



大会

Distr.
GENERAL

A/HRC/7/38/Add.2
25 January 2008

CHINESE
Original: ENGLISH

人权理事会
第七届会议
议程项目 2

联合国人权事务高级专员的年度报告和高级专员办事处 及秘书长的报告

人权事务高级专员的报告和世界人权会议后续行动

增 编*

人权事务高级专员办事处在乌干达的活动

* 本报告的内容提要以所有正式语文分发。报告本身载于附件，仅以原文分发。

内容提要

这是 2006 年 1 月与乌干达政府签定全面谅解备忘录之后，联合国人权事务高级专员向人权理事会提交的第二份报告。报告按照人权事务高级专员办事处(人权高专办)的战略优先事项，主要侧重于乌干达北部和东北部受冲突影响地区的人权状况。

报告期间，乌干达北部和东北部受冲突影响地区的人权和安全状况得到显著改善。而且在报告期间，乌干达政府及其国家和地方级机构与人权高专办继续开展增强保护和促进人权的建设性接触交往。

在乌干达北部阿乔利和兰戈等分区，尽管仍有一百多万人滞留在国内流离失所者安置营内，但是估计有 560,000 人已在报告期间返回原籍地。¹ 为了支持这些人口流动，并建设当地开展和平回返进程的能力，人权高专办在乌干达北部为民事执法人员和司法官员大量增加了培训和能力建设活动。

在卡拉莫贾，人权高专办的调查结果表明 2007 年初至 9 月使用武力的强度和规模有所降低。其中部分原因在于乌干达人民国防军更严格地遵守行为守则和标准作业程序、军民对话增加以及该国政府努力建设各方之间的信任并动员卡拉莫琼族人。报告期间，报告和指称在裁军行动中发生法外杀人、偷盗和财产灭失等违反人权的事件减少了。2007 年 9 月以来，在科蒂多和卡邦地区，卡拉莫琼非法武装力量的暴力和入侵事件增多，与此同时，对军队杀人、采取残忍、不人道或有辱人格的待遇或惩罚的行为及滥用武力破坏财产和生计事件的报导也增多。

在获得诉诸司法的机会问题方面，自 2006 年中以来，民事执法人员和司法官员一直在慢慢返回到原先受上帝抵抗军(上帝军)冲突影响的区域。报告证实该国已另外增加聘用了警察，使得原先已弃之不用的警察哨岗再度开始运作，尽管警方的资源和培训依然有限。对于正式司法体系，民众仍然知之甚少。在争端解决中，由于当地传统的解决机制即使不是总是那么公平，但更易于获得、更具有成本效益而且被认为更方便，因此这种机制的应用最为普遍。此外，正式司法体系中案件的严重积压仍是一个棘手问题，也没有向司法机关提供足够的资源以及时处理案件。

¹ 机构间常设委员会(机构间常委会)，工作组，2007 年 11 月。

在土地权方面，无论是仍然滞留在国内流离失所者安置营内的人员还是已迁往过渡地点或已返回原籍地的人员，大量人员目前都可以获得并使用农业用地。乌干达北部的人口目前依赖于现有的调解和裁决机制，处理回返过程中土地方面的争端，由于这方面争端的发生愈加频繁，这可能会成为一项棘手问题。现有土地方面的争端涉及个人、家庭和部族要求收回其土地、财产和住房，同时需要确保最弱势群体的权利，诸如单身妇女、女性和儿童为户主的家庭、包括上帝军退伍儿童在内的孤儿或孤身儿童及老年人。

此外，人权高专办开展了为期六个月的研究调查，旨在拓宽与深化对乌干达北部冲突的理解以及对问责制、和解与过渡时期司法的认识，本报告总结了该次研究的结果。参加重点小组的人员指出上帝军和该国政府都应承担最主要的责任。各方均指出必需进行和解，并强调团体之间的和解。然而，他们认为和解应依赖于原有的公开承认与赔偿。在过渡时期司法选择办法方面，重点小组普遍表示了对该国政府机构的不信任，尤其是地方委员会和民事/军事法庭存在的腐败和成见。各方始终强调需要平反以往的罪行并进行赔偿，以及广泛支持进行大赦，但并非所有方面一致支持进行大赦。

最后，人权事务高级专员向乌干达政府提出了一系列建议，其中包括：确保司法、问责制和法治的各项原则符合相关国际规范并融入所有和平协议中，以及围绕问责制与和解展开的国家磋商进程继续允许冲突受害者可以真正、有效地进行参与。

高级专员还提倡，国内流离失所者在知情的情况下，对于是否迁移、何时迁徙、迁往何地的决定有自由做出选择的权利，包括安全体面地返回家园的权利，应指导人道主义紧急情况至初期恢复的过渡阶段的任何规划与协助。

Annex

Activities of the Office of the High Commissioner for Human Rights in Uganda

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List of abbreviations and acronyms

ASTU	Anti-Stock Theft Unit
CMCC	Civil-Military Cooperation Centres
IDP	Internally displaced person
JLOS	Justice Law and Order Sector
KIDDP	Karamoja Integrated Disarmament and Development Plan
LC	Local Council
LC II courts	LC courts at parish level
LC III courts	LC courts at sub-county level
LDU	Local Defence Units
LRA	Lord's Resistance Army
OHCHR	Office of the United Nations High Commissioner for Human Rights
PRDP	Peace, Recovery and Development Plan
SPC	Special Police Constables
UHRC	Uganda Human Rights Commission
UNICEF	United Nations Children's Fund
UPDF	Uganda Peoples' Defence Forces
UPF	Uganda Police Force
UTFMR	Uganda Task Force on Monitoring and Reporting

