

Report on the Activities of the Office of the United Nations High Commissioner for Human Rights and the Human Rights Situation in Uganda



Nov. 2011 to Sept. 2013



UNITED NATIONS
HUMAN RIGHTS
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SUMMARY

This report gives an overview of the human rights situation and outlines the activities of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Uganda during the period of its mandate, covering November 2011 to September 2013. OHCHR hopes that this report and its recommendations will contribute to the development of a national human rights action plan, which the Government of Uganda voluntarily pledged during the Universal Periodic Review of the Human Rights Council in 2011. Significant progress has been made by the Ugandan authorities over the reporting period to improve respect for human rights and the enjoyment of these rights by all individuals under its jurisdiction. At the same time, there are still many challenges which highlight the need for further concerted efforts – both technical and political - for Uganda to fulfil its human rights obligations

In the reporting period, OHCHR monitored the human rights developments and provided technical assistance and advice to the Government, State institutions and civil society. In particular, OHCHR contributed to strengthening the Uganda Human Rights Commission (UHRC). The report notes the constructive engagement between the Government and OHCHR to tackle human rights concerns. For example, it highlights progress made on legislation to prevent and prohibit torture, inhuman and degrading treatment and punishment as well as steps undertaken to investigate human rights violations and to improve the administration of justice. OHCHR also commends the Government for strengthening the institutional framework for the protection of human rights.

At the same time, OHCHR raises concern with regard to the deprivation of personal liberty beyond constitutional provisions and the prevailing practice of torture and ill-treatment during detention. Challenges and setbacks related to the realization of the rights to freedoms of expression, assembly and association also need to be addressed.

The report further indicates the positive development of policies and plans by the Government to promote social and economic rights, but points out that investments in the social sector fall behind the targets set by the Government in the National Development Plan (NDP) and require more decisive efforts to ensure the progressive realisation of these rights.

In the last section, the report makes reference to some aspects of the human rights situation in northern Uganda and Karamoja where OHCHR has sub-offices. In particular, it underlines progress made in the security and human rights situation during the disarmament process in Karamoja, but also observes that there is a need to investigate human rights cases systematically to discourage unlawful acts and strengthen accountability for the perpetrators. With regard to the LRA conflict in northern Uganda, OHCHR emphasises the importance of the almost complete return process of internally displaced persons and the resulting peace, as well as the efforts towards reconciliation and developing a transitional justice policy.

The report concludes with recommendations to the Government of Uganda to further progress in fulfilling its human rights State obligations.

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LIST OF ABBREVIATIONS AND ACRONYMS

ACTV	African Centre for the Treatment and Rehabilitation of Torture Victims	KIDDP	Karamoja Integrated Disarmament and Development Programme
AIDS	Acquired Immune Deficiency Syndrome / HIV-Human Immune Virus	LCC	Local Council Court
AU	African Union	LDU	Local Defence Unit
CAT	Committee against Torture, Cruel, Inhuman and Degrading Treatment and Punishment	LPAC	Legal and Parliamentary Affairs Committee
CEDAW	Committee on the Elimination of Discrimination Against Women	LRA	Lord's Resistance Army
CERD	Committee on the Elimination of Racial Discrimination	MDGs	Millennium Development Goals
CESCR	Committee on Economic, Social, Cultural Rights	MGLSD	Ministry of Gender, Labour and Social Development
CMI	Chieftaincy of Military Intelligence	MMR	Maternal Mortality Rate
CMW	Committee on the Rights of Migrant Workers	MTCT	Mother To Child Transmission
CRC	Committee on the Rights of the Child	NDP	National Development Plan
CRPD	Committee on the Rights of Persons with Disabilities	NER	Net Enrolment Rate
DPP	Directorate of Public Prosecutions	NGOs	Non-Governmental Organizations
ESCR	Economic Social Cultural Rights	NUDIPU	National Union for Disabled Persons in Uganda
FY	Financial Year	OHCHR	United Nations Office of the High Commissioner for Human Rights
GDP	Gross Development Product	PRDP	Peace Recovery and Development Programme
HDI	Human Development Index	RRU	Rapid Response Unit of the UPF
HRBA	Human Rights Based Approach	SIP	Strategic Sector Investment Plan
HSSP	Health Sector Strategic and Investment Plan	SIU	Special Investigation Unit of the UPF
IASC	Inter Agency Standing Committee	UGX	Uganda Shillings
ICC	International Criminal Court	UHRC	Uganda Human Rights Commission
ICCPR	International Covenant on Civil and Political Rights	ULRC	Uganda Law Reform Commission
ICESCR	International Covenant on Economic, Social, Cultural Rights	UN	United Nations
IDPs	Internally Displaced Persons	UPDF	Uganda Peoples' Defence Forces
IGP	Inspector General of Police	UPF	Uganda Police Force
ILO	International Labour Organization	UPR	Universal Periodic Review
IMR	Infant Mortality Rate	UPS	Uganda Prison's Services
JATT	Joint Anti-Terrorism Task Force	UWA	Uganda Wildlife Authority
JLOS	Justice Law and Order Sector	WHO	World Health Organization

1. INTRODUCTION

This report describes the activities of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Uganda outlining developments in the human rights situation during the period of November 2011 to September 2013. The report recognises the progress that has been made and the measures taken by the Ugandan authorities to improve respect for human rights and to ensure the enjoyment of these rights to all individuals under its jurisdiction. At the same time, there are many challenges left which highlight the need for further concerted efforts – both technical and political - for the State to progress further in fulfilling its human rights obligations. OHCHR took into account the findings of the 15th Annual Report of the Uganda Human Rights Commission to Parliament which analyses the human rights situation in Uganda in 2012.

