



UGANDA HUMAN RIGHTS COMMISSION

COMPLAINTS HANDLING PROCEDURES MANUAL

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FOREWORD BY THE CHAIRPERSON

The Uganda Human Rights Commission was established in 1996 with the general mandate of protecting and promoting human rights in Uganda. One of its core functions is to investigate, at its own initiative or on a complaint made by any person or group of persons against the violation of any human right. Where a violation is found, the Commission has powers to provide an appropriate remedy as spelt out under Article 53 (2) of the Constitution. The Commission has thus been handling complaints since its inception.

Complaints to the Commission can be made at any of its regional offices, which are currently located in Arua, Kampala, Fort Portal, Gulu, Jinja, Mbarara, Moroto and Soroti. Over time, the need to streamline, harmonise and standardise the Complaints handling system in the Commission was realised, hence the development of a Complaints Procedures Manual. The Manual has been developed out of long practice in complaints handling as well as adoption of best practices within Uganda and around the world.

The specific objectives of this Manual include:

1. To define the procedures employed by the Commission in handling and determining complaints as mandated under the Constitution of the Republic of Uganda, 1995.
2. To standardise and make the process of administering complaints uniform throughout all Commission Regional Offices.
3. To be a reference point for all Commission staff and other users of the system.
4. To create transparency in the process.
5. To manage clientele expectations.

I would like to acknowledge and appreciate all the staff of the Commission who have participated in putting this Manual together. Special thanks go to the former Director, Mrs. Christine Birabwa Nsubuga, all staff of the Directorate of Complaints, Investigations and Legal Services and all Regional Human Rights Officers.

I strongly urge all staff of the Commission to familiarise themselves with the contents of this Manual as its practical implementation will make us more efficient and greatly improve service delivery to the people of Uganda.



Margaret Sekaggya (Mrs.)

CHAIRPERSON, UGANDA HUMAN RIGHTS COMMISSION

TABLE OF CONTENTS

Acronyms.....	7
1. Establishment	8
1.1. Enforcement of Rights and Freedoms- Article 50	8
1.2. Establishment of the Uganda Human Rights Commission- Article 51.....	8
1.3. Functions of the Commission- Article 52	9
1.4. Powers of the Commission- Article 53.....	10
2. Definitions	10
3. Admissibility Criteria	14
3.1. Complaints not handled by the Commission	15
3.1.1. Time Limitations	15
3.1.2. Matter Pending before another Court or Judicial Tribunal	15
3.1.3. Matter involving the relations or dealing of Government and other Government or International Organisation	15
3.1.4. Matter relating to the exercise of the prerogative of mercy	16
3.2. Complaints handled by the Commission	16
3.2.1. The complaint must raise a human rights violation	16
3.3. Nomenclature System of Human Rights Violations.....	42
3.4. Dealing with Borderline Complaints	49
3.5. Internal Policies	49
4. Receiving and Recording Complaints	49
4.1. Who may bring a complaint before the Commission?	50
4.2. Modes of reception	50
4.3. Assessing Complaints	51
4.3.1. Complaints deemed inadmissible	52
4.3.2. Complaints Deemed Admissible	53
4.3.3. Recording findings of the preliminary assessment.....	55
4.3.4. Allocation of complaints	55
4.3.5. Difference of opinion on a preliminary assessment.....	55
5. Investigating Human Rights Complaints	56
5.1. Commencing investigations	56
5.2. Field Investigations.....	57
5.2.1. Preparing for the investigations.....	57
5.2.2. Dealing with witnesses during the investigations.....	58
5.2.3. Dealing with the respondents and their witnesses during the investigations..	58
5.2.4. Important issues for the investigation officer to note.....	59
5.2.5. Second or Further Investigation Trip.....	59

5.2.6. Concluding investigations.....	59
5.3. Writing an Investigation Report	60
5.3.1. Recommendation not to proceed with the complaint	60
5.3.2. Recommendation for further action.....	60
5.3.3. Recommendation to proceed with the complaint	61
5.4. Writing a Legal Opinion	61
5.4.1. Recommendation not to proceed with the complaint	62
5.4.2. Recommendation for further or alternative action	62
5.4.3. Recommendation to proceed with the complaint	62
5.5. Files Closed at Regional Offices.....	62
5.6. Dealing with files sent to the Director	63
5.6.1. Files to proceed to the Tribunal	63
5.6.2. Files returned to the Regional Office by the Director	64
5.7. Summary of Time Frames.....	64
6. Investigations initiated by the Commission	65
6.1. <i>Suo Motu</i> Investigations	65
6.1.1. Process of determining Commission-initiated investigations.....	65
6.2. Systemic Investigations.....	66
6.2.1. Concept and guidelines on Systemic Investigations	66
6.2.3. The purpose of systemic investigations.....	66
6.2.4. Methodology of identifying systemic violations.....	66
6.2.5. Methodology of investigating systemic violations	67
6.2.6. Identification of an area to be investigated	68
7. Mediation	69
7.1. Which complaints should be mediated?.....	69
7.2. The Mediation Process	70
7.3. Parties failing to abide by terms of the consent judgment.....	71
7.4. Enforcement Action	71
7.5. Urgent cases and uncooperative parties.....	71
8. Counselling	72
9. Tribunal Process.....	74
9.1. Pre-Tribunal Process.....	74
9.1.1. Allocation of files	74
9.1.2. Cause Listing	75
9.1.3. Preparation and Issuing of Summonses	75
9.1.4. Circuit sessions	75
9.1.5. Hearing Commissioner's Role in Pre-Trial Preparations.....	76
9.1.6. Preparing for Hearing by Commission Counsel	76
9.2. During Tribunal Hearings	77

9.2.1. Tribunal Hearings	77
9.2.2. Preliminary Matters	78
9.2.3. Adducing Evidence	78
9.2.4. Oath.....	78
9.2.5. Interpreter	79
9.2.6. Burden of Proof	79
9.2.7. Examination of Witnesses	79
9.2.8. Final Submissions	80
9.2.9. Important Points to Note	81
9.3. Commission Decisions	81
9.3.1. Decisions/Judgments/Rulings.....	81
9.3.2. Balance of Probabilities	82
9.3.3. Remedies	82
9.3.4. Pronouncement and Publication of Tribunal Decisions.....	83
9.3.5. Appellate Process.....	83
9.4. Post-Tribunal Process	83
9.4.1. Decrees and Orders	83
9.4.2. Bill of Costs	84
9.4.3. Records	84
10. Execution of Judgements	84
10.1. The Process of Execution of Judgments.....	85
10.1.1. Procedure for engaging a bailiff	85
10.1.2. Procedure for execution	85
10.2. Stay of Execution.....	86
10.3. Objector Proceedings.....	86
11. Process Serving.....	86
11.1. Time within which to serve	86
11.2. Mode of Service	87
11.2.1. Service on a Person in Prison	87
11.2.2. Service on a Public Officer	88
11.2.3. Service on a Soldier.....	88
11.3. Procedure after Process Serving	88
12. File Management.....	88
13. Cross Referencing	89
13.1. Internal Administrative Appeals.....	89
13.1.1. Level 1 Appeal- Appeal to the Director.....	89
13.1.2. Level 2 Appeal Process- Appeal to the Chairperson	90
13.2. Power to Commit for Contempt	90
13.2.1. Failure of witnesses or respondents to cooperate with the investigation	90

13.2.2. Contempt of Court.....	91
13.3. Summoning documents	91
13.4. Powers to Commit	92
13.5. Release Order.....	92
13.5.1. Issuing and signing a Release Order.....	93
13.5.2. Serving of a Release Order	93
13.6. Caution Letter.....	94
14. Guidelines on Witness Refunds	95
15. Mobile Complaints.....	97
Schedule 1: Standard Forms and Templates.....	98
Schedule 2: International Human Rights Instruments Ratified By Uganda.....	120
Schedule 3: Summary of Roles of Various Officers in the Complaint Handling Process	
.....	121
16.1. The Receiving Officer	121
16.2. The Investigations Officer.....	121
16.3. The Regional Human Rights Officer	121
16.4. The Process Server	121
16.5. The Commission Counsel	122
16.6. The Tribunal Clerk.....	123
16.7. The Registrar.....	124
16.8. The Director	124

Acronyms

Cap.	Chapter
CBO	Community Based Organisation
CHARMS	Complaints Handling and Record Management System
LC	Local Council
MoU	Memorandum of Understanding
NGO	Non-Governmental Organisation
PWDS	Persons with Disability
RHRO	Regional Human Rights Officer

1. Establishment

The Commission is established by the Constitution of the Republic of Uganda 1995 and the Uganda Human Rights Commission Act, Cap.24, Laws of Uganda, 2000. The Commission Tribunal is further regulated by the Constitution (Uganda Human Rights Commission) (Procedure) Rules. This chapter offers guidance on the constitutional and legislative framework under which the Uganda Human Rights Commission operates.

1.1. Enforcement of Rights and Freedoms- Article 50

(1) Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened is entitled to apply to a competent court for redress which may include compensation.

(2) Any person or organisation may bring an action against the violation of another person's or group's human rights.

(3) Any person aggrieved by any decision of the court may appeal to the appropriate court.

(4) Parliament shall make laws for the enforcement of the rights and freedoms under this Chapter.

1.2. Establishment of the Uganda Human Rights Commission- Article 51

(1) There shall be a Commission called the Uganda Human Rights Commission.

(2) The Commission shall be composed of a chairperson and not less than three other persons appointed by the President with the approval of Parliament.

(3) The chairperson of the Commission shall be a judge of the High Court or a person qualified to hold that office.

(4) The chairperson and members of the Commission shall be persons of high moral character and proven integrity and shall serve for a period of six years and be eligible for reappointment.

1.3. Functions of the Commission- Article 52

(1) The Commission shall have the following functions:-

- (a) Investigate, at its own initiative or on a complaint made by any person or group of persons against the violation of any human right;
- (b) Visit jails, prisons and places of detention or related facilities with a view to assessing and inspecting conditions of the inmates and make recommendations;
- (c) Establish a continuing programme of research, education and information to enhance respect of human rights;
- (d) Recommend to Parliament effective measures to promote human rights, including provisions of compensation to victims of violations of human rights or their families;
- (e) Create and sustain within society the awareness of the provisions of this Constitution as the fundamental law of the people of Uganda;
- (f) Educate and encourage the public to defend this Constitution at all times against all forms of abuse and violation;
- (g) To formulate, implement and oversee programmes intended to inculcate in the citizens of Uganda awareness of their civic responsibilities and an appreciation of their rights and obligations as free people;
- (h) To monitor the Government's compliance with international treaty and convention obligations on human rights; and
- (i) To perform such other functions as may be provided by law.

(2) The Uganda Human Rights Commission shall publish periodic reports on its findings and submit annual reports to Parliament on the state of human rights and freedoms in the country.

(3) In the performance of its functions, the Uganda Human Rights Commission shall-

- (a) Establish its operational guidelines and rules of procedure;
- (b) Request the assistance of any department, bureau, office, agency or person in the performance of its functions; and
- (c) Observe the rules of natural justice.

1.4. Powers of the Commission- Article 53

(1) In the performance of its functions, the Commission shall have the powers of a court –

(a) to issue summons or other orders requiring the attendance of any person before the Commission and the production of any document or record relevant to any investigation by the Commission;

(b) To question any person in respect of any subject matter under investigation before the Commission;

(c) To require any person to disclose any information within his or her knowledge relevant to any investigation by the Commission; and

(d) To commit persons for contempt of its orders.

(2) The Commission may, if satisfied that there has been an infringement of a human right or freedom, order –

(a) The release of a detained or restricted person;

(b) Payment of compensation; or

(c) Any other legal remedy or redress.

(3) A person or authority dissatisfied with any of the above orders made by the Commission has a right to appeal to the High Court.

(4) The Commission shall not investigate –

(a) Any matter which is pending before a court or judicial tribunal;

(b) A matter involving the relations or dealings between the Government and the Government of any foreign State or international organisation; or

(c) A matter relating to the exercise of the prerogative of mercy.

2. Definitions

In this Procedures Manual unless the context otherwise requires:-

“Act” means the Uganda Human Rights Commission Act, Cap.24, Laws of Uganda 2000.

“Admissibility Criteria” means an assessment criterion to determine whether the complaint falls within the Commission’s jurisdiction under Arts. 52 and 53 (4) of the Constitution or Sections 8 and 25 of the Act.

“Allegations Letter” means the first letter from the Commission to the respondent, alleging a human rights violation.

“Appeal”: The term appeal carries two definitions:-

“External Appeal” means any challenge under Art 53(3) of the Constitution of any decision made by the Commission under Art.53 (2) of the Constitution on any grounds.

“Internal Appeal” means any challenge to decisions taken by the Commission not to proceed with a complaint at any stage.

“Authorisation form” means a form issued by the Commission confirming that the complainant has nominated a third party to initiate the complaint on their behalf or one complainant to represent a group of complainants in a mass action. This form shall also be issued to complainants authorising or instructing a representative to pursue complaints before the Commission.

“Certificate of Order” means a document or certificate issued by the Commission to an individual to whom the tribunal has ordered an award of compensation against the Attorney General.

“Chairperson” means the Chairperson of the Commission or person acting in the capacity of the Chairperson.

“Commission” means the Uganda Human Rights Commission.

“Commissioner” means a member of the Commission appointed under Article 51(2) of the Constitution of the Republic of Uganda, 1995.

“Complainant” means a person, a group of persons, an organisation or an association who allege a human rights violation and report to the Commission.

“Complainant’s card” means a card issued by the Commission to a complainant following the initial assessment and confirmation that the complaint will be investigated or mediated. The card contains the complainant’s complaint number, address and telephone number of the Commission’s office where the complaint was registered.

“Complaint” means an allegation of a human rights violation addressed to the Commission.

“Commission Counsel” means a lawyer working in the Commission.

“Constitution” means the Constitution of the Republic of Uganda, 1995 and any subsequent amendments thereto.

“Counsellor” means a person offering counselling services to clients of the Commission.

“Decision”: The term shall have two meanings in the complaints handling process:

“Tribunal decision” means a legally reasoned conclusion in writing by the Commission following a full tribunal hearing.

“Administrative decision relating to complaints” means a conclusion reached regarding a complaint. This may be on such issues as admissibility, mediation, closure etc.

“Director” refers to a person holding the position of Director Complaints, Investigations and Legal Services at the Commission.

“Directorate” refers to the Directorate of Complaints, Investigations and Legal Services.

“Hearing Notice” means a notice of hearing inviting the respondent to attend a hearing.

“Human Right” means any right guaranteed under the Constitution and/or any International Human Rights Instrument ratified by Uganda.

“Investigation” means a process intended to establish factual issues with a view to determining whether there has been a human rights violation.

“Investigation Report” means a report of findings of an investigation.

“Investigations Officer” means an officer of the Commission tasked with investigating a complaint.

“Jurisdiction” means whether or not the Commission is empowered by the Constitution to handle a complaint.

“Legal Opinion” means a legally reasoned assessment of all the available evidence on a complaint following an investigation; or a legally reasoned position on a particular human rights issue.

“Letter informing parties of hearing” means a notice to both parties informing them that the Commission has decided that the complaint should proceed to a tribunal hearing.

“Mediation” means a process through which parties to a dispute use the services of the Commission to help them reach an amicable solution.

“Medical Report” means a report from a qualified medical practitioner providing a medical opinion on the physical or mental state of a person usually in support of an allegation made to the Commission.

“Nominated Complainant” means a person, organisation or body, with written authority signed by a complainant authorizing him or her to act on their behalf before the Commission.

“Notice of inability to proceed with a complaint” means a letter from the Commission to a complainant informing them that the Commission cannot investigate a complaint for a given reason.

“Paying Officer” means an accountant or a person acting in that position in the Commission.

“Permanent Address” means the physical address of origin, that is, where the person originates from, or where his or her parents permanently reside. The permanent address is normally used to locate parties, who may from time to time relocate during the investigation.

“Police Lock-up” means a police register where persons who have been arrested are recorded.

“Preliminary decision” means an initial assessment made by an officer of the Commission on whether or not the Commission should proceed with the complaint.

“Process Serving” means delivering summonses in person to various parties or witnesses required to attend the Commission Tribunal.

“Received complaint” means a complaint registered, accorded a complaint number and is being dealt with through the complaints handling process of the Commission.

“Referral letter” means a letter from within the Commission to another office of the Commission or to another organisation, institution or agency, introducing a person for assistance.

“Receiving Officer” means any employee of the Commission tasked with the responsibility of receiving complaints.

“Regional Human Rights Officer” means an officer of the Commission heading a regional office.

“Regional Office” means any office of the Commission in any part of Uganda headed by a Regional Human Rights Officer.

“Registrar” means a person holding this office at the Commission and is in charge of administering Tribunal Hearings.

“Release Order” means an order made by the Commission to a detaining authority to release a person unlawfully detained.

“Systemic Investigation” means an in-depth examination with a wide impact into an emerging trend or pattern or practice as a result of legislation, policy, practice or strategies that are either non-existent or if existent, defective or unimplemented.

“Respondent” means a person, group or class of persons, government institution, association or organisation against whom a complaint is brought before the Commission.

“Summon” means to order a person to appear before the Commission by serving that person with a summons. Summonses are signed by the Registrar, or the Director of Complaints, Investigations and Legal Services, or a Commissioner, or the Chairperson.

“Warrant of Committal” means a warrant issued by the Commission to commit a person to prison.

“Witness Statement Form” means a form approved by the Commission used to record statements from witnesses.

3. Admissibility Criteria

The Commission is mandated to investigate any complaint against the violation of any human right that is brought to its attention. Much as many complaints brought before

the Commission may offend a person, they may not necessarily amount to a human rights violation. Even where some complaints may raise some human rights issues, the Commission may not be in position to deal with them.

This chapter is intended to guide the determination of complaints that are admissible by the Commission and those that are not. It is by no means exhaustive and may be expanded as and when circumstances require. When in doubt as to whether or not to admit a complaint, a receiving officer should consult the Regional Human Rights Officer or the Director.

3.1. Complaints not handled by the Commission

3.1.1. Time Limitations

1. The Commission cannot receive and handle complaints against human rights violations that occurred before October 8, 1995 when the Constitution came into force (*Section 7(3) of the Act*).
2. A complaint shall not be brought before the Commission after the expiration of five years from the date on which the alleged violation of a human right to which the complainant relates occurred (*Section 24 of the Act*).

There are, however, exceptions to this rule, that is to say, where a person has been incapacitated from bringing the complainant within five years by reason of:

- age,
- infirmity of body or mind,
- detention or
- other just cause whether similar to the foregoing or not.

Even where the exception applies, the complaint must be brought within five years after the incapacity ceases or after the person entitled to bring the complaint dies (*Section 25 of the Act*).

3.1.2. Matter Pending before another Court or Judicial Tribunal

The Commission shall not investigate any matter which is pending before a Court or judicial tribunal (*Article 53(4) (a) of the Constitution*) or any matter already adjudicated upon by a court of law or judicial tribunal.

3.1.3. Matter involving the relations or dealing of Government and other Government or International Organisation

The Commission cannot handle complaints involving the Government of Uganda and any other foreign government or an international organisation (*Article 53(4) (b) of the Constitution*).

3.1.4. Matter relating to the exercise of the prerogative of mercy

The prerogative of mercy is solely at the discretion of the President of Uganda who may act on the advice of the Advisory Committee on the Prerogative of mercy. This prerogative is exercised with regard to persons who have been convicted and sentenced for an offence or crime committed. This prerogative may take the form of a pardon, a respite, substitution for a less severe punishment or remission of the whole or part of the punishment. The Commission cannot handle matters relating to the exercise of the prerogative of mercy (*Article 53(4) (c) of the Constitution*).

3.2. Complaints handled by the Commission

3.2.1. The complaint must raise a human rights violation

A human rights violation is an act or omission, whether deliberate or not, that offends fundamental rights and freedoms guaranteed by the Constitution and by international human rights instruments that have been ratified by Uganda. Where a complaint does not raise a human rights violation, then it falls outside the jurisdiction of the Commission.

Legal claims of a civil nature which do not directly touch on human rights may not be brought therefore the Commission. Examples are matters relating to breach of contract, defamation, divorce, land disputes, claims based on the tort of negligence and any such ordinary civil disputes, between private individuals. Complaints based on or arising from crimes committed as a result of purely private disputes will not be accepted by the Commission.

There are cases which may raise a human rights violation, but there are specialised institutions that should handle them for instance, employment related cases are usually dealt with by the Labour office; cases against members judicial officers or the judicial process are dealt with by the Judicial Service Commission etc. Such cases should be referred to the appropriate institution to handle especially where it is certain that the complainant will be most effectively assisted there. Furthermore, the Commission should ensure that where a complaint could be resolved through an available internal mechanism, say through administrative procedures, this should be the complainant's first alternative except where it is certain that such procedure will not yield justice or it is unduly prolonged or delayed.

The following section provides a brief discussion of the ingredients and/or interpretation of the rights in the Constitution of Uganda as stipulated therein. It highlights elements pertaining to the rights that must be present in order for any act or omission to amount to a violation of a particular right. *The interpretation of the respective Articles Chapter Four of the Constitution is only meant as a guide. As legal opinions differ and jurisprudence grows, users are encouraged to consider other components that may not necessarily be included here.*

It is also important to note that all Articles should be read with others. Furthermore, one should always bear in mind that most of the rights can be restricted or limited (read interpretation of Article 43, *infra*), apart from the non-derogable rights contained in Article 44.

3.2.1.1. Article 20: Duty to respect, uphold and promote human rights

Article 20(1) provides that fundamental rights and freedoms of the individual are inherent and not granted by the State.

