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**ОСУЩЕСТВЛЕНИЕ РЕЗОЛЮЦИИ 60/251 ГЕНЕРАЛЬНОЙ АССАМБЛЕИ
ОТ 15 МАРТА 2006 ГОДА, ОЗАГЛАВЛЕННОЙ "СОВЕТ ПО ПРАВАМ
ЧЕЛОВЕКА"**

**Доклад Верховного комиссара Организации Объединенных Наций по правам
человека и дальнейшие шаги после Всемирной конференции по правам человека**

Добавление

**Доклад о работе Управления Верховного комиссара Организации Объединенных
Наций по правам человека в Уганде* ****

* Резюме настоящего доклада распространяется на всех официальных языках. Сам доклад содержится в приложении к резюме и распространяется только на языке оригинала.

** Настоящий доклад представляется с запозданием, с тем чтобы можно было включить в него как можно больше свежей информации.

Резюме

Настоящий доклад Верховного комиссара Организации Объединенных Наций по правам человека представляется в соответствии с решением 2/102 Совета по правам человека после подписания всеобъемлющего меморандума о понимании с правительством Уганды в январе 2006 года. В нем, главным образом, рассматривается положение в области прав человека в затронутых конфликтом районах на севере и северо-востоке Уганды в свете стратегических приоритетных задач Управления Верховного комиссара (УВКПЧ) и размещения его представителей.

Президент Мусевени, председатель Национального движения сопротивления, был переизбран в результате многопартийных выборов 23 февраля 2006 года, получив 59% голосов. На этот раз беспорядки, связанные с проведением выборов, в целом носили ограниченный характер по сравнению с предыдущими выборами 2001 года, когда волнения приняли широкие масштабы. Тем не менее непосредственно перед выборами отмечались преследование и произвольное задержание лидеров оппозиции, ряд убийств и судебные процессы с явно политической подоплекой. В марте 2006 года Верховный суд отклонил ходатайство кандидата на пост президента Киззы Бесидже от Форума за демократические изменения, оспаривавшего результаты выборов. Суд постановил, что, несмотря на то, что нарушения имели место, они были не настолько серьезными, чтобы повлиять на результаты выборов.

Мирные переговоры между правительством и Армией сопротивления Святого духа при посредничестве вице-президента Судана Риека Мачара начались в середине июля в Джубе. УВКПЧ выступает за уважение прав человека как ключевого элемента и фактора, необходимого для обеспечения мира и справедливости, поскольку ни первое, ни второе не может быть достигнуто в условиях несоблюдения прав человека. Освобождение по амнистии виновных в грубых нарушениях прав человека и гуманитарного права не будет способствовать закладыванию основы для устойчивого мира.

В первой половине 2006 года положение в области прав человека в северной части Уганды продолжало характеризоваться убийствами, ограничениями свободы передвижения и милитаризованностью системы отправления гражданского правосудия. Хотя безнаказанность продолжала вызывать серьезную озабоченность, отмечалось улучшение положения с привлечением к уголовной ответственности предполагаемых виновных в нарушении прав человека из Народных сил обороны Уганды (УПДФ) и местных групп обороны (МГО).

После того как Специальный представитель Генерального секретаря по вопросу о детях и вооруженных конфликтах посетила Уганду в июне 2006 года, правительство взяло на себя обязательство сотрудничать с Угандийской комиссией по правам человека, УВКПЧ и ЮНИСЕФ для прекращения практики использования и вербовки детей вооруженными силами.

В течение 2006 года в результате заметного улучшения ситуации с безопасностью в северной части Уганды примерно 300 000 внутренне перемещенных лиц (ВПЛ) переселились из переполненных лагерей в районы, откуда они были родом, благодаря чему они получили больший доступ к земле и больше возможностей для самообеспечения. Однако предположительно более 1 миллиона ВПЛ будет оставаться в лагерях в течение 2007 года.

В Карамодже, на северо-востоке Уганды, бедственное положение племен кочевников-скотоводов продолжало ухудшаться из-за низкого уровня безопасности вследствие распространения огнестрельного оружия, столкновений между племенами и такого традиционного явления, как кража скота, что часто влекло за собой совершение преступных деяний; положение также осложнялось фактическим отсутствием структур центрального правительства.

В документах было зафиксировано большое количество случаев нарушения прав человека гражданского населения Народными силами обороны Уганды (УПДФ) в связи с проводимыми мероприятиями по разоружению.

Большую часть 2006 года численность подразделений угандийской национальной полиции, размещенных в северной и северо-восточной частях Уганды, оставалась чрезвычайно низкой. Поскольку полиция не располагала достаточным потенциалом и другими средствами для поддержания на должном уровне правопорядка в сельских районах, в особенности в лагерях ВПЛ, УПДФ продолжали выполнять функции гражданской полиции, для чего они не имеют ни должной подготовки, ни необходимого оснащения. Недостаточное присутствие сил полиции, отсутствие должной профессиональной подготовки и навыков и обвинения в коррупции, главной причиной чего, как правило, является нехватка средств, привели к устойчиво низкому уровню доверия к гражданской полиции в затронутых конфликтом районах. Как следствие, о большинстве преступлений и нарушений прав человека, особенно случаев насилия, обусловленного половой принадлежностью, заявлено не было.

В ответ на эти вызывающие озабоченность проблемы в 2006 году государственный сектор по обеспечению правосудия и правопорядка (ГСПП) взял на себя обязательство "обеспечить эффективное надлежащее присутствие ГСПП в затронутых конфликтом районах к июню 2006 года", в том числе за счет выделения данным районам по крайней мере 30% средств своего бюджета, направляемого на развитие. Хотя во второй половине 2006 года и был отмечен некоторый прогресс в выполнении данных обязательств, ограниченность средств оказалась серьезным препятствием.