OHCHR hopes that this report will contribute to the development of a national human rights action plan to which the Government pledged during its Universal Periodic Review of the Human Rights Council in 2011.¹ On this note, it is acknowledged that already a Steering Committee has started its work to develop this action plan. The plan will provide an important road map for the Government of Uganda to systematically address human rights challenges and augment institutional processes.

1.1. OHCHR mandate and the Office's activities

The OHCHR Country Office in Uganda was established in 2005 at the invitation of the Uganda Government, with an initial mandate to monitor the human rights situation in northern Uganda and Karamoja. A new agreement with a national mandate was signed between OHCHR and the Government on 21 October 2009 and extended in October 2011 for another two years. OHCHR in Uganda has its Head Office in Kampala and is present in northern Uganda (Gulu and Kitgum) and in Karamoja (Moroto and Kotido).

The main functions of OHCHR in Uganda as outlined in Chapter IV of the agreement with the Government of Uganda are the following:

- to contribute to national efforts of promotion and protection of human rights;
- to monitor the human rights situation and inform the competent authorities on the latter to enable authorities to take appropriate corrective and timely action;
- to provide advice and capacity-building to competent national authorities, national human rights institutions, civil society and individuals;
- to prepare its reports including on activities of the office, as and when determined by the High Commissioner for Human Rights.

To fulfil this mandate, OHCHR established collaborative working relations with Government and relevant State institutions, including the Uganda Human Rights Commission (UHRC), as well as with civil society organizations. It maintains regular dialogue with relevant authorities, through established channels, to inform them about its findings and to offer relevant technical assistance and advice.

In accordance with its mandate, OHCHR provides advice and technical assistance to institutions in the security sector, such as the Uganda Police Force (UPF), Uganda People's Defence Force (UPDF) and the Uganda Prison Service (UPS), with a focus on the development of internal capacity to prevent and to investigate human rights violations. OHCHR has engaged with the Ministry of Gender, Labour and Social Development and the Ministry of Education and Sports to assist them in reporting to the Committee on the Elimination of all Forms of Discrimination against Women. OHCHR also works with the Ministry of Justice and Constitutional Affairs and the Uganda Law Reform Commission on a gender and human rights sensitive approach to legislation and to disseminate legislation with implications on gender equality.

¹ The Universal Periodic Review is a peer review mechanism installed by the Human Rights Council in 2008. Uganda underwent its first review in October 2011.

OHCHR also provides technical assistance to the Uganda Law Reform Commission working in collaboration with the Justice Law and Order Sector to develop witness protection legislation and a national transitional justice policy. OHCHR similarly assists the Justice Law and Order Sector in its efforts to integrate human rights in its sector policies and plans. It has further provided advice to the Ministry of Health, in collaboration with civil society, on the mental health draft bill. In addition, it is working with the National Planning Authority and district local governments in the North and Northeast to disseminate and integrate a human rights approach to development programming into national and district planning processes.

OHCHR has supported the Ministry of Foreign Affairs since 2010 to prepare for the Universal Periodic Review (UPR) of Uganda and subsequently, in the development of a national human rights action plan that is underway as a follow up to the recommendations of the UPR.

OHCHR has engaged with the Human Rights Committee of the Parliament and other parliamentary committees to provide human rights and legal training as well as technical advice through submission of human rights analysis to bills such as the Public Order Management Bill, the Oil Bills, the Marriage and Divorce Bill, Anti-Homosexuality Bill, the HIV-AIDS Prevention and Control Bill and the Amnesty Act among others.

OHCHR works with civil society organizations and has strengthened the capacity of national and local organizations to monitor and report on the human rights situation. It has contributed to enhancing skills and knowledge on diverse thematic areas of human rights and supported alternative treaty reporting and UPR stakeholder reporting.

In northern Uganda, OHCHR has also engaged with victims' organizations. Together with other partners, OHCHR participated in a community sensitization programme on human rights issues and strengthened community-based organizations in northern Uganda and Karamoja. In the framework of the UN Peace-building Programme, OHCHR sensitized traditional leaders on gender equality and human rights, provided training and a software tool for case monitoring for civil society organisations and funded reconstructive surgery for over 100 victims and survivors of the LRA conflict.

Over the years, OHCHR in partnership with the Uganda Human Rights Commission prioritized consultations on reparation measures with victims in the conflict-affected Acholi, Lango, Teso and West Nile sub-regions, and carried out research and produced a report in 2012 that put forward key policy proposals on reparations to inform a national transitional justice policy. In 2012, OHCHR engaged with the Justice Law and Order Sector (JLOS) and the UHRC in the development and the pilot testing of a methodology designed to facilitate accurate documentation of serious crimes, gross human rights violations and abuses committed during the LRA conflict in northern Uganda.

1.2. Engagement with the Uganda Human Rights Commission

The Uganda Human Rights Commission (UHRC) has sustained an 'A' status for accomplishing with the Paris Principles on National Human Rights Institutions. OHCHR continues to strongly support the Commission's efforts to promote and protect human rights in the country as well as to strengthen the UHRC's national leadership in dealing with human rights matters.

In 2010, OHCHR and the UHRC signed the "Guidelines for Cooperation between the Uganda Human Rights Commission (UHRC) and the United Nations High Commissioner for Human Rights (OHCHR) in Uganda" as a basis for close partnership and to carry out joint work plans from 2010. These guidelines regulate the coordination and cooperation between both Offices in human rights monitoring, advocacy, reporting as well as capacity-building and institutional strengthening of the Commission by OHCHR. The joint work plan identifies thematic areas of cooperation where OHCHR provides capacity building and institutional strengthening, support in monitoring and reporting on human rights, advice on international human rights standards in legislation and advocacy, training of its staff in specific

areas, such as economic social and cultural rights, business and human rights, non-discrimination among others, as well as direct financial support through grants and projects. The work plan also entails joint projects towards supporting the Commission's engagement in transitional justice priorities (report on reparations, documentation of serious human rights violations during the LRA conflict), due process in court martial, UPR recommendations baseline study, as well as witness protection mechanism and legislation. Important activities of this work plan were implemented in the reporting period and will be reviewed and updated in early 2014.