Interpretation: This provision amounts to an acknowledgement that human rights contained in the Constitution may not be restricted or overridden by domestic legislation other than those restrictions contained in the particular rights. It is hence important for the receiving officer to bear this in mind while making the assessment.

Article 20 (2)

Ingredients:

The rights and freedoms of the individual and groups enshrined in this Chapter,

- are not respected, upheld and promoted,
- by all or any of the organs and agencies of Government and by any person.

Interpretation: This provision confirms that all individuals, Government agencies and organs have an obligation to respect and promote human rights. They are thus accountable for any human rights violations that may be occasioned. Put another way, they may be brought before the Commission for human rights violations. The Article, in addition, imposes a duty on the State to intervene to prevent violation of human rights whether or not the State is responsible for the violating acts or omissions.

3.2.1.2. Article 21: Equality and freedom from discrimination

Article 21(1)

Ingredients:

A person is treated differently before the law because of his or her:-

- political opinion,
- social standing,
- economic circumstances,
- cultural way of life.

Interpretation: This clause guarantees equality and equal protection for all persons before the law in all spheres of political, economic, social and cultural life. That is to say that, individuals may not be discriminated against by the law; or may not be accorded differing treatment unreasonably or denied the protection of the law because of their political beliefs, economic circumstances, social standing or cultural way of life.

Article 21(2)

Ingredients:

Different treatment is accorded to different people by virtue of their:

- sex
- race
- colour
- ethnic origin
- tribe
- birth
- creed or religion
- social or economic standing
- political opinion, or
- disability

Interpretation: This clause guarantees the right to protection from discrimination on grounds of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability. Any discrimination for example in the provision of services, employment, etc on the grounds listed above amounts to a human rights violation.

Article 21(3)

Interpretation: The clause defines discrimination as the means to accord different treatment to different persons attributable only mainly to their respective description on grounds mentioned above. In essence, the question should be: 'Was preferential or detrimental treatment given to the individual because of his or her tribe, race, sex or any of the grounds listed above?' Or, 'but for any of the grounds listed, would the individual have received better the service she or he required?'

3.2.1.3. Article 22: Protection of right to life

Article 22 (1)

Ingredients:

- Death occurs caused by the State or an individual;
- In the absence of a sentence passed in a fair trial by a competent court;
- The sentence was not in respect of a criminal offence under the laws of Uganda; and
- The conviction and sentence were not confirmed by the highest appellate court.

Interpretation: A violation of the right to life shall occur where all of the above four ingredients are present.

Article 22(2)

Ingredients:

- The life of an unborn child is terminated in the absence of lawful authorisation.

Interpretation: This clause makes abortion unlawful if not authorised by the relevant domestic legislation.

3.2.1.4. Article 23: Protection of personal liberty

Article 23(1)

Ingredients:

A person's right to personal liberty is violated where the detention or arrest is **not**:-

- (a) In execution of an order or sentence of a court established by Uganda, another country or international court or tribunal in respect of a criminal offence or an order punishing that person for contempt of court.
- (b) In execution of a court order made to secure the fulfilment of any obligation imposed on that person by law.
- (c) For the purpose of bringing that person before a court in execution of a court order or upon *reasonable* suspicion that the person has committed or is about to commit a criminal offence.
- (d) For the purpose of preventing the spread of an infectious or contagious disease.
- (e) In case of a person under 18 years for the purpose of that person's welfare or education.
- (f) In the case of a person *reasonably* suspected to be of unsound mind or addicted to drugs or alcohol for the purpose of his or her care or treatment or for the protection of the public.
- (g) For the purpose of preventing unlawful entry of that person in Uganda or for the purpose of effecting the expulsion, extradition or other lawful removal from

Uganda or for restricting that person while in Uganda for the purpose of extraditing that person to another country.

(h) As may be authorised by law, in any other circumstances similar to those above.

Interpretation: This clause provides an exhaustive list of when the detention or arrest of an individual may be lawful. Any detention or arrest of an individual on grounds other than those provided amounts to a deprivation of liberty. It is also important to assess the reasonableness of arrest provided in the grounds above *i.e. Any arrest on the basis that a crime has been committed or is about to be committed must be based on a reasonable belief i.e. would it be reasonable to believe that a crime is or was about to be committed? This is an objective test.*

Article 23 (2)

Ingredients: A person arrested, restricted or detained is not kept in a place authorised by law.

Interpretation: A person lawfully arrested in accordance with the above provisions can only be held at a police station or at a place ordered or authorised by a court of law or any other specific place authorised by law. The detention of an arrested person in any other place amounts to a violation.

Article 23(3)

Ingredients:

A person arrested, restricted or detained;

- Is not informed in a language he or she understands the reasons for his or her arrest, restriction or detention and,
- Is not informed of his or her right to a lawyer of his or her choice.

Interpretation: All three ingredients must be observed: (1) inform the person of the reason for arrest immediately or as soon as practicable where it is not possible to inform the person immediately; (2) in a language that he or she understands; (3) inform the person of his or her right to call on or be represented by a lawyer of his or her choice. Failure to fulfil any or all three of these elements amounts to a violation of Article 23 (3).

Article 23(4)

Ingredients:

A person arrested or detained:

- for the purpose of bringing him or her before a court in execution of an order of a court, or

- upon reasonable suspicion that the person has committed or is about to commit a crime under the laws of Uganda;
- is kept in detention for more than 48 hours before producing him or her before court.

Interpretation: A person arrested under any of the circumstances mentioned above should not be detained for longer than 48 hours from the time of his or her arrest before bringing that person before a court of law.

Article 23(5) (a)

Ingredients:

A person restricted or detained,

- makes a request to have his or her next-of-kin informed, as soon as practicable, of his or her restriction or detention;
- the request is not granted.

Interpretation: This clause will be violated where upon request of the arrested or detained person to inform his or her next-of-kin of his or her detention, the arrested person's next of kin is not at all informed, or is not informed as soon as practicable, or the request is refused.

Article 23(5) (b)

Ingredients:

A person is restricted or detained,

- his or her next of kin, lawyer and personal doctor,
- are denied reasonable access to that person.

Interpretation: This clause is violated where the arrested person's next of kin, lawyer or personal doctor is not allowed reasonable access to the arrested person. Reasonable access will depend on individual circumstances of each case.

Article 23(5) (c)

Ingredients:

A person restricted or detained,

- is denied access to medical treatment including private medical treatment at his or her request and cost.

Interpretation: This clause will be violated where the arrested person is denied medical treatment. This includes denial of private medical treatment, at his or her cost, where that person has so requested.

Article 23(6) (a)

Ingredients: A person arrested in respect of a criminal offence is denied access to apply to court for his or her release on bail.

Interpretation: A person arrested in respect of a criminal offence has the right to apply to a court of law to be released on bail.

Article 23(6) (b)

Ingredients:

A person is arrested,

- for an offence triable by the High Court as well as a subordinate Court;
- The person has been on remand for 60 days before the trial;
- Is denied access to apply to Court for his or her release on bail.

Interpretation: Any person who has been arrested for an offence triable by the High Court or a Magistrate Court may be held on remand for 60 days, if he or she has not yet applied for release on bail. After those 60 days the person has a right to apply to Court to be released on bail. The Court may grant bail on such conditions as it considers reasonable.

Article 23(6) (c)

Ingredients:

A person arrested,

- for an offence triable only by the High Court,
- is remanded for 180 days before the case is committed to the High Court,
- is denied access to apply to court for his or her release on bail.

Interpretation: a person arrested for an offence triable by the High Court who has been remanded for 180 days, shall after 180 days of being on remand have the right to apply to Court to be released on bail.

Article 23(7)

Ingredients: A person unlawfully arrested, restricted or detained by any person or authority is not compensated by that person or authority.

Interpretation: This provision will be violated where a person unlawfully detained, restricted or arrested is not compensated for the unlawful, arrest, restriction or detention by the person or authority responsible.

Article 23(8)

Ingredients:

A person has been lawfully detained pending hearing of his or her case;

- the person is convicted and sentenced to imprisonment;
- the term of imprisonment imposed does not take into account the period the person spent in custody in respect of that offence prior to the conviction.

Interpretation: This right will be violated where a person who was held in custody pending the hearing of his case is found guilty and sentenced but the sentence does not take into account the time he has been in custody.

Article 23(9)**Ingredients**

A person is detained,

- *incommunicado* beyond the prescribed 48 hours;
- an order of *habeas corpus* is made by the Court for the person or authority holding the detainee to bring the detainee before Court;
- the person or authority to whom the order is made fails to produce the detained person before court.

Interpretation: This right will be violated where the Court issues an order of *habeas corpus* for a detained person to be brought before the Court and the person or authority holding the detainee does not do so. This clause should be read together with **Article 44(d)** which provides that the right to an order of *habeas corpus* is non-derogable, that is to say, whenever such an application is made, it should be granted and respected.

3.2.1.5. Article 24: Respect for human dignity and protection from inhuman treatment**Ingredients:****Torture**

- severe pain or suffering, whether physical or mental;
- is intentionally inflicted on a person;
- for the purpose of:
 - obtaining from him or a third person information or a confession, or
 - punishing a person for an act he or a third person has committed or is suspected of having committed or,
 - intimidating or coercing him or a third person for any reason based on discretion of any kind.
- the pain or suffering is inflicted by, or at the instigation of, or with the consent or acquiescence of any person or public official.

Cruel, inhuman or degrading treatment or punishment

Ingredients

- another person's act or omission, deliberately or unintentionally, makes another feel fear, anguish and inferiority,
- that is humiliating and debasing,
- where intense physical and mental suffering are caused.

Interpretation: This right will be engaged where a person is subjected to torture or cruel, inhuman or degrading treatment. It is important to note that the State's failure to criminalise torture engages the State's liability where any individual tortures another or where a person acting in public (official) or private capacity tortures another and the State fails to penalise the perpetrator. This Article should be read in conjunction with **Article 44(a)** which provides that the freedom from torture, cruel, inhuman or degrading punishment or treatment is a non-derogable right. Hence, under no circumstances is torture, cruel, inhuman or degrading treatment or punishment permissible or justifiable.

3.2.1.6. Article 25: Protection from Slavery, Servitude and Forced Labour**Article 25 (1)****Ingredients:**

Slavery: Status or condition of a person over whom another person has the powers attaching to the rights of ownership and does exercise those powers.

Servitude

- a person is denied freedom and coerced to provide his or her services,
- is obliged to live on another person's property,
- impossible for him or her to change this condition.

Interpretation: This provision will be infringed where a person is subjected to slavery or servitude. This clause is non-derogable under Article 44(b).

Article 25(2): Forced labour**Ingredients:**

- a person is required to work or perform a service under the threat of any penalty;
- the person has not offered himself or herself voluntarily to perform that work or service;
- the work or service required of that person does not fall under the categories specified in article 25(3) below.

25(3) (a)-(e) defines the following as not amounting to forced labour:

- labour required as part of one's sentence or order of court;
- labour required of anyone who is lawfully detained in consequence of an order of the court that is reasonably necessary in the interest of hygiene or for the maintenance of the place someone is detained in;
- any labour required of a member of a disciplined force as part of the member's duties; or
- in the case of a person who has conscientious objections to service as a member of a naval or military or air force, any labour which that person is required to do by law in place of that service (*Where somebody refuses to enlist or participate in the army, naval or air force and the law provides for that person to do work in lieu of not enlisting in the army, naval or air force, his/her right will not be violated*);
- any labour required during any period when Uganda is at war or in any case of any emergency or calamity which threatens the life and well-being of the community to the extent that the labour is reasonably justifiable as a result of the emergency or calamity for the purpose of dealing with the situation;
- any labour reasonably required as part of one's reasonable communal or civic obligations.

Interpretation: This provision will be engaged where a person is forced to do any work, which does not fall within clause 25(1) (3).

3.2.1.7. Article 26: Protection from deprivation of property

Article 26(1)

Ingredients: A person is denied the right to own property individually or in association with others.

Interpretation: This is the right to retain ownership of property, that is, not to have property arbitrarily taken away from a person, and the right to acquire shares and interest in property. It does not mean the right to acquire possession of property or to expect possession of property without means.

Article 26(2)

Ingredients:

A person having an interest or right over property,

- is deprived of it for purposes that are not in public use or in the interest of defence, public safety, public order, public morality or public health, and
- without a law providing for prompt payment of fair and adequate compensation; and
- no provision for a right of access to a court of law by the person or persons affected.

Interpretation: Possession or acquisition must be necessary for the public or in the interest of defence, public safety, public order, public morality or public health and must follow a procedure provided by law, which provides for payment of prompt and adequate compensation. Where the compulsory acquisition or possession and its procedure are used, the law should provide for the compulsory acquisition to be challenged in a court of law.

3.2.1.8. Article 27: Privacy of person, home and other property

Article 27 (1) (a) and (b)

Ingredients:

- one's person,
- one's home, or
- one's property,
- are unlawfully searched, or
- where one's premises are unlawfully entered into.

Interpretation: This clause will be violated where a person without any lawful authority searches a person, his or her home or property. It will also be violated where an officer of the law, searches one's person, home or property without a search warrant. There may be circumstances where the person, his home or property may be searched or his or her premises entered into without a warrant. *Reasonable suspicion* that a crime has been committed or is about to be committed will, however, be required in such circumstances. In addition, an explanation as to why the circumstances were such that it was not *reasonable* to get a court order will be required.

Article 27(2)

Ingredients:

- a person's privacy of home,
- correspondence,
- communication or
- other property,
- is unlawfully interfered with.

Interpretation: This right is violated where enjoyment of one's home or property is interfered with e.g. garbage dumped or a trench is dug in front of one's home. The right to privacy of property also includes the right not to have one's property taken either temporarily or permanently.

The right not to interfere with correspondence covers all forms of communication such as telephone calls, text messages, e-mail, letters and fax, etc. In general, authorities will not be allowed to interfere with such correspondence. However, there are circumstances where lawful interference will be permitted e.g. a prisoner's letters may be read before being forwarded to him or her. However the authorities must show good reason why they read the prisoner's mail.

3.2.1.9. Article 28: Right to a fair hearing

Article 28(1) and (2)

Ingredients:

A person charged with a criminal offence or sued in a civil matter,

- is denied a fair, speedy and public hearing,
- before an independent and impartial court or tribunal,
- the tribunal or Court must be established by law.

Interpretation: This clause is violated where essential elements of due process are not observed in a criminal trial or civil proceeding. These include the right to *fair, speedy* and *public* hearing before an independent and impartial court or tribunal established by law. However, there are instances where the hearing may not be public as explained in the next clause. The right to a fair hearing is non-derogable under **Article 44(c)**. There are, therefore, no circumstances that justify non-compliance with the tenets of the right to a fair hearing as stated in the whole of Article 28.

Article 28(2) defines circumstances or conditions under which the press or public are excluded from all or any court proceedings. This may be done on any of the following grounds: morality, public order or national security which must be necessary in a free and democratic society. The right to a public trial is therefore not absolute.

Article 28(3) (a) and Article 28 (4) (a)

Ingredients

A person charged with a criminal offence;

- is considered guilty,
- before he or she pleads or is found guilty.

Interpretation: This right will be violated where an individual is deemed or treated as having committed a crime before that person is convicted of a criminal offence. This Article should be read together with **Article 28(4) (a)**, which provides that the law may impose the burden of proving particular facts on a person charged with a criminal offence and that this will not take away the presumption of innocence. This clause is

violated where a person is presumed guilty on the basis that the law imposes a burden on him or her to prove certain facts.

Article 28(3) (b)

Ingredients:

- in a criminal trial;
- a person is not informed immediately of the nature of the offence
- in a language he or she understands.

Interpretation: There are three main requirements: 1- to inform of the person of the nature of the offence for which she or he is charged with, 2- in a language she or he understands, 3- this must be done immediately. The Court has to find an interpreter as soon as possible to ensure that the accused understands the nature of the offence that she or he is charged with. In addition where all or any of the three elements are missing the duty to explain why it was not practicable to do so is retained by authority concerned.

Article 28(3) (c)

Ingredients: A person charged with a criminal offence is not given adequate time and facilities to prepare his or her defence.

Interpretation: Adequate time and facilities will depend on the circumstances of each case, however the duty is on the arresting authority to justify any failure to accord adequate time and explain the lack of facilities where the allegation of a violation is raised.

Article 28(3) (d)

Ingredients: A person is not permitted to appear before court in person or is refused to be represented by a lawyer of his or her choice.

Interpretation: This right will be violated where a person is refused to appear in court to contest the charges or proceedings. It is equally violated where one is refused to be represented by a lawyer of his or her choice at his or her cost.

Article 28(3) (e)

Ingredients:

- a person charged with a criminal offence that carries a sentence of death or imprisonment for life;
- is denied legal representation at the expense of the state.

Interpretation: It is important to note that legal representation does not simply mean a lawyer, but a competent lawyer. The State cannot therefore discharge its responsibility by providing the person charged with a cheap, incompetent lawyer but must provide sufficient funds to allow the individual facing the charges competent legal representation.

Article 28(3) (f)

Ingredients:

A person charged with a criminal offence,

- cannot understand the language used at the trial, and
- he or she is not afforded an interpreter at the state's expense.

Interpretation: This clause imposes a duty on the state to provide, at its expense, an interpreter to a person charged with a criminal offence where that person does not understand the language used by the court in the proceeding against him or her.

Article 28(3) (g)

Ingredient: A person charged with a criminal offence is not allowed to examine witnesses or call upon other witnesses in court.

Interpretation: This clause will be infringed upon where an accused person in criminal proceedings is not allowed to examine witnesses or call upon his or her witnesses or where his or her legal representative is not allowed to do the same. This clause should be read together with **Article 28(4) (b)**, which provides that where an accused person's witnesses are to be paid their expenses out of public funds, then the law may impose some conditions. This provision should not be seen as contradicting the right to examine or call upon witnesses.

Article 28(5)

Ingredients:

- the trial of any person takes place in the absence of that person without his or her consent,
- that person has not conducted himself or herself as to make it impossible for the proceedings to continue in that person's presence and,
- the court has not made an order for the person to be removed and the trial to proceed in the absence of that person.

Interpretation: This right will be violated where proceedings against a person are conducted in the absence of that person, without his or her consent or where he has not acted in such a manner as to warrant the court to continue with the proceedings in his

absence or where the court has not made an order for the court to proceed in the person's absence.

Article 28(6)

Ingredients:

A person tried on a criminal offence or any person authorized by him or her,

- is denied a copy of the proceedings after judgment,
- upon his or her payment of a fee prescribed by law.

Interpretation: This provision will be where a person charged with a criminal offence or any person authorised by him or her i.e. his or her lawyer has paid the fee or is willing to pay the fee set by law for obtaining a copy of the judgment against the person charged but she or he is refused a copy of the judgment.

Article 28(7)

Ingredients: A person is charged with an offence that did not constitute a criminal offence at the time it took place.

Interpretation: This provision will be violated where a person is charged with an offence that was not an offence at the time he committed it. For example, where a person does something in June 2006 and a law is passed in August 2006 that makes what he did in June 2006 a criminal offence and thereafter the person is charged with that offence.

Article 28(8)

Ingredients:

- the penalty imposed on a person for a criminal offence,
- is more severe in degree or description than the maximum penalty that could have been imposed for that offence at the time when it was committed.

Interpretation: This provision is violated where the punishment for a particular offence has been increased after a person has committed that offence.

Article 28(9)

Ingredients:

A person who shows that he or she has been tried by a competent court for a criminal offence, and convicted or acquitted of that offence,

- is tried again for that offence or for any other criminal offence for which he or she could have been convicted at the trial for that offence,

- in absence of an order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

Interpretation: This right will be infringed where a person who proves that she or he was charged with a criminal offence and was convicted or acquitted of that offence is tried again for the same offence or any other related criminal offence that he or she could have been charged with at the time. In order to amount to a violation one should ensure that the second trial is not upon the order of a superior court following an appeal or review of the proceedings relating to the conviction or acquittal.

Article 28(10)

Ingredients: A person is tried again for a criminal offence in respect of which he or she has already been pardoned.

Interpretation: Where a person committed an offence against an individual and the individual who the offence is committed against forgives him or her, the state may still charge the person who committed the offence and this does not violate this provision. The Head of State is the only person that may exercise the prerogative right of pardon and it is this pardon that is referred to in this provision.

Article 28(11)

Ingredients:

A person tried for a criminal offence,

- is compelled to give evidence against himself or herself,
- his or her spouse is compelled to give evidence against that person.

Interpretation: This right will be violated where a person charged with a criminal offence is compelled to give evidence against themselves or where that person's spouse is compelled to give evidence against him or her.

Article 28(12)

Ingredients:

A person is convicted of a criminal offence,

- that is not defined by law,
- the penalty for that offence is not prescribed by law,
- The offence does not amount to contempt of Court.

Interpretation; This right will be violated where a person is convicted of a criminal offence that does not exist in law or for which a penalty is not set out by law with the exception of the offence of contempt of court.

3.2.1.10. Article 29: Protection of freedom of conscience, expression, movement, religion, assembly and association

Article 29 (1) (a)

Ingredients:

- A person receives and imparts information or ideas including political speech, commercial speech, artistic expression, professional speech, and
- he or she is prohibited from doing so, or criminal or civil liability is attached.
- The press or media is refused to operate or publish an article without justifiable cause;
- Unjustifiable censorship of the press and other media.

Interpretation: This provision will be violated where a person or group of people or organisation is constrained or refused to: express and form or hold a political or religious or commercial or professional opinion or any other idea; or where criminal or civil sanctions are imposed where this right is exercised.

Article 29(1) (b)

Ingredients:

Where a person's freedom of conscience and belief,

- is restricted,
- criminalized or civil liability is attached.
- Where academicians are threatened or prohibited from freely expressing their opinions.