Структуры и учреждения системы отправления правосудия неразвиты и практически отсутствуют в сельских районах на севере и северо-востоке Уганды. Как правило, они не считаются объективными, а их доступность ограничивается как материальными, так и экономическими факторами. Процедура передачи дел официальной системе правосудия - сложная и дорогостоящая, что не в последнюю очередь объясняется значительной нехваткой сотрудников в судебных органах, функционирующих в затронутых конфликтом районах. По имеющимся данным, из-за коррупции пострадавшие лица предпочитают не прибегать к средствам правовой защиты. К числу причин широкого распространения недоверия к системе правосудия относятся: затягивание судебного процесса, пренебрежение правами потерпевших, большое количество случаев отклонения исков судами и отсутствие бесплатной юридической помощи. Положение осложняется значительным числом накопившихся дел и неоправданно длительными сроками досудебного заключения. В результате время от времени население вершит самосуд, осуществляя коллективные расправы.

ГСПП также признает наличие этих проблем, однако соответствующие программы действий, направленные на укрепление органов правосудия и правопорядка в затронутых конфликтом районах, осуществляются слишком медленно.

Хотя УВКПЧ и отметило растущую готовность армии отдавать под суд военного трибунала подозреваемых военнослужащих для борьбы с безнаказанностью, серьезную озабоченность по-прежнему вызывает рассмотрение дел в рамках военного судопроизводства, которое в значительной степени не соответствует международным стандартам справедливого и беспристрастного судебного разбирательства.

В северной части Уганды практически вся земля, особенно в сельских районах, принадлежит частным владельцам в соответствии с основанной на обычае системой землепользования. Как правило, сельскохозяйственные угодья являются собственностью отдельных семей, а земли для охоты, под лесное хозяйство и пастбища принадлежат всей общине.

Общины северной части Уганды считают землю основным и зачастую единственным производительным ресурсом.

В этом контексте усугубляемые последствиями перемещения трудности постконфликтного жилищного строительства, размывание традиционной культуры, в том числе дробление общества при перемещении, а также заявленные программы властей, направленные на обеспечение развития и снижение уровня бедности за счет механизации сельскохозяйственных работ и создания земельного рынка, могут привести к возникновению разного рода споров относительно прав на землю, краткое описание которых приводится в данном докладе.

Для развития комплексного подхода к правосудию переходного периода перед разработкой каких-либо инициатив должны проводиться национальные консультации, в первую очередь с теми лицами, которые больше всего пострадали в результате конфликта или перемещения. Важно обеспечить соответствие любых предложенных процедур привлечения к ответственности и урегулирования разногласий социальному и культурному контексту, чтобы у местных общин появилось чувство сопричастности.

Как представляется, общины севера и северо-востока начинают периодически говорить о том, что для создания комплексной основы для удовлетворения различных нужд пострадавших лиц и затронутых общин необходимы многочисленные процессы и механизмы. Дальнейшему распространению процедур привлечения к ответственности и улаживания споров можно содействовать с помощью согласованных и взаимодополняющих инициатив, включая инициативы, касающиеся комиссии по установлению истины и примирению, повышения надежности судов местных советов, традиционной правовой системы, а также осуществляемых на национальном уровне судебных преследований в рамках официальной судебной системы и Международного уголовного суда. Важно, чтобы механизмы привлечения к ответственности включали элементы, предусматривающие выплату компенсаций правительством жертвам и их семьям.

Верховный комиссар сформулировала ряд рекомендаций, адресованных национальным властям и Угандийской комиссии по правам человека, в том числе следующие: обеспечить интеграцию прав человека и системы правосудия как ключевых элементов устойчивого мира; укрепить политические обязательства и процедуры судебных разбирательств, направленные на проведение расследований, судебное преследование и наказание за любые нарушения международных стандартов в области прав человека любыми представителями государственной власти; в срочном порядке обеспечить надлежащий уровень безопасности в районах возвращения и направить дополнительный персонал и ресурсы для обеспечения эффективного отправления гражданского правосудия в северной и северо-восточной частях Уганды; создать эффективные механизмы урегулирования земельных споров для рассмотрения возможных споров, связанных с возвращением; а также способствовать проведению национального диалога относительно различных вариантов системы правосудия переходного периода.

Annex

**REPORT ON THE WORK OF THE OFFICE OF THE HIGH COMMISSIONER
FOR HUMAN RIGHTS IN UGANDA**

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I. INTRODUCTION

1. Within the framework of the comprehensive Memorandum of Understanding between the Government of Uganda and the Office of the United Nations High Commissioner for Human Rights (OHCHR), the present report is an overview of the analysis by the OHCHR of the human rights situation in Uganda, in particular since the visit of the High Commissioner to the country in January 2006.
2. During 2006, OHCHR extended its field presences from Acholiland (Gulu, Kitgum and Pader) and Lango (Lira), to Karamoja (Moroto) and Teso (Soroti). The current country engagement strategy of the Office pursues the mandate of the High Commissioner through cooperation and dialogue with public authorities, the Uganda Human Rights Commission (UHRC) and civil society organizations.
3. The Office's engagement and activities reflect three distinct, yet historically interlinked, development stages in Uganda: (i) the relatively stable region of southern, western and central Uganda that has registered socio-economic progress over the last 20 years, albeit heavily dependent on international assistance; (ii) the conflict in northern Uganda which has entered its twenty-first year, with 1.4 million internally displaced persons (IDPs) still living in substandard conditions in overcrowded camps; and (iii) the Karamoja region in north-eastern Uganda where the plight of pastoralist nomadic tribes is exacerbated by high levels of insecurity as a result of the proliferation of firearms, intertribal clashes and traditional cattle rustling, compounded by the virtual absence of central government services and attention.
4. The present report focuses principally on the human rights situation and trends in the conflict-affected areas of northern and north-eastern Uganda, in line with the strategic priorities and deployment of OHCHR.

