

THE REPUBLIC OF UGANDA

GOVERNMENT WHITE PAPER

ON

**THE REPORT OF THE JUDICIAL COMMISSION
OF INQUIRY INTO
ILLEGAL EXPLOITATION OF NATURAL
RESOURCES AND OTHER FORMS OF WEALTH
IN THE DRC**

ABBREVIATIONS

| | |
|--------------------|-----------------------------------------------------------|
| ADF | Allied Democratic Front |
| AFDL | Liberation Democratic Armed Forces (Laurent Kabila Party) |
| BOU | Bank of Uganda |
| CAA | Civil Aviation Authority |
| COMTRADE | Commerce and Trade |
| DGLI | Dora Great Lakes Industries Ltd. |
| DRC: | The Democratic Republic of Congo |
| EX-FAR | Force' Arme' Rwandaise (Former Rwandese Armed Force) |
| EX-FAZ | Force' Arme' Zaire (Former Zaire Armed Forces) |
| GDP | Gross Domestic Product |
| H.E | His Excellency the President |
| ICAO | International Civil Aviation Organisation |
| ICJ | International Court of Justice |
| IMF | International Monetary Fund |
| ISO | Internal Security Organization |
| MLC | Congolese Liberation Movement |
| MOD | Ministry of Defence |
| NALU | National Union for Liberation of Uganda |
| OSH-TAC HQS | Operation Safe Haven Tactical Headquarters |
| RCD – ML | Rally for Congolese Democracy- Liberation Movement |
| RCD-Goma | Rally for Congolese Democracy – Goma |
| RCD-Kis | Rally for Congolese Democracy - Kisangani |
| TAC-HQ | Tactical - Headquarters |
| UMA | Uganda Manufacturers Association |
| UN | United Nations |

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|-------------|---------------------------------|
| UNSC | United Nations Security Council |
| UPDF | Uganda Peoples Defence Force |
| URA | Uganda Revenue Authority |

FOREWORD BY THE 3RD DEPUTY PRIME MINISTER/ MINISTER OF FOREIGN AFFAIRS

1. The core objective of Uganda's foreign policy is to ensure national security; social economic welfare and prosperity of her people and nation. National security and development are therefore paramount considerations in determining, shaping and guiding her relations with countries in the region as well as the rest of the world.
2. Uganda's foreign policy is influenced by a number of critical factors; the most important of these has been the geographical location. Events in the five countries that surround Uganda, that is: Rwanda, Kenya, Tanzania, Sudan and the Democratic Republic of Congo can impact on Uganda either positively or negatively.
3. Uganda is a land locked country. This bestows on her serious challenges, as it has to depend on her neighbours for access and corridors to and from markets. Equally so, Uganda is a transit country for countries in the region such as Rwanda Burundi, Sudan and the DRC. Available evidence shows that Uganda's systems of controlling transit goods are not entirely effective as the Porter Commission pointed out.
4. Today, Uganda's security has been negatively affected particularly by the events in Sudan and the DRC, which have posed serious security foreign policy challenges that Uganda has continued to grapple with on a day-to-day basis. Regional instability has also had an impact on Uganda's defence expenditure.
5. It is imperative to reiterate that the conflict in the DRC arose out of internal political instability aggravated by lack of effective administration. Uganda was drawn into DRC due to the national security threat caused by the presence of Sudan backed rebels, the ADF rebels and the Interahamwe militia operating against Uganda from the Congolese territory.
6. The consequences have been far reaching for Uganda. Uganda has been wrongly accused that her main motive of going into the DRC was to exploit the natural resources and other forms of wealth of the DRC. This resulted into accusations and counter accusations, leading to the establishment of the UN Panel by the Security Council to investigate into the allegations.
7. It is important to note that the "illegality" concept, which was a core thrust on which the first UN panel was based, was dropped by the reconstituted panel. This confirms the invalidity of some of the panel findings and the report. Moreover, the Report subsequently produced was flawed, inconsistent and full of uncorroborated evidence on allegations and conclusions against Uganda.

8. Uganda fully co-operated with both the first and the reconstituted UN Panel of Experts and extended maximum assistance to the Panelists during their investigation mission in Uganda. The team was able to meet H.E the President of Uganda, Yoweri Kaguta Museveni, Government Ministers and other high-ranking Government officials.
9. Uganda has demonstrated good will and has withdrawn most of the troops from the DRC except Bunia and the western slopes of Rwenzori Mountain, as requested by the UN Secretary General. The remaining troops will be withdrawn in the context of the Lusaka, Luanda and the Dar es Salaam Agreements.
10. In compliance with Cabinet decision, I appointed a Technical Committee, under the Chairmanship of the Head of the Public Service and Secretary to Cabinet, Mr. John Mitala, to study the Report and advise Government. The Committee has done a commendable job, which I now have the honour to present to Cabinet, for consideration and decisions as appropriate.

James W. Wapakhabulo
**3RD DEPUTY PRIME MINISTER/
MINISTER OF FOREIGN AFFAIRS**

CHAPTER ONE

INTRODUCTION

1.0 BACKGROUND

- 1.1.1 The Secretary General of the UN, in April 2001, released the first Report by the Panel, chaired by MME Ba N'Daw on the Illegal Exploitation of the Natural Resources and other forms of Wealth in the DRC. The Ba N'Daw Report accused Uganda and other countries of involvement in the illegal exploitation of natural resources of the DRC. The Government of the Republic of Uganda duly made its comments to the Secretary General in the Interim Report (S/2001/458). The Security Council agreed with Uganda that the Ba N'Daw Report was based on hearsay and lacked corroborative evidence to back its conclusions and recommendations.
- 1.1.2 On 3rd May 2001, the UN Secretary General reconstituted the UN Panel of Experts under the chairmanship of Amb. Mahmoud Kassem to carry out a more in-depth analysis based on corroborated evidence on the allegations and issues raised, and to write up an Addendum to the First Report. The reconstituted UN Panel visited Uganda and received maximum cooperation.
- 1.1.3 The Security Council met in New York on 14th December 2001 to consider the Addendum to the Report of the UN Panel. Uganda made her response to the Addendum Report, which is contained in document S/2001/.... December 2001. The Addendum to the Report concluded that neither the Uganda Government nor His Excellency the President of Uganda was involved in the illegal exploitation of the natural resources of the DRC.
- 1.1.4 In response to the UNSC's proposal that the countries accused set up independent investigations, the Government of the Republic of Uganda, instituted the Judicial Commission of Inquiry into the Illegal Exploitation of