Interpretation: Freedom of conscience and belief includes holding an opinion, believing or practising a religion of one's choice, changing one's religion. Academic freedom may include publication of an academic article or delivering an academic speech, and forming an academic opinion.

Article 29(1) (c)

Ingredients:

A person is penalised for;

- practising any religion,
- belonging to and,
- participating in the practices of any religious body or organisation,
- where such belonging to and participating in such practices, is in a manner that is consistent with the Constitution.

Interpretation: The freedom to practise a belief or religion does not always guarantee the right to behave in the public sphere in a way which is dictated by that belief. In other words, there is a limitation or restriction on the right to manifest one's belief or religion.

Article 29 (1) (d)

Ingredients:

A person is denied the right to or is penalised for;

- assembling,
- demonstrating together with others peacefully,
- demonstrating unarmed and,
- petitioning.

Article 29 (1) (e)

Ingredients:

A person is denied the right to, or is penalised for;

- associating,
- forming and,
- joining associations or,
- unions including; political and other civic organisations.

Interpretation: In looking at whether or not this right has been violated, one should consider that in case there was a restriction on the exercise of this right, such restriction was beyond what is acceptable and demonstrably justifiable in a free and democratic society (*See Article 43 of the Constitution*).

Article 29(2) (a) and (b)

Ingredients:

A Ugandan is denied the right to:

- move freely throughout Uganda, or
- reside and settle in any part of Uganda, or
- enter into Uganda, or
- Leave and return to Uganda.

Article 29(2) (c)

Ingredient:

A Ugandan is denied the right to own a passport or any travel document.

Interpretation: In making a decision on whether Article 29 (2) has been violated one must consider the provisions of Article 43 of the Constitution on limitations of rights.

3.2.1.11. Article 30: Right to Education

Ingredients:

- an individual is refused access to education in all education establishments in Uganda,
- either by the State or,
- the education establishment or,
- a parent refuses to take a child to school,
- and the parent, State or education institution is not constrained by financial considerations.

Interpretation: The right does not depend on one or several education institutions refusing an individual education, but on all refusing. There will be an exception where there is one specialised institution for a particular type of education that the complainant would like to pursue and that complainant is unreasonably denied admission to that institution.

3.2.1.12. Article 31: Right of the Family:

Article 31 (1)

Ingredients:

- a man and woman,
- of eighteen years and above
- entitled to marry are denied the right to found a family, and,
- are not entitled to equal rights at,
- in, and at dissolution of marriage.

Interpretation: Marriage must be between a man and a woman, of 18 years and above and entitled to marry.

Article 31(3)

Ingredients: A marriage is entered into in the absence of *full* and *free* consent of either the man or the woman or both.

Article 31(4)

Ingredients:

- Parents fail, neglect or refuse to care for and bring up their children, or
- Children are forcibly or unjustifiably removed from their parents.

Interpretation: This Article has two possible perceptions: from the perception of the child, the right is violated where the parent fails, neglects or refuses to take care of him or her. From the perception of the parent: where any individual, institution of the State unjustifiably or forcibly removes the child from the parent, hence depriving the parent of the right to care for and bring up his or her child. This second approach is in line with Article 31(5) below.

Article 31(5)

Ingredients:

- A child is separated from his or her family or guardian against the will of the family or guardian.
- The removal is not in accordance with the law.

3.2.1.13. Article 32: Affirmative action in favour of marginalised groups:

Article 32(1)

Ingredients: Where the state fails or refuses to take affirmative action in favour of marginalised groups on the basis of gender, disability or any other reason created by history, tradition or custom or for the purposes of redressing imbalances which exist against them.

Article 32(2)

Ingredients:

- A law is passed, or
- cultures, customs and traditions are practised;
- that are against the dignity, welfare or interest of women
- or any other marginalised group to which clause one(1) above relates, or
- which undermines their status.

Interpretation: This clause may be violated where the State or its agents fails to protect women and other marginalised groups from cultures, customs and practices that are against their dignity, welfare or interest or those which undermine their status.

3.2.1.14. Article 33: Rights of women

Article 33(1)

Ingredients:

- A woman,

- is not accorded full and equal dignity with a man.

Interpretation: Treatment is accorded to a woman, which is less than or not equal to that accorded to a man in the same circumstances.

Article 33(2)

Ingredients:

- The state fails to provide facilities and opportunities necessary to enhance women's welfare,
- to enable them fulfil their potential and advancement.

Interpretation: This clause should be read in conjunction with Article 32 (1) of the Constitution, which provides for affirmative action.

Article 33(3)

Interpretation: Where the state fails or refuses to protect women and their rights taking into consideration their unique status and natural maternal functions in society.

Article 33 (4)

Ingredient: Where a woman is not afforded equal treatment with a man including equal opportunities in political, economic and social activities.

Interpretation: Violation of this clause could be done through a law, policy or practice of the State, its agencies or even in the private arena.

3.2.1.15. Article 34: Rights of Children

Article 34(1)

Ingredients:

- Where contrary to the best interest of the child,
- that child is denied the right to know, or
- be cared for by his or her parents or,
- those entitled by law to bring them up.

Interpretation: The clause is violated where a child (a person under the age of eighteen years) is denied the right to know or be cared for by his or her parents or guardians. The right shall not be violated where denial to know or be cared for by one's parents is in the best interests of the child.

Article 34(2)

Ingredients: The state and the parents of the child fail to provide the child with basic education.

Article 34(3)

Ingredients:

Where a child is deprived, by any person, of:

- medical treatment,
- education or,
- any other social or economic benefit,
- by reason of religious or other belief.

Interpretation: The deprivation of medical treatment, education or any other social or economic benefit must be based on religious or other beliefs.

Article 34(4)

Ingredients:

- Where a child, who is under sixteen years of age, is not protected from social or economic exploitation, or
- where a child who is under sixteen years of age, is employed or required to perform work
- that is likely to be hazardous to his or her education, or
- to be harmful to his or her health,
- or physical, mental, spiritual, moral or social development.

Interpretation: This clause prohibits child labour. Child labour is often defined as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. It refers to work that is mentally, physically, socially or morally dangerous and harmful to children; and interferes with their schooling.

Article 34(6)

Ingredients: Where a child offender in lawful custody or detention is kept together with adult offenders.

3.2.1.16. Article 35: Rights of persons with disabilities

Article 35 (1)

Ingredients:

- where a person with a disability is not treated with respect and human dignity,
- Where the state and society fail to take appropriate measures to ensure that a person with disability realises his or her full mental and physical potential.

Interpretation: This clause calls for non-discrimination of persons on grounds of a disability. It also calls upon the State to put in place special measures to ensure that persons with disabilities are treated with respect and dignity.

3.2.1.17. Article 36: Protection of rights of minorities**Ingredients:**

- where minorities are refused or authorities fail to allow them to participate in decision-making processes and;
- their views and interests are not taken into account in the making of national plans and programmes.

Interpretation: Minorities are those that belong to ethnic or national, religious or linguistic minority groups. Special measures should be put in place to allow them take part in decision-making. Article 36 will be violated where minorities are denied opportunity to participate in decision-making or where their views are disregarded in national plans and programmes.

3.2.1.18. Article 37: Right to culture and similar rights**Ingredients:**

Where a person is denied the right:

- to belong to, enjoy, practise, profess, maintain and promote;
- any culture, cultural institution, language, tradition, creed or religion,
- in community with others.

Interpretation: This clause will be violated where an individual is denied the right to do any of the above stated things in association with others or where a group is denied the right to enjoy or practise their culture, provided that culture does not violate the rights of others and conforms to the provisions of Article 32 (2).

3.2.1.19. Article 38: Civic rights and activities**Article 38(1)****Ingredients:**

- where a Ugandan citizen,
- is refused to participate in the affairs of government,

- either individually or,
- through his or her representative in accordance with the law.

Interpretation: Where the law prohibits a person from doing so, this right shall not be violated.

Article 38(2)

Ingredients:

- where a Ugandan,
- is denied the right to participate in peaceful activities to influence the policies of government through civic organisations.

Interpretation: This includes the right to demonstrate peacefully and get involved in debates etc.

3.2.1.20. Article 39: Right to a clean and healthy environment

Ingredients: Where a Ugandan is subjected to live in an unclean and unhealthy environment

3.2.1.21. Article 40: Economic rights

Article 40(2)

Ingredients:

Where any person in Uganda is denied the right to;

- practise his or her profession and,
- to carry on any lawful occupation, trade or business.

Interpretation: Such denial should be arbitrary and not in accordance with the law for it to amount to a violation. For instance, a doctor who has engaged in professional malpractice may have his or her licence suspended and in the meantime, he or she cannot practice his or her profession.

Article 40(3) (a)

Ingredients:

Where a worker is denied the right to:

- form or join a trade union of his or her choice,
- for the promotion and protection of his or her economic and social interests.

Article 40(3) (b)

Ingredients: Where a worker is denied the right to collective bargaining and representation.

Article 40(3) (c)

Ingredients:

- Where a worker is denied the right to;
- withdraw his or her labour according to the law.

Interpretation: This right includes the right to resign from a job or refuse to work for any organisation in accordance with the law.

Article 40(4)

Ingredients:

- Where a woman worker,
- is not accorded protection by her employer,
- during pregnancy and after birth in accordance with the law.

Interpretation: This is the right to maternity leave in accordance with the law. It is violated where an employer does not permit a woman worker to have maternity leave and any other incidental protection as provided by the law.

3.2.1.22. Article 41: Right of access to information

Article 41(1)

Ingredients:

- Where any citizen of Uganda,
- is denied access to information in the possession of the state or any other organ or agency of the State,
- which information, if released, is unlikely to prejudice the security or sovereignty or the state or,
- interfere with the right to privacy of any other person.

Interpretation: Information in the State's possession may be denied where it is likely to prejudice the security or sovereignty of the state or where it is likely to interfere with the right to privacy of another person.

3.2.1.23. Article 42: Right to just and fair treatment in administrative decisions

Ingredients:

- where a person before any administrative official or body
- has been treated unjustly and unfairly and,
- is denied the right to apply to a court of law in respect of any administrative decision taken against them.

Interpretation: This clause is violated where a person is treated unfairly, unjustly or not in accordance with internal administrative procedures governing the administrative official or body before which he is appearing; and is denied the right to apply to a Court of law for review of the decision.

3.2.1.24. Article 43: General limitation on fundamental and other human rights and freedoms

Article 43(1) and (2):

The rights mentioned in the Constitution are subjected to the following limitations or restrictions:

- where the enjoyment of one's right(s) prejudices the enjoyment of another person's right(s),
- where the enjoyment of one's right(s) prejudices public interest.

Public interest does not permit: political persecution, or detention without trial, or placing such limitations, on rights and fundamental freedoms, that are not acceptable or demonstrably justifiable in a free and democratic society or go beyond the provisions of the Constitution.

Interpretation: Article 43 applies generally to all the rights in the Constitution except those that are non-derogable under Article 44 and those where specific limitations or exceptions are stated such as those under Articles 23(1), Article 25(3), Article 26(2), and Article 28(2), (5), (12). This therefore means that when one is looking at most of the rights in the Constitution and determining whether a particular right has been violated or not, one should always bear in mind the provisions of Article 43.

3.2.1.25. Article 45: Human Right and freedoms additional to other rights

Other human rights, duties, declarations and guarantees relating to fundamental human rights and freedoms not included in this chapter are not excluded just because they are not specifically mentioned.

Interpretation: This Article gives us the latitude to look to at international human rights instruments ratified by Uganda and include rights that are not specifically mentioned or elements of some of the rights included in Chapter four, but are not specifically mentioned. It allows for the use of international human rights jurisprudence as an aid to interpretation. It is therefore crucial for staff to know the instruments that have been

ratified by Uganda and the contents of those instruments (*see Schedule 2 for list of some of the instruments ratified by Uganda*).

3.2.1.26. Human Rights and Freedoms during a State of Emergency

A State of Emergency is that which has been declared as such by the President under the provisions of **Article 110** of the Constitution. In such circumstances, Parliament may make a law authorising the taking of reasonably justifiable measures for dealing with a state of emergency (Article 46(1) of the Constitution) e.g. it may make a law providing for the detention of persons where it is necessary in dealing with the emergency (Article 46(3) of the Constitution). It is worthwhile to note that a state of emergency applies in only that part of the country where the emergency exists.

3.2.1.27. Article 47: Detention under emergency laws

This Article is violated where a person restricted or detained under a law made for the purpose of a state of emergency,

- is not furnished with a statement in writing specifying the grounds on which he or she is restricted or detained within 24 hours (Article 47 (a)).
- when the spouse, or
- next of kin named by the person detained or restricted,
- is not informed of the restriction or detention and
- allowed access to the detainee,
- within 72 hours after the commencement of the restriction or detention (Article 47 (b)).
- no notification, stating that a person has been restricted or detained and giving particulars of the provision of the law under which his or her restriction is authorised, is published in the gazette and in the media in less than 30 days after the commencement of that person's restriction or detention (Article 47(c)).

3.2.1.28. Article 59(1): Right to vote

Article 59(1) and (2)

Ingredients:

These clauses are violated when:

- a Ugandan citizen,
- of 18 years or above is denied the right to vote.

3.3. Nomenclature System of Human Rights Violations

This section provides for human rights violations that correspond with the Articles in the Constitution. It is not limited to Articles in the Constitution but also includes violations that are applicable under international human rights instruments ratified by Uganda. The list of

violations is by no means exhaustive and as such inclusion of violations outside this list is welcome.

Although Article 20, is not a human rights violation as such, it lays down a general obligation for all organs and agencies of the State and all persons to respect, promote and protect all human rights. It should also be noted that it is the duty of the State to ensure that it intervenes in actions of individuals to prevent violations of human rights. Where it fails to do so, it may also be held accountable for the ensuing violation.

Serial No.	Category Code	C. NO	Category/Sub-Categories	ARTICLE
1	2100	2	EQUALITY and FREEDOM FROM DISCRIMINATION	21
2	2101		Deprived of Equal Protection in Political, Social, Economic and Cultural Life	21
3	2102		Discrimination on Ground of Sex	21
4	2103		Discrimination on Ground of Race or Colour	21
5	2104		Discrimination on Ground of Ethnic Origin	21
6	2105		Discrimination on Ground of Tribe	21
7	2106		Discrimination Based on Ground of Birth	21
8	2107		Racial Discrimination	21
9	2108		Discrimination on the Grounds of Disability	21
10	2200	3	THE RIGHT TO LIFE	22
11	2201		Alleged Deaths in Prison Custody	22
12	2202		Alleged Deaths in Police Custody	22
13	2203		Alleged Killings of Civilians	22
14	2204		Death in Army Custody	22
15	2205		Death in Prison Custody	22
16	2206		Death in Police Custody	22
17	2207		Death by Electrocution due to Negligence of State Provider	22
18	2208		Death due to Medical Negligence	22
19	2209		Death due to Police Torture	22
20	2211		Death due to Starvation in Prison	22
21	2212		Death in Army Encounter	22
22	2214		Death in Police Encounter	22

23	2216		Death of Injured Person owing to the Negligence of Police or Prison Service	22
24	2217		Death in Custody of Intelligence Agencies	22
25	2218		Mass Killings	22
26	2219		Inadequate Protection of the Public By the State	22
27	2300	4	PROTECTION OF PERSONAL LIBERTY	23
28	2301		Abduction or Kidnapping by State Agents	23
29	2302		Arbitrary Use of Power (Arrest for Unlawful reasons)	23
30	2303		Security Motivated Confinement	23
31	2304		Enforced Disappearance	23
32	2305		Illegal Arrest	23
33	2306		Inaction by Local Administration	23
34	2307		Failure to Produce a Person Before Court Within 48 Hours of Arrest	23
35	2308		Prolonged Imprisonment/Remand	23
36	2309		Unlawful Detention	23
37	2310		Unlawful Solitary Confinement of Prisoners	23
38	2400	5	RESPECT OF HUMAN DIGNITY and PROTECTION FROM INHUMAN TREATMENT	24
39	2401		Alleged Custodial Rape in Prison	24
40	2402		Mistreatment by Custom/Excise/Enforcement/Forest/Income-Tax, Etc.	24
41	2403		Mistreatment by Police	24
42	2404		Rape by State Agents	24
43	2405		Torture in Prison Custody	24
44	2406		Violence in Prison Custody	24
45	2407		Harassment of Prisoners	24
46	2408		Illegal Punishment	24
47	2409		Inducing Fear and Inferiority Complex by State Agents	24
48	2410		Mistreatment in Prison	24
49	2411		Inhuman and Degrading Treatment	24
50	2412		Mental Torture	24
51	2413		Rape by Inmates in Prison	24
52	2414		Physical Torture	24
53	2415		Sexual Harassment in Prison	24

54	2500	6	PROTECTION FROM SLAVERY, SERVITUDE and FORCED LABOUR	25
55	2501		Bonded Labour	25
56	2502		Denial of Labour Rights	25
57	2503		Denial of Remuneration	25
58	2504		Exploitation of Labour	25
59	2505		Forced Labour	25
60	2506		Hazardous Employment	25
61	2507		Slavery	25
62	2509		Trafficking of Human Labour	25
63	2600	7	PROTECTION FROM DEPRIVATION OF PROPERTY	26
64	2601		Denial of Property Rights	26
65	2602		Denial of Acquisition of Property Rights	26
66	2603		Unlawful Compulsory Acquisition of Property	26
67	2700	8	RIGHT OF PRIVACY OF PERSON, HOME and OTHER PROPERTY	27
68	2701		Burning or Unlawful Demolition of Houses	27
69	2702		Illegal Search (Person)	27
70	2703		Illegal Search (Property)	27
71	2704		Unlawful Interference with Correspondences	27
72	2705		Looting/Theft by State Agents	27
73	2706		Unlawful Entry into the Premises by State Agents	27
74	2800	9	THE RIGHT TO FAIR HEARING	28
75	2801		Biased Judiciary	28
76	2802		Complaint against Judicial Officers	28
77	2803		Complaint against Quasi-Judicial Officers	28
78	2804		Denial of Legal Aid in Capital Offences	28
79	2805		Delay in Producing Accused Persons before Court	28
80	2806		Denial of Impartial Hearing	28
81	2807		Denial of Reasonable Opportunity to Present the Case as per the Law	28
82	2808		Denial of Speedy Trial	28
83	2809		Double Jeopardy	28
84	2810		Prolonged Trial	28
85	2811		Unreasonable Delayed Investigations by the Police	28

86	2900	10	PROTECTION OF FREEDOM OF CONSCIENCE, RELIGION, ASSEMBLY, ETC.	29
87	2901		Unlawful Demolition of Places of Worship	29
88	2902		Unlawful Denial of Free Movement	29
89	2903		Denial of Right to Speech or Other Forms of Expression	29
90	2904		Denial of Gatherings etc.	29
91	2905		Denial of Right to Demonstration etc.	29
92	2906		Denial of Right to Form a Trade Union or Association	29
93	2907		Religious Intolerance	29
94	2908		Restriction on Practising Religion or Freedom to Worship	29
95	3000	11	RIGHT TO EDUCATION	30
96	3001		Denial of Access to Educational Establishments	30
97	3002		Lack of Proper Education Facilities	30
98	3100	12	RIGHTS OF THE FAMILY	31
99	3101		Denial of Marriage as per Law	31
100	3102		Denial of Paternity/Maternity Rights	31
101	3200	13	AFFIRMATIVE ACTION IN FAVOUR OF MARGINALISED GROUPS	32
102	3201		Discrimination of Marginalised Groups (Women, Children, Minorities etc.)	32
103	3202		Denial of Protection of Marginalised Groups (Women, Children, Minorities etc.)	32
104	3300	14	RIGHTS OF WOMEN	33
105	3301		Deprived of Equal Status	33
106	3302		Deprived of Facilities/Opportunities Necessary to Enhance Women Welfare	33
107	3303		Deprived of Special Protection owing to Unique Status/Natural Maternal Functions	33
108	3304		Disparity in Maternity Leave to the Working Women	33
109	3305		Sexual Exploitation of Women	33
110	3306		Trafficking of Women	33
111	3307		Indignity of Women	33

112	3313		Sexual Harassment of Women	33
113	3400	15	RIGHTS OF CHILDREN	34
114	3401		Child Labour	34
115	3402		Child Marriage	34
116	3403		Child Pornography	34
117	3404		Child Prostitution	34
118	3405		Deprived of Basic Education	34
119	3406		Deprivation of Medical Facilities on Religious, Cultural or other Beliefs	34
120	3407		Deprivation of Special Protection to Orphans/Vulnerable Children	34
121	3408		Recruitment of Children in Security Forces	34
122	3409		Denial of Maintenance	34
123	3410		Exploitation of Child Prisoners	34
124	3411		Trafficking of Children	34
125	3412		Neglected by Parents/Guardians	34
126	3413		Failure to Provide Separate Custody/Detention Cell for Children	34
127	3500	16	RIGHTS OF PERSONS WITH DISABILITY	35
128	3501		Denial of Basic Facilities to PWDs	35
129	3502		Denial of Human Dignity to PWDs	35
130	3503		Discrimination on Grounds of Disability	35
131	3504		Exploitation of Persons with Mental Disability	35
132	3600	17	PROTECTION OF RIGHTS OF MINORITIES	36
133	3601		Failure for the State to Protect Minorities' Ways of Existence	36
134	3602		Denial of Special Protection	36
135	3603		Failure to Protect Minorities against Ethnic Cleansing	36
136	3604		Discrimination of Minorities	36
137	3606		Systemic Rape/Exploitation of Minorities	36
138	3607		Victimisation of Minorities	36
139	3700	18	RIGHTS OF CULTURE AND SIMILAR RIGHTS	37
140	3701		Denial of Enjoyment of Culture	37
141	3702		Denial to Promote Culture	37
142	3703		Denial to Maintain Culture	37
143	3800	19	CIVIC RIGHTS	38

144	3801		Denial of the Right to Vote	38
145	3802		Denial of Participation in Affairs of Government as per the Law	38
146	3900	20	RIGHT TO CLEAN and HEALTHY ENVIRONMENT	39
147	3901		Denial of Healthy and Clean Environment	39
148	3902		Ecological Disturbances	39
149	3903		Environmental Pollution	39
150	3904		Misuse of Scientific Development	39
151	3905		Failure to Provide Safe and Clean Drinking Water	39
152	4000	21	ECONOMIC RIGHTS	40
153	4001		Denial of Equal Wages	40
154	4002		Denial of Basic Facilities for Pregnant Women Workers	40
155	4003		Denial of Fixed Working Hours or Holidays	40
156	4004		Denial of Holidays	40
157	4005		Disparities in Employment Opportunities	40
158	4006		Non-Payment of Pension	40
159	4007		Denial of Adequate Health and Safety Facilities or Environment at Work	40
160	4100	22	RIGHT TO ACCESS TO INFORMATION	41
161	4101		Denial of Personal or Public Information by the State	41
162	4102		Denial of Information of Government Policies	41
163	4200	23	RIGHT TO JUST and FAIR TREATMENT IN ADMINISTRATIVE DECISIONS	42
164	4201		Denial of the Right to Approach Higher Courts Against Administrative Decisions	42
165	4202		Denial of Fair Administrative Procedure	42
166	4300	24	GENERAL LIMITATION ON FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS	43
167	4301		Denial of Rights under the Cover of Public Interest for Political Persecution	43
168	4302		Denial of Rights under the Cover of Public Interest for Detention Without Trial	43

169	4303		Any other Illegal Activity in the Name of Public Interest	43
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Under Article 45, the following rights can be considered: Right to health, right to an adequate standard of living, right of aliens to be accorded due process of the law in matters regarding their expulsion, right of recognition before the law, and right to an effective remedy, to mention but some.

