ACCESS TO JUSTICE IN NORTHERN UGANDA
Executive Summary

**THIS REPORT** is based on research initiated by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Uganda in 2006 and 2007. All OHCHR field offices in Acholiland (Gulu, Kitgum and Pader), Lango (Lira), Karamoja (Moroto and Kotido), Teso (Soroti) and the Kampala office contributed to the report by providing information to identify trends and patterns over the months, as well as individual cases illustrative of these patterns. OHCHR also liaised closely with the Ugandan Human Rights Commission (UHRC) field offices, including its Civil-Military Cooperation Centres (CMCCs).

The present report focuses on issues related to access to justice in northern and north-eastern regions, with specific reference to relevant Ugandan laws and policies. The report describes the main obstacles that persons who seek access to justice have to face. It provides an analysis of the impact that these obstacles have on the enjoyment of human rights. The report concludes with recommendations made to the Government of Uganda, civil society and other stakeholders in line with observations made by various United Nations human rights treaty monitoring bodies aimed at contributing to improve access to justice for all in Uganda. The annex to the report provides general background information on the judicial system in Uganda, from the Local Council Courts system to the Supreme Court. The brief description of these judicial bodies focuses on criminal matters, as opposed to civil claims, as criminal matters have a greater impact on the enjoyment of human rights.

**Barriers to accessing justice**

The justice system has been considerably weakened by the conflict between the 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.

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 have been recruited leading to the re-opening of previously abandoned police outposts, although their resources and training remain limited.

The population in Uganda, especially in the northern and north-eastern districts, 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 view of the absence of any other formal court system. Local council officials as well as traditional, religious and camp
leaders, and elders are often involved in so-called “friendly” settlements of disputes, which seek to provide for material compensation and some form of reconciliation. These practices concern the majority of disputes and address issues that are of concern to the displaced populations, including protection of land, property and livestock, petty crimes within the community and resolution of disputes between families and clans. These settlements do not entail punishment of any sort, except in the form of material compensation to be provided by the perpetrators perceived by the communities as a form of punishment.

While the population tends to resort primarily to LC courts and to a lesser extent to Magistrates courts, many still perceive these institutions to be corrupt.

In addition, the serious backlog of cases in the formal justice system has remained a challenge. The Government’s Justice, Law and Order Sector (JLOS) has recently initiated both ad hoc and longer-term measures to reduce the case backlog and to increase access to justice. 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 district of Lango sub-region, and the extension of powers of Magistrates courts to deal with defilement cases. However, not enough resources have been put at the disposal of the Sector to address these challenges 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 in northern and north-eastern districts. Due to their heavy workload, they complain of not having enough time to adequately peruse files or prepare court hearings. As a result, the backlog of case has lead to excessive periods of pre-trial detention.

Impact on the human rights situation

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 of police vehicles, makes compliance with the 48-hour rule extremely difficult.

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, and once again largely as a result of lack of awareness of these rights, release on bail is rarely invoked and meeting the conditions required for court bail may prove to be quite difficult, given the very low level of income of the population, especially in areas of internal displacement.

Local Council (LC) courts are the judicial institutions most widely resorted to in northern Uganda, even in cases where the matter does not fall within their jurisdiction, such as with respect to capital offences,
including rape cases. Therefore decisions from LC courts often go far beyond their statutory competence. Not in possession of any legal instrument and composed generally of members 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. In accordance with the national law, LC court proceedings are very informal. As a result, the impartiality of court members and the fairness of proceedings might be questionable. Before Magistrates courts, complainants frequently do not receive an effective legal remedy due to the high number of cases being dismissed. Dismissals generally occur as a result of 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.

While Ugandan law provides for community service order as an alternative to deprivation of liberty sentences, few offenders benefit from such measure. On the other hand, 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.

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. Factors such as infrequent High Court sessions, the cost of proceedings and weaknesses in the file management also have a great impact on the access to justice of victims. In addition, police officers are mostly inadequately trained to appropriately deal with survivors of sexual and gender-based violence and children, be they victims or suspected female or juvenile offenders.

A core concern constitutes 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 for the form to the police and/or to have a doctor carry out the required medical examination for completing the form.

The phenomenon of “mob justice” remains an issue to be further studied, especially in the northern part of the country, and appears compounded by the lack of access to formal justice described above. It is said that populations resort to “mob justice” to punish members of their own communities who are suspected of having committed wrongful acts, in particular theft and offences of a sexual nature, but also witchcraft and unintentional killings such as road accidents. “Mob justice” often takes place before the alleged perpetrators are handed over to the police or on the way to the nearest police station/outpost. While such instances certainly originate out of anger, communities assert that because of corruption practices, police and judicial officials are alleged to often collude with criminals. Youths are in particular said to be participating in “mob justice”.
Recent Government initiatives to improve access to justice

The Government is currently drafting plans to develop the northern and north-eastern regions of the country, including through the Peace, Reconstruction and Development Plan for Northern Uganda (PRDP) and the Karamoja Integrated Disarmament and Development Plan (KIDDP). In particular, the PRDP’s first strategic objective, 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.”

In its 2006 progress report, the Government’s Justice, Law and Order Sector (JLOS) indicated a number of initiatives to improve access to justice, such as the construction of juvenile cells and new police outposts at sub-county level in LRA-affected areas, the construction or rehabilitation of courts (Pader and other districts), the strengthening of priority programmes such as policing, civic education and enhanced movements of magistrates; 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.

The Uganda Human Rights Commission (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 Tribunal proceedings are said to be more prompt than proceedings at other judicial instances, especially since the opening of various regional offices. The UHRC Tribunal proceedings are at no cost for the complainant. Its 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 unbiased by corruption practices and not constrained by legal technicalities that common citizens do not understand. As a result of the presence of UHRC regional offices in many districts (Gulu, Soroti, Moroto, Mbarara, Fort Portal, Jinja and Kampala – and in the near future, Arua), it has also brought justice closer to more marginalised and rural populations.

There is no provision under Ugandan law for the State to provide free legal aid for indigent persons facing trials 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 crime they are accused of.
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Introduction

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2. The present report focuses on issues related to access to justice in northern and north-eastern regions, with specific reference to relevant Ugandan laws and policies. The report describes the main obstacles that persons who seek access to justice have to face. It provides an analysis of the impact that these obstacles have on the enjoyment of human rights. The report concludes with recommendations made to the Government of Uganda, civil society and other stakeholders, in line with observations made by various United Nations human rights treaty monitoring bodies aimed at contributing to improve access to justice for all in Uganda. The annex to the report provides general background information on the judicial system in Uganda, from the Local Council Courts system to the Supreme Court. The brief description of these judicial bodies focuses on criminal matters, as opposed to civil claims, as criminal matters have a greater impact on the enjoyment of human rights.

3. Information for this report was gathered through interviews conducted with a wide range of law enforcement and judicial officials, including magistrates and judges, public prosecutors, state attorneys, prison officials, military personnel (Uganda People’s Defence Forces/UPDF) and their auxiliary forces, in particular Local Defence Units (LDUs), as well as police officers (Uganda Police Force/UPF). OHCHR also received allegations of human rights violations from victims, their relatives, lawyers and paralegals, local, national and international non-governmental organisations (NGOs), as well as United Nations agencies. Most of these allegations were referred to the competent authorities for appropriate action, whilst some were followed-up by the UHRC, the CMCCs and the OHCHR through monitoring the procedures and practices of prisons, the police, military institutions and the court systems.
Offences commonly tried in Uganda

The most common criminal offences committed in Uganda are reported to include the following offences (in no particular order):

- **Child negligence** (section 157 of the Penal Code (PC)) to be tried before a Magistrates Grade II Court functioning as Family and Children Court and eliciting a sentence of less than three-year imprisonment term.

- **Common assault** (section 235, PC) and **assault causing actual bodily harm** (section 236, PC), both to be tried before a Magistrates Grade I Court, eliciting a sentence of one- to five-year imprisonment term.

- **Elopement** (section 127, PC, which however does not define it - this refers to a married person leaving her/his marriage to get involved with another person without formally dissolving it and enter into a new relationship) to be tried by a Magistrates Grade I Court and eliciting a sentence of a less than 12-month imprisonment term or a fine not exceeding Ugandan Shillings (UGX) 200 on first conviction and UGX 600 as compensation for the aggrieved party.

- **Defilement** (section 129, PC, which is defined as “an unlawful sexual intercourse with a girl under the age of 18 years”) is a capital offence to be tried by the High Court.

- **Rape** (section 123 & 124. PC) is a capital offence to be tried by the High Court.

- **Attempted rape** (section 125, PC), to be tried by a Chief Magistrates Court, eliciting a life imprisonment term.

- **Theft** (section 254 & 261, PC) to be tried a Magistrates Grade I Court and eliciting a less than ten-year imprisonment.

- **House-breaking and burglary** (section 295, PC) to be tried by a Magistrates Grade I Court and eliciting seven- and ten-year imprisonment terms, respectively.

According to the *Crime Report 2006*, released by the UPF on 11 July 2007, theft (27.5%), common assault (17%), defilement (6.9), simple robbery (2.8) burglary (2.7) and aggravated assault (2.6) are amongst the most common crimes perpetrated in Uganda (*The New Vision, 11 July 2007*).
I. Barriers to Accessing Justice

A. Knowledge gap

4. OHCHR field work, including investigations of human rights complaints, and other research shows that the population in Uganda, especially in the northern and north-eastern districts, is poorly informed about the formal justice system. Three-quarters of the population in northern Uganda is reported not to know the formal judicial machinery, but at the same time, two-thirds believes that people can get a fair trial in Ugandan courts. Considering the low level of familiarity with the judicial system, it is likely that many respondents were unaware of what the requirements are for a trial to be considered fair. With respect to civilian law enforcement agencies, the confidence of the public seems to be progressively expanding. The Justice, Law and Order Sector (JLOS) progress report, covering the period between July 2006 and May 2007 stated that the public perception of the police performance has improved by 7% over the last five years. It is expected that with the progressive return of civilian law enforcement and judicial institutions in northern and north-eastern Uganda, coupled with the provision of additional resources, the population will regain confidence in these institutions, provided that the latter perform their functions in accordance with the law.

5. However, traditional mechanisms of dispute-resolution, especially referral to the elders or the village chiefs, as well as Local Council (LC) Courts are most commonly used as they are more accessible, cost-effective and are perceived to be swift, if not always fair, ways to settle disputes. During the conflict in the LRA-affected district of the north over the last 20 years, LC Courts were by and large the only bodies to which people could resort to in view of the absence of any other formal court system. Furthermore, the processes are better known to people, especially in non-urban settings. As stated by Justice Ogoola, Principal Judge of the High Court, the conflict reinforced the populations’ feelings and perception that informal justice processes and mechanisms were the only recourse available to them: “the war [handed over] the function of
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the administration of justice to the LC Courts, the army, and the traditional cultural/social institutions in the community. Grade II Magistrates courts, which are established at the county level, were worst hit due to insecurity in the rural areas. The lives of judicial officers were perpetually at risk”. 6

But, as acknowledged by the Government, “the majority of LC Courts do not have people who are educated in international standards and other legal technicalities.” 7 Although the Ministry of Local Government developed training modules for LC Court members 8 and carried out a number of trainings in 2006 with the financial support of the JLOS and the United Nations Development Programme, most LC officials in northern and north-eastern Uganda have benefited from very little training, if any, and which usually included only an introduction to human rights principles.

6. As a result, a high number of cases are being handled through these mechanisms, including criminal cases that by law are subject to subordinate or superior courts of the formal justice system. In the Karamoja sub-region, for example, cases of murder for example are at times considered satisfactorily settled when the murderer provides the family of the victim with a specific number of heads of cattle; failure to do so may lead to retaliation, and potentially to the killing of the culprit.

Dropping of cases by complainants

Because the formal justice system is inaccessible by most of the population especially in rural areas, expensive (including due to corruption practices) and slow, quite a number of cases go unreported. Even cases initially reported to the appropriate bodies are dropped in the course of action, because the complainant fails to pursue as the process is found to be cumbersome by the majority of the population. Insecurity on the roads to reach police stations and/or courtrooms, repeated requests from law enforcement and judicial officials for illegal fees and other corruption practices, unpredictability and constant adjournment of court hearings, difficulties in ensuring the presence of witnesses, lengthy proceedings especially at the High Court, low expectations in terms of the outcomes due to the low rate of convictions and the absence of proper and effective remedies discourage most. Judicial officials often stay the proceedings due to an alleged ‘lack of interest’ by the aggrieved party, e.g., when such a party or witnesses fail to appear in court to give their testimonies.

For instance, on 30 March 2007, a case of defilement was dismissed because of the failure of the witness to appear before the High Court sitting in Gulu. However, it was later found out that the witness had not been notified on time.

Political commitment and resource constraints

At times, limited political commitment, both at national and local level, to support the formal justice system reinforce the perception that in order to seek justice, alternatives to the court system have to be resorted to.

Such limited political commitment is particularly reflected by the insufficient resources put at the disposal of law enforcement and judicial institutions, which result in inadequate budgets, lack of material assets and under-staffed institutions (see below).

Similarly, interference by the executive branch of Government with the independence of the judiciary further limit the confidence of the public in the judiciary but also of judicial personnel in their law enforcement and judicial institutions. 9
7. LC officials, traditional, camps and religious leaders, and elders are often involved in so-called “friendly” settlements of dispute. The latter seek to provide for material compensation and some form of reconciliation, but do not entail punishment of any sort (except in the form of the material compensation that has to be provided for by the culprits). Extreme poverty, but also in some instances strong attachment to cultural practices, such as in the case of Karamoja sub-region, explain that victims and their relatives tend to prefer immediate material gains rather than pursuing (formal) justice. Large segments of the population believe that what they refer to as “modern justice” is “unfair” as proceedings take too long and sentences are perceived to be somewhat clement, and as not addressing their (material) needs.

B. Conflict in the north and insecurity in the north-east

8. The justice system in northern Uganda has been considerably weakened by the conflict between the Lord’s Resistance Army (LRA) and the Government, and in north-eastern Uganda the insecurity due to cattle rustling by the Karimojong warriors to which the Government responded with ”cordon and search” operations as part of the disarmament process in the north-east. Due to the insecurity, police outposts and courts, especially in rural areas, closed down, law enforcement and judicial official abandoning their positions. In addition, northern and north-eastern parts of Uganda are said to have suffered of a historical marginalisation at the political level, which was reflected by a scarce presence of central government services, notwithstanding the conflict and insecurity issues. The Circuit Court system was completely dismantled, as Chief Magistrates and High Court judges were not able to travel to outlying districts to hold sessions, and supervise the work of Magistrates Courts. Regular trips by relevant magistrates and judges were rendered, and are still in the north-eastern parts of the country, difficult, if not impossible, due to the insecurity, thus seriously reducing supervisory opportunities.

9. The police found themselves caught up in the conflict which made it unsafe to continue civilian law and order operations. In the north, in the early years of the conflict with the LRA, the police are said to have been targeted as a symbol of the central authority. Rural police outposts were thus abandoned, leaving the public with no choice but having to travel to urban centres to eventually file criminal complaints. The absence of the Ugandan Police Forces (UPF) resulted in the militarization of the civilian administration of justice. As stated by the Government, “[t]he insurgency in the conflict affected areas destroyed all civil institutions of administration of justice. The only institution capable of operating in an armed conflict environment is the military. The intervention of the military is not to take over civil administration of justice but to fill the vacuum that was created by the insurgency.”

10. As a result, until mid-2006, police deployment remained seriously limited in northern Uganda. As the UPF lacked the capacity and resources to adequately perform law and order functions, specifically in internally displaced persons’ (IDP) camp settings, the UPDF continued administering civilian policing functions for which it is inadequately trained and equipped, and not mandated under Uganda law. This militarization of the law and order sector resulted in numerous violations of human rights, perpetrated by the UPDF and its auxiliary forces. For instance, on 25 July 2006, two LDUs members shot and wounded three students who were participating in a strike at a technical college in Pajule IDP camp, Pader district. On 3 June 2006, in Gulu district, three UPDF soldiers arrested two civilians who were returning from their fields to the camp at 7
p.m., for having broken the curfew. They were taken to an abandoned house and kept there until they were eventually shot dead three hours later. On 9 March 2007, at the end of a funeral rite in Keja Village, Paloga sub-county, Kitgum district, three LDUs began pushing some people from the fringes of the compound, provoking a wrangle. In the process, two civilians were stabbed with bayonets by the LDUs and two others were injured by LDUs throwing stones.

11. Lack of access and road insecurity prevented victims from reporting cases to the police or attending court sessions, especially as long distances had to be travelled to reach the nearest police post or court. Some court sessions, even when in progress, were halted due to insecurity incidents. Justice Ogoola stated that “investigations 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 standards 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.”

12. Since late 2006, civilian law enforcement and judicial officials have only been returning progressively to zones formerly affected by the northern conflict. Additional police have been recruited leading to the re-opening of previously abandoned police outposts, especially in rural areas and potential return areas for IDPs. The backlog of cases has remained a challenge and not enough resources have been put at the disposal of the judiciary to address it efficiently and in a timely manner. It must, however, be recognised that significant efforts have been made by the JLOS sector since early 2007. For instance, the Gulu-based Chief Magistrate did not hold any court session in Kitgum or Pader throughout 2006, but a Resident High Court judge was appointed for the Gulu Circuit in March 2007. Other such initiatives to reduce backlog and increase access to justice include, but are not limited to the extension of powers of Magistrates courts to deal with defilement cases; the creation of a new magisterial area for Kitgum district and the plan to deploy Magistrates Grade I in all district of Lango sub-region.

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Anti-Stock Theft Units (ASTUs)

In practice, most ASTUs limit themselves to undertaking operations related to cattle rustling, and do not accept to receive or investigate other complaints of a criminal nature from the population. However, as many current ASTU elements were previously local defence unit members, communities often confuse their role. The population does not recognize that some of these new ASTUs formally belong to the police force, which may eventually impair their ability to perform civilian policing functions, in accordance with the Police Act.

Although officially under the UPF command and hired as SPCs, the statutory mandate and functions of ASTUs remain unclear as the Police Act does not make specific mention of ASTUs. The Deputy Inspector General of Police has de facto overall control, command and responsibility over ASTU operations in northern and north-eastern Uganda. Finally, it should be noted that Section 64 of the Police Act authorises the officer in charge of an area to appoint “such number of residents in the neighborhood as he or she thinks necessary to be special constables to reinforce the members of the force in that area”. In many cases, the requirement of residency in the area of deployment does not appear to be respected, as for example some SPCs and ASTUs deployed in Teso originate from Lango and Acholi sub-regions.
C. Challenges facing the police

13. The scarce presence of the police makes the latter’s work difficult. Currently, the national ratio of police officers per capita is approximately 1:2,298\textsuperscript{13}, and it amounts to an estimated 1:5,000 in northern and north eastern districts of Uganda. According to the National Peace, Recovery and Development Plan for northern Uganda 2007 – 2010 (PRDP)\textsuperscript{14}, a police station supervises two or more sub-county police posts\textsuperscript{15}. Currently, there are only 19 police stations in the northern region, which negatively impacts on their monitoring and supervisory role vis-à-vis the police posts. In addition, it must be noted that there are only 184 operational police posts, while the region counts 322 sub-counties\textsuperscript{16}. As a result, local communities have limited access to police services.

14. In 2005, the UPF closed 11 police posts in Karamoja due to insecurity and vulnerability to armed Karimojong elements. By March 2007, Kotido district had nine police posts only, without a district police station. Similarly, Abim district did not have a district police station and only 12 police officers, with eight of them uniformed and four plain-clothed were servicing the district. However, the police plan to open a district police station in every district of Karamoja sub-region and a police post in every sub-county\textsuperscript{17}. Plans are also underway to recruit at least 150 young Karimojong into a Special Police Constables for handling law and order as well as crimes related to cattle raiding. The police will also strengthen community policing and various special police forces in Karamoja to ensure effective law and order. A community liaison officer has reportedly been posted to every district in Karamoja\textsuperscript{18}.

