The Dynamics of Corruption Control and Human Rights Enforcement in Uganda: The Case of the Inspector General of Government*

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1. General Introduction

Hardly a week passes without the office of the Inspector General of Government (IGG) making banner headlines in Uganda's newly–liberated and often speculative print media. "IGG Supports the Death Penalty"; "Ghosts' in Government,' says IGG"; "IGG Condemns NRM officials", are but a sampling of the titles to the many Press stories carried on this novel office in the Ugandan administrative machinery. What is this office all about, and how has it emerged to such a position of prominence (and sometimes controversy) within the relatively short period of time it has been in existence? What does the emergence of such an institution reflect, given the background of profound political, social and economic turmoil that has characterized the erstwhile exercise of state power in Uganda over the past two decades? To what extent does the IGG's office represent a radical departure from method in Uganda in the past of ensuring government accountability to the public employed? Finally, and perhaps most importantly, how has the institution performed so far in light of current demands for "good governance" and increased grassroots participation made by the Ugandan peoples after years of state oppression, exploitation and dictatorship?

This last question assumes critical relevance not only within the narrow context of developments that have characterized the history and evolution of Uganda as an independent state, but also feeds into the wider and extremely important questions of the day that currently engulf the African continent. The 1990s is a period in which African people are, according to Ayesha Imam, asserting their right "... to live their own aspirations and programmes, not only in political life, but also in economic, cultural, religious and other aspects of life."[1] Consequently, it is not trite to say that this will be the decade in which the African state, politicians, bureaucrats, academics and the population at large, were forced to critically reconsider all prior assumptions that have characterized the first several years of independent existence.

In the case of Uganda, the national Resistance Movement (NRM) capture of state power predated the tremendous movement of social and political forces internationally and on the African continent. But the exercise of such power has clearly come to reflect some concern with respect for human rights, economic reconstruction, good governance and accountability, however inarticulately defined. These concerns in present–day Uganda represent the kernel of the new forms of governance that reflect the NRM's method of administration, and indeed serve to distance it from any previous regime within the country's recent past.

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However, it is important to be aware that underlying these currents, and also captured in the formation and operation of the office of the IGG in Uganda, is the wider issue of whether this movement is less a response to *internal* demands for "accountability" and "good governance", than it is a reflection of the capitulation of the African state to the level of the international debt, the turmoil in the world commodity markets and the greatly increased dependence on foreign aid and assistance even to meet recurrent expenditures. All of these factors have produced (some may say "played into the hands of") the external pressure from the latest forms of International Monetary Fund (IMF) and World Bank aid "Conditionality", that currently extend to encompass the question of reform in the political arena.

As is apparent from the 1991 *World Development Report* "The Challenge of Development" – "reform" is the catch–phrase of the 1990s:

> Reform must look at institutions. The establishment of a well funtioning legal system and judiciary, and of secure property rights, is an essential complement to economic reforms. Reform of the public sector is a priority in many countries. That includes civil service reform, rationalizing public expenditures, reforming state–owned enterprises and privatization. *(World Bank, 1991, 10)*[2].

But the World Bank is not advocating reform as an end in and of itself. Rather, reform is urged in linkage to the propsects it offers in terms of qualitatively improved modes of governance.[3] Such considerations are certainly not remiss within the context of present–day Uganda, wherein reform in the political, economic and social arena is taking place with an energy unparalleled since the late–1960s. In 1987, the NRM government structured and implemented an Economic Recovery Programme (ERP) that drew inspiration from the IMF/WB – formulated Structural Adjustment Programmes (SAPs) that have been applied throughout the underdeveloped world. This programme has not only received wide acceptance and support from the international monetary community and donor countries, but has significantly impacted upon the structure and operations of the government in the socio–economic and political arena.

Within this paradigm, the IGG's office essentially straddles the fence, being an institution that is designed to address both social and economic reconstruction, reform and accountability within the government, and to ensure the protection, enhancement and institutionalization of respect for civil and political freedoms for the popuation at large. While the two functions are not mutually exclusive and indeed must necessarily be related, it is most often the case that distinct arms of government are created to oversee each.[4] However, the IGG's office is not the typical "Ombudsman" *a la* the Swedish model, emphasizing the notion that governmental and bureaucratic excess must be checked. In addition, it embodies the principle that human rights abuse by state functionaries cannot occur without sanction.

The preceding postulations form the main thematic avenues of inquiry in this article. In a nutshell, does the IGG's office provide a cogent answer to the vexing question: *Can the state in Africa actually police itself?* Is the IGG's office "new wine in old wineskins?" the reverse? or neither? The first section following this introduction (Part II) is devoted to a broad overview of the background, origins and the general functioning of the IGG's office. In Part III of the paper, we attempt to give a flacour

of some of the cases so far handled by the office and offer a critical background commentary on the factors that influenced their adoption. Part IV reviews the key functions of the IGG's office, and examines the *modus operandi* employed by the office in the execution of each of its duties thereunder. It also critically revisits the question of governance in Uganda and concretely links it to the operation of the IGG's office.

II. The Inspector General of Government: A General Overview

2.1 Background, Origins and Constitution

The philosophical inspiration provided by the NRM's **Ten Point Programme (TPP)** can also be found in the genesis of the idea that it was essential to establish an institution akin to an Ombudsman to check bureaucratic excess, corruption and the abuse of human rights. Point No. 7 of this document states as one of the primary objectives of the NRM "... the elimination of curruption and misuse of power", while point No. 9 stresses respect for human rights, albeit in linkage with the idea of regional cooperation – the latter receiving greater emphasis in the discussion **(TPP, 1986: 32).** It is also a very generalized account of the role that human rights should play in the Uganda envisaged.[5] Together, points 7 and 9 are the essential items in the programme from which the IGG's office draws inspiration.

Early in the life of the NRM government, moves were already underway to institutionalize a permanent body that would specifically address the question of curruption.[6] In December, 1986, the First Deputy Prime Minister announced in the National Resistance Council (NRC) that the various Commissions of Inquiry into Curruption would be superseded with a permanent institution, the reason being that the investigation of corruption "...should be a continuous process to make sure that what is happening in government and other places is being monitored." **(Hon. Eriya Kategaya, (1986), NRC Debates, :193–194).**[7]

In interviews with the IGG himself, he pointed out that the establishment of the institution preceded by several months, the formulation of the law governing the operation of the office and it essentially developed in discussions held between him and the President.[8] Complaints of administrative excess, abuse of office, corruption and the violation of human rights, began pouring in as soon as the NRM government seized power. The specific institutional roles of the instituation were not defined, but an attempt was made to cast it in the mould of the Swedish Ombudsman at the general level, while special attention was paid to institutions in Tanzania, Zambia, Denmark and the Parliamentary Commission in the United Kingdom. In particular, Zambia's anti–corruption Commission and the Commitee for Investigation, as well as the Tanzanian PCE provided the blue–prints for the eventual statute that brought the office into legal existence.

A critical concern at the inception of the IGG's office, was the issue of human rights violations. The IGG asserts that this aspect of the institution was specifically incorporated at his insistence, because of the peculiar historical context within which the NRM came to power and was operating. The Commission of Inquiry into Human Rights Violations that was established in 1986 was limited in its mandate, being concerned primarily with human rights violations committed between October 9, 1962 (the date on which Uganda attained independence from Britain) and January 26, 1986 – the

egal date on which the NRM assumed the reigns of power. Furthermore, the Commission was remote, resembling the more traditional Judiciary to which the general ublic had only limited access. It was recognized that there was a need for quick and xpeditious action on issues relating to the violation of human rights by an institution hat would not be constrained in its operation.