Natural Resources and other forms of Wealth of the DRC on the 23rd of May 2001 (Legal Notice No. 5/2001), under the Chairmanship of Justice David Porter.

1.1.5 **The Terms of Reference of the Commission were to inquire into:**

- Allegations of illegal exploitation of natural resources and other forms of wealth of the DRC, for example: minerals, coffee, timber, livestock, wildlife, ivory, moneys or other property from the DRC contained in the said Report.
- Allegations of mass-scale looting and systematic exploitation of natural resources and other forms of wealth from the DRC by the Government of Uganda made in the said Report.
- Allegations of complicity or involvement by H.E. the President and his family in the alleged exploitation made in the said Report.
- Allegations of involvement in the illegal exploitation of the natural resources of the DRC by top UPDF officers and other Ugandan individuals named in the said Report.

1.2 **METHODOLOGY**

After the appointment and acceptance of appointment, Members were sworn-in. Thereafter each member was issued with a copy of the Report and Annexes to study and internalize the contents before discussions at Sunset Hotel in Jinja commenced. Members discussed the Report chapter-by-chapter laying particular emphasis on the findings and recommendations. They were then divided into groups and assigned specific sections in order to come out with proposals for the Committee's consideration.

Cross-reference was made to the on going activities that were relevant to some of the recommendations of the Judicial Commission of Inquiry.

For purposes of analysis members decided to refer to the main areas covered by the Report as chapters. These are:

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| Chapter 1: | Establishment of the Commission |
| Chapter 2: | Defining Key Concepts |
| Chapter 3: | Illegal Exploitation of Natural Resources |
| Chapter 4: | Links between the Alleged Illegal Exploitation of Natural Resources and Continuation of the Conflict |
| Chapter 5: | Panel's Conclusions and Findings |
| Chapter 6: | Ugandan Administrative Organisations |
| Chapter 7: | Consideration of the Addendum |
| Chapter 8: | Consideration of the Final Report of the Panel |
| Chapter 9: | Annex 1: Exhibits |
| Chapter 10: | Annex 2: Witnesses |
| Chapter 11: | Paper on Illegality |

The Porter Commission Report presents an in-depth analysis of the evidence provided by the original Panel and the reconstituted Panel, giving a balanced and objective view.

1.3 STRUCTURE OF THE WHITE PAPER

The White Paper is set out into five chapters as follows:

- Chapter One - Introduction
- Chapter Two - Legal and Investigative Issues Raised and Sanctions Recommended
- Chapter Three - Administrative Issues Arising From The Porter Commission Report.

- Chapter Four - International And Security Implications to Uganda Arising from the Porter Commission Report.
- Chapter Five – General Recommendations.

1.4 DECISIONS

This White Paper sets out Government responses to the recommendations of the Porter Commission as they relate to the Terms of Reference. It also spells out Government response to other important areas brought out by the Commission though outside the original terms of reference. It gives in-depth understanding of the international obligations on Uganda, as a member of the UN, and her earlier continued commitment to fully implement the recommendations of the Report. It sets a policy framework as a way forward for implementing the report. Lastly the White Paper covers matters incidental to the Report as analysed by the Technical Committee.

All decisions of the Committee were arrived at by consensus.

CHAPTER TWO

2.0 LEGAL ISSUES RAISED AND SANCTIONS RECOMMENDED

2.1 BACKGROUND:

The Definition of the legal concepts of: **illegality, exploitation and violation of sovereignty** has been the key to the interpretation of the UN Panel Report on allegations of illegal exploitation of natural resources in the DRC. The Government response disagreed with the interpretation of the first UN Panel. On the merit of the Government response, the reconstituted UN Panel has adopted new positions on the concepts.

2.1.1 DEFINING CONCEPTS

(a) ILLEGALITY

The Porter Commission discussed the issue of illegality of exploitation within its terms of reference. This position diverges from the mandate of the UN Panel on the issue. The report declines to discuss the full definition of illegality in the context of exploitation of resources in the DRC, particularly with regard to Uganda's intervention in the DRC and the pending case in the International Court of Justice against Uganda. It does also not make any conclusion on violation of sovereignty. It only considers "illegality of alleged exploitation of natural resources in the DRC".

The re-constituted UN Panel also abandoned the use of "**illegal**" for "**illicit**". In usage, "illegal" is what is not allowed by law or is a breach of the law and "illicit" is what is not allowed either by laws or rules or by certain norms of society or international community. Hence illegal is more uncompromising and restricted in meaning.

The new position of the UN Panel on interchanging usage of these two terms with regard to allegations against Uganda is not acceptable, since it changes the understanding of the original mandate, which was to investigate the illegal exploitation of resources but not illicit exploitation. It is easy to determine what is illegal, and not what is illicit. There has to be a law or international convention that determines illegality. Acts described as illicit are not necessarily illegal, especially in absence of a set standard.

