament passes the resolution supported by votes of not less than two thirds of all Members of Parliament, the President shall cease to hold office. Other innovations under the executive concern the offices of the Attorney General and the Director of Public Prosecutions (DPP) which were strengthened in terms of powers and status. The Attorney General is a cabinet minister appointed by the President with the approval of Parliament. A person is not qualified to be appointed Attorney General unless he is qualified to be appointed a Judge of the High Court. The Attorney General is the Principal Legal Adviser of the Government.

The functions of the Attorney General were expressly laid down in Article 119(4) to emphasise their importance. They are:

- to give legal advice and legal services to the government on any subject;
- to draw and peruse agreements, contracts, treaties, conventions and documents by whatever name called, to which the government is a party or in respect of which the government has interest.
- to represent the government in courts or any other legal proceedings to which the government is a party, and
- to perform such other functions as may be assigned to him or her by the President or by law.

It is expressly provided that no agreement, contract, treaty convention or document by whatever name in which the government has an interest, shall be concluded without legal advice from the Attorney General, except in such cases and subject to such conditions as Parliament may prescribe.

The Director of Public Prosecutions is another legal officer whose office is provided for in the chapter on the Executive under
Article 120. The Director of Public Prosecutions is appointed by the President on the recommendation of the Public Service Commission and with approval of Parliament.

A person is not qualified to be appointed DPP unless he or she is qualified to be appointed a Judge of the High Court and he or she enjoys the same terms and conditions of service as a Judge of the High Court. The Director of Public Prosecutions is independent, and is not subject to the direction or control of any persons or authority but regard must be had to the public interest, the interest of the administration of justice, and the need to prevent abuse of the legal process.

The functions of the Director of Public Prosecutions have been expanded to include the power to direct the police to investigate any information of a criminal nature and report to him or her expeditiously. This provision is intended to enable the Director of Public Prosecutions to have control over the criminal investigations which are conducted by the Criminal Investigations Department – part of the Uganda Police Force. Another change was in the Director of Public Prosecution's power to discontinue proceedings before judgment is delivered. The Director of Public Prosecution is prohibited from discontinuing proceedings commenced by another person or authority without the consent of the Court. These innovations are in addition to the usual powers of the Director of Public Prosecutions to institute or take over criminal proceedings commenced by any other person or authority.

The Director of Public Prosecutions is therefore now an autonomous prosecuting authority, not operating under the control of the Attorney General or the Minister of Justice.

A broadly representative and independent Parliament
Parliament is the highest symbol of representative government and voice of the people. It is also the supreme legislative organ in a country, with power to make laws for peace, order, development and good governance.

In Uganda, the main concerns of the people about Parliament included the failure of the legislature to be representative of the people, poor quality of representation, lack of accountability by members to the electorate, manipulation by the executive, lack of
acceptance of the role of the opposition, excessive centralisation of legislative powers, and the absence of separation of powers and checks and balances.

Ugandans preferred a unicameral to a bicameral Parliament one associated with federalism. A bicameral Parliament was not suitable for a small unitary state. The Constituent Assembly rejected the National Council of State which had been proposed by the Constitutional Commission to act as a liaison between the Executive and Parliament. This would resolve any conflicts between them, advise the President on the exercise of executive powers, promote good relations between central and local Government and approve presidential appointments. It seems that the Constituent Assembly feared that the Council would strengthen the Presidency and weaken Parliament, although both organs of the state were to be represented on it. The Council was based on the idea of the National Executive Committee of the NRC.

In order to provide effective representation, the Constitution provides that Parliament shall consist of directly elected representatives to represent constituencies and representatives of various interest groups which include women representing districts, youth, army, workers and persons with disabilities, as Parliament may determine. The Vice President and members of the cabinet who are not already Members of Parliament are ex-officio members, without a right to vote on any issue requiring a vote in Parliament. The representation of special interest groups is to be reviewed after ten years, and then after every five years by Parliament, to decide whether to retain, increase or abolish it. The special representation has greatly empowered marginalised groups which would otherwise have had no significant voice in Parliament. This is a form of affirmative action.

The main function of Parliament is to make laws on any matter for the peace, order, development and good governance of Uganda but it has many others. These include: the protection of the Constitution and the promotion of democratic governance of Uganda, the approval of presidential appointments, the approval of a state emergency and declaration of war, the determination of emoluments of political leaders and specified constitutional offices; the discussion or initiation of bills and the assessment
and evaluation of activities of Government and other bodies and the censoring of ministers for misconduct or non-performance of their duties.

For the efficient and expeditious execution of its functions, Parliament has the power to form standing and session committees. Standing committees have the power to call any Minister or any person to appear and give evidence. They have the powers of the High Court to enforce attendance of witnesses and production of documents.

These are very powerful and important functions. The Constitution made a major shift in the balance of power between the executive and the legislature in favour of the latter as the most representative democratic institution in the country. In order to promote a strong and independent Parliament, it is provided that Parliament is responsible for organising its work and determining its programme under the charge of the Speaker of Parliament who has power to summon and prorogue Parliament. The President has no power to summon or dissolve Parliament. To strengthen its independence, Parliament passed the Administration of Parliament Act which gives it power to select its staff, control its funds and provide for the welfare of its members and staff through the Parliamentary Commission.

One of the innovations regarding Parliament is the introduction of the right of recall of Members of Parliament. The electorate of any constituency or any interest group have the right to recall their Member of Parliament before the expiry of the term on grounds of inability to perform, misconduct or misbehaviour likely to bring the office into contempt or disrepute, or persistent desertion of the electorate without reason. The petition for recall must be signed by at least two-thirds of the registered voters in the constituency and addressed to the Speaker. Thereafter the Electoral Commission must conduct a bye-election for the constituency. To-date, Parliament has not made the law to regulate recall of Members of Parliament and no Member of Parliament has been recalled but the provision has the effect of promoting effective representation of voters through regular consultation.
An independent and accountable Judiciary

In a democratic society, the Judiciary plays a leading role as the custodian of the constitution, guardian of basic human rights and freedoms, and promoter of the rule of law. The Judiciary can only achieve these goals through the impartial and just settlement of disputes between citizens and between the state and its citizens. An efficient and fair system of administration of justice is essential if citizens are to live together in peaceful association with one another. In order for the Judiciary to succeed in dispensing justice impartially, it must be accorded independence from interference by any authority or person in the exercise of its judicial functions.

In conceptualising the nature and functions of the Judiciary in the new constitutional order, the framers had regard to the concerns, values and interests of the people. The Constitutional Commission found that the people were concerned about injustice and discrimination in the administration of justice brought about by corruption, bribery and sympathy towards the rich. The people alleged that justice was being bought as a commodity. There was concern about lack of independence of the Judiciary due to political interference. They lamented the foreign nature of law and their ignorance of the law. The people also decried long delays in the administration of justice.

The people proposed that the independence of the Judiciary should be guaranteed and the rule of law adhered to. They wanted fair, speedy and affordable justice. They called for equality before the law with no impunity or exemption for any person. They looked forward to improved access to justice with justice brought closer to the people and legal assistance provided to the poor. Finally the people wanted compensation to be emphasised.

The new Constitution therefore sought to address these public concerns by strengthening the independence of the Judiciary by laying down safeguards for that independence. These safeguards include; security of tenure, the fixing of salaries by Parliament, the charging of judiciary expenses on the Consolidated Fund, providing for judicial immunity, and financial autonomy. In order to secure financial autonomy, the Judiciary was made a self-accounting institution with its budget being submitted to Parliament through the President without amendment but with comments of the
Executive. Parliament approves the budget subject to the dictates of the resources available.

The Constitution which vests judicial power in the Judiciary under Article 126, declares that judicial power is derived from the people, and must be exercised by the courts in the name of the people and in conformity with the law, values, norms and aspirations of the people. Thus the Judiciary is ultimately accountable to the people, whose values should be taken into account in administering justice. The fundamental principles to be taken into account in administering justice are:

• Justice shall be done to all irrespective of social and economic status;
• Justice shall not be delayed;
• Substantial justice shall be administered without undue regard to technicalities, Article 126(2)(e);
• Adequate compensation shall be awarded to victims of wrongs;
• Reconciliation shall be promoted between the parties.

The proper implementation of these principles can fundamentally change the system of administration of justice to bring equal justice closer to the people. This is likely to promote greater judicial legitimacy and public confidence in the administration of justice.