Against this background, the NRC debated and promulgated the *Inspector General f Government Statute* (No. 1 of 1988), that was given Presidential Assent on March 9, 1988, "To provide for the establishment, functions and powers of the office of the nspector General of Government...." The statute consists of 27 articles.[9]

art II of the statute established the Inspector General of Government as a "public ffice" (S.2.1), which "...shall not be subject to the direction or control of any other uthority, but shall be directly responsible to the President." (S. 2.2). Both the IGG nd his Deputy are appointed by the President, as is the Secretary, who is designated s the Administrative head of the office. (S.2.3). The statute also provides for the ffice of Legal Counsel, as the principal legal advisor, as well for other supporting taff, all of whom shall be appointed by the Appointments Board, which is chaired y the IGG and comprises the Deputy IGG, the Secretary, the Chairman of the Public Service Commission (PSC), the Permanent Secretary in the Ministry of Public ervice and Cabinet Affairs, as well as two other members appointed by the Presient. (S. 4.1). Thus, although itself a public office, the Inspectorate, unlike any other nstitution in the administrative bureaucracy, has its own Appointments Board – a neasure that is intended to enhance the independence of the office and to utonomize it from the over–all authority of the principle government appointing uthority – the PSC. At the same time, that autonomy is minimized by the fact that ll members of the Board, are, in one way or another, Presidential appointees.

A loose division of labour currently operates in the office, with the IGG in overall charge of administration and investigations, the D/IGG, supposed to cover financial matters and corruption, and the Secretary as the chief administrative officer. The Inspectorate presently has five Departmental heads, apart from that of the office of Legal Counsel and Secretary. These are: Commissioner for Legal Affairs, Commissioner for Corruption and Abuse of office, and Commissioner for Human Rights. To date, none of these offices have been filled.

At the time of our research, the Inspectorate comprised a staff of 72 persons, with 32 of these working within the operational section of the office i.e. investigations. These are executed primarily by five Principal Investigation Officers (PIOs), who are assisted by Senior and Ordinary Investigation Officers below them. The majority of such investigation officers are accountants and lawyers, with a few being administrators drawn from the traditional Civil Service. Currently, these are also Police and Army officials who now form a component part of the office and are involved in both investigation as well as in liaison with their respective former host institutions. Only of recent has the Appointments Board advertised for posts in its office, the earlier mode of selection being to co–opt officials from other government departments, rather than through at–large recruitment.

Section 7 of the Statute comprehensively lays out the functions and powers of the Inspector General, charging him with the duty

...of policing and promoting the protection of human rights and the rule of law in Uganda, and eliminating and fostering the elimination of corruption and abuse of public offices.

The term "public office" is defined in S.1 of the statute, and encompasses twenty categories of office in Uganda, extending from Government departments, to schools and colleges, trade unions, cooperative societies and political parties **(cf. Kiapi, op. cit: 93),** although the Presidency is excluded from this categorization. By implication, the IGG has no jurisdiction to investigate the activities of the President.

This wide jurisdiction over public institutions is combined with an equally wide discretionary power to investigate matters covering the main civil and political rights enumerated in the Constitution (from the deprivation of life to the unlawful acquisition, possession, damage or destruction of private property – [S. 7 (a)]. Additionally, the IGG is empowered to inquire into the methods by which law enforcing agents and state security agencies execute their functions, with the particular objective of gauging "...the extent to which the practices and procedures employed in the execution of such functions uphold, encourage or interfere with the rule of law in Uganda." [S. 7.1 (b)]. The IGG is also empowered to take necessary measures for the detection and prevention of corruption in public offices [S. 7.1 (c)] and investigate the conduct of any public officer which may be connected with or conducive to:

(i) the abuse of office;
(ii) the neglect of official duties, and
(iii) economic malpractices. [S. 7.1 (d)].

The IGG not only receives complaints from the general public, but is also empowered to initiate investigations.[10]

2.2. *Functioning and Operations*

There are five main ways in which investigations conducted by the IGG's office are initiated, *viz:*

(i) Following written complaints – both public and private;
(ii) On the initiative of the IGG – either in response to an article in the Press or *via* some other mode of communication;
(iii) Anonymous communications – depending on the content and the gravity of the allegation;
(iv) From visitors to the office, who must reduce their complaints into writing and sign them, and
(v) On the written instructions of the President.

All investigations conducted by the office must be expressly sanctioned by the IGG. This procedure is governed both by the sensitivity of the issues handled by the office and in order to ensure that there is direct control and accountability for the conduct and outcome of the investigations. To this end, S.17 of the statute stipulates that all complaints or allegations shall be strictly confidential. Provision is also made to allow for complaints by prisoners or public employees not to be made through either the prison officials, or the complainant's immediate supervisor or employer.[11] Also, save in "exceptional circumstances", and with the exception of a criminal offence, a time limit of two years from the date on which the facts giving rise to a complaint arose, is specified as the maximum period within which the IGG will receive a complaint.

(S. 17.4). On the receipt of any complaint, the IGG will usually forward the same to the Counsel, with instructions for the appropriate action required. Certain cases are forwarded directly to the Principal Investigation Officers, who will then constitute Investigation teams to carry out the investigations. A file will be opened and referenced on each particular complaint that merits investigation. The process of investigation will normally involve interviews with the principal parties concerned, the perusal and examination of any documentary evidence supplied, coordination with a variety of governmental bodies, such as the police, the Army,Customs Officers and officials of the Attorney General's Chambers.

The Investigation team comprises at least two or more persons, in a bid to minimize on the possibility of the offer and acceptance of inducements or undue influence, as well as to achieve an objective assessment of the case under investigation. The PIO who is charged with oversight of the investigation is constantly in touch with the team and monitors the progress of investigations. Following the conclusion of the investigations, a report of the findings will be compiled by the team of investigators who submit it to the PIO for review. The PIO may either alter, add to or re–write the report and will then dispatch it to the Counsel or the IGG – depending on who initiated the investigation. In practice, the advice of the Counsel is sought in all the cases investigated by the office. In either case, the report can be re–written, but the final decision in the matter with respect to each case rests with the IGG.[12]

The Presidential report must contain a statement of any action taken by a person whose conduct has been under inquiry by the public office or authority employing such a person, to correct or ameliorate any conduct, procedure, act or omission that is adversely commented upon in the report. In addition, it must be strictly confidential, so as not to prejudice the persons investigated by the office, or (in the event that legal action has been commenced), not to be seen to be influencing the outcome of any such proceedings, or violating the rule against commenting on matters that are *subjudice.* The Legislative report shall not disclose the identity or contain any statement which may point to the identity of any person into whose conduct an investigation has been or is about to be made, unless the Legislature resolves that the IGG provide more details or information in respect thereof. Indeed, the first draft report being prepared for consideration by the Legislature is rather bland in the omission of details, but nevertheless includes the names of individuals who are in one way or another connected with the investigations of the office.

III. The IGG in Action: A Review of the Case–Load

3.1 *A Background Survey*

The synopsis of the essential elements of the IGG statute demonstrate that the institution was conferred with fairly extensive powers of investigation. How has the IGG's office exercised its mandate? What activities have been the main focus of attention? Who are the main targets of the investigations undertaken? What is the result and what are the recommendations that are made? The broad answer to the foregoing questions can only be discerned through a reading of the cases handled by the office.

The data in Table I gives a representative sampling of the nature of cases handled by the IGG's office over the period 1989–91, selected for compilation in the first report to be submitted to the Legislature.[13]

TABLE I
REPRESENTATIVE SELECTIN OF CASES HANDLED BY THE IGG (1989–1991)

TYPE OF CASE	NUMBER
1. WRONGFUL SUPPLIES/PAYMENTS	11
2. LAND DISPUTES	6
3. EVICTIONS/TENANCY	5
4. MISMANAGEMENT	5
5. CORRUPTION/EMBEZZLEMENT	3
6. DISMISSALS	2
7. ALLEGATIONS AGAINST JUDICIAL OFFICERS	1
8. REVIEW OF CRIMINAL CASES	1
9. HUMAN RIGHTS	2
10. OTHERS	2
TOTAL	36

Source: Office of the Councel, Inspectorate of Government.