Under the joint work plan, OHCHR and UHRC staff, in Karamoja and Northern Uganda, jointly monitors alleged human rights violations, including visits to prisons and detention facilities. OHCHR also provides financial assistance to UHRC to undertake its role in convening the regional and district protection working groups in both sub-regions.² In addition, OHCHR and UHRC jointly provide capacity-building for various stakeholders such as the Police and UPDF Local Defence Units (LDUs), civil society and local and district authorities. OHCHR also participates in, and in some cases, co-hosts, human rights promotion and advocacy activities undertaken by UHRC. Furthermore, OHCHR continues to collaborate with UHRC in the commemoration of international human rights days.

In the framework of the UN Peacebuilding Programme for the Acholi sub-region, OHCHR supported the UHRC project to secure funding for staff deployment and institutional strengthening, for the reduction of the backlog of tribunal cases, and for community programmes. OHCHR cooperated with the Gulu regional Office of UHRC in facilitating projects addressed to traditional leaders, victims' organizations and other civil society organizations. It further provided capacity-building in human rights monitoring and Database management. Based on consultations in the conflict-affected sub-regions of Acholi, Lango, Teso and West Nile, a joint report on the victims' rights to remedy and to reparations in northern Uganda was issued in 2012.³

In 2012, a capacity assessment of UHRC was carried out by OHCHR Uganda Office, supported by OHCHR Geneva, to identify key areas for further joint efforts required to strengthen the Commission's role and its efficiency and effectiveness in the implementation of its constitutional mandate. In this regard, OHCHR recognises the increased technical capacity, visibility and the role of UHRC as a valuable partner of State institutions and of civil society.

² Protection clusters were established in 2007 in northern Uganda and Karamoja within the Inter-Agency Standing Committee (IASC) for coordination of humanitarian assistance and were converted into protection working groups (Karamoja) and District Human Rights Protection and Promotion Committees (Northern Uganda) in 2011 after the IASC was phased out. These groups are broadly covering human rights and protection issues and are convened by UHRC with broad participation of government authorities and civil society.

³ The report is titled "The Dust has not yet settled - Victims' Views on the Right to Remedy and Reparation; A report from the Greater North of Uganda", UHRC and OHCHR, 2011.

2. LEGAL AND POLICY FRAMEWORK

2.1. Uganda's international human rights obligations

Uganda has ratified all core international human rights treaties⁴, with the exception of the International Convention for the Protection of All Persons from Enforced Disappearance and several optional protocols.⁵ It has also ratified the African Charter on Human and Peoples' Rights, the Maputo Protocol⁶, the African Charter on the Rights and Welfare of the Child and its protocol.

As a State party to these instruments, Uganda is obliged to take necessary measures, including adopting legal, policy and institutional measures, to ensure adequate protection of the rights and freedoms enshrined in the ratified treaties at the domestic level. Uganda is also obliged to report periodically to the treaty monitoring bodies on the status of implementation of its obligations.

Uganda has reported to some of the treaty monitoring bodies, although not on a regular basis and not under all conventions and protocols it has ratified.⁷ The prior inexistence and presently limited functioning of the inter-ministerial committee on human rights under the Ministry of Foreign Affairs has hampered the Government's regular engagement with international mechanisms, especially the timely reporting to treaty bodies, the implementation and follow-up of recommendations and the consistent domestication⁸ of treaty obligations. Uganda has received five official visits of Special Rapporteurs.⁹ The last visit of a Special Procedures mandate holder to Uganda was in 2007 conducted by the Special Rapporteur on the right to the highest attainable standard of physical and mental health. To date, the response of the Government to two visit requests¹⁰ is still pending. OHCHR recommends to the Government to respond to pending requests for country visit and to invite other pertinent Special Procedure mandate holders.

In October 2011, Uganda participated in the Universal Periodic Review of the United Nations Human Rights Council. The Government submitted its report to the Human Rights Council along with 27 other stakeholder submissions representing the views of over 100 civil society organizations highlighting the human rights situation in the country. The Council made a total of 171 recommendations, of which Uganda fully accepted 129, partially accepted 6 and rejected 46. The Government pledged among others; to establish a Cabinet subcommittee to provide policy oversight and guidance on human rights issues, an inter-ministerial technical committee to provide support to the Cabinet subcommittee and human rights desks in key ministries. This would help to tackle the challenges of institutionalising the integration of a human rights perspective into national policies and programmes and mainstream human rights issues in all aspects of governance.

2.2. Overview of the national legal framework related to human rights

Chapter IV of the Constitution of Uganda provides a strong framework for the protection of human rights, with more emphasis on civil and political rights than economic, social and cultural rights. It also provides avenues for redress in case of violations of those rights, which can be obtained through the Courts of law, the Uganda Human Rights Commission or the Equal Opportunities Commission.¹¹

⁴ Uganda entered two specific reservations on Article 5 of Optional Protocol 1 of the ICCPR and Article 18 on the International Convention on the Protection of the Rights of All Migrant Workers.

⁵ Treaties to which Uganda is not a party: Optional Protocol to the ICESCR, Optional Protocol 2 to the ICCPR, Optional Protocol to the CEDAW, Optional Protocol CAT and CED (signature only, 2007).

⁶ Uganda ratified the Maputo Protocol with reservation on two provisions under Article 14 on Health and Reproductive Rights – women's right to control their fertility and authorization of abortion in specific circumstances.