While the formal court system consisting of the Supreme Court, the High Court and Magistrates Courts was preserved, the Constitution created a new Court of Appeal which also was to be the Constitutional Court and lies between the Supreme Court and the High Court. The Constitution also established Kadhi Courts to administer Islam Law. At the lowest level of the system the Local Council Courts which are community courts at village, parish and sub-county levels were recognised to deal mainly with civil disputes or minor criminal offences. These courts mainly promote reconciliation between the parties, but have power to award compensation. They are popular because they are accessible, cheap and fast. They have replaced what used to be informal courts of elders and chiefs. The Constitution provides in Article 127 that Parliament shall make laws providing for the participation of the people in the administration of justice by the courts and the Local Council Courts can be said to be fulfilling this role.
In order to insulate the appointment and discipline of judicial officers from undue political influence, an independent Judicial Service Commission was established with a Chairperson and eight members. The Chairperson and Deputy Chairperson must be persons qualified to be appointed Justices of the Supreme Court. The Chief Justice, Deputy Chief Justice and Principal Judge are not allowed to be members of the Commission. The other members include the Attorney General, a Judge of the Supreme Court representing Judges, two advocates representing the Uganda Law Society, two lay persons and one member representing the Public Service Commission. The Commission’s functions include recommending Judges to the President for appointment with approval of Parliament and advising on the terms and conditions of judicial officers. It also organises judicial and public education, receives public complaints about the administration of justice and advises Government on the administration of justice. Since it was established in 1997, the Commission has successfully handled most of its tasks. I was privileged to serve as the first chairperson of the reconstituted Judicial Service Commission between 1996 and 2000.

**Decentralised System of Local Self-government**

The new Constitution introduced a unique system of local government and one which is different from the system in the 1962 or the 1967 Constitutions. Federalism and unitary centralism were both rejected as unsuitable for Uganda. The Constitution Commission was however of the view that the advantages of federalism could be achieved without necessarily adhering to all the characteristics that aim at reproducing the entire government structure at the level of local government. We believed that it was possible to have a decentralised form of government in which local governments were in full control of their own affairs at the least cost and to the satisfaction of the majority. Such arrangements could be constitutionally entrenched to provide certainty and stability. The Constituent Assembly endorsed the system.

Decentralisation of powers was therefore the system adopted in the Constitution to divide powers between the centre and the local areas. It is essentially a system of local self-government in a unitary
state. Conceptually, decentralisation is a term that pre-supposes centralised and unitary states and describes the process by which powers are transferred from the centre to local governments giving them more autonomy and liberty to manage their affairs within the framework of a unitary state.

A successful decentralisation policy must respect national unity and indivisibility as well as local diversity and autonomy.

The provisions relating to the system of decentralisation are contained in Chapter 11 of the Constitution, on Local Government. The system is based on the district as the basic unit, with lower local governments and administrative units. The principles upon which the system is based are laid down in Article 176 of the Constitution as follows:

- the system shall be such as to ensure that functions and responsibilities are devolved and transferred from the government to local government units in a coordinated manner;
- decentralisation shall be a principle applying to all levels of local government and in particular from higher to lower local government units to ensure people’s participation and democratic control in decision making;
- the system shall be such as to ensure the full realisation of democratic governance at all local government levels;
- there shall be established for each local government unit a sound financial base with reliable sources of revenue;
- appropriate measures shall be taken to enable local government units to plan, initiate and executive policies in respect of all matters affecting the people within their jurisdiction;
- persons in the service of local government shall be employed by the Local Government and;
- the local government shall oversee the performance of persons employed by the Government to provide services in their areas and to monitor the provisions of Government services or the implementation of projects in their areas.

It is also provided that the system of local government shall be based on democratically elected councils on the basis of universal adult suffrage. A local government is based on a council which is the highest political authority within its area of jurisdiction and which has legislative and executive powers to be exercised
as provided by the Constitution. It is important to note that one third of the membership of each local government council must be reserved for women.

A district is headed by a chairperson who must be elected directly by universal adult suffrage through secret ballot. A council has a district executive committee of secretaries nominated by the Chairperson and approved by the council. The council also has a Speaker. It also has a Chief Administrative Officer appointed by the District Service Commission.

The functions and services reserved to the Government are specified in the Sixth Schedule to the Constitution. These include defence and security, banking, taxation policy, citizenship, national parks, foreign relations, public services of Uganda, the Judiciary, education policy, health policy, agriculture policy, etc. District Councils have responsibility for any functions and services not specified in the Sixth Schedule. District Councils and the lower councils may, however, on request be allowed to exercise any of the functions and services specified in the Schedule. The Local Government Act 1997 clarifies further the functions and powers which the local authorities are in charge of.

Local governments have power to levy, collect and appropriate fees and taxes in accordance with the law. The local governments are entitled to receive unconditional grants to run the decentralised services, calculated by a formula specified in the Seventh Schedule to the Constitution. They are also entitled to receive conditional grants to finance programmes agreed between the Government and the local government, and which must be expended for the purposes for which they were made. The Councils also get equalisation grants for giving subsidies or making special provisions for the least developed districts. These grants are based on the degree to which a local government unit is lagging behind the national average standard for the particular service.

A Local Government Finance Commission was established by the Constitution to advise the President on matters concerning the distribution of revenue between the Government and the Local Governments, and the allocation to each local government, and to advise local governments on appropriate tax levels to be levied.
Each district has a District Service Commission to appoint officers in the service of a district.

A provision exists in the Constitution under Article 178 allowing various districts to cooperate in areas of culture and development set out in the Fifth Schedule to the Constitution, and to form councils, trusts funds and secretariats for that purpose. This provision was intended to satisfy those districts or areas which wanted a federal status and therefore the Constitution deemed some districts to belong to one entity, region or kingdom. The districts of Buganda specified in the First Schedule to the Constitution were deemed to have agreed to cooperate on the coming into force of the Constitution but to date no group of districts have successfully signed a charter to formalise their cooperation.

On the whole, decentralisation is a popular system of local participation in democratisation and development. It has brought power and services closer to the people, who are eager to exercise it. The main problems include lack of capacity at local levels, tax evasion, low civic competence, corruption, and lack of consensus on priorities.

**Restoration of Traditional Institutions**

It will be recalled that the 1962 Constitution recognised the institution of traditional rulers most of whom had ruled over their kingdoms before the colonial period. It established kingdoms as federal states. However, in 1967, the institutions of traditional or cultural rulers were abolished and their property transferred to the central government. Federalism was also abolished and federal states turned into districts, administered as local administrations under the Central Government. Uganda became a unitary republic.

During the constitutional debate, there were strong reasons advanced against the restoration of traditional institutions in most parts of Uganda. There were equally strong grounds advanced for the restoration of the institutions, especially in Buganda and a few other areas where the institutions had existed previously. I have outlined these arguments in Chapter 9. The Commission recommended the restoration of traditional institutions in those areas where the people cherished them and wished to have them restored, as a recognition of their right to practise their culture.
The right to culture is recognised in both the Directive Principles of State Policy and the Bill of Rights. Paragraph XXIV of the Directive Principles provides that cultural and customary values which are consistent with fundamental rights and freedoms, human dignity, democracy, and with the Constitution, may be developed and incorporated in aspects of Ugandan life. The state is required to preserve those cultural values and practices which enhance the dignity and well-being of Ugandans, and to encourage the development of all Ugandan languages. The Bill of Rights in Chapter Four of the Constitution, specifically recognises the right to culture in Article 37 where it states that ‘Every person has a right to belong, enjoy, practise, profess, maintain and promote any culture, cultural institution, language, tradition, creed or religion in community with others.’

The main provisions recognising the institution of traditional or cultural leaders are contained in Article 246 of Chapter Sixteen of the Constitution. The institution of traditional leaders is permitted to exist in any area in Uganda in accordance with the culture, customs and traditions of the people to whom it applies. In any community where the issue of traditional leaders has not been resolved, it shall be resolved by the community concerned using a method prescribed by Parliament.

While a traditional or cultural leader may own property or enjoy any privileges or benefits conferred upon him by Government, there are three important limitations placed upon the institution. In the first place, no person can be compelled to pay allegiance or contribute to the cost of maintaining the leader. Secondly, a traditional leader cannot join or participate in partisan politics. Finally, a traditional leader shall not have or exercise any administrative, legislative or executive powers of Government or local government.

The purpose of these limitations was to ensure that the institution was entirely voluntary for those who believe in it, and that the leader did not compromise his office by practising partisan politics which could bring conflict between the institution and the Government, as had happened in the past.

Since the restoration of traditional institutions, most kings have been restored, namely; in Buganda, Bunyoro and Tooro
Kingdoms. Most of their properties have been returned to them. The Kyabazinga of Busoga who is also a cultural leader was reinstated. Several other areas have resurrected their traditional institutions or chiefdoms or created new ones which are in the form of cultural leaders. These institutions are playing a useful role in preserving peace, developing cultures, promoting development and forging unity in diversity.

However, there is still a strong demand for federalism among the kingdom areas especially Buganda which under the 1962 Constitution had a political kingdom constituting the Federal State of Buganda. The Constitutional Review Commission was expected to address this issue, and make recommendations to Government.

**Guaranteeing Security of Land Ownership and Land Justice**

The people of Uganda regard land as perhaps the most important resource of the people and community as a whole. This is not surprising in view of the fact that Uganda is predominantly an agricultural country. Land is a major factor of production alongside labour and capital.