The above data clearly indicates the preponderance of cases relating to the purported supply of goods and services to various government departments, as well as to the making of wrongful payments. This phenomenon, known in local parlance as the supply of "air", had attained pandemic proportions under the Military regime and in the various governments that followed it.[14] Government officials, in collusion with local and foreign businesspeople would contract for the supply of goods effect payment to the supplier, and the matter would end there. Once the supplier had been paid, following the exchange of money along the line, the department in question would never receive the goods. This led to a considerable loss of government revenue, particularly with respect to large Ministries such as Defence and Education, and it is understandable why the IGG's office has been overwhelmingly preoccupied with this phenomenon.

Evictions, tenancy disputes and quarrels over the ownership of land follow in line, and in the main, centre around the two principal government agencies engaged in real property transactions – the Departed Asians Property Custodian Board (DAPCB) and the National Housing and Construction Corporation (NH&CC). The disputes over the former arise in part from the political wrangles that have enshrounded this property since the inception of the Board in 1972, following the expulsion of citizen and non–citizen Asians by the Military Government. The DAPCB – described by one writer as a huge "Pork Barrel", into which the politician of the day can reach to distribute fat to his circle of supporters **(Mamdani, 1992: 32)** – is the principle means utilized by successive governments to disburse political patronage, and in the quest of private accumulation.

Consequently, forcible evictions ocur on spurious grounds and in direct violation of the terms and conditions of tenancies entered into between the parties. Aggrieved tenants have sought recourse in the IGG's office in a bid to reverse, or at a minimum to stay the process of eviction, without having their cases heard. Although the IGG refers to this activity as being in execution of its human rights mandate, this depends on the nature of the particular case and the violence or injustice that attends the eviction. Many of these cases have involved widows and orphans, who are usually in an economically weak position and in most instances do not have easy access to alternative forms of accommodation. In such cases, the IGG intervenes primarily because of the humanitarian element in the case, and seeks to prevail upon the Board or the Corporation to either delay, or even to stay the eviction on such grounds. Other isntances have involved the eviction of people from areas designated as forestry reserves or otherwise acquired by the government.

A number of cases have involved mismanagement, abuse of office and corruption, often attended by embezzlement of state or parastatal funds. In many instances, the IGG enters the picture after the fact, although in a few cases the IGG's timely intervention has led to the interdiction of the officers involved in the alleged malpractices and in the institution of criminal prosecutions against the offenders. The target of such investigations has been varied, ranging from persons of the stature of a Judge of the High Court, Permanent Secretaries to Ministries, Ambassadors and Managing Directors, to lesser functionaries. The status of the particular office does not appear to hamper the investigation, to the extent that even allegations that would otherwise appear frivolous or malicious are thoroughly investigated to establish the truth or otherwise. In a way, this stands as proof of the relative autonomy of the office from overt political control by the appointing authority – the Presidency.

Many of the cases adopted by the IGG are often in pursuance of a liberal interpretation of the statute, that seeks the end of justice, rather than the strict black–letter of the law. Thus, while S.12.2 of the statute stipulates that the IGG shall not have jurisdiction to investigate and inquire into the decision of any court of law, where a complaint has been made that merits an investigation, the IGG has not hesitated to do so. This happened for example, with the one criminal case referred to in Table I. The IGG also asserts that it is within his legislative mandate to investigate administrative questions concerning the Judiciary, including delays in delivering judgement, interminable and unjustifiable adjournments of Court cases, as well as allegations of corrupt practices.

The largest number of complaints (received and initiated), were made against the Ministry of Education, which with 89, outstrips any other department.[15] The next in line of the top ten is the NRM Secretariat, with a total of 70, followed by the Ministry of Housing, Defence, the Custodian Board, Lands and Surveys, Health, Finance, the Police and Constitutional Affairs, and finally, the Ministry of Local Government. A total of 417 cases were initiated on the receipt of complaints from the public, while the IGG initiated slightly less, with 412. Of these, the IGG reports that 770 were investigated and resolved, while 35 were not investigated, and another 482 were carried forward to 1991.[16] It is interesting to note that the National Resistance Army (NRA) is not listed anywhere as having been the subject of investigation. The issue of the IGG's jurisdiction over the army raises fundamental questions about the efficacy of the office – a point we consider subsequently.

3.2 *The Question of Human Rights*

None of the cases in Table I above were investigated in pursuance of the human rights mandate of the office, although, as already noted, the IGG asserts that certain

cases (particularly those concerning unjust evictions) overlap into the human rights arena.[17] Two principle reasons can be given in explanation of this. First, the IGG has read and executed his human rights mandate in a relatively restrictive fashion. Consequently, although there have been a number of instances in which the IGG has intervened concerning questions such as illegal arrest and detention, torture and other human rights abuse, this has been in *ad hoc* fashion, and extremely limited in its purview. As is noted by a recent human rights report on Uganda, this is principally in light of the overwhelming attention thus far paid to the question of corruption. **(New York Bar,1991: 20–22).** The report gives two other reasons – the lack of resources to execute the job,and the particular professional background of the IGG himself, which is in the area of accounting.

Both reasons are not, in our view, fundamental. Indeed, our researches illustrate otherwise. The fundamental problem with respect to this issue lies in the dominant perspective adopted towards the question of human rights, as well as the wider political, economic and social context in which the IGG's office was established. This point is clearly illustrated by an examination of the emergence and operation of the Deputy IGG, who (although also an accountant by training) has become a forthright critic of human rights abuses, albeit this does not appear to have the blessing of his superior. Moreover, the issue of "resources" affects the investigation of corruption issues as much as it does the question of investigating the problem of human rights violations. The lack of resources would therefore cut across the board regardless of the particular focus of the office. We examine this point in greater detail, in the following critical review of the IGG's mandate and output.

IV. The IGG in Critical Perspective: An Assessment and Pointers to the Future

The above discussion demonstrates the manner in which the IGG executes its varigated functions, as well as the strengths and weakness of the office. The principle points of attention must neccessarily focus on the critical factors that determine its mode of operation, namely , its mandate and its output. A related, but separate issues concerns public perceptions of and accessibility to the office: to what extent does or can the IGG's office penetrate both the higher echelons of the bureaucracy and effectively monitor the practices of government functionaries, and simultaneously impact upon the more localized levels of corrupt practice, abuse of office and human rights violations?. We begin our assessment by revisiting the legislative mandate of the office, in linkage with its output.

4.1 *Mandate and Product: Revisting the Statute*

Since 1988, the IGG's office has become an institution in its own right that has attracted considerable prestige and authority within the local Ugandan context. Internationally too, the existence of such an institution (and in particular the fact of its human rights mandate), has led to a belief that serious attempts are underway to turn the Ugandan story around. However, there are several problems, particularly with respect to the efficacy of the institution as part of the movement towards better forms of governance. A significant number of observers of the operations of the IGG's office argue that its mandate is too restrictive. This criticism has been made with particular attention paid to the issue of corruption and abuse of office, and has been suggested by several high–ranking government officials, including Museveni himself. The criticism is also attended by a call for greater powers of sanction of officials found to have engaged in corrupt practices, including arrest and prosecution.