⁷ As of September 2013, Uganda had seven reports that were overdue, including on CERD, ICCPR, CAT, CRC, CMW (initial), CRC OP (armed conflict), CRC OP (sexual exploitation).

⁸ The domestication of the Convention on the Rights of Persons with Disabilities still requires an amendment to the Persons with Disability Act 2006 and the enactment of mental health legislation is still under design in the Ministry of Health.

⁹ These include; SR on Right to Education (1999); Independent Expert on Structural adjustment (2003); Representative of the Secretary General (RSG) on IDPs (2003); SR on right to health (2005, 2007). In 2009, the RSG on IDPs also made a follow-up visit to Uganda although no report was issued.

¹⁰ Visit request by the Special Rapporteur on the rights to freedom of peaceful assembly and of association on 6 September 2011 and sent a reminder on 30 October 2013 and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on 23 May 2011.

¹¹ Article 50 of the Constitution provides for access to the courts by those persons whose rights and freedoms have been infringed. The Uganda Human Rights Commission also has quasi-judicial powers to provide legal remedy in cases where there has been infringement of human rights, Article 53 (2) (c). Article 32 of the Constitution establishes the Equal Opportunities Commission to address issues of discrimination for marginalised groups.

Several laws have been enacted in compliance with the relevant provisions of international human rights treaties, for instance, the Access to Information Act, 2005; the Domestic Violence Act, 2010; the Female Genital Mutilation Act, 2010; the Prevention of Trafficking in Persons Act, 2009; the Whistleblower Protection Act, 2010, the Prevention and Prohibition of Torture Act, 2012 and the Children's Act, Cap 59. With respect to the latter, amendments are underway to comply with the Committee on the Rights of the Child (CRC) recommendations and general comments, but still pending to be brought before Cabinet for approval by the Ministry of Gender, Labour and Social Development.

Important to note is that the Standing Human Rights Committee of Parliament on 10 September 2013 launched a human rights checklist for drafting legislation to further ensure compliance with international and regional human rights standards. The adherence to this checklist will set a good practice in upholding fundamental rights and freedoms in legislation. It is noted that some national laws do not conform to applicable international human rights standards, such as the Act on Persons with Disability, 2006, that has to be amended to be fully compliant with the standards set out by the Convention on the Rights of Persons with Disabilities with regard to non-discrimination.¹² Besides, persons with mental disabilities are referred to in derogatory terms under the Mental Treatment Act, Cap 1 (Section 1), the Trial on Indictment Act (Sections 45 and 48) and Section 130, Penal Code Act reinforcing social prejudice against mentally ill persons, depriving them of their dignity and liberty as well as legal capacity as opposed to a human rights compliant perspective. The corresponding draft amendment bills are yet to be brought to Parliament and should be expedited.

In relation to security, the Human Rights Committee concluded that the provisions of section 10 and 11 of the Anti-Terrorism Act, 2002 have to be brought in conformity with the Covenant.¹³ This law also permits the exercise of discretionary powers that should be complemented with adequate safeguards, such as judicial review for the purpose of ensuring that discretionary powers are not exercised arbitrarily or unreasonably. In addition, legal remedy and redress must be upheld for victims of human rights violations.¹⁴

2.3. Development of the institutional framework for the protection of human rights

A number of national human rights mechanisms have been strengthened or established during the reporting period. The Standing Human Rights Committee of Parliament was created on 21 May 2012 with the mandate to ensure compliance of human rights standards in all business of Parliament. The Uganda Police Force established the Directorate of Human Rights and Legal Services in August 2013 to ensure human rights and the rule of law compliance in police operations and to coordinate human rights matters in the institution as well as to reinforce accountability measures. The Uganda Peoples' Defence Forces (UPDF) strengthened its Directorate for Human Rights (created in 2007) and in 2012, established human rights desks in the Chieftaincy of Military Intelligence and in the Air Force. Similarly, the Uganda Prison Service has established functional human rights committees in 95 per cent of prison units as well as created human rights desks at all levels of prison administration.¹⁵ Overall, these measures create a favourable institutional environment to promote and protect human rights more effectively. During the reporting period, OHCHR in coordination with the Uganda Human Rights Commission provided technical assistance and training to most of these entities and will continue doing so.

¹² OHCHR drafted a comprehensive analysis to this aim which was shared with the Equal Opportunity Commission, the National Council for Disability, Uganda Human Rights Commission and civil society partners.

¹³ HRC Concluding observation, CCPR/CO/80/UGA, 4 may 2004, p.2

¹⁴ E.g. Provisions relating to terrorist investigations (Section 17 and third schedule; interception of communication and surveillance (Part VII) and use of force permitted under Section 30).

¹⁵ See JLOS Annual Performance Report 2012/13.

3. HUMAN RIGHTS ISSUES TO BE ADDRESSED

As part of its mandate, OHCHR observes the human rights situation in the country receiving human rights complaints and identifying trends of violations. This chapter summarises OHCHR's main findings and observations from its monitoring work as well as its engagement with the Government on specific issues. It reports on progress made in addressing the human rights situation in the country, as well as ongoing human rights concerns which need to be addressed.

OHCHR receives complaints from any person and also follows cases that are reported by the media or any other public source. The complaints accepted by OHCHR are verified by interviewing victims, witnesses or alleged perpetrators, as well as visiting the sites where possible. When the facts are ascertained, OHCHR brings these cases, or the identified trends, to the attention of the relevant authorities and encourages them to carry out investigations and take appropriate measures. OHCHR further follows-up with the authorities to understand the actions taken. OHCHR collaborates with the relevant institutions to assess existing needs and where required, provides training or technical assistance to prevent further human rights violations and to strengthen the institutional settings to deal with such incidents as they emerge.