I. INTRODUCTION

1. The present report of the United Nations High Commissioner for Human Rights is the second report submitted to the Human Rights Council (“the Council”) in accordance with the Memorandum of Understanding signed with the Government of Uganda on 9 January 2006, and focuses principally on human rights developments in the conflict-affected areas of northern Uganda and in Karamoja, north-eastern Uganda in 2007, in line with the strategic priorities and deployment of OHCHR. This report provides an update on human rights developments in the country since the previous report submitted to the Council.¹ The well-established presence of OHCHR on the ground in both northern and north-eastern Uganda has gained confidence and respect amongst the populations, public authorities at both local and national level, as well as protection and humanitarian partners, and thus increased the capacity of the Office to impact positively on the human rights situation.

II. OVERVIEW OF HUMAN RIGHTS DEVELOPMENTS

A. Northern and north-eastern Uganda

2. In view of the significantly improved security situation in northern Uganda, as of November 2007,² approximately 560,000 internally displaced persons (IDPs) had returned to their places of origin, mainly in the Lango subregion. In Acholiland, approximately 59 per cent of IDPs (or 659,000) still live in original camps and 37 per cent have moved to new camp-setting sites on transit from the original camps to their home.³ In Teso subregion, north-eastern Uganda, the post-conflict transition process has considerably stabilized during 2007, with over 90 per cent of the population having returned to their places of origin in Soroti and Kaberamaido districts. However, in Amuria and Katakwi districts of Teso, 96 per cent of 142,000 IDPs remain in camp-settings due to armed Karimojong incursions. Returns continue to take place and were not significantly affected by the recent flood emergency in the region. The deployment of specialized Anti-Stock Theft Units (ASTUs) of the Uganda Police Forces (UPF) along the border with Karamoja has increased security in the region, but also resulted in human rights violations by some of their members.⁴

¹ A/HRC/4/49/Add.2.

² See footnote 1 above.

³ Idem.

⁴ In February, August and September 2007, OHCHR recorded three cases of rape by ASTU members in Katakwi and Amuria districts, which were reported to and followed-up by the Uganda Police Force. In October 2007, three IDPs were allegedly tortured by members of ASTU and SPCs in Pader district. The case was reported to the police.

3. With respect to freedom of movement, OHCHR continues to consistently advocate for the rights of IDPs to a free and informed choice regarding three durable solutions to their displacement: return home, local integration on the site of displacement or resettlement in another part of the country, all of them in safety and with dignity. Greater freedom of movement throughout northern Uganda in the second half of 2007 improved access to land, in particular for agricultural purposes, leading to a progressive return to self-sustainability. However, limited infrastructure and resources, basic services, including health and education continue to be inaccessible to the majority of the population in the light of the largely inadequate assistance provided to the returning populations. Consequently, most of their economic, social and cultural rights, including the right to an adequate standard of living remain unfulfilled. In support of the increasing population movements, and to build local capacity for peaceful durable solutions, OHCHR significantly stepped up its training and capacity-building activities in northern Uganda. In cooperation with protection partners, OHCHR provided human rights training for most newly deployed Special Police Constables (SPC) in Kitgum, Gulu and Amuru districts and in Lango subregion; human rights training for regular police forces in Lango subregion and in Pader district; training for local authorities, including local council courts, and community-based organizations, and organizations working on the promotion and protection of the rights of persons with disabilities, in Teso subregion.

4. In September, President Museveni launched the Peace, Recovery and Development Plan (PRDP) to be implemented from 2008 until 2010 in northern and north-eastern Uganda. Two of its strategic objectives offer a framework to address existing human rights challenges: the consolidation of State authority, including through the enhancement of civilian policing and judicial presence, and the re-establishment of the rule of law, and the fostering of peacebuilding and reconciliation.

5. During the second half of the year, the deployment of ASTUs and SPCs was accompanied by the disbanding of a significant number of armed auxiliary forces of the Uganda Peoples' Defence Forces (UPDF), commonly referred to as Local Defence Units (LDU). While in some instances LDUs are considered as an integral part of the UPDF, especially in the Acholi subregion, others, such as the Arrow Boys in Teso, and others in Lango subregions, were officially demobilized as of July 2007. Whilst the disarmament and reintegration processes are still in the process of being completed in some parts of the north, OHCHR considers this a positive initiative in terms of reinforcing the return to a civilian administration of justice in northern Uganda.

6. Throughout the northern districts, with the increase in deployment of police and judicial officers, access to justice for the populations is slowly improving. Yet, impunity and corruption practices in the police and especially at the lower levels of judicial services continue to be reported. Although significantly on the decrease, instances of summary

executions,⁵ gender-based violence,⁶ arbitrary arrest, detention and torture and inhuman or degrading treatment⁷ and excessive periods of pretrial detention and lack of legal aid continue to be recorded. The phenomenon of “mob justice” remains an issue to be further studied, especially in northern Uganda.⁸ “Mob justice” appears to be compounded by the lack of access to formal justice where populations take the law in their own hands mainly in cases of theft, unintentional killings, sexual offences and suspected witchcraft. While such instances certainly originate out of anger, communities assert that police and judicial officials at times collude with criminals. Similarly, many crimes and human rights violations still go under-reported, mainly because of limited referral mechanisms and a lack of trust among the population in the law enforcement and judicial institutions.