One letter to the *New Vision* called for the formation of a Ministry of Supervision, akin to that existing in China.[18] Recently, the First Deputy Prime Minister revealed that the government was considering the establishment of a tribunal that will "...quickly try officials of being corrrupt..." coupled with a Permanent Commission to deal with the prevention of human rights abuses in the country. ("Corruption Tribunal Coming", *New Vision,* February 21, 1992: 1). The spirit by which such suggestions are motivated is quite understandable in view of the relative lack of an effective mechanism to follow–up the operations of the IGG since its inception. Extremely few cases of prosecution of persons found by the IGG to have engaged in corrupt practices, embezzlement or abuse of office have either reached the courts or been successfully prosecuted by the state. However, the establishment of a fully–fledged commission such as that envisaged by either the First Deputy Premier or the other observers is fraught with problems. First of all, such powers must necessarily follow a reform of the IGG's office that would have to extend to a more fundamental issue, namely the constitution of the office and its links and relationship to the Executive and Legislative branches of government. In short, the issue of accountability.[19] In discussions with the IGG, a strong case was made for the preservation of the IGG as an Executive, rather than a Legislative Ombudsman. This was because within the context of Uganda, real and effective power lies with the President rather that with the NRC – the present legislature. Consequently, it has been the "Democles Sword" of Executive sanction that has enabled the IGG's office to register even the limited success that it has, insofar as the prevalent belief is that the IGG is the President's "watchdog".[20] Highranking government officials who would otherwise disregard the summons of the IGG's office feel threatened by the fear of reprimand or sanction from the President himself. At the same time, the Legislature in Uganda today is a weak rubber–stamp to Executive action that in the past, has been done away with.

It is our view that such an argument can therefore only be valid to the extent that the Executive exercises considerable self–restraint, but not because there exists a sanction to enforce such restraint. Consequently, its efficacy is tied to the attributes of the particular individual, which may or may not be positive. The potential of such an office being utilized merely as a cosmetic shroud over Executive abuse of power cannot be minimized.[21] The process of reform in Uganda should be directed towards greater checks on Executive power, rather than providing it with even more expanded avenues of sanction. (cf. **Magezi, 1992).**

Unless the Executive can be brought to book, any discussion of preventing corruption or sanctioning human rights abuse, is simply academic. The principle objective should be to create difuse and variegated centres of power, which can be checked and balanced by other organs exercising judicial, legislative and popular, participatory power. Indeed, the " sword of Damocles" argument can be turned on its head, if instead, high government officials ignore the sanction of the IGG's office in the belief that they are closer to the Executive "ear". It is thus submitted that a transition needs to be effected in the mechanism of appointment, sanction, and accountability of the

IGG, which must be accompanied by a process that ensures that the candidate be vetted, coupled with a scrutiny of that persons's antecedents, qualifications and suitability for the job, as well as an on-going or periodic process of scrutiny.[22] The specification of a vetting procedure should be accompanied by a stipulated period of tenure (ranging from between 3 to 5 years), renewable only once. Both the nature of the job, the sensitivity and load of the matters handled, require that one should not be held to the task for too long: it is both taxing and furthermore undermines the possibility of the institutionalization of the office. As it is – after only four years of operation – the IGG's office is intimately associated with the character, style and personage of the current IGG. In addition, a fixed tenure must be accompanied by stipulated conditions in which the IGG can be removed. Currently, the statute is completely silent on the issue of the removal or sanction of the IGG, which implies that this is the sole prerogative of the President and can easily be invoked in the event of displeasure with the occupant of the office. With specified conditions and power vested in the Legislature, arbitrary dismissal is minimized. Indeed, the procedure for removal should be as stringent as that for the removal of a Judge of the High and Supreme Courts. (cf. **Article 85, 1967 Constitution).**

There are additional, primarily logistical reasons why the IGG's office should be distanced from Presidential sanction and control. In many cases, quick and expeditious action is required, either to sanction a particular official and thereby bring to an end a particular pratice, or to ensure that a recommendation made by the IGG is implemented in order to remedy an administrative defect, or a human rights abuse. The President simply cannot be expected to *personally* attend to each and every report and recommendation made by the IGG, given the varied nature of the functions he performs. Consequently, this compounds the bureaucratic and "Red Tape" excess that the office was created to obviate.

However, the real problem is not so much that the President is constrained by time, but rather that the action or inaction of the Executive can be controlled by the officers who determine the course of action to be adopted regarding a particular matter. With accountability directed to the Legislature or a select committee thereof, both the possibility of delays in action, as well as of an issue remaining unscrutinized, are considerably reduced. Presently, the formulation of the reporting requirements to the Ligislature (s. 23) are too lame to be of any utility, since the extent of the powers that the legislature can exercise with respect to the report are limited to requiring the provision of more details with respect to the identity of a person referred to in the report (s.23.3). The report is therefore supplied for information only.

There are added advantages to accountability of the IGG vesting in the Legislature, although these must be coupled with a reform in the constitution of the office, as well as in the character of the legislature. All letters to the President, along with the reports of the investigations are signed solely by the IGG. There is no indication of the officers involved in the investigation and total responsibility for the report vests in the IGG. This has led to a situation of considerable pressure for the holder of the office. In the Swedish case, there is both a division of labour and a division of responsibility, minimizing the pressure experienced by the particular head of the office. As we saw with respect to the PCE, a dissenting Commissioner can make a separate statement and append it to the report. Finally, in an underdeveloped context such as the Ugandan one, matters are taken much more personally. The involvement of a larger body of persons in the decision of the fate of a particular individual, lessens the inimical effect of an argument that the decision was "personalized".[23]

What of the transformation of the IGG into a full anti-corruption commission with powers to arrest, prosecute and sentence? Such a proposition is obviously pregnant with a host of possibilities, but at the same time is underscored by considerable problems, not least of which is the potential for abuse as well as the conflict with the notion of separation of powers. From the synopsis of the statute and the cases handled by the IGG, it is fairly clear that without the powers of prosecution or sanction, the conclusion that must be reached is that the effect of the office has been largely salutary. Many of the recommendations on eviction cases (particularly those which involve the DAPCB and the NH&CC) are either ignored by the authorities, or are made after the fact of eviction, a situation which in many instances is very difficult to reverse. In cases of unlawful dismissal, it is hard to imagine the case of a Minister who has dismissed the head of a parastatal, acceding to the reinstatement of the officer. Indeed, there is no sanction provided in the event that the IGG discovers that the dismissal was unlawful or unjust-leaving civil judicial action as the only recourse available, with its multifarious problems.[24]

There are two possible avenues out of this problem. Either, some limited powers of sanction should be conferred upon the IGG, but with rights of appeal that vest in the Judiciary, or in some supervisory organ such as a select committee of the Legislature. Alternatively, the IGG's Report should be elevated to the status of a judgment of a Judicil Court, provided that the recommendations made are administrative, rather than legal. If the first option were to be adopted, it is fairly clear that appeals from the IGG's office must be considered within the special context of the fashion in which it gathers evidence and in particular, the documentary and oral evidence collected. If the strict rules of evidence were to be followed, a report of the office could be dismissed *ab initio* in a judicial proceeding, on the basis of technical rules alone. At the same time, it is rather distressing to see the results of an often careful, extensive and painstaking investigation (such as many of those conducted by the IGG's office), coming to nought on the rocks of prosecutory incompetence, political pressure, or sheer reluctance. Hence, the question must be asked: Are powers of prosecution necessary for the IGG? Should it be turned into a full anti-corruption commission?