15. In addition to their still limited presence, most police officers reside and work in town areas and few are present in rural areas, at sub-county level. For instance, in 2006, Kitgum district had 63 police officers, out of which 57 were actually working in Kitgum town. Five police officers were thus meant to service only two police posts in Madi Opei and Labongo Layam sub-counties. Similarly, only two local administration police officers service the total population of Padibe IDP camp, Kitgum district, which hosts over 35,000 IDPs.

16. Throughout 2006, the police frequently requested assistance from local councillors and the army to carry out their duties, in particular to arrest suspects. As a result, policing activities were often conducted without respect for basic principles of civilian policing. This of course increased the confusion between the role of the army and the police and further limited the public confidence in the police to effectively perform its duties.

17. In September 2007, the total police strength in northern Uganda comprised 1,722 regular police personnel and 2001 local administration police personnel. The JLOS target over the next three years is to have a total strength of 4,223 police personnel in northern Uganda, with a view to achieving an overall police ration of 1:1,069\textsuperscript{19}. To attain this goal, various categories beside regular police officers are expected to be deployed. In particular, elements of the LAP are being screened and re-trained\textsuperscript{20} before being integrated in the Central Police (in accordance with the 2006 Police Amendment Act) and Special Police Constables (SPCs - in accordance with Section 64 of the Police Act), as well as Anti-Stock Theft Units (ASTUs) will be recruited\textsuperscript{21}.

7
Concerns regarding SPC recruitment procedures and lack of training

Military auxiliary forces are reportedly incorporated into the Police without being adequately screened and trained. For instance, 204 “vigilantes”, an auxiliary force in Teso region, recruited as a back-up force during the 2006 presidential elections were absorbed in the UPF as SPCs, allegedly without any formal recruitment process and training. Similarly, members of LDU’s are often recruited in the northern district by the police especially to constitute their ASTUs without screening procedures.

The one-month training at the Masindi UPF training centre provided to SPCs deployed in early 2007 is considered as insufficient, especially compared to the usual nine-month training received by regular UPF constables. However, it should be noted that SPCs are recruited at a lower grades than constables. Reportedly, due to lack of funding, the original two-month training planned for SPCs was reduced to one month. At the time of writing, the first reports from Lira district (where some 200 SPCs had been deployed in November 2006) show that these officers still lack knowledge of human rights principles as they pertain to policing, such as arrest and investigation procedures and techniques. This was also obvious during training conducted by OHCHR, UNICEF and UNHCR to SPCs deployed in Amuru, Apac, Gulu, Kitgum, Lira and Pader districts, as well as in Teso sub-region, since November 2006. OHCHR and partners continue their efforts to increase capacity building of SPCs through training.

The UPF has recognised that serious attention needs to be urgently devoted to the provision of rigorous training, especially considering that many of the recently recruited SPCs come from demobilised auxiliary forces.

In early June 2007, some 1,300 new ASTUs recruits were undergoing initial training at Olilim Regional Training School, in Soroti. The school is said to be seriously under-resourced in terms of facilities, including for accommodation and training purposes. Recruits undertake a two-month programme, of which one month is dedicated to military science and the second to policing. Human rights training is not systematically integrated into the programme, but rather consists of a separate section under community policing. OHCHR, in cooperation with its partner, is ready to provide support at request.

The PRDP provides for the recruitment and training of 5,680 Police Probational Constables and 2,320 ASTUs\(^ {22}\). In addition, the Office of the Prime Minister released eight billion Ugandan Shillings (UGX) aimed at building regional offices and stations, rehabilitating police and court buildings and recruiting 500 prison warders\(^ {23}\).

The Government is committed to restoring civilian policing and judicial institutions, in particular in the northern parts of the country. This is reflected in the fact that 30% of the JLOS budget is allocated to the north, under the Emergency Humanitarian Action Plan for post-conflict areas\(^ {24}\).

18. Aware of its responsibilities in that domain, but still constrained by financial implications\(^ {25}\), the Government “has embarked on a process of improving its [police] staff ratios with the population as contributing factors for efficient and effective service delivery.”\(^ {26}\) Amongst its achievements, it states the retooling and equipping of JLOS institutions with communication equipment, vehicles and computers, in particular with a view to facilitating magistrates’ movements within their jurisdiction. The 2005 decision to recruit 4,000 personnel for the UPF to be deployed as ASTUs took effect as of July 2006 with the deployment of 1,760 personnel in Teso and Lango sub-regions and 1,400 personnel in Kitgum and Pader districts; in addition, 120 child protection officers have been trained in Masindi police training school in January 2007\(^ {27}\).
19. In the same vein, the UPF is planning to provide each sub-county with 30 police officers, to strengthen community policing structures and to revive the district and sub-county security committees. As a result, in January 2007, some 600 SPCs were deployed in the districts of Gulu and Amuru. Another 3,000 SPCs and ASTUs were deployed in Amuria, Bukeea, Katakwi, Kitgum, Lira, Pader, Kitgum districts and Teso sub-region in the first trimester of 2007. In June 2007, there were no SPCs in the Karamoja sub-region. Generally, however, this demonstrates the willingness of the Government to remedy to the scarcity of human resources within civilian law enforcement agencies. It is, however, regrettable that these officers underwent a rather limited training (see box above). In addition, it must be noted that as a result of the deployment of SPCs and ASTUs, regular police officers now constitute only a small proportion of all civilian policing forces. In Amuria district, for example, 331 SPCs are deployed as ASTUs and another 130 SPCs, deployed at police posts at sub-county level, against only 36 regular fully trained police officers assigned to the district.

20. An important element in “demilitarizing” the civilian administration of justice is the rapid and co-ordinated deployment of various police forces on the ground that will be necessary to address the potential vacuum that will be left when auxiliary forces will have been demobilised. While the demobilisation process of some of these forces, such as the Arrow Boys in Teso sub-region has been completed, much remains to be done to see the estimated 18,000 elements belonging to LDUs and other auxiliary forces of the UPDF demobilised and reintegrated into civilian life, or eventually integrated into regular armed forces of the police, provided that they receive appropriate training and are properly screened.

21. The low level of police wages is said, in particular by police officers themselves, to have an impact on their motivation and conditions of work. Police officers reportedly receive basic wages of 150,000 UGX per month, as well food and housing allowances. Often, they carry out additional duties, such as guarding public and private buildings, for which they receive an additional 140,000 UGX. However, it must be noted that SPCs receive 100,000 UGX only, although they are mandated to carry out the same tasks.

22. It is of concern that the police are often reported to charge fees for providing general preliminary assistance or relevant police forms\textsuperscript{18}, or for carrying out investigations sometimes simply to cover the costs associated with performing their duties since they alleged not receiving adequate public funding or for personal enjoyment. The amount charged depends on the person, and mostly on his financial means. For example, in Jengari IDP camp in Gulu district, it is reported that the police charge 15,000 UGX for preliminary assistance and the provision of basic services. In January 2007, the father of a rape victim was similarly asked to pay 15,000 UGX by police officers in Palaro Camp, Gulu district, for preliminary services, including recording his statement. The Officer-in-Charge of Ngai outpost, Oyam district, admitted that sometimes the police receive money from complainant with a view to providing them with material support aimed at facilitating their investigations and other tasks (e.g. carrying out arrests).

23. Often the police require complainants to pay the transportation costs of the suspect and the police, for example between an IDP camp and the district central police station. Victims and suspects are also expected to pay for the photocopying of some of the police forms used for documentation purposes when either reporting or being charged for a crime. In Kitgum district, the police report that they lack forms to carry out their work efficiently.
24. In addition to preventing victims from lodging complaints or obtaining basic police services, the practices of requiring the payment of fees and other corruption practices make people believe that money is actually required to seek and obtain the assistance of the police. This misconception needs to be clarified to restore civilian confidence into the police.

25. The police hierarchy seems to be aware of this phenomenon and is taking necessary measures to stop such practices, in particular through education campaigns. For example, in early 2007 when SPCs were being deployed in Amuru and Gulu districts, the Deputy Inspector of Police made it clear to all SPCs that they are not authorized to request any fee. A Human Rights and Complaints desk at the Police Headquarters has also been created in order to receive and investigate complaints made against police officers; from July to November 2006, the desk had received 221 complaints out of which 63 had been investigated and concluded\textsuperscript{29}.

26. In Karamoja sub-region, the scarce human resources are exacerbated by the extremely difficult material and physical conditions, compounded by a high level of stress due to insecurity, in which the police must operate. They are often unable to affect arrest because either they cannot access the manyattas or kraals\textsuperscript{30} where suspects go into hiding for security reasons, or they fear retaliation from the family of suspects being arrested. Suspects are generally more armed than the police, who also lack self-confidence, specific training and skills to handle violent suspects. In addition, they also lack adequate and specialized equipment, including transport and fuel.

27. In northern Uganda, the police also operate with minimum equipment and material resources, which has a serious impact on their morale. Whereas all police officers are in possession of an AK47 firearm, they have no other means to otherwise control crowds or restrain suspects, such as control batons or even handcuffs. Most police stations have no vehicle, only the district capital police stations usually have cars. For instance, the UPF in Kitgum, Gulu, Amuru and Pader districts possesses only one vehicle each, but most of the time lack fuel. Partner agencies have provided the police with bicycles in an attempt to alleviate the situation. The police are planning to supply police stations with motorbikes.

28. Police buildings are often rather basic infrastructures; in extreme cases, police outposts consist of tents. There are no computers in the police stations throughout northern and north-eastern Uganda, and police officers often complain about the lack of basic stationary. As a result, case file are often simply attached together with a string and put aside in a corner (i.e. not in a proper file cabinet, but rather on a desk or on the floor).

29. The police explained their common failing to execute arrest warrants or to summon witnesses to be the result of the lack of human resources and transportation means compounded by the absence of proper records keeping and filing systems as well as of regular court list indicating when specific cases will be heard. The poor system of information management results in cases being delayed, if not dismissed. Failure

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**Police performance**

According to the Crime Report 2006, during the year under review, 21% of the cases reported to the police were taken to court while 45% remained under investigation. The remaining 34% were not detected. Out of the cases that were subject to trial, 30% led to a conviction. (The New Vision, 11 July 2007).
to transfer files of suspects on time and the loss of files are issues of serious concern as such shortcomings greatly contribute to a slow, ineffective and cumbersome judicial system. Magistrates and judges are said to sometimes simply dismiss a case on the ground that a suspect or a witness did not appear before them. Even when a case is not dropped on such grounds, delays from the police in producing suspects or witnesses before courts of law seriously impair the prompt delivery of justice. For example, suspects (especially in defilement cases) frequently report that even if they have received information confirming that the complainant is no longer interested in pursuing a case through legal means, the legal proceedings cannot be halted. This leads to lengthy arbitrary pre-trial detention periods and to delays at the courts since the courts order repeated adjournments because of the non-appearance of suspects and witnesses.

30. Through the Government set-up “Chainlink” (see box) measures have, however, been put in place at district level to ensure better coordination. In particular, Chainlink seeks to improve ways of transmitting case files from the police to the Office of the DPP/State Attorneys.

31. In addition to requests by police officers for fees and reimbursement of costs allegedly incurred from assuming their mandated duties, cases have sometimes been reported where complainants offered to bribe the police to ensure that they would pursue a case, or in the case of defendant, to drop the case. To accommodate their scarce resources, the police are also said to prioritize crimes deemed worthy of investigation, according to the seriousness of the offence, such as murder, rape and defilement. It is reported that victims thus do not receive equal treatment in terms of seeing their complaints being investigated upon.

32. Finally, the lack of training of police officers, especially with respect to investigative, interrogation and forensic techniques and ways of handling suspects during arrest and detention is another challenge. For example, in Soroti district, only 12 police posts out of 27 are manned with a detective. Thus, the PRDP recognises the need to “train [police] personnel in crime intelligence and investigation for effective handling of cases.”

**Chainlink**

Chainlink consists of regular meetings of a technical nature between law enforcement officials – from the police to the prison authorities – and judicial officers – from the magistrates/judges to the registrars – to discuss issues related to the administration of criminal justice. NGOs and OHCHR participate as observers. The meetings aim at enhancing cooperation and communication amongst the various stakeholders, and finding concrete and practical solutions to problems encountered by law enforcement agencies and the judiciary, to facilitate the work of all concerned, and improve the quality of services provided.

The idea was initially conceived in 1998 in Masaka Chief Magisterial area, but rapidly spread out and was adopted in all Magisterial areas, as it proved to be an efficient coordination mechanism. However, it is regretted that meetings are however not taking place on a regular basis in all district of northern and north-eastern Uganda.

The JLOS Strategic Investment Plan 2 (see below) intends to strengthen Chainlink.
Evidence

Because of lack of forensic expertise and inadequate knowledge regarding investigative techniques, most, if not all, prosecutions are based on circumstantial evidence and confessions, according to information collected.

Confessions can be recorded by any police officer above the rank of Assistant Inspector of Police. According to national law, there is no need for the presence of any other party during the recording of statement, be they from the prosecution’s or defence’s side, although the person whose confession is being recorded has a right to call any person to be present. In practice this is not happening due to ignorance on the part of suspected offender.

International standards and practices indicate that a person who does not belong to the police apparatus should be present when a confession is being recorded. In addition, interrogation sessions should be either audio-, if not video-, recorded to ensure that confessions are not extracted under duress.

D. Challenges facing public prosecutors and state attorneys

33. As in the case of the police, there is a severe shortage in the number of public prosecutors and state attorneys.

Table I. Statistics regarding the presence of public prosecutors and state attorneys in selected districts in northern and north eastern Uganda in 2006

<table>
<thead>
<tr>
<th>District</th>
<th>Public Prosecutors</th>
<th>State Attorneys</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gulu</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Pader</td>
<td>1</td>
<td>None</td>
</tr>
<tr>
<td>Kitgum</td>
<td>1</td>
<td>None</td>
</tr>
<tr>
<td>Lira</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Soroti</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Moroto</td>
<td>0</td>
<td>1</td>
</tr>
</tbody>
</table>

34. As noted above, in the selected districts, the number of public prosecutors and state attorneys remains grossly inadequate. The same situation is said to exist in many districts. The Government notes that “[t]he DPP is thinly spread out in the region with only 14 operating stations out of 32 districts, with a staff capacity of only seven Resident State Attorneys and 22 State Prosecutors.” Due to their heavy workload, prosecutors/attorneys complain of not having enough time to properly peruse files, supervise police investigations or prepare court hearings. They have difficulties attending all court sessions, especially when a district has several courts. It is not uncommon that a prosecutor/attorney is required to appear before three different Magistrates Courts on the same day, such as in Kitgum and Moroto districts.

35. Furthermore, when public prosecutors and state attorneys are in a position to attend court sessions, they might appear unprepared, with little knowledge of the case. In addition to their workload, this is said to be due to their lack of motivation to perform their obligations efficiently because of their low wages (around 500,000 UGX per month).
36. In addition, prosecutors/attorneys have scarce resources at their disposal. For instance, when investigating crimes committed in Kitgum district, the prosecutor must send his indictments to Gulu for typing. Prosecutors and attorneys also complain of the poor quality of the reports they receive from the police, which often have to be sent back for further investigations. Moreover, when a prosecutor/attorney is absent or on leave, cases allocated to him/her are delayed by repeated court adjournments.

37. Magistrates and judges complain that the prosecutors/attorneys delay court proceedings, by being absent from the offices they are granted at the court house. The police complain that files are frequently received from the Prosecutor’s office on which the next court appearance date has not been noted.

38. The Government intends to expand geographical coverage of services provided by public prosecutors and state attorneys by recruiting and deploying more staff (in particular two senior state attorneys to handle capital offences, and over the next three years, recruit 27 attorneys), construct resident state attorney’s stations and operationalise them by equipping them with vehicle, furniture, computers, telephones and solar panels.

E. Challenges facing Local Council Court members

39. As stated by the Government, the level of education of members sitting on LC Courts is low and constitutes a major hindrance to the delivery of justice in a fair and equitable manner. This is exacerbated by the fact that at the level of LC I and II, but in reality also at LC III, LC courts, members hold concurrently both judicial and executive powers. Belonging to the community where the alleged offences occurred is an advantage when it comes to rendering judgements that will satisfy the need for communal reconciliation. However, at the same time, it raises serious questions regarding the impartiality of those judging a case, as they would certainly personally know either the victim or the alleged offender, if not both, and thus possibly render their judgements based on other considerations than justice ones. Although the law provides for various members of the LC committee to be sitting on the Court, thus providing for a certain degree of collective responsibility that may act as a safeguard against such bias, decisions are in reality more than often taken solely by the Chairperson of the LC committee.

40. The impartiality of LC Court members is also called into question as they hold other positions of power, such as Executive Committee members but also at times as serving soldiers, as is the case for example at Palabek Ogili IDP camp in Kitgum district.
41. In addition to frequently hearing cases that do not fall within their jurisdiction, LC Courts are said to often fail to meet their quorum requirement (i.e. five members, including two women). In particular, LC I and III Executive Committees chairpersons reportedly sit on their own, sometimes with a secretariat member (at LC III level). It is alleged that this is also a way to ensure that they do not have to share bribes they receive. Most of the time, LC Courts are only composed of male representative, despite specific provisions requiring the presence of female members on these courts. The gender- or child-sensitivity of the courts remains of concern.

42. While the public tends to resort primarily to LC Courts, many still perceive them to be corrupted. Judgements are allegedly made in favour of the party who was in a position to offer the highest bribe to the LC Court members or who have connections with LC Executive Committees members. It is reported that LC Court members usurp duties not falling within their prerogative in order to increase the possibility of personal financial gain, considering that their wages are drawn from court fees and court orders, such as fines. For instance, LC Courts have supported a practice of “referral letters” condoned by the police. In Gulu district, victims are said to be asked to pay for LC referral letters to ensure that a case is brought to the attention of the police when the matter falls outside their jurisdiction. On their part, police officers allegedly refuse to provide assistance to complainants who refer their cases without a referral letter.

43. Moreover, LC Courts are reported to charge higher fees than those stipulated by the Executive Committees (Judicial Powers) Courts Fees Regulations of 1990, partly because of misinterpretation of regulations, partly out of corruption practices. It is reported that according to these regulations, filing a case before a LC I Court cost 500 UGX, while an appeal before a LC II and III Courts, 1,000 UGX and 2,000 UGX, respectively. In Pabbo sub-county, Amuru district, it is reported that LC II Chairpersons were charging up to to 50,000 UGX to hear a case, while in Pader district, the minimal fees to be charged is said to be 5,000 UGX.

44. The aggrieved party is sometimes asked to pay the fees for the LC I Court to sit on the promise that the money would be refunded by the defendant (provided that the former wins the case). Complainants have often referred to this as a serious obstacle to their access to justice.
**F. Challenges facing magistrates and judges**

45. As shown in the table below, the number of magistrates, coupled with a limited number of High Court sessions, is grossly inadequate to ensure that individuals have access to justice. As of September 2007, in the northern region, there were eight chief magistrates against a required number of 33, and only 21 magistrates grade I, as opposed to the 33 that are required in the region. A striking example is the situation in Moroto district, where the High Court in 2006 had not held any session for the past few years. This is explained by the fact that Moroto district, like Lira, Kumi, Kaberamaido and Katakwi districts, are covered by the resident High Court judge in Soroti, who in view of the vast geographic coverage, is only able to hold a limited number of sessions in each of these districts. For example, in 2006, the judge held only two sessions in Soroti. The judicial system is characterised by a significant backlog of cases, especially with respect to serious offences that can only be heard before the High Court.