7. In this regard, OHCHR has continued to provide support to the Civil-Military Cooperation Centres (CMCC) coordinated by the Uganda Human Rights Commission (UHRC) in northern Uganda. Joint monitoring, investigations, training, human rights sensitization and public outreach activities were carried out by the UHRC, CMCCs and OHCHR in all northern districts of Uganda, as well as in Karamoja during the reporting

⁵ In December 2006, in Katakwi district, a UPDF auxiliary (Guide) killed one IDP whilst on patrol. The case was committed to High Court in August 2007. In June 2007, in Gulu district, three UPDF tortured and killed two IDPs. The UPDF 4th Division investigated and the case was brought to High Court in September 2007. In November 2007, one LDU killed one male and one female IDP in Pader district. The perpetrator killed himself during his arrest.

⁶ Since December 2006, 48 cases of rape and other sexual violence against girls perpetrated by UPDF or LDU elements were reported, out of which 37 cases were recorded from March to August 2007 in Kitgum, Gulu, Lira and Amuru districts. Thirty-four of these cases were committed by UPDF forces, and three were perpetrated by members of the LDUs. Most of these cases occurred in internally displaced camp settings and return areas. In February 2007, four girls were abducted by a UPDF soldier in Gulu district, resulting in the rape of two of the girls, aged 12 and 14. Also in February 2007, another 14-year-old girl was raped and strangled to death by an LDU soldier in Amuru district. These cases were reported to the police, but no arrests were made due to either difficulties in identifying the perpetrators or because the suspects disappeared. (Uganda Task Force on Monitoring and Reporting under Security Council resolution 1612 (2005) on children and armed conflict.) In January and February 2007, OHCHR documented two cases of rape by members of the Arrow Boys in Amuria district.

⁷ Some selected examples of cases which OHCHR has recorded include: in January 2007, a UPDF officer in Lira district ordered the arbitrary arrest and ill-treatment of an SPC. The case was referred to the UPDF 5th Division, and the perpetrator paid compensation for medical bills for the victim. In Pader, in January 2007, the UPDF and police arbitrarily arrested and detained one man in the military barracks. The victim reported being tortured and the case was referred to the police. In Soroti, in January 2007, three cases of torture by an Arrow Boy detachment commander were documented and reported to the police. In March 2007, in Lira district, four police officers arbitrarily arrested and ill-treated one woman and her son. Upon referral by OHCHR to the District Police Commissioner, the perpetrator was disciplined and ordered to pay compensation. One case of torture in Amuria Prisons was reported by OHCHR to the UHRC in September 2007. In November 2007, four women were arbitrarily arrested and beaten by the UPDF in Kitgum district, and subsequently released. OHCHR was informed that the army was not successful in locating male suspects they were looking for, and instead decided to detain their wives.

⁸ OHCHR Uganda has recorded eight cases by way of illustrative examples of “mob justice” between March and September 2007, across northern Uganda.

period. These activities contributed to raising awareness of the population and to mediate minor offences committed by the army or the police.

8. In implementation of Security Council resolution 1612 (2005) on children and armed conflict, the Government continued to engage with the Uganda Task Force on Monitoring and Reporting (UTFMR) and submitted an action plan against the recruitment and use of children in armed conflict to the Special Representative of the Secretary-General on children and armed conflict in November 2007.

B. Karamoja

9. OHCHR continued to monitor the situation of human rights in Karamoja, particularly in the light of the recommendations made by the High Commissioner in previous reports.⁹ Reports in November 2006 and April 2007 highlighted that UPDF disarmament operations, especially in Kotido early in November 2006, amounted to indiscriminate and excessive use of force by the army. The High Commissioner reiterated calls on the Government to respect its obligations to protect the human rights of all individuals under its jurisdiction and cease the use of indiscriminate and excessive use of force against men, women and children; and to take all necessary measures, including reviewing the disarmament process, to prevent any further human rights violations in Karamoja.

10. Most recently, in August 2007, findings by OHCHR show a moderation in the intensity and scale of use of military force during the disarmament process, as well as a steady decline in numbers of exchanges of fire between armed Karimojong and the UPDF soldiers. This was partly attributable to stricter observance of the code of conduct and standard operating procedures by UPDF, as well as a change of attitude towards the ongoing disarmament exercises based on increased civil-military dialogue and on the Government's efforts to mobilize and build confidence with Karimojong communities.

11. Furthermore, the number of reported and alleged cases of human rights violations committed during disarmament operations, including extrajudicial killings, theft and loss of property, reduced during the reporting period, pointing to an overall improvement in the human rights situation in Karamoja until September 2007. OHCHR also notes that its cooperative and constructive relations with UPDF in Karamoja and the Ministry of Defence strengthened consistently throughout the reporting period.

12. Of serious concern, however, is the deteriorating security situation in Kaboong and Kotido districts from late September 2007 onwards. It was reported that in the face of increasing violence and cattle raids by illegally armed Karimojong, the army's disarmament operations also intensified with the deployment of new UPDF contingents, including the UPDF 65 battalion. It has been reported that operational forces in northern Karamoja

⁹ See "Report of the High Commissioner for human rights on the situation of human rights in Uganda: Situation in Kotido, Karamoja, from 29 October to 15 November 2006"; "Report of the High Commissioner ... from 15 November 2006 to 31 March 2007"; and "Report of the High Commissioner ... from 1 April to 12 August 2007".

resorted to more aggressive techniques, leading to arbitrary killings, destruction of cattle and torture and other forms of ill-treatment of Karimojong arrested during cordon and search operations. At the same time, attacks by armed Karimojong during the same period also resulted in casualties on the UPDF side. OHCHR has engaged in active dialogue with the Minister of Defence on the reported human rights violations with a view to encouraging institutional accountability. OHCHR notes the dismissal, in December 2007, of four UPDF soldiers, and the sentencing of five others, by a unit disciplinary committee in Moroto for misconduct during disarmament operations.