To the second question, we have two basic objections. In the first instance, the IGG's office has made considerable capital in terms of prestige and respect, which a new institution would be required to build. Secondly, the creation of a new or expanded institution would necessitate the outlay of considerably fresh resources, and this, in light of the perennial problem that the IGG faces in attempting to marshal the resource necessary to finance its present investigations. The creation of a new or expanded institution with prosecutory powers would compound, rather than ameliorate the problem of a lack of resources. It would also mean the deployment of staff from the investigatory and prosecutory organs of government, without any guarantee that they would operate in a fundamentally different fashion from the way they presently do.[25]

Both in comparative terms and from an examination of the types of cases handled by the office, it is our contention that such powers are in fact unnecessary.[26] Obviously, the Ugandan context differs in several fundamental respects from other countries, but even in the absence of concise statistical data, it is clear that a minority of the IGG's recommendations to the President counsel prosecutory action.[27] Even if the case were to be otherwise, it is still questionable whether as a matter of expedience, this would be a correct course of action. All this implies therefore, that the critical, problem lies with those bodies such as the Police and the Department of Public Prosecutions (DPP) which have been lax in the execution of their statutory functions of prosecution of criminal offenders. In such circumstanes, it would be enough for the law to provide for the second alternative, *viz:* the elevation of IGG reports to the status of a judicial edict, with all the necessary consequences that flow therefrom. It would then be unnecessary to convert the IGG's office into a fully-fledged anti-corruption unit. Either alternative must nevertheless be considered against the background of the critical question: *why* have the prosecutory organs of government failed to execute their statutory functions?

It is important to note the fact that the proposal for the creation of a full anti-corruption commission is nearly always counter-posed to the establishment of a Human Rights Commission – a proposal that, in light of conditions currently existing in Uganda, would in fact lead at best, to the further bureaucratization of the human rights issue, at worse, to its complete marginalization. The final result would be that even less attention than is currently the case would be paid to the respect of human rights.[28] As it is, the present mandate conferred on the IGG's office is sufficient for the establishment of a serious human rights agenda.[29] This last point must necessarily be tied to the second fundamental point of assessment of the IGG's office, *viz:* the manner in which it has executed it's human rights mandate.

It is fairly eveident – both from a review of the output of the IGG's office, as well as in the admission of all its senior officers – that the IGG's office has fallen far short of the legislative mandate on human rights conferred upon it. This is primarily the supervisory function over the general violation of human rights in Uganda, and more specifically," ...to inquire into the methods by which law enforcing egents and the state security agencies execute their functions, and the extent to which the practices and procedures employed in the execution of such functions uphold, encourage or interfere with the rule of law in Uganda." [S.7.1 (b)]. Public frustration with the manifest inability to effectively execute this mandate has found expression in a number of ways.[30] of particular concern to the general public has been the manifest double-standards adopted by the government towards the human rights issue. A clear example of this frustration was displayed in a letter to the *New Vision* decrying the summary dismissal of two senior police officers for a shooting incident at Makerere University, when several other serious digressions and abuses remain uninvestigated.[31]

The Serere and Kumi incidents, despite the public outcry which followed, have never been satisfactorily investigated, notwithstanding the announcement of the establishment of commissions of inquiry to ascertain and sanction the perpetrators. Indeed, these are not the only occasions on which human rights issues have been treated in such lacklustre fashion. Moreover, some instances have involved the IGG's office –

the NRM's human rights "watchdog"! In 1988, the government established a commission to deal with allegations of atrocities committed by army personnel in Northern Uganda which has since died a natural death.[32] Following allegations made in the treason trial of a former Minister, the President instructed the IGG to establish the veracity of the allegations. To date, the IGG has come up with no report, principally because two senior government officials alleged to have intimate knowledge of the allegations, have simply refused to appear or answer any questions tendered to them.[33]

Finally, an *ad hoc* commission was established by the then Prime Minister, in February, 1991, amid a burst of publicity. The Commission comprised the Attorney General, the Deputy Inspector General and an officer of the NRA. It was designated with the task of touring police and military establishments around the country, establish who were improperly incarcerated and arrange for their expeditious release. The Deputy IGG asserts that after a few visits to some Police stations in Kampala, the commission ground to a halt, primarily on account of a lack of funds for the exercise. Since the commission had not been established under the aegis of the IGG's office, no funds could be deployed for the exercise: it too, has thus died a natural death! This is a rather surprising end, given that this would have provided the IGG's office with the first opportunity to demonstrate that something positive was being done in the human rights arena.[34]

The IGG himself expresses dissatisfaction with the fashion in which the office has executed its human rights function. He points out that some progress has been realized in obtaining relief for aggrieved parties in a number of ways. For example, following the declaration by the army that they intended to prosecute Major Mpiso, who had been acquitted by a civilian court on a charge of treason, the IGG joined the Attorney General in declaring that such action would be unconstitutional and violate the principle of double jeopardy. *(New Vision,* August 28, 1990: 1).[35] The IGG's dissatisfaction relates in particular to the failure either to obtain comprehensive relief for aggrieved parties, or to bring the perpetrators of human rights abuse to justice, especially in light of the difficulty of concisely pin-pointing andividuals against whom disciplinary sanctions can be invoked.

At the same time, the IGG believes that much of the criticism of the office for its perceived inattention to the human rights issue arises from a lack of information on the activities of the office in this regard. Much has been done in the area, but the public lacks any information in this activity. There is also, according to the IGG, a problem in assessing how far an instrument of government can go in criticizing government and still remain a part of government, especially in light of the sometimes shocking nature of the stories unearthed. The IGG is against the use of publicity as a tool in the fight against human rights abuses and prefers instead, to adopt an informal approach. This has led, in the view of the IGG to a situation of personal frustration, because it would not be fair to open the "Pandora's Box" of human rights abuses, when the current government is trying its best to correct the problem.

The above views reflect a fundamental difference of perspective from that espoused by the Deputy IGG who argues principally, that the office must pursue an agressive and high-profile strategy if any reaction is to follow on the human rights front. This

difference in perspective has led, in my view, to an impasse over the human rights function of the IGG's office. This conflict can be retraced historically, but probably first found expression in the Deputy IGG's attack on the Directors of the NRM Secretariat for the alleged misappropriation of funds.[36] Presently, virtually none of the invetigations conducted by the DIGG find their way into the official corpus of investigations carried out by the Inspectorate, and two sources in the office assert that anything that emanates from the DIGG is considered "unofficial," and that the DIGG is restricted in access to the resources of the Inspectorate. The high–point of the conflict appeared to have been reached when early in the year, newspapers were rife with the story that the DIGG had been removed from his post.[37]

Underlying what may seem to be a clash of personalities, is in fact a much more fundamental issue relating to perspective, particularly in so far as the human rights issue is concerned. This is reflected in the often publicly conflicting and contradictory ways in which the two deal with the issure. Thus, in a widely publicized tour of military and civilian institutions which were generally known for the incarceration of civilian detainees, the Attorney General and the IGG asserted that the only problem with respect to the condition of these institutions and the inmates, was one of "over–crowding". In contrast the DIGG wrote an extensive article in local newspaper, asserting that the phenomenon of "disappearances" continues as a form of government policy to date. **(Lule, 1990:1, 8–9).** In a recent article, this distinction in perspective has emerged all the more sharply:

> When we came to power in 1986 it was hallmarked by a drastic upturn on the human rights scene. Gone were the days when previous governments committed human rights violations by the day blatantly. Despite a far more transparent environment and the formal declaration of human rights observance as one of our objectives, there has been little fundamental progress since 1986 and we portray ourselves as content to live off that short lived piece of history. There has been no visible human rights progress of a fundamental nature. In contrast there is now a drastic deterioration in the situation which is alarming. 'Disappearances' have raised their ugly head again whilst we continue to clutch at rotten straws. **(Lule, 1992:13)**

Between these two contending viewpoints, a critical assessment of the human rights mandate of the IGG's office placed against its product reveals an obvious short–fall. Unlike the mandate conferred with respect to the abuse of office and corruption, which has been pursued to some positive ends, the same cannot be said of its powers over the enforcement of human rights observance. The excuse given for not pursuing the human rights question through public reports, is a weak excuse for a lack of a forthright policy on the matter, since the very nature of the job implies a certain degree of conflict with other organs of government and the officials in charge of them.[38] It is also incorrect to refuse to go public because the government is "trying" to address the situation. Provided the pressure is not applied, the respect for human rights issues will continue to abate. Furthermore, with the possible exception of the areas of armed conflict which can be excused as representing a special case, little has been done to pursue compliance with human rights principles with respect to areas in which there is relative peace and tranquility. In this respect, the IGG's office presents that paradox of being the principle institution in Post–1986 Uganda designed to address the issue of human rights abuse, but failing substantively to execute this mandate.