It is imperative that all staff in the complaints handling process acquaint themselves with the international human rights law, particularly that which is binding on Uganda, in order for them to efficiently utilise the admissibility criteria as well as the nomenclature system.

3.4. Dealing with Borderline Complaints

There are situations where an officer of the Commission will be in doubt as to whether or not a particular complaint amounts to a human rights violation. In such a situation it is important to recall that the primary discourse of human rights is to balance the right of an individual against the all powerful state.

With this view in mind, it is suggested that *complaints that exhibit the State's absolute disregard and contempt of fundamental human rights or fairness should always be considered as human rights violations.*

3.5. Internal Policies

The Commission may, from time to time, adopt policies on how to handle certain complaints or to exclude certain complaints. This does not mean that the Commission has no jurisdiction in the matter but may have identified an alternative way of dealing with such complaints. The Director should be consulted on the existing policy.

4. Receiving and Recording Complaints

The Complaints handling system is at the heart of the protection role of the Commission with regard to human rights work. The officer receiving complainants is in so many ways, the face of the Commission. It is therefore important that employees of the Commission ensure that while executing their duties they conduct themselves in a professional and courteous manner.

This chapter deals with interaction between complainants and officers who receive and record complaints. It prescribes a format through which the process can effectively be managed.

4.1. Who may bring a complaint before the Commission?

Anyone claiming a violation of a fundamental right may bring a complaint before the Commission for redress. It need not be the victim; it could be anyone concerned about the violation, an organisation, institution, a relative, a friend or anyone authorised by the victim.

4.2. Modes of reception

Complaints may be received in person (walk-in) i.e. where the complainant walks into any of the Commission offices to tell their story; or by letter, by email, fax or telephone call.

a) Walk-ins

All complainants that present themselves at any office of the Commission are entitled to be listened to, whether or not their allegations amount to a human rights violation and whether or not the allegation is within the jurisdiction of the Commission.

b) Complaints sent by letter, email or fax

Complaints received by letter may be addressed to the Chairperson or Secretary to the Commission, or Director Complaints, Investigations and Legal Services or the Regional Human Right Officer (RHRO).

Complaints addressed to anyone else in the Commission shall be forwarded to the Director for appropriate onward transmission to the appropriate regional office as soon as practicable.

Where a complaint received by letter or email is deemed admissible, and there is no need to interview the complainant further, the regional office will acknowledge receipt of the complaint in writing *within 14 days* of receiving the complaint and advise the complainant of the complaint number and officer handling the complaint.

In case of insufficient information in a written complaint, the complainant is invited to the Commission, where practicable, to substantiate their allegations or is requested to substantiate the same in writing, where they cannot come to the Commission.

Where required, the complainant will be given *45 days* within which to bring his or her witnesses to the Commission and/or to provide addresses and telephone numbers of

witnesses to the violation. Thereafter the complaint is handled in the same way as all other complaints

Where it is a matter outside of the Commission's jurisdiction, a referral letter or a notice of inability to proceed should be sent to the complainant *within 14 days*. A record of this letter must be kept on the general file of such letters.

c) Complaints received by telephone

Where a person makes a call to any office of the Commission with a complaint, he or she should be asked for his or her area of residence or where the violation occurred, whichever they prefer, and should be given the address of the appropriate Regional Office to present their complaint.

When in doubt, a complaint by telephone should always be referred to the Director to determine the most appropriate course of action in the particular matter.

Where a person calls any of the Regional Offices of the Commission with a complaint and the complainant resides in the area for which that office is responsible, the caller should be advised to come to the office and register his or her complaint in person.

If the complainant is comfortable lodging their complaint on telephone, the receiving Officer should listen to the entire story first before deciding any course of action. Once the Receiving Officer decides that it is a matter clearly within the Commission's mandate, then the complaint should be properly recorded on the complaint form and a complaint number allocated to it. The rest of the procedure is the same as in other complaints.

The caller should be guided as to what information is required. He or she should also be informed that they would need to appear in person to sign the complaint form where practicable.

Where the complaint is one that the Commission cannot entertain, the complainant should be properly advised as to how to deal with it and or referred appropriately verbally. Thereafter, their proper address should be taken and either a referral letter or a 'notice of inability to proceed' should be sent to them *within 14 days*. A record of this letter must be kept on the general file of such letters.

4.3. Assessing Complaints

After listening to the allegations made by the complainant, the receiving officer will make a preliminary assessment on:

- (a) whether the Commission has jurisdiction in the matter; and

- (b) whether the complaint raises a human rights violation basing on the admissibility criteria.

This is a crucial stage in the investigations process and the receiving officer has a duty to ascertain facts and to diligently capture vital information.

4.3.1. Complaints deemed inadmissible

Complaints should only be deemed inadmissible based on the admissibility criteria as provided in the preceding chapter. For every complaint not received, the receiving officer must support his or her decision with good reasons founded in law or policy and approved by the RHRO.

4.3.1.1. The duty to provide advice, legal or otherwise

The Uganda Human Rights Commission is considered and referred to by many other institutions as a Legal Aid service provider. By virtue of the work done through the complaints handling function, this is an appropriate reference.

An officer must exercise all the due diligence in advising the client on the best course of action in matters that the Commission will not entertain. Consultation is mandatory in this process. The receiving officer has at a minimum, a duty to provide the best available advice, or appropriately refer the complainant elsewhere if a complaint is deemed inadmissible. Complainants should at no time be turned away without their complaints being heard or listened to.

4.3.1.2. Advice or Referral Procedure

Where the preliminary assessment determines that the complaint does not raise a human rights violation and/or is not within the Commission's jurisdiction, the receiving officer must:-

- a. Advise the complainant of alternative legal or other practical remedies.
- b. Issue a 'notice of inability to proceed' containing a detailed explanation why the complaint is inadmissible and advice to the complainant as to their best alternative. A complainant should also be advised of their right to request for a review to the Director *within 30 days*.
- c. Issue an appeal form to the complainant, to allow them exercise their right to request for a review.
- d. Photocopy the documents issued to the complainant and put them on the office general file.

Please note that all letters sent out from a Regional Office must be signed by the Regional Human Rights Officer (RHRO) or a person delegated by the RHRO. This will help in transparency, accountability, and enabling the RHRO to take responsibility for all communications going out. It will also enable the appeal process to the Director to be kicked in since the lower decision will be from RHRO.

4.3.2. Complaints Deemed Admissible

4.3.2.1. Registration of complaints

Where the complaint raises a human rights violation on the face of it, and the Receiving Officer is satisfied that the Commission has jurisdiction over it, the Receiving Officer should record the complaint on the Commission's complaint form and open a file for the complainant.

4.3.2.2. Essential issues to note when registering a Complaint

1. Language in which a complaint may be registered

The complainant may submit his complaint in any Ugandan language but the complaint must be recorded in English on the Commission's complaint form.

2. Recording accurate details

It is the duty of the Receiving Officer to ensure that the correct address and telephone number of the complainant, witnesses and respondents are properly recorded.

The receiving officer should specially remember to record the complainant's permanent address (*see definition section for meaning of permanent address*). This helps to trace complainants who keep changing addresses since place of birth does not change.

3. Complainant residing in a different region from where the violation occurred.

Where the violation occurred in a different area from where the complainant resides, the complainant is at liberty to lodge the complaint at the nearest regional office. This is to give effect the Commission's commitment of bringing services nearer to communities. However, where the complainant's witnesses do not bode in the region where the complaint was lodged, the regional office where the violation occurred shall interview the complainant's witnesses and forward their statements to the regional office where the violation occurred. The regional office where the complaint was recorded shall retain conduct of the complaint.

4. Advising complainants on important documents

The receiving officer shall advise the complainant of what documents the Commission will require to investigate the complaint. All relevant supporting documents that substantiate the claim maybe submitted where possible. Where this is impossible or

impracticable, they may be provided at a later stage, but before an investigation is concluded.

5. Photocopied documents

Where the complainant intends to rely on photocopied documents as opposed to original documents, they should be advised that the Commission will only accept photocopied documents that have been certified.

6. Handling documents provided by complainants

Only photocopies of original documents provided by complainants should be retained by the Commission. The original documents must remain with the complainant.

7. Witnesses required

The complainant must be advised to either bring their witnesses to be interviewed by the Receiving Officer *within 45 days* and/or provide addresses, telephone numbers of other contacts of their witnesses *within 45 days*, if not provided at the time of receipt of the complaint.

As many witnesses as possible may be recorded on the complaint form. Nonetheless, a maximum of two witnesses are required to prove a particular violation or event in a violation process.

It is important to note that failure of the complainant to have witnesses cannot bar a complaint from progressing.

8. Confirming contents of the complaint and signing the complaint

The complaint should be read back to the complainant after it has been recorded and the complainant should be asked to sign the complaint form to verify its contents.

9. Documents to be given to the Complainant

The complainant shall be given:

- (a) a complainant's card, which the Complainant must have whenever he or she visits the Commission;
- (b) a copy of the signed complaint form; and
- (c) the Commission information flyer. The Commission flyer should be issued to all complainants regardless of whether their complaint will progress further or not.

10. Dealing with complaints where the victim is deceased

Where the victim in the complaint is deceased, the complainant should be advised to obtain Letters of Administration or Grant of Probate. However, the fact that the complainant has not got Letters of Administration or Grant of probate, or a death certificate shall not bar the complaint from progressing. These documents help in

determining the rightful representatives of the estate of the deceased, but are not sufficient in determining the rightful beneficiaries of a Tribunal award.

11. Obtaining identification or introductory letters from Local Councils (LCs)

Complainants should not be asked to produce letters from their LCs for identification and details of address. This means they must look for money to get this introduction letter.

12. Complainants monitoring progress of their complaints

Complainants should not be asked to return to the Commission to monitor progress of their complaints. Each time a staff member asks the complainant to return, transport refund and accommodation may have to be provided. The RHRO should consult the witness refund policy for guidance in instances where a complainant returns to monitor the progress of his or her complaint and requests for fares.

It is hoped that the information flyers which provide an estimated period in which the Commission hopes to deal with complaints will reduce the number of complainants frequently returning to the Commissions office to monitor the progress of their complaint.

4.3.3. Recording findings of the preliminary assessment

After recording the complaint and opening a file, the receiving officer will write a black minute of his or her assessment to the RHRO which must be based on whether she or he believes that the complaint should be investigated further or not.

4.3.4. Allocation of complaints

Following the end of the receiving process, the receiving officer will forward the complaint to the RHRO on the day that the complaint is received.

The RHRO will assess the complaint and where he or she believes that the allegations should be investigated, he or she will allocate the file to an investigations officer.

4.3.5. Difference of opinion on a preliminary assessment

Where there is a difference of opinion on the preliminary assessment between the RHRO and the receiving officer, the RHRO's opinion should prevail with good documented reasons.

Where the prevailing opinion by the RHRO is for the Commission not to investigate the allegations, the RHRO will inform the complainant of the decision not investigate the complaint and advise the complainant of his or her right to appeal to the Director.

Where the opinion of the RHRO is to substitute the rights or violations identified by the receiving officer, he or she shall request the receiving officer to obtain another statement from the complainant or take any other action on the complaint. The receiving officer should carry out the task as requested.

5. Investigating Human Rights Complaints

This chapter deals with the next stage after a complaint file has been opened by the receiving officer and allocated by the RHRO. It provides a format or guide through which investigations of complaints may be managed and is intended to provide a timeline for this process.

5.1. Commencing investigations

Investigations of complaints begin at receiving the complaint and the field investigations are just a part of the whole process.

When a file is allocated to a particular investigations officer, the officer must send out an Allegations Letter to the respondent *within 7 days* of being allocated the file. A standard form letter is available in the first schedule to this Manual (*Template 3*).

All allegations letters must be signed by the RHRO or a person delegated in his or her absence to sign the same. This ensures taking responsibility at the highest level of the regional office.

The respondent should be asked to reply *within 21 days* on receipt of the letter. It is hoped that all letters will be delivered in person as much as is practicable, with a return copy to confirm the date of receipt upon which the number of days for a response begin running. The allegations letter may be accompanied by a copy of the signed complainant's complaint form.

Under no circumstances should the complainant be given the Allegations Letter to serve on the respondent.

Where no reply is received from the respondent following the Allegations Letter and the 21 days have elapsed, the handling officer shall send out a reminder allowing for a *further 7 days*.

Where a reply is received from the respondent with an explanation that refutes the allegations made by the complainant, and the RHRO is persuaded that the complaint is not worth pursuing any further, or for any other reason, the RHRO may close the file and issue the complainant with the 'inability to proceed' notice and advise them on their right to appeal for review of the decision to the Director.

In the case of the complainant, the investigations officer must make two (2) attempts, by either telephone or letter, to contact the complainant and remind him or her of the 45 days in which he or she is required to bring his or her witnesses to the Commission to record their statements.

The RHRO must ensure that where witnesses have attended the Commission to provide evidence, reasonable travel and accommodation expenses, as appropriate, shall be provided according to the Commission's Witness Refund Policy. This is because the majority of the Commission clientele are extremely poor and to require them to facilitate their witnesses is to further impoverish them.

It must be noted that it is cheaper to facilitate witnesses to the Commission than to send out officers to collect the testimonies of the witnesses. Therefore as much as practicable, encourage the complainants to bring their witnesses and let them know that their expenses would be reimbursed. Each regional office should budget for these refunds, which could be added to those of witnesses coming to attend the Tribunal.

5.2. Field Investigations

Where the complainant has not brought his or her witnesses to the Commission to record their testimony after 45 days of receiving the complaint, the investigations officer should carry out a field investigation.

The purpose of the investigations trip should be to interview or speak to witnesses of the complainant, the respondent and collect any other necessary evidence and cross check information in order to ascertain, clarify or verify some facts. The investigations should also seek to identify victims of the violation(s).

5.2.1. Preparing for the investigations

The Investigations Officer should have an investigations plan that should be submitted to the RHRO together with the requisition for funds for any investigations trip.

Where the investigation officer believes that he or she will have to exercise any Article 53 powers, that is, to produce documents or records or question any one relevant to the

investigation, he or she should prepare for the same in consultation with the RHRO and Director.

The investigations plan should include:-

- i. The number of files that the investigations officer will carry on a particular trip;
- ii. What actions will be taken on each file and why. This includes looking at what facts need to be ascertained or verified and who shall do so and how it shall be done;
- iii. How much time is required on each file and account for the time;
- iv. Movement plan;
- v. Any other necessary information i.e. summonses to produce information etc.

Where possible and necessary, using the information on file, the investigations officer should contact witnesses, respondents, complainants and advise them of his or her impending visit giving them at least two weeks notice in advance.

5.2.2. Dealing with witnesses during the investigations

Investigation officers should always formally introduce themselves, show their Commission identification card and state the purpose of their visit to enlist cooperation from witnesses.

The investigations officer may interview as many witnesses as he or she wants but must enlist a maximum of two of the most credible witnesses to prove a particular violation or event in the process of a violation.

It is important for the investigations officer to achieve all tasks set out in the investigations plan on the first trip. It is only under exceptional and convincing circumstances that a second trip may be authorised by the RHRO.

5.2.3. Dealing with the respondents and their witnesses during the investigations

It is common for respondents to be uncooperative with the Commission in its investigations. Where the respondent and his or her witnesses are unlikely to be cooperative, the investigations officer in consultation with the RHRO may take a decision whether or not to inform the respondent of the investigations officer's impending visit.

The investigations officer should be prepared to exercise powers under Article 53 of the Constitution where he or she believes that the respondent or his witnesses are being uncooperative with the investigation. This should always be done in consultation with the RHRO and the Director.

Where the respondent has failed to respond to the allegations letter and the reminder, and appears uncooperative, the investigations officer should form an opinion and make the same a part of his or her observations in the report.

5.2.4. Important issues for the investigation officer to note

- (a) Show his or her identification.
- (b) Under no circumstances should the Investigations Officer assign duties to another person.
- (c) Always be professional and courteous.
- (d) Investigations officers and witnesses shall sign and date every page of the witness form or complaint form (as appropriate).
- (e) He or she shall identify victims in the complaint.

5.2.5. Second or Further Investigation Trip

Where the first investigation trip has failed to yield the required results according to the investigations plan, the investigations officer should write an investigations report and a second investigations plan explaining what was achieved in the first investigations plan and what was not achieved, why it was not achieved and how he or she proposes to achieve what is lacking during the second trip and submit this to the RHRO for approval.

The RHRO will assess the information provided and determine:-

- i. Whether or not the information received during the first investigation trip is sufficient;
- ii. Whether or not there is a need for a second investigation trip;
- iii. Whether or not the investigations officer used the Commission's funds and time appropriately.

The RHRO may then formulate a new plan for the second investigations or devise another way of sourcing the information required. Where the RHRO authorises a second investigations trip, he or she will document on file the reasons for doing so.

The RHRO must always ensure that every investigations trip provides value for money spent, and this assessment should form part of the appraisal considerations for the officer involved.

5.2.6. Concluding investigations

The investigations officer has *two (2) months* from the time of being allocated the file, in which to conclude the field investigations, all other factors remaining constant.

5.3. Writing an Investigation Report

Within one (1) month of concluding the field investigations, the investigating officer should write and complete the investigations report.

The investigations report should adopt the following format:-

- Background
- Objective
- Methodology
- Identification of beneficiaries and victims
- Findings
- Observation
- Opinion
- Recommendations

It is important for the investigations officer to bear in mind that his or her role is to investigate facts of the allegations and not to determine legal liability. The investigations report must deal exclusively with factual findings and not legal findings.

The investigations officer, based on his or her factual findings, may recommend that either the complaint be closed or proceeds further.

The investigations report should be submitted to the RHRO for endorsement.

The RHRO will review the investigations report and:

- (a) determine whether or not to endorse the recommendations of the investigations officer, or
- (b) recommend further investigations or different action. The RHRO will make the final decision on all investigations reports.

5.3.1. Recommendation not to proceed with the complaint

Where the recommendation is for the complaint not to proceed further, the RHRO will inform the complainant in writing; issue a notice of inability to proceed with the complaint and advise the complainant of their right to appeal for a review to the Director *within 30 days*. A copy of the 'notice of inability to proceed' must be attached to the file.

5.3.2. Recommendation for further action

Where the decision by the RHRO is to recommend further or alternative action, the file will be returned to the investigations officer who shall carry out the remedial actions *within 21 days*.

5.3.3. Recommendation to proceed with the complaint

Where the recommendation or decision is for the complaint to proceed further, the RHRO will forward the file to the legal officer for a legal opinion.

5.4. Writing a Legal Opinion

This process of writing a legal opinion is intended to analyse evidence and apply the evidence to the law. It is intended to be thorough and should involve a deep analysis of legal and factual issues with a view of reaching a legally reasoned conclusion. The legal officer should be guided by the admissibility criteria, among others.

The legal opinion must adopt the following format:

- (a) **Parties-** correct details of all parties to the complaint i.e. the names accurately spelt. Where a party is implicated in their vicarious role, this should be identified by naming the party in brackets.
- (b) **Complaints number-** correct file or complaint number must be recorded.
- (c) **Brief facts-** these should include details of what happened, where it happened, when it happened, by who and to whom. The victim and perpetrator should be clearly identified.
- (d) **Legal issues-** exhaustively detail and list all Articles including clauses in the Constitution and other international instruments ratified by Uganda that appear violated, properly citing the relevant Articles or sections.
- (e) **Law applicable-** list legislation, policy, case law, international instruments all opinions that may aid legal resolution of issues pertaining to the complaint.
- (f) **Summary of evidence-** list evidence and how that particular evidence is persuasive or helpful in forming a legal opinion.
- (g) **Identification of victims and/or beneficiaries-** this process is both legal and factual and is intended to identify recipients of the potential compensation award.
- (h) **Identification of Parties-** the legal opinion should address whether the parties mentioned are the proper parties. This should be followed by legal justification as to why the officer believes those to be the proper parties.