*Table II. Statistics regarding the presence of magistrates and judges in selected districts of northern and northeastern Uganda in 2006*

<table>
<thead>
<tr>
<th></th>
<th>High Court Sessions</th>
<th>Chief Magistrate</th>
<th>Magistrate Grade I</th>
<th>Magistrate Grade II</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gulu</td>
<td>Approximately two-week session every quarter</td>
<td>1</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Pader</td>
<td>None</td>
<td>None</td>
<td>1</td>
<td>None</td>
</tr>
<tr>
<td>Kitgum</td>
<td>None</td>
<td>None</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Lira</td>
<td>Approximately two-week session every quarter</td>
<td>1</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Soroti</td>
<td>Approximately two-week session every quarter</td>
<td>1</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Moroto</td>
<td>None</td>
<td>None</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Kotido</td>
<td>None</td>
<td>None</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

46. In an effort to improve access to justice, the High Court constituted Circuit Divisions located in Jinja, Mbale, Masaka, Mbarara, Nakawa, Fort Portal and Gulu. At the time of writing, there was a resident judge in all Circuit Divisions. However, it must be noted that the Resident High Court judge for Gulu Circuit (whose jurisdiction covers Gulu, Amuru, Kitgum and Pader districts) was only appointed in March 2007, reportedly due to lack of funding to support the operations of the High Court in northern Uganda. Each Circuit has full jurisdiction within its territorial jurisdiction.

47. The serious backlog of cases in turn leads to excessive periods of pre-trial detention, in violation of Uganda law and the denial of the right to be tried without undue delay. In 2006 for instance, more than 280 detainees in Lira prison, and over 200 detainees in Gulu prison, were awaiting trial before the High Court, including some for over five years. In August 2006, Soroti prison was holding 266 suspects on remand, of which 154 were committed to the High Court. During the August 2006 session, only 56 were presented before the Court. According to judicial officials, each time that the High Court holds a session it is believed to
hear only one quarter of the cases pending before it. Even when a person is convicted, he/she must usually wait for the following session, often held months later, to be informed of the sentence.

48. A number of districts in northern Uganda still remain without any magistrate, save a High Court judge. For example, the newly created districts of Kaabong, Abim and Nakapiripirit do not have magistrates. As a result, all cases continue to be referred to Kotido (from Kaabong and Abim districts), and to Moroto (from Nakapiripirit district), making access to justice very cumbersome if not impossible for the population concerned. In November 2006, during a visit to Karamoja, the Chief Registrar of the Judiciary promised that action would be taken for pending cases to be heard in a speedy manner and that more magistrates would be recruited and deployed to Moroto district. In addition, it must be noted that the revised version of the KIDDP provides for the establishment of a High Court in Karamoja.

49. It is reported that only 33 judges, including five who currently have responsibilities outside the country\textsuperscript{38}, are appointed to the High Court. In June 2007, the Secretary of the Judiciary recommended the appointment of 19 additional judges to solve the shortage of judges at the High Court, and to make “a provision in the next budget to cater for more judges.”\textsuperscript{39} The JLOS budget from the basket fund that supplement the recurrent budgets for 2007/2008 caters for 72 High Court sessions to be held, all divisions included, in the country.\textsuperscript{40} The mention of additional judges is included in the recurrent budgets.

50. With respect to the scarcity of human resources currently at the disposal of both civilian law enforcement agencies and judicial institutions, the Government indicated its “plans to recruit more judicial officers to fill vacant post of all law enforcement agencies in all the districts that had no magistrates, police stations and prisons services.”\textsuperscript{41}

51. In the Karamoja Integrated Disarmament and Development Plan (KIDDP), the Government notes that the ability of the judiciary to deliver services to achieve its objectives in Karamoja, which includes dispensing justice to all people in Uganda, through timely adjudication of disputes without discrimination, has been undermined by structural, staffing and logistical constraints.\textsuperscript{42}

52. In northern Uganda, the Government has plans to remedy to the situation by recruiting 25 Chief Magistrates and 13 Magistrates Grade I over the next three years\textsuperscript{43}.

53. In addition to the limited number of High Court judges and magistrates available especially in northern Uganda, another major hindrance to the holding of regular court sessions is limited funding. Funding available for the Judiciary for 2006-07 amounts to 20,96 billion UGX. This includes the budget for High Courts (16 million allocated for court sessions) as well as Chief Magistrate Courts (5 million allocated for court sessions)\textsuperscript{44}. As a result, judicial officials complain that they receive little support from the Government and have difficulties holding sufficient court sessions considering the number of cases falling within their respective jurisdiction. They often have no computers, vehicles and fuel, and generally have at their disposal only one set of Ugandan laws. Civil society organisations, as well as the JLOS, have provided judicial staff with some refresher courses, but most magistrates, especially at the lower level, have had little or no training specifically in human rights norms and standards pertaining to the administration of justice.
54. Some *ad hoc* measures to reduce the case backlog have been initiated in 2006/2007. For example, in October 2006, five judges were assigned to handle the backlog of some 2,000 civil cases in Gulu district.\(^45\) Regrettably, the High Court session started in May 2007 but was almost immediately stalled due to financial difficulties. A new session started on 18 June 2007. Nevertheless, 79 civil cases had been heard, although a final judgment was not made for all of them. An additional 50 criminal cases, all entering a plea bargain, had been handled during the same session, of which 32 received cautions and suspensions, whilst the remaining 18 received custodial sentences of a maximum of seven years.

55. Another measure to alleviate the case backlog in northern Uganda was the intermittent transfer of suspects on remand from Kitgum to Gulu prison, with a view to having their cases being heard before the High Court in Gulu. This is a laborious and slow process, which, amongst other things, complicates the appearance of witnesses. Furthermore, the creation of a new magisterial area for Kitgum district and the plan to deploy Magistrates Grade I in all district of Lango sub-region are to be noted positively.

56. Finally, in an attempt to avoid further overloading of the formal justice system, and in accordance with their powers under the law (see below), magistrates encourage victims to mediate their grievances, either through them or informally through elders or traditional leaders.

### Complaints against magistrates or judges

Written complaints against any member of the judiciary (be they judges, magistrates or court registrars) may be lodged with the Judicial Service Commission (JSC) or the Inspector of Court (sitting at the High Court). The Chief Registrar is entrusted with investigating the matter before the complaint is brought to the attention of the respondent, who is given an opportunity to provide a summary response. If the Chief Registrar decides that the matter warrants further action, a file containing the written complaint, the findings of her investigation and the summary response from the respondent is forwarded to the JSC for further consideration. At the same time, the Chief Registrar interdicts the respondent in order to allow investigations to be carried out without obstruction. The case is then heard by the JSC in presence of the respondent who is given another opportunity to defend his or her position. The JSC decision, which contains recommendations regarding eventual disciplinary measures, including removal of the judicial officer, is communicated to the parties and to the Chief Registrar for action.

In 2006, through field inspections, the JSC had received 194 complaints, from Lira, Arua and Soroti, amongst other districts. As of February 2007, 30 were under investigation, 29 were pending trial before the Disciplinary Committee, 15 had been forwarded to other relevant bodies and 22 had been completed by the JSC Secretariat.

*Letter from the Ministry of Foreign Affairs dated 8 February 2007, p. 5.*
II. Impact on the Human Rights Situation

**Constitutional guarantees with respect to the right to a fair trial**

Article 21 (1) of the Constitution of the Republic of Uganda, 1995 (as amended) (Constitution) guarantees equal protection to all before the law.

Article 28 (1) of the Constitution provides that in the determination of civil rights and obligation of any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.

Article 28 (3) adds that every person charged with a criminal offence shall be presumed innocent until proven guilty or until that person has pleaded guilty. In addition, the suspect must be informed in the language she understands of the nature of the offence; be given adequate time and facilities for the preparation of her defence; be permitted to appear before the court in person, or at the person’s own expense, by a lawyer of her choice - except in the case of an offence that carries a sentence of death or imprisonment for life, in which she is entitled to legal representation at the expense of the State; be afforded a free interpreter at the court, if necessary; be afforded facilities to examine witnesses and to obtain attendance of other witnesses before the court. The same article prohibits retrospective charges or conviction and the trial of a person already pardoned.

Article 126 (2) (b) provides that justice shall not be delayed.
A. The 48-hour rule and the right to habeas corpus

“Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”

57. According to Article 23 (4) of the Constitution, persons under arrest must be brought before a court as soon as possible but in any case not later than 48 hours from the time of her arrest. In reality, this constitutional guarantee is rarely respected.

58. For example, interviews conducted at Kitgum Police station in October 2006 showed that 10 out of 12 suspects at the time detained there had not been given the reasons for their arrest at the time of arrest, not been informed promptly of charges against them nor been brought before a judge within 48 hours of arrest. Others had been taken into police custody for some three weeks without having been brought before a magistrate or a judge. Similarly, officers visiting Amuria Prison identified six prisoners who had been held beyond the 48 hours limit, for as long as two weeks since their arrest, without having been presented before a magistrate.

59. The police report that they make efforts to adhere to the 48-hour rule, but that structures are not in place to enable them to properly release and/or process cases within that period. The absence of courts close to IDP camps police outposts and of police vehicles makes compliance with the 48-hour rule extremely difficult. The absence or the farther locations of High Court judges in most parts of the country make it impossible for the police to comply with this provision, when suspects are to be tried before such a court. In addition, the shortfall of judges/magistrates limits the number of persons under arrest who can be presented before a court in order to be formally charged and remanded. For example, in Abim district, police officers confessed that because they do not have transport they are usually compelled to keep suspects under custody much beyond the required period of time before being able to take them before a magistrate in Kotido. The same justifications are commonly presented by police in most rural outposts, but also at police stations in districts where there are few magistrates or no judges.

60. It must be noted that central police stations, which are close to courtrooms appear to comply with the 48 hour rule. Therefore, the time delay required to bring a suspect before a court seems to be proportional to the distance that has to be travelled between the police outposts and the nearest available court.

61. Furthermore, the police argue that in sensitive cases, such as defilement of young children, they must place suspects in what they refer to as "protective custody", especially in view of possible threats of mob justice and the pressure from society to keep such suspected offenders in detention. In practice, this means that the legal requirements related to arrest and detention are fulfilled. Finally, a number of cases have been reported where suspects were arrested before formal criminal investigations had been instituted.

62. The right to a habeas corpus application (i.e. the legal action through which the lawfulness of one’s
detention is decided without delay by a competent court) is guaranteed under article 23 (9) of the Constitution as inviolable. Mostly as a result of lack of awareness of rights, such petitions are in practice very rarely filed and suspects under arrest remain without judicial revision of their detention for significantly longer periods than the 48-hour period. From numerous interviews with detainees, OHCHR observed that the overwhelming majority of detainees are not aware, nor made aware, of the right to apply for a writ of habeas corpus. Their contacts with judicial officers, including during proceedings, are only occasional. In addition, no institutional structures are in place for suspects to notify relatives of their detention.

B. The right to be tried without undue delay

“In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (c) to be tried without undue delay.”

63. According to Article 23 (6) (b) of the 2005 Constitution, it is mandatory to release on bail all persons who have been on remand without trial for more than 60 days in the case of non-capital offence (which must be tried by the High Court or any other subordinate court); paragraph (c) of the same article provides that the period before a person accused of a capital offence by the High Court is entitled to be released on bail is 180 days before committal before the High Court (as solely the High Court can exercise its jurisdiction over such crimes). Under this article, once the 60/180 day-period has elapsed, the Court has the obligation to grant bail, under conditions which it considers reasonable; the Court does not have discretionary powers in that respect. Thus, the right of detainees to be granted bail can only be defeated by the accused person’s inability to fulfil reasonable conditions of bail, as established by the Court. These provisions may only be invoked by the defence lawyer in the case of the High Court, or the party concerned if not represented. In reality, this constitutional guarantee is rarely invoked. Not only are the overwhelming majority of detainees on remand not aware or informed of this legal requirement, but in addition to the limited presence of magistrates and High Court judges, poor record keeping and information management further complicate the matter, as magistrates and judges are not in a position to verify the length of detention on remand easily.

Compliance with the 60/180-day requirement

On 30 September 2006, JLOS reported that a preliminary prisoner census reflected an increased non-compliance with constitutional standards. The survey found that nationwide, 32% (1,021) of suspected petty offenders had stayed beyond 60 days and 13% (354) of suspected capital offenders had stayed beyond 180 days. It is, however, believed that the rates are much higher in parts of the country where there is no resident High Court judge and where Magistrates Courts are still few, such as the northern and north eastern sub-regions.

The chronic non compliance with the 60/180-day requirement is extremely common in north eastern Uganda where there is no permanent resident High Court judge in Moroto and where as a result, the Court only holds sessions every three to four months, at its utmost. The situation was similar for the northern districts of Gulu, Pader and Kitgum where there was no permanent High Court judge until March 2007.

If the law were to be strictly applied, it would seriously reduce the overcrowding situation in prisons, although some judicial officials have expressed their concerns that this would mean releasing individuals suspected of serious offences who may then become recidivists.
64. As the High Court does not sit permanently and only holds irregular sessions in Moroto Circuit for example, it is impossible for pre-trial detainees committed to the High Court to request their release on bail after the legally defined 60- or 180-day period. To some extent, the Magistrates Courts are in a better position to comply with such legal requirements, even if in practice, they rarely do so. It is reported that magistrates and judges are not pro-actively enforcing this provision of the Constitution proprio motu. But, when invoked, usually magistrates and judges comply with the requirement, and order the immediate release of the suspect concerned.

65. Throughout the northern and north-eastern districts it is of concern that OHCHR interviewed dozens of suspects on remand awaiting trial up to five years, without having been offered an opportunity to be released on bail, as provided for by Uganda law.

66. In Lira prison, one man has been awaiting trial before the High Court since 1996 when he was arrested at the age of 16 on charges of defilement. In July 2007, 316 detainees, including 173 detainees accused of capital offences committed before the High Court by the Lira Chief Magistrate, some of whom have now been in detention for up to 68 months, were awaiting trial in the same prison. During a visit to Patongo Prison, Pader district, in early 2007, out of a total of 133 prisoners, 16 had been convicted whilst 105 were on remand. In Kitgum district, of the 98 persons in detention in March 2007, 20 were convicts, while 78 were on remand. Interviews confirmed that the overwhelming majority were not aware of the possibility of applying for bail. In Soroti prison, 20 detainees charged with murder and robbery, including two elderly, had been on remand since before 2005.

67. In addition, it must be noted that often the police arrest a suspect before any significant investigation has been carried out. As a result, suspects are remanded to a police station, if a police cell exists, or to prison custody, while the police keep completing their investigation, which may last for weeks.

68. As public prosecutors are relatively few, they are often obliged to spend a large portion of their time attending court sessions. As a result, they complain having little remaining time to draft indictments or other documents, and to monitor the work carried out by the police, including possible request for additional statements. Moreover, the process of handling additional statements, which is centralised at the level of the Office of the DPP in Kampala, is extremely slow. It has been estimated that the DPP Office frequently receives

**High Court and Chief Magistrate Court sessions**

A JLOS Progress Report indicates that from December 2005 to December 2006, nationwide only 61 of an intended 97 High Court sessions had been held, whilst only 15 out of 78 intended sessions of the Chief Magistrates Courts took place, due to the late release of funds and a shortage of judges and magistrates. In addition, as of 6 December 2006, the High Court had a completion rate in criminal cases of only 16%, while there were 36,965 incomplete cases before the Chief Magistrates Court nationwide, representing more than half of the entire caseload of uncompleted cases nationwide.

up to 400 files daily. State attorneys who are charged with perusing files containing additional statements are reported to be overwhelmed. This has led to serious delays in the adjudication of additional statements. As noted earlier, the decision to discontinue a criminal case can only be taken by the DPP himself, which explains the backlog in dealing with additional statements.

69. Poor case management further contributes to the growing backlog of cases before the courts. According to Justice Ogoola, case management has not been very successful because of the failure of the High Court to take an active part in the management of cases until the time of a hearing. The practice of granting successive adjournments and the failure to apply rules of procedure consistently are also contributing factors. The same observation can be made with respect to Magistrate Courts. In all courts, poor record keeping and coordination results in witnesses and suspects, including those charged with serious crimes, failing to appear before the court. The transfer of suspects without their corresponding files from Kitgum and Pader districts to the High Court and the Chief Magistrate Court in Gulu is common. For example, in late 2006, 31 prisoners arrived at Gulu Central Prison without their files from the Magistrates Court in Kitgum. Moreover, it has been reported to OHCHR that it is not uncommon for court files to disappear within Magistrates Courts, including allegedly sometimes due to corruption practices.

70. In addition to the absence of a permanent High Court presence and the limitations of the Magistrate Courts, delays arise from police tardiness in completing investigation, a lack of commitment and of proper investigative means and techniques; the lack of supervision by senior police officers; limited involvement of the public prosecutors in supervising the work of investigating police officers; and delays by prosecutors in drawing up indictments and other relevant documents.

71. The table in Annex II provides a detailed description of the performance of various courts regarding processing of cases brought before them. In particular, it must be noted that between July 2006 and April 2007, the backlog of cases increased, which led to the average length of detention on remand increasing from 26 months to 30 months. The JLOS sector noted that to clear the existing backlog with the current staffing level and resources would require 175 High court sessions with 40 cases each and 712 Chief Magistrate court sessions. The Sector further stated there is a need to revise its strategy to include multiple interventions.

C. Right to be heard by a competent tribunal

“In the determination of any criminal charge against him (…), everyone shall be entitled to a (…) hearing before a competent (…) tribunal established by law.”

72. The issue of the competency of judicial institutions arises most strikingly at the LC Court level. The latter appear, in the eye of the public, accessible, in terms of physical proximity, opening hours, and affordability; and their conciliatory approach is said to be clear and prompt. In addition, they are composed of individuals coming from the same community as the complainant/defendant, and are thus perceived as having a better understanding of the issues at stake and how to resolve them in a more culturally-appropriate and socially-accepted manner. However, there is often confusion, in the views of the population, between the LC Executive Committees members’ executive and judicial functions.
73. As a result, the LC Courts are the judicial institutions most widely resorted to in northern Uganda, even, and actually very often, in cases where the matter does not fall within their jurisdiction, such as with respect to capital offences, including rape and defilement cases. According to interviews, such cases are reported to LC Courts because complainants expect them to make a judgment on the basis of custom or tradition, often seeking in the first to provide material compensation for the victim, with no other form of punishment. Often, however, decisions from LC Courts go far beyond their statutory competence.

74. Not in possession of any legal instrument and composed of members with a low level of general education, without legal education, LC Courts lack the technical capacity to interpret the law correctly, hence creating double standards in the administration of justice.

75. For instance, local authorities, including the LC III, II and I of Kokuwam parish in Nakapiripirit district presided over LC Court hearing on 29 April 2007, which resulted in the execution of the death sentence by hanging a man suspected of murder. His two other co-defendants had been sentenced to a fine consisting in the payment of 60 heads of cattle, which the former could not pay. The Local Council Court officials were subsequently arrested, but denied any involvement in the proceedings, despite evidence to the contrary.

D. Right to a fair hearing

76  1. In the determination of any criminal charge against him (…), everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
   (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
   (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
   (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
   (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
   (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
   (g) Not to be compelled to testify against himself or to confess guilt."
Before Local Council Courts

77. Proceedings before LC Courts lack conformity with due process of law standards. In accordance with the law, proceedings are very informal, due to the lack of technical skills and legal knowledge of members of LC Courts. As a result, the impartiality of court members and the fairness of proceedings are questionable. Proceedings are rarely recorded, which makes it almost impossible to appeal any decision by such a court. At times, when LC Court proceedings and decisions are recorded, they are presented to Magistrates courts if cases are referred to their jurisdiction.