There are additional issues that are either inappropriately covered by the statute, or those that can be usefully added to it, to give greater efficacy to the functioning of the IGG's office. Principle among these is the issue of information and publicity about the office, which is intimately linked to the question of accountability, albeit in a much broader sense. This primarily concerns both the confidentiality of all its proceedings and communications, its relationship to the public and to its principle constituents – the complainants. While it is understandable that the confidentiality of communications of complaints should be maintained in order to protect complainants against possible recrimination, this should not be the case with the reports to the President, or on the particular course of action adopted with respect to a particular matter. First, it eliminates public speculation about the actions (or inaction) of the office; secondly it enhances its public image, and finally, it avoids a situation in which the IGG must always clarify or correct what his office is responsible for, and that for which it is not.[39] As it is, the institution appears to be shrouded in mystery and secrecy and is often dismissed as cosmetic. Clearly the office needs to be more aggressive in promoting its activities to the public. One mode of doing this would be to follow the Swedish practice of going public.[40]

Alternatively, the office could make periodic public circuits of the countryside at large, as in the case of the Tanzanian PCE. Presently, the IGG is hardly known outside the capital city. The majority of the rural populace, and even the urban up–country dwellers have never heard of the office. While the ideal situation would be to have branches of the office spread throughout the country, the practical possibility of such endeavour is clearly limited. If some of the meagre resources were to be devoted to such periodic tours, this would greatly enhance the image of the IGG as an office that is truly concerned about the broad masses of the populace. Finally, the statute does not place any obligation upon the IGG either to follow–up its recommendations to the President, or for a means of communication of the President's action to the complainant, knowledge of which may only come through the media. This leaves the complainant in limbo, and does not enhance the image of the office in any way.[41]

The publication of the Annual Report (with all the limitations already noted) would serve to establish the fact that the office is not merely salutary. However, this needs to be accompanied by a more comprehensive break–down of the cases than is presently contemplated. (See, Appendix B). Thus the data needs to show not only whether the complaint was initiated by a member of the public or th IGG, but also, the type/category of case; whether or not it was investigated; those referred to other state organs for action; those on which no action followed the investigation; the kind of criticism that was issued and the instances in which prosecution was advised. Even in the absence of a strict categorization of particular institutions and the specified course of action adopted against them, such break–down presents the image of an institution that is concerned about public perceptions of the manner in which it attempts to execute its mandate. Absent such a breakdown, it is also impossible for one to actually gauge the impact of the office, wich may not necessarily be construed solely from the numbers.[42]

Section 9 of the statute confers powers of search on officers of the IGG "... if there is reason to suspect that property corruptly or otherwise unlawfully acquired has

been placed, deposited or concealed therein".[43] There is no power in the IGG statute to make inspections, specifically of institutions of incarceration, unless one reads this into the broad mandate conferring powers to "inquire into .. the arbitrary arrest and consequent detention without trial." Needless to say, the IGG has on one publicized occasion toured prisons and military establishments in Kampala.[44] Not only do such tours need to be institutionalized, but they should be married to a power to inquire into the denial of a fair public trial (s.7.1 (a)), and to order or secure the immediate release of such persons. In particular, these concern cases such as those of persons held on remand beyond the statutory limit, ungazetted detentions or the case of "lodgers".

In his discussion of Uganda's need for an Ombudsman, Khiddu Makubuya (op.cit), expressed the hope that such an institution should in particular address the issue of preventive detention under the *Public Order and Security Act.* Unfortunately, the IGG's office has failed to do this. This is all the more disturbing in light of the traditional Judiciary's reluctance to deal with the issue in a forthright manner,[45] or when it does, to achieve the enforcement of such an order, as these are simply ignored in many instances.[46] But, this point extends to a wider issue, namely, the failure of the IGG statute to address the issue of the conformity between the laws promulgated by the Legislature and basic constitutional and human rights principles. It is submitted that in the context of Uganda, such a function would have intrinsic to the operation of an institution such as the IGG's office.[47] Moreover, it is not without precedent, [48] and could be effectively designed in such a way as not to be in conflict with the principle of Judicial independence. To summarize, the IGG statute clearly necessitates a review in several material particulars. However, whether or not this would plug up the loopholes in the operation of the office is really a question that lies outside the parameters of the issue of legal reform per se. It is to a consideration of these factors that we now turn.

4.2 *Governance and the IGG: Back to the Future*

No other issue more precisely captures the movement in social, economic and political forces in Africa, than the current debate over the issue of governance. In the preceding discussion of the IGG's office this concern has found expression as the **power** of that institution, in relation to the **law** by which it was constituted. Here lies the link between the notion of governance, and that of Constitutionalism – its Siamese twin. This linkage is not only important in light of the wider concerns with the transition in the African political economy, but specifically, in relation to the on–going debate about the promulgation of a new Constitution for Uganda. The debate is important because our concerns cannot stop simply with the advocacy of better forms of "governance", "accountability" and "transparency". Ultimately, such demand must be linked to the wider question of the democratic underpinnings of the movement towards qualitatively improved forms of governance.

To appreciate this point however, one must begin from an elementary premise, *viz:* that anti–corruption measures, without much more cannot lead to an effective check against the phenomenon.[49] This explains why the powers of the IGG are purely recommendatory, and at that to the executive – a reflection of the continuing intransigence of executive authority in Africa. In the final analysis, our notions of good

governance, which mesh quite smoothly with those of the IMF and the World Bank, is not accountability to the people, but rather, accoutability to them for their "aid" extensions.

From whichever point of view one begins, it is obvious that the benefits that accrue do not in the first instance, belong to the broad sectors of the population. For this reason, the impact of the IGG can only be individualized, and not social. Coupled with this is the fact that it is not so much the novelty represented by institutions such as the IGG's office, but the addiction to archaic and retrogressive forms of governance that characterized the systems of government in Uganda prior to the NRM assumption of power–an addiction that clearly undermines any benefit of novelty that can be derived from them. This addiction can be found in the continuing philosophical fixation with Executive power as the principle source of legitimacy and control, on the one hand, and military force, to fortify that power, on the other. This is evident from the omnipotent role of the Executive in giving efficacy to the functions of the IGG's office, as well as the continuing (and growing) strength and influence of the military, reflected in the political role of the NRA, the Army Council and the High Command in a variety of arenas from which they should otherwise be excluded.[50]

All of this compounded by the adoption of *Militaristic,* rather than political methods for the resolution of the dominant social conflicts in Ugandan society today, the case of the conflicts in the North and Northeastern parts of the country being the most lucid and overt expressions of this reality.

The simultaneous conferment of powers to consider human rights abuses and to be essentially ineffective in their prevention or fundamental curtailment, is a clear demonstration that the critical point is less what the IGG statute says the office can do than what the office actually does. In short, it is more the factors outside of the statute which determine the mode of operation of the office. These extend from the absence of any form of power beyond the recommendatory, to the failure to provide for a mechanism by which the IGG is empowered to review laws of questionable constitutional legitimacy. It also explains why the IGG has so far failed (and will continue to be hamstrung) in making any inroads on the question of human rights, and has now all but abdicated responsibility over the censure of the military either in the conflict areas or elsewhere. Absent further and more drastic measures against curruption, it is also probable that even this shall cease to be affected in any fundamental respect by the workings of the office.

Our conclusions must take into consideration the fact that the IGG's office does not exist in a vacuum. Part of its accomplishments must be ascribed to the quality and calibre of the personnel that run the office. Ultimately however, such resilience and perseverance will only be rewarded by greater frustration as the road blocks and hurdles become insurmountable, or by resignation to the fact that their operations can only be cosmetic.

