

## **Constraints: The Un-Doing of the Ugandan Truth Commission**

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### **ABSTRACT**

In the aftermath of a period of mass atrocity at the hands of the state, many societies struggle to find a way to repair the damage caused to the physical infrastructure in terms of things like roads, hospitals, and schools. Yet the social infrastructure is also often badly damaged. One mechanism often employed in such cases is the truth commission, which can act to foster sustainable development on many different levels, as well as social trust.

When Yoweri Museveni and the NRM acceded to power in Uganda in 1986, one of their first acts was to establish the Commission of Inquiry into Violations of Human Rights to look into the abuses which had been perpetrated from 1961 until that time. The Commission, however, was endowed with neither proper funding nor political support. The social infrastructure, therefore, was left in a state of flux. This paper provides an analysis of the many constraints faced by the Commission and of its relative failure to provide a platform for improving the social infrastructure.

### **I. INTRODUCTION**

In the aftermath of a period of mass atrocity at the hands of the state, the restoration of the political and social fabric of a country is a pressing need. In the case of Uganda from the mid-1960s forward, this need was particularly real. Almost since the country had gained independence from Britain in 1962, a series of brutal governmental regimes had ransacked the

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country, and had viciously dealt with its inhabitants. Nearly thirty years of mind-numbing violence, perpetrated under the regimes of Idi Amin and Milton Obote, culminated in a broken society. Where once had stood a capable people, able to provide for themselves on every level, now was found a country whose economic, political, and social systems were seriously fractured.

Under both Obote and Amin, as well as the transitional governments in place between and immediately following these regimes, democracy and the rule of law had been suspended. Instead, beginning in 1962 with Obote's first term in office and continuing throughout the regimes of Amin and the second regime of Obote (commonly referred to as Obote II), as well as the various transitional governments put in place for short periods of time, a series of brutal crimes was carried out. Often depending on ethnic affiliation and/or societal status, Ugandans were subjected to all manner of abuses, from arbitrary arrest and detention to wholesale slaughter and mass murder. From one regime to the next, different tribal groups were targeted, then tortured and killed. Amin's brutality was legendary:

The tactics Amin used against his adversaries defy description. He did not merely order his henchmen to kill people but also encouraged them to subject their victims to unspeakable atrocities after they were dead. Ugandans regularly discovered the mutilated bodies of their relatives, friends, and acquaintances with "livers, noses, lips, genitals or eyes missing." Amin himself was suspected of cannibalism and practicing traditional Kakwa blood rituals on slain enemies.<sup>1</sup>

Hundreds of thousands of people were murdered throughout the period, while the various heads of Ugandan government sought to legitimize their rule and cement their positions of power in any way possible.

Indeed, from the moment of independence in 1962 and for the next twenty-four years, six out of the eight heads of state effected their transition into power by means of overthrowing the previous regime.<sup>2</sup> Obote's first term in power lasted until 1971, when he was overthrown by Amin and his supporters. Amin was, in turn, overthrown in 1979 and replaced by three different governments, collectively lasting for less than eight months until Obote was returned to power after a fraudulent election in 1980. Obote was overthrown by his own army in 1985. The ensuing military council lasted six months, when, in turn, it was overthrown by the National Resistance Army (NRA, later changed to "National Resistance Movement" or NRM) under Yoweri Museveni.

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1. THOMAS P. OFCANSKY, *UGANDA: TARNISHED PEARL OF AFRICA* 43 (1996).

2. P.G. Okoth, *The Military in Transition to Democracy in Uganda*, in *UGANDA: LANDMARKS IN REBUILDING A NATION* 258 (P. Langseth et al. eds., 2d ed. 1997).

When Museveni seized control of the government in 1986 after nearly fifteen years of bush warfare, he set about rebuilding the shattered nation. He outlined a ten-point program in which he emphasized democracy, security, national unity, independence, restoring and rehabilitating social services, ending corruption and misuse of power, dealing with the plight of displaced people, pan-African cooperation, and pursuing a mixed economy as the basic tenets of his philosophy.<sup>3</sup>

In pursuit of these goals, Museveni established, among other institutions, a truth commission to address the wrongs which had been perpetrated. The role of the Commission of Inquiry into Violations of Human Rights (CIVHR) was to inquire into “the causes and circumstances” surrounding mass murders, arbitrary arrests, the role of law enforcement agents and the state security agencies, and discrimination which occurred between 1962 and January, 1986 when Museveni and the NRM assumed power. The Commission also was meant to suggest ways of preventing such abuses from recurring,<sup>4</sup> and was expected to determine the role of various state institutions in both perpetrating and hiding gross human rights violations. The government promised that the results and findings of this Commission would be treated seriously.

But like so many institutions implemented by regimes facing deficits in virtually all areas, the path of the truth commission was not easy. Civil war leaves in its path a series of communities in need of many things, all of which stretch budgets that have been depleted by years of significant military expenditure. These include roads, hospitals, education, and security, among others, and each of these must be carefully weighed against the country’s need for justice.<sup>5</sup> In transitional societies, the outward signs of poverty and destitution sometimes mask the importance of rebuilding those structural social institutions that form the basis of any stable society. Often, scarce resources are allocated to the repair of the physical infrastructure in its many forms, rather than to the repair of its social “infrastructure.” Reckoning with past injustices, however, is an important step in the process of ensuring the rebuilding of a viable democracy. A restructured judicial system and strengthened networks of civic engagement all lead to increased levels of social trust. And these processes are particularly important in addressing the causes of conflict within divided transitional societies.

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3. YOWERI K. MUSEVENI, *SOWING THE MUSTARD SEED: THE STRUGGLE FOR FREEDOM AND DEMOCRACY IN UGANDA* 217 (1997).

4. THE REPUBLIC OF UGANDA, LEGAL NOTICE NO. 5 OF 1986: THE COMMISSION OF INQUIRY ACT, THE REPORT OF THE COMMISSION OF INQUIRY INTO VIOLATIONS OF HUMAN RIGHTS 3–4 (Kampala: UPPC, 1994) (on file with author) (hereinafter REPORT OF THE COMMISSION OF INQUIRY).

5. Audio tape: Paul van Zyl, Plenary Session: Truth Commissions, The Academic Council on the United Nations System Twelfth Annual Meeting (17 June 1999) (on file with author).

The Commission of Inquiry into Violations of Human Rights failed because it did not provide the citizens of Uganda a real opportunity to acknowledge and thus address the widespread violations of human rights.

## II. RESTORATIVE JUSTICE

In attempting to come to terms with a history of mass human rights violations committed at the hands of the state, societies over the past twenty years have increasingly opted to use methods of alternative and restorative justice over more widely-accepted methods of western-style retributive justice. Restorative justice is defined here as a process of active participation in which the wider community deliberates over past crimes, giving center stage to both victim and offender in a process which seeks to bestow dignity and empowerment upon victims, with special emphasis placed upon contextual factors.<sup>6</sup> Mechanisms such as the truth commission have sometimes proven useful instruments in searching for details of past events. Here victims and perpetrators come forward to tell their stories, and from these a narrative history of the graphic and frightening nature of the society's past emerges. Often, this exposé of past events may, in fact, be the first opportunity that victims have had to speak of their experiences. It is also likely to be the first time that these accounts will have been recorded in any way, finally providing individuals and communities with a version of history that includes the abuses wrought by previous regimes.