II. POLITICAL AND RELATED HUMAN RIGHTS DEVELOPMENTS

Elections

5. President Museveni, leader of the National Resistance Movement, was re-elected in a multiparty election held on 23 February 2006, with 59 per cent of the votes. In general, election-related violence was limited compared to the last elections in 2001 which saw widespread violence. However, immediately prior to the elections, in early February violent incidents were reported, with several people injured or killed in various locations. Opposition politicians, supporters and media personnel were subjected to harassment, arbitrary arrests and detentions by security operatives, including from the Chieftaincy of Military Intelligence and the Violent Crimes Crack Unit, and some elements of the Army. Persons arrested in particular on charges of treason claimed to have been tortured or suffered other forms of ill-treatment in ungazetted safe houses.¹ Some opposition politicians, including Forum for Democratic Change presidential candidate Kizza Besigye, were tried on treason charges. Media coverage of candidates by human rights organizations was generally considered to have been unbalanced and

¹ In June 2006, a UPDF spokesperson publicly recognized the existence of ungazetted safe houses, arguing their necessity for the purpose of protecting witnesses (protective custody).

voter education was deemed to have been largely inadequate. The constructive role of the Uganda Police Force (UPF) in ensuring the security of polling stations and voters is to be commended. In March 2006, the Supreme Court, on a vote of 4 to 3, dismissed the petition filed by Dr. Besigye challenging the election results. It ruled that malpractices, while they existed, were not sufficiently serious to affect the election results. The Court cleared President Museveni of involvement in any alleged electoral malpractices, but concluded that the Electoral Commission had failed to comply with various provisions of the Presidential Elections and Electoral Commission Acts, resulting in the disenfranchisement of voters and in some irregularities.

Peace talks

6. Peace talks between the Government and the Lord's Resistance Army (LRA), mediated by Sudanese Vice-President Riek Machar, began in Juba in mid-July. The parties agreed on a five-point agenda for negotiations: (i) cessation of hostilities; (ii) a comprehensive solution (including participation in national institutions and life; economic and social development of northern and eastern Uganda; resettlement of IDPs); (iii) accountability and reconciliation; (iv) demobilization, disarmament and reintegration; and (v) a formal ceasefire agreement.

7. The landmark cessation of hostilities agreement of 26 August 2006, and its subsequent renewal until 1 March 2007, cleared the way for protracted negotiations on the remaining items. In recognition of the regional element of the peace talks, the Secretary-General, in November 2006, appointed Joaquim Chissano, former President of Mozambique, as his Special Envoy for LRA-affected areas.

8. OHCHR advocated for respect for human rights as a central element, indispensable for both peace and justice. In particular, accountability is crucial as impunity denies the rights of victims and their families to remedy, to redress and to truth. The failure to combat impunity opens the door to new violations by the same perpetrators and incites others to commit violations. It is therefore imperative that any peace agreement for northern Uganda is guided by a comprehensive understanding of the principles in force to combat impunity, including the duty of States to punish serious crimes under international law, which prohibits any amnesty for such crimes.

Human rights situation in northern Uganda

9. In the first half of 2006, the human rights crisis in northern Uganda (Acholiland) continued to be characterized by killings, restrictions on freedom of movement, militarization of the civilian administration of justice and lack of access to justice. Whilst persistent impunity remained of serious concern in the Lango and Teso subregions of Acholiland, an improvement in establishing institutional accountability for alleged perpetrators of human rights violations committed by the Uganda People's Defence Force (UPDF) and the Local Defence Units (LDU) was noted.

10. As a result of the move of LRA from northern Uganda and Southern Sudan to Garamba National Park in the Democratic Republic of the Congo, the Lango subregion and parts of Acholiland witnessed a significantly improved security situation and greater freedom of

movement. During 2006, an estimated 300,000 IDPs moved out of overcrowded camp settings to their parishes of origin, increasing their access to land and self-reliance. However, over 1 million IDPs are still expected to remain in camps during 2007. By means of the Uganda Consolidated Appeals Process 2007, the United Nations would extend human rights and humanitarian protection monitoring needs to both camps and return areas.

11. In response to the continuing human rights and humanitarian challenges affecting the population in northern Uganda, the Government of Uganda, in collaboration with the international community, in April 2006, launched the Joint Monitoring Committee (JMC) and its Emergency Humanitarian Action Plan. Despite a slow start, JMC has activated the engagement of important government sectors in an effort to strengthen institutions, service provision and corresponding budgetary allocations in conflict-affected areas.

12. While cases received by OHCHR in 2006 only reflect a small proportion of the actual number of human rights violations committed, some patterns may be noted. The majority of victims of such cases are IDPs in or near their places of residence. Over half of the reported cases of arbitrary arrests and killings are said to be committed by UPDF, LDU or members of a joint command centre (perceived to be affiliated with UPDF). Victims continue to lack confidence in local institutions and fear reprisals for reporting their cases.

13. For example, OHCHR documented a case of extrajudicial killings of 10 IDPs by LDU soldiers in Ogwette IDP camp, Lira District, on 21 May 2006. Prison sentences were imposed against seven soldiers following their trial by field court martial in June 2006. Six members of an auxiliary force ("Amuka") serving under UPDF who pleaded guilty also received prison terms for "negligence and careless/reckless shooting". The local commander of the UPDF detachment, who also pleaded guilty, was sentenced for his failure to "take proper command and control". Whilst OHCHR appreciates the speedy action taken by UPDF to eliminate impunity and establish accountability, concerns remain about reports that the alleged principal perpetrator may have been killed by UPDF after his arrest.

Human rights situation in Karamoja, north-eastern Uganda

14. The Karamoja region is characterized by recurrent problems of proliferation of illegal firearms, cattle rustling, looting, ambushes and other acts of criminality, political and economic marginalization and lack of central government services, in particular social, medical and judicial services. In May 2006, the Government and UPDF launched a renewed disarmament campaign whereby the army would surround Karimojong homesteads ("manyattas") and search for firearms ("cordon and search" method). This exercise was reported to have led to human rights violations. The Office of the Prime Minister is to be commended for its initiative in establishing a committee to investigate alleged violations committed by UPDF in the context of the ongoing disarmament process in Karamoja. However, an OHCHR analysis found that the report of the committee, by failing to determine whether violations of relevant international and national standards occurred, did not meet its objectives.