During 2012, OHCHR in Uganda received 438 complaints of alleged human rights violations, out of them 361 were accepted to be monitored. In total, 275 (76.20 per cent) complaints and identified trends were raised to the respective authorities to investigate and adopt other appropriate measures. Of these, the Government agreed to take corrective measures in 117 complaints (42.54 per cent). In the context of its monitoring activities, OHCHR conducted 501 meetings and field missions to verify the facts, obtain additional information or raise the complaints and recommend actions to the relevant authorities.

During 2013, OHCHR in Uganda received 471 complaints of alleged human rights violations and accepted 291 (61.78 per cent) to be monitored. Out of them, 218 complaints and related trends were raised to the respective authorities. Of these, the Government agreed to address 64 complaints, which represents 29.36 per cent. In the context of its monitoring activities, OHCHR conducted 323 meetings and field missions to verify the facts, obtain additional information or raise the complaints and recommend actions to the relevant authorities.

UPDF and UPF are the institutions OHCHR received most complaints against. (For details see the Annex to this report).

3.1 Death penalty

The death penalty is still in force in Uganda under Article 22 of the Constitution.¹⁶ Nevertheless, a de facto moratorium is in place given that there have not been any executions since 1999.¹⁷ In addition, the death penalty cannot be pronounced for pregnant women, the mentally-ill and persons who, at the time of committing the offence, were below the age of eighteen.¹⁸

Under international law, the death penalty should only be applied for the most serious crimes and upon application of the most rigorous judicial process. In Uganda the death penalty still applies to 28 offences, including a broad range of crimes which may not meet the threshold of "most serious crimes" as defined in international human rights jurisprudence.¹⁹ According to the latter, "most serious crimes" is limited to crimes involving lethal intent and resulting in death or, in other words, intentional killing.²⁰

¹⁶ Article 22 of the Constitution of Uganda states: "No person shall be deprived of life intentionally except in execution of a sentence passed in a fair trial by a court of competent jurisdiction in respect of a criminal offence under the laws of Uganda and the conviction and sentence have been confirmed by the highest appellate court". The death penalty is prescribed under the Penal Code Act, Cap 120; the Anti-Terrorism Act, No. 14 of 2002; the Uganda Peoples Defence Forces Act, 2005 and the Trial on Indictment Act, Cap 23.

¹⁷ Director of Public Prosecutions, Letter to OHCHR dated 12 January 2011 and also given as information by Uganda Prisons Service.

¹⁸ Sections 103 and 105, Trial on Indictment Act, Cap 23, and Sections 11 and 194 of Penal Code Act in relation to the mentally-ill

¹⁹ For instance, offences such as; detention with sexual intent, smuggling while armed and kidnapping or detaining with intent to murder under the Penal Code Act; aiding and abetting or establishment of terrorist organizations under the Anti-Terrorism Act as well as numerous others under the UPDF Act don't meet the serious offence threshold to warrant application of the death penalty.

²⁰ A/HRC/4/20, paragraphs. 54-62 and 66

In 2004, the United Nations Human Rights Committee recommended, inter alia, that Uganda limit the number of offences for which the death penalty is provided and ensure that it is not imposed except for the most serious crimes.²¹ The Committee also recommended that Uganda “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.”²² Although concerns remain, there have been some notable positive developments.

In 2009, the Supreme Court of Uganda ruled that the mandatory death sentence is unconstitutional.²³ The Court’s ruling on the mandatory death sentences restored the sentencing discretion of judges, and therefore reduced the possibilities of imposing the death sentence.²⁴ It further held that, in cases where no decision has been made by the Executive after three years, the death sentence shall be deemed commuted to imprisonment for life without remission.²⁵

Moreover, in April 2013, the “Sentencing Guidelines for Courts of Judicature” were issued with the aim of strengthening “humane, predictable and consistent sentencing.”²⁶ The Guidelines recommend that the death sentence be imposed only in exceptional circumstances. This is a commendable effort that is in line with the aforementioned recommendation.

Furthermore, in 2013 the Law Revision (Penalties in Criminal Matters) Miscellaneous Amendment Bill, 2013 was drafted to repeal provisions of mandatory death penalty under the Penal Code Act, the Anti-Terrorism Act and the UPDF Act. These amendments should be expedited to fully comply with the Supreme Court ruling and the recommendations of the United Nations Human Rights Committee.

OHCHR also calls attention to the fact that the majority of convicts given mandatory death sentences are still waiting for mitigation hearings.²⁷ According to information gathered from the Uganda Prisons Service and the Judiciary²⁸, five inmates on death row were immediately released after the 2009 Supreme Court ruling. The High Court mitigated the death sentence for 40 convicts. The sentences of 165 convicts were commuted to life imprisonment without remission. Approximately 278 convicts are still waiting for their mitigation hearings because of lost files, appeals without judgement on notice or other delays and constraints. This is a situation that should be addressed urgently through measures such as reinforcement of legal aid dedicated to those cases under mitigation, systematic screening of the cases, and a coherent strategy for addressing the outcome of the mitigation hearings.

Finally, although a de facto moratorium is in place OHCHR recommends the Government issues an official moratorium.²⁹

²¹ CCPR/CO/80/UGA, 4 May 2004, p.3 paragraph 13

²² Ibid

²³ A.G V. Susan Kigula & 417 Others (Constitutional Appeal No. 03 of 2006), Supreme Court judgment issued on 21 January 2009 Also see Susan Kigula and 3 Others vs. Attorney General - Constitutional Court Const. Petition No. 6 of 2003, judgment delivered on 10 June 2005.