This process of dealing with the emotional implications of reckoning with both personal and societal experiences forms the basis of this inquiry. This paper posits that a society must pass through several stages in its quest to right the wrongs of the past. These stages include memory and remembering, forgiveness, a general coming to terms with the past, and acknowledgment. This work focuses specifically on the stage of "acknowledgment," arguing that acknowledgment is the one stage through which any successful process of societal recovery must pass.

Acknowledgment is defined by the Oxford Canadian English Dictionary as "the admission of something as true or as stated and the recognition of the authority of the claims of others." Acknowledgment in and of itself is not an end point, as is reconciliation, for example. Nor is acknowledgment, by itself, able to bring about some kind of meaningful change. Rather, it forms a necessary but not sufficient condition for any of the goals to be realized. These might reasonably include the growth of a stronger, sustainable

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6. Adapted from Sinclair Dinnen, *Restorative Justice in Papua New Guinea*, 25 INT'L J. Soc. L. 245, 255 (1997).

democracy, bringing with it free and fair elections and a right to publicly oppose the government of the day. They might also include a better-functioning judiciary with impartial judges and timely hearings. And among and between each of these also might flow systems of civic engagement, *gemeinschaft*, communal harmony, social capital, and social trust.<sup>7</sup>

In remembering, Ugandan society faced a potentially insurmountable stumbling block: how to get to the “truth” after twenty-five years when the situation is not at all clear-cut? In the gathering of testimony, which comprises a major aspect of facing the past, questions of historical inaccuracy are often raised; debates between historical purists and historical relativists pit verifiability against value-laden accounts.<sup>8</sup> Additionally, as has been discovered in the testimony of Holocaust survivors, events are rarely remembered in any semblance of temporal or chronological order but, instead, in “durational time,”<sup>9</sup> making less and less credible the details reported. Pierre Nora, for example, identifies three kinds of memory which he claims have lapsed due to what he calls a “preoccupation with the individual psychology of remembering”: archive-memory, duty-memory, and distance-memory, arguing that the present generation has found a frightening discontinuity between past and present, causing a faulty sense of distance-memory.<sup>10</sup> The use of the term “failed memory” below is meant to suggest that Ugandans have failed to actively pursue the process of remembering, as discussed above, and have, in fact, suppressed many of the horrors which took place.

This argument is important in the sense that remembering past events thus becomes an impossible task for a group or society to undertake. As concluded in earlier discussions regarding acknowledgment and coming to terms with the past, this has serious implications for a society’s ability to move forward. Collective memory can possess the power to divide whole societies.<sup>11</sup>

The implications of the process of acknowledgment, then, in overcoming the causes of conflict, have the potential to effect real and lasting change. In allowing victims to come forward without fear of retribution to tell the often grim details of how they or various family members have been

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7. ROBERT PUTNAM, *MAKING DEMOCRACY WORK: CIVIC TRADITIONS IN ITALY 163–85* (1993). Putnam defines social capital as the “features of social organization, such as trust, norms, and networks, that can improve the efficiency of society.” *Id.* at 167.
  8. MAURICE MANDELBAUM, *THE PROBLEM OF HISTORICAL KNOWLEDGE* ch. 1, 6 (1938).
  9. LAWRENCE LANGER, *ADMITTING THE HOLOCAUST: COLLECTED ESSAYS* 15–22 (1995).
  10. Pierre Nora, *Between Memory and History: Les Lieux de Mémoire*, 26 *REPRESENTATIONS*, 7, 15–16 (1989).
  11. Paula K. Speck, *The Trial of the Argentine Juntas*, cited in MARK OSIEL, *MASS ATROCITY, COLLECTIVE MEMORY, AND THE LAW* 14 (1997).

disappeared, raped, or murdered, for example, the pattern of abuses from community to community becomes apparent. The testimony of perpetrators, too, helps to build an elucidated picture of events, while at the same time openly exposing their actions. I argue that by bringing these events out into the open, the power of the perpetrators over their victims is finally severed. And when these crimes have been acknowledged, individuals and their communities can begin once again to form relationships with their neighbors and to participate in the social activities and civic structures of society, finally defeating the deep-rooted conflicts that have served to paralyze that society. These networks of civic engagement will lead to the rebuilding of democracy.

### III. THE COMMISSION OF INQUIRY INTO VIOLATIONS OF HUMAN RIGHTS

In the case of Uganda in 1986, Museveni's government was simply seen as the next in a series of military coups, a military government fighting to hold on to what legitimacy it could. His statements in favor of democracy, therefore, combined with his progressive stance on dealing with Uganda's recent past, were a nice bit of window-dressing. As Museveni's initial term in office wore on, it began to seem that he had no genuine intention of supporting the truth commission in any real way. After several months in power, Museveni and the NRM chose to focus on strengthening Uganda's economy, and on rebuilding the military and police force in their quest for "the rule of law."<sup>12</sup> In doing so, it sometimes sacrificed human rights for the greater good of Museveni's own agenda.<sup>13</sup> Today, Museveni continues to pursue what he claims is a "democratic government that relies on consensus rather than force . . . [yet he has] postponed elections . . . [and] banned political parties from holding meetings without governmental approval."<sup>14</sup>

The Commission of Inquiry into Violations of Human Rights was appointed on 16 May 1986, three months after Museveni had taken office. The Commission was inaugurated one month later, on 13 June 1986. Until the tabling of the Report on 10 October 1994, the Commission worked to gather evidence and testimony relating to the events of 1962–1986. Thousands of people completed questionnaires with regard to their recollection of particular events, many of which were then investigated in the field. From these, particularly strong and representative cases were chosen

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12. MUSEVENI, *supra* note 3, at 192–93.

13. OFCANSKY, *supra* note 1, at 155.

14. *Id.* at 60.

to go before the Commission. In all, 608 witnesses appeared before the CIVHR, from 11 December 1986 to 7 April 1993.<sup>15</sup> The Commission travelled to virtually every region of the country, holding hearings and collecting testimony in seventeen districts.<sup>16</sup> This testimony was gathered and bound into eighteen enormous volumes. Today, one set of these volumes is housed at the Uganda Human Rights Commission and each of the commissioners displays his or her set proudly in homes and offices. Two complete sets reside in a locked closet where I found much of the material surrounding the Commission. The final report is more than 720 pages in length, and contains testimony, analysis, and recommendations, along with lists of names of those who were subjected to torture and abuse.

The testimony itself was gripping, and often revealed startling information. The Final Report contains some of the graphic descriptions presented before the Commission. Witnesses testified about the survival strategies they had employed while in state custody: "You [had] to keep your urine and this urine was very useful because at night with that suffocation people used to drink their own urine because it was the only water you could get."<sup>17</sup> Some of the witnesses provided details of bizarre executions and mass graves.<sup>18</sup> The following is an account of one of the Commissioners in describing the testimony and hearings process:

You know, for us—I speak for myself—to begin with, I didn't know that the crimes that had been committed were that many, and that hideous. It was shocking to me because, okay, I knew that so-and-so was arrested. You knew that people we knew were killed. So you limit your knowledge to those you know, or to those who were reported in the newspaper. But when you open the Commission for the whole country and you see the response, and the crimes in all the areas of the country, it was shocking. It was shocking to me. And everyday, I expected a new story. Everyday, I expected a new kind of crime. The crimes were so—you can imagine—you think maybe that they have been arrested, imprisoned . . . but when they arrested them and assaulted them, there's also forms of torture that you never get to hear . . . the forms of torture he goes through and he kills him. And then the helplessness after these things. And psychological sickness they go through. The death that follows. And the disintegration of the family. If the head of the family is arrested, the whole family seems to sort of, you know, everybody suffers. So to me . . . I feel it really brought me a new dimension of what took place and how society at large suffered.<sup>19</sup>

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15. REPORT OF THE COMMISSION OF INQUIRY, *supra* note 4, at Appendix 10: xxx.