Under the previous constitutions, various land tenure systems were recognised, namely customary tenure, mailo tenure, freehold tenure and leasehold tenure. However, in 1975 the Land Reform Decree abolished all mailo and freehold tenures and converted them into leasehold. Customary tenure was preserved and tenants on mailo land were declared tenants at sufferance. In effect most of the land became public land to be managed by the Government. In practice, the former mailo and freehold owners behaved as if the legal reform had not been implemented, thereby causing confusion in the management and dealings in land.

During the constitution-making exercise, the major concerns of the people included; land grabbing by rich and powerful people, thereby rendering poor peasants landless, fear of foreigners taking over land and too much centralisation and corruption in land administration. In order to address these concerns the Commission developed certain principles to guide its recommendations which included: principles of fair and equitable allocation of land to all citizens; the need to guarantee every citizen access to land;
protection of peasants from eviction from land while recognising that all categories of farmers and other developers should have easy access to land; formulating a land tenure and policy that could lead to a balance in development in urban and rural areas; guaranteeing use of land to farmers and other investors; discouraging holding of land for prestige or speculative purposes; and a phased introduction of a uniform system of land tenure of freehold in rural areas and leasehold for urban areas.

These concerns and principles influenced the Commission’s recommendations for a new system of land tenure. The new Constitution restored land ownership to the people. Article 237 declared that land in Uganda belongs to the citizens of Uganda and shall vest in them in accordance with the land tenure systems provided for in the Constitution. The land systems under which land is owned - customary, freehold, mailo and leasehold - have been recognised by the Constitution. The ownership of land was transferred from the state to the citizens. The 1975 Land Reform Decree, which had abolished freehold and mailo titles and converted all land into public land was repealed. On the coming into force of the Constitution all Uganda citizens owning land under customary tenure were free to acquire certificates of ownership in a manner prescribed by Parliament. Land under customary tenure could be converted to freehold ownership by registration. Leases of public land could also be converted into freehold.

It should be emphasised that by declaring land to belong to the people and to vest in them, the land which the colonial and post colonial governments had expropriated from the local inhabitants and transformed into crown or public land was now restored to the people. The recognition of the various land tenures existing prior to the Land Reform Decree also resolved land conflicts created by the Decree.

To ensure maximum protection to citizens occupying the land, ‘the lawful or bona fide’ occupants of land, whether freehold or leasehold were allowed to enjoy security of occupancy on the land. This was a victory for peasants who had occupied the land of absentee landlords who had not been utilising the land. But Parliament was required to enact a law within two years to regulate
the relationship between the lawful or bona fide occupants of land and the registered owners of that land, and also to provide for the acquisition of a registrable interest on the land by the occupant. The Land Act 1998 was made in compliance with this requirement.

The Constitution established various institutions for the management of land and the settlement of land disputes. The Uganda Land Commission was established to hold and manage land acquired by the Government. The District Land Boards were established in each district to hold and allocate land which was not owned by any person or authority, to facilitate the registration and transfer of land, and to deal with land matters in the district. Parliament was empowered to make law establishing land tribunals to determine disputes relating to the grant, lease, repossession, transfer or acquisition of land by individuals, the Land Commission, or any other authority responsible for land. Land Tribunals were also to determine disputes relating to the amount of compensation to be paid for land acquired.

The Government or a Local Government was given power to acquire land in the public interest subject to requirements governing public acquisition of land. The Government, or a Local Government were to hold in trust for the people of Uganda, natural lakes, rivers, wetlands, forest resources, game reserves, national parks, and any land reserved for ecological and tourism purposes for the common good of all citizens. Non-citizens were to acquire leases of land and not freehold, in accordance with the law.

It must be noted that under Article 26 in the Bill of Rights, every person has a right to own property either individually or in association with others. The state cannot compulsorily acquire property unless the taking is necessary for public use or in the interest of defence, public safety, public order, public morality or public health, and there is prompt payment of fair and adequate compensation prior to the acquisition and of a right of access to court is provided for by any person who has interest in the property.

The Land Act 1998 was enacted in fulfilment of a constitutional requirement that a law be passed by Parliament within two years of the coming into force of the Constitution. Both the Constitution and the Land Act were intended to create far-reaching reforms in land laws with a view to facilitating and expediting development.
The Act defines the various land tenures and ‘lawful occupant’ and ‘bona fide occupant’. These were referred to as tenants by occupancy and were given rights to enjoy security of tenure on payment of nominal annual ground rent of one thousand shillings. Such a tenant is free to apply to the registered tenant for a certificate of occupancy or he can exercise his option to purchase his interest. Persons holding customary ownership on former public land may apply for a certificate of occupancy or to convert their interest into freehold. In considering these applications, consideration must be given to the rights of women, children and Persons With Disabilities.

There were innovations with regard to the land fund, Land Tribunals and the Jurisdiction of land tribunals as alluded to in Chapter 11, pg 296.

There are also provisions relating to the exploitation of minerals. Parliament was given power to make laws regulating the exploitation of minerals and the sharing of royalties arising from such exploitation. It was expressly provided that minerals and mineral ores shall be exploited taking into account the interests of the individual landowners, Local Governments and the Government.

For the first time, provisions relating to the protection and preservation of the environment were included in the Constitution both in the Directive Principles and in Chapter 15 on Land and Environment. Article 245 requires Parliament to make laws intended to protect and preserve the environment from abuse, pollution and degradation; to manage the environment for sustainable development, and to provide environmental awareness. To implement these provisions Parliament enacted the National Environment Act to provide the necessary framework for the protection and preservation of the environment.

**Domesticating the Military**

The army has played an active role in the politics of Uganda since independence: the gun rather than the vote has dominated political change. The army was thus associated with dictatorship, political and constitutional instability as well as with gross violation of human rights especially through state terrorism. There was therefore, a need to change the character and role of the army to
make it support democratic institutions, defend the country and be transformed into a pro-people army. It was for these reasons that it was proposed that the military needed to be domesticated.

During the constitution-making exercise, it was argued that the military needed to be integrated into civilian life in order to be part of the development process. The army should be productive and should assist whenever there are national disasters. It was also agreed that during the transition to democracy, the military should be represented in Parliament and be part of the democratic process because of its historical role in liberating the country. It was therefore found imperative to address the issue of the military in the Constitution for the first time, in chapter 12. The name of the army was changed from National Resistance Army to Uganda People’s Defence Forces to reflect its new role and character.

The Constitution provides in Article 208 (2) that the Uganda People’s Defence Forces must be non-partisan, national in character, patriotic, professional, disciplined, productive and subordinate to the civilian authority as established under the Constitution. Members of the UPDF must be citizens of Uganda of good character. No person is allowed to raise an army except in accordance with the Constitution. The Constitution sets out in Article 209 the functions of the UPDF. They are to:

- preserve and defend the sovereignty and territorial integrity of Uganda;
- co-operate with the civilian authority in emergency situations and in cases of natural disasters;
- foster harmony and understanding between the Defence Forces and civilians; and
- engage in productive activities for the development of Uganda.

Parliament was given the power to make law regulating the UPDF by, *inter alia*, setting up the organs and structures of UPDF, providing for the recruitment, appointment, promotion and discipline of members of UPDF, and ensuring that the members of UPDF are recruited from every district of Uganda.

These provisions emphasise the new image and role that the UPDF is expected to have. It must be a professional national army which must defend not personal but national interests. The army is required to improve its military-civil relations and remain non-partisan.
The chapter on Defence and National Security also contains provisions relating to the Uganda Police Force and Uganda Prison Services which define their characteristics, functions and commands. In addition, new provisions were introduced to regulate intelligence services which had in the past been involved in abuses of human rights. Parliament was given the sole power to establish by law intelligence services and prescribe their composition, functions and procedures.

The Constitution also established the National Security Council with the function of informing and advising the President on matters relating to National Security. Parliament was given power to make laws to regulate the possession and use of firearms and ammunition. The Constitution emphasised in Article 221 that it was the duty of the UPDF, the Uganda Police Force, the Uganda Prisons Services, the Intelligence Services and the National Security Council to observe and respect human rights and freedoms in the performance of their functions.

Measures have been taken to make UPDF a national army by recruiting from all parts of Uganda. The army has been made more professional by increased training at home and abroad. Its discipline has greatly improved and there have been fewer instances of harassment of the civilian population. The role of the army in engaging in productive activities has not been so successful as its efforts to establish industries and farms has not born fruit except in a few instances, such as in the production of ammunition.

The role the army has played in assisting the police in maintaining security during elections has been controversial as the army has been accused of violence, intimidation and being partisan or supporting particular candidates. This allegation was particularly prominent in the Presidential Election of 2001. A Committee of Parliament was formed recently to investigate and report on election violence and it has already submitted its report to Parliament. While election violence is also perpetrated by candidates, voters, supporters, government and political functionaries, there is a feeling that the army should be kept out of elections.
Another issue which has arisen has been the deployment of the army to the Democratic Republic of Congo without the authority of Parliament. The deployment was made to defend the territorial integrity of Uganda and to fight the ADF which was carrying out rebel activities along the Congo/Uganda border. This happened because Parliament had not made a law providing for the deployment of troops outside Uganda as required by Article 210(d) of the Constitution. Parliament should make this law in addition to making laws to regulate the army, in accordance with the Constitution.