15. Following a series of grave incidents in October 2006, OHCHR undertook a fact-finding mission to the Kotido District of Karamoja and issued a report on 23 November 2006.² OHCHR appreciated the serious and constructive dialogue with the relevant government authorities, and in particular with UPDF, which ensued following the issuing of the report, in a joint effort to address concerns raised. Amongst measures intended to establish accountability and rebuild civil-military confidence to respond to the situation in Karamoja, the Chief of the Defence Forces constituted a board of inquiry to look into the events of 29 October in Kotido.

16. OHCHR Uganda also continued to document and investigate the impact on the human rights of the civilian population of incursions by armed Karimojong elements into the neighbouring districts of Pader and Kitgum in Acholiland. The perpetrators of such criminal acts must be held accountable and punished in accordance with relevant international and national standards.

III. THE ABSENCE OF CIVILIAN POLICING AND ITS IMPACT ON HUMAN RIGHTS

17. UPF, for most of 2006, remained severely under-deployed in northern Uganda. As the police lacked the capacity and resources to adequately maintain law and order in rural areas, and specifically in IDP camps, UPDF continued administering civilian policing functions, for which it is inadequately trained and equipped. Justice Ogoola, Principal Judge of the High Court, stated that “armed conflict in a community renders the area of operations too unsafe for the police to carry out their work” and “the situation in the conflict-affected north made it unsafe for the police to act”.³ He further noted that “investigation of crimes and suspected criminals cannot be effectively, let alone efficiently, conducted in a conflict-affected area. To visit a scene of crime becomes hazardous, if not outright dangerous, with the result that the investigation is likely to fail to meet the high standard of proof required in criminal cases and many heinous crimes are bound to go unpunished, while the perpetrators of the crime gather the courage to commit other crimes with impunity”.

18. The militarization of civilian policing by UPDF has resulted in human rights violations perpetrated by members of UPDF and its auxiliary forces, in particular LDU, and in reinforced impunity. For example, at Pajule IDP camp, Pader District, on 25 July 2006, two LDU members shot and wounded three students who were participating in a strike at a technical college.

19. In response to these concerns, the Government’s Justice, Law and Order Sector (JLOS), in 2006, committed itself to an undertaking “to reactivate and improve an appropriate JLOS presence in conflict-affected areas by June 2006”. According to UPF, a presence of 30 police officers at sub-county level, community policing structures at village level and the revival of district and sub-county security committees are envisaged. Whilst some progress in the implementation of these commitments has been observed in the latter half of 2006, resource constraints have proven a serious challenge.

² Available at: <http://www.ohchr.org/english/countries/ug/docs/ugandarep11-06.pdf>.

³ Keynote address delivered at the eleventh Justice, Law and Order Sector Review (June 2006).

20. There has been a gradual, albeit slow return of police in Lango, with the recruitment of additional police and the reopening of abandoned police posts. The deployment of special police constables to Acholiland is anticipated in early 2007, whilst a number of Anti-Stock Theft Unit officers have already been deployed to Katakwi, Teso. Until full and effective police deployment with adequate resources and professionally trained personnel is implemented throughout the Acholi, Lango, Teso and Karamoja subregions, enforcing rule of law will remain a challenge. OHCHR has cooperated with UPF in providing human rights training for all new special police constables deployed in Lango, and similar training is planned.

Inadequate police presence and resources

21. While the national ratio of police to population is 1:1,800 in Uganda, still well below the recommended United Nations standard of 1:450, the current ratio in northern and north-eastern Uganda is 1:4,968.⁴ The Government's target of 5,945 police personnel in the north over the next three years still remains below the overall estimated requirement of 10,558 police for northern Uganda. In all districts, the number of police personnel deployed in camps and return areas remains inadequate, such as at Padibe camp, Kitgum, where two local administration police officers service a population of over 35,000 IDPs.

22. Police officers, notably in rural areas, are unable to effectively carry out their duties due to a lack of resources (manpower, communications equipment, transportation, stationery supplies and otherwise) and professional capacity. Due to these constraints, they frequently request assistance from local councillors or soldiers in arresting suspects, increasing their dependency on the Army to administer civilian policing functions. The confusion of military and civilian policing functions limits the confidence of the public in the police to effectively maintain law and order, so that many individuals fail to seek police assistance.

23. In addition, corruption, indifference and a lack of professionalism by the police are reported to be challenges to overcome. Police officers, particularly in rural areas, are alleged to request money for referral letters, medical or other police forms, and even for general preliminary assistance. Without such assistance, cases might not be processed and suspects might be released, resulting in very low conviction rates. For example, in 2006, the Pader district police recorded over 25 cases of human rights violations, allegedly committed by Army and militia elements, of which only one resulted in a conviction.

24. The police also reportedly lack competence in investigation skills, interview techniques, record keeping and maintenance. The current system of proving the guilt of suspects is of serious concern, in particular in cases of defilement⁵ and other cases of gender-based violence. The absence of forensic experts, a dearth of female police officers and a disproportionate

⁴ Draft National Peace, Recovery and Development Plan for Northern Uganda (PRDP) 2006-2009, 2 August 2006.

⁵ Under the Ugandan Penal Code Act, defilement is defined as "unlawful sexual intercourse with a girl under the age of eighteen years" (sect. 129 (1)).

reliance on circumstantial evidence and hearsay compound the situation. Gender-based violence cases are sometimes only referred to the police and judicial authorities as a last resort, when negotiations between families have failed to reach agreement, particularly over compensation.

25. Forensic reports must be requested by filling out a police form (PF3). However, mindful of the urgency of seeking medical attention prior to making a police statement, and in the absence of nearby police posts, survivors usually reach a health centre before lodging a complaint, without filing a PF3. These factors clearly discourage reporting.