16. *Id.* Tbl. 3: V–VI.

17. *Id.* at 78.

18. *Id.* at 52–58.

19. Anonymous Interview with government official, Kampala, Uganda (25 June 2001) (on file with author).

The Commission of Inquiry into Violations of Human Rights was Museveni's answer to dealing with the legacy of nearly twenty-five years of mass atrocity. Certainly, many of those appointed to share in the task of carrying out the Commission's work were confirmed patriotic human rights supporters who were honored to have been asked to participate; others were selected because of their strong knowledge of the law. In every case, the appointees possessed a specified set of knowledge and/or experience. The Chair, Justice Oder, came from the Supreme Court. Commissioner Khiddu-Makubuya was a graduate of Yale Law School, and a professor of Law at Makerere University. Some of the commissioners had no previous connection either to Museveni or to his National Resistance Movement. Altogether, there were six: a lawyer, a professor of law, a judge, a professor of history and sometime women's advocate, a writer, and a medical doctor-turned-member of parliament who had been with Museveni since his days in the bush. Any casual observer might rightfully have thought that this combination of personalities and years of experience would be enough to carry the Commission through to a successful conclusion.

Museveni was hasty in appointing the Commission. Its mandate was extremely broad and vague; it included the need to investigate nearly every type of human rights abuse imaginable, all of which had been committed between the time of Independence in 1962 and the beginning of Museveni's term in office. The legislation listed nine wide-ranging categories of violations for consideration, along with a clause demanding that the Commissioners consider "any other matter connected with or incidental to the matters" already mentioned.<sup>20</sup> These included investigation of mass murder; arbitrary arrest, detention and imprisonment; unfair trials; torture; crimes of law enforcement agents; the displacement, expulsion or disappearance of Ugandans; discriminatory treatment; the denial of any human right; the protection of anyone who had perpetrated such crimes; and anything else the Commission deemed necessary. Otherwise, the scope, size, and subject matter for consideration were largely undetermined, as was the manner with which such abuses ought to be dealt. Neither the fact that these abuses totaled well into the hundreds of thousands, nor were specified, was addressed. Instead, the fledgling group of Commissioners were left to sort out such issues. As so often happens in the establishment of truth commissions, this sweeping mandate proved difficult to manage.<sup>21</sup> Although the CIVHR was fortunate to consult with an international truth commission expert, Dr. José Zalaquett, and to hold public hearings, the

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20. REPORT OF THE COMMISSION OF INQUIRY, *supra* note 4, at 3–4.

21. See Christian Tomuschat, *Clarification Commission in Guatemala*, 23 HUM. RTS. Q. 233, 239–40 (2001) (describing that the experience of Guatemala in this regard is similar).

unwieldy nature which was to characterize the Commission was evident from the very start.

In composing the list of commissioners, Museveni called upon long-time friends, strong supporters of the NRM, and some of the country's leading legal practitioners and scholars. Dr. Jack Luyombya had been with Museveni throughout his years in the bush. John Nagenda, a writer who had been in exile in the United Kingdom since the time of Amin, and a former school-mate and friend of Museveni, was appointed to the Commission shortly after his return to Uganda. Another, Dr. Edward Khiddu-Makubuya, was a legal and human rights scholar. John Kawanga had been a member of parliament in the first session after Museveni assumed power, and was a lawyer by profession. The Chair, Arthur Oder, was a Justice of the Supreme Court with no particular political affiliations.

Even as the CIVHR was announced, the people of Uganda and many in the international community were calling for substantial reforms. At that time, the five-member Commission was expanded to include an academic and women's rights advocate who had been petitioning the government for adequate representation on the Commission both by and for women. Joan Kakwenzire, a historian, was appointed to the Commission after its work had already begun, giving the Commission six members. Although Museveni's government had taken care to include this Commission as part of their first acts of governance, people were sceptical, and with good reason.

## A. Methodology

Before the work of the CIVHR was even completed, public interest in the Commission had largely abated. Materials surrounding the Commission, including the final copy of the Commission's report, are difficult to find, both within and outside Uganda. The outside world has largely ignored the CIVHR, and, as a result, the work of the Commission remains virtually unknown. The Final Report of the Commission had an extremely limited publication, and even these copies were poorly, if at all, distributed. After approximately two years, I was able to obtain a photocopy of the report, a copy of which I had traced to the Danish Ministry of Foreign Affairs.<sup>22</sup> Many of the documents that discuss the Commission contain only small references to it, and even these are few. The international agencies that supported the efforts of the CIVHR have moved on to other projects, and retain only scant

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22. I wish to thank Georg Ulrich of the Danish Human Rights Centre, and Marete Lisbet Voetmann of the Danish Ministry of Foreign Affairs for their assistance in obtaining a copy of the report.

information pertaining to their involvement, much of which is often limited to an expenditure line from an old budget. With only a couple of exceptions, the Commissioners themselves have remained silent about the work and outcomes of the Commission.

In the summer of 2001, I spent nine weeks in Kampala, Uganda, investigating the Commission. By the end of my two months, I had interviewed thirty-seven people, including all of the Commissioners of the CIVHR and others who had been involved in its work. In addition, I spoke to government officials, opposition party members, academics, former refugees, and religious and community leaders. I chose many of these people in part because I assumed that they would at least have heard of the Commission. I was also interested in the effect of the CIVHR on the wider community, and so civic leaders seemed a natural choice. I was fortunate in that I was open to speaking with all types of people. The “snowball” technique of selecting respondents provided me with a depth of inquiry, as well as a broad cross-section of interviewees. While there, I stumbled across storerooms full of boxes of decaying documents, all of which were opened for me to use. Apparently, no-one had ever thought to ask if any physical evidence and legacy of the Commission remained. For the most part, these people were eager to speak to me about their experiences with the Commission and about life in Uganda. Due to the fact that the international community has largely ignored this tiny effort at restorative justice, hardly anyone has ever asked them about this period of their lives.

I went armed with a skeleton outline of the types of questions I was interested in asking of people belonging to various groups and occupations. The questions were purposely open-ended to allow for a diversity of responses. For example, I was careful to allow the conversation to explore sometimes tangential aspects of these ideas, which resulted many times in particularly illuminating interpretations and explanations. Each interview lasted approximately two hours. In most cases, the interviews were tape recorded. In a few cases, people asked that our conversation not be recorded, that their responses be kept confidential, and that they not be identified in any way. The majority of these people proved to be critics of the NRM and Museveni in some way, and feared for their jobs or their security and that of their families if their identities were revealed. In all, nearly every one of my interviewees provided thoughtful and considered responses. Although I received permission to identify quotations from the majority of those whom I interviewed, I have chosen not to do so except in those cases I felt it to be absolutely necessary.

In situations like the one in which Uganda found itself, the truth commission often is used as an instrument to effect change in these societies. The desired outcome of the truth commission varies from one society to another. In some, the stated goal is the restoration of civil society

or the repair of democracy. In others, societies aim for the broader goals of reconciliation or forgiveness. The stated goal of the Ugandan truth commission was simply to determine the truth about the abuses of the past, with no grander designs on effecting a general healing of the community. This commitment to only “the assembling of evidence”<sup>23</sup> is one of the factors responsible for the limited ambitions of the commissioners, and served to prevent any further discussion and ambition. No one, it seems, had envisioned the emotional needs of a society beginning to look at the horrors of its recent past. Nor had they imagined the potential for social reconstruction which might have emerged from the work of the Commission.