13. In June 2007, a number of children were taken by UPDF to the Kotido Army Primary School in Kotido town in an attempt to enforce compulsory universal primary education. Some of the children were reportedly taken without the knowledge of their parents, and most returned to their homes within a few days. In partnership with the United Nations Children's Fund (UNICEF), OHCHR engaged with army and education officials on the ground and the Ministry of Education in Kampala to ensure that measures to enforce the right to education are respectful of sociocultural specificities of the Karimojong communities and rendered more sustainable by sensitizing parents and communities on the benefits of education for their children. Attention was drawn to the obligation of the Government to take effective measures to ensure that Karimojong children enjoy their rights equally and without discrimination.

14. As a result of armed Karimojong incursions and following security threats issued by resident communities in Teso subregion, several instances of forced returns of Karimojong economic migrants, mostly women and children, took place from Teso to Karamoja in early 2007. Following intensive advocacy efforts by OHCHR and protection partners, these practices appear to have ceased. In Kampala, however, street populations, including children, who are mostly Karimojong, continue to be forcibly removed from the streets. Many reportedly return to Kampala within a short period of time. OHCHR encourages the Ministry of Gender, Labour and Social Development, the Uganda Police Force and the Kampala City Council, in collaboration with protection partners, to find more durable solutions respectful of the human rights of all men, women and children living in the streets.

III. ACCESS TO JUSTICE IN NORTHERN AND NORTH-EASTERN UGANDA

A. Barriers to accessing justice

15. The justice system has been considerably weakened by the conflict between the Lord's Resistance Army (LRA) and the Government in northern Uganda, and by the insecurity due to cattle rustling by the Karimojong warriors in the north-eastern part of the country. Due to the insecurity, many police outposts and courts, especially in rural areas, were closed down, and law enforcement and judicial officials abandoned their positions.

16. Until mid-2006, police deployment in northern and north-eastern districts remained seriously limited, and the army continued administering civilian policing functions for which it was inadequately trained and equipped, and not mandated under Ugandan law. Since then, civilian law enforcement and judicial officials have been returning slowly to areas formerly

affected by the conflict. It is recognized that additional police, in particular ASTUs and SPCs, have been recruited and deployed, along with an increase in transportation means, leading to the reopening of previously abandoned police outposts, although their resources and training remain limited.

17. The population remains poorly informed about the formal justice system. Traditional mechanisms of dispute resolution, especially referral to the elders or the village chiefs, as well as to Local Council (LC) courts are most commonly used as they are more accessible, cost-effective, and are perceived to be more expedient, if not always fair, in settling disputes. During the LRA conflict, LC courts were by and large the only bodies to which people could resort to in the absence of any other formal court system. LC officials as well as traditional, religious and camp leaders/elders are often involved in so-called “friendly” settlements of disputes, which seek to provide material compensation and some form of reconciliation. These practices concern the majority of disputes and address issues of land, property and livestock, petty crimes within the community, and resolution of disputes within and between families and clans.

18. In addition, the serious backlog of cases in the formal justice system has remained a challenge and not enough resources have been put at the disposal of the judiciary to address this situation efficiently and in a timely manner. There exists a severe shortage in the number of public prosecutors and State attorneys, as well as magistrates and High Court judges. As a result, the backlog of cases has led to excessive periods of pretrial detention. In recognition of these challenges, the Government’s Justice, Law and Order Sector has recently initiated a number of measures to reduce the backlog and to increase access to justice for all in northern and north-eastern Uganda. These include the appointment of a resident High Court judge for Gulu Circuit Court, the creation of a new magisterial area for Kitgum district, the plan to deploy Magistrates Grade I in all districts of Lango subregion, and the extension of powers of Magistrates courts to deal with defilement cases.

B. Impact on the human rights situation

19. Although guaranteed under the Constitution of the Republic of Uganda (1995, as amended), the right of persons under arrest to be brought before a court as soon as possible but in any case not later than 48 hours from the time of her/his arrest is rarely respected. The police report that they make efforts to adhere to the laws, but that structures are not in place to enable them to properly process cases within that period. The absence of courts close to police outposts and the lack of sufficient police vehicles make compliance with the 48-hour rule extremely difficult.

20. The right to a habeas corpus application is guaranteed under the Constitution as inviolable. However, in practice, such petitions are rarely filed and suspects under arrest remain without judicial revision of their detention for significantly long periods. The overwhelming majority of detainees are neither aware, nor made aware, of their right to apply for a writ of habeas corpus. Their contacts with judicial officers, including during proceedings, are only occasional. Similarly, applications for bail are rarely submitted and meeting the conditions required for court bail may prove to be quite difficult, given the very low level of income of the population.

21. LC courts are the judicial institutions most widely resorted to in northern Uganda, and even cases where the matter does not fall within their subject jurisdiction, e.g. capital offences. Thus decisions from LC courts go far beyond their statutory competence. Deprived of any legal instrument and composed of members generally with a low level of general education and without legal education, LC courts lack the technical capacity to interpret the law correctly. Proceedings before LC courts lack conformity with international standards of due process. As a result, the impartiality of court members and the fairness of proceedings might be questionable. Before Magistrates courts, complainants are frequently denied an effective legal remedy due to the high number of cases being dismissed. Dismissals generally occur as a result of the failure of suspects released on police bond or on bail, or witnesses, to appear, because the police often fail to locate and summon them. On the contrary, High Court judges are experienced judges who act with professionalism and court proceedings usually respect fair trial requirements.