Footnotes:

[1] See, Ayesha Imam, "Democratization Processes in Africa: Problems and Prospects" in *CODESRIA BULLETIN*, No. 2 of 1991.

[2] It is interesting to note that this report devotes a whole chapter to "Rethinking the State", in which an attempt is made to radically reconceptualize the notion, particularly in its Third World variant. (See, World Bank, op. cit: 128–147).

[3] The Report continues, "Strengthening these institutions will increase the quality of governance and the capacity of the state to implement development policy and enable society to establish checks and balances." (ibid.)

[4] This will usually be a Human Rights Commission or Council to deal with the question of protection and enforcement of basic rights and freedoms, while an *Ombudsman* will usually deal with the issue of administrative excess. **(Eze, 1984: 49–54).**

[5] See p. 33 of the TPP.

[6] It should be pointed out that the establishment of the IGG's office was not the first attempt to deal with corruption in a systematic manner. In 1970, a *Prevention of Curruption Act* (No. 8 of 1970) was passed with the intention of dealing with corrupt official practices, as part of the "Move to the Left" strategy of the period. Despite the cacophony that greeted its promulgation, the legislation nevertheless remained a dead–letter, among with the other measures of the first Obote government, following the 1971 *coup d'etat.* In 1975, the Military Governmnent enacted the *Economic Crimes Decree* (No. 2 of 1975), which was designed to combat the hoarding of commodities, smuggling, over–charging, embezzlement and corruption, and vested the trial of such crimes in a Military tribunal. Passed within the context of increased state brutality and terrorism, the Tribunal simply degenerated into yet another of the regime's instruments of terror – focusing on petty crimes, while high level graft and corruption continued unabated.

[7] *Africa Analysis* provides a more plausible explanation: "The Commissions of Inquiry have also not been particularly effective in the first year. Sixteen ministries, including defence, commerce and industry were left uninvestigated. None of the commissions had enough time or resources to do a thorough job. Only one or two have produced reports with any punch." "The main problem was that the Minister of the Ministry under scrutiny was allowed to appoint the commission members and often chose close colleagues and friends not likely to probe too deeply." **(AFRICA ANALYSIS 1987: 1).**

[8] The IGG and several other members of his office were interviewed on several occasions during the course of the research. As such specific dates of interview are only recorded for persons who are not part of the office, and were only interviewed once during the course of the research.

[9] These sections cover, *inter alia:* Establishment and Appointments; Functions and Powers; Procedure for Investigations; Investigations; Reports and general provisions.

[10] Sections 8–19 stipulate the exact extent of the IGG's powers.

[11] As Kiapi correctly points out, this provision is important because that Prisons Act and Rules made thereunder, specify that all communications to and from prisoners must be transmitted via the officer in charge, while the Public Service Standing Orders stipulate that all communications to external bodies must proceed through the Head of Department.

[12] The IGG's office has developed a specified format that is used for each of the reports compiled which is supposed to meet the stipulation in S.23.1 that provides for the submission by the IGG to the President of a full report on the proceedings of every inquiry, together with his conclusions and recommendations.

[13] Although established in 1988, the IGG's office is yet to issue a report to the Legislature, as stipulated under S. 23.1 (b). The IGG gives the reason that logistical reasons have prevented the production of such a report. In comparative terms, the figures in Table I reflect a much greater diversity in the types of cases handled than in previous years. For example, of the sixty cases sampled for the January 1, 1987 to December 31, 1989 report, the break–down is as follows: Embezzlement, 14; Evictions, 12; Land and Tenancy disputes, 12; Corruption, 11; "Air supplies", 5; Arrests, 1, and others, 5.

[14] The post–Amin period saw three governments in one year, and according to the IGG, the rate of corruption was at its highest: "The period was characterized by outright plunder, huge commissions, embezzlement, etc." ("Corruption: Greatest Enemy of the Day," *New Vision,* December 21, 1989: 6–7).

[15] cf. The following account is a bridged from the figures contained in Table A of the larger study (Oloka–Onyango, 1992: 47).

[16] Some discrepancies appear in the IGG's statistical summary, as compared to the totals given. It would appear that this results from the exclusion of cases carried over from the previous year. A summary of the complaints received and initiated in the years 1987, 1988 and 1989, gives the following as the top five institutions complained against: Ministry of Defence, 1,464; Police, 521; Health, 508; Rehabilitation, 437, and Education, 326. (See appendix B, infra.) The figures of complaints received from the public for each respective year are: 1987, 2,137; 1988, 3,753, and 1989, 1,316. The figure for 1990 is even lower, which, according to the IGG's estimate, stands at 1,287.

[17] The IGG asserts that corruption also leads to human rights abuse. Explaining why his office appears to be working more on corruption, he stated that this was because, "...corruption entrenches poverty in society and poverty erodes our capacity to ensure basic human rights for our people." ("IGG Criticises Police, DPP,' Weekly Topic, June 14, 1989: 14).

[18] "Make IGG Full Supervior," *New Vision,* June 1, 1989:5

[19] At the March 1991 CBR symposium, it was noted that, "Delegates were most concerned over the fashion in which the IGG was appointed, and expressed the preference of the appointment to be made by the Legislature, rather than exclusively by the President. It was also suggested that the IGG's office submit and annual report of its activities to the Legislature for consideration, and the Legislature have the power to summon and censure the office." (CBR, op. cit: 28).

[20] See, Kiapi, op. cit: 94.

[21] It is important to note that although not expressly excluded, as in the Tanzanian case, the Presidency is not included among the "public offices" over which the IGG can exercise the power of investigation. This implies that the IGG cannot investigate the President. Coupled with the stipulation in Article 24.3 of the 1967 Constitution, which provides that the President shall, "...take precedence over all persons in Uganda and shall not be liable to any proceedings whatsoever in any Court", the conclusion is that the Executive is beyond the IGG's purview. This is compounded by the fact that the are no provisions in the constitution or elsewhere for the impeachment of the President.

[22] The Swedish Ombudsman in fact elected by the Parliament, but in the circumstances of present-day Uganda, such a process is likely to be dogged by sectarian and other extraneous considerations.

[23] One letter-writer, was of the view that the IGG should be a committee for this very reason. "IGG Be A Committee," *New Vision,* April 15, 1990:5).

[24] This issue relates to a more fundamental problem, *viz,* the extensive powers of control exercised by members of the Cabinet. This point has been made on several occasions, and must be addressed in order to reduce on the possible abuse of power. Reviewing a recent Bill in the Legislature, several Council Members (CMs) felt it was necessary to review the extensive powers conferred on cabinet ministers, in part because, "...many qualified Ugandans outside the country fear to take up competitive jobs in parastatals due to absence of job security." ("CMs Criticise Ministers", *New Vision,* February 6, 1992:1

[25] The alternative would be to upgrade the training of those already deployed in the office, but once again consideration must be given to the issue of resources.

[26] Over the period July 1, 1988 to June 30, 1989, the Swedish Ombudsman received a total of 2,960 cases. 1,016 of them were dismissed outright, without any investigation; another 1,507 were investigated, but no criticism issued from the office; 70 were referred to other agencies or state organs for action; 355 investigations led to admonitions or other criticism, while the surprisingly small figure of 2 cases led to prosecution or disciplinary proceedings. This represents only 0.06% of the total number of cases recieved over that reporting period! The figures are derived from an information-sheet issued by the Swedish Ombudsman in 1990.

[27] The only statistics published by the IGG's office related to the number of complaints received from the public, as opposed to these initated by the office. These figures do not include any break-down of outcome, but merely refer to cases "investigated and resolved." See IGG, (1990), "Complaints Received from the Public and Cases Initiated by the IGG's office for the Year 1990," (Mimeo).