The interview questions were designed to determine the role of the commission in the process of Uganda’s coming to terms with its past. From each of the various groups of people from which my interviewees were drawn, I was interested in the same types of questions. Spiritual leaders, for example, were asked about the role of their particular church in the truth process, collective mourning, and social capital. Journalists were canvassed as to their role in the creation of a public narrative of events, as well as the occurrence of historiography (*i.e.*, an interpretation or fictitious account of past events) and historical reconstruction. The Commissioners themselves answered questions pertaining to deep memory, remembering, and emotional responses, along with providing technical information on the workings of the Commission.

## B. Analysis

The CIVHR encountered many significant constraints throughout its protracted existence. Chief among these was the institutional failure of the Commission and of the mechanisms surrounding it, all of which ought to have provided more support; this can be ascribed to failures in capacity, funding and time. In addition, political will in Uganda both in 1986 and at present appears to have supported the work of the Commission only to the extent that it might appease internal opposition and curry favour with foreigners who might then be counted on to provide additional funding, both in this sphere and in others. And the process appears to have left no indelible mark on Ugandan society; the country’s memory of past events, at least in terms of the CIVHR, has failed. Each of these factors is explored briefly below.

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23. The Republic of Uganda, Address by Hon. Joseph Nyamihana Mulenga, The Minister of Justice/Attorney General On the Occasion of the Inauguration of the Commission of Inquiry into Violation [*sic*] of Human Rights, at the International Conference Center, 13 June 1986, REPORT OF THE COMMISSION OF INQUIRY, *supra* note 4, at Appendix 1: ii.

In addition, the Commission made a substantial number of recommendations. These included suggestions for democratic development, human rights education, constitutional guarantees and international treaty responsibilities, prosecutions and legal responsibilities, and the need for reform in military and security sectors. The chapter containing the recommendations is extremely long, but provides precise proposals. Sadly, however, very few of the CIVHR's recommendations have ever been implemented.

## C. Institutional Failure

### 1. Capacity

The institutional failure of the CIVHR is paramount among the reasons for the relatively little success that the Commission had. From the very beginning, the Commission seemed unable to gather the momentum necessary to carry out an activity of this scale. The Report of the Commission outlines many of its shortcomings, including what it calls the "vastness of the exercise"<sup>24</sup>—the Commission was burdened with the task of sifting through, and collecting testimony about, nearly twenty-five years' worth of horrific abuses. Thousands upon thousands of abuses had taken place, each with its own story, and with different victims and perpetrators. Coupled with this was the fact that, unlike in the circumstances covered by other Commissions, the abuses in Uganda had been carried out by different power-hungry rulers and their supporters: rotating groups of perpetrators whose power was won and lost with each successive turn-over of the government.<sup>25</sup> The context, therefore, of the information gathered by the Commission was different, depending on both the ethnic background (and therefore political allegiance) of the victim and that of the perpetrator. Those who had curried favour with Obote were the very targets of Amin's wrath. In turn, when Obote resumed power, he brutalized Amin's supporters. In between, successor regimes had fought their own battles. Museveni, in turn, trounced Obote's power base. It was a vicious cycle.<sup>26</sup>

The Commissioners also faced a dilemma in that Uganda's conformity to international human rights conventions and standards had been, and remained, lacking. It was only after the 1995 Constitution had been promulgated, for example, that the Uganda Human Rights Commission

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24. *Id.* at 17, § 2.9 (II).

25. See, e.g., the testimony of Adonia Tiberondwa, REPORT OF THE COMMISSION OF INQUIRY, *supra* note 4, at 529.

26. The Report mentions this in several places. See, e.g., REPORT OF THE COMMISSION OF INQUIRY, *supra* note 4, at 61.

(UHRC) was founded.<sup>27</sup> The people of Uganda had not even a basic knowledge of their rights up to the late 1980s and beyond. The process of dealing openly with the human rights abuses of the past was unprecedented. In 1974, an earlier truth commission of sorts had been appointed; the recommendations of this commission were never followed, and the commissioners themselves faced retribution at the hands of the state.<sup>28</sup>

Even once the Commission sorted itself out as to its role, there were many difficulties to be overcome. Although the Commissioners variously reported that “the facts were known to everybody,” one Commissioner noted “the absence of hard evidence.” As time passes, and as those who have committed atrocities attempt to hide their complicity in past events, physical proof is often eroded or destroyed. In fact, at different points in the work of the Commission significant amounts of evidence went missing.<sup>29</sup> Whole files disappeared, and audio and video recordings could not be found. Some of the commissioners wondered if the disappearance of evidence was due merely to sloppy archival and storage techniques, but others speculated that people inside the CIVHR had purposely destroyed evidence that would implicate them or their friends and family in the heinous crimes. The Chairman of the Commission, Justice Oder, had to be provided with a body guard, and police escorts were used throughout the work of the Commission. Much of the hierarchical government apparatus appears to have been unable and perhaps unwilling to tolerate the Commission’s attempt to delve into the issues of the past.

In addition, the terms of the appointment of the Commission were such that it was forbidden for the Commission to look at issues which had occurred after January 1986, when Museveni and the NRM had taken power. In fact, in this period, many were still suffering abuses at the hands of the NRM as Museveni sought to strengthen his hold on power.<sup>30</sup> Especially in the northern parts of Uganda, the reaction of the armed forces under Museveni was violent. And the UHRC, when it was founded in 1996 as a direct result of the Commission’s recommendations, was expressly forbidden to examine any issue that had taken place prior to its formation. The CIVHR simply was not allowed to examine adequately many of the issues which were uppermost in the minds of many Ugandans at that point, and which remain so to many today.<sup>31</sup>

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27. UGANDA CONST., art. XXIX, ch. 4, cl. 51 (1995).

28. Priscilla Hayner, *Fifteen Truth Commissions—1974 to 1994: A Comparative Study*, 16 HUM. RTS. Q. 597, 611–13 (1994).

29. REPORT OF THE COMMISSION OF INQUIRY, *supra* note 4, at 18, § 2.9 (III).

30. M. Louise Pirouet, *Human Rights Issues in Museveni’s Uganda*, in CHANGING UGANDA 197 (Hölger Bernt Hansen & Michael Twaddle eds., 1991).

31. *Id.* at 202.

## 2. Funding and Resources

Another problem that significantly hampered the work of the Commission was the extreme lack of funding and resources. The offices of the Commission were continually being moved in order to provide accommodation for the many Commissions that were being appointed at that time. As time went on and more and more information was gathered, adequate storage facilities became a serious problem. The Commission's Report speaks of the Commission itself as having been hastily appointed,<sup>32</sup> with no provision for funding the actual day-to-day activities of the CIVHR. This lack of attention seems to indicate the lack of commitment to the CIVHR by Museveni and the NRM. Museveni simply had other priorities, as evidenced both by government spending and program initiatives. In addition, the Commission faced chronic shortages in transportation to and from hearings outside Kampala, staff, filing cabinets and stationery, to name but a few. From time to time, Commissioners were even forced to ask those whose testimony they were to hear to provide their own paper and pen in order for the testimony to be recorded.<sup>33</sup> In the end, it took eight years for a final report to be prepared and tabled.