Police conduct during arrests and detention

26. Interviews with detainees point to a number of concerns relating to police conduct during searches, arrests and detentions. Because there are limited or no means of transporting suspects (for example, UPF possess only one vehicle each for Kitgum and Pader districts and insufficient fuel), complainants are usually compelled by the police to pay the transportation costs of the arresting police officer(s) and suspect(s). Only a few police posts have detention cells and suspects are reportedly at times kept in unofficial holding places, including homes of arresting officers, in violation of the constitutional requirement to detain suspects in places authorized by law.⁶ Persons under arrest are often not promptly informed of the reasons for their arrest, whilst others are not given the opportunity to inform their relatives. No institutional structures are in place to notify relatives. Reports of delays in completing statements of suspects and of torture and other forms of ill-treatment are also frequent.

27. Throughout northern Uganda, UPF do not respect the constitutional provision requiring detainees to be brought before a court within 48 hours of arrest,⁷ resulting in arbitrary detention. Although aware of this requirement, police officers refer to logistical problems, including the lack of transport and resources to complete preliminary inquiries before forwarding the case to the magistrate courts, and the slow judicial process at the courts generally. The police also report that suspects released on police/personal bond often fail to report as directed. In such cases, police have been accused of colluding with the suspects, further impairing their relationship with communities. Similarly, limited manpower in the office of the resident State attorney results in delays in the movement of files between the prosecutor's offices and the police.

28. Overcrowding, poor conditions and lack of sanitation facilities and medical attention in police cells are commonplace. OHCHR investigations have also concluded that some members of the police have requested suspects to pay so-called "exit fees" upon release from police cells, ostensibly to recover any costs which might have been incurred by the police whilst holding a suspect in detention.

29. During assessment visits in IDP camps in northern Uganda, OHCHR received reports of cases of bribery, corruption, ill-treatment and unprofessional conduct by members of the local

⁶ Constitution of the Republic of Uganda (Amendment 2005) provides, "A person arrested, restricted or detained shall be kept in a place authorized by law" (art. 23-2).

⁷ Ibid., art. 23-4.

administration police, who are reportedly ill-equipped and received inadequate training to carry out policing functions.

30. In summary, IDPs state that they avoid lodging official complaints with the police, citing lack of funds and unequal bargaining power to oblige the police to carry out their responsibilities as the main reasons for their lack of confidence in effective civilian policing. Consequently, the majority of crimes and human rights violations remain unreported.

IV. LACK OF ACCESS TO JUSTICE AND ITS IMPACT ON HUMAN RIGHTS

31. Administration of justice structures and institutions are weak and virtually non-existent in the rural areas. They are often not perceived as impartial and their accessibility is limited, for both logistical and economic reasons. The process of taking cases to the formal justice system is cumbersome and expensive, not least because of the significant lack of judicial personnel in northern and north-eastern Uganda. Corrupt practices reportedly discourage victims from seeking legal remedy. There is a general lack of confidence within the justice system due to delays in judicial proceedings, disregard for victims' rights, a high number of dismissals in court and a lack of free legal assistance.

Large backlog of cases and excessive pretrial detention

32. Poor case management, lack of communication and coordination between the police and courts, the severe shortage of magistrates, State attorneys and prosecutors and reported high levels of corruption have caused a significant backlog of cases before the courts in northern Uganda. The lack of resident High Court judges for Acholiland and Lango subregions further contributes to lengthy periods of pretrial detention. The High Court holds sessions in Gulu and Lira approximately three times a year, for a period of two weeks, while it has never sat in Kitgum and Pader districts. As a result, the High Court has only heard approximately 20 per cent of the cases currently pending in the north.

33. Bail and habeas corpus applications are difficult to file due to the lack of available legal aid. According to the law, depending on the seriousness of the offence an accused person may be held in pretrial custody for 60 or 180 days before trial, after which he/she must be released. OHCHR has documented numerous cases of detainees remanded in custody for periods in excess of these time limits, including in some cases for over five years, before appearing before court.

34. Access to legal aid in northern Uganda is extremely limited. For example, Kitgum and Pader districts have no defence counsel. Even where defence counsels exist, funds allocated to legal representation are limited and the amounts arbitrarily set. Some organizations, such as the Paralegal Advisory Service of the Legal Aid Project (LAP) in Gulu, are currently providing much-needed legal aid services. In Gulu, during the first 10 months of 2006, the six LAP paralegals, who rotate between police stations, prisons and court, were in contact with 5,188 inmates, pretrial detainees and members of the community and traced 337 sureties for police bonds/court.

35. Detention facilities are overcrowded. For example, Gulu prison, initially built to accommodate 200 detainees, housed 469 detainees in December 2006. Pretrial and convicted prisoners, as well as adults and juveniles, are detained together, due to insufficient detention facilities.

Local council courts and traditional justice mechanisms

36. Local council courts (LCCs) are the most commonly used and most easily accessible judicial mechanisms in northern Uganda. LCCs are intended to be geographically accessible and affordable. It is, however, of concern that LCCs do not abide by international human rights norms ratified by Uganda, for example because they impose corporal punishment. LCCs also at times act on cases outside their jurisdiction, for example on defilement issues. Whilst the conciliatory approach of LCCs is reported to be efficient, the public at times perceive the courts as corrupt and biased. The impartiality of LCCs is particularly questioned when local councillors sitting on LCCs hold other positions, for example in the Army, as is often the case. OHCHR notes the changes introduced by the 2006 Local Council Courts Act that require LCCs to keep a record of their proceedings and to act in accordance with the principles of natural justice. It is of concern, however, that these new requirements have not yet been implemented in practice. A further analysis of LCCs from a human rights perspective is warranted.

37. In parallel to the formal justice system, traditional and cultural chiefs and elders continue to play a significant role in resolving disputes, notwithstanding the erosion of their authority during the conflict. Elders are often the first to be contacted before a dispute is eventually referred to an LCC. Traditional justice in Acholi is restorative in nature and includes aspects of trust, the voluntary nature of the process, truth telling, compensation and restoration. The revival of *Ker Kwaro*⁸ in the 1995 Ugandan Constitution together with the efforts of its leadership has strengthened this institution. It has modified cleansing rituals for returnees, which has had positive effects on the sensitization of the population and relief for returnees, as well as in bringing about unity and confidence building.