The major military engagement of the army has been against the protracted rebellion in Northern Uganda led by Joseph Kony and his LRA for the last 18 years. The rebellion has undermined the establishment of peace and development in this area where many inhabitants now live in camps of Internally Displaced Persons (IDPs). The rebellion has been weakened by the increased pressure of UPDF, the capture or surrender of several top commanders of Kony and the signing of the peace agreement between the Sudanese Government and the SPLA of Col. Garang, and it is hoped that peace will soon be restored in the north, as it is in the rest of the country.

Re-definition of Citizenship

The definition of citizenship is important in providing for national identity and protection as well as to the nation-building process. Nation-building is a process through which the people within a state acquire common positive values that enable them to identify themselves as a collective unit. In other words, it involves the sum total of the positive collective attitudes towards the nation state. They enable the people to sustain the various institutional mechanisms necessary for a state to survive. Survival of a nation state will depend on how its citizens interpret their history, how they live their cultural values, how they regard representatives of the state organs, how they regard the mechanism for transfer of power, and so on.

Two critical issues relating to the issue of nation-building, national values and national identity concerned the need to have a national language and the acquisition of citizenship. The issue of national language in Chapter 9 has been dealt with.
the issue of citizenship was very important in identifying Ugandans. Uganda consists of over 50 ethnic groups brought together by the colonisers: the boundaries of Uganda were not finally settled until 1926. They were drawn arbitrarily, cutting across ethnic groups, which are now also found in neighbouring countries. As a result of Uganda’s geo-political position, there was fear of foreigners, refugees and immigrants acquiring citizenship.

The Constitution therefore, in Chapter 2, recognised the 56 indigenous communities existing in Uganda since 1926 as those which would be the basis of citizenship. The list appears in the Third Schedule of the Constitution. Therefore, citizenship by birth is acquired by every person born in Uganda, one of whose parents or grandparents are or were members of any of the indigenous communities existing and resident within the borders of Uganda on 1st February 1926 and set out in the third schedule. Secondly, every person born in or outside Uganda one of whose parents or grandparents was at the time of birth of that person a citizen by birth shall be a citizen of Uganda by birth. A child of not more than five years whose parents are not known who is found in Uganda is presumed to be a Uganda citizen.

Provisions are made for the acquisition of citizenship by registration in a number of cases including persons who have lived continuously in Uganda since independence in 1962, those married to Ugandan spouses and those who have lived in Uganda for 10 years before the commencement of the Constitution. These provisions cater for immigrants who have lived in Uganda for a long time. Citizenship by registration can be lost on specified grounds, including voluntary acquisition of citizenship of another country, acquisition of Ugandan citizenship by fraud or bribery, and espionage against Uganda.

A National Citizenship and Immigration Board is established to register and issue national identity cards to citizens, to issue Ugandan Passports and other travel documents, to grant and cancel citizenship by registration, to grant and cancel immigration permits, and to register and issue identity cards to aliens. The functions of the Board may be decentralised to the district level to improve its accessibility to the people.
For the first time, the chapter on citizenship contains the duties of a citizen. They are provided for in Article 17 and include the following: to have respect for the national anthem, flag, coat of arms and currency; to respect the rights of others; to protect and preserve public property; to pay taxes; to register for electoral purposes; to combat corruption; to create and protect a clean and healthy environment; and to undergo military training for the defence of the Constitution and the country.

Establishment of Institutions to promote Good Governance and Accountability

One of the objectives of the new Constitution was to establish and uphold the principle of public accountability of all holders of public offices and political posts. The two main innovations introduced were the Leadership Code of Conduct and the Inspectorate of Government. The office of the Auditor General was preserved but strengthened and its independence guaranteed.

During the constitution-making consultations, we found that Ugandans were deeply worried about the apparent moral decay and misconduct of many leaders – both elected and appointed public office holders. The people’s view was that the success of government or even the new Constitution would to a large extent depend on the quality of the leaders responsible for implementing its provisions.

Therefore, it was imperative for the new democratic constitutional order to improve standards of leadership. The new Constitution had to set new standards of leadership and provide mechanisms for adherence to such standards.

The new standards of conduct for leaders were to address people’s concerns which included corruption, abuse of office, dictatorial tendencies, poor leadership qualities, the absence of service for the common good and failure to lead by example. In order to create a new leadership culture, the people wanted principles underpinning the values of honesty, impartiality, non-discrimination, respect for the rule of law, fairness, transparency, and accountability, and culture of shame to be promoted.

Chapter 14 of the Constitution provided for the establishment of a Leadership Code of Conduct for persons holding such offices as may be specified by Parliament. The Leadership Code was
mandated to require specified officers to declare their incomes, assets and liabilities from time to time and how they acquired or incurred them.

The conduct which the Leadership Code was to prohibit, was specified to include:

- Conduct likely to compromise the honesty, impartiality and integrity of specified officers.
- Conduct likely to lead to corruption in public affairs.
- Conduct which is detrimental to the public good or welfare or good governance.

The Leadership Code was also to prescribe the penalties to be imposed for breach of the Code, and the powers, procedures and practices for ensuring its effective implementation. Parliament was given power to provide that a person dismissed or removed from office by reason of breach of the Code could be disqualified from holding office again. The Code was to be enforced by the Inspectorate of Government or such other authority as Parliament might by law prescribe. The Leadership Code Act 2002 was made providing for the implementation of the provisions of the Constitution.

The Inspectorate of Government was established by Chapter 13 of the Constitution. The Inspectorate consists of the Inspector General of Government and such number of Deputy Inspectors General as Parliament may prescribe. These officers are appointed by the President with the approval of Parliament, and hold office for a term of four years, subject to renewal only once. They enjoy security of tenure and can only be removed by the President upon a recommendation of a special tribunal constituted by Parliament.

The Inspectorate of Government has far-reaching functions. The functions are prescribed by Parliament, and include:

- To promote and foster strict adherence to the rule of law, and principles of natural justice in administration.
- To eliminate and foster the elimination of corruption, abuse of authority and public office.
- To promote fair, efficient and good governance in public offices.
- To supervise the enforcement of the Leadership Code of Conduct.
• To investigate any act, omission, advice, decision or recommendation by a public officer or any other authority.
• To stimulate awareness about the values of constitutionalism in general and activities of its office in particular, through any media or other means it considers appropriate.

The Inspectorate is given special powers under Article 230 to investigate, cause investigation, arrest, cause arrest, prosecute or cause prosecution in respect of cases involving corruption, abuse of authority or public office. The Inspectorate has power to make such orders or give such directions as are necessary in the circumstances, and to enter and inspect premises or property of any government department or call for any documents for examination.

The jurisdiction of the Inspectorate extends to officers or leaders whether employed in the public service or not and also to such institutions, organisations or enterprises as Parliament may prescribe.

To make the institution more accessible to the public, the Inspectorate is given power to establish branches in districts and other administrative levels as it considers fit for the performance of its functions.

The independence of the Inspectorate is guaranteed under Article 227 and therefore in the performance of its functions, it is not subject to the direction or control of any person or authority and is only responsible to Parliament. To strengthen its independence the Inspectorate has an independent budget which it as well controls. The Inspectorate is answerable to Parliament and is required to submit reports to Parliament at least once in every six months, on the performance of its functions, making any recommendations it considers necessary for Parliament. Parliament has made a law, the Inspectorate of Government Act 2002, regulating the Inspectorate’s exercise of powers.

The Inspectorate has registered a number of achievements since its establishment. It has been successful in creating public awareness about the adverse effects of corruption and lack of integrity on the economic and political development of this country, and the need to fight hard to eradicate corruption and abuse of office, especially among the public officers and political leaders. Uganda has been rated by Transparency International
amongst the 10 most corrupt countries, although the level of corruption appears to be reducing over the years. This means that the level of corruption is still high despite the concerted public campaign against it.

The Inspectorate has also carried out periodic National Integrity Surveys to assess the levels of corruption in the country, and it has established that they are still high, according to public perception. More public education and inducements are needed to create a culture of zero tolerance to corruption buttressed with strong ethical and moral standards.

It has investigated many cases of corruption and abuse of office and recommended appropriate action or sanctions to the relevant authorities. Such cases include the award of tenders especially by local governments, embezzlement by public officers, corruption and abuse of office by public officers and fraudulent payments for goods and services including ‘supply of air’. Some of these investigations have been acted on and saved Government the loss of colossal sums of money. However, other recommendations have not been accepted or implemented, thus perpetuating a culture of impunity. It has been alleged in some circles that the failure to act on such recommendations is due to lack of political will.

The Inspectorate has also been engaged in the prosecution of cases of corruption and abuse of office. Again, most of these prosecutions have not been successful due to poor investigations and prosecutions as well as the long delays by courts which tend to make interested parties lose interest in the cases. It is now being proposed by the Inspectorate that a special anti-corruption tribunal be established to deal with corruption cases.