- (i) **Critical witnesses-** list witnesses that are critical to either substantiating or refuting allegations. A maximum of two witnesses are required and may be called before the tribunal to prove a particular violation.
- (j) **Discussion of issues-** this process includes applying the law to the facts and supporting one's findings. It is vital when writing legal opinions to consider the scope or limitations of those rights that are not absolute. This process may also include anticipating legally plausible hypothetical explanations or defences that may rebut the complaint i.e. should the respondent prove certain facts then the complainant will have no basis to claim the violation. In addition, the process identifies victims or potential recipients of compensation if awarded.
- (k) **Recommendations-** basing on reasons given when discussing the issues recommend what course of action should follow.

The legal officer will write the opinion *within one (1) month* of receiving the complaint from the RHRO and return the file to the RHRO.

The RHRO will review the legal opinion and:-

- (a) decide whether or not to endorse the recommendations of the legal officer, or
- (b) recommend further or different action.

The RHRO will make the final decision on all legal opinions.

5.4.1. Recommendation not to proceed with the complaint

Where the recommendation is for the complaint not to proceed further, the RHRO will inform the complainant in writing of the decision; issue a 'notice of inability to proceed' with the complaint and advise the complainant of their right to appeal for a review to the Director *within 30 days*.

5.4.2. Recommendation for further or alternative action

Where the recommendation by the RHRO is for further or alternative action, the file will be returned to the legal officer who shall carry out the remedial actions *within 21 days*.

5.4.3. Recommendation to proceed with the complaint

Where the recommendation is for the complaint to proceed further, the RHRO will forward the file to the Director.

5.5. Files Closed at Regional Offices

The RHRO may close a file at any stage in the process. Where the RHRO has taken the decision to close the file the complainant shall be served with the 'notice of inability to proceed', and the Level 1 Appeal form advising the complainant of the right to appeal to the Director.

The RHRO shall in the last week of every month forward a report on all files closed to the Director. The format for the monthly report on closed files shall indicate the following:

File number

Parties

Brief facts

Reasons for closure

Date when the complaint was lodged

Date of closure

Date sent to Director

It must be signed by the RHRO at all times

5.6. Dealing with files sent to the Director

The Director shall have the final authority on the conduct of complaints. The Director shall *within 30 days* of receiving the legal opinion from the RHRO:-

- a) make a final decision on whether the complaint should proceed as recommended by the RHRO, or
- b) substitute or add to the recommendations, or
- c) remit the file to the legal or investigations officer for further or alternative action through the RHRO.

5.6.1. Files to proceed to the Tribunal

Where the Director decides that the matter should proceed to the tribunal the Director shall: -

- a) *within one month* of receiving the file write to the relevant parties informing them of the action taken on the matter, i.e. either that it has been set down for a hearing or any other course that has been taken on the file.
- b) *every 4 months* (1st January - 30 April, 1st May - 31st August, and 1st September- 31st December) forward files for the Chairperson to allocate to Commissioners.

All files forwarded to the Director after the 15th day of the last month before allocation shall form part of the next allocation. The Director shall by the 20th day of the last month of allocation forward all complaints to be heard by the Tribunal to the Chairperson for allocation.

5.6.2. Files returned to the Regional Office by the Director

Where the Director remits the file to the RHRO for further or pending action, the Regional Office should address the concerns raised and return the file to the Director *within 30 days*.

5.7. Summary of Time Frames

- Allegations letter shall be sent out *within 7 days* of the Investigations Officer receiving the file from the RHRO.
- Field investigations may only commence *after 45 days* of receiving the complaint following the allegations letter and the reminder.
- Field investigations shall be concluded *within 2 months* of commencing the investigations.
- The investigations report must be written and forwarded to the RHRO *within 1 month* of concluding field investigations.
- The RHRO shall *within 7 days* of receiving the file make a decision on the conduct of the complaint after receiving the investigations report.
- The legal opinion shall be written and forwarded to the RHRO *within 1 month* of the Legal Officer receiving the file.
- The RHRO shall *within 7 days* of receiving the legal opinion make a decision on the conduct of the complaint.
- The process shall be concluded *within 8 months* of receiving the complaint. That is to say, that complaints originating from regional offices shall be received by the Director within 8 months of being received.
- The Director shall *within 1 month* of receiving files from the RHRO make a final decision on the conduct of the complaint.
- Where the Director remits the file to the RHRO for further or alternative consideration, such instructions shall be carried out *within 1 month* and the file returned to the Director.
- The Director shall have *1 month* to make a decision on the complaint.
- The maximum time a complaint should take from receiving a complaint to the Director making a decision on the same shall be *1 year* from receipt. The one-year period applies only to files returned to the region by the Director.
- The allocation of complaints to hearing Commissioners and counsel shall be effected by the Chairperson, working with the Registrar *within 1 month* of receiving files from the Director.
- It is anticipated that during the quarterly allocation of files, some files may take approximately 4 months to be allocated to a Commissioner. Allowing for this process the maximum a file may take from receipt of the complaint to being allocated to a Commissioner should be *16 months*.

6. Investigations initiated by the Commission

The Uganda Human Rights Commission is mandated under article 52(1)(a), *to investigate, at its own initiative or on a complaint made by any person or group of persons against the violation of any human right*. In exercising these powers, the Commission may at its discretion make inquiries to ascertain possible fundamental rights abuses or may receive anonymous complaints and decide to investigate, or may observe through any source, an issue, that, on the face of it, raises a violation of a fundamental right.

This chapter gives the procedure on Commission initiated investigations (*suo motu investigations*); it explains the concept of systemic investigations and defines the process on how to conduct such investigations.

6.1. *Suo Motu* Investigations

The decision for the Commission to initiate an investigation into any alleged violation of a fundamental right must be taken by the Director in consultation with the Chairperson or Secretary of the Commission or Commissioners or the RHRO. Any person may bring an issue to the attention of the Director that they believe requires a Commission initiated investigation. The Commission may also observe on its initiative an issue that requires an investigation.

6.1.1. Process of determining Commission-initiated investigations

All issues that appear to warrant a Commission-initiated investigation must be forwarded to the Director. The Director will assess the issue received or observed and take into consideration the following factors before recommending that the investigation proceeds: -

- a) Whether or not the public or a particular group will meaningfully gain from the investigation.
- b) Whether or not the complaint adversely affects the public or a particular group.
- c) Whether or not Commission resources will be justifiably spent on the investigation.

The Director shall present a brief to the Commission explaining why there is a need for such an investigation; the proposed strategy of the investigation; the expected duration of the investigation; and the impact of the investigations.

The Chairperson shall *within 30 days* of receiving Director's brief take a decision on whether the Commission would embark on the investigation.

Where any person including an employee of the Commission brings the complaint, the above process must be completed *within 60 days* and the person shall be advised of the Commission's decision on whether or not to investigate the complaint.

The Director shall be responsible for the management of such investigation.

6.2. Systemic Investigations

6.2.1. Concept and guidelines on Systemic Investigations

A systemic investigation is an in-depth examination with a far reaching or wide impact into emerging trends, patterns or practice as a result of legislation, policies or programs that are either non-existent or if existent, defective or unimplemented. The ingredients of systemic violations may include scope of the violation. It usually targets or affects a particular class or group of people, region of the country. It is usually institutionalised, recurrent, and the method of violation is always the same and for the same purported purpose or objective. The end result is the violation of human rights standards.

There are many seemingly institutionalised human rights violations in Uganda such as town planning that never takes care of persons with disability, persistence of torture despite the documentation, among others. In order to deal with structural violations, it is important to understand the usefulness of systemic investigations as they help to address the big picture which individual complaints handling does not.

The aim of a systemic investigation is to make public the findings and recommendations that require the Commission's intervention within a specified time. The recommendations may include: review of legislation and policy; and compensation among others.

6.2.3. The purpose of systemic investigations

1. To identify potential serial violations.
2. To investigate the underlying causes as well as impact, and document the findings.
3. Highlight the wrongs that are accepted as right or otherwise not acknowledged.
4. Raise awareness on what systemic violations are and how to deal with them.
5. Cause structural adjustments for the good of all.
6. Make recommendations on possible remedies in solving the systemic violations.

6.2.4. Methodology of identifying systemic violations

Systemic violations may be identified in the following ways:

- input from stake holders and members of the public.
- review of public information.

- violations that the Commission persistently receives.
- Research and field investigations

Note that a systemic investigation is a multi-track application in which few or all methods are employed in arriving at a solution to the problem.

The process of investigating systemic violations can be broken down into 4 steps involving investigative work, report preparation, follow-up and file closure. The steps in this process, as well as the time associated with the steps, will differ slightly for each investigation.

6.2.5. Methodology of investigating systemic violations

Part of the process prior to launching a systemic investigation, includes conducting an assessment of the issue of concern. This may include researching similar complaints, identifying relevant areas of investigation and estimating resource requirements. The investigations group also undertakes investigative planning, including:

1. Establishing an investigative strategy.
2. Preliminary research on all applicable rules, regulations and guidelines associated with the issue(s) being investigated.
3. Establishing a list of witnesses to interview.

Step 1- Investigative Work (six months on average)

Evidence gathering

During this step of the investigative process, a team of investigators may conduct visits and interviews with all identified stakeholders, in addition to collecting all relevant documentation for an in-depth examination of the issue under investigation.

Review and analysis of evidence

This process may involve reviewing and analysing all of the information that was gathered by the investigators. Some of the activities undertaken in this step include:

- Identifying issues of concern and deducing any legal interpretation.
- Verifying applicable policy standards.
- Conducting comparative research.
- Researching precedence violations.
- Establishing a list of findings and recommendations.
- Consolidating supporting evidence and verifiable facts.
- Deciding on the format of the product (letter or report).

Drafting of report or letter

This process may involve:

- Determining the requirement for external consultation.

- Identifying and consulting with stakeholders who need to review the final draft.
- Analysing comments from stakeholders and making factual changes to the final draft, as appropriate.
- Establishing a timeline for the implementation of the recommendations contained in the report or letter.

Step 2- Report Preparation and Submission to the Government or Relevant Authorities (Three Months)

After the investigative work is completed, the report or letter is formatted, translated and printed. Once the report or letter is finalised and translated, a copy is provided to the government or relevant authority, which is then allowed a specific time to review the report or letter before it can be made public.

Step 3 – Follow-Up Action

The investigations group conducts a follow up review to assess the status of the implementation of the recommendations contained in a report or letter six months after its public release. This follow-up review includes:

- Developing a matrix of recommendations or actions to be implemented and timelines for each recommendation.
- Obtaining and analysing documentation and information from the government regarding the status of implementation of each recommendation.
- Conducting follow up interviews and research.
- Making public any concerns, or potentially launching a new investigation, if not satisfied with the results of the follow up.

Step 4 – File Closure

Once the follow-up review is completed, the investigations group conducts a review of the file to gather lessons learned, prior to its closure. Depending on the issue, the investigations group may continue to monitor the file over time.

6.2.6. Identification of an area to be investigated

- The Director should initiate the process by calling for areas that should be investigated from all members and officers of the Commission. Those proposing them should justify the proposals, and once the Directorate has compiled the proposals, they should be ranked in order of frequency or urgency of the matter and a list of the top 5 tabled for discussion in the management committee with onward recommendation to the Commission for the final area to commit funds to.
- The frequency of such investigation could be once in two years, depending on how serious and far reaching the Commission wishes for its findings to be.

- In conducting a systemic investigation, the Commission can co-opt non-Commission staff with expertise in the area under investigation as part of the investigation team.
- It is important for the release of the findings to be timely in order to maintain momentum and ensure that there is impact of such investigation.

7. Mediation

Mediation is a process where two parties are helped by a third neutral person to find ways of resolving an issue at hand. The parties are expected to come up with their own solutions. The mediator is only expected to guide the process and provide advice, legal or otherwise, where necessary. The complaint is mostly effectively mediated if the respondent and complainant have mutually agreed to such mediation. The process is cheap, fast, non-adversarial, and allows the parties to decide for themselves how best to handle their own problem.

This chapter is intended to guide the process of mediation. It helps identify complaints that should be mediated and guide officers on how to resolve issues that may occur during the process.

7.1. Which complaints should be mediated?

The Commission has identified the following areas as appropriate for mediation: -

- Family matters.
- Employment or remuneration matters.
- Specific non-complex land matters.

The above list is neither exhaustive nor mandatory. It is for guidance purposes only and where in doubt the RHRO or Director should be consulted.

When should the Commission decide on mediation?

The following shall be indicators to aid the Commission in determining when complaints should be mediated: -

- Urgency of the matter - when delay in investigating and bringing the matter to the Tribunal will not be beneficial to the parties.
- Relationship - when preservation of the relationship of the parties is vital.
- Complexity of the matter - when the dispute can be easily resolved and the Commission has jurisdiction in the matter.

In all matters identified above, parties should be encouraged where appropriate to resolve the complaint through mediation.

At any period during the investigation and/or at the request of either party and with the consent of both parties, the investigation officer may decide to refer the complaint for mediation.

Parties should be encouraged to mediate where appropriate in order to settle the complaint cheaply, fast, and to avoid public resolution of the complaint.

7.2. The Mediation Process

- i). Where the complainant agrees to resolve the complaint through mediation, or where the receiving officer believes that the complaint is best resolved through mediation, he or she shall appropriately advise the RHRO who will allocate it for mediation. This may be done upon receiving a complaint where the urgency of the matter dictates.
- ii). The allocated officer should write to invite both parties including witnesses, where possible, to a mediation session at the Commission's office *within 14 days* of receiving the complaint. Depending on the urgency of the matter, this time could be shorter.
- iii). Reasonable travel expenses shall be met by the Commission for the complainant and witnesses, but this should be dependent on need.
- iv). The mediation process must be conducted with the primary objective of settling the complaint quickly, amicably, cheaply and privately.
- v). Parties may bring counsel to the mediation session; however, legal representatives must not interfere with the process and must be advised accordingly. They should not bring in technicalities of the law, and or stand in the way of an amicable settlement.
- vi). Issues agreed by parties should be noted and read back to both parties at the end of the session.
- vii). A Memorandum of Understanding (MoU) must be drafted by the mediator and signed by both parties on the same day at the end of the session. Parties must be advised of the legal nature of the documents they are signing and their legal obligations under the agreement.

- viii). The MoU should be converted into a consent judgment and signed and sealed by a Commissioner or the Registrar after the parties have signed it. This consent judgement should be finalized *within 14 days* of completion of the mediation. Please note that parties must always sign the MoU immediately after the mediation to avoid them changing their minds later.
- ix). The mediation process should be concluded *within 3 months* of receiving the complaint.
- x). Where the complainant has expressly sought a different remedy and the Commission has decided to resolve the complaint by mediation, the right of appeal exists.

7.3. Parties failing to abide by terms of the consent judgment

Where any party to the consent judgment fails to abide by its terms, the mediator may only make one attempt to encourage the parties to abide by the agreement before advising the aggrieved party on enforcement action.

Where the decision is taken to enforce the consent judgment, the mediator will recommend enforcement action to the RHRO who will refer the matter to the Registrar for execution of the consent judgment.

7.4. Enforcement Action

It is important to note from the outset that a notice to show cause before execution is mandatory.

The Commission has no mandate to execute and the law governing this area is to be found in rule 32 of the Commission Procedure Rules. The Commission, however, has a budget to assist complainants execute judgments, only with regard to the costs of the execution. The bailiff's fees must come from the execution itself, e.g. auction and the complainant must identify his or her own bailiffs for enforcement of the judgment.

The bailiffs must be given an authorisation letter by the Registrar to receive Commission funds to help the complainant. The Court bailiffs must submit a cost budget to the Registrar for the necessary funds.

7.5. Urgent cases and uncooperative parties

All urgent matters including maintenance matters where the regional office believes that the complaint should be mediated but efforts to mediate have been frustrated by either

party, the RHRO shall document on file attempts made by the regional office to mediate the complaint and recommend that the complaint proceeds to the Tribunal. The RHRO shall urgently bring this to the attention of Director.

The Director may, in agreement with the legal officer, refer the file to the Registrar for allocation by the Chairperson or offer an alternative approach to the mediation and refer the complaint back for investigation.

Where the Director has decided to forward the complaint for allocation, the Registrar shall immediately liaise with the Chairperson to allocate a Commissioner to hear the complaint urgently. The Registrar shall nominate counsel and ensure that the complaint is heard as soon as possible.

Where the Director remits the complaint to the RHRO for further or different consideration, the regional office must deal with the issues raised by the Director *within 1 month*.

This process, including pronouncement of the decision by the Tribunal, or resolution of the complaint must be completed *within 5 months* of receiving the complaint.

8. Counselling

Counselling is a process through which individuals may be helped to manage their lives or a particular situation better. Counselling may be complementary to any other services provided by the Commission including an on-going investigation or mediation.

This chapter assists officers of the Commission to identify complainants that may need counselling and how to assist them.

Identifying complainants that require counselling

- Tearfulness or crying while narrating their story.
- Finding it difficult to tell their story.
- Revealing that he or she experiences disturbed sleep.
- Expression of feelings of guilt.
- Expression of constant self-blaming.
- Expression of feelings of hopelessness and despair.
- Bearing several or mixed unanswered questions.
- Signs of difficulty in making decisions.
- Appearing heartbroken i.e. frustrated, disappointed with signs of withdrawal.
- Talking of loneliness or appearing lonely even when around other people.

Categories of complainants who may require counselling

- People from war torn areas or conflict areas.
- Victims of torture, cruel, inhuman and degrading treatment or punishment.
- The victims of violence of all sorts e.g. domestic violence.
- Bereaved people
- Deeply stressed people
- Persons suffering from anxiety
- Short-tempered persons
- Persons with a low mood
- Drug addicts
- The youth and vulnerable
- People with chronic illnesses

Reasons why one should be recommended for counselling

- The matter does not reveal any human rights violation and yet the complainant appears to need help
- The matter reveals a human rights violation but deserves counselling as an accompaniment
- To assist the complainant in making right choices.
- To help the complainant make an informed decision.
- To enable the complainant view the future positively.
- To help the complainant build his or her self esteem and confidence.
- To reassure and provide comfort to the complainant despite the hard situations.

At what stage is counselling relevant or necessary?

Counselling may come up in the middle of the story or session. This is especially when the complainant is getting nervous and emotional. Sometimes it is important that counselling comes at the end of the story i.e. when the facts and details of the story are clear.

Referring complainants who require counselling

Most complainants that use the services of the Commission are usually financially constrained and any referrals for counselling must be to centres or hospitals that provide free counselling services. Each regional office should identify free counselling services within their local areas. The list below identifies some centres for free counselling services: -

- All referral hospitals in Uganda
- Butabika hospital in Kampala
- Specialised Non-Governmental Organisations e.g. The Aids Support Organisation, Aids Information Centre etc.
- Hope After Rape in Kampala etc

9. Tribunal Process

One of the cardinal aims for the establishment of the Commission is to provide a fair and expeditious redress process for human rights and administrative justice complaints. Effective evaluation of claims of human rights violations requires that the Commission sits as a quasi-judicial tribunal, comprised of a single hearing Commissioner, assisted by legal counsel. Under Article 53 of the 1995 Constitution of the Republic of Uganda, the Commission has powers of a court in the performance of its functions of protecting and promoting human rights.

The Commission tribunal is much more informal than an ordinary court of law; however it must comply with the rules of natural justice and procedural fairness. The fundamental consideration is that a miscarriage of justice does not occur. This means that the tribunal hearing is a semi-formal process for obtaining relevant, necessary and appropriate information that will be useful to the Commission in resolving complaints before it.

This chapter explains the legal and procedural requirements that define the Commission's tribunal process. It defines the various roles of Commission personnel that are involved in the Tribunal process and prescribes stages in the process.

9.1. Pre-Tribunal Process

9.1.1. Allocation of files

- Once the Director makes the final recommendation for a file to be heard, the file is forwarded to the Registrar who prepares it for hearing by making a duplicate file. The Registrar compiles between 50-100 files before referring them with a memo to the Chairperson.
- The Chairperson works in close consultation with the Registrar during the allocation of files to the different Commissioners. The criteria for allocation are based among others on the complexity of issues involved, legal expertise, and current thematic areas that the Commissioner is dealing with.
- The Registrar after allocation of the files prepares memos to Commissioners and Commission Counsels on the allocation, and sends them files. This should be done *within two weeks* after the allocation.
- Once the above communication has been made and the files have been passed on to Counsel and to the hearing Commissioner, the Counsel liaises with the hearing Commissioner to fix the complaint for hearing.
- A list of fixed cases showing the tentative dates for the hearing is then sent to the Clerk and Registrar from all regions, to compile a cause list for the particular month.

9.1.2. Cause Listing

The cause list shows the date, time, place and before whom a matter is to be heard. The cause list is compiled and signed by the Registrar. The Tribunal Clerk circulates the cause list to all Commissioners, RHRO's, the Attorney General and all staff in the Directorate *within two weeks* before the hearing begins.

9.1.3. Preparation and Issuing of Summonses

- The Legal Counsel should prepare the summonses in good time and pass them on to the Registrar for signature and sealing.
- The Process Server should draw the service budget and raise a requisition for funds for process serving. He or she can only do this if he or she has accounted for all the funds previously given to him or her. The budget is then verified and passed by the Registrar.
- When the money is released the Process Server serves the summons and when he or she returns, he or she must draw an affidavit of service and swear it before a Magistrate's Court or a Commissioner for oaths. This affidavit is then filed and the hearing is ready to begin.
- The summons should be served *at least 14 days* before the hearing date. The process server must write a report, file a return of service, swear an affidavit of service and file accountability for the funds disbursed to him. The Registrar verifies the accountability before it is presented to the concerned Accountant.
- Counsel in charge of the session should draw the witness schedule along with a budget, for purposes of requisitioning for witness refunds. The RHRO should ensure that the budget for facilitation for the Commissioner and team to travel for the circuit session is drawn and funds requisitioned in good time.