In fact, it is thanks to the external donor community that the Commission was able to finish its work at all. Due in part to the constant changes in Secretary to the Commission (the Report lists five, plus four assistants), who was responsible for procuring external funding, the Commission was forced to suspend its activities for long periods while funding was found. The Ford Foundation's donation of \$93,000 USD early on in the work of the Commission enabled hearings to recommence.<sup>34</sup> The Swedish International Development Agency's (SIDA) funding in the amount of \$90,000 USD was used to purchase badly needed office supplies. The Danish International Development Agency (DANIDA), the largest external donor to the CIVHR, provided equipment and expertise, along with \$363,000 USD; this involvement allowed the Commission to finish its work. Other donors included the International Centre for Human Rights and Democratic Development (ICHRDD) in Montreal,<sup>35</sup> the Federal Republic of Germany, and the

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32. REPORT OF THE COMMISSION OF INQUIRY, *supra* note 4, § 2.9 (I).

33. JOAN KAKWENZIRE, PROBLEMS OF IMPLEMENTING HUMAN RIGHTS IN UGANDA, THREE PAPERS PRESENTED BEFORE THE COMMISSION OF INQUIRY INTO VIOLATIONS OF HUMAN RIGHTS, 15–16 Feb. 1990, Kampala, Uganda (Wash. D.C.: U.S. Committee for Refugees, 1990), at 28.

34. OFCANSKY, *supra* note 1, at 65; REPORT OF THE COMMISSION OF INQUIRY, *supra* note 4, at 17, § 2.9 (II).

35. INT'L CENTRE FOR HUM. RTS. & DEMOCRATIC DEV., ANNUAL REPORT—1992, 30 (1992) (provides details of the contribution of the ICHRDD: "the Centre assisted in the purchase of a computer and its software components to facilitate the publication of this report").

Government of Australia.<sup>36</sup> An official with one of the donor agencies reports that this external involvement came about as the external donor community tried to support Museveni in his “good” policies and foster new ones in turn.

### 3. Time

Time is the third of the institutional failures. Initially, it had been hoped that the work of the CIVHR could be completed within a period of three years, although it was not until 1994 (eight years after it began) that the Report was tabled. In truth, the appointment of the commission had specified no initial deadline. During the period between 1986, when the Commission was appointed, and 1994, some of the evidence which had existed either disappeared or was damaged; some of those who might have testified as either victims or perpetrators either died or moved to other countries; and many of the events were lost to the ravages of time and memory.

As noted above, several significant constraints were at the root of the delays. Although the Report discusses the rebellion of Holy Spirit Movement (HSM) and the Lord’s Resistance Army (LRA) which grew out of it in the north as a factor in the delay of the Commission’s work,<sup>37</sup> this was only one of the many reasons for the delay. Especially in the early years of the NRM’s term in office, areas in northern Uganda were at the mercy of both rebel armies and Ugandan forces. Joseph Kony, leader of the LRA, seized Ugandan boys to act as soldiers and kidnapped girls to be used by him as his wives. At the same time, the LRA was doing battle with the Karamojong cattle thieves from eastern Uganda.<sup>38</sup> Much the same as the bush warfare carried out by Museveni in attempting to oust Obote II, Museveni was determined that the rebel armies should be disarmed and disabled. These areas were, in fact, inaccessible during certain periods of the life of the Commission due to brutal fighting. Some of this fighting continues today, and those children who were kidnapped are only beginning to return to their families.

Other factors also weighed heavily on the CIVHR. Throughout the period in which the Commission did exist, each of the Commissioners held other jobs. It was necessary to do so because their work for the Commission,

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36. REPORT OF THE COMMISSION OF INQUIRY, *supra* note 4, at 17, § 2.9 (I). The Report does not provide a total dollar amount for the international assistance provided by either Australia or Germany.

37. *Id.* at 17, § 2.9 (IV).

38. For an excellent summary of events, see Michael Twaddle & Hölger Bernt Hansen, *The Changing State of Uganda*, in *DEVELOPING UGANDA* 5–6 (Michael Twaddle & Hölger Bernt Hansen eds., 1998).

and thus their pay, was sporadic. The Commissioners were prominent citizens with viable careers to maintain and families to feed. At times work was forced to stop for months because there was no more funding. When it did resume, the distances to travel to reach outlying areas and collect testimony, along with the sheer volume of people to be seen, made for difficult work.

Many hundreds of Ugandans came forward to provide information to the Commission. In an effort to facilitate the prosecutions which should have resulted from the gathering of this testimony, three different agencies were then to be dispatched to verify the information already gathered: the Criminal Investigations Department (CID), the Director of Public Prosecutions (DPP), and the Commission itself. The legal department worked with those selected as representative of a particular group to produce a coherent version of events. These stories were recorded and then transcribed into written form. This process resulted in eighteen bound volumes of written testimony. This convoluted process was lengthy, and was further compromised by the destruction of evidence. The disappearance of evidence was disheartening to those involved in the process, but it also seriously hampered the process of investigations. As isolated episodes, each of the impediments faced by the Commission would have been minor. As a group, they conspired to set the work of the Commission back by more than five years. When the Report was finally produced, more than eight years from its appointment, it was without significant fanfare—people had already largely forgotten about the struggling Commission.

Hampered as it was by the country's lack of understanding of the meaning of human rights and how they had been violated, and by the lack of a consensus and conception of how the CIVHR should operate, the Commission was never fully able to realize its mandate. One of the people interviewed explained that abuse at the hands of the government had become so routine that people no longer realized that the government should not be allowed to do what it was doing. Indeed, the Report reflects this: "From 1971 onwards, the people of Uganda just looked on when their compatriots were being subjected to human rights abuse."<sup>39</sup> People also had no knowledge of the language of "rights," something which has only recently changed. It is not uncommon today to hear people say in the streets, "You can't do that. I know my rights." Similarly, the financial difficulties of the Commission, caused in large part by the failure of the NRM to commit to the enterprise and helped only by the generosity of external donors, so hindered the work that when it finally reported, any impetus gained by its work had largely dissipated.

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39. REPORT OF THE COMMISSION OF INQUIRY, *supra* note 4, at 588.

## D. Political Will

A lack of political will<sup>40</sup> also played a substantial role in the relative failure of the Commission. This lack of political will, for example, was partly to blame for the fact that Museveni failed to adequately fund the Commission or to provide it with the facilities it required. This was in direct contradiction to his earlier promises. In order to obtain support from Ugandans during its first couple of years in power, the NRM kept announcing new and innovative programs aimed at changing its image from a rag-tag bush army to that of honored statesmen. Early in his first term, for example, Museveni had pledged to establish a system of democracy.<sup>41</sup> Today, more than fifteen years later, Museveni remains in power through a series of constitutional reforms and disputed electoral victories.

In order to appease the world community, Museveni needed to take some steps in the direction of securing peace and guaranteeing human rights to the citizens of Uganda. He became friendly with international aid agencies such as the World Bank and International Monetary Fund (IMF), and served for two years as the Chairman of the Organization of African Unity (OAU).<sup>42</sup> Announcing the truth commission appeared to solve many of his problems in one fell swoop: he could convince Ugandans that he cared about the abuses they had suffered, and he would have proof for the international community of his human rights reforms. Once the CIVHR was announced, however, his focus on righting past wrongs began to dissipate.

The outward appearance of propriety and good-hearted intent was enough for the moment. Certainly, Ugandans and international observers were desperate to find a leader for Uganda who would last longer than the rainy season, and who would behave more sensibly in public than had his predecessors. Under the circumstances, Museveni seemed like the best possible choice.