(b) VIOLATION OF SOVEREIGNTY

The Porter Commission declined to give a full definition of the word “sovereignty” for similar reasons as for ‘illegality’. The Porter Commission stated that there is evidence to prove that the entry of the UPDF into the DRC in 1998 was by consent of the Government of DRC through a bilateral agreement between the Governments of Uganda and the DRC. This was to tackle the security problem along the common boarder.

(c) EXPLOITATION

Exploitation is done through trade, and under International Law, trade is not affected during illegal occupation of territory. Even if it were argued that Uganda’s presence in the DRC is “illegal” on the basis of UN Security Council Resolutions, this does not imply commercial activities in the occupied territory of the DRC should be deemed illegal. The re-constituted UN Panel in the Addendum Report comes to the same conclusion.

2.2 METHODOLOGY

- 2.2.1 The Porter Commission considered its task as one of inquiry and investigation rather than of prosecution or defence of any one. With few exceptions, hearings were conducted in public and evidence given on oath. Witnesses were entitled to legal representation. The sources of information were documents and sworn testimony/evidence.
- 2.2.2 The methodology used by the first UN Panel was rather different from that of the Porter Commission. The Panel stated that they utilized official documents, published and unpublished literature, and interviews of individual actors and stakeholders, many of whom were not disclosed. The re-constituted Panel did not address the methodology they used. It has to be assumed that they adopted the same approach.
- 2.2.3 The Porter Commission observed that the Government response took exception to the UN Panel's methodology on the ground that it did not follow its own (UN Panel) methods of work. The Panel did not for instance bother to interview those it accused of wrongdoing. It has been established that in many cases the Panel relied on hearsay, gossip and forged documents. The reconstituted Panel, in the Addendum to the Report, failed to admit the overt errors made by the original Panel. The reconstituted Panel also stated that it relied on documentary evidence for its Report and made every effort to, fairly and objectively, evaluate the information it gathered.
- 2.2.4 Initially, the UN Panel refused to cooperate with the Porter Commission in terms of exchange of documents. The UN Panel, being the author of the allegations, was therefore in the position of accuser/complainant. They were thus bound to name the sources and provide documents they claimed to have relied upon in their Report. The initial refusal thus caused difficulty to the inquiry of the Porter Commission. Eventually the Re-constituted Panel gave some documents to the Porter Commission. All in all, the Panel forwarded

twelve (12) documents to the Commission. Some needed translations and some were unverifiable.

2.2.5 All documents except one were photocopies, which made handwriting analysis very difficult. Some of the documents have turned out to be forgeries. The Porter Commission, on its part, gave the reconstituted UN Panel all the documents it required. However, the UN Panel failed to acknowledge this fact in its Addendum to the Report. For instance in the *Dara Foret* Case Study, where the whole evidence was given to the UN Panel and which also interviewed Mr. Kotiram of *Dara Foret*; the Panel did not make any mention of these findings in the Addendum to the Report or make any acknowledgement to the concerned parties. The evidence clearly proved that the allegation against the President was false and unresearched.

2.2.6 The Porter Commission observed that they depended on the UN Panel to provide evidence of its allegations because the law requires evidence of wrongdoing against any accused person to be proved before action is taken. That is why the Commission's work was to examine the UN Panel's work and not to repeat it. Consequently the UN Panel should have provided more evidence to the Porter Commission.

2.2.7 EVALUATION OF EVIDENCE

In cooperation with the UN Panel, the Porter Commission was given certain documents as evidence implicating certain individuals. The Porter Commission received some documents from the UN Panel, which after examination, the Commission decided that they could not be relied upon and some were outright forgeries, for instance, the Protocol d'Accord. The Commission observed that if documents are shown in evidence to be questionable, any party should not rely upon them.

The Porter Commission observed that in general, the Reconstituted UN Panel and itself are agreeable on the following findings:

- (i) **The original Panel's allegations against the Government of Uganda and the President were wrong.**
- (ii) **Some officers and men of UPDF conducted themselves in an unbecoming manner in the DRC.**

2.3 OFFENCES AND SANCTIONS RECOMMENDED AGAINST INDIVIDUALS IMPLICATED IN ILLEGAL EXPLOITATION

2.3.1 OFFENCES BY SOME INDIVIDUAL UPDF OFFICERS

The Porter Commission observed that some individual UPDF officers committed acts of indiscipline in the course of their duties. It recommends further urgent investigations in some cases and disciplinary action for others. The offences and acts of indiscipline established by the Commission include: **perjury, disobedience of lawful orders, harassment of civilians, mining, smuggling, looting, incompetent investigations and contempt of the Commission.**

(a) PERJURY

The Porter Commission found that the following UPDF officers perjured themselves before the Commission.

- (i) **Maj. General Kazini –**
Committed acts of perjury in the following areas:

- (a) His denial of knowledge of soldiers being involved in doing business in the DRC.
- (b) Use of military aircraft in facilitating private businessmen.
- (c) His dealings with La Societe Victoria in diamond trade and his appointment of Adele Lotsove as Governor of Ituri Province.

(ii) Lt. Col. John Kasaija, Maj. Jones Katafiire, Capt. Richard Badogo and Lt. David Komurubuga

As liaison officers at the Military Air Base they committed perjury before the Commission when they failed to disclose the use of the Air Base by private businessmen.

(iii) Lt. Col. Mugyenji, Maj. Sonko Lutaaya (R.I.P), and Lt. Okumu David.

Committed perjury before the Commission about their knowledge of UPDF soldiers' involvement in gold mining.

Response:

- (a) Government notes the above findings of the Commission*
- (b) Government undertakes to invoke the disciplinary mechanism under the 1992 N.R.A. Statute against the officers mentioned in i, ii & iii above.*

(b) DISOBEDIENCE OF LAWFUL ORDERS

The Porter Commission highlighted instances of disobedience of lawful orders by some officers of the UPDF.