Also, the Inspectorate has received many complaints about maladministration, unfair appointments or dismissal, unfair treatment by public officials and failure to follow rules of natural justice in handling administrative matters. It has investigated these complaints and made appropriate recommendations or taken appropriate action.

However, not all the recommendations have been implemented as some of them have been challenged in courts of law by the relevant authorities or officers involved. In some of the cases, the
courts have set aside the decisions of the IGG or made different decisions, thus reversing the recommendations of the IGG. There have been several such decisions of the courts ordering reinstatement of public officers.

Another area where the Inspectorate has been successful is the enforcement of the Leadership Code, which requires public officers and political leaders to file forms with the IGG declaring their assets and liabilities and those of their spouses every two years. These declarations are intended to ensure that leaders’ incomes, assets and liabilities are monitored so as to determine whether they have been acquired legally or properly in accordance with the Leadership Code. The evidence available indicates that the vast majority of leaders have complied with the declaration of assets requirements.

In a recent case, however, *Fox Odoi Oywelowo & Another v. Attorney General* Constitutional Petition No. 8 of 2003, the Constitutional Court held that various sections of the Leadership Code Act 2002 which give the IGG powers to direct the dismissal of public officers including holders of constitutional offices are inconsistent with various provisions of the Constitution which provide for special procedure for dismissal or removal of such officers. Therefore, the IGG’s action in directing the President to dismiss a Presidential Advisor, who had failed to submit his Declaration of Assets and Liabilities to the IGG was unconstitutional and invalid.

The Constitutional Court declared that:

- Sections 5(2), 12(2), 13(4), 14(3) and 35 of the Leadership Code Act No.17 of 2002 are not inconsistent with Articles; 144, 56, 60(8), 120(7), 146(7) (c), 161(5), 163(10), 167(9), 169(9), and 238(5) of the Constitution.
- Sections 19(i), 20(i) and 35 (b) and (d) of the Act are inconsistent with Articles 144, 56, and 120(7) in that they create distinct procedures for removal from office from that provided in those Articles.
- Sections 19(i) 20(i) 35 (b) and 35 (d) are inconsistent with Articles 60(8), 146(7) (c), 161(5), 163(10), 165 (8), 167 (9), 169 (9) 172 (i) (a) and 238(5) in that they fetter the discretion provided to the President by those Articles.
In Major Roland Kakooza Mutale v. the Attorney General, Civil Appeal No 40 of 2003, the High Court held that the Inspector General of Government had acted lawfully in recommending the dismissal of Major Kakooza Mutale, but that Major Mutale had not been afforded a hearing by the IGG or the President before he was dismissed, thus breaching the rules of natural justice. The Court declared null and void the decision of the President in relieving the appellant Major Mutale of his office.

These decisions have been interpreted in some quarters as having weakened the powers and effectiveness of the IGG. Coupled with a proposal to merge the Uganda Human Rights Commission with the Inspectorate of Government, they were seen as an attempt to undermine the authority of the IGG. However, the merger proposal has been abandoned and there appears to be more Government commitment to strengthening the Inspectorate of Government to fight corruption and abuse of office more effectively.

The Inspectorate of Government has improved its effectiveness and accessibility by establishing regional offices upcountry. This makes the lodging and processing of complaints cheaper and faster. On the whole, despite the perennial problems of shortage of funds and resources, the Inspectorate of Government has had a marked impact on promoting ethics and integrity as well as accountability and transparency in public affairs.

**Constitutional Bodies and Offices**

One of the unique features of the Constitution is the establishment of an unprecedented number of Constitutional Commissions and Offices, which are sometimes referred to as ‘politically neutral zones’.

These institutions, which are usually insulated from political influence are intended to manage, administer, advise, adjudicate, develop and perform specialised public functions where special expertise, professional and technical skills, impartiality and integrity are required. The institutions complement the traditional public service bodies. They enjoy a substantial degree of autonomy from the three arms of state, as well as the public.

Previous constitutions of Uganda and constitutions of most countries establish only a few constitutional bodies to deal with
critical constitutional responsibilities which need to be guaranteed under the Constitution. The remaining public bodies are normally established by Acts passed by Parliament.

In the past constitutions of Uganda, the following Commissions and Offices were established:

- The Electoral Commission,
- The Public Service Commission,
- The Teaching Service Commission,
- The Judicial Service Commission,
- The Uganda Land Commission,
- The Auditor General,
- The Director of Public Prosecutions, and
- The Committee on Prerogative of Mercy.

In the 1995 Constitution, the number of constitutional bodies doubled. The old Commissions were retained but strengthened by making them more independent and giving them more executive powers. In addition, the following new constitutional bodies were established:

- The Uganda Human Rights Commission,
- The Health Service Commission,
- The National Citizenship and Immigration Board,
- The Local Government Finance Commission,
- The National Security Council,
- The Law Reform Commission,
- The Inspectorate of Government,
- The District Service Commissions,
- The Disaster Preparedness and Management Commission,
- The Equal Opportunities Commission, and
- The National Planning Authority.

In most cases, the Constitution lays down the composition, functions, tenure of service, staff, operation and funds of the Commissions. The members of these bodies are appointed by the President with the approval of Parliament for periods of four to seven years, renewable only once.

These institutions enjoy independence in the performance of their functions and are not subject to the control or direction from any person or authority. The members enjoy security of tenure. The funds of the institutions are a charge on the consolidated
fund. The Commissions are generally accountable to Parliament, to which they submit reports annually.

Most Commissions are now fully operationalised: their members have been appointed and laws have been enacted to govern their operations. A law to establish and operationalise the Equal Opportunities Commission is yet to be made. The women activists have stepped up their campaign for the law to be enacted.

The performance of the Commissions and Constitutional Offices has varied. By and large, they have been able to establish firm foundations for their effective operation. They have also been able to operationalise the Constitution by making the necessary appointments and executing constitutional obligations.

The main challenges which have faced these institutions and Government in general have included inadequate resources in terms of funds, staffing, and poor remuneration. Other problems include the failure of Government to comply with some of the recommendations of some of the institutions, such as the Human Rights Commission, the Electoral Commission and the Inspectorate of Government.

Many Commissions and Constitutional offices receive donor support and this has enabled them to expand their programmes and operate effectively. Among those which have benefited to a significant extent are the Uganda Human Rights Commission, the Inspectorate of Government, the Electoral Commission, and the Directorate of Public Prosecutions.

Commissions and other Constitutional offices are expensive. They increase the cost of public administration, which is already high. Indeed it appears that Government is not in a position to fund these institutions adequately. This is one of the major reasons why there are proposals to reduce the number of these institutions. As we saw earlier, one of the proposals is to merge the Uganda Human Rights Commission with the Inspectorate of Government as it was before the 1995 Constitution. This proposal is not popular among the human rights activists who support the continued existence of a separate and independent Human Rights Commission. Another proposal is to reduce the number of Service Commissions.
The functions of the constitutional bodies may also need to be streamlined to eliminate or reduce duplication and conflict in their functions. For instance, a number of bodies have the responsibility for conducting civic education, for example the Human Rights Commission, the Electoral Commission, the Judicial Service Commission, and Inspectorate of Government. The prosecution function is exercised by the Directorate of Public Prosecutions but the Inspectorate of Government also has powers to prosecute persons who are suspected to have committed offences relating to corruption, abuse of office and embezzlement. The Human Rights Commission has a Human Rights Tribunal which has power to adjudicate on complaints relating to the violation of human rights and to award remedies, while the main responsibility to adjudicate in cases of human rights violations remains with the courts. Any review of the constitutional bodies must address these problems and others which are likely to adversely affect their efficiency, effectiveness and affordability. However, I must acknowledge that we recommended fewer Commissions in the Constitution, precisely due to some of the problems stated above.

Safeguards to the Constitution
Uganda's past constitutional and political instability has been documented in the earlier chapters of this book. Prior to 1995, Uganda had had three constitutions and drastic amendments had been introduced by each successive government, normally involving suspending parts of the constitution without consulting the people. It has been said that each government or regime came with its own constitution. In their views submitted to the Commission, the people were quick to connect the political instability, social turmoil and violence which Uganda experienced after the 1966 crisis to the manner in which successive regimes had arbitrarily dealt with the national constitution without consulting the people. To these regimes, the constitution did not enjoy the respect, significance and a sense of sacredness constitutions are associated with. It was no more than a piece of paper which could be torn and thrown into the dustbin.
During the constitutional debate, the vast majority of Ugandans expressed the belief that unless the new Constitution was effectively safeguarded by both the military and political leaders and by the people, it would have little meaning wasting a lot of resources both human and financial on its making. They constantly asked us, ‘How would the new Constitution be safeguarded from illegal abrogation?’

The people in turn contributed important proposals, which we accepted and incorporated into the constitution. They wanted a durable Constitution which could stand the test of time.