In his Ten-Point Programme, Museveni had pledged the “elimination of corruption and misuse of power.”<sup>43</sup> But where to start? The corruption of the police was legendary, and the exploits of previous regimes had caused people to fear for their lives on an almost daily basis for nearly twenty-five years. Many had fled savage beatings and death threats by the government officials of Uganda for the relative safety of Kenya and other East African

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40. The use of the term “political will” is meant to suggest the influence and commitment that would have to exist amongst those with decisionmaking power in order for such ideas to gain currency within smaller intellectual and broader social circles, as well as blatant support for the policies and programs both to begin and later to flourish.

41. OFCANSKY, *supra* note 1, at 59.

42. *Id.* at 58.

43. MUSEVENI, *supra* note 3, at 217.

countries. Others who could afford to travel went into exile in countries around the world, many taking the opportunity to complete advanced education while abroad. The Asian population of Uganda was expelled under Idi Amin in 1972. Those who remained behind faced the memory of the horrible acts they had seen carried out, or in which they, themselves, had participated.

Many of the Commissioners I interviewed suggested that Ugandans wanted nothing more than to return in safety to their homes. Their purpose in coming forward to the Commission was not to seek forgiveness or to commemorate a fallen family member, although these could well have been by-products. Indeed, the Commissioners revealed that many Ugandans came forward because they thought that they would be compensated for their losses, which was not the case.

Beginning in 1986, Museveni set about reforming Uganda drawing on his own ideas of how Uganda should be run. To be sure, he is a brilliant man, and filled with philosophical ideas that stem from his time at Dar es Salaam University and before. Ideas such as African unity and nationalism dominated his political views in those days.<sup>44</sup> Today, his views are more liberal.<sup>45</sup> In recounting the details of the platform he pursued in 1986, Museveni himself lists, among others, the building of a new national army and putting down the insurrection in the north as perhaps his biggest priorities.<sup>46</sup> Certainly, his eye was not on coming to terms with the horrors of Uganda's recent past. In fact, nowhere in his memoir does he list even the most remote suggestion of anything like a truth commission.

Instead, Museveni in effect "circled the wagons"—some of the Commissioners had been with the NRM in the bush, and were now being handsomely rewarded for their efforts from that time. In the summer of 2001, Commissioner Jack Luyombya was awarded a medal on Heroes' Day for his long service to Museveni and the NRM dating from that time. Commissioner John Nagenda, who had been at Dar es Salaam University with Museveni, was similarly honored.<sup>47</sup> The majority of the other Commissioners were chosen from among the groups which had been most persecuted during the period in question. Today, all of the Commissioners still enjoy positions in public life, a direct result of their very public work for the Commission.

At the same time as the appointment of the truth commission, however, Museveni was appointing Commissions in many other fields. In 1986, the

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44. *Id.* at 23–33.

45. JIM OCITTI, *POLITICAL EVOLUTION AND DEMOCRATIC PRACTICE IN UGANDA 1952–1996*, 347 (2000).

46. *Id.* at 174–80.

47. Anthony Mugeere, *Awards for Nalubaale, Damu, Luwero Triangle Heroes*, *NEW VISION*, 12 July 2001, at 24–25 (on file with author).

Commission of Inquiry into Local Government was established, followed in 1988 by the Interim Electoral Commission, and in 1991 by the Constitutional Commission. Ugandans have been inundated with commissions since 1986 to the point where when anyone is asked about the Commission of Inquiry into Violations of Human Rights, the answer would invariably be “which one?” This bevy of commissions is unfortunate, as none was accorded the importance each deserved.

The Amnesty Commission, however, presented the largest threat to the CIVHR of any of the commissions appointed. The Amnesty Commission, publicly discussed during the same period, was in part tasked with the same mandate as the CIVHR. Although the Amnesty Commission was not officially appointed until 2001, both commissions were intended to deal with the events of the past. It seems ridiculous to think that anyone would bother with a body like the CIVHR, when an Amnesty Commission could provide so much more—the termination of any culpability. One Commissioner reported that when the Amnesty Commission was first discussed, it began to erode the vigour of the CIVHR in suggesting that the work of the CIVHR was becoming less important, and that an amnesty should be imposed to free Ugandans from any responsibility for events of the past. Such thinking essentially challenged the supposed purpose for the Commission of Inquiry: to determine the truth about past events. Amnesty necessarily negates the need to dredge up the past, and instead smoothes it over, never again to be discussed.

Concurrently with the CIVHR, the Government also appointed a Constitutional Commission in 1991. The new Constitution was promulgated in 1995, and added sweeping new powers for Museveni. The CIVHR was asked to contribute a proposal to the Constitutional Commission. In its submission, they argued strongly for the enumeration of human rights in the new Constitution, and they advocated the full spectrum of civil, political, social, economic and cultural rights, as well as the creation of a permanent human rights commission. This submission obviously had an effect on the constitutional process, for the Uganda Human Rights Commission was established under the 1995 Constitution as a direct result. In fact, the 1995 Constitution reads almost as though it were taken straight from the CIVHR's proposal.<sup>48</sup> This is one of the few successes to come out of the CIVHR.

One of the most confounding difficulties faced by the Commission, however, was one imposed directly in the terms of reference which established it in the beginning: the Commission was barred from investigating any violations which occurred after 25 January 1986, when the NRM

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48. UGANDA CONST., *supra* note 27, cl. 20–49.

assumed power. This was a significant barrier because once Museveni was installed in Kampala, the fighting in which his troops had been involved since 1979 did not immediately end.<sup>49</sup>

Although Museveni at least paid lip service to these important ideas of human rights and of making a record of the events of the past, the Ministry of Justice was to have had an oversight role with respect to the Commission. Minister of Justice Mulenga, who appointed the Commission in 1986, promised that the government would not bury the findings of the Commission.<sup>50</sup> Similarly, the Solicitors General and Attorneys General who served during that period shouldered some responsibility with regard to its completion. The Report goes so far as to thank these individuals and agencies for their support.<sup>51</sup> A government official reported that officials presently serving with the Ministry of Justice see very little relevance in the CIVHR, and are, instead, anxious to focus on new reforms. Indeed, this fits with Museveni's plan to rebuild Uganda, and to dwell only on the future.

Even those arms of the Commission that were supported by the Ministry of Justice, the Solicitors General and the Attorneys General, the Criminal Investigations Department and the Director of Public Prosecutions managed to thwart the work of the Commission with their relative inaction. Their respective roles were to take the evidence gathered in preliminary investigations and to prepare cases for trial. Very few cases were ever investigated and a smaller number were ever prosecuted.<sup>52</sup>

Participation in the process, too, was suspect. While the poor and down-trodden were among the first to come forward, in due time many others gave testimony to the Commission. The Report is filled with stories of peasant cultivators, plantation workers, and domestic workers. Their testimony is both descriptive and powerful:

This man, the guard, he had all sorts of equipments. [*sic*] He had two hammers, one of five kilos, another one was two and a half. He had a panga which was sharpened on both sides. He showed us all these. He had two iron bars. . . . He had a big gun and a pistol, he had this bayonet, he had all things. This man, we were told inside, had beaten Nsubuga. The man had beaten all his ankles, Nsubuga could not stand up at all because they used to call it removing the fuse, I do not know what fuse. They had beaten all his ankles [and] here in the knees, I understand there is some liquid inside the nee [*sic*—this one had gone out. . . . And that other gentleman . . . actually had a very big wound on the head. . . . You could see the maggots coming out of their bodies. Stinking, but

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49. See Pirouet, *supra* note 30, at 197–209.

50. REPORT OF THE COMMISSION OF INQUIRY, *supra* note 4, at 15, § 2.8 (I).

51. *Id.* at 17, § 2.9 (I).