78. As previously indicated, at the LC Court level victims cannot be represented by public prosecutors or state attorneys. This disadvantages less educated parties and marginalised segments of society in terms of defending their case. In particular, women and children are believed to be at disadvantage when opposed to male adults. Any party is at liberty to call witnesses. Parties before a LC Court are believed to be rarely told that they have the right to appeal a decision to a higher jurisdiction, and eventually to a Magistrate Court.

79. Although not yet implemented in practice (mainly due to the low level of awareness of LC Court members who have no access to relevant legal texts and limited dissemination of relevant amendments), changes have been introduced by the 2006 Local Council Courts Act. In particular, the Act now requires LC Courts to keep a record of their proceedings and to act in accordance with the principles of natural justice, meaning each party to a case has the right to be heard and judicial officials involved in a case cannot be party to the case.

80. Coupled with limited training, the quasi absence of supervision of LC Courts by Chief Magistrates significantly contributes to the poor performance of LC Courts with respect to respecting basic fair trial standards. This leads to discrepancies in the application of the law. Some have challenged the fact that Chief Magistrates have been assigned these supervisory functions considering the material and logistical hurdles that would need to be overcome by Chief Magistrate to effectively carry out their duties in respect of LC Courts.

Before Magistrates Courts

81. Before Magistrates Courts, complainants frequently do not receive an effective legal remedy due to the high number of cases being dismissed. The majority of cases dismissed is said to be as a result of failure of suspects released on police bond or on bail and witnesses to appear. The police often fail to locate and summon them. Even when summoned, witnesses are often unable to cover the distance to the court. In Kitgum district, up to 75% of cases before the Magistrates Court are dismissed on that ground, according to judicial officers interviewed. Public prosecutors also complain that securing the presence of witnesses is a major obstacle and regret that investigating officers do not take their duties in this regard seriously enough. Police officers report that they are either too busy or that they fail to trace and summon witnesses, in particular because of lack of transportation. Other reasons cited are the absence of a system to record suspects released on police bond or on bail and witnesses’ moves, especially at a time when IDPs are progressively leaving camps. In practice, the police pass summons onto LC officials, who in turn pass the summons onto the local administration police.
82. The lack of adequate communication channels between court and police officials, especially the absence of a weekly court list for any courts, including Magistrate Courts or High Court sessions coupled with the random publication of ad hoc court lists mean that police is not in a position to alert witnesses regarding court dates on time. A session of the High Court in Lira observed by OHCHR in June 2006, a number of suspects whose names had been listed for trial were not called up, while others whose names had not been on the court list were called before the judge, without having had time to prepare their case.

83. In addition, for example in Pader district, the prison that serves as a remand centre, Patongo Prison, is not located in the same town as the court. This makes it extremely difficult for detainees to follow their case, and for the public prosecutor, magistrate or judge to have access to detainees in the course of the investigation or even during court proceedings.

Excessive pre-trial detention periods

“Overstay on remand has been identified as a serious problem (...). There was a percentage reduction in remand population from 60% in September 2005 to 58% in September 2006. The monthly growth rate of prisoner also reduced from 10% to 4%. This is because of the prisons project of linking remanded prisoners to different social actors to access bail and Paralegal Advisory Services piloted in Gulu, Mbale, Kampala and Fort Portal. A list of suspects who have stayed on remand beyond the statutory period has been presented to the Judiciary to expeditiously cause list their cases for hearing to improve compliance with the Constitutional standards. JLOS has set targets for achieving reduction in case backlog as follows:
- Average length of stay on remand for capital offenders from date of admission to prison on remand to date of final case disposal:
  2006/7: 21 months
  2008/09: 16 months
  2010/11: 12 months
- Average length of stay on remand for non-capital offenders from admission to prison on remand to date of final case disposal:
  2006/7: 60 days
  2008/09: 53 days
  2010/11: 39 days.”

(Letter from the Ministry of Foreign Affairs dated 8 February 2007, p. 6.)

Conviction rates and backlog

According to the JLOS Mid-Year Report for 2006, Magistrates Courts performed better, with an average of 52% of existing cases having been dealt with. It also states that the percentages of disposed criminal cases and family matters are higher than land and civil matters, with an average of 44% and 43% respectively.

As of 30 April 2007, the total number of cases at all court levels showed that 82,843 cases had been brought forward from 2006 and 53,605 were registered in 2007. Of the total caseload, 49,799 were completed (36%) and 86,648 were still pending. The growth rate of cases in the Judiciary for the year covered is 5%, with the High Court’ rate at 6% (JLOS Progress Report, January – May 2007, p. 10-11).

According to recent JLOS figures, as of March 2007, 16,395 convictions were reported against the 55,796 cases brought to court, bringing the current conviction rates to 30%. (ibid., p.13)
Before the High Court

84. High Court judges are experienced judges who act with professionalism and court proceedings usually respect fair trial requirements. Appeals of their decisions are rarely on the grounds of alleged incompetence, partiality or corruption. The main procedural concerns regarding High Court proceeding is their tendency to dismiss cases due to the failure of a suspect released on police bond or on bail or a witness to attend a court hearing, without establishing reasons.

Current status of Local Council Courts

In 
Rubaramira Ruranga vs. Electoral Commission and Another, Petition No. 21 of 2006, the Constitutional Court nullified the electoral procedural provisions in the Local Government Act which dealt with the elections of the Local Councils at village and Parish levels (LCI and LCII) since these provisions were found in violation of the Constitution. The Court then called upon the Executive to initiate an amendment in Parliament of the impugned provisions of the laws to reflect the multiparty system before new elections of the village local councils are held.

At the time of writing, the term of office of LC I and II officials had expired and no formal extension by way of new election or otherwise, had been made.

In a letter sent to all districts chairpersons (LC V) on 16 April 2007, the Minister for Local Government declared, based on an advice from the Solicitor-General, that the LC structures are still effective as the validity of the Local Councils was not challenged in the Constitutional Court. Only the constitutionality of the electoral mechanism was challenged. Therefore according to the Minister, current local council structures should remain in place and should continue carrying out their duties pending the amendments to the law and the organization by the Electoral Commission of elections for new village and parish councils and committees.

However, whilst the Constitutional Court ruling did not clearly specify the timeline of applicability of the ruling, the continued activities of the LC I and LC II officials could be considered no longer mandated by the law and therefore could easily be challenged before a court. Thus, LC I and LC II officials, whose mandates have expired, should not continue to operate until they are re-elected under the provisions of an amended Local Government Act.

As for other local councils (the district, municipal and sub-county councils that were elected in 2006 and have a mandate for five years), the judgment does not specify if its effect is retroactive. Therefore, since the constitutionality of these LC structure was not challenged, it could be argued that their mandate remains still valid and that at the expiration of their mandate in five years, they will have to be elected following the provisions of an amended Local Government Act or that re-elections would have to take place at the time when the appropriate legislative amendment has been enacted.

In August 2007, the Cabinet approved the Local Governments (Amendment) (No.2) Bill, 2007 which will pave way for fresh LC elections. The Amendment, *inter alia*, is intended to address the issues raised in the judgement of the Constitutional Court which nullified certain provisions of the law that related to elections of village, women and youth councils.
E. Conditions of pre-trial detention

85. “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

“The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment.”

“Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate.”

“Every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so.”

“Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.”

86. As there is no remand centre in any of the northern and north-eastern districts, suspects are kept either in police cells or in district prisons. Actually, only a few of police outposts have a usually very small detention cells (often a former office space transformed into a cell), and suspects are reportedly at times kept in unofficial detention places, such as private homes of arresting officers or offices of local and district authorities, in violation of the Constitution.

87. Overcrowding, poor general conditions, in particular of sanitation facilities, and lack of medical attention in police cells, as well as in prisons, are commonplace. Detainees sleep on bare floors; often head to toe in order to accommodate the number of inmates. They usually share blankets. Toilet and shower facilities are basic and most detainees do not wear prison uniforms. In prisons, a nurse is sometimes available to provide medical attention and basic medication is available. More specific medication needs to be provided by the family. In addition, minors are not separated from adult male ones, in contradiction of international minimum standards for detention, while often female are separated from male detainees. Suspected offenders on remand are however not separated from convicted prisoners.

88. It is reported that some police officers have requested individuals to pay so-called ‘exit fees’ upon release from police cells, allegedly to recover costs which might have been incurred by the police whilst holding a suspect in their detention facility. For example in the IDP camps in Lango, Pader and Kitgum districts suspects were required to pay up to UGX 15,000 as exit fees following periods of police detention.

F. Lack of recourse to alternatives to the deprivation of liberty

89. “Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”
“The judicial authority, having at its disposal a range of non-custodial measures, should take into consideration in making its decision the rehabilitative needs of the offender, the protection of society and the interests of the victim, who should be consulted whenever appropriate.”

90. Ugandan law provides for a range of alternative measures to the deprivation of liberty, including generic bail/bond and community services orders, as well as for powers of magistrates to promote reconciliation between the parties.

**Police bond and court bail**

91. A police bond is a commitment by a suspect in police custody, before the person is brought before a magistrate/judge, which binds the person to report to the police under certain terms and conditions as may be prescribed by the police. The criteria for granting police bond are very similar to those of granting court bail. Police bonds are free of charge and are granted by the officer-in-charge of a police station.

92. Article 23 (6) (a) of the Constitution entitles any person arrested on suspicion of having committed a criminal offence to apply to the court to be released on bail. Applications for bail may be made orally at any time before the judgment, either by the applicant herself or through legal representative. The court may grant that person bail on such conditions as the court considers reasonable.

93. According to Section 77 of the Magistrates Courts Act, the Magistrates Court must consider the nature and gravity of the offence, as well as the severity of the punishment which a conviction might entail; the antecedents of the applicant; whether the applicant has a fixed abode within the area of the court’s jurisdiction; and, whether the applicant is likely to interfere with witnesses or investigations/evidence.

94. Section 15 of the Trial and Indictment Act provides that in order to get bail, a person accused before the High Court must prove the existence of exceptional circumstances (such as serious illness, infancy or advanced aged) which would justify the release on bail, and that the person will not abscond once released. Moreover, the District Public Prosecutor must sign a certificate of no-objection. It must be noted that according to Ugandan law, suspects charged with a capital offence are also entitled to bail, in particular once the 180-day period has elapsed without them being presented before the High Court.

95. When bail is not granted, the court is required to record the reasons and accordingly inform the applicant. An application can be made of the decision to a higher jurisdiction. Similarly, an appeal can be made to a higher court with a view to reducing the amount of the bail bond. In practice, it is also possible to re-apply for bail before the same court after a certain time or if the conditions under which bail was initially refused have changed.

96. Magistrates and judges however, have been unable to deal with guilty pleas (see box) and bail applications in a timely manner for various reasons, but primarily because of the non-appearance of the suspect before the court, the lack of knowledge of the right to apply for bail and the failure to meet bail requirements.
97. In addition, there is a general lack of awareness surrounding the procedures for applying for bail or bond and the criteria for admissibility, both from potential applicants, but also from various police and judicial officials interviewed.

98. In Gulu district, the population has repeatedly expressed anger upon seeing a suspect released on police bond or court bail, and immediately ‘returned’ to the community seemingly unpunished. The police and the judiciary have been accused by the population of conniving with suspects, further impairing their relationships with the communities and undermining public confidence in formal justice institutions. This may partly explain the reluctance of some police and judicial officials to make use of these alternatives.

99. Meeting the conditions required for court bail or police bond may prove to be quite difficult, given the very low level of income of the population. This is especially the case in the northern parts of the country, where most of the population live in IDP camps, and in north eastern part of the country, where poverty is even more endemic as in northern districts. Indeed, people have very few assets to offer as surety. According to information received from Soroti magistrates, people often cannot afford court bail of more than 200,000 UGX. It is however alleged that the Magistrate Grade I for Pader district used to charge up to 500,000 UGX to order a release on bail.

100. It must also be noted that there is no mechanism in place to account for money paid to cover bail orders. A baseline study on financial management systems of the Justice Law and Order Sector conducted by Deloitte & Touche indicates as some of the financial weaknesses the lack of control over bail money and fines. The report indicates that it is unclear what happens to the bail money once suspects jump bail or if a suspect is unable to produce a receipt when trying to retrieve the funds. There is no independent list of suspects paying bail for accounting purposes. The report furthermore notes that there is no serially numbered independent list of fines imposed of magistrates and judges in order to be reconciled with the amounts received by the cashier. In Amolatar district, OHCHR recorded a case where the officer in charge of prison refused to release prisoners who presented ordinary receipts delivered upon payment for fines or bail ordered by the Amolatar Court. The prison official argued that he would only recognize Uganda Revenue Authority (URA) receipts as per instructions received from the Regional Prison Commander. The Grade II Magistrate in charge of Amolatar and Dokolo Courts claimed that these URA receipts are available only with the Lira Chief Magistrate. As a result, prisoners who were ready to pay their fine or bail order have remained in detention in violation of their rights.

101. It is reported that an alarming number of suspects abscond whilst on court bail or police bond. Police are finding it difficult to execute subsequent arrest warrants as they are unable to identify the suspects or to reach their location.
Community Service Orders

102. According to section 3 (1) of the 2000 Community Service Act, when a person has been convicted of a minor offence, the High Court or any subordinate court, in particular Magistrates and LC courts, may instead of sentencing the person to deprivation of liberty, order community service. While the Act does not describe the types of community services that may be ordered, they usually consist of manual work benefiting public buildings or spaces, such as slashing grass, rehabilitating roads or cleaning compounds. Courts have discretionary powers in that respect.

103. An OHCHR investigation carried out in Moroto prison in November 2006 showed that a number of prisoners convicted for minor offences could have benefited from community services, but had not done so because the appropriate actions had not been taken by the Magistrate concerned. Appropriate actions included among others consulting with relatives of the concerned prisoners and of the victims to consider whether community services is amenable to them.

104. In addition, it is observed that because of lack of proper investigations and at times of limited knowledge of the applicable provisions of the law, various suspects are eventually charged with offences that would not fall within the category of ‘minor offences’ for the purpose of community services although the facts might have initially warranted such qualification. Further analysis would be required to assess the extent to which the erroneous qualification of the criminal acts, in particular at the time of judgement, might actually prevent detainees from benefiting from community service orders.

105. Community service orders must be supervised by an officer named in the order. These officers however generally lack logistical support, including transportation means, to carry out their functions, especially in the camps. It is alleged that as a result, only offenders living in district towns actually benefit from such orders as they are possibilities of being supervised. As a result, community service orders are only rarely resorted to in rural areas. According to JLOS, some 1,500 community service orders had been issued during the pilot period (2001-2003). Up to October 2006, 5,052 orders had been issued.

106. Finally, the Community Service Act, under section 14, provides that offenders, who are currently serving prison sentences but are to be released within six months, may request for a revision of their sentence to enable them to qualify for non-custodial sentence, such as community service. This provision is rarely used, most probably because not known by either prisoners or prison and judicial authorities who may advise them to resort to it.

107. The Government notes that “[c]entral and local administrative prisons are holding high numbers of petty offenders who are eligible for community service. (…) Of the total of 3,186 prisoners in the Central Prisons in the North, 1,288 or 34 % are eligible for community service.”
Powers to promote reconciliation between the parties

108. The Constitution, in its Article 126 (2) (d), encourages all courts to promote reconciliation between parties. This serves the purpose of reducing the time and costs associated with resolving cases through the formal justice system, and ultimately might contribute to reducing the backlog of minor offence cases. Therefore, magistrates and judges must encourage and facilitate the settlement in an amicable way in all cases which are not aggravated in nature and do not amount to felony. 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. The Act provides that the judicial officers (any presiding judge or magistrate, as well as chief registrars) must ask the parties if they are interested in settling cases through reconciliation and if so, they can stay proceedings and when a settlement is reached, dispose of the case. Reconciliation can be promoted at any suitable stage of the proceedings before the judgement is delivered.

109. However, it is alleged that the amicable settlement power is exercised too broadly, in particular as it targets particular categories of cases, such as gender-based and domestic violence cases, which are still too often not considered seriously enough by judicial personnel. Similarly, the police and public prosecutors reconcile cases, in particular assault cases, including domestic violence and cases which involve threat of violence, if they believe, based on the information at their disposal, that reconciliation would be the best option. They often do so by asking the aggrieved party to write an additional statement with the purpose of dropping the initial complaint.

110. As previously noted, only the DPP has constitutional powers to discontinue criminal cases that are already before a court. In doing so, the DPP is required to pay due regard to public interest, the interest of the administration of justice and the need to prevent abuse of legal process.

G. Gender-based violence

111. “The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.”

(a) “States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;”

“Gender-based violence is a form of discrimination that inhibits the ability to enjoy rights and freedoms, including economic, social and cultural rights, on a basis of equality.”
112. It is reported that most cases of gender-based violence are reported and resolved through family members and community leaders rather than through the formal administration of justice system. According to research conducted by the Ministry of Health, this is partly due to the fact that in most cases, the perpetrator is a close family member. Notably, this assertion is worrisome as a substantiating fact for why most sexual and gender-based violence cases are resolved or settled out of court. Despite the fact that the assertion is taken from a study conducted by the Planning Division of the Ministry of Health, and is a contributing factor to unreported sexual and gender-based violence cases in the formal justice system, such practices, significantly contribute to stigmatization and create an endemic cycle of alleviating poverty through getting compensation, often at the expense of pursuing justice.

113. Suffice to note, factors such as infrequent High Court sessions, cost of proceedings, weaknesses in administration of files, and the loss of confidence in the formal justice system, which are discussed in this report, also have a great impact on the access to justice of victims of gender-based violence in northern and north-eastern Uganda.

114. In relation to the police, officers are inadequately trained to appropriately deal with survivors of sexual and gender-based violence and children, be they victims or suspected female or juvenile offenders. It is observed that domestic and gender-based violence are generally not taken seriously by police and judicial officers who often ask the victim to resolve the issue through an amicable settlement. Socio-cultural taboos and traditions still play an important role with respect to cases involving women or children as victims. The limited number of female police officers makes it difficult for some survivors to report their cases, thereby limiting their access to any formal forms of redress, in particular of a legal nature. It is reported that sometimes male police officers request the assistance of a woman from the community (such as a teacher or one of their wives) to take statements from gender-based violence victims.

“Friendly” settlements of sexual and gender-based violence cases

Lack of awareness and confidence in the formal justice system - which is perceived to be cumbersome, expensive and slow - combined with socio-cultural taboos and low self-esteem of women in society, discourage many victims of sexual and gender-based violence from seeking legal remedy through the formal court system. In addition, fear of stigmatisation, sometimes coupled with the legal prohibition of abortion, leads to such amicable settlements in order to avoid publicity around the case. Indeed, cases of rape and other forms of gender-based violence are tried in public hearings, which often causes further trauma to the victim. Because evidence is rather difficult to gather, and because women would not dare to say publicly that they were forced to have sex with a man due to taboos (statements by victims usually refer to “he slept with me”), most culprits end up not being found guilty “beyond reasonable doubt”, as provided by the law (Section 123, PC), by a court of law, and thus evade punishment.

Consequently, in such cases, in particular defilement cases, the victims and more often her next-of-kin prefer dealing with the situation informally between the families of the victim and of the alleged perpetrator, often with the assistance of elders or traditional leaders, with a view to obtaining some kind of material reparation.

In most Karamoja districts, a “good settlement” is said to have been reached when the perpetrator of a defilement or rape accepts to marry the victim and provide the required number of heads of cattle – whether she is a minor or not. Elsewhere in the country, monetary or other forms of compensation may entail paying retroactively the school fees of a school girl or some goats.
The story of a rape victim

On 25 January 2005, at around 7:30 pm, a soldier on patrol stopped a woman from Amida IDP camp, Kitgum district, on her way to the hut where she sleeps. At gunpoint, he raped her.