(i) Lt. Gen. Salim Saleh

He purported to change his shareholding in Air Alexander International Ltd so as to circumvent the President's directive forbidding army officers from doing business in the DRC while he actually maintained his controlling interest in the company, which continued to do business in the DRC.

(ii) Maj. Gen. Kazini

He gave instructions to assist businessmen from the DRC to use the Military Air Base contrary to the President's directive. He also appointed Adele Lotsove Governor of Ituri Province contrary to the policy not to interfere in local administrative matters in the DRC.

He was however reprimanded for the latter.

(iii) Liaison Officers at the Air Base - Lt. Col. John Kasaija, Maj. Jones Katafiire, Capt. Richard Badogo and Lt. David Komurubuga.

These officers allowed private businessmen to use the Military Air Base and board military aircraft contrary to the President's directive. They claimed to have been working under superior orders.

(iv) Lt. Col. Sula, Maj. Kagezi and Cpt. Kyakabale were accused by Maj. Gen. Kazini of having deployed soldiers to guard gold mines without authority or orders.

The Porter Commission recommended further investigations and appropriate action.

Response

(a) Government notes the recommendation

(b) Government undertakes to carry out investigations with a view to taking appropriate action.

(v) Indulging in Business

The Porter Commission found that some individual UPDF officers indulged in business while in operation in DRC contrary to the President's directive. Col. Peter Kerim was reported by Maj. Gen. Kazini to have been doing business.

Response:

(a) Government notes the finding of the Porter Commission.

(b) Government agrees to undertake further investigations.

However it should be noted that action has already been taken against Col. Peter Kerim cited above, who has been suspended pending investigation.

(vi) Soliciting Security/Intelligence Funding

The Porter Commission noted Maj. Gen. Kazini's report that some UPDF commanders were getting money from Congolese rebels and companies under the pretext of intelligence gathering. Maj. Gen. Kazini's concern was that it should be forwarded to him.

The Porter Commission recommends investigation and appropriate action in respect of Maj. Gen. Kazini's instructions.

Response:

(a) Government notes the recommendation and,

(b) Undertakes to carry out further investigations.

(vii) Conspiracy in operation of illegal flights

The Porter Commission found that some UPDF officers conspired with the Liaison Officers at the Air Base to conduct illegal flights contrary to the Uganda Civil Aviation Authority Statute and the Chicago Convention on Civil Aviation.

It recommended that the investigations and disciplinary action be taken against the officers involved.

Response:

- a) Government notes the recommendation and,*
- b) Undertakes to carry out further investigations and take appropriate action.*

(c) HARASSMENT OF CIVILIANS

Maj. Lutaaya Sonko and Lt. David Okumu

The Porter Commission found that the above named officers were confirmed to have harassed civilians in the DRC.

Response:

- (a) Government notes the findings above.*
- (b) Government undertakes to carry out appropriate disciplinary action against the two officers.*

2.3.2 MINING

The Porter Commission stated that some individual senior officers and soldiers of the UPDF took advantage of their postings and participated in the exploitation of resources in the DRC. The Commission specifically

cites Maj. Gen. Kazini, Col. Mayombo, Lt. Col. Mugenyi, Maj. Sonko, Maj. Kagezi and Lt. David Okumu.

It recommends an extremely careful inquiry into the complaints against UPDF officers implicated in the mining sector.

Response:

Government accepts and agrees with the above recommendation.

2.3.3 SMUGGLING

(i) General Smuggling

The Porter Commission noted that Maj. Gen. Kazini' made a report about the serious problem of smuggling along the common boarder between Uganda and the DRC. This activity was being done by some individual UPDF officers in collusion with local civilians.

The following officers were implicated: Lt. Col. Arocha, Lt. Col. Mugenyi, Lt. Col. Nyakaitana and Col. Burundi.

The Porter Commission recommended further investigations and a full review of the capability, discipline and honesty of UPDF officers.

Response:

- a) Government takes note of the above findings.*
- b) Government agrees to carry out investigations in relation to smuggling.*

(c) *However matters of capability, discipline and honesty of UPDF officers are to be addressed in the on going Defence Review Programme.*

(ii) **Diamond Smuggling**

The Porter Commission found that there is a diamond smuggling ring through Uganda to Belgium. **This involves Maj. Gen. Kazini, Jovial Akandwanaho and Khahil using a company called La Societe Victoria.** It stated that the link between the three is supported by strong evidence.

It recommends further investigations based on the report.

Response:

Government notes the above finding and agrees to undertake further investigations as recommended.

2.3.4 Elite Networks

(i) The reconstituted UN Panel's final Report alleges that some individual UPDF officers, some influential Government officials and some businessmen have established "**Elite networks**" to perpetuate the insecurity situation in the DRC for purposes of continued exploitation of commercial benefits after the withdrawal of UPDF.

The Porter Commission does not agree with this theory and finds most of the evidence advanced by the Panel on individuals and companies alleged to operate the networks not convincing.

Response:

Government notes and agrees with the above position.

- (ii) However, the Porter Commission only found the evidence of a network between La Societe Victoria and Maj. Gen. Kazini credible, in respect of diamond smuggling.

The Porter Commission recommended further investigation and prosecution of those involved in the Victoria diamond smuggling ring namely: Maj. Gen. Kazini, Jovial Akandwanaho and Khalil.

Response:

- (i) *Government notes the above finding and accepts the recommendation for further investigation.*
- (ii) *The Government observes that the involvement of these three individuals in diamond smuggling does not necessarily constitute a network.*

2.4.5 International Travel Ban

The Porter Commission did not agree with the recommendation of the Final UN Panel Report to impose travel bans on the following officers: Lt. General Salim Saleh, Col. Otafiire, Col. Mayombo, Col. Peter Kerim, Col. Burundi, Sam Engola and Mr. Piskunov.