22. While Ugandan law provides for community service orders as an alternative to deprivation of liberty sentences, few offenders benefit from such measures due to the lack of available security guards. Furthermore, the Constitution encourages all courts to promote reconciliation between parties in all cases which are not aggravated in nature. The recourse to amicable settlements aims at reducing the number of minor offences being handled by courts. Reconciliation is often accompanied by some form of compensation (usually, of a monetary nature) approved by the court. However, it is alleged that this power is exercised too broadly, targeting particular categories of cases, such as gender-based violence cases.

23. It is reported that most cases of gender-based violence are resolved through family members and community leaders rather than through the formal administration of justice system. This is partly due to the fact that the perpetrator is often a close family member. However, factors such as infrequent High Court sessions, the cost of proceedings and weaknesses in the file management also have a significant impact on the access to justice of victims. In addition, police officers are inadequately trained to appropriately deal with cases of violence affecting women and children, be they victims or suspected offenders.

24. A core concern relates to police form number 3 (PF3), the document issued by a police officer to a victim who has formally lodged a complaint of a sexual nature at a police station. The PF3 records the results of a medical examination for the purpose of being used as evidence in court. The form has to be obtained by victims prior to their examination, as it consists of a request by the police to a medical doctor to perform certain examinations to evaluate the medical condition of the victims. Victims of gender-based violence are often required to pay to obtain the form from the police and/or to have a doctor carry out the required medical examination for completing the form.

C. Recent Government initiatives to improve access to justice

25. The Government has recently adopted plans to develop the northern and north-eastern regions of the country, including through the PRDP for northern Uganda and the Karamoja Integrated Disarmament and Development Plan (KIDDP). The first strategic objective of the PRDP, entitled “consolidation of State authority”, includes programmes specifically dedicated to enhancing the police, prisons, judicial services and local government. It seeks to

“ensure rule of law and due process is strengthened in the conflict-affected areas, support the criminal justice system (...) and strengthen provision and accessibility to legal services by the general public” in particular by “re-establish[ing] a functional legal and judicial system in the North that includes prosecutorial staff, judges and courts”.

26. In its 2006 and 2007 progress reports, the Justice Law and Order Sector (JLOS) has planned a number of initiatives to increase access to justice in northern Uganda, including but not limited to: the construction of a court in Pader (and other districts); the establishment of an office of the Ministry of Justice and Constitutional Affairs with five State attorneys in Gulu district; a district public prosecutor’s office in Moroto; training of LC court officials and the provision of communication and transportation equipment to judicial officers, as well as the development of national policy framework on legal aid.¹⁰

27. UHRC provides another tier in the justice system in Uganda. Its tribunal has the power to hear and determine human rights complaints, thus contributing to greater access to justice. One of the major strengths of the tribunal is its discretionary power to order compensation to be paid to victims of human rights violations, the release of a person or any other legal remedy, thus ensuring that effective legal and material remedies are provided. UHRC tribunals are said to be more prompt in their proceedings than other judicial instances, especially since the opening of various regional offices. UHRC tribunal proceedings are at no cost for the complainant. UHRC tribunal rules of evidence are also simpler than those of the court system. The general public views the UHRC tribunal as a more affordable and accessible judicial body than other formal judicial institutions, and considers it a fair tribunal unaffected by corruption and not constrained by legal technicalities that common citizens do not understand.

28. There is no provision under Ugandan law for the State to provide free legal aid for indigent persons facing trial for non-capital offences, while the provision of free legal assistance for capital offences is a constitutional right. There exists no comprehensive legal, institutional and policy framework to guide the provision and regulation of legal aid services provided for cases of non-capital offences. Many initiatives, in particular by civil society organizations and donors, have attempted to address the crucial issue of providing legal assistance for indigents facing trial, whatever the nature of the crime they are accused of.

IV. LAND, HOUSING AND PROPERTY RIGHTS IN NORTHERN UGANDA

29. In northern Uganda, almost all land, particularly in rural areas, is owned under customary tenure as first recognized by the 1998 Land Act. Accordingly, land is owned without any form of documentation, ownership being based on previously accepted settlement on a plot of land and use thereof. Land boundaries are equally not surveyed nor recorded in any way. Boundaries are, however, known to the members of the communities and marked with natural features, including trees and field refuse. Traditional rules governing land are not documented but are known and implemented by clan leaders. As a

¹⁰ JLOS Annual Report 2006 and Progress Report 2007 presented to the 12th Joint Government and Donors’ review.

result, rules are flexible and can be adapted to new circumstances using natural justice principles, like fairness and equality.

30. Local communities in northern Uganda consider land as their fundamental and often only productive asset. Generally, land for farming is owned individually and by families and land for hunting, grazing or foresting is owned communally by the clan. Communal land is held in public trust to which all clan members are party and can be used by all members of a village in accordance with certain predetermined rules. Ownership of individually owned land is not absolute and is limited by obligations towards previous and future generations. This limits ownership rights including the possibilities of sale. While farming land is allocated and managed by the male head of the family who distributes plots to each male family member, women have enforceable subsidiary rights including access to land similar to men within the community.