9.1.4. Circuit sessions

The Commission holds circuit-hearing sessions. This means that once matters are allocated to a hearing Commissioner who fixes them for hearing, they should all be disposed of in the same hearing session, and decision writing should follow after that. This also means that fixing of cases for hearing will involve the Attorney General's office to ensure their availability during the session. With this, the Registrar should hold a meeting with the Director of Civil Litigation to agree on when the sessions for the particular year will take place.

After allocations, all hearing Commissioners and Commission Counsel should be communicated to by the Registrar, in writing, as to which cases have been allocated to whom. When circuits take off, a schedule of when these sessions will take place should be attached to this communication.

9.1.5. Hearing Commissioner's Role in Pre-Trial Preparations

- The hearing Commissioner should find a convenient date on which to fix the matter. Consideration should be made of which date allows reasonable time for all the other players to do their part.
- Each hearing Commissioner with the help of his or her personal secretary should create a database of files allocated to them indicating dates allocated, dates files were received in the Commission, number of times the matter has come up for hearing, number of adjournments, how long the Commissioner intends to spend on each file, etc. This helps to organise the hearing Commissioner and to give each file a life span so that files do not over stay at part heard stage.
- Commission Counsel should agree with the Commissioner on an appropriate date, and draw the necessary summonses in good time, identify the parties and witnesses correctly, and provide the witness details to the Registrar. Sometimes it is necessary to contact the concerned State Attorney to find out if they will be available or if they have the required funds to attend.
- Consistency should also be seen in the number of times and reasons for which adjournments should be allowed. In order to allow for an expeditious complaint resolution process, a hearing may not be adjourned more than 3 (three) times.
- Where a complaint at the tribunal hearing stage has been adjourned for the fourth time, the Registrar shall inform the Chairperson who will take up the matter with the concerned Commissioner.

9.1.6. Preparing for Hearing by Commission Counsel

Counsel for the Commission should ensure that the complaint file is well arranged and that it contains the following relevant documents:

- i). Statement of complaint.
- ii). Allegations letter.
- iii). Response.
- iv). Notification of hearing date.
- v). Proof of service of notification.
- vi). Issuance of witness summons.
- vii). Proof of service of witness summons.

- viii). Relevant documents or annexure to the complaint.
- ix). Relevant materials and correspondences.

Counsel should summon the relevant witnesses well in advance to ensure their attendance of the tribunal.

Expert reports e.g. medical reports, handwriting expert reports, ballistic expert reports etc. should be secured well in advance and authors summoned to attend Court and present the same.

Where the witnesses are unable to attend, affidavit evidence may be availed. For instance, where witnesses are unable to appear due to illness or are out of the country, the Commission can arrange to have their evidence availed.

Counsel should bring along with him or her, to the hearing room a copy of each of the following documents, which are relevant to the proceedings:

- Complaint File
- The Constitution of Uganda
- The Uganda Human Rights Commission Act
- The Uganda Human Rights Commission (Procedure) Rules
- Civil Procedure and Miscellaneous Applications Act
- The Evidence Act
- The Civil Procedure Act
- The Civil Procedure Rules
- A Bible, or a Koran or other holy book

Commission Counsel should arrive early before the tribunal starts to check that the Hearing Room is arranged properly and the witnesses are properly seated. The seating arrangements should be such that hearing Commissioner can see the witness directly and observe his or her demeanour during the testimony, and that the tribunal can hear everything the witness says.

9.2. During Tribunal Hearings

9.2.1. Tribunal Hearings

- All Commission hearings are circuit hearings with each hearing conducted by one Commissioner.
- The procedures used at the hearing are less formal compared with those at the courts. At the hearing, the normal rules of evidence applicable at the courts are relaxed in the interest of efficiency and greater appreciation of the proceedings by the parties. This is done without sacrificing the internationally recognised cardinal

principles of natural justice and procedural fairness, which guide the conduct of administrative tribunals.

- Parties may be represented at the hearing by legal counsel of their choice. The Commission counsel should endeavour to assist parties who appear without counsel.
- The parties are given the opportunity to present evidence to the tribunal through examination-in-chief, cross-examination, and, where necessary, re-examination and closing submissions by legal counsel. The parties may also call witnesses to testify on oath or affirmation.
- The maximum time that the file should spend at the tribunal including, making a decision, *is one year* from the time of allocation to the hearing Commissioner. Any file that has been at the tribunal in excess of a year forms part of the tribunal backlog.

9.2.2. Preliminary Matters

Commission Counsel usually makes a brief opening statement summarising what the case is about. The hearing usually opens with preliminary motions such as arguments about jurisdiction, complaints about the form or content of an application or interrogatories and other such technicalities. After this initial stage, which may occupy anywhere from a few hours to a few days, the real hearing begins.

On the date of hearing the complainant is given the opportunity to testify first. In most cases the complainant testifies first and then his or her witnesses follow. After all the complainant's witnesses have testified, the complainant closes his or her case. Thereafter, the respondent is also called upon to testify.

9.2.3. Adducing Evidence

Evidence is usually introduced by means of witnesses. If a party wishes to introduce a chart or report, usually he or she will be expected to call as a witness the person who prepared the chart or report. After testifying, that person should be available for cross-examination. Documentary evidence such as charts, tables or reports are given exhibit numbers in sequence of introduction for convenience of reference.

9.2.4. Oath

Before giving evidence each witness must swear an oath on a holy book. Where one objects to taking an oath, one must affirm that he or she will tell the truth or, if he or she states that some other form of religious oath would be binding on his or her conscience then that form of oath may be used.

9.2.5. Interpreter

The degree of competence and accuracy with which an interpreter or translator performs her duties at the hearing is crucial to the success of the proceedings. One way of dealing with the challenge of interpreter or translator bias, albeit not foolproof, is to have such persons swear an oath or give an affirmation that is binding on their conscience.

9.2.6. Burden of Proof

Generally the burden of proof of any fact lies upon the party who asserts the truth of the issue in dispute (*cf. Section 101(2) of the Evidence Act, Cap. 6 Laws of Uganda, 2000*).

If the complainant establishes a *prima facie* case, the onus of the evidentiary burden shifts to the respondent to offer a legitimate reason for the conduct and deny that the violation occurred, or if it did, to explain why the conduct did not amount to a violation. It is then open to the complainant to show that the respondent's explanation is not convincing and, therefore, should be rejected by the tribunal.

9.2.7. Examination of Witnesses

There are 3 phases to the examination of witnesses: Examination-in-chief, Cross-examination and Re-examination (*cf. Rule 21 of the Commission Procedure Rules*).

a) Examination -in- Chief

Examination-in-chief consists of the affirmative portion of the witnesses' evidence. A witness (or in some tribunals a panel of witnesses) will appear in the witness box or at a witness table, swear the oath or make an affirmation, and then will present his or her evidence. Usually this is in the form of a question and answer dialogue with the Counsel, who will not be permitted to ask "leading" questions, that is, questions which are so worded as to suggest the answer.

b) Cross-Examination

Following examination-in-chief, there is cross-examination. This is the examination or interrogation of a witness by the opposite party or his or her Counsel. The object of cross-examination is to elicit information concerning facts in issue or relevant to the issue that are favourable to one's side and to cast doubt upon the accuracy of evidence of the other party. To achieve this, the witness may be asked questions to test the witness' means of knowledge, opportunities of observation, reasons for belief, powers of memory, perception and judgment and general reliability. Leading questions are allowed.

After cross-examination, there may be questions put to the witness by the hearing Commissioner. This is not, strictly speaking, cross-examination, in that the

Commissioner is neutral in the matter and cannot be seen as adverse in interest. The Commissioner has a duty to clarify the evidence to help it to arrive at an informed decision.

c) Re-examination

Re-examination is where the witness is re-examined by the party calling him in order to give him an opportunity of explaining or contradicting any false impression produced by cross-examination. It is confined to matters arising out of cross-examination. Leading questions are not allowed.

After re-examination, if any, the witness will usually be dismissed. The applicant will then call his second witness who will be examined-in-chief, cross-examined and re-examined.

After the complainant has produced all his witnesses and they have all been examined and cross-examined, the respondent will also produce all his or her witnesses and they shall also be subjected to the same series of examinations.

d) Rebuttal Evidence

After the respondent has presented his or her case, the complainant may be given an opportunity to present evidence in rebuttal. He or she may re-call any of his or her witnesses or may call new witnesses to rebut any points of evidence raised in the respondent's case which were not dealt with during the presentation of his or her affirmative evidence. New issues, however, may not be raised during rebuttal evidence, as the sole purpose is to give the complainant as fair a chance to rebut the respondent's case, as they had to rebut his. Of course, any witnesses called by the complainant to give rebuttal evidence will follow the normal procedure of examination. The calling of rebuttal evidence is comparatively rare.

9.2.8. Final Submissions

After the respondent's evidence or after rebuttal evidence, if any, the parties present their submissions. These are the final statements made by the parties at the end of examination of witnesses. They contain a short statement of facts, points of evidence and law and are intended to persuade the Commissioner to believe the version of one of the parties. In some cases, submissions are oral and in others they are written.

The complainant usually submits first. Typically he or she will sum up all the evidence they have presented and attempt to show that the evidence presented by the respondent was not convincing or was inconsequential. Then he or she will present any statements or opinions of a non-evidentiary nature including any arguments as to why the tribunal should pay special attention to the evidence presented by his or her witnesses. This will

be followed by the argument of the respondent to rebut the points raised by the complainant and then the complainant will be given a final opportunity to reply to the respondent. This final reply is limited to points raised by the respondent in arguments which were not dealt with by the complainant in his or her initial argument.

The complainant is usually given the final word in most of the procedures outlined above because he or she has the burden of proof.

9.2.9. Important Points to Note

1. The Commissioner should take notes of the proceedings in a manner which is sensible to him or her when writing decisions or for reference. Usually it is the responses and not the questions that are recorded. Commission Counsel may also take some notes of the proceedings for his or her reference. The Commissioner may have a witness repeat an answer if necessary. An accurate record of proceedings will be very vital in appeal cases.
2. Exhibits should be marked in the order in which they are presented and a list of the exhibits as well as the original of each exhibit should be kept.
3. Where the opposing counsel objects to the acceptance of a tendered document or object as an exhibit, the Commission may receive and mark it as a “Reject” and place it on the file as such. This is necessary because a High Court may need to examine the document or object in the event of an Appeal.
4. Where appropriate, the Commissioner may consult with Counsel (including a party who is representing himself or herself) in private – away from the public and the press – in order to try to calm people down or assist in working out a way in which to proceed with the hearing expeditiously.
5. The respondent should not be allowed to defend one ground of complaint by raising another that has not been alleged.
6. In all technical matters not provided for under the Commission Act and Rules, the Civil Procedure Act and the Civil Procedure Rules apply (cf. Section 32 of the Act). Some of these include extraction of orders and certificates of orders, taxation of costs, and execution.

9.3. Commission Decisions

9.3.1. Decisions/Judgments/Rulings

After the case has been heard, the tribunal pronounces judgment either at once or at some future date. A judgment contains a concise statement of the case, the points for determination, the decision on these points and the reasons for such decision. A ruling is a decision handed down following an application, for example, where a party has brought an application for a temporary injunction.

In circuit hearings, or in some rare instances or in emergencies, a decision may be given “off the bench” on the very same day that the hearing concludes or within a day or two after. More commonly, the decision may be reserved for several weeks or even months.

In urgent situations the decision will often be announced almost immediately with no reasons being given. Then, within a few days or a few weeks, formal reasons for decision will often be written and made public.

9.3.2. Balance of Probabilities

Under Rule 23 (1) of the Rules, all Commission decisions are to be based on a balance of probabilities. The term *balance of probabilities* is derived from concept of standard of proof. The *standard of proof* is the degree to which a person having the burden of proof must satisfy the tribunal in civil matters, that is, on the balance of probabilities. It should be noted that there cannot be certainty of say 100%. It suffices that the Commission is satisfied on the balance of probabilities.

9.3.3. Remedies

According to Article 53 (2) of the Constitution, the Commission may, if satisfied that there has been an infringement of a human right or freedom, order:

- (a) the release of a detained or restricted person;
- (b) payment of compensation or
- (c) any other legal remedy or redress.

With regards to payment of compensation, awards made should be based on previous awards so that even if there are no agreed positions generally, there can be perceived consistency within the Commission Tribunal.

Article 53 (2) (c) of the Constitution 1995 is couched in such broad terms as to give the Commission wide latitude to do what the High Court is enjoined to do. The Commission is empowered to award any other remedy. Such remedies may include:

- An injunction to bar the commission of a wrong.
- Restitution - ordering the return of an article to its rightful owner.
- Declaration - making a formal statement intended to create, preserve, assert, or testify to or the decision on a question of law or rights. This is a discretionary remedy.

- Payment of Interest at designated rates depending on whether the claim is commercial in nature or non- commercial.
- Payment of costs – usually taxable by the Registrar.
- Directing another body to act.
- Recommending another disciplinary body to conduct disciplinary proceedings.
- Vacant possession; eviction etc.

9.3.4. Pronouncement and Publication of Tribunal Decisions

- The hearing Commissioner shall draft the decision and may circulate it to the Chairperson, the Registrar, the Director, and invite comments on the draft decision 3 weeks before pronouncement. Where this is done, the Director and Chairperson should *within 7 days* make their observation to the Commissioner.
- The Systems Administration Unit must ensure that tribunal decisions approved by the Director are posted on the Commission’s official website.
- A Tribunal decision shall not be made public or distributed or shared internally until the respective parties have received it.

9.3.5. Appellate Process

Any party that is dissatisfied with the judgment or ruling of the tribunal is at liberty to appeal against such judgment or ruling to the High Court. An appeal is any proceeding taken to rectify an erroneous decision of a court by bringing it before a higher court. For appeals from the Commission to the High Court, see *The Constitution (Uganda Human Rights Commission) (Practice) Directions, Statutory Instrument – Const. 9 enacted under Article 133(1) (b) of the Constitution*.

Rule 2 of these Rules provides that the Civil Procedure Rules applicable to the High Court immediately before coming into force of the Constitution, relating to appeals to the High Court are to apply to appeals from the Uganda Human Rights Commission with such modifications as may be necessary.

9.4. Post-Tribunal Process

At the end of the hearing session, Commission Counsel should send a tribunal report to the Registrar and the Director, for information and verification where appropriate

9.4.1. Decrees and Orders

Once a complaint is decided, the judgment is signed by the Hearing Commissioner and sealed. Where the decision was on an interim matter, then it is referred to as a Ruling.

Both judgment and ruling should contain the number of the complaint, names and description of parties and particulars of the claim and, where applicable, should state clearly the remedy granted and against whom it is granted.

A Judgment contains what is referred to as a Decree, while a Ruling contains what is referred to as an Order. The Registrar ensures that the Decree or Order, and a Certificate of Orders is extracted and drawn for service on all parties.

9.4.2. Bill of Costs

A successful party (also known as Judgment Creditor or Decree holder) is awarded costs. Costs are the expenses incurred by the litigant such as lawyers' fees, accommodation, meals, transport expenses, photocopying expenses etc. The successful party or his advocate prepares and files a document called a Bill of Costs.

After the Bill of Costs has been filed, a taxation hearing notice is issued inviting parties to attend the taxation. Taxation is the process of examining and, if necessary, reducing the successful party's Bill of Costs. At the taxation, the Counsel for the successful party defends the bill and Counsel for the losing party (also known as Judgment Debtor) opposes the bill before the Registrar. The Registrar later makes a ruling and subsequently issues a Certificate of Taxation (*cf. Rule 29(2) of the Rules*).

The Judgment Creditor or his or her counsel serves copies of the Order and Certificate of Taxation upon the Judgment Debtor requiring him or her to comply within a stipulated period.

9.4.3. Records

A record of matters heard before the Tribunal, awards made, complaints dismissed, hearing Commissioner, etc is prepared by the Clerk. The Registrar should have a record of files pending allocation, partly heard cases, decided cases, awards made, and Commission cases appealed against. A copy of this record should also be sent to the Director at the end of each month.

10. Execution of Judgements

Execution is the act of completing or carrying into effect of a judgment. It is the process of compelling the judgment debtor to comply with the decree. Execution can be by way of attachment and sale of property of the judgment debtor, arrest and detention of a judgment debtor in a civil prison, etc. An officer of court called a bailiff does execution. This chapter offer guidance on the execution of Commission judgments where the debtor fails to honour the judgment.

10.1. The Process of Execution of Judgments

The Commission Act and Rules do not provide for execution procedures once the Tribunal has decided on a particular complaint. The Commission has no mandate to execute. Individual complainants are expected to either hire a lawyer or court bailiffs for execution in their particular cases. The Commission however, is cognisant of the fact that about 90% of our clientele are either indigents and/or illiterate. During budgeting therefore, a budget line is included to help in about four executions a year per regional office. This helps to facilitate victims who wish to execute the Commission decisions.

Please note that because more than 90% of our complaints are against the Attorney General, it is almost impossible for the Commission to facilitate those wishing to execute against the Attorney General. Executions that the Commission facilitates are those against individuals, local governments as well as other non-government agencies.

10.1.1. Procedure for engaging a bailiff

1. The complainant must identify their own court bailiff that they introduce to the Commission for that purpose. Each bailiff is engaged on a case-by-case basis.
2. An engagement letter or agreement is signed between the Commission Secretary and the particular bailiff company.
3. The bailiff then submits a cost budget for the particular complaint for purposes of execution. This budget should not exceed the threshold for a micro-procurement otherwise execution would become impossible.
4. Under the law, the bailiff must charge their fees from the execution and therefore the Commission has no duty to pay the bailiff's fees. The Commission only covers the cost of the execution, which would otherwise have been covered by the indigent complainant before execution can issue.
5. The budget is then submitted through the normal regional procedures for requisitioning for money but is paid to the bailiff directly. It is expected that the bailiff must recover the cost after execution and may return it to the Commission.
6. The bailiff must be given an instruction letter from the Registrar to be able to receive Commission funds to execute for the complainant.

10.1.2. Procedure for execution

1. The Registrar issues a notice to show cause why execution should not issue against the respondent. It is unlawful to grant a warrant of attachment or execution before this process.
2. If the respondent appears on the day set in the notice, they must explain why they have not made good to-date and if they have no good reason they must either

leave a payment schedule behind which must be strictly followed or issue the warrant once convinced that they are not meeting their obligation.

3. Every communication during execution must be properly documented to avoid future problems and misunderstandings
4. If the court bailiff departs from instructions issued by the Registrar, they should be communicated to in writing, first warning them and subsequently cancelling the authority granted to them if they do not heed the warning before much damage is done.
5. A cost inventory must be made by the bailiff at the end of the execution for accountability purposes.

10.2. Stay of Execution

Where a judgment debtor has justifiable reasons, he or she may apply to Court to secure a Court Order staying or suspending the operation of the decree or order pending further orders of Court. (*Cf. Section 98 of the Civil Procedure Act and Order 22 rule 26 of the Civil Procedure Rules and Order 43 rule 4 of the Civil Procedure Rules*).

10.3. Objector Proceedings

Where a person who is not a party to the suit claims that his or her property has been wrongfully attached he or she may challenge the attachment by applying for the release of his or her property. Such proceedings are referred to as objector proceedings. (*Cf. Order 22 Rules 55, 56-60 of the Civil Procedure Rules*).

11. Process Serving

Process serving is vital in that the success and quick resolution of complaints at the tribunal stage may depend on the effectiveness of the process serving. Ineffective process serving has often resulted in failure of hearings to take off, failure of witnesses to turn up, incessant adjournments and this has greatly impacted on the quick disposal of cases at the tribunal stage.

This chapter is aimed at providing guidelines, rules and regulations governing the effective service of summonses, hearing notices and any other documents that are essential in the entire complaints handling process.

11.1. Time within which to serve

- According to the Civil Procedure Rules, Service of summons should be effected *within 21 days* from the date of issue of Summons (*Order 5 Rule 1(2) of the Civil Procedure Rules*).
- The process serving must be done *before 6.00p.m.* except on Saturday when it shall be before 1.00p.m. If served after 1.00p.m. on Saturday it shall be taken to have been served on Monday (*see Order 47 Rule 9 of the Civil Procedure Rules*).
- The Process Server must ensure that summonses are served at least 14 working days before the hearing date to avoid adjournments or earlier where possible.

11.2. Mode of Service

1. Summonses shall, where practicable, be served personally on the person summoned (*See Rule 15(1) of the Commission Rules*).
2. Calling a person on telephone does not amount to proper service and it must never be done because the law does not provide for it.
3. Where a party's advocate is served, service shall be deemed to be as effectual as if it has been served on the actual party in person (*see Rule 15(5) of the Commission Rules*).
4. The process server must carry two copies of the summonses; one should be signed upon and returned (*Rule 15 (2) of the Commission Rules*).
5. Where it is not practicable to serve the actual person, the following could be done:
 - a) Leave the summons with an adult person residing with the person or some adult member of the family or his or her employer.
 - b) Affix a copy at a clear, open and obvious place in the homestead where the person summoned resides or his or her place of work. E.g. at the gate, front door of the house (*this should only be done in exceptional circumstances*).
 - c) In the event that the process server fails to find a clear fixed place of abode or workplace to effect service, he or she should liaise with the Registrar to publish in a newspaper circulating in the relevant area or in any other media. This is called substituted service. (*see Rule 15(a),(b),(c) of the Commission Rules*)

Note: Where the Commission Rules are silent on service, the ordinary rules of civil procedure shall apply.

11.2.1. Service on a Person in Prison

Where the person to be served is in prison, service of summons should be effected on the Officer-in-Charge of the prison for onward service to the relevant person (*see Order 5 Rule 19 of the Civil Procedure Rules*).