The Porter Commission recommended that the International Community should stay action against Maj. General Kazini pending action by the Government of Uganda.

Response:

Government agrees with the above position.

2.3.6 Take Air Ltd.

The Porter Commission found that shillings one hundred eleven million (111,000,000/=) paid to Take Air Ltd. by the Ministry of Defence was not accounted for.

It recommends investigations to determine the accountability.

Response:

Government notes and agrees with the above recommendation.

2.3.7 Lt. Gen. Salim Saleh and Air Alexander International Ltd.

The Porter Commission found that Lt. Gen. Salim Saleh as Director in Air Alexander International Ltd committed offences under the Companies Act by registering a minor as a director in the company contrary to the Act.

The Porter Commission recommended appropriate criminal sanctions to be invoked by the C.I.D. undertaking investigations for prosecution.

Response:

(a) Government notes the above finding.

(b) Government agrees to undertake further investigations.

2.3.8 Looting

The Porter Commission found that some individual soldiers of the UPDF were involved in looting and that some senior officers supported them in this act. Maj. Gen. Kazini revealed that soldiers of the 19th Battalion were involved in looting of civilian property.

Response:

- (a) *Government notes the above findings and the statement attributed to Maj. Gen. Kazini with regret.*
- (B) *Government undertakes to investigate the looting allegation against the 19th Battallion of the UPDF.*

2.3.9 Incompetence In Investigations

The Porter Commission observed that from the evidence of Maj. General Kazini, there is incompetence or total lack of inquiry and failure to deal effectively with breaches of discipline at senior levels. It further stated that from the evidence of Col. Mayombo, the Commission concluded that, Military Intelligence's investigations are not good enough. Col. Mayombo admitted that some cases are not reported to Headquarters by field officers.

The Porter Commission Report recommended a serious consideration of those holding senior posts in UPDF.

Response:

- (a) *While Government notes the above recommendation it wishes to point out that shortcomings of the few officers does not justify serious considerations of competence of all the other UPDF officers holding senior posts.*
- (b) *Government also reiterates that the ongoing Defence Review Programme will address such weaknesses, where they exist.*

2.3.10 Conspiracy of Silence/Contempt of the Porter Commission

The Porter Commission observed that:

- (a) Some UPDF officers who appeared before it conspired to keep silent on many issues when giving testimony.

- (b) The commitment of some UPDF officers to respect civil Authority as required by the Constitution is questionable.

The Porter Commission recommended that the on-going Defence Review Programme should examine the professional ability of officers as professional soldiers.

Response:

- (a) *Government notes the concerns of the Commission.*
- (c) *Government accepts the recommendation.*

2.3.11 Hema-Lendu Conflict

The UN Panel accuses the UPDF of involvement in Hema-Lendu Conflict as a strategy to sustain the vicious circle of war and exploitation. It alleged that the following UPDF officers were involved on different sides of the conflict. They are: Maj. Gen. Kazini, Ltd. Col. Arocha, Col. Peter Kerim, Capt. Kyakabale and Col. Angina.

The Porter Commission observed that it heard evidence of some of the officers on oath and they all denied involvement. The Commission noted that it did not find them credible witnesses. According to the evidence of Col. Mayombo who investigated the issue, the UPDF High Command took action against Col Kerim, Col. Angina and Capt. Kyakabale – by removing them from the area.

The Porter Commission found that the conflict is about land and the Government and UPDF High Command had no role in

fermenting the conflict. The conflict has nothing to do with minerals.

Response:

Government notes and accepts the findings of the Commission.

2.3.12 Individuals Exonerated

(i) H.E. The President Yoweri Kaguta Museveni:

The Porter Commission stated that they investigated each and every allegation against the President and found the allegations false.

(ii) Muhoozi Kainerugaba

The Porter Commission found allegations against this officer baseless.

(iii) Hon. Wapakhabulo, Col. Otafiire and Col. Mayombo.

The Porter Commission stated that the Commission heard evidence from the "Nairobi" witness that Col. Mayombo was involved in obtaining a payment of US\$380,000 from RCD for the three of them.

The Commission found the evidence not reliable, as the documents were questionable.

Response:

Government notes the Commission's exoneration of the individuals above.

CHAPTER THREE

ADMINISTRATIVE ISSUES ARISING FROM THE PORTER COMMISSION REPORT

3. INTRODUCTION

3.1 The Porter Commission brought out administrative issues which were pertinent to its work, but which were outside its Terms of Reference. Recommendations and responses under these administrative issues are outlined here below under sub-headings:

- Registrar of Companies
- Uganda Revenue Authority
- Transportation Network
- Ministry of Defence

3.2 REGISTRAR OF COMPANIES

The Porter Commission observed that there was gross mismanagement of the Register and that fines and penalties for offences under the Companies Act were too low and therefore recommend as follows:

(i) Updating of Register

The Porter Commission observed that companies' register is not up to date.

The Porter Commission recommended that the updating of the Registry be implemented speedily.

(ii) Management of the Registry

The Porter Commission observed that there is laxity in the management of the registry as evidenced by lack of a proper filing system and compliance.

The Porter Commission recommended that:

- (a) All current files should be checked for compliance.
- (b) Immediate action be taken against companies that offend the requirements of the Companies Act.

Response

- (a) *Government notes the observation by the Porter Commission that the Companies Register is not up to date and that there is lack of proper filing system and laxity in the management of the Registry*
- (b) *Government undertakes to address the question of lack of capacity, which has undermined the compliance of the companies Act.*
- (c) *Furthermore, Government undertakes to ensure that all files are checked for compliance and will take action against companies that offend the requirement of the Act.*
- (d) *Government accepts the recommendation that updating of the Register be implemented speedily.*

(iii) Revision of Fines and Penalties

The Porter Commission observed that fines and sentences for offences under the Companies Act are too low.