“Mob justice”

38. The virtual absence of the justice system in northern Uganda has resulted in the proliferation of “mob justice”. For example, in March 2006, two women were lynched in Mucwini, Kitgum District, one day after having been arrested on suspicion of practising witchcraft and poisoning. A mob reportedly broke into the local administration police cells and killed the two women. In September 2006, it was reported that 69 persons belonging to the Pampara clan, suspected by the community of practising sorcery, were forcibly expelled from Patongo IDP camp, Pader District, to Agago and thereafter to their ancestral homeland, where no shelter, water or any other services were available. In the process, a 7-year-old child reportedly disappeared and police had to take a man into protective custody at Patongo police post to guarantee his safety.

⁸ *Ker Kwaro* is a contemporary institution of the Acholi Paramount Chief composed of an Executive Council of 19 representatives.

39. Following the killing of a young IDP by an LDU soldier in Lalogi IDP camp, Gulu District, on 26 December 2005, an angry crowd gathered at the entrance to the army detachment at the camp to protest the killing. Witnesses said that the protesters were demanding that the perpetrator be handed over to them and complained that no action had been taken against soldiers who had committed similar atrocities previously.⁹

40. In August 2006, two minors suspected of theft were arrested by LDUs at Corner Alango, Kitgum District, and handed over to the community to be escorted to the police station. On their way, a mob of some 100 people threw bricks at them, eventually killing both.

Juvenile justice

41. As noted by the Committee on the Rights of the Child in its concluding observations on Uganda, “the limited progress achieved in establishing a functioning juvenile justice system” (CRC/C/UGA/CO/2, para. 79) remains of serious concern. There are still no functioning juvenile detention facilities in northern or north-eastern Uganda, although JLOS reported in November 2006 that the construction of juvenile cells in Kitgum, Pader, Katakwi and Kaberamaido was ongoing to prevent juveniles being held with adult offenders. It is extremely cumbersome for juveniles to challenge their detention, partly because of the lack of legal aid and the difficulty in proving their minor status due to the absence of birth certificates. OHCHR has received complaints which indicate that investigating officers have purposely misrepresented the ages of detainees to legalize detentions.

42. Due to a lack of resources, probation and welfare officers report that they are unable to carry out their mandates properly. Their inability to supervise juvenile offenders when released on bail has resulted in high rates of absconding. According to the 2000 Community Service Act, a person convicted of a minor offence may be sentenced to community service, instead of being deprived of his/her liberty. Such orders must be supervised by probation and welfare officers who are largely unable to supervise orders for persons residing in IDP camps.

Military justice

43. During 2006, OHCHR observed a positive trend among some UPDF commanders of bringing military suspects to justice before field courts martial in an effort to combat impunity. Monitoring and investigative work by OHCHR has prompted several investigations by the Army, following an open and constructive dialogue at district level. A more recent trend of transferring some investigations of crimes committed by the military against civilians to the police to enable soldiers to face trial before civilian courts was also noted. Interviews conducted by OHCHR with military officers in the north revealed a desire on their part to ensure greater transparency in the justice system. OHCHR is, however, concerned that proceedings before military courts still fall short of international standards. Defendants, even those facing capital charges, are often not afforded defence counsel or are assigned unskilled defence counsels. For

⁹ The perpetrator of the 26 December 2005 killing was brought before a field court martial and subsequently sentenced to death. OHCHR notes, however, with serious concern the absence of defence counsel and other violations of fair trial procedures.

example, in January 2006, as referred to above, an LDU soldier was sentenced to death by court martial for the killing of a primary school pupil at Lalogi IDP camp in December 2005, in proceedings which lasted less than six hours and in the absence of defence counsel.

V. LAND RIGHTS

44. In northern Uganda, almost all land, particularly in rural areas, is owned privately under customary tenure. According to this system, which was first recognized as a form of legal tenure by the 1998 Land Act, land is owned without any form of documentation. Generally, land for farming is owned by families and depending on the clan, land for hunting, forests or grazing is owned communally. Land is perceived by local communities in northern Uganda as the fundamental and often the only productive asset. Clans have a strong sense of obligation towards other and future clan members, including the obligation to provide access to land. This limits ownership rights and possibilities of sale.

45. Land is allocated and managed by the male head of the family who distributes plots, typically demarcated by natural features, to each male family member according to his needs and ability to use the land. Traditional rules governing land were not documented and rely on the knowledge of the clan leaders. Communal land is held in public trust for all clan members and can be used by all members of a village, in accordance with certain predetermined rules. As a result, the rules are flexible and can adapt to new circumstances to include natural justice principles, like fairness and equality.

Potential land-related disputes

46. Against this background, and fuelled by the consequences of displacement, the challenges of post-conflict housing reconstruction, the weakening of traditional cultures, including the individualization of society during displacement, as well as the reported plans by the authorities to promote development and poverty reduction through mechanized farming and creation of a land market may potentially contribute to disputes concerning land rights.

47. The types of dispute include: issues surrounding boundary determination and encroachment on land; land grabbing and irregular sales; issues related to changes in family composition during displacement; changes of claim to the land; and irregular acquisition, which closely relates to the issue of compensation. Regarding the actors involved, disputes may occur within the household, within the (extended) family, between families within a clan, between a clan and others, including other clans or others from outside the north, such as State actors and entrepreneurs.

48. During the recent return movements in the Teso and Lango subregions and more cautiously in the Acholi region, a number of land-related disputes were reported to OHCHR. Most demonstrated an element of power imbalance or knowledge deficit, but did not necessarily lead to other human rights violations or crimes with the exception of some singular cases. On 26 September 2006, in Angolocom Parish, Lira District, a man was killed during a fight with a UPDF soldier who had laid claim to the land on which the victim and his family had returned. It must be noted, however, that these recent returns took place in areas where the period of displacement was only around two to three years. OHCHR is concerned that in areas where

displacement lasted for much longer periods, a greater number of land disputes may arise. Furthermore, those who may be particularly at risk when exercising their right to land - single women, female-headed households, orphans or unaccompanied children - have generally not yet participated in return movements for security reasons (they fear to leave camps as security outside is not adequate).