52. *Id.* at 18, § 2.9 (III).

again we were also thrown to stay with these people; stinking, they were actually rotten.<sup>53</sup>

These people believed strongly enough in the system that they entrusted their stories and evidence to the Commission. Evidence also suggests, as did many of the commissioners, that these people also believed that they might be in some way rewarded or compensated both for their participation and for the evidence they sought to provide; no compensation was forthcoming. Elites, however, hesitated to come forward and to participate in the exercise at all. Many of their stories appear in the Report, in part because of the startling abuse of their positions of authority. One former Minister under Obote II, Mayanja Nkangi, for example, testified to all types of human rights abuses against the Baganda, one of the largest ethnic groups in Uganda.<sup>54</sup>

In the northern regions of Uganda, participation was extremely difficult under the circumstances. The rebel activity of Lakwena's HSM and Kony's LRA made it next to impossible to travel to areas such as Kitgum in the heart of the rebel-held territory. Museveni's troops simply could not make any headway among the Acholi in northern areas, because people blamed Museveni for failing to keep his promises of peace and security, and for the continued attacks by the Karamojong. The Commission spent only the better part of four days in this area, and even then nearly five years after the CIVHR had begun its public hearings.<sup>55</sup> Political opinion in the area was dead set against Museveni, and by extension, the Commissions created by him.

Accordingly, the limited successes of the CIVHR were achieved in spite of the best efforts of Museveni's supporters. The same can be said of his detractors. "The government never had any intention to follow up on 1986," an external observer mused, when asked about the relative failure of the Commission.<sup>56</sup>

## E. Failed Memory

Now in his seventh term and seventeenth year as President, Museveni's grip on the political landscape remains strong. Certainly, he has managed to cool many of the conflicts that were brewing in the country. And those around him think quite highly of him. He has even made headway in

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53. *Id.* at 78.

54. *Id.* at 513.

55. *Id.* at V, Tbl. 3: Itinerary of the Commission 1986–1991.

56. Anonymous Interview with external observer from INGO community, Kampala, Uganda (27 July 2001).

restoring several of the traditional kingdoms within Uganda, and returning to them lands seized under Obote I.<sup>57</sup> A recent letter to the editor of *The New Vision*, the government-sponsored newspaper in Uganda, was a glowing letter of support from an apparent Museveni fan: "By 2006, when he retires, he will leave a legacy that generations will cherish and remember."<sup>58</sup> The media is generally supportive of Museveni.<sup>59</sup> He won an overwhelming 74.6 percent of the vote in the 1996 Presidential election.<sup>60</sup> He seems almost single-handedly to hold together the torn fabric that makes up Uganda.

But these achievements in no way feel sustainable. Many of the earlier conflicts are, in fact, still bubbling under the surface.<sup>61</sup> The difficult process surrounding the promulgation of the 1995 Constitution revealed many of the deep-seated conflicts which exist.<sup>62</sup> Political opposition to Museveni is growing daily.<sup>63</sup> A recent skirmish between police and opposition party members heading to a banned political rally resulted in one death and the wounding of two others plus arrests.<sup>64</sup> Even members of the NRM have begun to disagree publicly with his stance on democratization and political pluralism.<sup>65</sup> The fact remains that once he is no longer the sole dominant force in Ugandan politics—whether voted out, assassinated, or felled by health difficulties—the stress on this fabric will likely be such that the cobbled-together calm that now pervades Uganda will be torn to shreds.

This analysis suggests that there is no social underpinning for any of the things the theory of acknowledgement seeks to achieve: no strengthening of democratic process, a judiciary struggling to meet the demands of impartiality, and no real social trust. In real and practical terms, democratic issues could have been addressed in the elections held in the summer of 2001 by ensuring the fairness of the election and accepting the outcome of the vote. Neither of these was much in evidence. Similarly, social capital could be increased through equal treatment of each of the tribal groups that make up Uganda. Instead, certain kingdoms are routinely favored over the others by the NRM and by visiting dignitaries<sup>66</sup> in a kind of divide-and-conquer

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57. OCITTI, *supra* note 45, at 365–71.

58. Edward Kasirye, Letter to the Editor, *Museveni's Ideas are Beginning to Bear Fruit*, *NEW VISION*, 6 July 2001, at 13.

59. OCITTI, *supra* note 45, at 396.

60. *Id.* at 392.

61. OFCANSKY, *supra* note 1, at 64.

62. OCITTI, *supra* note 45, at 361–76.

63. OFCANSKY, *supra* note 1, at 157.

64. Paul Busharizi, *One Killed in Uganda Ahead of Banned Rally*, *REUTERS ON-LINE*.

65. OCITTI, *supra* note 45, at 358–60.

66. In July 2001, Libyan President Muammar al-Qaddafi visited the Kingdom of Toro in Uganda for the coronation of King Oyo of Toro. He has also made overtures to only two of the other kingdoms: Buganda and Bunyoro. See Yunusu Abbey & Kabaka Mutebi, *Iguru Invited to Libya*, *NEW VISION*, 18 July 2001, at 4.

strategy. The CIVHR might logically have contributed to these goals by possibly empowering the people of Uganda to get beyond their horrific past, and in allowing them to begin to rebuild the social framework of the country.

The problem appears to be one of failed memory. The people of Uganda have, for the most part, never come to terms with the events which took place under Obote and Amin. Furthermore, they have never been allowed even to consider those things carried out by the NRM and Museveni. If, as I posit, it is in acknowledging the past that one can reasonably be expected to move forward, then Uganda has no real chance at any of those things. No one seems to remember. Many of the exiles have returned home, and some of the Asians once expelled have come back to claim their property and to start businesses; all are going about the business of their daily lives. The activities of Amin are relegated to no more than a "This Week in History: 30 Years Ago" column in the national newspaper.<sup>67</sup> The headline "Living in the past!" is used to refer to events that took place two months earlier.<sup>68</sup>

The message of the Report of the CIVHR was quite revealing: Uganda underwent unspeakable horrors. The Report attempts to document many of these. Yet whole sets of the bound volumes of testimony collected are now housed in a dusty, bug-infested closet in an unused building at Makerere University. The only public copy of many of the documents is housed in Kampala at the UHRC offices.

The Commissioners themselves have not had much success in making sure the work of the Commission is not lost. Immediately following the completion of its work, some of the Commissioners founded The Uganda Human Rights Education and Documentation Centre (UHEDOC) in order to continue on with the work that had been done. But, through fiscal mismanagement and the creeping in of other interests, UHEDOC shut its doors in 1997. Its document collection, which housed many of the official documents of the CIVHR, now resides in that same buggy closet.

Certainly, it is true that many of the Commissioners are no longer in a position to speak out against Museveni and the NRM. They are now directly within the government or else play a very public role that prevents such discourse. John Nagenda and Joan Kakwenzire are special advisors to Museveni. Edward Ssekandi is Speaker of Parliament. Edward Khiddu-Makubuya is Minister of Education and Sport. John Kawanga is a member of parliament. Jack Luyombya heads Nile Breweries, a company which enjoys great privilege inside Uganda. And Arthur Oder is Chief Justice of the

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67. *This Week in History: 30 Years Ago—1971: President Amin Reorganises Uganda Police Force*, SUNDAY VISION, 17 June 2001, at 8 (on file with author).

68. *Living in the Past!*, NEW VISION, 21 July 2001, at 27.1.