The victim reported the rape to the women’s block leader, then to the community volunteer counsellor and to the LC III Chairperson. The alleged perpetrator was eventually taken by these public officials into custody at the military detachment adjacent to the camp. Upon request by the UPDF Officer-in-Charge, the suspect was transferred to the police station in Kitgum town, the following morning. The victim was unable to obtain a medical examination for two days.

In trying to ensure that the authorities followed up her case, the victim faced the following obstacles:

- A demand for UGX 10,000 by the police to pay for their transportation to the camp for investigating the case;
- The police officer to whom she paid that money was later transferred, which meant that she had to pay another UGX 4000 to the police officer who took over her case;
- The case file went missing at Kitgum Police Station and the victim had to go there five times without being given any information; and
- The victim was not informed of the developments regarding her case, including the fact that the suspect was eventually transferred to Gulu prison, pending trial.

115. A core concern constitutes police form 3 (PF3), which is 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. It 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 with a view to evaluating the medical condition of the victims. It must be signed by both the doctor performing the examination and the issuing police officer. It is noted that the free-of-charge provision of primary health to victims is not dependent on the production of a PF3.

116. According to information received, rape, defilement and victims of other gender-based violence are often required to pay to obtain a PF3 from the police and to have a doctor carry out the required medical examination for completing the form. Even in cases where a police forensic doctor carries out an examination, payments are reported to be extorted from the victims. The cost of these examinations is arbitrarily set and varies from district to district. For example whilst in Jinja district, the PF3 is reported to “cost” 5,000 UGX, in Kitgum district, it “costs” 10,000 UGX. Police officers have also repeatedly complained about the fact that PF3 are not regularly provided by headquarters to police outposts. It is reported that as a result, they often require victims to make photocopies, at their own cost.

117. Poverty is thus an obstacle to the reporting of rape and defilement cases. It is also commonly alleged that public medical practitioners have refused to provide medical treatment to victims who were not able to present a PF3, wrongly alleging that the production of the form is a prerequisite to obtaining medical care.

118. Forensic reports have legal standing before a court only if a PF3 has been duly completed. However, mindful of the urgency of seeking medical care prior to making a police statement, and in the absence of
nearby police outposts and in view of the hurdles described above, survivors of gender-based violence usually reach a health centre before lodging a complaint, i.e. without being in a possession of a PF3, which nullifies forensic reports presented as evidence before a court. In regard to payment of fees for forensic examinations by victims of sexual and gender-based violence, the UPF has stated that the police have adopted a practice whereby the user of forensic examination services is responsible for the payment of the examination. In recognition of the fact that some indigent persons are unable to meet the cost, the police pay on their behalf, a sum of 4500 UGX towards the fees of the examining doctor.\(^76\)

119. The lack of police surgeons or doctors\(^77\) and of doctors *de facto* authorised to perform forensic examinations\(^78\), in particular in cases of rape or defilement, prevents victims from obtaining evidence which

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**Amendments contemplated regarding the crime of defilement**

According to Section 129 of the Penal Code, defilement is defined as “an unlawful sexual intercourse with a girl under the age of 18 years”.

At the time of writing, a Penal Code Amendment Bill had however been adopted by the Parliament with a view to extending the jurisdiction *ratione materiae* of the Magistrates Courts, notably to give Chief Magistrates Courts jurisdiction over defilement cases; the Bill was awaiting signature by the President. Several, including Justice Ogoola, are of the opinion that allowing lower courts to deal with defilement suspects would help reduce the backlog of pending cases at the High Court (New Vision, 29 October 2006). Such amendment would mean that the penalty attached to defilement would be reduced to life imprisonment, save for aggravated forms of the offence, which would continue to attract the death sentence and be tried before the High Court.

With respect to the aggravated form of defilement, the amended version of Section 129 (4), PC, reads as follows: “(a) where a person against whom the offence is committed is below the age of fourteen years, (b) where the offender to his or her knowledge is infected with HIV/AIDS, (c) where the offender is a parent or guardian of or a person in authority over, the person against whom the offence is committed, or (d) where the person is a serial offender.”

In addition, the amendment broadens the definition of defilement to include “performance of a sexual act with another person below 18 and attempts to perform such acts”. It however provides for compensation to the victims, as well as the power to the Chief Magistrate to eventually grant bail. Finally, the High Court is given the authority, in cases involving minor below the age of 12, to exclude the press and the public from the proceedings for reasons of morality.

While the amendment introduces the difference between a minor below and over 14-year-old, the notion of ”sexual consent” is absent and ”consensual sexual intercourse” between two minors above a certain age is still criminalised.

Concerns have also been expressed over paragraph (b) and some fear that the extension of the jurisdiction of Chief Magistrates Courts over defilement will create a serious backlog of cases in view of the current number of Chief Magistrates in the country. Fears have also been expressed that the defence of indigents may not be properly assured before such courts, as legal representation at the expense of the State is usually more difficult to obtain with respect to cases before the Chief Magistrates courts than the High Court.
has legal standing before a court. For example, in Kitgum district, which hosts some 300,000 IDPs, only four doctors have been authorised to perform such medical examinations. Medical reports issued by unqualified and unauthorised medical doctors may not be admissible as evidence in court. Magistrates and judges are said to rarely use their discretionary powers to accept such reports as evidence.

120. In addition, doctors frequently do not attend court sessions to give evidence. They have commented that they perceive the process to be frustrating and time-consuming; in particular they do not see the point of appearing before a court to repeat what they have stated in the PF3. Doctors complain of not being provided any assistance to attend court hearing, in particular with respect to transport. Some medical practitioners are reported to have openly declared that filling the PF3 was a waste of time, in light of their workload at overcrowded health centres/hospitals.

121. Moreover, doctors have demonstrated a pre-emptive reluctance to deal with survivors of rape, defilement and of other forms of gender-based violence often deterring the latter from seeking treatment by demanding exorbitant fees to complete PF3. The budget of the Criminal Investigations Department placed under the Ministry of Internal Affairs provides resources to be allocated to authorised doctors with respect to the PF3. However, according to the information received, the funding does not always reach the districts. Thus, medical practitioners are said to have no financial motivation to carry out their forensic functions of filling the PF3 and are thus, in their own view, forced to ask the victims to pay for the service.

H. Recourse to traditional dispute-resolution mechanisms

122. “... where a State, in its legal order, recognizes courts based on customary law, or religious courts, to carry out or entrusts them with judicial tasks, [i]t must be ensured that such courts cannot hand down binding judgments recognized by the State, unless the following requirements are met: proceedings before such courts are limited to minor civil and criminal matters, meet the basic requirements of fair trial and other relevant guarantees of the Covenant, and their judgments are validated by State courts in light of the guarantees set out in the Covenant and can be challenged by the parties concerned in a procedure meeting the requirements of article 14 of the Covenant. These principles are notwithstanding the general obligation of the State to protect the rights under the Covenant of any persons affected by the operation of customary and religious courts.”

123. As stated earlier, large segments of the Ugandan population, especially in rural and poor urban areas where there is often minimal access to formal justice, are more inclined to turn to traditional reconciliation and accountability practices than what they refer to as ‘modern’ or ‘formal’ justice mechanisms. It is estimated that in northern and north eastern Uganda these practices concern the majority of disputes and address issues that are of concern to the displaced populations, including protection of land, property and livestock, petty crimes within the community, and resolution of disputes between families and clans.

124. In northern Uganda, where the 21 year conflict has taken its toll on the operation of formal justice system, community-based traditional justice practices have a particular significance. Some of these practices have operated in some form throughout the conflict period; for example, the practices of nyono tong gweno,
and *mato oput*, notwithstanding a general erosion of their authority during the conflict. Consequently, in parallel to the formal justice system, traditional chiefs and elders play a central role in resolving disputes. Elders are often the first to be contacted, even before disputes are referred to LC courts.

125. Uganda promotes respect for the right to enjoy, practice and belong to any culture and cultural institution, language, tradition, creed or religion to the extent that they are consistent with the Constitution (Article 2 (2), Constitution). Thus, the re-establishment of Ker Kwaro, a contemporary institution of the Acholi Paramount Chief composed of an Executive Council of 19 Rwodi, elders and other representatives, in the 1995 Ugandan Constitution (Article 246), has strengthened traditional authority. For instance, the modified cleansing rituals for returnees is said to have had positive effects on the populations’ awareness of reconciliation, healing and relief for returnees, and building confidence and unity among conflict-affected communities in general.

126. Traditional community-level practices related to justice vary from one region to another. There are, however, commonalties in the approaches. For example, these practices incorporate the aspects of trust, a voluntary process, truth, compensation, restoration and reconciliation and are, in essence, restorative forms of justice.

127. An assessment of traditional, community-level practices related to justice in Uganda requires an understanding of the political and legal context within which they operate. There is a need for further study.

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**Traditional justice practices**

*Gomo tong* means “bending the spears,” and entails a symbolic ceremony that would mark the end of a war or violent conflict between Acholi clans or between Acholi and neighbouring ethnic groups. It used to be practised in earlier times. The ritual implied a vow by both sides evoking the ‘living dead’ and promising that these killings would not be repeated.

*Nyono tongweno* means “stepping on egg” and is an Acholi ritual that entails the stepping on an egg placed at the entrance of a clan settlement. It is used to symbolize cleansing of the spirit and a gesture of welcome and commitment on the part of the community and returnees to be living in harmony. At times, large-scale, collective *nyono tongweno* ceremonies have been held to welcome over one hundred returnees in a single ceremony.

*Mato oput* is a process and ritual ceremony to restore relationships and foster reconciliation between clans in case of intentional murder or accidental killing. *Mato oput* means “drinking oput,” a bitter root common to Acholiland, which is shared by both sides to a dispute as a symbol that they are willing to swallow and wash away the bitterness that once existed between them. It also involves some material compensation to be made to the clan of the aggrieved party.

*Kayo cuk* means “biting a piece of charcoal” and is a ritual sometimes used in Lango sub-region, after compensation has been made between the parties.

*Ainyonyo awokot* is a cleansing ritual used in Teso sub-region, involving the smearing of the blood of a male goat in order to send away the spirits and bad omens associated with people returning from the bush.

in order to clarify the function, purpose, prevalence as well as inter-clan, inter-tribe, cross-regional relevance of these practices and in particular, situate them within the broader sphere of transitional justice addressing violent and mass atrocities in a post-conflict setting.

128. Such holistic research will contribute significantly to understanding the human rights implications of these practices. For example: whether both norms and practice comply with international human rights standards; or whether there is evidence of potential systemic discrimination with respect to particular groups of victims or perpetrators, such as women, children and marginalised groups. It should be noted for example that the Ker Kwaro Executive Council provides for two women and one youth representatives in an otherwise patriarchal institution, which upholds traditional views on gender and age. It is also unclear to which extent these practices may be somewhat adapted to forms of criminality that were not initially contemplated by traditions, such as rape, defilement and sexual exploitation. Traditionally, Acholi culture used to provide for ritual cleansing ceremonies for women and girls victims of rape or defilement known as tum although they are apparently rarely practiced today. Interestingly, no cleansing ceremony is performed or stigma is attached to men who commit the crime of rape or defilement. Tum involves the sacrifice of a goat, sheep or hen, as a purification sacrifice to the ancestors. The guilty party plays a central role and acts in shame. The elders discuss about the occurrence and identify the way forward in order to prevent further conflict or problems from occurring.

129. Moreover, findings on the relationship between formal and communally negotiated methods of justice will also determine whether in a post-conflict context, a hybrid system of communal negotiation within formal legislative parameters may be developed in Uganda. Some have suggested that a future technical commission might be established to explore options for the integration of traditional practices into national law. Such a commission would determine whether egregious human rights abuses should be dealt within the framework of traditional justice or within a new framework incorporating both traditional justice practices and the formal judicial system.

I. Mob justice

130. As noted by the United Nations Committee against Torture, the phenomenon of “mob justice” appears to be common in Uganda, especially in the northern part of the country and is compounded by the inefficiencies of the formal justice system described above.

131. It is said that populations have lost trust in the formal law and order system as well as judicial institutions and resort to “mob justice” to punish themselves members of their own communities who are suspected of having committed wrongful acts, in particular theft and offences of a sexual nature, but also witchcraft and unintentional killings such as road accidents. “Mob justice” often happens before the suspects may even be handed over to the police or on the way to the nearest police station/outpost.

132. While such instances certainly originate out of anger, communities assert that because of corruption practices, police and judicial officials often collude with criminals. The absence of law enforcement agents
on the ground in many locations, the slow formal justice processes, as well as the fact that in the eye of the public the formal justice system too often set free suspected offenders also explain why the public resorts to immediate measures that give them a sense of justice. Youths are in particular said to be participating in “mob justice”.

**Recent cases of mob justice**

A crowd at Mucwini, Kitgum district, lynched two women on 17 March 2006 on suspicion of practising witchcraft and poisoning. A mob reportedly broke into the local administration police cell and killed the two women.

On 12 May 2007, a humanitarian relief worker narrowly escaped being lynched by a mob in Pader Labono when his vehicle hit a pedestrian and over turned. A mob armed with axes, machetes, and sticks severely beat the aid worker who was later rescued by other community members who could identify him. The victim was later admitted in Kampala with serious injuries.

On 29 May 2007 at Ojama Central village, Kyere sub-county in Soroti district, a man was beaten to death by a mob because he was caught in possession of suspected stolen cows. The police made no subsequent arrest.

On 29 May 2007, a man from Okidi parish, Kitgum district, died of what clan members suspected to be witchcraft. The matter was reported to the LC II Chairperson, who called for a meeting on 3 May 2007, which was attended by over 120 community members, including the UPDF detach commander and five soldiers. The LC II Chairperson and the camp leader asked those present to put forward by secret ballot, the names of those they suspected to have caused the death. As a result, it was reported that about 11 people were named, but four were eventually singled out, including one woman. Suspects denied the allegations made against them and to extract a confession, each suspect was beaten with sticks by over ten people at the same time. They were then laid on the ground, covered with grass and set on fire. Soldiers are alleged to have put their gun turrets into the mouths of the suspects and threatened to shoot them if they did not tell the truth. After the detach commander left the scene, relatives and sympathisers of the deceased started throwing stones at the suspects. As a result, three died, while the fourth victim was eventually rescued by her family members. The police reported to have arrested the LC Chairperson and two other civilians in connection with the death of these three individuals, while the camp leader had not been arrested because he had gone into hiding.

In July 2007, in Lira district a man was lynched by a crowd on suspicion by the population of being a thief. Angry at the recurrence of thefts, villagers were making an enquiry about a bicycle, which the murdered man was riding. Since the latter was not a native of the area, he could neither understand the language nor respond adequately to the questions he was asked. As the villagers were trying to coercively remove his bicycle away from him, he resisted and was eventually beaten to death.

On 3 September 2007, in Gulu district, a man suspected of rape died from the beatings and stabbings he sustained when a mob attacked him. The population was angry at the fact that while he had been on bail for a couple of months, he was suspected of having committed another rape and of having inflicted serious injuries to his victim and her baby. It is reported that the police had tried to disperse the crowd by shooting in the air.
133. The Government has recently adopted plans to address the issues of development in the two regions concerned by this report, including the Peace, Recovery and Development Plan for Northern Uganda (PRDP) and the Karamoja Integrated Disarmament and Development Plan (KIDDP). References to these plans have been made throughout the text, where appropriate. In particular, the first PRDP strategic objective, entitled “consolidation of State authority”, include programmes “largely identifying the ‘supply side’ of supporting local government and the rule of law… it is recognised that the ‘demand side’ of local governance will also have to be strengthened to enable demand for more accountability, responsibility and transparency of local authority.”

Priorities will be specifically dedicated to the expansion of police, prisons, judicial services and local government. The PRDP also 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.”
III. Recent Government Initiatives to Improve Access to Justice

134. In 1999, the Government adopted a Justice, Law and Order Sector (JLOS) reform agenda to improve the administration of justice through coordinated planning and budgeting of all justice, law and order institutions. Access to justice was one of their main objectives. In 2001, the Government developed the Justice Law and Order Strategic Investment Plan (SIP), which among other things sought to promote access to justice.

A. Justice, Law and Order Sector

135. The 2004 mid-term SIP evaluation clearly showed the need to decentralise judicial services; which was reflected in the second SIP. The SIP II also focused on the impact of poverty on accessing justice and thus, provided for the development of a pro-poor national legal aid policy and legal aid basket fund (LABF), and the promotion of pro-poor alternative dispute resolution mechanisms. In addition, it made proposals for the decriminalisation of certain petty offences, alternative juvenile justice mechanisms, rights-awareness activities and the strengthening of LC courts that would enhance access to justice for the most marginalised sections of society. With respect to interventions in areas affected by the conflict and internal displacement, the Plan indicated support to traditional justice mechanisms with an emphasis on respect for human rights, to crime prevention programmes linked to the resuming of formal policing, and to supporting existing administrative arrangements for law and order within IDP camps with a focus on the protection of women’s rights and children.

136. Measures were taken to strengthen the legal profession and to enhance access to legal advice and representation, in particular to enhance access to justice by marginalized segments of the population. The building of Chief Magistrate Courts was planned in Bushenyi, Kotido, Kiboga, Kisoro, Pallisa, Kapchorwa, Kaberamaido, Entebbe, and Pader districts, as well as the rehabilitation of a number of courts, including in Soroti.
137. In its 2006 progress report, JLOS indicated a number of initiatives to improve access to justice, such as the construction of juvenile cells in Kitgum, Pader, Katakwi and Kaberamaido as well as new police outposts at sub-county level in LRA-affected areas; the rehabilitation of courts in Kamuli and Soroti, as well as the construction of new ones in Busenyi, Kisoro, Pallisa and Kapchorwa; the establishment in Lira of a UPF Coordination Office for northern and north-eastern districts, the deployment of up to 4,000 ASTUs in Teso and Lango sub-region. Notably, between 2006 and July 2007, 4,410 ASTUs were deployed in northern and north-eastern Uganda in 11 districts, which include: Katakwi, Amuria, Pader, Lira, Kitgum, Bukedea, Sironko, Adjumani, Abim and Kapchorwa. In addition to the deployment of ASTUs in northern and north-eastern Uganda, as of September 2007, up to 1,048 SPCs were deployed along side the regular police at various sub-county policy posts in the Teso districts: Soroti, kumi, Amura, Kaberamaido, Katakwi and Bukedea.

138. Other JLOS initiatives include the provision of communication equipment, vehicles and computers, strengthening priority programmes such as policing, civic education and enhanced movements of magistrates. Furthermore, in the 2007 progress report, JLOS mentioned the ongoing construction of courts in Moyo, Yumbe, Pader, Kaberamaido, Entebbe, Kisoro, Bushenyi, Pallisa and Kapchorwa, the establishment of an office of the Ministry of Justice and Constitutional Affairs to be manned with five State Attorneys in Gulu, and of District Public Prosecutor offices in Iganga, Nebbi, Kasese, Moroto and Luwero. The Sector recognises as a challenge its inability to decentralise its presence and services in the newly created districts, within the available resources.

139. In addition to the resources dedicated to the strengthening of the police (see above), in order to enhance access to justice, particularly to the marginalised and the poor, the JLOS development budget for 2007/8 has approved funding for a number of, including: building of two Magistrates Courts, specialised training of lawyers and staff of the Minister of Justice and Constitutional Affairs, recruitment of State Attorneys and judicial officers, transport for juveniles offenders to court, development of a national policy and framework on legal aid, roll out of a mediation pilot project, and training of LC Court officials. The extension of Magistrates' powers to deal with defilement cases will also contribute towards reducing case backlog.