[28] Discussing the reasons for the inclusion of a human rights mandate in the functions of the Ombudsman of Papua New Guinea, Amankwah and Omar (1990) state,
"... a complainant who has been brutalized by the Police is able to walk straight into an Ombudsman office. Here, in contrast to a litigation process, there are no formal requirements of obtaining a medical report, its scrutiny by opposing counsel, cross-examination and so on, sometimes long after the incident, when visible evidence of the alleged brutality is no longer apparent... The Ombudsman Commission in this regard has the capacity to remedy such situations speedily." (ibid: 98).

[29] In this respect, we must disagree with the recommendation of the New York Bar which counsels that "...the task of investigating current human rights abuses should be transferred from the IGG to the Human Rights Commission, which should be established on a more permanent basis", principally on account of, "... the IGG's lack of interest in human rights..." (NY Bar, op. cit: 68). First, such a recommendation is too personalized, in so far as it is directly linked to the incumbent IGG. Secondly, it does not consider the several logistical and political problems already experienced by the HRC in executing a rather limited human rights mandate. Finally, it fails to come to grips with the general malaise towards human rights issues that has pervaded the NRM government since 1986.

[30] After lavishing praise on the IGG for its anti-corruption activities, a *New Vision* editorial explicitly criticized the IGG's office in the following manner: "The office of the IGG can perhaps be criticized over its mandate to protect human rights. In any society, human rights will be infringed from time to time and Uganda is no exception. The Press, RCs and members of the public have exposed various abuses that have occurred but in general the IGG has not intervened. This is because the IGG has been bogged down, investigating corruption. The government should increase funding to the IGG's office so that it can set up a special section to monitor human rights." *New Vision,* April 4, 1990.

[31] The incident ocurred on December 10, 1990, following a student boycott of classes. Despite the setting up of a Judicial Commission of Inquiry to investigate the student deaths, the report is yet to be made public, and the perpetrators of the violence remain to be punished - more than a year later. See, "Axing of IG Misdirected", J.P. Wanyama to *New vision,* January 3, 1991: 5).

[32] In a *New Vision* article on September 13, 1991, it was announced that 3 people from the IGG's office had joined the commission which had failed to progress on account of "Logistical reasons", and the continuing problem of rebel activity. It was also announced that the Commission would produce a report within two months, but to date, no such report has been issued.

[33] The problem of government officials refusing to comply with the directives of the IGG's office was obviously contemplated by the creation of provisions for arresting offenders, under s.20 and s.22 of the stature, which stipulate prison terms and fines for contravention. Discussing the Nigerian case, Akanle urges for a more stringent enforcement of the penalties created under the law to deal with such non-feasance, "We would hazard a suggestion that a legal unit be attached to each (state) commission, which unit will have responsibility, among other, for the prosecution of offences arising under the decree." (Akanle, op. cit: 80). The IGG statute does not, however, have provisions sanctioning a person who disobeys recommendations made by the IGG, which explains, for example, why officials of the DAPCB can ignore the IGG's directives with impunity.

[34] Counsel to the IGG states that in many respects the commission was a non-starter, for a number of reasons, including: i) There was no named Chairman: the Deputy IGG would have been the natural choice, but this conflicted with the principle of hierarchy since the Attorney General holds Cabinet rank; ii) There were no clear terms of reference regarding the target-areas of investigation as well as the terms of the commissioners; iii) The locational headquarters of the commission remained unspecified, nor was there any stipulation regarding a reporting or accountability element, and iv) No vote was specifically made, the logistics were not examined, neither was the issue of manpower. Our own conclusions are that the setting up of the commission was simply a public relations exercise.

[35] Article 15.5 of the 1967 Constitution stipulates that, "No person who show that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal."

[36] See footnote 13, p. 13, supra.

[37] At the time of the revision to this paper (January, 1993), Wasswa Lule had indeed been sacked as DIGG, and replaced by a former Inspector General of Government, who was implicated in the Makerere shootings. Wasswa's exit is largely belived to be related to his outspoken criticism of the government's human rights record.

[38] With respect to the issue to corruption, the IGG has not hesitated to go public, and draw the wrath of those concerned. This happened in the SOMA HOLDINGS case, and also with respect to a former Minister of Information, who attacked the IGG for allegedly targeting him politically by asserting that the first corrupt deal in Uganda, involved the installation of television in the early 1960s. (See, "Nekyon Attacks IGG", *New Vision,* December15, 1989:1).

[39] In an interesting case involving the National Housing and Construction Corporation, the December 15, 1988 *New Vision* reported that an IGG report on the Corporation had led to the dismissal and sanctioning of the main officials of the organization. Two weeks later the IGG isued a denial that the dismissals were "... a direct result of a report by the IGG ..." and that he had only recommended and overhaul of the administration, and with respect to the MD, he had only reported that "...it was a great mistake on the part of th government to have appointed Mr. Kimuli MD." "IGG Report Didn't Do It, "*New Vision*. January 3, 1989: 5).

[40] Swedish Ombudsman, 1991,op.cit: 8.

[41] In the NH&CC case (supra.), the IGG stated, "When the IGG made specific recommendations, they were not followed but where no specific recomendations were made on the Board, the Minister merely execised his powers over the Board."

[42] Indeed, if you were to go by the numbers, one could say that public confidence in the office is declining, given that the number of complaints registered each year has been reducing. (See, footnote 4, p.48, supra.)

[43] Several tours have been made of schools, garages and hotels in execution of this mandate.

[44] The Counsel to the Inspectorate states that a number of such inspections were carried out in 1990, following the much-publicized IGG/AG tour, but that the office is no longer doing so.

[45] See, *MUWANGA APPLICATION* (misc., Cause N0. 82 of 1987), in which the judge declined to review the detention of the applicant, on the grounds, *inter alia* that: 1) The non-service of the reasons for detention was not fundamental, 2) The detention did not have to be gazetted, and 3) No Detention review Tribunal had ever been established, and it would thus be absurd to order the detainee's appearance before a non-existent body.

[46] Furthermore, the invocation of Court jurisdiction over matters affecting the interpretation of the Constitution (and thus of the Bill of Rights Provisions thereof), are unduly convoluted. Article 87 of the 1967 Constitution provides, "Where any question as to the interpretation of this Constitution arises in any proceedings in any Court of Law, other than a Court-martial, and the court is of opinion that the question involves a substantial question of law the court may, and shall if the party to the proceeding so requests, refer the question to the High Court consisting of a bench of not less than three judges of the High court".

[47] It is our contention that a not insignificant number of human rights abuses are *lawfully* committed, insofar as the law in existence permits the commission of acts that violate fundamental precepts of democratic government, whether in the arena of political and civil freedoms, or in the area of social, economic and cultural rights. Since the demise of the Amin dictatorship, successive governments have made reference to the draconian legal provisions passed in the era, but none have done anything to repeal them.

[48] In the case of Zambia, Article 27.1 of the Independence (1964) Constitution, provided for an *Ad Hoc* Special Tribunal, appointed by the Chief Justice to review bills issued by the National Assembly, and to make a simple report on whether or not the Bill conformed to the fundamental rights provisions of the Constitution. This provision has since been repealed, on ground that were essentially political, rather than technical.

[49] See Gillespie and Okruhlik, 1991, at 81.

[50] "NRM: Political Cross-roads of Yellow-woods (1990-1995), *Uganda Confidential, No. 2* (February 1991: 5). The paper goes on to note how the IGG's office has been sidelined by the Military, "The first sign to indicate that the army was above political lines came out in 1988, when it was announced that NRA was to have its own Department of Inspectorate, to basically do, if not avoid, what should otherwise be done by the IGG... In other words, the much respected office of the IGG... was to restrict its war against corruption to the civilian population, not the army." (ibid: 5). Indeed, since the purported establishment of the office, nothing more has ben heard of its activities.

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