Supreme Court. All are in many ways beholden to Museveni for their rise in rank and in social popularity. To speak out against him at this point would spell the end of their careers, although many would suggest otherwise. Those loyal to Museveni's no-party system, however, would say that it is in the best interest of the NRM to present a united front.

For his part, Museveni has emphasized that Uganda should not dwell on the past. Unlike many places where thousands have been killed in civil wars, there are virtually no monuments to the fallen in Uganda, and no memorial hospitals or schools. School children do not know much at all about the events of 1961–1986, with two exceptions. The first is Heroes' Day, held each year in June, which specifically honours NRM supporters. The second exception is the Luwero Triangle region, where the majority of the abuses under Obote took place. There exists today a Ministry of State for Luwero Triangle, which operates under the Prime Minister's Office. In the Luwero Triangle, there are thirty-three mass graves where the skulls of those who were killed are buried, along with monuments to those who died. There are also two rusted and broken-down tanks sitting alongside the road, symbolic reminders of the fight to oust Amin. The plans of the Ministry include the building of memorial hospitals and schools if funding becomes available. One Ministerial assistant added, however, that "donors are not so friendly to [that]. They ask, 'Why remember?'"<sup>69</sup>

Why, indeed? When I initially contacted Commissioner Joan Kakwenzire about my project, her immediate reaction was "At least somebody is still interested," a point she reiterated more than once during our interview.<sup>70</sup> Commissions of Inquiry into many subjects are still being appointed. Museveni seems more interested in entertaining visiting dignitaries and playing the role of senior statesman among the other African nations than in ensuring peace and stability in Uganda.<sup>71</sup> Other countries are carrying on with the peace building that Uganda ought to be doing,<sup>72</sup> as evidenced by the fantastic donations of foreign countries to Uganda's human rights and democratization programs. It is as though the country has forgotten all about the CIVHR and its small, but important, successes.

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69. Anonymous Interview with ministerial assistant, Kampala, Uganda (29 July 2001).

70. Interview with Joan Kakwenzire, Kampala, Uganda (12 June 2001).

71. OCETTI, *supra* note 45, at 396.

72. *Germany Funds Peace Project*, NEW VISION, 20 July 2001, at 10.

#### IV. CONCLUSION

The Commission of Inquiry into Violations of Human Rights had every hope of succeeding. Other commissions in other countries, after all, had made do with much less. One thinks especially of the secretive nature of the Brazilian commission and of the stunning results released in its widely-publicized report, "Nunca Mais" (Never Again). The CIVHR even benefited from the experience of José Zalaquett, whose Argentine commission initially set the parameters of truth-seeking success. Among the Commissioners was a collective spirit of honor, of urgency, and of a need to prevent and protect against future human rights abuses.

In spite of all this commitment, the Commission was fraught with difficulties. Eight years and countless hold-ups later, the Commission released its report with a quiet whimper. Even today the Report of the Commission is not widely available within the country, let alone in the rest of the world. Agencies like the ICHRDD, who provided assistance to the Commission, must dig deep into their archives to remind themselves of the details of their involvement. On so many levels, the Commission was prevented from doing its job. The constraints it faced were enough to seriously erode what impact it might have had, and to render it impotent as a mechanism of truth-seeking and potentially of justice.

The Report is a strikingly large and imposing document, even in its paper-bound version. The evidence it contains is sickening. It describes and documents cases of brutal abuse, rape, and murder. It apportions blame. It makes exacting recommendations, some of which were accepted. Uganda's new Constitution contains a section on human rights, and the UHRC has been up and running now for more than five years. The Ugandan government has now ratified many of the international human rights treaties, and the police service is now under review. Most of the other recommendations have been ignored.

Sadly, the majority of Ugandans know little or nothing about the Report, because they have never seen it. In an attempt to get the news contained in the final Report to the people, a small pamphlet was also produced which summarized the findings of the Commission and was to be widely distributed. Instead, due to lack of funds and a waning interest in all things related to sorting out Uganda's past, this never happened. I discovered hundreds of pamphlets produced by the CIVHR which had been intended to be given to Ugandans in explanation of the Commission's work and findings. Instead, they had remained in their brown paper wrappers in a dusty closet also housing a water heater and the rest of the UHEDOC documents. The Commissioners, one by one, related to me the intensity of their reactions to the testimony they gathered. "It affected us," said

Commissioner John Nagenda. "It affected us all very much."<sup>73</sup> But unless that testimony, along with details of the human rights abuses which occurred, is accessible to the public, only those six Commissioners, and perhaps even those who gave their testimonies, will be any more informed.

The institutional failures of the Commission alone were enough to cause it to be derailed. The CIVHR was simply not invested with the tools it needed to do a thorough job; its capacity both to carry out its duties and to effect change in the greater community was minimal at best. The chronic under-funding endured by the Commission caused disruptions in its work and made external funding a necessity for its completion. This pattern has, in turn, been imprinted on the new Uganda Human Rights Commission: a legitimate cause for concern regarding the legitimacy of the commitment made by Museveni to the cause of human rights and justice. The result of these and other obstacles faced by the CIVHR was, of course, the eight years that it took to complete the work.

Equally significant, however, was the lack of political will in support of the Commission. Aside from issues of funding, the attitudes of the NRM and Museveni himself toward the Commission are finally exposed for what they were: a clever attempt to gain the support of those both inside Uganda and around the world who would be impressed by its appointment. This is nowhere more clear than in the funding of the new Uganda Human Rights Commission by international aid agencies and governments,<sup>74</sup> contrasted with Museveni's willingness to sacrifice human rights in order to achieve his goals.<sup>75</sup> Similarly, the virtual absence of the Ministry of Justice and other Ministers from the Commission, even in times of desperation, reveal the extremely low levels of support the Commission actually enjoyed.

The absence of supportive political will, combined with the institutional failures of the Commission, have resulted in the failed memory of the majority of Ugandans. I have found little evidence at all of any lasting impact of the Commission, except among the Commissioners themselves. The legacy of the Commission, in effect, has been relegated to that one dusty closet.

Earlier, it was posited that a society must pass through several stages, including acknowledgement, in order to recover from such atrocities. Among these stages might be a coming to terms with the past, memory and remembering, and the memorialization of the past. In the case of Uganda, it is difficult to see even the partial fulfillment of any of these stages. It is as

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73. Interview with John Nagenda, Kampala, Uganda (12 July 2001).

74. Uganda Hum. Rts. Comm'n., *Uganda Human Rights Commission Annual Report*, Table 1.3: Donor Funding (Kampala, Uganda 1999).

75. OFCANSKY, *supra* note 1, at 155.

though an attempt at truth-seeking, and by default acknowledgement, has never even been made.

It is not surprising, therefore, that those signs one might expect to see in a society which has dealt with its history are simply not there. Such signs might legitimately include the teaching of historical events to school children or the naming of memorial hospitals or schools in memory of those killed in the fighting. Yet they do not exist. Allegations of political patronage and corruption are rampant.<sup>76</sup> Opposition rallies are banned. Evidence of crimes committed in the period from 1961 to 1986 routinely went missing from CIVHR offices. And social capital seems in short supply.

The Commission of Inquiry into Violations of Human Rights was only one of the mechanisms employed by the Government of Uganda in its effort to rebuild a Ugandan society that had been fractured by more than twenty-five years of systematic human rights abuses. Despite the best efforts of those who saw it through to its conclusion, it ultimately faced constraints that would prove to be its undoing.

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76. Anthony J. Regan, *Decentralization Policy: Reshaping State and Society*, in *DEVELOPING UGANDA*, *supra* note 38, at 163.