140. In terms of court infrastructure, the Moroto Chief Magistrate Court was rehabilitated and extended. However, the judiciary in Karamoja has no permanent court buildings in all other locations. All operations, where necessary, are conducted under the existing local government structures. Service delivery is reportedly undermined by inadequate transport facilitation to judiciary staff. In order to enhance service delivery in Karamoja, the judiciary with support from JLOS has planned to construct a Grade court in Kotido resources. The judiciary also planned to have mobile courts in Karamoja region. During the years 2007/8, the judiciary planned to hold regular High court sessions in Karamoja, however this is dependant on the security situation and hold regular Chief Magistrate sessions for life imprisonment cases. In addition, during the years 2007/8, the judiciary has also planned the following: (a) to recruit/post more judicial officers to Karamoja (at least one Chief Magistrate, the Grade one Magistrates as well as administrative support staff; (b) provide at least four more vehicles to enable transportation by the judicial officers while supervising lower courts; (c) mobilize and/or provide resources for construction of both residential and court infrastructure in the new districts of Abim, Kaabong, and Nakapiripirit districts, which lack residential and court buildings for special court sessions in Karamoja at all levels (High Court, Chief Magistrate and Grade 1 Courts). Staff motivation being a
serious constraint in Karamoja, the judiciary planned to provide incentives to attract judiciary staff to work in Karamoja.97.

B. The Uganda Human Rights Commission Tribunal

141. The Uganda Human Rights Commission (UHRC) is another tier in the justice system in Uganda. The UHRC is established under Article 51 of the Constitution, and its functions are provided for under Article 52. Under Article 53, UHRC is given powers of a court, at the level of a Chief Magistrate Court.

142. Thus, the UHRC established its own Tribunal that has the power to hear and determine human rights complaints, thus participating in ensuring greater access for justice. As a result of the presence of its regional offices in various districts (Gulu, Soroti, Moroto, Mbarara, Fort Portal, Jinja and Kampala – and in the near future, Arua), it also brought justice closer to more marginalised and rural populations, especially in the northern and north eastern parts of the country.98 Each Commissioner presides individually over the Tribunal regarding the cases that have been allocated to the Commission. This means that Commissioners have to be physically present for weeks in the various regional offices.

143. It is reported that from July to December 2006, 119 new cases were allocated to the Commissioners. A decision was handed over in 33 cases, while 186, some of which were dating back from 2002, were partly heard by the Tribunal. At the time of writing, the backlog of cases pending before the Tribunal for more than one year was 114 cases.99

144. One of the major strengths of the Tribunal is its discretionary power, under Article 53 (2) to order compensation to be paid to the 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. It is reported that between October and December 2006, the Attorney-General has honoured compensation awards to victims for 156 millions UGX.100

145. UHRC Tribunal proceedings are said to be prompter, especially since the opening of various regional offices, than other judicial instances, and of no cost for the complainant. Its rules of evidence are also simpler than those of the court system.

146. Upon reception of a complaint, the UHRC opens a file and ascertains whether it falls under its jurisdiction. The Constitution provides that the Commission shall not investigate any matter, which is pending before a court or a judicial tribunal (Article 52 (4)). Cases that are not considered to be human rights violations are eventually referred to the appropriate authorities for adequate follow-up. If a case is deemed admissible, the Commission must decide whether it is a case to be mediated or investigated upon. It must be noted that the UHRC has made a quite liberal use of its mediatory powers.

147. If mediation fails, or if the case requires further investigation (based on the balance of probability), the Commission takes the necessary steps to gather sufficient evidence for the case to be referred, with a legal
analysis of the issues at stake, to the UHRC Tribunal. If the decision reached by the Tribunal is accepted by the parties, the decision is said to be enforceable; if the decision is rejected, an appeal may be made to the High Court.

148. At the same time, however, formal hearings before the UHRC take time, and are said not always to be conducive to the provision of quick remedies. Indeed, like other judicial bodies, the Tribunal is now facing an increasing backlog of cases, partly due to the lack of general admissibility criteria which would allow the UHRC to focus on human rights violations per se. Hence, the UHRC is not anymore, as initially contemplated, in a position to execute speedy proceedings, as an alternative to lengthy proceedings before formal judicial bodies. This is said to be mainly attributed to high number of cases received, unlimited adjournments, limited technical and support staff, and financial constraints. However, it is hoped that the new decentralised circuit hearings will redress the situation in the future. The UHRC is also said to be lacking political support, like other public accountability institutions, and thus, must mainly rely on donors' funding to execute its functions. The UHRC's budget request to the Government for 2007/08 amounted to 6,296,397,000 UGX. The Government released 4,696,276,000 UGX, which constitutes three quarter of the requested budget. In addition, it is worth noting that the Government gave 1,806,276,000 UGX more than for the 2006/07 budget. For 2008/9, donor contributions to the UHRC amounted to 1,700,000,000 UGX, which is 100,000,000 more than what was given for the 2006/07 budget.

149. Furthermore, its awards for reparations are often not honoured, as the Government pays compensation reluctantly: out of the eight billions UGX awarded, only one billion UGX has been paid. Some have also questioned the amounts awarded as being exorbitant. On response to the criticism by some that the Tribunal is awarding too many and too high financial reparations, the Commission has explained that it considers a set of principles and

**Civil-Military Cooperation Centres (CMCCs)**

CMCCs have been established as an additional mechanism to address breaches of human rights perpetrated by the UPDF, and its auxiliary forces, as well as by the UPF, and to restore confidence and trust of the public in the army and the police. Established under the mandate of the UHRC, CMCCs are composed of members drawn from the UHRC, the UPDF, the UPF and civil society, as well as national United Nations Volunteers. Through its composition, CMCCs form a unique multidisciplinary forum of dialogue in which the different members contribute their expertise and contacts with their parent organisation to solving human rights related problems.

CMCCs assist in resolving problems in the absence of institutional mechanisms, which can quickly and effectively address complaints of human rights violations to the satisfaction of all parties. Amongst its tasks, CMCCs provide mediation for minor violations, in accordance with Uganda law, to ensure that preliminary and immediate redress, including reparations, are awarded to the victim. CMCCs furthermore reduce impunity by referring cases that cannot be mediated and by actively following them up with internal disciplinary and oversight mechanisms, ordinary criminal justice bodies and/or the UHRC Tribunal, in accordance with the victim's decision.

CMCCs are present in Acholiland, Teso, Lango and Karamoja sub-regions.
criteria, which aim at reestablishing the victims in the position he or she would have been before the violation occurred and thus, providing him or her with an effective remedy. The Commission has had difficulties in monitoring the enforceability of its awards.

150. With respect to the guarantees related to the administration of justice, it must be noted that there exist a confusion regarding the different roles that must be assumed by the legal counselors of the Directorate of Complaints, Investigations and Legal Services. Indeed, they cumulate the following responsibilities: conducting research and investigation on the case before it is transmitted to the Tribunal, preparing legal opinions, appearing before the Tribunal and sometimes providing legal advice to the Commissioner presiding over the matter as well as (although not in all cases) preparing the Commissioner’s decision. Concerns have been expressed that this lack of separation of responsibilities may lead to an unfair hearing of either party before the Tribunal.

151. The general public views the UHRC Tribunal as a more affordable and accessible judicial body than other formal judicial institutions, and considers it as a fair tribunal not biased by corruption practices and not constrained by legal technicalities that common citizens do not understand. Although the UHRC Tribunal has power to enforce its decisions like any other court, some regret that it does not take a more proactive approach in this regard, in particular insofar as they relate to the payment of its awards.

C. Legal aid

Free legal representation

There is no legal provision for free legal aid for indigent suspected criminals in Ugandan law, save for offences that carry a death or a life imprisonment sentence (Article 28 (3) (e), Constitution) before the High Court or the Chief Magistrate Court, respectively.

When an indigent person is committed for trial in such a case, and it appears that in the interest of justice such person should benefit from free legal aid, the judge/magistrate presiding over the committal proceedings or the registrar of the court may certify that the accused ought to be provided with legal aid.

Lawyers are required to express their interest to the Registrar to hold such state briefs as at least one of such pro bono briefs is required for the yearly renewal of their practice certificate. However, private lawyers are said to comply with this requirement very reluctantly.

Article 28 (3) (d) of the Constitution provides that every person who is charged with a criminal offence shall be permitted to appear before the court in person or, at that person’s own expense, by a lawyer of his/her choice. This provision does not however apply with respect to cases heard by LC Courts.

152. There is no provision under Ugandan law for the State to provide free legal aid for indigent suspected criminals facing trials for non capital offences, although the Constitution guarantees equal protection to all before the law (Article 21 (1)). The provision of free legal assistance for capital offences is a Constitutional right (Article 28 (3) (e)) to be exercised in the interest of justice. Therefore, legal aid services in non capital offence cases are provided in a vacuum. There is no comprehensive legal, institutional and
policy framework to guide the provision and regulation of legal aid services provided for cases of non-capital offences.

153. 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 is the crime they are accused of.

154. The Law Council, established under Section 2 of the Advocates Act, is composed of a judge, the President of the Uganda Law Society, the Director of the Law Development Centre, and two practicing advocates elected by the Uganda Law Society. The main functions of the Council include general supervision and control over the professional legal education in Uganda, taking disciplinary steps against advocates and their clerks, supervision and control over the provision of legal aid and advising indigent persons. Its mandate to regulate legal aid service provision has however been constrained by lack of human, financial and technical resources. Currently, the Council requires advocates to conduct at least one *pro bono* service as a precondition for renewal of the practice certificate.

155. The equivalent to a bar association in Uganda is called the Uganda Law Society (ULS). It is established under Section 2 of the Uganda Law Society Act, and is composed of the Attorney-General, the Solicitor-General and any practising lawyer registered with the Bar. The ULS’ main functions include to represent, protect and assist members of the legal profession as regards the conditions of practising law in Uganda; to maintain and improve the standards of conduct and learning of the legal profession; to protect and assist the public in all matters touching upon the law; and, to assist the government and the courts in all matters affecting legislation and the administration and practice of law in Uganda.

156. The Legal Aid Project (LAP) – sometimes referred to as the legal aid clinic – established by the ULS in 1992, with assistance from the Norwegian Bar Association, aims at providing legal assistance to indigent and vulnerable people in Uganda. It seeks to protect and assist the public in all matters touching, ancillary or incidental to the law. One of the main objectives of the ULS is indeed to “remain the leading proponent of increased access to justice for the socially and economically marginalised Uganda communities, through a country-wide network of legal aid clinics and complimentary activities such as human rights awareness and training (...) and to undertake public litigation and ensure access to justice for the disadvantaged.”

157. The LAP mainly helps in providing free legal services to people who cannot afford private

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**Availability of lawyers**

*Table III. Statistics regarding the presence of practicing advocates and legal aid services in various districts of Northern and North eastern Uganda as of June 2007*

<table>
<thead>
<tr>
<th>Districts</th>
<th>Number of practising advocates</th>
<th>Number of legal aid service providers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gulu</td>
<td>10</td>
<td>1 (ULS Legal Aid Project)</td>
</tr>
<tr>
<td>Lira</td>
<td>5</td>
<td>None</td>
</tr>
<tr>
<td>Kitgum</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>Pader</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>Kotido/Moroto</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>Soroti</td>
<td>4</td>
<td>1 (SOCADIDO)</td>
</tr>
</tbody>
</table>

Complaints against advocates may be referred to the Disciplinary Committee of the Law Council, which exercises its disciplinary powers.
lawyers due to their lack of financial resources, or when a case is deemed to be particularly complex. They help low-income earners determining whether they can handle the case on their own or require the services of a lawyer. The LAP has branches in Kabarole, Kabale, Masindi, Jinja, Gulu and Luzira, with its head office in Kampala. LAP’s geographical coverage is very minimal compared to a population of approximately 28 millions, of which 31% live below the poverty line\textsuperscript{105}. 

158. The ULS LAP in 2005 received 7,394 cases and only 828 were resolved. The majority of cases for which legal aid was provided included land/property disputes, inheritance and succession, criminal matters, family and domestic relations, and human rights violations.\textsuperscript{106}

159. The Paralegal Advisory Service (“PAS”) is a pilot project of the Legal Aid Board and is supported by the Development Partners’ Legal Aid Basket Fund (LABF) for the next three coming years. According to the Government "paralegals are intended to form the nexus and follow up matters between person who are in conflict with the law and criminal justice agencies."\textsuperscript{107} In Gulu district, for example, its six paralegals rotate between prison, police stations and courts and operate a paralegal clinic. They increase knowledge of citizens, in particular those in conflict with the law, of their rights and legal procedures. During the first ten months of 2006, paralegals have been in contact with 5,188 inmates, pre-trial detainees and community members and traced 337 sureties for police bond and court bail. However, the fact that no legal aid is available either in Lango, Teso or Karamoja sub-regions remains of serious concern.

160. Government funds allocated to legal representation through State briefs are meagre and arbitrarily set ranging from 200,000 to 300,000 UGX per month for an advocate representing between 30 and 60 State brief clients. In practice, legal aid is usually limited to suspects charged with capital offences who cannot afford their own private defence lawyer. As a result, the quality of the defence is poor and the clients feel that they are not well represented.\textsuperscript{108} The majority of accused persons report that they actually have a first meeting with their legal representation only minutes before the hearing. In addition, legal representation is said to often delay court processes because State briefs are often lacking.

161. According to a survey undertaken in 2006 with support from UNDP and DANIDA on access to justice and legal aid, 43 out of 72 districts did not have any primary legal aid service; 29 of these 43 district had actually more than one providers in the domain of legal aid, including community-based initiatives for disputes resolution\textsuperscript{109}. Most NGOs whose core mission is to provide legal aid services are based in Kampala.

162. In addition to PAS, organizations such as the Norwegian Refugee Council (NRC), Justice and Peace Commission (JPC) and Human Rights Focus (HURIFO) monitor and report on human rights violations and abuses through a voluntary network of paralegals based in the camps in northern Uganda. Although the paralegals have limited understanding of the justice system and varies significantly from individual to individual, the network provides a useful entry point for raising issues relating to rule of law with justice actors including police, court and prisons.

163. Finally, under the leadership of the Ministry of Justice, the JLOS will commence the process of developing a legal aid policy for Uganda through which a review of the scope of legal aid provision will be addressed. It must also be noted that the JLOS SIP II, under its strategic objective 3 entitled ‘enhancing access to justice for all especially the poor and the marginalised’, intends to strengthen legal aid services.
IV. KEY RECOMMENDATIONS

164. With a view to contributing towards substantive and sustainable increase in access to justice in northern and north-eastern Uganda, the Office of the United Nations High Commissioner for Human Rights recommends the Government of Uganda to:

- Provide relevant training to all Local Council Executive Committees members sitting on courts, Magistrates Grade II and I and Chief Magistrates on Ugandan law, on their jurisdiction *ratione materiae*, fair trial requirements and the rights of victims and suspects in legal proceedings;

- Encourage magistrates and High Court judges to consider court bail where appropriate and in accordance with Ugandan law, and provide them with the necessary material resources to ensure that suspects summoned to the court appear before them;

- Take the necessary measures, including through training and the issuance of guidelines, to ensure that magistrates, judges and the police are enabled to handle gender-based violence cases and juvenile suspected offenders in accordance with Ugandan law and international human rights norms and standards;

- Ensure that the constitutional guarantees pertaining to the right to habeas corpus and to the 60/180-days rule are strictly respected, and that detainees on remand are properly and promptly informed of these and other rights;

- Consider amending the law with a view to ensuring that all indigents, in particular juveniles and women, facing criminal charges are offered the services of a lawyer without charge, and put at the disposal of
existing legal aid programmes, especially the ULS legal aid scheme as well as other JLOS initiatives, the necessary financial and other resources to ensure their expansion throughout the territory of Uganda;

- Take the necessary measures to ensure that victims of human rights violations receive adequate, effective and prompt remedy and reparations, including by providing the UHRC with the necessary financial, human and other resources to ensure that its Tribunal can discharge its functions properly and in an efficient manner, and ensure that financial reparations awarded by the UHRC Tribunal are promptly and fully made to the victims;

- Deploy fully trained civilian law enforcement agents throughout Uganda with a view to ensuring an appropriate level of presence on the ground to carry out civilian law and order functions in accordance with Ugandan law, and provide police stations with the necessary material and other resources to ensure that the 48-hour rule before a suspect is brought before a court is strictly respected;

- Take the necessary measures to ensure that the UPDF does not carry out law enforcement and order activities that fall outside its statutory mandate and ensure that the demobilisation of auxiliary forces of the UPDF, such as LDUs, does not create a security vacuum by coordinating such demobilisation with the deployment of appropriate civilian police;

- Increase the number of police surgeons and other medical doctors authorized to perform forensic legal examinations with a view to filling in ‘PF3’ and ensure that ‘PF3’ and other police forms are available in all police stations and outposts free of charge;

- Put in place monitoring mechanisms to prevent corruption practices and investigate any allegations in that respect and request the police hierarchy both at central and district level to issue strict guidelines on the charging of fees for the provision of services or police forms;

- Consider abolishing the death penalty as a matter of priority by amending the law with respect to the crimes to be tried before the High Court that attract a death sentence.
ANNEXES

Annex I

CIVILIAN ADMINISTRATION OF JUSTICE STRUCTURES IN UGANDA

A. The Court System

Article 129 (1) of the 1995 Constitution provides for the structure of the civilian court system in Uganda, as described below.

1. Local Council Courts

Wide consultations held in 2000 recognized the need for improved access to justice for all. At the initiative of the Ministry of Local Government, the Government decided to draft a bill requesting parliamentary approval to give some judicial powers to the Local Councils (LC). Accordingly, the Local Councils Courts Act was adopted in 2006, to expedite the dispensation of justice at a local level, especially with respect to justice matters that affect the daily life of citizens, and to promote justice and reconciliation at the community level. LC courts are an attempt to promote a more accessible, cost-effective and popular system of justice. The Act provides for the establishment of LC courts at the following levels: (1) village (LC I), (2) parish (LC II) and (3) sub-county level (LC III). According to the Government, in 2006, there were 50,700 LC courts across the country.

According the LC Courts Act, LC courts have jurisdiction over a whole range of matters, from debt recovery to assault and battery, and damage to property (Section 10 of the Act). Their jurisdiction is unlimited as far as civil disputes governed by customary law are concerned, such as disputes over land held under customary
tenure, disputes over issues regarding marriage, divorce and parental care, and disputes relating to the identity of customary heirs.

Furthermore, Section 92 of the Children’s Act provides that all civil matters concerning children shall be dealt with by village LC courts. It also confers criminal jurisdiction (of first instance) to the latter with respect to the following offences when committed by minors: assault and bodily harm, theft, criminal trespass and malicious damage to property, as well as offences related to being “idle and disorderly”, which cover acts of prostitution, gambling and indecent behaviour in a public place. However, it must be noted that begging on the street, while prohibited for adults is not penalized in the case of minors (Section 167, PC).

Finally, the jurisdiction of LC Courts extends to matters arising out of infringement of byelaws and ordinances duly made by local government authorities (in particular Executive Committees) under the Local Government Act.

Before LC Courts, complainants make their claims orally or in writing against the defendant for the relief sought. As a result of the level of illiteracy amongst the population, claims are reported to be mainly made orally. Section 16 (2) of the 2006 LC Court Act stipulates that no party to proceedings before a LC Court can be represented by a lawyer, except in proceedings dealing with infringement of bye-laws. Section 21 provides that the proceedings and their records must be in the language most widely spoken in the area of jurisdiction, while it specifies that an interpreter must be provided to the parties who do not understand the language. Section 22 provides that the proceedings must be recorded in writing.