The first safeguard for the Constitution was the manner in which the Constitution was made by the people through their full participation in the submission of views, public debate, and adoption of the Constitution by an elected Constituent Assembly. The preamble testifies to this popular participation. It is expected that the people, who are the most important safeguard for the Constitution would respect, uphold and defend a Constitution which they have made for themselves.

The second set of safeguards are the inclusion of the principles of the sovereignty of the people and supremacy of the Constitution. Article 1 of the Constitution declares that ‘All power belongs to the people who shall exercise their sovereignty in accordance with this Constitution’. It goes on to re-affirm that all authority of the state emanates from the people of Uganda, and the people shall be governed through their will and consent. On the other hand, all power and authority of Government and its organs derive from the Constitution, which in turn derives its authority from the people who consent to be governed in accordance with it. The people are to express their will and consent on who shall govern them and how they should be governed through regular, free and fair elections of their representatives or through referenda. Thus the importance of the participation of the people in their governance was reaffirmed with the people exercising political power to chose their governments, unlike past constitutions which did not recognise the sovereignty of the people.

The institutional framework for the exercising of political power or sovereignty is provided for in the Constitution. Article 2 of the Constitution declares that ‘This Constitution is the supreme law of
Uganda and shall have binding force on all authorities and persons throughout Uganda’. If any other law or custom is inconsistent with the Constitution, the Constitution must prevail and that other law or custom is void, to the extent of the inconsistency. Here we have a new category of prohibited inconsistency, namely custom. Under the Bill of Rights, customs, traditions and cultures, which degrade or oppress women, are prohibited. This means that such customs are unconstitutional and have no legal effect.

The third set of safeguards specifically provides for a duty to defend the Constitution and resist any person or authority seeking to overthrow the constitutional order. Under Article 3 of the Constitution, ‘It is prohibited for any person or group of persons to take or retain control of the Government of Uganda, except in accordance with the provisions of this Constitution’. Therefore, any person who by any violent or other unlawful means suspends, overthrows, abrogates or amends the Constitution or any part of it or attempts to do any such act, commits the offence of treason and must be punished according to the law.

Furthermore, it is declared that the Constitution shall not lose its force or effect even where its observance is interrupted by a government established by force of arms, but instead, as soon as people recover their liberty its observance shall be re-established.

The Constitution recognises the right of and imposes a duty on all citizens of Uganda at all times,

- to defend this Constitution and in particular to resist any person or group of persons seeking to overthrow the established constitutional order; and
- to do all in their power to restore this Constitution after it has been suspended, overthrown, abrogated or amended contrary to its provisions.

These provisions are radical in outlawing coups d’etat, and any other unlawful overthrow of governments or constitutions. The provisions are contrary to Kelsen’s Pure Theory of Law, which recognises that a successful revolution is sufficient to produce a valid new grundnorm or legal order to replace the old one. Therefore, Article 3 of the Constitution overrules the decision in the case of Uganda v. Commissioner of Prisons ex parte Matovu.
(1966) EA 514, which held that the 1966 overthrow of the 1962 Constitution was a successful revolution which effectively replaced the old legal order with a valid new one.

To enable the people to defend the Constitution, by force of arms if necessary, the Constitution provides that all able Ugandans have a duty to take part in military training for the defence of their country. This provision is intended also to demystify or democratise the gun by allowing as many citizens as possible to be able to defend themselves and their country if the need arises.

In order for the people to be able to defend the Constitution they must be familiar with its contents, ideas, principles, and institutions. The Constitution must be accessible to them in languages they understand so that they may assimilate and apply it in their daily lives. The Constitution must become a living and liberating instrument in their lives and participation in governance. However, the Constitution was written in English, the official language, which the majority of Ugandans do not understand. It was therefore, provided under Article 4 that the state should promote public awareness of the Constitution by translating it into Ugandan languages and disseminating it as widely as possible. The state was also required to provide the teaching of the Constitution in all educational institutions and armed forces training institutions, and disseminating it through the media. The Human Rights Commission was given the responsibility of educating and encouraging the public to defend the Constitution against violation, and to create public awareness about its provisions and about basic human rights and civic obligations.

In order to safeguard the Constitution, the procedure for its amendment was made more rigid. The people of Uganda desired to have a durable Constitution, which could stand the test of time, not one which could be amended easily from time to time by each successive government. The people wanted to be consulted on the amendment of various fundamental provisions of the Constitution while leaving Parliament to amend the rest on their behalf.

Therefore, Chapter 18 on the amendment of the Constitution provided for three methods for its amendment. The first method is under Article 259 where a two-thirds majority of all Members of Parliament is required plus approval by the people through
a referendum. Included in this procedure which requires a referendum are Articles 1 and 2 on the sovereignty of the people and supremacy of the Constitution respectively; Article 44 which prohibits derogation from particular human rights and freedoms; Article 69, on the types of political systems in the Constitution; Article 74 on the principles a political party must conform to; Article 75 prohibiting the establishment of a one party state; Article 79 (2) providing for review of representation of special interest groups in Parliament; Article 105 (1) prescribing the term of office for the president as being five years; Article 128 (1) guaranteeing the independence of the Judiciary; the whole of chapter 16 which deals with the institution of traditional or cultural leaders and Article 259 itself.

The second method is amendment by Parliament with approval of at least two-thirds of the members of the District Councils in each of at least two-thirds of all the Districts in Uganda. This procedure applies to amendment of Article 260, which provides for this method; Article 5 (2), which specifies the districts which Uganda shall consist of and how others can be established; Article 152 which provides for the imposition of tax by Parliament and the establishment of tax tribunals to settle tax disputes; Article 176 on principles of Local Government; Article 178 on cooperation among districts; Article 189 on the functions of Local Governments and councils and Article 197 granting urban authorities autonomy over their financial and planning matters in relation to the district councils.

The third method of amending the Constitution under Article 261 is by Parliament passing a bill supported at the second and third readings by votes of not less than two-thirds of all Members of Parliament. This method applies to all other provisions which are not entrenched. Other safeguards for the amendment of the Constitution include the requirement that the votes on the second and third readings of Bills for amending the Constitution under the first and second methods provided by Articles 259 and 260 must be separated by at least 14 sitting days of Parliament, to give Parliament and the people sufficient time to consider and debate the amendments.
The other safeguards require a certificate of the Speaker or Electoral Commission before the President assents to the amendment Bill. Therefore, such a Bill shall be assented to by the President only if it is accompanied by a certificate of the Speaker that the provisions of Chapter 18 have been complied with in relation to it, or the Bill is accompanied by a certificate of the Electoral Commission that the amendment has been approved in a referendum or, as the case may be, ratified by the district councils in accordance with chapter 18 on amendment of the Constitution.

The President is required to assent to the Bill once the relevant certificates have accompanied it. If the President refuses to assent to the Bill or refuses to assent to the Bill within 30 days after it has been submitted to him, the President shall be taken to have assented to the Bill. The Speaker is required to lay the Bill before Parliament, and the Bill becomes law without the assent of the President.

These provisions are strong enough to promote the sanctity and respect for the Constitution by the three organs of the State and the people of Uganda. They provide a fair balance between constitutional stability and change, which is important in promoting a culture of constitutionalism.
In conclusion, I wish to reflect on how the Constitution has performed in totality or specifically, whether it has conformed to what was envisioned by its makers. In this connection, it is necessary to assess where its performance or implementation may have gone wrong. It is also appropriate to reflect on the current process of constitutional review to assess its significance and impact on the Constitution, and the future of constitutionalism in Uganda.

It is generally accepted that the 1995 Constitution was a popular, unique and modern Constitution, which broke with the past in many fundamental socio-economic and political aspects of Ugandan society, and gave the people of Uganda a fresh start. The fresh start was premised on the establishment of a democratic and constitutional state based on the principles of unity, peace, equality, democracy, freedom, social justice and progress. The Constitution sought to break away from the vicious cycle of constitutional and political instability, dictatorship, socio-economic degeneration, gross violation of basic human rights and international isolation.

In my opinion, the Constitution has generally been accepted by the people of Uganda as their basic decision on how they wish to live together and be governed. It has been seen as inclusive, accommodative, reconciliatory, dynamic and progressive. It has been taken as a sound foundation on which the people can build the framework for governance and development. I believe that this general acceptance and legitimacy has significantly contributed to the Constitution’s successful performance; its implementation, respect and observance, during the last 10 years.

The Constitution has been successful in establishing a constitutional state. The three major organs of the state have been firmly established in accordance with the Constitution. The executive and legislative organs of the state were established after
presidential and parliamentary elections which were generally free and fair and gave the people of Uganda an opportunity to choose and elect their leaders, a right which they had not enjoyed for nearly 20 years. These elections were followed by the local government elections where various local government representatives were democratically elected. These various general elections marked the transition from the NRM interim administration to a democratically elected government in accordance with the Constitution. Therefore, the Constitution succeeded in promoting the smooth and orderly transition to a constitutional state.