The Porter Commission recommended that these fines and sentences be revised urgently.

Response

- (a) *Government notes the above observations.*
- (b) *Government accepts the recommendations to revise the penalties and sanctions urgently. However Government wishes to note that there is an on going exercise to review all existing fees, fines and penalties under various laws of Uganda. Government will therefore enhance the review process.*

3.3 UGANDA REVENUE AUTHORITY

The Porter Commission found a lot of weaknesses in the URA system of revenue collection, and ineffective control of imports and exports. It further noted that URA had no power to inspect any items claimed to be classified.

The Porter Commission noted that a Commission of Inquiry into the URA had been established. The Porter Commission, therefore, suggested that its findings and remarks on URA be copied to that Commission for further consideration, in the context of the mandate of the URA Commission.

Response

- (a) *Government notes the revelations by the Commission about weakness in the URA revenue collection and the ineffective control of exports and imports, and that URA lacked power to inspect any items claimed to be classified.*
- (b) *Government accepts the recommendation that the weaknesses as mentioned be brought to the attention of the ongoing Commission of Inquiry into URA for appropriate action.*

(c) Government also undertakes to bring such weaknesses to the attention of the responsible Ministry supervising URA, in case the Commission of Inquiry into U.R.A. would have already completed its work by the time this Report comes out.

3.4 TRANSPORTATION NETWORK USED IN THE EXPLOITATION OF NATURAL RESOURCES AND OTHER FORMS OF WEALTH IN THE DRC.

3.4.1 Military Air Base

The Porter Commission observed the following weaknesses at the Military Air Base (MAB) at Entebbe:

- (i) Uncontrolled use of the Military Air Base by Ugandan, Congolese, and even Lebanese traders.
 - Goods belonging to traders were stored at the MAB to wait for availability of planes departing for DRC, which is a security risk.
 - Within a period of just under 3 years (1998 – 2000) over 4000 civilians transited to and from Congo, through the MAB.
 - Authority for trips/flights was given by various military officers, and officials of the Ministry of Defence, instead of the Civil Aviation Authority (CAA).
 - Civilian traders, irrespective of nationality, traveled on military flights whenever there was space.

- (ii) Failure by URA to establish its presence for a long time at the MAB; but even when it eventually did, it did not maintain a 24-hour presence, as it operated only from 8.00 a.m. to 5.00 p.m. daily.
- (iii) Presence of a back-road, manned by very junior soldiers, which links the Military Air Base to the Kampala/Entebbe Airport Road.

The Porter Commission recommended that:

- (a) The Military Air Base at Entebbe be closed, and revert to civilian operation by CAA.**
- (b) In any event, apart from the true military flights shown to be chartered by Ministry of Defence, all traffic from the Military Air Base should immediately stop. In that regard, it recommends that CAA insist on production of written proof of charter before clearing the flight for take off.**
- (c) Customs should maintain a full time presence at the Air Base.**

3.4.2 Civil Aviation Authority (CAA)

The Porter Commission made the following observations about the CAA's operation at the MAB:

- (a) CAA has no presence on the ground at the MAB, which makes supervision of air traffic in such matters as airworthiness and crew qualifications, very difficult.

- (b) A big number of private flights operate independently from the MAB, carrying merchandise and civil passengers, without intervention by the CAA.
- (c) CAA does not issue an air license for aircrafts that operate from the MAB, thus failing to control air traffic in the Uganda territorial airspace.
- (d) Presence of civilian planes using the Old Airport and the MAB, doing non-military operations, not under the supervision of the army because they are not on military operations. These are also not supervised by CAA since they operate from the Military Air Base.

Responses on both 3.41 and 3.4.2

- (a) *Government notes the observations by the Porter Commission about the Military Air Base.*
- (b) *Government will undertake to streamline the operation at the MAB, the compliance with the CAA Statute, International Civil Aviation Organisation Rules and Regulations, and any other relevant legal provisions in force.*
- (c) *Government also accepts the recommendations that senior officials in the CAA be considered for fitness, arising from their failure to observe the provisions of the CAA Statute and the Chicago Convention.*
- (d) *Government does not accept the recommendation to close the back road linking the MAB to the Kampala/Entebbe Airport road, however undertakes to ensure its proper management and control.*

- (e) *Government does not accept the recommendation to close the Military Air Base at Entebbe.*

3.5 UGANDA PEOPLES DEFENCE FORCES

The Porter Commission observed that UPDF, as an institution, had some weaknesses, which resulted into some of its officers directly or indirectly participating in the exploitation of the natural resources of the DRC. Some of the weaknesses pointed out were:

- (a) Poor investigation by UPDF commanders and the Chieftaincy of the Military Intelligence (CMI)
- (b) Lack of professionalism.
- (c) Misconduct by some of the UPDF officers.

The Porter Commission therefore recommended that, the on going Defence Review programme should include:

- Careful assessment of the ability, intelligence and educational achievement of, particularly, officers.
- A stringent examination of the capacity of the officers to fill his office as a professional soldier.
- The commitment of the officer to the defence of the state rather than self-advancement and self-enrichment, and respect for Civil Authority under the Constitution.

Response:

Government accepts the recommendation that the ongoing Defence Review exercise takes into account the following issues:

- *Professional ability;*
- *Assessment of the UPDF officers, and*
- *Respect of the Constitution by UPDF officers.*

CHAPTER FOUR

THE INTERNATIONAL AND SECURITY IMPLICATIONS FOR UGANDA ARISING OUT OF THE PORTER REPORT

4. BACKGROUND

4.1 The security, peace, and prosperity of Uganda are closely intertwined with those of our neighbours within the Great Lakes Region. Uganda's history over the last forty years clearly demonstrates that Uganda cannot attain sustainable peace, stability and prosperity as an island within the region. It is therefore critically important that the regional peace, stability and prosperity be viewed within a framework that goes beyond our borders.