In addition to community services, Section 13 of the Act provides that LC Courts may order any of the following remedies: reconciliation, declaration, compensation, restitution, apology, attachment and sale, court fees, and in the case of infringement of a bye-law, a fine or any other penalty imposed by the bye-law. Furthermore, Section 41 of the Act provides that the plaintiff must pay the court fees. The party found guilty

Composition of Local Council Courts

At the village and parish levels, LC Court members are also members of the Executive Committees of Local Government. At the sub-county level, according to section 5 of the LC Court Act, LC Courts consist of five members appointed by the LC III Executive Committee on the basis of their “good moral character and proven integrity”, their knowledge of the local language and English, their residence in the sub-county and the fact that they are not a member of any LC Executive Committee, of Parliament or of any other statutory body.

Members of LC Courts receive allowances as regulated by the Ministry for Local Government and hold office for the term of the Council to which they belong or which appointed them and are eligible for reappointment.

In the case of LC I and II Courts, they are duly constituted if five members, including the Chairperson or Vice-Chairperson and two women, are sitting; in the case of LC III Courts, if three members, including the Chairperson or Vice-Chairperson and one woman, are sitting.

LC Court members hold office for the term of the Executive Committee, and can be re-appointed.

The Act puts emphasis on female representation in the Local Council Courts, the Chair or Vice-Chair having to be a woman.
is usually asked to cover the expenses related to the court proceedings incurred by the adverse party. Under Section 32, a party not satisfied with the judgement or order of the LC Court may within 14 days lodge an appeal to a higher LC court or the Chief Magistrate in case of LC III Courts. Parties must be informed of their right of appeal at the time of the delivering of the judgement. The appeal shall be lodged through a memorandum signed by the appellant setting forth the grounds of the appeal. In practice, LC Court members fill the memorandum on behalf of the appellant(s) who simply append their signatures or thumb print.

Section 40 of the LC Courts Act provides that Chief Magistrates have general powers of supervision over LC Courts and assume this prerogative on behalf of the High Court. However, their operations and funding depend on the Ministry for Local Government.

Finally, according to Sections 41 and 42 of the 2006 LC Courts Act, complainants are required to pay court fees and possibly fines that may arise from a decision by the court. These form the funds used for the operational requirements of the court, including sitting allowances for the members of the court.

2. Subordinate Courts

Although being subordinate courts, Magistrates Courts handle the majority of civil and criminal cases in Uganda. The country is divided into 29 chief magisterial areas – which cover sometimes more than one district – aimed at ensuring efficient administration of justice. Magistrates Courts are divided into the three following layers: Chief, Magistrates Grade I and Magistrates Grade II Courts. Magistrates are appointed by the Judicial Service Commission and sit individually to hear case. A magistrate’s jurisdiction is limited both geographically as well as in civil matters, by the value of the subject matter, and in criminal matters, by the punishment attached to the offence. Each chief magisterial area is administered by a Chief Magistrate, who has supervisory powers over all Magistrates courts within his/her jurisdiction, without however any disciplinary powers. On appointment, magistrates are assigned to a chief magisterial area and cannot sit in another area without the permission of the Chief Magistrate.

Magistrates Grade II and I Courts

Magistrates Grade II (who are required to hold a diploma in law), may hear any criminal offence which are not of an aggravated or of a serious nature, in accordance with Section 161 (1) of the Magistrates Court Act. They do not have jurisdiction over capital offences but are competent to hear cases related to criminal offences committed by children, and function as Family and Children’s Courts in relation to application related to child care and protection. In addition, they hear any civil matters where the value of the subject matter does not exceed Ugandan Shillings (UGX) 500,000. Appeals to Magistrates Grade II’s judgments are to be heard by a court presided over by a Chief Magistrate, in both civil and criminal matters.

Magistrates Grade I, who must hold a post-graduate diploma in legal practice following a Bachelor of Laws degree from a recognised University (Bar course), can hear civil claims whose value does not exceed UGX 2,000,000 and have an unlimited jurisdiction over civil matters governed solely by civil customary law. With respect to criminal matters, they can hear any offences other than those which punishment attract death or life imprisonment. Appeals to Magistrates Grade I judgments are to be heard by the High Court.
It must be noted that a decision has recently been made to phase out Magistrates Grade II, although they were still sitting as courts. Only Magistrates Grade I were being recruited by the Judicial Service Commission. The decision was made in an attempt to professionalize the judiciary. Consequently, the Judiciary’s Strategic Plan 2002/3 – 2006/7 encourages Magistrates Grade II to enrol for a University law degree and a post-graduate diploma in legal practice with a view to making them qualify as Magistrates Grade I.

**Chief Magistrate Court**

Chief Magistrates, who in addition to holding a post-graduate diploma in legal practice have an extensive professional experience in legal practice, supervise both LC and Magistrates courts. They have jurisdiction over civil claims whose monetary value does not exceed UGX 5,000,000 (Section 207 (1), Magistrates Courts Act) and have an unlimited jurisdiction in disputes related to conversion, damage to property or trespass, as well as any matter solely governed by civil customary law. They are competent to hear criminal cases that attract a sentence of life imprisonment, such as terrorism (section 26, PC), incest (section 149, PC), attempt to commit a rape (section 125, PC), aiding committing suicide (section 209, PC), killing an unborn child (section 212, PC), acts intended to cause grievous harm or prevent arrest (section 216, PC), arson (section 327, PC). They are however not competent to hear capital offences. Appeals against decisions by Chief Magistrates are to be made to the High Court.

**Committals**

Section 168 of the Magistrates Court Act provides that when a person is charged in a Magistrates Court with an offence to be tried by the High Court, the Director of Public Prosecutions shall file an indictment and a summary of the case in the Magistrates Court. A copy of these two documents shall be given to the accused person and to the Registrar of the High Court. The suspect is not required to plead to the indictment. If the suspect was on bail at that time, the person is taken back into custody pending trial before the High Court or a decision by the High Court regarding a possible request for renewed bail.

209, PC), killing an unborn child (section 212, PC), acts intended to cause grievous harm or prevent arrest (section 216, PC), arson (section 327, PC). They are however not competent to hear capital offences. Appeals against decisions by Chief Magistrates are to be made to the High Court.

**3. Superior Courts**

**The High Court**

The High Court, which is headed by the Principal Judge, is the lowest of the superior courts exercising unlimited jurisdiction in both criminal and civil case. In addition to hearing all capital criminal offences as a court of first instance, it is the first court of appeal for judgments passed by Chief Magistrates and Magistrates Grade I Courts and it exercises overall supervisory powers over all lower instances. The President, upon recommendation from the Judicial Service Commission and approval by the Parliament, appoints the Principal Judge and other High Court judges (Article 142 (1), Constitution). High Court judges sit individually on each case, and their jurisdiction is all-encompassing and the Court is divided into Commercial, Civil, Criminal, Family and Circuit Divisions. Appeals against judgements by the High Court are to be made to the Court of Appeal.

**The Court of Appeal**

The Court of Appeal is headed by the Deputy Chief Justice, who is assisted by not less than seven judges.
Access to Justice in Northern Uganda

According to Article 142 (1) of the Constitution, upon recommendation from the Judicial Service Commission and approval by the Parliament, the President appoints all Justices. The Court of Appeal serves as the instance of appeal for judgments made by the High Court. It is not a court of first instance, except when, in accordance with Article 137 (1) of the Constitution, it sits as the Constitutional Court with respect to petitions challenging the constitutionality of laws. Appeals against its judgments are to be made to the Supreme Court.

The Supreme Court

Article 130 of the Constitution establishes the Supreme Court, composed of the Chief Justice and not less than six judges, as the final civilian instance of appeal in Uganda. The Supreme Court as the last appellate court has no original jurisdiction in any matter, and may decide to confirm or vary from a judgment by the Court of Appeal, or even ask for a new trial.

Power to institute criminal proceedings

Criminal proceedings may be instituted by:

- A police officer (i.e. any attested member of the police force) bringing a person arrested with or without a warrant before a magistrate upon a charge;
- A public prosecutor or police officer laying a charge against a person before a magistrate and requesting the issue of a warrant or a summons; and
- Any other person making a complaint and applying for the issue of a warrant or a summons (Section 42, Magistrates Court Act).

As a result of the very limited number of public prosecutors and state attorneys, police officers, especially at sub-county level, continue to act as prosecutors for minor offenders, at times creating confusion between investigations and prosecution. This challenges the separation of powers between the executive and the judiciary. According to the DPP, however, the functions of police prosecutors are in the process of being phased out.

B. Public Prosecutions

The Director of Public Prosecutions (DPP), under the Ministry of Justice and Constitutional Affairs, is mandated by Article 120 of the Constitution to: (a) direct the police to investigate any information of a criminal nature and to report to him expeditiously, (b) institute civilian criminal proceedings against any person or authority in any court with competent jurisdiction, (c) take over and continue any criminal proceedings instituted by any other person or authority and (d) discontinue at any stage before judgment is delivered, any criminal proceedings instituted by himself, and, with the consent of the court in case of criminal proceedings instituted by any other person or authority. The DPP may delegate his authority to state attorneys (who are holders of a Bachelor of Laws and are appointed by the Public Service Commission) to perform any of the above-mentioned functions, with the exception of the discontinuation of criminal proceedings which can be exercised only by the DPP (Article 120 (4) (b), Constitution).

The DPP/state attorneys supervise police criminal investigations and ultimately, upon review of the evidence collected, sanction the charges and institute, on behalf of the victims, the criminal case before the court that has jurisdiction to hear the matter, either a Magistrate Court or the High Court (as courts of first instance). The DPP is thus responsible for determining which court is competent according to the territorial jurisdiction and the nature of the offence. It must be recalled that the DPP does not assume any function with respect to the LC Court system.
C. Police

At the district level, the police is under the overall command of the District Police Commander (DPC), who reports directly to the Regional Police Commander (RPC). All police stations (in urban centres) and outposts (in rural areas and in internally displaced persons (IDPS) camps) are under an officer-in-charge (OiC).

Criminal investigations fall within the District Criminal Investigation Department (CID) answerable directly to the DPC. Minor crimes are however usually investigated by an officer answerable to the OiC of the police station/outpost to which the person belongs. In addition, there are Child and Family Protection officers who are responsible for handling family-related complaints, as well as district Special Branch Officers who collect intelligence information.

In addition to the regular police forces, the police structure also includes Special Police Constables (SPCs), Anti-Stock Theft Units (ASTUs) and the Local Administration Police (LAP).

SPCs provide support to the central police to ensure respect of law and order as well as to prevent and detect crimes, especially at the sub-county level where they are deployed.

Since 1996, ASTUs operate under the Ministry of Internal Affairs\textsuperscript{125} as an auxiliary force “created to curtail and contain cattle rustling”\textsuperscript{126} in “support of UPDF operations and the UPF to address security related threats”\textsuperscript{127} in Karamoja sub-region and bordering regions. While ASTUs primarily perform the function of preventing livestock theft, they however also have the powers to arrest criminal suspects although they do not carry out investigations. Indeed, as they are currently recruited as SPCs and under the same provisions, according to Section 64 of the Police Act, ASTUs “shall perform the same duties as those performed by a police officer of an equivalent rank”.\textsuperscript{128} In practice, most ASTUs limit themselves to undertaking operations related to cattle rustling, and do not accept to receive or investigate other complaints of a criminal nature from the population.”\textsuperscript{129}

The Local Administration Police (LAP), which was formerly under the local government system (Section 67 of the Police Act), has recently been integrated into the central police structure\textsuperscript{130} and is under the command of the Inspector General of Police (IGP) who is responsible for all its operations (Section 67 (a), Police (Amendment) Act, 2006). At the district level, local administration police are under the command of the DPC. Since LAP elements are said to receive the same training as regular UPF officers, they have the same powers, duties and responsibilities as central police officers. On the ground, however, they mainly perform functions related to the enforcement of ordinances and bye-laws issued by local governments, and work closely with local council members (daily security and order activities) and LC Courts (investigation of minor criminal offences).
Annex II

CIVILIAN COURT SYSTEM DIAGRAMME

SUPREME COURT

COURT OF APPEAL

HIGH COURT
(Commercial, Civil and Criminal Divisions + Circuit Courts)

CHIEF MAGISTRATE

MAGISTRATE GRADE I

MAGISTRATE GRADE II

LC III Court at Sub-County level

LC II Court at parish level

LC I Court at village level

LC II Court at parish level
Annex III

DETAILED RECOMMENDATIONS

With a view to contributing towards substantive and sustainable increase in access to justice in northern and north-eastern Uganda, the Office of the United Nations High Commissioner for Human Rights offers the following more detailed recommendations in addition to the principal human rights recommendations included in the body of this report:

TO THE GOVERNMENT OF UGANDA:

• With respect to the LC Court system:

  - Provide relevant training to all LC Executive Committees members sitting on courts on relevant Ugandan laws, their jurisdiction ratione materiae, fair trial requirements and the rights of victims and suspects in legal proceedings;

  - Provide LC Executive Committees members who have received training with regular ‘refresher’ training, with modules focusing on the rights of parties to judicial proceedings;

  - Put in place oversight mechanisms to ensure that LC Courts are only handling cases falling within their jurisdiction according to Ugandan law;

  - Put in place monitoring mechanisms to prevent corruption practices and investigate any allegation in that respect;

• With respect to the Magistrates Courts system:

  - Provide relevant training to Magistrates Grade II and I and Chief Magistrates, in particular on Ugandan law, fair trial requirements and the rights of victims and suspects in legal proceedings;

  - Take the necessary measures to ensure that the on-going phasing out of Magistrates Grade II does not reduce access to justice, in particular through the hiring and deployment of Magistrates Grade I;

  - Encourage Chief Magistrates to exercise their overall supervisory powers with respect to LC courts in a more regular and efficient manner, including with a view to ensuring that LC courts respect their jurisdiction ratione materiae and do not engaged in corruption practices, and take the necessary measures to provide Chief Magistrates with relevant means to assume their responsibilities in that respect in accordance with Ugandan law;

  - Provide Chief Magistrates Courts with sufficient human and other resources to be in a position to handle professionally and in accordance with Uganda law requirements defilement cases, and in particular, ensure that free legal aid is provided in such cases;
- Provide Magistrates Courts’ registries with the necessary material and other resources to put in place proper records keeping and filing systems, including court lists;

- **With respect to the High Court system:**

  - Consider increasing the number of High Court Circuits Divisions, with a view to reducing the geographical scope of the jurisdiction of each of the current ones, and thus, making justice more accessible and prompt;

- Encourage the transfer of detainees on remand facing trial before the High Court to central prisons, prior and during sessions, with a view to facilitating communications between the detainees and judicial officials, including the DPP and state attorneys:

- Consider abolishing the death penalty as a matter of priority by amending the law with respect to the crimes to be tried before the High Court that attract a death sentence.

- **With respect to both Magistrates Courts and the High Court:**

  - Encourage magistrates and judges to consider court bail where appropriate and in accordance with Ugandan law, and provide them with the necessary material resources, including through enhanced information management systems and coordination with the police, to ensure that suspects summoned to the court appear before them;

  - Consider regulating court bails, in particular as far as amounts are concerned, and establish proper accountability system;

  - Take the necessary measures, including through training and the issuance of guidelines, to ensure that magistrates and judges’ powers of reconciliation are exercised in conformity with Uganda law and international human rights norms and standards;

  - Take the necessary measures, including through training and the issuance of guidelines, to ensure that magistrates and judges handle gender-based violence cases and juvenile suspected offenders in accordance with Ugandan law and international human rights norms and standards;

  - Ensure that the constitutional guarantees pertaining to the right to habeas corpus and to the 60/180-days rule are strictly respected, and that detainees on remand are properly and promptly informed of these and other rights;

  - Provide the necessary financial, human and other resources to ensure that officers charged with supervising community services orders are in a position to carry out their functions in accordance with Ugandan law, and thus, encourage magistrates and judges to resort to community service orders where appropriate;
- Take the necessary measures to ensure that victims of human rights violations receive adequate, effective and prompt remedy and reparations.

• With respect to Public Prosecution and State Attorneys:

- Take the necessary measures to ensure that the Office of Public Prosecutions is allocated sufficient human and other resources to carry out its functions in accordance with Ugandan law with a view to ensuring progressively that only the DPP and state attorneys institute criminal proceedings;

- Encourage the DPP and State Attorneys to exercise their overall supervisory powers with respect to criminal investigations by the police in a more regular and efficient manner, and take the necessary measures to provide the DPP and state attorneys with relevant means to assume their responsibilities in that respect in accordance with Ugandan law;

- Consider amending the law pertaining to the admissibility of additional statements with a view to rendering the process less cumbersome and thus, avoiding delays in dealing with such statements;

- Request the DPP to instruct its personnel to inform on a regular basis complainants of the progress of the case;

• With respect to the Uganda Police Force:

- Deploy fully trained civilian law enforcement agents throughout Uganda, but in particular in the northern and north-eastern districts, with a view to ensuring an appropriate level of presence on the ground to carry out civilian law and order functions in accordance with Ugandan law, in particular in accordance with the targets set by the JLOS;

- Take the necessary measures to ensure that all police forces, including SPCs and ASTUs, have received a complete and comprehensive training, including on the rights of victims and suspects during criminal investigations, criminal investigation and interrogation techniques, and arrest procedures and crowd-control techniques, and consider reducing the number of police forces entrusted with arrest and criminal investigations to those who have received a specific training\(^\text{137}\);

- Take the necessary measure to ensure that police officers are specifically trained to handle properly female and juvenile victims and offenders in accordance with human rights norms and standards\(^\text{138}\);

- Provide the police stations and outposts with the necessary material and other resources, including vehicles, to ensure that the 48-hour rule before a suspect is brought before a court is strictly respected;

- Provide special police officers with adequate training to deal with juvenile and female victims
and suspected offenders, and in addition, ensure that all police officers take their obligations vis-à-vis gender-based violence and juvenile victims seriously and act in accordance with Ugandan law;

- Review recruitment schemes in particular with a view to ensuring that former LDUs and elements of other auxiliary forces who are suspected of having committed human rights violations are banned from the police (‘vetting’);

- Increase the number of police surgeons and other medical doctors authorised to perform medical examinations with a view to filling ‘PF3’, take the necessary measures to ensure that ‘PF3’ and all other police forms are available in all police stations and outposts and are handed over to victims free of charge in accordance with Uganda law, and ensure that medical personnel carrying out such examinations receive their wages;

- Request the police hierarchy both at central and district level to issue strict guidelines with respect to the charging of fees for the provision of services or police forms and other corruption practices; engage into education campaign to inform the public of the duties and obligation of the police; reinforce existing mechanisms and eventually create new ones for the public to lodge complaints on such practices; investigate these complaints thoroughly and ensure that appropriate action, including disciplinary sanctions and dismissal, are taken;

- Request the police hierarchy to instruct its personnel to inform on a regular basis complainants of the progress of the case;

- Review the mandate, functions and training of the ASTUs with a view to limiting their operations to cattle-rustling incidents only, considering their lack of appropriate training and skills to perform other functions assigned to SPCs;

- Encourage police officers to use police bond where appropriate and in accordance with Uganda law, and provide them with the necessary material resources to ensure that they are in a position to summon suspects to the court;

• With respect to the UPDF

- Take the necessary measures to ensure that the UPDF does not carry out law enforcement and order activities that fall outside its statutory mandate with a view to creating the necessary space for civilian law enforcement agencies to carry out their functions in accordance with Ugandan law;

- Ensure that the demobilisation of auxiliary forces of the UPDF, such as LDUs, does not create a security vacuum by coordinating such demobilisation with the deployment of appropriate civilian police;
- Make dependent the integration of demobilised element of UPDF auxiliary forces on appropriate vetting procedures to ensure that those suspected of having committed human rights violations are banned from holding such positions pending investigation and eventually prosecution, and on training opportunities aimed at ensuring that they will be capacitated and skilled to carry out their new functions in accordance with Ugandan law;

- With respect to the Uganda Prison Service:

  - Take the necessary measures to ensure that detainees on remand are separated from convicted prisoners, female detainees from male detainees, and juvenile suspected and convicted offenders from adults, and build separate remand centres as well as juvenile detention centres that have been foretold by the Government in particular in the PRDP;

  - Provide prison authorities with the necessary financial, material, human and other resources to ensure that the conditions of detention meets international standards, in particular to address issues of overcrowding;

  - Provide prison authorities with the necessary financial, material and other resources to ensure that they are in a position to keep proper prisoners records, in particular with a view to ensuring the respect of the 60/180-day constitutional requirement;

  - Take the necessary judicial and other measures for the commutation of deprivation of liberty into community service sentences of petty offenders and prisoners who are to be released within six months;

- With respect to the UHRC Tribunal:

  - Provide the UHRC with the necessary financial, human and other resources to ensure that its Tribunal can discharge its functions properly and in an efficient manner;

  - Ensure that financial reparations awarded by the UHRC Tribunal are promptly and fully made to the victims;

- With respect to the provision of free legal aid:

  - Consider amending the law with a view to ensuring that all indigents, in particular juveniles and women, facing criminal charges are offered the services of a lawyer without charge in accordance with Article 14 (d) of the International Covenant on Civil and Political Rights to which Uganda is a State party;

  - Put at the disposal of existing legal aid programmes, especially the ULS legal aid scheme as well as other JLOS initiatives, the necessary financial and other resources to ensure their expansion throughout the territory of Uganda, prioritising areas without the presence of any practising private lawyer;
- Encourage the Law Council to consider requiring more than one pro bono service for the renewal of the practice certificate with a view to ensuring that a greater number of individuals facing trial benefit from legal aid;

- Encourage the Law Council and the Uganda Law Society to take the necessary measures to ensure that lawyers show the highest degree of professionalism and ethics in the discharge of their function, especially when they are entrusted with pro bono cases; and,

- Strengthen the current network paralegals in all regions previously or currently affected by generalised violence with a view to reinforcing community-based monitoring and reporting mechanisms, and continue to train paralegals on justice and human rights norms and standards with a view to ensuring that they disseminate them within the communities.