A. Dispute-resolution mechanisms

31. The population in northern Uganda is currently relying on existing mediation and adjudication mechanisms to address land-related disputes during the return process. Under customary tenure, disputes were mostly resolved through mediation by either the head of family or traditional leaders. Appeals would be heard by clan elders or a higher clan chief. As such, the system was simple, affordable and accessible. Although the 1998 Land Act explicitly legitimized customary tenure regulated by customary rules, it simultaneously created a new set of institutions for dispute resolution, including the LC courts at parish level (LC II courts) as first instance jurisdiction, the LC courts at sub-county level (LC III courts) and district land tribunals as first and second appeal jurisdictions. These institutions effectively sidelined some of the traditional dispute-resolution mechanisms. While district land tribunals have been terminated due to a lack of funding, it remains to be seen if LC courts and clans can actually assert their authority in case of dispute resolution and to which extent such mediations would respect basic human rights norms and principles.

32. Mediation has gained further importance as there have been several challenges to the judicial mechanisms set up by the Land Act. The contracts of district land tribunal members were not extended on 1 November 2006, when the Chief Justice instructed all pending cases to be moved from the land tribunals to the Magistrates courts as an interim measure. This has added to the already substantial workload and sometimes backlog of the latter courts.

B. Types of land-related disputes

33. With the exception of the owners of land used for internally displaced camps or the establishment of UPDF barracks and detachments, the conflict in northern Uganda did generally not result in unlawful and arbitrary appropriation or occupation of land and property by other citizens. Therefore, the challenges in northern Uganda relate to individuals, families and clans recovering their land, property and housing, while at the same time ensuring the rights of most vulnerable groups. Those particularly at risk include single women, female- and child-headed households, orphans and unaccompanied children, including those who will be returning from LRA ranks, as well as older persons, particularly those who are primary caretakers of children.

34. Disputes currently being witnessed, and that might become more frequent as the return process speeds up, include issues surrounding boundary determination and encroachment on land; land grabbing by family members, particularly of plots that have been attributed to vulnerable groups; issues related to changes in family composition during displacement; changes of claim to a plot by owners or legal occupants who changed the claim of a previously unwritten arrangement - further complicated by the passing away of those individuals who made the initial arrangements; and compensation claims by owners of land used for internally displaced camps, army barracks and detachés.

35. Land-related disputes generally occur within the household and the (extended) family, between families within a clan and between clans and others from outside the subregion concerned, such as public actors or private entrepreneurs. Influential members of society, including those connected to the army, its auxiliary forces or the police, or those with extended knowledge seem to use the advantages of their position to settle land disputes in their favour. Cases of disputes have arisen where private investors have been seeking ownership of large plots of land to develop large-scale farms and when public entities such as the National Forest Authority or Uganda Wildlife Authority attempted to affect their claim on land.

36. The increase of land-related cases seems to affect all levels of various law enforcement and judicial institutions, leading to a situation where these mechanisms are rapidly getting overburdened. Measures to enable disputes to be effectively resolved within an acceptable time frame by institutions having received relevant training will need to ensure that these processes are just and fair, timely, accessible, and are age and gender sensitive.¹¹ In addition, early warning mechanisms through central monitoring of numbers and trends in land-related cases should be established to plan for preventative and contingency measures when required.

37. Finally, while some of the internally displaced persons have indicated their interest to remain in camps which are expected to become viable communities, the legality of their continued residence remains problematic. The agreement on agenda item 2 on “comprehensive solutions” of the Juba peace talks, signed on 2 May 2007, addresses land issues, including compensating owners whose lands have been used for settlement of internally displaced persons or establishment of barracks and detachés. According to the agreement, the owners are entitled to repossess their land or to receive a fair and just compensation. The Government has not yet provided any guidance about the process for those displaced persons interested in remaining in the camps to legalizing their presence, nor about compensation schemes.

¹¹ In accordance with principle 13 regarding “Accessibility of restitution claims procedures” of the Principles on Housing and Property Restitution for Refugees and Displaced Persons contained in the final report of the Special Rapporteur, Paul Sérgio Pinheiro (E/CN.4/Sub.2/2005/17, see also E/CN.4/Sub.2/2005/17/Add.1).

V. ACCOUNTABILITY, RECONCILIATION AND TRANSITIONAL JUSTICE IN NORTHERN UGANDA

38. OHCHR undertook a six-month research study aimed at broadening and deepening understanding of the northern Ugandan conflict and perceptions of accountability, reconciliation and transitional justice. The study, entitled “Making Peace Our Own: Victims’ Perceptions on Accountability, Reconciliation and Transitional Justice in northern Uganda” illustrates the complexity of current views, in particular of victims, across several subregions.

39. The primary means of gathering information, mainly over the period of January to June 2007, was through semi-structured interviews with 1,725 victims in 69 selected focus groups and 39 key informants in three subregions: Acholiland, Lango and Teso. Focus groups comprised former LRA abductees, relatives of abductees and of people killed or maimed, victims of physical violence, internally displaced person who have suffered economic loss, grass-root cultural leaders and elders, youths, recipients of traditional healing and members of victims’ and community-based organizations. Where relevant, the groups were subdivided in terms of gender or age. Short drama skits illustrating the main themes of the research project were performed before the focus group participants. The dramas helped introduce the topics of the project to respondents and generate discussion. The collection of data took place in February and March 2007, with note-takers keeping detailed records of all discussions.