Dispute-resolution mechanisms

49. Traditionally, disputes were 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 and traditional rules, it simultaneously created a whole new set of institutions for the administration of land and dispute resolution which typically sidelined traditional dispute-resolution mechanisms.

50. Furthermore, the mechanisms constituted by the Land Act have not been sufficiently supported by the central authorities to actually become effective. Those responsible for LCCs at the level of the parish and subcounty have not been sufficiently trained and are reportedly largely ignorant of the law. The District Land Board Committees responsible for issuing certificates of customary ownership have not received the necessary resources to perform their tasks. Similarly, the contracts of members of the District Land Tribunals, which expired on 1 November 2006, have not been renewed. Instead, on 1 December 2006, the Chief Justice instructed that cases and staff from the Land Tribunals be handed over to designated magistrates, as an interim measure. This decision sets a worrying precedent for existing or future adjudication mechanisms in northern Uganda.

51. As the family is the legal entity that owns land under the customary system, neither individual women nor men have absolute ownership of land, only subsidiary rights. Women have the right to access land, either through their parents before marriage or their husband, and widows retain their rights (before the land is passed on to her children). Customary law provides that the family head or clan elders should intervene if anyone tries to deprive a woman of her rights. In theory, all individuals, including women and children, have access to land. In practice, however, vulnerable individuals sometimes face problems accessing justice as a result of the financial payments which are requested by adjudicatory mechanisms. It has been reported to OHCHR that LCCs can charge up to 50,000 Ugandan shillings for adjudicating a case and, following the sale of a property, expect a 10 per cent commission. The Ministry of Local Government is currently contemplating issuing guidelines for such fees.

52. The absence of an efficient system of administration of land and the lack of effective adjudication mechanisms may also arise from the uncoordinated practice of dividing land-related issues across several government ministries, including the Ministry of Lands, Urban Development and Housing (land boards), the Ministry of Justice (land tribunals), the Ministry of Local Government (local council courts) and the Office of the Prime Minister (IDP-related land issues). For example, the Peace, Reconstruction and Development Plan (PRDP) developed by the Office of the Prime Minister did not sufficiently address the issue of land rights. The Ministry of Lands later developed a submission to PRDP which was, however, not discussed during the original consultations with the population.

53. The population of northern Uganda has expressed a preference for establishing non-legal mechanisms to address land disputes in a proactive manner. In both the Lango and Acholi subregions, parts of the population have suggested that as soon as people return, village councils, comprising elders, women representatives and the local council chairpersons, should constitute a land rights determination mechanism. In their view, this would address their fears of encroachment and land grabbing by families that return early.

54. Additionally, during the period of displacement, little recognition has been given to the fact that certain landowners have been forced to give their land for IDP camps. IDPs, as well as humanitarian organizations, cultivated and built homes, schools, health centres and latrines, drilled boreholes and often buried relatives on these lands, on many occasions without consulting the owners. Owners of land on which IDP camps and military detachments have been built have never been compensated, nor has the land been legally expropriated. Although understandable from a humanitarian point of view, the authorities forbid landowners asking for payments from IDPs, such as rent for agricultural land around the camps. This contravenes article 26 (2) (b) of the Ugandan Constitution, which stipulates that where there are legitimate defence or public safety grounds, “the compulsory taking of possession or acquisition of property is made under a law which makes provision for prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property”.

VI. TRANSITIONAL JUSTICE

55. The prospect of concluding a peace agreement at Juba prompted discussions on issues of accountability, justice and reconciliation. As a result, non-governmental organizations, academic institutions, and traditional and religious leaders have explored ways to bring about a lasting and comprehensive peace agreement. Some are looking towards establishing a truth-seeking process involving all parties to the conflict that will generate the potential for genuine national reconciliation.¹⁰ Other parts of civil society are advocating for a Ugandan transitional justice process to consider several issues, the foremost being the rights of victims. There is, therefore, a need for coordinated efforts to maximize cooperation between victims’ organizations and other stakeholders.

The Amnesty Act

56. The 2000 Amnesty Act provides amnesty to all applicants who surrender their arms and renounce their involvement, or collaboration with those involved, in the armed conflicts.¹¹ In June 2000, the Government established an Amnesty Commission charged with its

¹⁰ In early 2006, the Justice and Peace Commission held open discussions about the creation of a truth and reconciliation commission for northern Uganda.

¹¹ Part II 3 (2), the Amnesty Act of 2000 provides that those given amnesty “shall not be prosecuted or subjected to any form of punishment for the participation in the war or rebellion for any crime committed in the cause of the war or armed rebellion”.

implementation. An amendment of 24 May 2006 to the Amnesty Act provides that “a person shall not be eligible for grant of amnesty if he or she is declared not eligible by the Minister [for Internal Affairs] by statutory instrument made with the approval of Parliament”.

57. By December 2006, the Amnesty Commission had registered close to 19,000 “reporters” nationally, among them well-known LRA operatives. Although the amnesty has resulted in the return of thousands of LRA combatants, including abductees, and their demobilization and reintegration into civilian life, OHCHR is concerned that the granting of an amnesty for serious crimes under international law is in violation of Uganda’s treaty obligations.

58. Although the Amnesty Commission is mandated to promote dialogue and reconciliation, such activities have thus far been limited. The Commission has suffered from a lack of capacity, adequate resources and follow-up mechanisms, hampering the development of programmes that might move a process for reconciliation further. It is noted that the Amnesty Act does not require applicants to disclose information on any violations or abuses they committed, which means that an additional legal basis for the establishment of a truth-telling and reconciliation mechanism would likely be required.

Prosecutions

59. In December 2003, President Museveni referred the situation in northern Uganda to the International Criminal Court. In July 2004, the Court announced that there was sufficient evidence to proceed with an investigation by the Court and in October 2005, issued indictments against five top LRA commanders, including Joseph Kony. Since then, some have argued that the indictments spurred the Juba peace initiative and created an incentive for LRA to agree to dialogue. Others have argued that the indictments have complicated the amnesty process and stalled the peace talks.