²⁴ Refer to speech by Hon. Justice David Wangutusi, High Court Judge, at the Foundation for Human Rights Initiative Roundtable meeting on Penal Reform with Parliament held in Kampala on 26 March 2013

²⁵ Supreme Court in A.G vs. Susan Kigula & 417 Others, Constitutional Appeal No. 03 Of 2006, majority decision of Hon. Justice Benjamin Odoki, T.W.N. Tsekooko, J.N. Mulenga, G.W. Kanyehamba, Bart M. Katurebe and C. Kitumba

²⁶ The Guidelines were launched on 11 June and are now fully operational.

²⁷ At the time of reviewing this report 150 cases started to be handled with financial support from OHCHR

²⁸ Presentations by the Uganda Prisons Service and by Hon. Justice David Wangutusi, High Court Judge, at the Foundation for Human Rights Initiative Roundtable meeting on Penal Reform with Parliament, 26 March 2013.

²⁹ Today more than 150 of 193 States have either abolished the death penalty or do not practise it. The United Nations General Assembly adopted several resolutions (67/176 in 2012, 65/206 in 2010, 63/138 in 2008, and 62/149 in 2007), which, inter alia, call upon States to establish a moratorium on the use of the death penalty with a view to abolishing it. In addition, Resolution 42 adopted by the African Commission on Human and Peoples’ Rights in Rwanda in 1999 urged States to envisage a moratorium on the death penalty and Resolution 136 adopted in Nigeria in 2008 calling on state parties to observe the moratorium on the death penalty.

3.2 Freedom from torture, cruel, inhuman and degrading treatment and punishment

Articles 24 and 44(a) of the Constitution of Uganda, 1995 and the Convention against Torture, inhuman and degrading treatment and punishment³⁰ prohibit acts of torture under any circumstance. In 2005, the United Nations Committee against Torture issued its concluding observations following consideration of the initial periodic report submitted by Uganda.³¹ In these observations, the Committee, *inter alia*, recommended that the Government of Uganda (a) adopt a definition of torture that covers all the elements contained in article 1 of the Convention, and amend domestic penal law accordingly; (b) adopt domestic legislation to implement the principle of non-refoulement in article 3 of the Convention; and (c) ensure that acts of torture become subject to universal jurisdiction in Ugandan law in accordance with article 5 of the Convention.

The legal framework to domesticate the Convention was adopted in 2012 with the enactment of the Prevention and Prohibition of Torture Act.³² This law provides for individual criminal responsibility as well as protection and compensation for victims of torture. It complies fully with the CAT Committee's observations. In addition, OHCHR urges the Government to build an effective system for preventing all forms of torture and ill-treatment. Law enforcement officers and the military should be instructed and systematically trained on lawful methods of interrogation and treatment of persons deprived of their personal liberty in a human rights sensitive manner. Besides, effective oversight mechanisms should be strengthened. Furthermore, redress for victims of torture has so far only been possible through UHRC tribunal decisions and psycho-social support provided by civil society initiatives, such as the African Centre for the Treatment of Torture Victims (ACTV). These aspects are reflected in the road map for the implementation of the Act. This roadmap is coordinated by UHRC and necessitates Government commitment in allocating adequate resources.

The implementation of the Act and other relevant national laws for the prevention and prohibition of torture is the main challenge. The Government of Uganda has recognized that the implementation gaps need to be addressed by the relevant institutions and has given its commitment to do so. The UHRC affirmed in its 15th Annual Report to Parliament³³ that torture, cruel, inhuman or degrading treatment or punishment, with 303 cases registered, still leads its statistics on human rights violations investigated by the Commission. For its part, in 2012, OHCHR received 178 complaints involving the violation of physical integrity of detainees, primarily by members of the UPDF, and to a lesser extent by the Uganda Police Force (UPF) and the Uganda Prison Service (UPS). In 2013, OHCHR received 64 allegations involving the violation of physical integrity; out of them, 34 (53.12 per cent) were related to UPDF and UPF operations in the context of the law enforcement and disarmament process in Karamoja. OHCHR shared its findings on these cases with the relevant UPDF, UPF and UPS authorities at local and national levels.

To fully implement the Prevention and Prohibition of Torture Act, OHCHR calls in particular on the justice sector and the respective institutional accountability mechanisms in UPF, UPDF and UPS to ensure effective measures to investigate, prosecute and punish acts of torture. The prohibition of torture, in connection with effective criminal investigations, must be included in all internal guidelines and training curricula of security institutions. In this regard, the Uganda Police Force is in the process of developing internal "Guidelines for the Prevention and Management of Torture in the UPF", to which OHCHR has provided comments. The UPDF Chieftaincy of Military Intelligence has also embraced such an initiative and is encouraged to implement it urgently.

The Uganda Prison Service shared with OHCHR its data on internal investigations of cases of torture and ill-treatment for the reporting period and informed about 6 cases of assault punished with fines and suspensions by departmental disciplinary mechanisms. OHCHR in this regard indicates that

³⁰ The Convention was ratified in 1986 by the Government of Uganda.

³¹ CAT/C/CR/34/UGA

³² The Prevention and Prohibition of Torture Bill - a Private Member's Bill - was approved on 25 April 2012 in Parliament and signed into law by the President of Uganda on 27 July 2012. The Act came into force on 18th September 2012.

³³ 15th Annual Report of the Uganda Human Rights Commission to the Parliament of Uganda on 2012, launched on 3 April 2013.

administrative and/or civil liability alone is not sufficient for deliberate acts of torture, inhumane or degrading treatment or punishment. In line with the Prevention and Prohibition of Torture Act criminal liability should be enforced. OHCHR received complaints of torture and/or ill-treatment in Abim, Amita prison, Oyam Central prison, Dokolo prison, Namalu and Soroti government prisons. The complaints were brought to the attention of the prison authorities, who, in most cases, conducted investigations into the allegations. Abuses were allegedly committed in some cases by prison guards but more often by “katikiros”.³⁴ The use of katikiros creates the potential of contravening Section 97 of the Prison Act which outlaws the use of prisoners to punish fellow prisoners. OHCHR recommends progressively abolishing the existing arrangement of “katikiros” and restricting disciplinary functions only to official prison authorities as outlined by the Prison Act, Section 63. This calls for enhancing the capacity of prison officers to handle the increasing number of inmates.