40. After consultations with community-based organizations, the study used qualitative methods as it was deemed that only a narrative-based approach could give the broadest and deepest possible understanding of respondents’ experiences of the conflict and perceptions of accountability and reconciliation, particularly social and cultural nuances that could not be adequately captured in a quantitative analysis. Consequently, the report analyses focus groups participants’ responses in terms of broad trends of opinion among and within focus groups in different locations and seeks to embed these findings within the relevant social, cultural and political context.

41. The findings presented below represent the major trends and patterns of responses by victims.

A. Perceptions of harm suffered as a result of the conflict

42. Victims who participated in focus groups identified a wide range of physical, emotional, psychological, cultural and economic harms, both as individuals and communities with the most common forms of harm identified as murder, torture, abduction, rape, mutilation, arson, displacement of the population into internally displaced camps and looting and destruction of property, leading to feelings of immense loss, and sustained severe physical and psychological trauma. Extreme poverty and inability to meet basic needs are major impacts of the conflict and have exacerbated other harms suffered by the victims. Victims referred to

their forced displacement in camps as a result of a government practice that had a wide range of negative effects on the population. They considered cultural fragmentation and overall loss of cultural norms and values as a result of life in the camps.

43. Many of these victims perceived the Acholi as having endured extreme harm, although Langi and Iteso are also considered to have experienced severe suffering. Victims described children, especially as primary targets of LRA abductions, and women, especially as gender-based violence victims, and primary breadwinners, as having suffered the most. The disabled and elderly were also considered as most affected.

B. Perceptions of accountability and reconciliation

1. Distinction between responsibility and accountability

44. Respondents identified both LRA and UPDF, and their respective commanders, as responsible, meaning that they blame them for having caused harm and suffering. The notion of responsibility was not understood by respondents to mean liability in any legal sense. While LRA was blamed for its direct role in causing harm and committing abuses, the Government was blamed for having failed to prevent abuses by LRA, but also for having committed violations.

45. Victims consulted cited most frequently LRA and the Government as accountable for harm caused. Victims who considered LRA to be the most accountable pointed to the brutality of the acts perpetrated by LRA. Victims who considered the Government to be most accountable pointed to the seniority of Government positions, their higher level of education compared to LRA, and the perception that the Government fuelled the violence and failed to protect the civilian population against LRA.

46. Victim respondents named a wide range of lesser parties as responsible, including current and historical figures, demonstrating that most victims hold a long-term view of the conflict. Furthermore, they consider other responsible parties to include Karimojong raiders for their part in cattle rustling, national politicians for contributing to corruption and failure to bring about the end of the conflict, and the international community for not intervening to secure the end of the conflict.

47. People consulted in the study identified the gravity of the harms they caused and the seniority of the individuals identified as responsible as the two main factors underpinning their views on accountability.

2. Reconciliation

48. Focus group participants in Acholiland who had personally witnessed the confessions of high-level LRA perpetrators often doubted the sincerity of the public disclosure of wrongdoings, believing that they were only motivated by a desire for smooth reintegration into the community, and at times felt coerced by Government officials to forgive or reconcile with the confessor. They however noted that they could only forgive and reconcile with those who publicly acknowledged their deeds, in particular if they were low-level perpetrators.

49. Considerable variance existed among victims regarding their views on forgiveness and they identified a range of individual and communal influencing factors. Respondents expressed a simultaneous desire for forgiveness and revenge, showing the breadth and complexity of people's emotional responses to the harms they have endured. They expressed a desire for forgiveness as they considered it is as necessary to rebuilding relations within families, especially when the perpetrators are "their own children", and re-establishing social cohesion.

50. Usually, victims consulted interpreted the 2000 Amnesty Act as a form of forgiveness for entire groups of offenders, and more appropriate for parties responsible for minor offences. Many considered it problematic that the Amnesty Act applies to individuals who are responsible for serious offences and that amnesty was not made conditional upon truth-telling or did not lead to compensation.

51. Forgiveness appeared to be far from an inherent aspect of northern Uganda society but rather a deliberate, often reluctant choice - an aspect which merits consideration.

52. Victims voiced the immense need for reconciliation in the community between groups, clans, family and regions. Among these reasons was the longed-for end of the conflict and reconciliation so that people could be reunited with their lost families. Others linked reconciliation with Christian motivations and/or the need to rebuild communal social structures and identities.

C. Perceptions of transitional justice options

53. Victims who participated in the focus groups desired different levels of transitional justice processes to address different levels of perpetrators and crimes and view the need for distinct actors to play various roles in delivering transitional justice in northern Uganda. While victims considered local rituals to be appropriate for the rehabilitation and reintegration of low-level perpetrators, they voiced opposition against the use of such rituals in the case of those accused of being major perpetrators. They argued that such persons should be prosecuted through formal judicial processes, including the International Criminal Court.

54. Victims consulted wanted the Government to provide the necessary environment, free of corruption, for the delivery - including by non-State sources - of a comprehensive recovery plan for northern Uganda, calling upon the State to maintain security and provide general social services. These victims expected elected and traditional community leaders to guide the population regarding reconciliation processes and to facilitate economic development activities.

1. Primary needs after conflict: truth-telling and compensation

55. Truth and compensation were the two elements that victims expected the most as a result of transitional justice mechanisms.

56. Victim respondents expressed a need to address events that took place before the beginning of the LRA conflict in 1986 and events that took place beyond the borders of

northern Uganda, in neighbouring regions (Karamoja in particular) and countries. They expressed their need to discover the truth about the past, especially to shed light on the identity of the perpetrators and the nature of the acts that have been committed. However, because of the nature of the crimes, they requested the provision of psychosocial support to mitigate the negative impact of truth-telling exercises on the victims and the perpetrators who will have to be reintegrated into their communities of origin.