11.2.2. Service on a Public Officer

Where the person to be served is a public officer, service should be effected by delivering summons to the head office in which the respondent is employed, e.g. in cases of service of a police or prisons officer. In case of a Government Ministry this would be the respondent's Head of Department (*see Order 5 Rule 20(1) of the Civil Procedure Rules*).

11.2.3. Service on a Soldier

Where the person to be served is an ordinary soldier, service should be made through his commanding officer (*see Order 5 Rule 20(2) of the Civil Procedure Rules*).

In the above three cases, where a person to whom the summons is sent receives it he or she is bound to serve it and to return the original signed by him or her with a written acknowledgement of the respondent (*Order 5 Rule 21(1) of the Civil Procedure Rules*).

11.3. Procedure after Process Serving

1. The Process Server shall swear and file an affidavit of service and annex a copy of the return of service (*Order 5 Rule 16 of the Civil Procedure Rules*).
2. The Process Server shall provide a copy of the return of service for the Commission Counsel as well as the Commissioner's file immediately on return.
3. The Process Server must never falsify service as this amounts to a criminal offence.
4. The Process Server must submit both accountability, a copy of summonses and a one page report to the budget holder *within seven (7) days*. Process servers should not write generic reports.
5. No further funds should be issued before the previous accountability is submitted.

12. File Management

This chapter describes the process of file storage and movement in all the Commission's offices.

File Management/Tracking

1. The stenographer secretary for each Regional Office is in charge of all the files in the region and file tracking of what is happening on each file. This role is the

responsibility of the Tribunals Clerk at the Directorate of Complaints, Investigations and Legal Services.

2. All files in each office should be managed by the stenographer secretary and kept in a general place rather than in officers' desks to ensure accessibility by all. The stenographer secretary is expected to track all files periodically, preferably every two weeks to ensure that those due for action are brought up to the relevant officers.
3. Black minutes are the minutes written on the left hand side cover of the file. These are as important as everything else on the file. They give the timeline of the file; indicate what the last action was, and how active the file is. Everybody that attends to the file in any way, including the clerk and the stenographer secretary must minute in this place what they have done. All interactions: physical, telephone, written correspondences with the complainant must be recorded here. Any contact with persons related to the investigation or complaint, including any attempt by any officer to contact any party related to the investigation or complaint must be recorded as a black minute on the file.
4. The red minuting indicates what documents have been added to the file, starting with the earliest at the back to the latest or newest at the front of the file. If a document has more than one page, the document is given a number and each page/ folio on it given a letter e.g. 7 a-d meaning, document seven on this file, has four pages a, b, c and d.
5. At the back of each file there should be an added sheet of paper on which to update change of address.
6. Each regional office should have three file tracking meetings a year in which they discuss each file, time duration they want to spend on it, why it is not moving or why it is pending etc.

13. Cross Referencing

This chapter deals with the various processes that may arise at different stages during the complaints handling process.

13.1. Internal Administrative Appeals

13.1.1. Level 1 Appeal- Appeal to the Director

A Level 1 appeal shall be an appeal made by a complainant to the Director. The following decisions shall attract a right to Level 1 appeal:

- All decisions made by the regional office not to entertain a complaint upon receipt.
- All decisions made by the regional office to offer an alternative remedy or redress other than that sought by the complainant.

- All decisions to close a file at any stage during investigations but before the file is forwarded to the Director.
- All requests by the complainant to the regional office to re-open a file following closure of the file.

Where the regional office makes a decision on a file in any of the above mentioned instances, the regional office shall issue the complainant with a 'notice of inability to proceed' with reasons why i.e. why the Commission does not have jurisdiction, why the complaint does not raise a human rights violation etc. and advise the complainant of the right to appeal to the Director *within 21 days* of the decision and issue them with the level 1 appeal notice.

The Director shall *within 30 days* of receiving the appeal from the complainant make a decision on whether to allow the appeal i.e. allow the complaint to proceed further and remit the file to the regional office for processing or dismiss the appeal i.e. endorse the regional office's decision and inform the complainant of his or her decision and also advise the complainant of his or her right to appeal to the Chairperson.

13.1.2. Level 2 Appeal Process- Appeal to the Chairperson

All administrative decisions by the Director on the conduct of a complaint shall be appealed to the Chairperson. These may include decisions made by the Director following a level 1 appeal; any decision taken by the Director to close a file, or offer an alternative remedy etc.

The Director shall ensure that for all decisions made on the conduct of the complaint or following a level 1 appeal, the complainant is issued with the 'notice of inability to proceed' providing a reasoned explanation of his or her decision and explaining to the complainant of his or her right to appeal to the Chairperson *within 21 days*. The complainant is issued a level 2 appeal notice.

The Chairperson shall *within 30 days* of receiving the appeal from the complainant make a decision on whether to allow the appeal i.e. allow the complaint to proceed further and remit the file to the Director for processing or dismiss the appeal i.e. endorse the Director's decision and inform the complainant of the Commission's final decision.

The Chairperson's decision shall be the Commission's final decision of the Commission.

13.2. Power to Commit for Contempt

13.2.1. Failure of witnesses or respondents to cooperate with the investigation

In the event that a witness fails to cooperate with the investigation, where summonses have been issued in accordance with the Rules and this manual and the investigation is unlikely to succeed without enlisting cooperation from crucial witnesses, the Investigations Officer shall write an investigation report and forward the file to the legal officer.

The legal officer, if in agreement with the investigations officer, shall recommend in a legal opinion the use of appropriate Constitution powers. The RHRO shall *within 7 days* of receiving the report from the legal officer make the final decision at the regional office and either: -

- endorse the decision to commit the witness or respondent for contempt of the Commission's orders and forward the file to the Director; or
- recommend a different course of action to be followed by the investigations and legal officers.

The Director shall *within 21 days* of receiving the RHRO's recommendations either authorise the RHRO to commit the witness or respondent for contempt of the Commission's orders or recommend a different course of action to be followed by the regional office.

Where the decision by the Director is to commit the parties concerned, the RHRO shall *within 7 days* of receiving such authorisation draft a committal order and take it to the police for execution.

13.2.2. Contempt of Court

The hearing Commissioner in any proceedings before him or her may commit any person in the proceedings or related to the proceedings for contempt of Court. Where the Commissioner orders that a person is committed for contempt of Court, Counsel for the Commission shall draft a committal order and take it to the police for execution.

13.3. Summoning documents

In the event that a respondent in possession of information or documents crucial to the investigation, fails or refuses to cooperate in the investigation or attempts to hinder it and the investigation is unlikely to succeed without enlisting cooperation from crucial witnesses, the investigations officer shall write a report recommending that the required documents are summoned and forward the file to the legal officer.

The legal officer shall, in a legal opinion, recommend, where appropriate, the use of relevant powers to summon the information required.

The RHRO shall *within 7 days* of receiving the legal opinion decide whether to endorse the decision to summon the information required or he or she shall recommend a different course of action to be followed by the investigations and legal officer. The file shall then be forwarded to the Director.

The Director shall *within 21 days* of receiving the legal opinion either authorise the RHRO to issue summonses compelling respondents to disclose the required information or documents or recommend a different course of action to be followed by the regional office.

The RHRO shall *within 7 days* of receiving such authorisation; issue summonses and ensure that they are effectively served.

13.4. Powers to Commit

Where any person subject or related to the investigation or inquiries by the Commission disregards, refuses or acts in a contemptuous manner to any of the orders of the Commission such as failing to provide information requested, failing to appear before the Commission when requested following more than two requests, the investigations and legal officer shall write a report to the RHRO and recommend that the person is committed for contempt of the Commission's orders.

The RHRO shall *within 7 days* of receiving the report from the investigations or legal officer either endorse the decision to commit the person for contempt of the Commission's orders and forward the file to the Director or recommend a different course of action.

The Director shall *within 21 days* of receiving the file from the RHRO either endorse the decision to commit the person for contempt, draft and sign a committal order and ensure it is returned to the RHRO for service or recommend a different course of action to be followed by the regional office.

The RHRO shall present the order to the nearest police station and ensure that it is effected. The RHRO may at his or her discretion rescind the committal order where he or she believes that the person committed for contempt agrees to cooperate with the Commission's orders.

13.5. Release Order

Release orders are issued by the Commission only in extreme cases. Extreme means but is not limited to; detained by the police or army in serious illness, beyond 10 days with

no release in view, etc. The RHRO in liaison with the Director must agree that this is a matter that requires a release order. This is in order to ensure that the redress is not abused. Where a person has been illegally detained and is released upon a release order, he or she still has the right to compensation pursuant to Article 23(7) of the Constitution.

In case of an urgent need to exercise Constitutional powers to release a detained person, the following procedure shall be employed.

1. The Commission learns of or receives a complaint regarding illegal detention.
2. The RHRO ensures that his or her office urgently investigates the matter or ascertains the full facts as much as possible or as far as circumstances can allow.
3. The RHRO ascertains whether there has been any other attempts to secure the release of the detainee.
4. An investigations report is written as soon as possible.
5. The RHRO attempts dialogue and the use of his or her good office to secure release and explores other legal and practical issues such as bond application to secure release as soon as is practicable and document all efforts taken on file. The findings of the investigations may be sent to higher authorities in the region to secure the release where appropriate and practical.
6. Where the release is not secured, the legal officer writes a legal opinion as soon as is practicable detailing concrete findings, observations and recommendations, avoiding non-specific, multiple recommendations where possible.
7. Where all attempts to secure release are futile the RHRO shall forward a copy of the file to the Director recommending that a release order is issued.

13.5.1. Issuing and signing a Release Order

The Director shall *within 1 day* of receiving the file from the RHRO either:-

- endorse the RHRO's decision to issue a release order, draft the release order to be signed by either the Chairperson or Commissioner. In the absence of the Chairperson or a Commissioner and where there are compelling exceptional circumstances dictated by urgency the Director may sign the release order; or
- remit the file to the RHRO with instruction to explore alternative action.

The Release Order is a prescribed form in the procedure rules and should always be signed and sealed.

13.5.2. Serving of a Release Order

- The release order shall be served either by the Chairperson or the Commissioner who signed it. Where it is not practical or possible for the Chairperson or the Commissioner to serve the release order, any signatory to the release order may authorise either the Director or the RHRO to serve the order.

- Where cooperation is afforded to the release order server by the detaining authority prior to service of the release order and the detained person is released, the release order server may withdraw service of the release order.
- It shall be the responsibility of the requesting RHRO and the Director, at whatever stage each person is responsible, to document all actions taken on the file.
- Bearing in mind that the person will have been unlawfully detained for more than 48 hours before this process is put in motion, this process must be completed *in a maximum of 3 days* from date of learning of the unlawful detention.

13.6. Caution Letter

This remedy is considered the least effective by complainants, as it has no tangible benefits to the complainant. It is, however, useful in bringing errant officers to the attention of the heads of various respondent institutions or government agencies and it has served as a useful deterrent to future human rights violations thereby giving a meaningful purpose to the protection of human rights. It is important to bear in mind that most complainants would naturally prefer compensation. Nonetheless, in some circumstances, a caution letter may still be issued even where a matter has been set down for hearing.

When should issuing of a caution letter be considered?

Caution letters are written as a way of affecting individual records of security officers or public officers whom our investigations have revealed as violators of different human rights. They are issued where the violation is considered less serious e.g. ill-treatment etc. The RHRO in conjunction with the Legal Counsel should exercise their discretion on when caution should be used or where a hearing is necessary.

Where the Director receives a file with a legal opinion recommending issuance of a caution letter, the Director shall:-

- return the file to the RHRO and recommend different action, or
- substitute the remedy and forward the file for a Tribunal hearing,
- endorse the recommendation to issue a caution letter and return the file to the RHRO to do the same.

A caution letter may be signed by the RHRO and a copy shall be sent to the Director.

Where the file is returned to the RHRO, to issue a caution letter, he or she will serve the caution to the respondent *within 7 days* of receiving the file from the Director. Caution letters shall only be issued in the Commission approved format (*See Schedule 1, Template 15*).

A closure letter must be sent to the complainant with a copy of the caution letter. As the caution letter is issued in consultation with the Director, the right of appeal against its issue shall lie with the Chairperson.

14. Guidelines on Witness Refunds

These guidelines have been developed to ease the process of preparing for, making payments to, and accounting for monies paid to witnesses in form of transport or fuel refunds, accommodation allowances and professional fees in the case of an expert witness.

List of public transport costs

While there is a specific duty on the Process Server to develop a list of public transport costs of the different places where they serve parties and witnesses, a general duty is placed on Commission Counsel and subsequently on the RHROs to ensure the list for public transport costs is available and regularly updated.

It is the duty of the concerned Accountant and the Registrar to amalgamate the nationwide list of public transport costs from the different lists prepared by the regional offices.

Witness budget preparation

Before the Tribunal hearing, Commission Counsel should draw up a budget for witness refunds, *at least one month* before the hearing, attach affidavits of service and submit them to the immediate budget holder for approval. The budget should reflect the complaint file number and parties, the names and number of witnesses expected in each case, their physical addresses and transport costs. Once the money is approved, it should be deposited with the Office Accountant together with the list of approved witnesses and their corresponding addresses.

Commission Counsel should inform all summoned witnesses that they will be paid a transport refund and accommodation allowance where applicable, at the end of their time at the Tribunal. The witnesses summoned are either expert or ordinary witnesses.

Private transport

Where any witness appearing before the Commission requests fuel to travel to the Commission, the expenses should be in accordance with this policy where it appears to the RHRO that the request is reasonable.

Expert witnesses

An expert witness is defined under section 43 of the Evidence Act as someone especially skilled in foreign law, science or art, handwriting, finger impressions, ballistics etc., whose opinion court will rely on to form an opinion. Expert witnesses are invited in their capacity as such and not as representatives of their institutions. It is judicially acknowledged that an expert witness is entitled to a facilitation allowance or professional fee.

While the Commission can compel anyone to attend its hearings as an expert witness, the Commission would not wish to be confrontational because it would jeopardise the quality of the testimony that would be given by a compelled expert witness. The Commission therefore provides reasonable transport or fuel refund and accommodation, where applicable, and a standard expert allowance to expert witnesses. An expert witness is entitled to an accommodation refund at the level of a government officer.

An expert witness is also provided with a fuel refund. This is based on the Commission rates for the different distances in kilometres. For all fuel refunds, the expert witness is expected to produce fuel receipts when he or she appears before the tribunal. It is the duty of the accountant or paying officer to request for them on payment.

An expert witness should be paid per day of appearance before the Tribunal rather than per file.

Number of times an expert should be summoned

An expert witness should only be summoned a maximum of two times on a single file. Since expert witnesses are very expensive to the Commission and they are expected to be busy officers, the hearing Commissioner and Commission Counsel should always ensure that once expert witnesses are summoned, they are heard, cross-examined and done with on the same day. Only in exceptional circumstances should an expert witness be summoned more than once.

Accommodation allowance

- At all times, the process server, Commission Counsel and Office Accountant should work in consultation in determining who should be paid an accommodation allowance and who should not. Accommodation is only paid to witnesses in cases where it is not reasonably possible for a witness to attend a hearing and go back on the same day; or where a hearing is taking place either early in the morning or in the late afternoon necessitating the witness to spend a night.
- Once done with his or her time at the Tribunal, a witness should be directed to the Paying Officer to whom he or she presents himself or herself with his or her summons. A witness refund cannot be paid to any person other than the one summoned.

- For each approved witness, the Paying Officer should prepare a payment voucher which discloses the payee's name, complaint file number and name of the paying officer. It should then be signed by both payer and payee and stamped "PAID", a copy of which must be put on the complaints file.
- The paying officer should prepare an accountability report to the RHRO within 7 days.
- Commission Counsel should never at any given time perform the role of the Paying Officer.
- A report on the Tribunal hearing should be prepared by Commission Counsel *within 7 days* with details of the files handled and their status after the hearing and the witnesses that turned up. The report should be signed by the hearing Commissioner.
- The accountability report together with the report on the Tribunal hearing should be submitted to the RHRO, the Director and the Registrar *within 7 days*.
- At the end of every month, the RHRO should submit a report on the Tribunal process to the Director and Registrar.

15. Mobile Complaints

Mobile complaint handling should be carried out only in districts or areas that are distant in location from the Commission's regional offices. The intention is to bring services closer to communities and allow people financially constrained or hindered by long distances to access the Commission's services. Mobile complaint handling may be undertaken in collaboration with other human rights stakeholders such as local Governments, human rights NGOs/CBOs, and local human rights desks.

What Should be Done in the Mobile Complaints Handling Process

1. The RHRO shall identify the area where mobile complaint handling will be carried out and ensure that there are adequate facilities for the Commission to effectively carry out the process of mobile complaints handling.
2. The RHRO shall ensure that the Commission's office remains open while mobile complaints are carried out.
3. The RHRO shall write to the Police Officer-in-Charge of the relevant area *at least one month* in advance informing him or her of the Commission's pending visit,

and requesting the Police's presence. The RHRO shall also ensure that the letter is hand delivered to the Police and where possible receipt of the letter is acknowledged by the Police.

4. The RHRO shall ensure that the local public is informed in advance of the Commission's presence either through local radio advertisements or by putting up posters in the local area.
5. The mobile complaint handling process shall include sensitisation of the local population, local authorities etc. and shall not be just a process of exclusively receiving complaints. The RHRO shall ensure that some activities are undertaken to enhance human rights awareness.
6. Attempts must be made by the officers undertaking the exercise to explain to the people clearly about the mobile complaint handling and its process to avoid instances of loss of interest and confidence.
7. Mobile complaint handling is a community outreach function that must take stock of all methods of social interventions including socio-cultural sensitivity approaches without compromising objectivity and credibility of the process. Remember that we are dealing with communities some of which are vulnerable and easily intimidated.
8. Walk-in procedures as defined by this procedural Manual shall apply to mobile complaints handling as appropriate.

Schedule 1: Standard Forms and Templates

FORM 1

Complaint Form

Uganda Human Rights Commission

Head Office Plot 20/22/24/ Buganda Rd P. O. Box 4929 Kampala

Tel:256-41-4233757, 256-41-348007/8; Fax: 256-41 255261

Email: uhrc@uhrc.ug, URL:http//www.uhrc.ug

Regional Offices:

Kampala/Central (Phone and address)

Mbarara..... (Phone and address)

Soroti..... (Phone and address)

Email for complaints: complaints@uhrc.ug

1. General information

Permanent address (home or place of birth):

.....

Temporary address: (includes detention centre. Note temporary address must be accompanied by permanent address above or where the complaint intends to move to when he leaves the temporary address)

.....

When do you hope to leave your temporary address? (Date).....

Work address:

.....

Telephone number: Email address:

Next of kin's name:

Next of kin's address:

Next of kin's telephone number:

Relative 1's name:

Relative 1's address:

Relative 1's telephone number:

Relative 2's name:

Relative 2's address:

Relative 2's telephone number:

LC 1's name:

LC1's address

LC1's telephone number

3. Respondent's Details (to be completed by complainant or the Commission as appropriate)

1st respondent

Name of Respondent

Age:

Physical address

Postal address

Permanent address

Work address

Fax

Phone

Email

2nd respondent

Name of Respondent

Physical address

Postal address

Permanent address

Work address

Fax

Phone

Email

3rd respondent

Name of Respondent

Physical address

Postal address

Permanent address

Work address

Fax

Phone

Email

4. Victims Details (if different)

Title: i.e. Mr/Ms/Mrs/Dr/Rev etc, First Name:

Surname

Physical address:

Street

LC1

Village

Town

Parish

Sub-county

County

District

Postal address: P.O Box

Permanent address

Work address

Telephone number

Email address

Religion

Race/Tribe

Profession

5. Details of the complaint:

Please give details of the events that you are complaining about. You should include; what happened and how it happened, when it happened who was involved, who was there, where the event/s occurred, any witnesses, who did what, why you believe it happened

.....
.....
.....

6. Evidence

Please provide details of witnesses that saw any of the what happened to you. Please note that you only need a maximum of 2 witnesses to prove a particular stage of the violation.

Witnesses

1st witness

Name of Witness

Date of birth

Occupation

Physical address

Postal address

Permanent address (place of birth)

Work address

Fax

Phone

Email

2nd witness

Name of Witnesses

Date of birth

Occupation

Physical address

Postal address

Permanent address

Work address

Fax

Phone

Email

3rd witness

Name of Respondent

Date of birth

Occupation

Physical address

Postal address

Permanent address

Work address

Fax

Phone

Email

Supporting documents:

Have you got any relevant documents? (Please provide a copy for the Commission and keep the originals safe for future use).

Medical report	Yes/No (tick as appropriate)
Photographic evidence	Yes/No (tick as appropriate)
Any other documentary evidence	Yes/No (tick as appropriate)
Bail or Bond forms	Yes/No (tick as appropriate)
Hospital discharge Letters	Yes/No (tick as appropriate)

7. What would you like the Commission to do for you? Please note that the Commission may offer an alternative remedy from what you seek or may decided on a different course of action from what you would like.

I would like.....
.....
.....

8. Please tell us if you have reported this matter to any authorities and what action has been taken by those authorities. You must also tell us if your complaint relates to any matter before a court of law.

.....
.....
.....
.....
.....

Signature of the complainant

Date:

NOTE: In order for the Commission to investigate and deal with your complaint effectively please provide us with the following withindays:-

- ☐ **Medical Report**
- ☐ **Letters of Administration**
- ☐
- ☐
- ☐

Complaints' card issued: Yes ☐ No ☐

If complaints' card has not been issue state why.....
.....

Complaints' card number:

Data Release

The Commission from time to time is approached by organisations and individuals interested in human rights and may also on its initiative publish information or use information you provide in the promotion of human rights.