The Judiciary as the third arm of the State is not elective but is established under the Constitution. Its basic structure was preserved. However a new Court of Appeal was established, which also functions as the Constitutional Court. The judges of the new Court of Appeal were appointed. The members of the new and reconstituted Judicial Service Commission were also appointed. The existing courts and judicial offices were preserved.

The three arms of the State have sought to understand the scope and limitations of their functions and powers in order to respect the principles of separation of powers. The checks and balances provided in the Constitution have largely been effectively employed to keep each organ within its constitutional mandate. However, during the process of exercising checks and balances, friction, disharmony, and confrontations have sometimes arisen. This is perhaps inevitable between the two political organs of the executive and Parliament which must use negotiation, consultation, persuasion and sometimes compromise in order to operate in a harmonious relationship.

As regards the Judiciary, its independence means that it is not in a position to consult or compromise with any of the other two organs of the State in making judicial decisions. The Judiciary has taken this constitutional role seriously in adjudicating constitutional and other issues. This has sometimes provoked undue and harsh responses from the executive. For as long as the Judiciary is alive to its institutional role, constitutional mandate and jurisdictional limitations, it should be left free to administer justice impartially and equally between citizens and the Government and between
citizens. The courts will no doubt take into account fundamental constitutional goals and principles, the intention of Parliament and the policies of the Government on which the laws are based in discharging its responsibilities.

The three arms of the State must learn to respect the functions and powers of each other and not unnecessarily encroach or invade the political or judicial space of the other, in order to create harmony and confidence amongst them. Each organ must avoid intimidation, or undue interference in the performance of the others and must not attempt to take over or undermine the powers of the others, in order to acquire an upper hand to the detriment of the others. Unless such tendency is avoided, it may create a dictatorship of one organ against the rest, and the entire country.

The Bill of Rights is the heart of the Constitution. It is fair to acknowledge that the observance and respect for human rights has generally improved and that this is due to a number of factors which include the fact that security agencies are acquiring a culture of respect for human rights rather than abuse, as it was in the past; the active promotion and protection of human rights by state agencies and NGOs; and increased public awareness about the protection and enforcement of human rights. The rights of women, children and Persons With Disabilities, and affirmative action have substantially been promoted and protected; but the Equal Opportunities Commission is yet to be enacted.

The establishment of constitutional bodies and offices and the appointment of holders of such offices has been largely transparent and effective. Although these bodies have been expensive to maintain, they have been able to execute their constitutional mandates fairly competently and efficiently. Service commissions have successfully carried out their responsibility of appointment, discipline, promotion and dismissal of public officers, as well as participating in the reform of the Public Service. Institutions of good governance like the Auditor General and Inspector General of Government have exposed cases of abuse of office, embezzlement, corruption and misuse of public property, violation of the Leadership Code, as well as cases of maldadministration and denial of administrative justice. What needs to be done is to take firm action against the culprits. Strong political will and commitment
to fight corruption is required. The Constitution has laid down a sound framework for establishing a culture of good governance, transparency and accountability in public affairs, that remains to be fully exploited.

The military has been active in Uganda’s politics for the last forty years. The role they have played has not always been beneficial to the people of Uganda. The Constitution sought to create a new national and professional army, the UPDF, to defend the territorial integrity and sovereignty of Uganda and protect the rights of the people, including the right to choose their leaders. The Constitution also sought to ensure that the military are under civilian authority.

The military in Uganda has been alive to its constitutional character and mandate. The reforms in the army have produced a smaller, but well equipped army, which is recruited from the whole country and is trained to become professional, patriotic, disciplined and productive. Civil-military relations have improved and it is hoped that the army will continue to reform and develop into a truly ‘People’s Defence Force’. Nonetheless, the involvement of the military in elections detracts from this positive trend.

The police force plays a key role in the law enforcement process. The Uganda Police is undergoing reform and restructuring in order to produce a professionally competent and disciplined force. At present the capacity of the force is low and there is a need to increase manpower, equipment and operational resources to enable it to maintain law and order and ensure effective protection of basic human rights.

The system of local government based on decentralisation and devolution of powers established by the Constitution has been fully operationalised in the country. The system has brought power and services closer to the grassroots so that the implementation and benefits of the Constitution are not remote from the ordinary people: they are active stakeholders and beneficiaries of the constitutional dispensation.

The system of decentralisation has experienced problems of lack of capacity and resources like revenue but these problems were expected with the establishment of so many new units of local government. Problems of mismanagement of resources and
corruption are endemic and will have to be addressed in order for the system to achieve its objectives. The creation of new districts needs to be carefully studied to ensure viable local government units, before Parliament approves the proposal.

The provision in the Constitution for the establishment of co-operation between neighbouring districts through the creation of charters has not been successfully implemented, although there have been attempts to formulate charters in Buganda Kingdom and Busoga region. Calls for the restoration or establishment of a federal system of government in Uganda still persist, especially in those areas which had federal or semi-federal status under the 1962 Constitution.

In general, the Constitution has advanced the process of democratisation and constitutionalism in the country. To a great extent, citizens are able to exercise their political power at all levels of governance. Similarly, progress has been made in the enjoyment of fundamental rights and freedoms. Peace and security have been restored and maintained in most parts of the country. The Northern region has not experienced peace for a long time but may soon do so after the defeat of the rebellion by Joseph Kony. However, poverty is still rampant among the majority of citizens and it is hoped that the Poverty Eradication Plan and the Plan for the Modernisation of Agriculture will reduce poverty levels and improve the living conditions of our people.

The Constitution provided mainly two political systems as a basis for democracy in Uganda; the third being any other democratic system. The two systems, the Movement political system, and the multiparty political system are alternatives to one another, and yet both were intended to exist while one of them was in operation. In essence, this meant that during the period when the Movement political system was in operation the political parties could not carry out all activities associated with the operation and organisation of parties. The Movement political system which ushered in no party democracy was intended to unite the country and heal the wounds of the past, consolidate peace and stability, allow democratisation to take root and give enough time for political parties to reorganise and reform.
Most of these objectives have largely been achieved. Peace and stability have been restored in most parts of the country. Socio-economic development has been boosted by pragmatic policies of liberalisation and privatisation of the economy, the introduction of universal primary education (UPE) and a sound programme of health care, including a successful fight against the HIV/AIDS pandemic. However, it must be acknowledged that although a lot has been achieved, much remains to be done.

The restrictions provided under Article 269 of the Constitution had the effect of freezing most vital political party activities. Due to these restrictions, the political parties have been unable to organise or reorganise to reform or rebuild themselves into viable political institutions ready to acquire and retain power. The political parties therefore appear weak, and disorganised, and in need of rejuvenation and internal democratisation. This has led the parties to allege that the Movement system was intended to kill or destroy them since it did not give them a chance to organise and rebuild. The lack of a clear political programme of transition to the multiparty system may have contributed to this state of affairs. But the parties themselves have not done much to strengthen the organisations by having internal democracy and uniting the factions within them.

The regulation of political parties through the Political Parties and Organisations Act 2002 seems to have come rather late. The Act also contained restrictive provisions, which were later struck down by the Constitutional Court.

The decision by the Movement organs to open political space and the transition to political pluralism which will be attained through the Constitutional review process, are positive measures in deepening the process of democratisation. The process should be transparent, inclusive and accommodative and should aim at resolving some of the contradictions and conflicts which have arisen in regulating one political system while the other political system is in operation.

However, in order to achieve a smooth and peaceful transition to political pluralism, political parties and organisations must take steps to become legally recognised and politically viable. The NRM has turned itself into a political organisation, the
National Resistance Movement Organisation (NRMO), and has been registered as a political organisation. The NRMO has formed an Executive Committee to run its affairs. It has embarked on explaining and canvassing for public support for the proposals in the White Paper. Many of those who do not agree with the policies of the NRMO have readily joined the opposition.

On the other hand, the mainstream or old political parties are busy litigating to challenge laws that regulate political parties. The two main political parties, the DP and the UPC have so far not been registered although registration is a constitutional requirement. Some factions of the DP have attempted to register the party in vain. There appears to be dissent and disagreement in the various political parties about registration and leadership which need to be resolved.

Political parties must realise that they need to be registered in order to carry out their political activities legally and influence the constitutional review process as well as the transition to political pluralism. Political parties and organisations must be established and operated in accordance with the Constitution and other laws. These institutions must remember that in order to influence the current political process and eventually win power, they must practise internal democracy, formulate viable and attractive programmes, attain substantial membership, and secure adequate financial resources for their activities. The future of democracy and constitutionalism will depend largely on the nature, quality and strength of the various political parties and organisations that the people of Uganda will establish and develop.

The terms of reference of the Commission were very broad and extensive and covered most of the constitutional issues that had been addressed in the constitution-making exercise which produced the 1995 Constitution. Given the short time that the Commission had, it is difficult to believe that the Commission had sufficient time and resources for adequate consultation with the people on all the issues under inquiry.