60. OHCHR is concerned that the Government of Uganda, on various occasions, has promised the withdrawal of the Court warrants in exchange for peace. But, as experience has shown, a just and lasting peace is incompatible with impunity, and in any case the future course of these indictments is exclusively for the Court to decide. Mechanisms of accountability are necessary to allow individual victims to forgive and engage in communal reconciliation and possible national justice processes. They could lead to vetting options aimed at ensuring that security and law enforcement agencies are abiding by rule of law principles. They provide a deterrent to the commission of human rights violations in the future, contributing towards the establishment of a society respectful of human rights for all.

61. The option of national prosecutions through the formal justice system is another possible element of transitional justice. LRA, however, has indicated that it would not submit to any national formal judicial process, given the blanket amnesty they have been offered earlier.

The role of traditional practices

62. Traditional leaders are strongly advocating for the application of traditional justice, such as *mato oput* in Acholiland and *cao cuk* in Lango subregion, to deal with atrocities committed

during the conflict.¹² IDPs indicated that cleansing ceremonies are important in bringing about reconciliation between local communities and former LRA members, and that traditional justice would greatly contribute to the healing of communities. The possible creation of a hybrid model of traditional and formal justice mechanisms, culturally appropriate to the Acholi people, has recently emerged in discussions between civil society organizations, legal professionals and traditional leaders. OHCHR is concerned that relying solely on traditional justice mechanisms, including for the most serious crimes, would set a dangerous precedent for impunity.

A comprehensive approach to transitional justice

63. Consultations with persons most affected by the conflict and displacement must be held before any transitional justice initiatives move forward. From a human rights perspective, harmonizing the traditional justice system with the formal one must take into account the fact that the most vulnerable categories of individuals have at present very little de facto access to either system due to systemic barriers. OHCHR will continue, mainly through group discussions with victims, to ensure that their voices form an integral part of any national dialogue.

64. It is essential that any proposed accountability and reconciliation processes are respectful of the social and cultural context to ensure a sense of ownership among the local communities. In light of the overriding desire for peace which would provide the opportunity for abductees to return home, there is currently strong support for amnesty, although views vary amongst the population. OHCHR has found that a desire for amnesty by some has not precluded others from believing that the highest-level perpetrators of grave human rights offences must face some form of justice and accountability.

65. OHCHR supports the development of a Ugandan framework for transitional justice respectful of human rights norms at all stages of the peace and reconciliation process, from the negotiations on substantive provisions of the peace agreement to its implementation. This framework must ensure accountability, aim at ending impunity and establishing the truth about the past, and ensure that policies and mechanisms to be implemented reach out to and involve victims of past human rights violations and abuses to address their needs.

66. There appears to emerge from northern and north-eastern communities a recurrent message that multiple processes and mechanisms are needed to provide a comprehensive framework to address the various needs of victims and affected communities. Accountability and reconciliation may be promoted through a number of coordinated and complementary initiatives, including a truth and reconciliation commission as well as reliance on the local council courts, the traditional justice system, the formal judicial system and the International

¹² *Mato oput* means “drinking oput”, a bitter root common to Acholi, which must be drunk by both sides to a dispute (usually, in cases of intentional murder or accidental killing) as a symbol that they are willing to swallow and wash away the bitterness that once existed between them. *Cao cuk* means “biting a piece of charcoal” and is a ritual that takes place after compensation is effected between parties.

Criminal Court process, in accordance with international human rights standards. It is further believed that any accountability mechanisms should include elements of reparations to the victims and their families by the Government.

67. The challenge is now to fill in the “knowledge gap” regarding the various complementary options for transitional justice at different steps of the peace process, and to promote, deepen and broaden a national dialogue on these options for transitional justice. Such dialogue must ensure that victims are at the centre of any government policy of reconciliation and accountability.

VII. RECOMMENDATIONS

68. **The Government of Uganda should:**

(a) Ensure the full integration of human rights as a central element indispensable for both peace and justice of a comprehensive peace agreement. Any peace agreement for northern Uganda must be guided by a comprehensive understanding of the principles in force to combat impunity, including the duty of States to punish serious crimes under international law, which prohibits any amnesty for such crimes, and by the rights of victims and their families to remedy, to redress and to truth;

(b) Investigate, prosecute and punish any violations of international human rights law committed by its agents;

(c) Fulfil its obligations under national and international law to provide security and basic services to the population of northern Uganda in camps and return areas with particular attention paid to extremely vulnerable individuals;

(d) Reinforce internal military mechanisms to follow up and investigate chain of command responsibility for human rights violations and to adopt a system of accountability that will ensure individual responsibility for actions within the Armed Forces, including for the recruitment and use of children;

(e) As a matter of urgency, significantly increase the level of staffing and resources for all justice, law and order institutions, including police, magistrates, prosecutors, court staff, and probation and welfare officers, in order to ensure appropriate and accessible justice service delivery at all levels;

(f) Promote and broaden a national dialogue on various options for transitional justice, with victims at the centre of any policy of reconciliation and accountability. This should be based on meaningful consultations with a wide range of government and civil society organizations, including the different ethnic groups, women’s organizations and victims’ groups;

(g) Develop a national land policy which is based on inclusive consultations with affected populations and which takes into account the various traditional cultural practices and provides for effective land dispute mechanisms capable of dealing with land disputes arising from return;

(h) Review the current disarmament strategy in Karamoja in close consultation with community leaders and the civilian population and ensure that human rights standards are effectively integrated in any guidelines for military operations, in order to make any disarmament process community owned, peaceful, effective and incentive based.

69. The Uganda Human Rights Commission should:

(a) Increase its presence and activities in north and north-eastern Uganda, including through strengthening existing Civil-Military Coordination Centres with the full commitment and active participation of all parties;

(b) Ensure the timely and comprehensive documentation of human rights violations and abuses in Uganda, with a view to establishing accountability, protecting victims and preventing further violations;

(c) In cooperation with relevant partners, assist UPDF and UPF in strengthening their knowledge and awareness of and compliance with their obligations under international human rights and humanitarian law.