57. The victims who were consulted identified compensation as the primary response to harm, both as a form of accountability for perpetrators and as a means to improving the material conditions of affected communities. They considered it to be the Government's responsibility to compensate victims even where the harm was caused by LRA.

2. Amnesty

58. Respondents considered both amnesty and prosecution to be necessary responses to harm. Considerable variance existed among victims on the question of whether amnesty is an acceptable response to crimes. Views differed depending on pragmatic considerations such as the desire to have abductees - "our own children" - return, and to secure permanent peace. The dual identity of many abductees as children of the community, and in many cases as perpetrators of serious crimes, was often presented as a reason for offering amnesty to former LRA elements.

59. At the same time, victims voiced widespread discontent with the current amnesty process due to its failure to deliver compensation for victims and reintegration packages for combatants who had already returned. Conditional amnesty may be more acceptable to victims if it were predicated on disclosure by the perpetrators of their actions.

3. Prosecution

60. Victims who participated in the focus groups considered the seniority of perpetrators and the gravity of their crimes as the primary factors determining accountability. Amnesty was seen initially as an appropriate response for low-level perpetrators. In contrast, prosecution was favoured as one means of addressing harm committed by high-level perpetrators.

61. Considerable variance existed among victims' views regarding the International Criminal Court. The dominant perspective was not one of support or opposition to the International Criminal Court but one of ignorance of its operations. Victims opposing its presence in Uganda, mainly in Acholiland, voiced concern about it as the main stumbling block to the peace negotiations. It must be recalled that the data collection took place at the beginning of 2007 when the negotiations were stalled.

62. Respondents in support of the International Criminal Court, more frequently voiced in Lango and Teso, said it was a preferable option than either civilian or military courts due to these courts' perceived or actual inefficiencies. Some in Lango and Teso wished that the International Criminal Court would come into play only if the amnesty process failed to bring former combatants home or if the Juba talks collapsed entirely.

63. Though these victims' desire for truth and compensation was voiced as the primary benefits expected from transitional mechanisms, the International Criminal Court is not perceived as a source of either truth recovery or compensation. Victims held the view that the International Criminal Court would not be a legitimate institution in northern Uganda unless it also prosecutes crimes committed by UPDF.

4. Local or traditional practices

64. Views on the potential use of traditional practices varied according to the individual personal experience of the conflict, be it as a victim, perpetrator or both, and were also influenced by the wide range of these local and traditional practices. Victims expressed their doubts about the applicability of their own certain localized practices to other affected communities.

65. Local and traditional rituals were not considered to be synonymous with amnesty and do not speak of any inherently forgiving or reconciliatory nature of northern Ugandan cultures. However, victims did consider local rituals valuable for facilitating aiding forgiveness and reconciliation, in particular for the rehabilitation and reintegration of low-level perpetrators.

5. National consultations

66. OHCHR welcomes the signing of a framework agreement on item 3 of the Juba peace talks on "Accountability and Reconciliation" on 29 June 2007, as well as the subsequent consultations of Ugandans, in particular affected populations, on specific transitional justice mechanisms held by both the Government and LRA from August to November 2007. While the LRA consultations mainly focused on asking for forgiveness, in other words amnesty, the Government consultations addressed the whole range of mechanisms of accountability and reconciliation.

VI. CONCLUSIONS AND RECOMMENDATIONS

67. The ongoing Juba peace talks represent a critically important opportunity for bringing about peace in northern Uganda. The Office of the United Nations High Commissioner for Human Rights (OHCHR) advocates that any durable peace agreement be based on the principles of justice, accountability and the rule of law, in accordance with relevant international norms. OHCHR encourages the negotiating parties to clearly reaffirm that those responsible for the most serious crimes will be held accountable in accordance with international norms and principles.

68. Furthermore, OHCHR welcomes the initiatives by both parties aimed at gathering the views of all stakeholders - and most importantly, of the conflict-affected populations, on appropriate accountability and reconciliation processes and mechanisms. OHCHR hopes that the findings of its transitional justice study, summarized above, contributed substantively to these national consultative processes, and will continue to inform the negotiations on the implementing agreement on item 3 of the Juba peace talks on "accountability and reconciliation".

69. Concerning northern Uganda, OHCHR encourages the Government of Uganda to take primary responsibility, both politically and in terms of resource allocation, including through the Peace, Recovery and Development Plan (PRPD), for the early recovery of northern Uganda and by assisting its people to return home. United Nations and development partner activities should support the capacity-building of the Government in this regard.

70. OHCHR encourages the Government of Uganda to respect and fulfill the rights of internally displaced persons to make a free and informed choice in relation to return and to ensure that their concerns are integrated into the planning and assistance of the early recovery phase.

71. In northern and north-eastern Uganda, the Government of Uganda is encouraged to continue its efforts to re-establish civilian law enforcement and judicial institutions and to provide these institutions with the necessary human, material, financial and other resources commensurate with their tasks under Ugandan laws and policies.

72. OHCHR encourages the Government of Uganda to continue its efforts in Karamoja to strengthen the civilian law enforcement and administration of justice institutions throughout the subregion and invest in sustainable development initiatives, including creative alternative livelihoods programmes respectful of the traditional, cultural and geographic specificities of the region as part of the Government's comprehensive engagement in Karamoja.

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