One of the main justifications for the review was to find out how the 1995 Constitution had performed over the past ten years. However, the mandate was to address specific issues, which appear to have been identified as needing revisiting or fresh discussion. Most of the issues included were issues we had previously identified as controversial or contentious and on which national consensus had not been obtained. The issues the CRC addressed included: political system, federalism, traditional leaders, national language, role of the military in politics, land, the executive, Parliament, separation of powers, death penalty, and citizenship. Most of these issues had been resolved by the Constitutional Commission and the Constituent Assembly on the basis of majority views while taking into account the views or interests of the minority. The second reason for the review could be to seek national consensus on these issues.


Some of the proposals in the White Paper which are likely to be contentious include:

- Empowering the President to exercise limited legislative powers in matters relating to investment, environment, public health and historical or archaeological sites.
- Giving the Government power to acquire land compulsorily for investment purposes.
• Lifting the Presidential term limits.
• Giving the President power to dissolve Parliament in case of fundamental disagreement between the two organs.
• Retaining the current composition of Parliament.
• Establishment of corporate governance whereby the President, Speaker of Parliament and the Chief Justice meet to consult on matters of national interest.
• Establishment of regional governments by two or more districts which agree to form such a Government by adopting a Constitution for the region, with traditional leaders being titular heads of regional councils where traditional leaders exist.
• Government to contribute to the maintenance of traditional leaders by way of endowment.
• Parliament to be given power to remove traditional or cultural leaders who violate the Constitution.
• Results of referendum to be binding on all organs of the State and all persons and organisations.
• Establishment of special Courts charged with handling cases of corruption, and terrorism.
• Excluding from the Constitutional Court the power to nullify an expired statute.
• Reduction in the professional qualifications for appointment of Judges of the High Court, Court of Appeal and Supreme Court.
• Retaining the death penalty.

On the other hand, it appears that the following proposals in the White Paper appear to have positive elements; these may not be so contentious and are likely to be resolved by consensus:
• Holding presidential and parliamentary elections on the same day.
• Adopting Kiswahili as a second official language.
• Dual citizenship to be permitted.
• Current political system to be changed through amendment to Article 74 to provide that at the end of the current term of Parliament, public elections will be held under the multiparty political system, instead of through resolutions by District Councils.
• Quorum of Parliament to be determined by Rules of Procedure of Parliament.
• Recall Members of Parliament to apply only when multi-party political form of democracy is in operation.
• District women Members of Parliament to be elected by universal adult suffrage.
• Members of Parliament or local council who are convicted of an offence involving dishonesty or moral turpitude or an electoral offence to be disqualified from standing for election.
• Establishment of office of Leader of Opposition.
• Inspector General of Government to have exclusive power to investigate cases involving corruption, abuse of office and leadership code.
• Establishment of the Salaries and Remunerations Board to determine the remuneration of Members of Parliament and other public officers.

There are other proposals which were made by the Constitutional Review Commission but which were rejected in the Government White Paper. Some of these proposals may resurface during the debate on the White Paper and the Constitutional Amendment Bill. The proposals rejected include reducing the number of Members of Parliament, and disqualifying members of the cabinet from being Members of Parliament.

From the above proposals, it is clear that the Constitution will be heavily amended. While a Constitution is not cast in stone, the utmost care must be taken to ensure that the amendments do not affect the fundamental values, objectives and principles upon which the Constitutional Order is based.

Some of the issues addressed by the CRC touch on fundamental values of the Constitution. Therefore, resolving them will need a reasonable degree of consensus. This book has discussed the challenges that faced the people of Uganda in searching for national consensus. Those challenges should inform the current constitutional review process which should draw relevant lessons from them.
The challenges and lessons which may be of guidance to the current review process include the following:

- Following a transparent and realistic agreed programme or roadmap for political transition and public discussion of the proposals for amendment of the Constitution and their adoption by the Parliament through legislation and the people through a referendum.
- Holding a free, open, frank and genuine public debate of the constitutional proposals, without fear or intimidation or manipulation of the process.
- Providing adequate, information and materials on the process to create an informed public opinion.
- Promoting principles of tolerance of diverse views, spirit of give and take, and a willingness to agree or compromise amongst the people.
- Political will and genuineness in managing the process in the national interest and for the welfare of the people without manipulating the process for the benefit of sectional interests or a few people.
- Ensuring that the process is all-inclusive, accommodative and allows all significant socio-political forces to participate and contribute their views and canvass for support for their views to influence the outcome of the process.
- Respecting the sovereignty of the people by taking into account their views, interests and aspirations for the future and by allowing the people to have the final say on the product.
- Preserving the basic character, values, objectives and vision of the Constitution while advancing its growth and development to make it a living and dynamic instrument of governance.
- Ensuring that proposed amendments resolve contradictions and do not generate more contradictions in the Constitution.
- Respecting the sanctity of the Constitution so that it can be durable and serve not only the present but future generations.
- Ensuring that amendments are viable, coherent, harmonised and affordable.
• Excluding proposals which have no fundamental or constitutional import which should be effected through ordinary legislation.
• Considering the effect and implications of the amendments on the constitutional order and future development of the Constitution and the country.

It is not clear whether there will be enough time to discuss all the proposals contained in the White Paper in view of the fact that general elections are due in 2006. There appears to be three options available to the managers of the process. The first option is to discuss all the proposals, finalise them and legislate on all of them. The second option is to discuss all proposals and legislate only on those on which there is reasonable consensus or a substantial majority and leave the rest for future discussion by Parliament. The third option is to prioritise the proposals and identify those which have an immediate effect on the political transition so that they are finalised and the rest left for future discussion and resolution. The choice of option will be dictated by the speed, complexity or controversy or consensus reflected in the discussions or negotiations or the political expediency and priorities of the time.

Whatever the outcome of the constitutional review process will be, the 1995 Constitution will remain a landmark in the process of democratisation and constitutional engineering in Uganda. The Constitution should be taken as a bedrock on which future constitutional development and political stability should firmly rest. The positive elements and characteristics of the Constitution must be preserved because they were formulated on the basis of national consensus and were meant to stand the test of time. Any shortcomings identified in the process of implementation of the Constitution should be rectified in the manner provided for in the Constitution. For as former President George Washington said in his farewell address to his fellow Americans,

If in the opinion of the people the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment the way in which the Constitution designates. But let there be no change by usurpation for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed.
For the people of the United States, the Constitution is a holy writ or sacred document, the representation of the country in which they take pride, the articulation of their good life, the charter of liberties, and a manifesto proclaiming to the world what they stand for in comparison with other ideologies.

The Constitution of the United States is undoubtedly the most important and most influential written constitution in the world. Although it is essentially American in character, it has come to epitomise constitutionalism: a written constitution, establishing a government of limited powers, premised on the importance of individual rights that are guaranteed against governmental interference with that guarantee protected by judicial review. The other principles which have had influence abroad include; republicanism, federalism, presidentialism, popular sovereignty and separation of powers. Most of these principles were adopted in Uganda’s 1995 Constitution. The Ugandan Constitution is in its turn beginning to have influence in several countries in Africa.

Ugandans need to emulate the Americans in their respect for the constitution. The Constitution of the United States has survived for over two hundred years without changing its basic values and structure. This has been achieved through the citizens’ commitment to the values, goals and principles on which their Constitution is based, the cultivation of democratic values and the promotion of a culture of constitutionalism. The people of the United States now cherish freedom and democracy at home and abroad.

As Professor Ali Mazrui has rightly observed, Uganda has adopted a strategy of planning for democracy rather than plunging into democracy. The people of Uganda recognise that democracy is a journey and not a destination. Ugandans cannot achieve in 30 years or so, the same level of democracy and constitutionalism, which has taken the Americans 300 years to achieve. But Ugandans have made a firm commitment to embark on the journey to democracy and constitutionalism. This journey is not an irreversible process. Significant achievements have been made and Uganda may perhaps be beyond the faltering first steps. Nevertheless, challenges remain in the way, namely: weaning the political process from military influence and violence; ensuring
peaceful orderly and predictable political succession; eradicating corruption from political processes; and building viable and democratic institutions.

Therefore, the Government, all institutions, organisations and all Ugandans must cultivate a culture of constitutionalism in order to respect and defend the constitutional order. There must be respect and promotion of all the elements of constitutionalism namely, limited government, fundamental human rights and freedoms, the rule of law, separation of powers, an independent judiciary, good governance and accountability of government through periodic elections.

In order to promote a culture of constitutionalism, democratic institutions and processes must be established to foster democratic governance. Leaders must adhere to the laid down rules for exercising and holding power to promote peaceful change of power. There must be good will and good faith, as well as mutual trust and confidence, amongst the political elite. Civil society and the entire population must be empowered through public awareness programmes to promote civic competence and create informed public opinion. Democratic values of honour, integrity, mutual respect, give and take, tolerance, compromise, peaceful resolution of disputes, and fair play must be cultivated in society.

Constitutionalism is a culture, a tradition which takes time to be firmly established. It has to be lived, nursed and developed. It is through constitutionalism that Ugandans will realise their vision to build a new socio-economic and political order based on the principles of unity, peace, equality, democracy, freedom, social justice, and progress.
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