4.2 Uganda is a member of the international community and organizations and must therefore abide by the set rules and regulations or risk the consequences. Actions and issues that may be national or regional are sometimes of major international interest and decisions that come from this are bound to impact on Uganda. We must therefore take this into consideration while developing and pursuing our national interest strategies within the region and beyond.

- 4.3 Uganda pledged to the UN Security Council and the world at large that the Porter Judicial Commission of Inquiry would be free, transparent and publicized. The Porter Report Para. 40.7.5, page 196 states in part, *“in this case the Minister of Foreign Affairs is on record that the Report will be published. His Excellency the President, on behalf of Government has publicly said that action will be taken on recommendations of the Report...”* Consequently, the Technical Committee advises that once the Government has accepted the recommendations, it must implement and be seen to implement those recommendations. The UN Panel has been reconstituted to continue with the investigations, which may raise issues requiring Government action. It is therefore imperative that Government remains seized with this and be prepared to take action in case need arises.
- 4.4 Arising from the Porter Commission Report, there are a number of issues with serious international and foreign policy implications that Uganda must address. These include the concern over environmental issues, the global interest in strategic minerals and humanitarian issues.
- 4.4.1 **Strategic Minerals**
- 4.4.2 The Great Lakes Region is known to have major strategic minerals that have attracted international interests. While having these strategic minerals can be considered a positive attribute and a major strategic advantage for development, the existence of these minerals can also be a major source of negative exploitative international interests for its control for selfish reasons. The history of the world and especially the 3rd world is replicate with hundreds of such exploitative selfish examples.
- 4.4.3 Of major interest in the region are minerals such as gold, diamond, coltan, uranium. These that have attracted both large and small speculative investors who thrive most on unstable environment and regimes and whose interest,

therefore, is to sustain instability in the region to enable them continue with their selfish exploitation.

4.4.4 The Porter Commission and the UN Panel Reports critically note our major weaknesses in the regulatory framework for the control and monitoring of these two critical elements. The impact of our weaknesses in these areas will be grave if we do not adopt appropriate national and regional mechanisms for their control.

4.4.5 These minerals are largely never processed or used within the region but are exported mainly to Western Europe and other developed countries.

4.4.6 The area of major concern therefore for Uganda and the region is the need for a regulatory framework that will ensure that the region would be able on a long term basis, to benefit from these minerals and at the same time not allow these minerals to be a source of instability in the region.

4.4.7 The Porter Commission pointed out that the data relating to dealings in minerals, such as gold, diamond, uranium, cobalt, etc. used by the UN Panel was unreliable and full of discrepancies arising from different Government departments handling this data differently and using different methods.

The Porter Commission therefore recommended that the data collection should be harmonized and integrated by the Uganda Bureau of Statistics.

Response:

(a) Government notes the Porter Commission observation regarding discrepancies in data collection;

- (b) *Government accepts the recommendation for a need to have the data collection harmonized and integrated by the Uganda Bureau of Statistics.*
- (c) *Government undertakes to improve the capacity and performance of UBOS and other institutions that collect data.*

4.5 ENVIRONMENTAL ISSUES

- 4.5.1 The UN Panel's interests in this were based on the need for the control and the protection of wild life species, elephants and their tusks and wood forest. Specific mention was made on a number of companies who were alleged to be exploiting timber and elephant tusks. These allegations were proved by the Porter Commission not to have involved Ugandan companies or Government in this exercise, since the operators were neither Ugandan nor Ugandan registered.
- 4.5.2 While Uganda was cleared of any wrong doing, it should be noted that these environmental issues remain one of the most contentious areas today and in the future.
- 4.5.3 It should further be noted that Uganda is signatory to the following international agreements, among others:
 - (a) Lusaka Agreement on Co-operation Enforcement of Cross-border Trafficking of Wild Life.
 - (b) Convention on Conservation of Migratory Species of Wild Animals (CMS) of 1979.
 - (c) African Eurasian Migratory Water Bird Agreement (AEWA) of 1995.
 - (d) Convention of International Trade of Endangered Species of Fauna and Flora (CITES) of 1975

The Technical Committee Recommends that Government should note the following:

- (i) These international conventions and agreements should not only be domesticated into Uganda laws but should also be incorporated into a regional framework to ensure that regional interests are protected and promoted.
- (ii) A mechanism to certify timber forest and other items of environmental concerns should be put in place to avoid similar accusations in future.
- (iii) There should be a regional approach to study, and consolidate all international conventions.

4.6 TRADE REGULATORY REGIME

The Porter Commission's findings on laxity of Uganda's regulatory regimes on products like timber, gold, diamond, coltan and uranium are a matter of major concern and should therefore be addressed. Uganda may also become a major haven for money laundering.

The Technical Committee recommends that:

- (i) Uganda initiates adoption of a common regional trade regulatory regime to specifically cover these products. This will require specific common agreements on some of the following elements of trade regulatory regime.
 - Rules of Origin;
 - Certificate of Origin;
 - Customs Procedures, etc.

- (ii) The on-going Uganda Trade Policy Review should incorporate and address the weaknesses of our regime as pointed out in the Porter Report.
- (iii) Ensure Uganda does not become a haven for money laundering.

4.7 TRANSIT

- 4.7.1 Being land locked, and yet at the center of the Great Lakes, Uganda is a major transit point for a number of these products as pointed out by the Porter Commission.
- 4.7.2 In light of the above, the Technical Committee observed that this could be a major positive attribute for economic development, especially as it will enable Uganda's economy develop our transport capacity. But the transit point is also sometimes developed negatively by exploiting the internal weaknesses thereby encouraging the movement of illicit products.