3.3. Arbitrary arrests and detention by security forces

3.3.1. Incommunicado detention

In the reporting period, OHCHR documented 81 complaints from people who reported they had been arbitrarily detained and held incommunicado³⁵ by the Joint Anti-Terrorism Task Force (JATT) or the Chieftaincy of Military Intelligence (CMI). OHCHR received complaints on incommunicado detention related to suspects of treason or terrorism. In terms of detention practices, the Constitution, under Article 23 (2) provides that a person arrested, restricted or detained shall be kept in a place authorised by law. This is reinforced in the Prevention and Prohibition of Torture Act, Section 16 (1) (b) which prohibits the detention of a prisoner or detainee to a non-gazetted place of detention where there are grounds to believe that such prisoner or detainee is likely to be tortured.

OHCHR notes that CMI and JATT facilities are not gazetted as authorized places for the detention of civilians. OHCHR interviewed detainees who were allegedly kept at such facilities and reported being subjected to various forms of torture and ill-treatment while in detention. Visible signs of injuries on the detainees were observed by OHCHR in several cases. The methods allegedly used included severe beating, burning with cigarette butts, cold water poured on their bodies, or pepper rubbed into their eyes and mouths. Others alleged they had received death threats and threats of a sexual nature while in custody. Acknowledging that States have a duty to address serious and genuine security concerns, such as terrorism, a fair balance between legitimate national security concerns and the protection of rights and fundamental freedoms has to be observed. In this sense, Section 21 (e) of the Anti-Terrorism Act, 2002 punishes any authorised security officer who engages in torture, inhuman and degrading treatment and illegal detention. Avenues that pose likelihood for such conduct to occur should be strictly prevented and regularly reviewed and inspected.

Between February and April 2012, OHCHR received complaints regarding 53 persons who were detained by security forces without notifying their relatives about their whereabouts. The OHCHR followed up on the matter and established that the persons were detained at the Special Investigations Unit of the Police in Kireka. OHCHR gained access to the detainees and conducted individual interviews on several occasions. Detainees informed OHCHR that they had been detained at CMI Headquarters between 3 to 25 days and thereafter transferred to police stations and finally to the Special Investigation

³⁴ Prisoners’ representatives or prefects; The Commissioner General of the UPS explained in this regard: “The Katikiro system is a means of maintaining order within the Prisons Wards, especially after lock up when the Prison guards have no access. The Katikiros enforce rules with the wards in respect of cleanliness, sanitation and general good conduct of inmates. During the day, when inmates are out of wards, the Katikiros are part of the Prison Administration as the numbers of staff are extremely low. We currently have a staff: inmates’ ratio of 1:7 against a desirable standard of 1:3.”

³⁵ The Committee against Torture considers that incommunicado or secret detention facilitates torture and ill-treatment and may in itself constitute such treatment, Human Rights Council Report, Joint Study on Global Practices in relation to Secret Detention, A/HRC/13/42, 2010. Secret detention at the same time might amount to enforced disappearance. Every instance of secret detention is by definition incommunicado detention. Incommunicado or secret detention qualifies as torture and can even amount to enforced disappearance (Ibid; A/HRC/13/42, 2010), pp. 2-3.

Unit (SIU). Subsequently, they were charged with treason and concealment of treason³⁶ and remanded to Luzira Prison. OHCHR together with Uganda Human Rights Commission Central Region Office made efforts to verify the sequence of the detention of these persons in several police stations in Kampala Metropolitan Area.

In April 2012, OHCHR formally raised the concern about incommunicado detention and torture to the then newly appointed Director of the CMI for his attention.³⁷ The Director informed OHCHR that in the effort to prevent human rights violations a Human Rights Desk had been created within the CMI in April 2012 with the aim of complying with national legal requirements and human rights norms. OHCHR was invited by CMI to assist with training and technical advice. In December 2012, OHCHR and the UHRC trained 35 senior officers of the CMI on human rights norms and standards relating to detention, prohibition of torture, fair trial and due process guarantees. OHCHR's assistance in organising specialized training and the development of internal guidelines on specific human rights issues related to CMI functions is still ongoing.

Investigations into incommunicado detention remain a challenge. By the time these cases are brought to the attention of a human rights entity, the victims are often either already in police detention or on remand in prison, and normally no records are made available on the detention period before transfer to the police. In the above reported cases none of the detainees had been brought before a court within the constitutional period of 48 hours, nor had they been provided access to a lawyer or given the authorisation and support to inform their family. The absence of judicial control and oversight of such detention violates their personal security, fair trial and due process rights, and exposes detainees to a high risk of being tortured or ill-treated.

As such, it is critical that external and internal control mechanisms and safeguards are operational to detect these cases immediately upon arrest. Adequate measures should also be provided within the criminal justice system to discourage the use of incommunicado detention.

3.3.2. Detention beyond the constitutional period in police custody

By regularly visiting police holding cells in northern Uganda, Karamoja and Kampala, OHCHR observed that a large number of individuals are held in police custody beyond 48 hours, without being formally charged and brought before a court, in violation of Article 23 of the 1995 Constitution of Uganda.³⁸

The frequent long detention periods create severe congestion in police cells, and in particular compromise minimum conditions of hygiene and sanitation, as well as access to food and water. OHCHR also found in some cases children and adults in the same cells OHCHR raised these concerns with the respective District and Regional Police Commanders and made concrete proposals for corrective actions according to the identified events. OHCHR was informed by the UPF Directorate of Human Rights and Legal Service that efforts are undertaken to overcome such cases by introducing model police stations with specific cells for juveniles.³⁹

According to information gathered by OHCHR, prolonged detention beyond the 48-hour period is often also caused by internal challenges faced by the UPF such as the lack of proper initial investigations and insufficient human, technical and logistical resources. According to the Uganda

³⁶ Sections 23 and 25 of the Penal Code Act, respectively.