Please tick the box below if we can use the information you have given us in our work. YES/NO

FORM 2

Authorisation Form

Uganda Human Right Commission

Authorisation form

I.....
.....(name,
address and telephone number)

Hereby authorise.....
.....
(name, address and occupation/capacity of representative) to represent me in my complaint before the Uganda Human Rights Commission / against
..... (Respondent).

I will notify the Uganda Human Rights Commission in writing when I change this person/ Company/legal representative (delete as appropriate) I have appointed.

.....
(Signature of complainant)

.....
(Date authority given)

I hereby accept the above appointment and undertake to inform the Commission of any changes in the authority vested in me by the appointee.

.....
(Signature of appointee)

(Date)

.....
(Signature of representative)

.....
(Date authority accepted)

This form must be completed, signed and returned to the office of the Commission where the complaint has been lodged by any complainant/s wishing to be represented by a legal representative or any other nominated/appointed person before the Commission.

TEMPLATE 3

Allegations letter

UHRC.....

Date

The

.....

.....

SUBJECT: UHRC No..... SAGARA -AND- NAGARA

The Commission is in receipt of a complaint from Mr. John Mukasa of.....
(address).The complainant alleges that

The above allegations, if proved, would violate Art.of the Constitution of the Republic of Uganda, 1995 in respect to the right to.....

The purpose of this letter therefore, is to put these allegations to you for your side of the story as a part of our investigations in this complaint, as soon as possible but in any case no later than 21 day from receipt of this letter.

The Uganda Human Rights Commission is empowered by Art 52 of the Constitution to investigate complaints of human rights violations.

Your cooperation is highly appreciated.

Regional Human Rights Officer
Jinja Regional Office
For: **SECRETARY, UGANDA HUMAN RIGHTS COMMISSION.**

TEMPLATE 4

Reminder and final notice

UHRC.....

Date

The
.....
.....

SUBJECT: UHRC.../... SAGARA -AND- NAGARA

The above subject matter refers.

The Commission notes that despite having received our letter to you dated, a copy of which is attached hereto for ease of reference, you have not responded to the same as requested.

The purpose of this letter is to remind you to respond to the same within 7 days on receipt of this letter.

Please note that can under Article 53 of the Constitution of Uganda, 1995, the Commission may issue committal orders for failure to respond to its inquiry.

This is the final notice and the Commission may choose to invoke its constitutional powers to commit persons for contempt of our orders, should we not hear from you within the stipulated time.

Your cooperation is highly appreciated.

Regional Human Rights Officer
Jinja Regional Office
For: SECRETARY, UGANDA HUMAN RIGHTS COMMISSION

TEMPLATE 5

Letter informing parties of hearing

UHRC/FP/12/2006

September 6, 2007

The Attorney General
Ministry of Justice and Constitutional Affairs
P O Box 7183
Kampala

RE: COMPLAINT UHRC/.../...: JOHN MUSOKE -and- ATTORNEY GENERAL

Reference is made to the above matter lodged with the Commission by John Musoke on February 26, 2006, in which he alleges that on February 16, 2006 at around 2.30 a.m., Criminal Investigations Department (CID) officers attached to Kasese Police Station namely; Jack Kiiza and Peter Busingye, accompanied by the LC.1 of Nyamwamba East one Paul Kijje, arrested him on allegations of murder of two persons in Nyakasanga Parish. That during the arrest, he was kicked and severely beaten with gun butts all over his body by the said officers making him bleed through the left ear. That he was thrown into a police pickup and taken to Kasese Police Station where he was detained until February 17, 2006 when he was released on police bond.

The foregoing allegations if proved, are a violation of the complainant's right to protection from torture, cruel, inhuman and degrading treatment or punishment enshrined under Article 24 of the Constitution of the Republic of Uganda, 1995.

Be informed that the matter has been set down for hearing against your office in its vicarious capacity and we shall duly notify you of the hearing date. Enclosed, please find a copy of the complainant's statement, medical and release on bond forms dated February 22, 2006 and February 17, 2006 respectively in the names of John Musoke for your ease of reference.

Be also informed that without prejudice to the foregoing, you may settle the matter amicably.

Director Complaints, Investigations and Legal Services

For: **SECRETARY, UGANDA HUMAN RIGHTS COMMISSION**

Copy to: John Musoke
Nyamwamba East Village
Nyakasanga II Parish
Kasese Town Council

Enc.

TEMPLATE 6

Internal Referral Letter

To: RHRO
Central Region Office

Date

Dear

The bearer of this letter is Mr/Ms/Mrs/Miss/Dr/Rev....., has approached me with a complaint regarding violation of his right to personal liberty. Having briefly listened to her story it is my view that the matter can best be handled by your office.

This is therefore to refer her to you for further management.

Your urgent attention in the matter is appreciated.

Yours Sincerely

Name:
Title:
Office:

TEMPLATE 7

External Referral Letter

To:

Date:

Dear Sir/Madam,

Re: Mr/Ms/Mrs/Miss/Dr/Rev.....

The abovementioned person has approached the Uganda Human Rights Commission with a complaint regarding e.g. non payment of wages by his employer.

The Commission lacks the jurisdiction to handle this matter but at the same time believes that your office is best placed to assist him.

This is therefore to refer him to you for assistance and hope that you will be able to render him the help he requires.

We are always appreciative of your cooperation.

Yours faithfully,

**Name
Title
Office**

FORM 8

Notice of inability to proceed

To:

Date

Dear Sir/Madam,

Re: Your complaint against.....

We write regarding your complaint against in which you alleged that

We regret to inform you that the Commission is not able to assist you with this complaint because
e.g. of a lack of jurisdiction to handle contractual matters. (*Reasons here contained must extensively explain jurisdiction issues/policy decision/issues or any other reasons as appropriate*)

We advise you to
.....
.....
(*details of alternative advice/remedy*).

This decision has been taken with consideration of all circumstances in your complaint. If you do not agree with the decision you may appeal to the Director of Complaints, Investigations and Legal Services who has not been involved in making this decision.

We believe, however, that your matter should be handled by..... (*appropriate office/forum*) which is best placed to do so.

While we are unable to assist you in this matter on this occasion, please don't hesitate to contact us in future should you require assistance.

Yours Sincerely,

Name:
Regional Human Rights Officer
Central

FORM 9

Appeal form

Uganda Human Rights Commission

Level 1 Appeal Form

Complaint number; Parties names

This appeal is submitted under Human Rights Commission Procedures Manual

1. Appellants/complainants details

Title:

First Name:

Surname:

Physical address: (please include street, LC1, village, town, county, sub-county, parish and District)

Postal address: i.e. P.O Box

Permanent address

Work address

Telephone number

Email address

Religion

Race/Tribe

Profession

2. Particulars of the complaint

When did you lodge your complaint.....(date)

3. Details of the complaint

Please tell us why you believe the decision is wrong. ...

4. What would you like to happen.....

.....
.....
.....

5. Decision by Director Complaints on the appeal

.....
.....

All Level I appeals must be received by the Director of Complaints, Investigation and Legal Services within 21 days of the date of the decision you are appealing. Complaints must be addressed to the Director of Complaints, Investigations and Legal Services, Uganda Human

Rights Commission, Plot 20/22/24 Buganda Road, P.O. Box 4929, Kampala. You may hand in the appeal form in person or post it.

FORM 10

Level II Appeal form

Uganda Human Rights Commission

Complaint number/Parties names

This appeal is submitted under Human Rights Commission Procedures Manual

1. Appellant's/complainant's details

Title: First Name: Surname:

Physical address: (please include street, IC1, village, town, county, sub-county, Parish and District)

Postal address: i.e. P.O Box

Permanent address

Work address

Telephone number Email address

Religion Race/Tribe Profession

2. Particulars of the complaint

When did you lodge your complaint.....(date)

3. Details of the complaint

Please tell us why you believe the decision by the Director is wrong. Please provide as much information as much as you can.

.....
.....
.....

4. What would you like to happen.....

.....
.....
.....

5. Decision of the Chairperson on the appeal

.....
.....

All Level II appeals must be received by the Chairperson within 30 days of the date of the level I decision you are appealing. Complaints must be addressed to the Chairperson, Uganda Human Rights Commission, Plot 20/22/24 Buganda Road, P.O. Box 4929, Kampala. You may hand in the appeal form in person or post it.

FORM 11

Witnesses Statement

Uganda Human Right Commission

In a matter before the Uganda Human Rights Commission

Witness Statement

Complaint Number:

In matter of (Complainant)

.....

And

..... (Respondent)

I (Name)

Of.....
..... (Address and telephone number)

Employed as.....

Age/Date of Birth

Address:

Permanent Address:

LC

Next of kin.....

State that.....

.....
.....

Signed.....

Name.....

Before (witness to this statement)

Signed

Name.....

For the Uganda Human Rights Commission

And (witness to this statement)

Signed.....

Name.....

Of.....
..... (Address and phone number)

TEMPLATE 12

Closing letter

Uganda Human Rights Commission

UHRC.....

Date

Dear

Re: Ojok-and- Ojok

Reference is made to your complaint lodged with the Commission on.....in which you alleged that..... (date and brief facts).

The Commission has.....

.....
(Action taken by the Commission: this may be investigations/referral/proceedings before the Commission tribunal/non-disclosure of a violation after investigations, written a caution etc. explain what has been done and why you are closing). As such there is no outstanding or pending action in your complaint.

The purpose of this letter is to inform you that with the above intervention your file has been closed.

Please note that should you be dissatisfied with the closure you may appeal the same to the Director Complaints, Investigations and Legal Services (as appropriate), using the attached appeal form.

We wish you the best in all your endeavours

.....
Arua Regional office

FORM 13

Tribunal Decision Notice

THE REPUBLIC OF UGANDA

IN THE UGANDA HUMAN RIGHTS COMMISSION TRIBUNAL

COMPLAINT NO.....

Mr. Sagara ::::::::::::::: COMPLAINANT

-and-

Ms. Nagara ::::::::::::::: RESPONDENT

1. Mr. Sagara

2. Ms. Nagara

TAKE NOTICE that the Tribunal Decision in the above complaint has been fixed for (*date and time*) in the forenoon or as soon thereafter as the Decision can be read in this Tribunal.

If no appearance is made by yourself or by someone authorized to act for you, the Decision will be delivered in your absence.

GIVEN under my hand and the Seal of this Court this day of July 2007.

REGISTRAR UHRC

TEMPLATE 14

Acknowledgement letter

Uganda Human Rights Commission

UHRC.....

Date;

Dear Mr. Sagara

Re: Sagara -and- Nagara

Reference is made to your complaint received by the Commission on.....(date)

The Commission has examined your complaint and decided to investigate the matter further. Your Complaint has been allocated this reference number **UHRC.....** and allocated to Mr. Sagara

It is estimated, depending on the circumstances of your complaint that it can take up to three years to determine this complaint. However, the Commission will strive to expedite the process and keep you informed of developments in your complaint.

It is important that you inform the Commission of any change of address or telephone number as we need to be in regular contact with you during the investigation. You may

advise us of any change either in writing, by calling or by visiting our office at(regional office)

In the meantime we would like you to bring to us any evidence you have to substantiate your complaint.

If you require assistance such as obtaining a medical report or obtaining evidence crucial to the investigations from any authorities or agency please contact us immediately.

RHRO, Gulu
Uganda Human Rights Commission

TEMPLATE 15

Caution letter

Uganda Human Rights Commission

UHRC

Date

The Officer-in-Charge
Central Police Station

Dear Sir

Re: COMPLAINT NO. UHRC..... TERRY JONES -V- NICK HARDWICK and CENTRAL POLICE STATION

Reference is made to the above complaint lodged with the Commission on the 18th of June 2005 by Mr. Jones in which he alleged that PC Nick Hardwick of Central Police station.....

.....
.....(Brief allegations).

The Commission has investigated the matter and finds that Mr. Jones' right to liberty as protected by Article 23 of the Constitution of the Republic of Uganda 1995 was violated by Mr. Hardwick. Article 23 requires the Police to have reasonable suspicion that a crime has been committed or is about to be committed before an arrest is made. However on

allegations that Mr. Jones had assaulted Mr. Bishops your officer, Mr. Hardwick without speaking with Mr. Bishops instigated the arrest of Mr. Jones.

In exercise of its powers under Art. 53 (2) (c) the Commission, by this letter has decided to caution Mr. Hardwick against arbitrary arrest and remind you of your obligation under Article 20 (2) of the Constitution of Uganda 1995 to uphold and observe human rights. You may deem it fitting to institute disciplinary measures against Mr. Hardwick. The Commission will be interested in being informed on the measures you have taken.

Regional Human Rights Officer

For: **SECRETARY, UGANDA HUMAN RIGHTS COMMISSION**

Copy to: Employer or senior regional commanding officer
Complainant

TEMPLATE 16

Sample of index inside the file

This is a sample of the index inside the file, having all details of the documents or papers with page numbers kept inside the file.

UGANDA HUMAN RIGHTS COMMISSION (Name and Address of the Regional Office)

INDEX

COMPLAINT NO.

NAME OF THE COMPLAINANT

NAME OF THE RESPONDENT

Serial Number	Description of the document	Date of Document	Date of Receipt	Number of Pages

Schedule 2: International Human Rights Instruments Ratified By Uganda

Below is the list of international human rights instruments ratified by Uganda. It is important to bear in mind that this list is not exhaustive.

International Instruments

1. Universal Declaration on Human Rights.
2. International Covenant on Economic, Social and Cultural Rights.
3. International Covenant on Civil and Political Rights.
4. Optional Protocol to the International Covenant on Civil and Political Rights.
5. Convention Relating to the Status of Refugees.
6. Protocol Relating to the Status of Refugees.
7. Convention Relating to the Status of Stateless Persons.
8. International Convention on the Elimination of all Forms of Racial Discrimination.
9. Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery.
10. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.
11. Convention on the Rights of the Child.
12. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.
13. Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.
14. Optional Protocol on the Convention on the Sale of Children, Child Prostitution and Child Pornography.
15. Abolition of Forced Labour Convention.
16. Employment Policy Convention.
17. Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.
18. Convention against Discrimination in Education.
19. Convention on the Prevention and Punishment of the Crime of Genocide.
20. Rome Statute of the International Criminal Court.
21. The four Geneva Conventions and their Additional Protocols.
22. UN Convention on the Political Rights of Women.

African Regional Conventions

1. Convention Governing the Specific Aspects of Refugee Problems in Africa.
2. African Charter on Human and Peoples' Rights, 1981.
3. Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples Rights.
4. The African Charter on the Rights and Welfare of the Child.

Schedule 3: Summary of Roles of Various Officers in the Complaint Handling Process

16.1. The Receiving Officer

- (a) To receive all complainants.
- (b) To make a preliminary assessment of complaints on admissibility in consultation with the RHRO.
- (c) To advice or refer complainants as appropriate.
- (d) To register complaints in accordance with this Procedure Manual.
- (e) To forward the complaint to the RHRO following the initial assessment.
- (f) To be professional and courteous to complainants.

16.2. The Investigations Officer

- (a) To ensure that the allegations letter is sent out within the specified time.
- (b) To carry out *objective, thorough and meticulous* investigations into any given complaint as directed by the RHRO.
- (c) To ensure that investigations are completed in a timely manner within the given time frames, save in some really exceptional circumstances.
- (d) To write a clear and detailed investigations report within the given time frame.

16.3. The Regional Human Rights Officer

- (a) To supervise the complaints process in the regional office.
- (b) To sign all letters going out from the regional office.
- (c) To make a decision at any stage of the investigations whether the complaint should proceed further or not.
- (d) To make a decision to close a file.
- (e) To sign all 'notices of inability to proceed' and all other correspondences at the regional level.
- (f) To send a report, on a monthly basis, to the Director, of all files he or she intends to close at the regional office, including file numbers, brief facts and reasons for closure.
- (g) To ensure that files for the tribunal are sent to the Director by the 15th day of the last month before allocation i.e. 15th April, 15th August and 15th December.
- (h) To sanction all budgets, expenses and payments made at the regional Level.

16.4. The Process Server

1. To receive summons from Commission counsel, Registrar or the Director.

2. To draw up a budget for the service, which budget should include transport, per diem or safari day allowance, where applicable. Please note, that transport cost estimates depend on the distance to be covered. These budgets must always be realistic.
3. To present the budget to the immediate budget holder for approval.
4. To fill out the requisition form for the planned service and attach it to the budget.
5. To ensure that money is received in good time in order to effect service early. It is the responsibility of the process server to ensure that the entire requisition process is properly followed and started in good time.
6. To record costs of the different distances and submit the same to the budget holder and Accounts office together with the accountability.
7. To peruse the file for the most recent address details and particulars of the person they are intending to serve. Subsequently, updates should be made on the file where the process server discovers from the field that the particulars and addresses have changed.
8. To effect service of summons, hearing notices and any other relevant documents in accordance with the Commission Rules, the Civil Procedure Rules and this Procedures Manual.

16.5. The Commission Counsel

Before the Tribunal Hearing

1. To read the file cover to cover including black minutes before cause listing any file.
2. To ensure that the complaint file has all the relevant documents, i.e. complaint statement, witness summonses etc.
3. To liaise with the Hearing Commissioner to cause list the file.
4. To summonses and hearing notices for the hearing, the summonses should be issued a month in advance in order to allow service in good time so that the 14 days rule is observed.
5. To prepare file numbers, get proper particulars and get updated clear addresses.
6. To read through the affidavit of service of the process server.
7. To draft a budget for transport and accommodation refund for witnesses and hearing Commissioner and take the budget to the budget holder for approval.
8. To record prices of different distances and submit the same to the budget holder and accounts office.
9. To meet with complainants and witnesses to brief them on what is expected of them before or during the hearing. He or she should find a date in advance before the hearing to brief the complainant on how to present their case. This meeting should be budgeted for before the hearing so that the Commission provides transport and accommodation where needed.
10. To handle files on first come, first serve basis and should bear in mind that he or she jointly shares responsibility with the Commissioner to ensure that matters are

disposed of within a year from the time it is first and where this not done, counsel must write to RHRO and copy to the Director giving reasons. Such issues will form part of Counsel's appraisal.

During Tribunal Hearing

1. To guide the Commissioner on points of law during the tribunal hearing.
2. To carry out research for the hearing Commissioner.
3. To advise the Commission on legal matters, both substantial and procedural.
4. To ensure that they black minute on the file to indicate at what stage the matter is.
5. To always be neutral during the hearing. Commission Counsel must avoid appearing for Complainant and as such must avoid appearing to be for the Complainant.
6. To defend against adjournments so that there is limited case backlog. No complaint may be adjourned more than three times. Commission Counsel should be in touch with Attorney General's representatives in the matters to avoid adjournments, delays and non-attendance by State attorneys.

After Tribunal Hearing

1. To ensure that the witnesses are paid their transport refund and any other appropriate allowances.
2. To make an accountability of the witnesses refund monies and write a report.
3. To write submissions for the hearing Commissioner.
4. To make a follow up on all decisions arrived at by the tribunal, extract Commission orders and ensure that both parties are served with the decisions and an order.

16.6. The Tribunal Clerk

The Clerk shall be under the Directorate of Complaints, Investigations and Legal Services and the Registrar. The role of the Clerk shall include the following:

1. To be the custodian of all files that have been disposed of; all files closed at the legal opinion or any other stage and all files sent to the Director.
2. To record all files received from or sent out to regions and all files assigned to staff in the Directorate. All files received and assigned to Directorate staff shall be recorded in the movement book following which they will be recorded on CHARMS for tracking.
3. To ensure that files are filed properly up to their conclusion.
4. To update the status of all files *within 5 days* of receiving the file. The Clerk should be able to provide complainants or staff with the status of any file in his custody.
5. To prepare a periodic review of all the files that each hearing Commissioner is handling at the Tribunal and which stage they are at every first week of the month

and circulate the list to the Director, Commissioners, Registrar and the Chairperson

6. To ensure that the cause list is issued in time after Commissioners have fixed matters for hearing.
7. To circulate the cause list by email, a month in advance, to Commissioners, all staff in the Directorate, the Registrar, all RHRO's and all Commission Counsels in the region.
8. To receive and prepare parties before or during Tribunal hearings and Mediations.
9. To ensure that before witnesses give evidence before the Tribunal, they take an Oath.
10. To act as an interpreter in proceedings before the Tribunal, where necessary and if called upon by the Hearing Commissioner,.
11. To help in effecting service of summonses or letters and deliver files as instructed.
12. To ensure that correspondences sent out on files in his or her custody are attached to the relevant files.

16.7. The Registrar

1. To inform Counsels and Commissioners on what files have been allocated to them within two weeks of receiving files from the Chairperson.
2. To duplicate or photocopy the file for counsel and hearing Commissioner.
3. To ensure smooth and effective administration of the tribunal hearings.
4. To sign and seal all summons, hearing notices etc.
5. To liaise with Counsel, Commissioners and the Attorney General to ensure that the tribunal process runs effectively.
6. To produce and distribute cause lists, in conjunction with the tribunal clerk, within two weeks before the beginning of the following month.
7. To ensure that the order and certificates are ready at pronouncement of decision.
8. To hold taxation hearings.
9. To tax bill of costs.
10. To hold hearings on why execution should not issue.
11. To handle executions.

16.8. The Director

1. To peruse all files sent in from the regional offices and take appropriate decisions on them.
2. To ensure that the decision on any given complaint file is taken with the specified time-frame.
3. To work closely with the Registrar and RHROs to ensure that complaints are resolved in a fair and timely manner.

4. To oversee the conduct of investigations initiated by the Commission including systemic investigations.
5. To receive monthly reports on the disposal of complaints files at the various regional offices.
6. To supervise the complaints handling process both at the headquarters and in all regional offices to ensure that it is in compliance with this procedures manual.