The Technical Committee therefore recommends that:

Uganda should therefore ensure that we use our transit point advantage positively to promote development. This will however require that:

- (i) Establishment of mechanisms to ensure compliance with international standards;
- (ii) Enforcement of a strict customs procedure process for re-export of these products;

- (iii) Maintenance of proper records of all the transit goods movement.

4.8 HUMAN RIGHTS ISSUES

Issues that relate to observance of basic human rights are issues of major international concern. The Porter Commission confirms some of the UN Panel's allegations that some UPDF soldiers harassed civilians in the DRC.

The Technical Committee strongly recommends that:

- (i) The Code of Conduct of operations in the areas of conflict should be effective and meet the basic international standards.

- (ii) The humanitarian concerns in The Porter Commission Report should be addressed from a broader regional perspective through the Great Lakes Corporation Framework.

CHAPTER FIVE

GENERAL RECOMMENDATIONS

5.1 INTRODUCTION

The Judicial Commission of Inquiry into Allegations of Illegal Exploitation of Natural Resources and other Forms of Wealth in the DRC, in the course of its investigation, came across incidental issues, which were pertinent to its work although outside its terms of reference.

The Technical Committee considered a number of these issues, which they deemed critical for the full and effective implementation of the recommendations and decisions to be made.

These incidental matters are discussed and summarized here below under the sub-headings: Registrar General's Office, Regional and International Approach to the Great Lakes Geopolitical problems, Implementation Strategy, Monitoring of the new Reconstituted UN Panel on DRC and Implementation Time Frame.

5.2 REGISTRAR GENERAL'S OFFICE

The Technical Committee notes that the problems affecting the department of Registry of Companies have been a subject of previous government policy to improve its performance. The Public Service Restructuring exercise, it was recommended that the department be devolved into an autonomous authority. To that effect, the Uganda Registration Service Bureau Act. No. 7 of 1998 was passed. However, to date the Act has not been implemented. This situation has been a major contributor to the problems sited above.

Recommendation:

The Technical Committee recommends to Government that the Ministries of Justice and Constitutional Affairs, Public Service and

Finance, Planning and Economic Development implement the devolution of the Registrar General's Department as soon as possible to address the persistent problems of the Registry of Companies.

5.3 REGIONAL AND INTERNATIONAL APPROACH TO THE GREAT LAKES GEOPOLITICAL PROBLEMS

The Great Lakes Region problems of peace, stability and development have become so intertwined that the long-term solutions will of necessity require a regional approach with major international support.

The Technical Committee therefore recommends as follows:

- (a) Uganda should support the convening of the proposed Great Lakes Conference at Summit level with the participation of the United Nation's Security Council Members and all friends of the region to focus on a Framework for Corporation and development within the Great Lakes Region.
- (b) Uganda should initiate the establishment of the Great Lakes Region Corporation Framework to address, on a long-term perspective, the issues of peace, governance, stability and development. Among others, the following issues need to be addressed:
 - (i) Within the framework, a trade regulatory regime for the region should be harmonized.
 - (ii) Uganda should strengthen and harmonize her data collection and documentation process.
 - (iii) The establishment of a Borderland Commission, which should not only address immediate security concerns,

but should equally focus on cooperative development ventures on all issues that affect the population, i.e. trade, transport, security, etc. The main purpose of this Commission would be to create and sustain durable peace among the people along the borders.

- (iv) Money laundering.
- (v) Transit route regime.
- (vi) Conflict prevention and early warning mechanisms.

5.4 IMPLEMENTATION STRATEGY

The Technical Committee feels that there is need to put in place a mechanism to facilitate the implementation of the Porter Commission Report. It is therefore recommended that an Inter-Ministerial Committee on implementation of the Porter Commission Report is established.

This Committee should consist of the following institutions.

- (a) Ministry of Foreign Affairs
- (b) Ministry of Defence
- (c) Office of the President
- (d) Internal Security Organization
- (e) External Security Organisation
- (f) Ministry of Local Government
- (g) Ministry of Tourism, Trade and Industry
- (h) Ministry of Finance, Planning and Economic Development
- (i) Ministry of Internal Affairs
- (j) Ministry of Justice and Constitutional Affairs
- (k) Ministry of Housing, Works and Communication

5.5 MONITORING OF THE NEW RECONSTITUTED UN PANEL ON DRC

The UN Secretary General reconstituted another Panel to continue and complete its investigation in the alleged exploitation of natural resources and other forms of wealth in the DRC. The UN Panel had indicated that it will, on receipt of Porter Commission Report, make appropriate response.

Recommendation:

In view of the reconstituted UN Panel continuing its further investigations in the DRC, the Ministry of Foreign Affairs should:

- (a) Maintain a Monitoring Committee on the UN Panel investigations.
- (b) Make timely response to UN Secretary General.
- (c) Keep the Cabinet seized on the issues and developments as appropriate to enable Uganda respond effectively.

5.6 IMPLEMENTATION TIME FRAME

Uganda's pledge to the international community would necessitate that the recommendations and decisions made on the Porter Commission Report are fully and speedily implemented. The Report should also be made public as pledged.

Recommendation

The Technical Committee recommends that after Government has considered the White Paper and adopted it:

- (i) **The Minister of Foreign Affairs should be authorized to send the Porter Commission Report to the U.N. Secretary General immediately.**
- (ii) **Thereafter the Minister of Foreign Affairs should be authorized to make the Porter Commission Report public, immediately.**

- (iii) Where Government has accepted the recommendations, it should implement the decisions within 6 months.