**To civil society organizations:**

- Undertake human rights-awareness campaigns throughout the country, with a particular focus on northern and north-eastern regions, with a view to informing the public of the avenues available to them to obtain justice through the formal justice system and of their rights before (police bonds) during legal proceedings (court bail and 60/180-day rule);

- Undertake a sensitisation campaign regarding “mob justice”, including calling on the judiciary to investigate, prosecute and punish individuals found guilty of having incited or participated in “mob justice” instance in accordance with Ugandan law;

- Undertake sensitisation campaigns with relevant law enforcement and judicial entities regarding the release of suspected offenders on police bond and court bail, as well as the purpose of community service orders, with a view to building confidence of the public in formal justice institutions.
ENDNOTES


2 The report uses both the term lawyers and advocates indiscriminately, even if most in Uganda would refer to lawyers formally registered with the Uganda Law Society as advocates.


4 Ibid.

5 JLOS progress report presented to the 12th Joint GoU/Donor review, p.14

6 Keynote address by Justice James Ogoola, Principle Judge of the High Court of Uganda, delivered at the 11th JLOS semi-annual review held 19-20 June 2006 at Speke Resort Hotel, Kampala.


10 Most IDP camps are located far away from district town centres, where any remaining judicial institutions are.


12 Keynote address by Justice James Ogoola, Principle Judge of the High Court of Uganda, delivered at the 11th Justice, Law and Order Sector semi annual review held 19-20 June 2006 at Speke Resort Hotel, Munyonyo, Kampala.

13 PRDP, p. 43.

14 The PRDP, September 2007, covers Acholi, Karamoja, Lango, Teso, Elgon and West Nile sub-regions (p. 43). The overall goal of the PRDP is to consolidate peace and security and lay foundation for recovery and development. The PRDP was approved by the Cabinet in September 2007.

15 Ibid., p. 43.

16 Ibid., p. 43.

17 KIDDP, p. 70.

18 Ibid., p. 71.

19 PRDP, p. 42.

20 Ibid., p. 44.

21 Letter from the Ministry of Foreign Affairs dated 8 February 2007, p. 4.

22 PRDP, p. 43.

23 Letter from the Ministry of Foreign Affairs dated 8 February 2007, p. 4.

24 Ibid., p.3.

25 In order to increase police presence and facilitation, the PRDP estimates that the total cost over the next three year to increase police presence and facilitation will amount to 57,624,322 US dollars (PRDP, p. 44).
In addition to the ‘PF3’ (see below under “Gender-based violence”), the ‘PF39’, which contains information on any previous criminal records of the suspects, and the ‘PF20’, which is used for suspects’ finger prints are also said to be lacking in most police stations. In theory, both forms should provide evidence for adjudicating personnel in assisting them to take a decision. The lack of these forms means that most often for lack of adequate information, recidivist offenders receive lighter sentences than what is provided by the law.

These two terms refer to the traditional habitations of Karimojong, made of huts and granaries.

When the Local Council Courts Act, 2006 came into force, its Sections 41 and 45 provided that a plaintiff/complainant in a case before the LC courts should pay the court fees in accordance with the regulations made by the Minister responsible for Local Government; the regulation also provided for the costs to be awarded by the LC courts. However, the Minister has not yet issued these regulations. In the meantime, the 1990 Court Fees regulations under the previous law, continue to operate in accordance with Section 50 (2) of the LC Courts Act, 2006, which provides that any Statutory Instrument made under the repealed Act and in force at the commencement of the LC Courts Act, 2006, shall continue to apply so long as it is not contradictory to the 2006 LC Courts Act.

On 2 May 2007, a dispute erupted between the Pader Resident Magistrate Grade I and the newly deployed Officer-in-Charge (OiC) of Patongo Prison over the release of a detainee held on remand, as the OiC refused to release a prisoner in the absence of a production warrant issued by the magistrate (Section 67, Magistrates Courts Act). The Magistrate arrested the OiC of Patongo Prison on charges of defying official orders. The Regional Criminal Investigation Department from Gulu upon his arrival at Pader police station ordered the immediate release of the OiC, who lodged a formal complaint for assault against the magistrate at Pader police station. Investigations into the complaint have been completed and the file taken to the Resident State Attorney in Gulu. Three charges have been conferred upon the Magistrate: (a) trespass into the prison facility, (b) assaulting a prison officer, and (c) malicious damage to property. As a result, there was no Magistrate for the Pader Circuit for a month until a new magistrate was sent to Pader early June 2007.

At the time of writing, two judges were at the International Court of Justice, one at the Special Court for Sierra Leone mandated to try Charles Taylor, one at the Amnesty Commission, and one is Inspector General of Government.

The Daily Monitor Newspaper, 27 October 2006.

Article 9 (4), International Covenant on Civil and Political Rights (ICCPR).

Article 14, (3) (c), ICCPR.

See Uganda vs. Col (Rtd) Dr. Kizza Besigye, Constitutional Court, (No. 20 of 2005).

"Enhancing Justice, Law and Order in conflict affected areas for rural development", Paper delivered by Justice James Ogoola, 6 February 2006, at Sheraton Hotel, Kampala, for the 11th JLOS review.

JLOS progress report presented to the 12th Joint GoU/Donor review, p.10

Ibid, p.11

Article 14 (1), ICCPR.

Joint Survey on Operations of Local Council Courts and Legal Aid Service Providers, Draft report, June 2006, Legal Aid Basket Fund and UNDP/UNCDF.


Article 14, ICCPR. “The requirement of competence, independence and impartiality of a tribunal (…) is an absolute right that is not subject to any exception. The requirement of independence refers, in particular, to the procedure and qualification for the appointment of judges, (…) and the actual independence of the judiciary from political interference by the executive branch and legislature.” General Comment No. 32 - Article 14: Right to equality before courts and tribunals and to a fair trial. UN Doc. CCPR/C/GC/32, adopted on 23 August 2007, para 19.

Article 10 (1), ICCPR. The Human Rights Committee has stated that article 10 is a fundamental and universally applicable rule, which, “as a minimum, cannot be dependent on the material resources available in the State party”, and which must be applied without discrimination. General Comment No. 21, in United Nations Compilation of General Comments, para. 4.

Rule 8, Standard Minimum Rules for the Treatment of Prisoners

Rule 8(a), Standard Minimum Rules for the Treatment of Prisoners

Article 37(c), Convention on the Rights of the Child

Article 10(2)(b), ICCPR.

The Constitution provides that a person arrested, restricted or detained shall be kept in a place authorized by law (Article 23 (3)).

According to the Government, there are 15 central prisons in the North with a total capacity of 1,586, while as of September 2007 the prison population is reported to be 3,816 – with an excess of 2,230 inmates. In addition, there are 34 local government prisons that have recently been integrated within the central prison system, which have a capacity of 717, but as of September 2007, are holding 1,943 inmates – with an excess of 1,226 prisoners. There are also only four juvenile remand homes countrywide. (PRDP, p. 48).

According to the JLOS Second Strategic Investment Plan 2006/2011, juvenile detention centres will be built in northern Uganda, as well as specific juvenile cells in Kitgum, Pader, Katakwi and Kaberamaido (Letter from the ministry of Foreign Affairs dated 8 February 2007, p. 8).

Article 9(4), ICCPR.


A minor offence is an offence for which the court may pass a sentence of no more than two-year imprisonment.

PRDP pp. 48-49.

Felony is any offence that is not punishable by a death sentence or a more than three-year deprivation of liberty.

Article 3, ICCPR.

Article 2 (b) (c), CEDAW.

General comment No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3) The International Covenant on Economic, Social and Cultural Rights (ICESCR)


Ibid, p.47-48

A PF24 is filled in with respect to the suspect and contains findings as to his/her mental capacity and medical condition, and other personal data, as well injuries sustained, if any.

Statement by the UPF Commissioner in charge of forensic examinations (UPF Surgeon-General) at a meeting held at the Ministry of Health, Kampala, 17 September 2007.

Currently, there are only three police surgeons mandated to carry out medical examinations and to provide expert evidence in court in Uganda. All of them are based in Kampala.

All doctors in government hospitals and a few private doctors (who have acquired the necessary training in forensic medicine and certified by the Ministry of Health) are allowed to perform forensic examinations. In the wake of corruption and forgeries of academic papers in higher institutions of learning, judges are often very reluctant to admit such reports written by any other doctor apart from the ones that are certified by the Ministry of Health.

Human Rights Committee General Comment No. 32, para. 24.


Article 37 of the Constitution provides that “every person has a right as applicable to belong to, enjoy, practice, profess, maintain and promote any culture, cultural institution, language, tradition, creed or religion in community with others.”

It is a traditional justice practice used in northern Uganda to send off the wrong spirit and a gesture of welcome and commitment on the part of the community and returnees to be living in harmony.

The purpose of this study is not to describe all traditional justice mechanisms and processes that exist in Uganda, but just to give a few examples. Further exploration of cultural/traditional practices is required in order to gain a more comprehensive understanding of such practices and systems in all regions of Uganda.


Dr. Phil Clark, Transitional Justice Institute, University of Ulster, Northern Ireland, comments presented at Workshop on The Role of Traditional Justice System in Dealing with Conflict, held by the International Bar Association and Uganda Bar Association, Lira, 10-11 November 2006.
Access to Justice in Northern Uganda

JRP Field Notes No. 3 October 2006: Justice and Reconciliation Project is a NGO research group based in Gulu that supports the idea of the government setting up a justice mechanism that will be culturally appropriate to the Acholi people.


PRDP, p. 38

Ibid., p. 38.

According to JLOS June progress report, the Sector prioritised interventions in conflict-affected areas and earmarked 30% of its annual budget to implement activities in northern Uganda; according to the policy decision of the JLOS SIP II, 55% of the budgetary allocation are dedicated to the strategic objective 3, entitled ‘enhancing access to justice for all especially the poor and the marginalised’.

The Legal Aid Basket Fund is a fund to which a number of donors contribute and which is administered by DANIDA. It is a joint effort by these donors to support activities regarding the provision of legal aid and the conduct of strategic litigation, all aimed at developing a national legal aid policy. JLOS has a separate fund, the JLOS Development Fund, to which donors contribute through sector budget support aid modality.

The ULS is divided into four departments: finance and administration, legal resource centre, legal aid and pro bono services, and policy, advocacy and legal affairs.

“The proportion of poor people who are unable to meet their basic needs (…) stayed [in northern Uganda] high at 64 % in 2002”. (PRDP, p. 12)


Letter from the Ministry of Foreign Affairs dated 8 February 2007, p. 5.

Ibid.


The Committee on the Elimination of All Forms of Discrimination against Women expressed “concern about the high incidence of violence against women, such as domestic violence, raped, including marital rape, incest, sexual harassment in the workplace and other forms of sexual abuse of women. The Committee is also concerned at the lack of legal and other measures to address violence against women. (…) The Committee urges the State party to place high priority on comprehensive measures to address violence against women and girls in
accordance with its general recommendation 19 on violence against women. The Committee calls on the State party to enact legislation on domestic violence, including marital rape, as soon as possible in order to ensure that violence against women and girls constitutes a criminal offence, that women and girls who are victims of violence have access to immediate means of redress and protection and that perpetrators are prosecuted and punished. The Committee also recommends gender-sensitive training for all public officials, in particular law enforcement personnel, the judiciary and health workers.” (UN Doc. A/57/38 (23 August 2002), part III, paras 135 –136)

111 The Committee on the Rights of the Child “[w]hile recognizing the efforts made in [the domain of juvenile justice], including through the adoption of legislation, remains concerned at the limited progress achieved in establishing a functioning juvenile justice system throughout the country. In particular, the Committee is concerned at the lack of magistrates, remand home for children in conflict with the law and the conditions in such institutions. The Committee urges the State party to ensure that juvenile justice standards are fully implemented, in particular articles 37 (b), 40 and 39 of the Convention, as well as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), and in the light of the Committee’s day of general discussion on the administration of juvenile justice. In particular the Committee recommends that the State party; (a) continue to increase the availability and quality of specialized juvenile courts and judges, police officers and prosecutors, inter alia through systematic training of professionals; (b) provide adequate financial, human and technical resources to the juvenile courts at sub-county level; (c) strengthen the role of local authorities, especially with regard to minor offences; (d) provide children with legal assistance at an early stage of legal proceedings; (e) improve training programmes on relevant international standards for all professionals involved with the system of juvenile justices.” (CRC/C/UGA/CO/2 (23 November 2005), paras. 79 - 80)

112 The Committee against Torture expressed its concerns about: “(a) the length of pre-trial detetion, including detention beyond 48 hours as stipulated by article 23, clause 4, of the Constitution (…); (b) the reported limited accessibility and effectiveness of habeas corpus” and recommended “that the State party take all necessary legislative, administrative and judicial measures to (…) (e) reduce the length of pre-trial detention; (f) enhance the accessibility and effectiveness of habeas corpus.” (UN Doc. CAT/C/CR/34/UGA (21 June 2005), paras. 5 – 10)

113 The High Commissioner for Human Rights advocates the abolition of the death penalty in all circumstances. This position is based on a variety of policy grounds, including the impossibility of avoiding irreversible execution of the innocent, the absence of proof that the penalty in fact serves as a deterrent to others in respect of future conduct, the inappropriately vengeful character of the sentence. (Press statement by the High Commissioner dated 15 January 2007).

114 The Human Rights Committee “is concerned about the broad array of crimes for which the death penalty may be imposed. It finds incompatible with the Covenant that the death penalty is mandatory for the crimes of murder, aggravated robbery, treason and terrorism resulting in the death of a person, and the imposition of death sentences by field courts-martial without the possibility of appeal or to seek pardon or commutation of sentence. The Committee also expresses its concern about the long periods of time which convicted prisoners spend on death row (almost 20 years in one case). (…) The State party should also abolish mandatory death sentences and ensure the possibility of full appeal in all cases, as well as the right to seek pardon or commutation of the sentence.” (UN. Doc. CCPR/CO/80/UGA (4 May 2004), para. 13).

115 See Annex I.
As of September 2007, there were about 950 LC courts at sub-country level, 5,250 courts at parish level and 44,500 at village level, making a total of 50,700 LC courts country-wide. In northern Uganda (including Karamoja sub-region), there were 13,913 LC courts, including 231 at sub-county level, 1,172 at parish level and 12,510 at village level (PRDP, p. 47).

For example, declaring whether someone is married or who is the customary heir.

In the form of money or property deemed by the court as equivalent to the complainant’s property or right which was damaged, lost or injured.

Public auction of a good/property of the defendant to cover his debts.

See Form D of the LC Court Act.

Magistrates Grade III have recently been abandoned.

For example, at the time of writing, the Chief Magistrate in Gulu supervises all magistrates in Kitgum and Pader districts.

Except for capital offences or when a child is charged jointly with an adult (Section 93, Children’s Act).

(Section 207 (1), ibid.). At the time of writing, one United States of America dollar is equivalent to approximately UGX 1,730.


PRDP, September 2007, p. 52.

Ibid., p. 51.

Police Act, section 65 (a)

Police Act, section 65 (a)

Local Administrative Police were integrated into Central Police for purposes of command, training, discipline, recruitment, promotion, salary payment and any delegated power from the IGP with effect from 1 July 2006.

While all the recommendation hereby made would significantly contribute to improving access to justice, a number of them have been identified to be of particular importance.

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The Committee against Torture expressed its concern about “(d) the wide array of security forces and agencies in Uganda with the power of arrest, detain and investigate” and recommended “that the State party take all necessary legislative, administrative and judicial measures to (…) (h) minimize the number of security forces and agencies with the power to arrest, detain and investigate and ensure that the police remains the primary law enforcement agency.” (UN Doc. CAT/C/CR/34/UGA (21 June 2005), paras. 5 – 10)

The Human Rights Committee recommended that “[t]he State party] should train law enforcement officials, in particular police officers, to deal with cases of domestic violence.” (UN. Doc. CCPR/CO/80/UGA (4 May 2004), para. 11)

The Human Rights Committees expressed its concerns over the fact that “[j]uveniles and women are often not kept separate from adults and males.” (UN. Doc. CCPR/CO/80/UGA (4 May 2004), para. 18)

The Human Rights Committees noted that “[t]he State party has acknowledged the deplorable prison conditions in Uganda. The most common problems are overcrowding, scarcity of food, poor sanitary conditions and
inadequate material, human and financial resources. The treatment of prisoners continues to be a matter of concern to the Committee. (...) The Committee has taken note of the measures implemented by the State party to counteract these shortcomings, including the introduction of community service as an alternative to imprisonment. However, it notes that they are inadequate to overcome the problems. (...) The State party should (...) bring prison condition into line with article 10 of the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners. It should also take immediate action to reduce overcrowding in prisons (...).” (UN. Doc. CCPR/CO/80/UGA (4 May 2004), para. 18)

141 The Human Rights Committee is “concerned about the frequent lack of implementation by the State party of the Commission’s decisions concerning both awards of compensation to victims of human rights violations and the prosecution of human rights offenders in the limited number of cases in which the Commission had recommended such prosecution (art. 2). The State party should ensure that decisions of the Uganda Human Rights Commission are fully implemented, in particular concerning awards of compensation to victims of human rights violations and prosecution of human rights offenders. It should ensure the full independence of the Commission.” (UN Doc. CCPR/CO/80/UGA (4 May 2004), para. 7)

142 The Human Rights Committee expressed its concerns over “the lack of legal assistance provided to non-capital offenders” and recommended that the State party “revise its legislation and practices” in that respect (UN. Doc. CCPR/CO/80/UGA (4 May 2004), para. 21).