³⁷ OHCHR addressed formal letters to CMI and Chief of Defence Forces (CDF) on incommunicado detention dated 11 November 2011 on previous cases and on 9 April 2012 about the reported situation.

³⁸ Article 23 of the Constitution of Uganda 1995, which requires that any arrested person: "shall, if not earlier released, be brought to court as soon as possible but in any case not later than forty-eight hours from the time of his or her arrest."

³⁹ The Uganda Police acquired various office buildings with reception centers that have provisions for juvenile cells and uniports for counselling children in 37 police facilities. There are different categories of children who are received in these centres and they include children who are in conflict with the law (those who commit offences) and those that are in contact with the law (witnesses, victims, complainants, missing, abandoned and those who are in need of care and protection).

Police Force, in spite of these challenges, the adherence to the 48 hour rule has improved by 85 per cent with regard to petty cases.

Article 9 of the ICCPR requires that “anyone arrested or detained on criminal charges shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release”, and to follow legal procedures and requirements for the deprivation of a person’s liberty. In order to decrease the number of arbitrary arrests, OHCHR highlights the importance of conducting thorough investigations before suspects are arrested, and welcomes the instructions that UPF has issued to the Police Unit Commanders to avoid detaining suspects beyond the 48-hour period. However, additional measures are necessary to reverse the current practice. For instance, adequate control mechanisms and methods of case tracking to detect arrests beyond the 48 rule should be created, as well as enforcing the existing ones.

3.4 Human rights concerns related to the right to due process and fair trial

This section highlights a range of human rights concerns which are a direct consequence of the lack of access to justice and of respect for due process guarantees. OHCHR monitored numerous cases in northern Uganda and Karamoja related to systemic challenges in relation to the right to a fair trial and due process over the period. Scarce and inadequate deployment and capacity of the justice institutions, particularly in rural areas, are of concern. The Local Council Courts (LCCs) system suffers from major constraints and cannot effectively address the justice needs of the rural population. The section also covers issues of due process guarantees for civilians tried by military Court Martial.

3.4.1. Delays in legal proceedings resulting in prolonged pre-trial detention

Presently, there is a high number of prolonged pre-trial detentions and case backlog that contributes to prison overcrowding especially in urban centres. Statistics provided by the Uganda Prisons Service indicate that as of August 2013, the prison population was 38, 177 while the approved accommodation capacity at 3.6sq.metres per prisoner was 14,908. This translates to an excess population above capacity of 23,269. To address the problem of overcrowding in prisons concerted efforts to expand the prison capacity are still ongoing through the construction of new prisons and renovation of old prisons since 2006/7. The JLOS Strategic Investment Plan III foresees 30 per cent increase in holding capacity of prisons by 2016/17 to address this problem.⁴⁰ Nevertheless, OHCHR believes that there is a need to take innovative measures to address the persistent challenge in face of the growing prison population.

Notably, the number of remand prisoners remains comparatively higher than the number of convicts. According to JLOS, in 2012/13, the average remand to convict ratio stood at 54 per cent remands to 45 per cent convicts with 0.5 per cent being civil debtors.⁴¹ Detention practices should be in line with due process standards, and deprivation of personal liberty should be opted for in exceptional circumstances, and only when sufficient investigations have been carried out and other options are not available. A step in this direction is the community service programme coordinated by the Ministry of Internal Affairs that increasingly shifts from custodial punishment to community service in petty cases.

The systemic shortcomings in the justice system also include considerable delays in investigations and prosecution, irregular court sittings of magistrate’s courts, and resource challenges in the prison system including to transport prisoners to court. The Judiciary is revamping the Data Centre to ensure that courts have accurate information on all cases, targeting in particular cases which are pending for more than two years.

⁴⁰ According to JLOS Strategic Investment Plan 2012/13-2016/17, by the end of SIP III, JLOS foresees increase in holding capacity will construct, equip and ensure functionality of 30 new Courts/ 20 new DPP offices/ 45 new Police stations and 8 new prisons.

⁴¹ See, JLOS Annual Performance Report 2012/13. In 2004, the HR Committee recommended to the State of Uganda to abolish imprisonment for debt. CCPR/CO/80/UGA (HRC, 2004). This could limit the number of detainees if alternative, non-custodial measures are taken.

The severe backlog in the court system results in infringements of the due process and fair trial guarantees of the accused and contributes to prolonged pre-trial detention. To tackle this, the Government initiated in 2011 the “Quick Wins Programme”⁴² which recorded significant results in the reduction of case backlogs, especially in criminal matters. Initial reported results are that the overall disposal rate of cases improved from 38.9 per cent in 2009/10 to 44.7 per cent in 2010/11.⁴³ JLOS figures also showed that the time prisoners spent on remand was reduced to 15 months on average in 2010/2011, down from 27 months in 2009/10. In 2012/13, there was an estimated 11.4 months average stay on remand for capital offenders and a reduction from 4.4 months to 3 months for petty offenders.⁴⁴ This is an important improvement and should be sustained by further efforts. In this regard OHCHR commends the efforts of the Judiciary to establish the Judiciary Case Backlog Committee to address this challenge as well as alternative dispute resolution measures that have been instituted.

Nevertheless, the inadequate numbers of judges allocated to the various courts⁴⁵, along with insufficient infrastructure and resources not only hamper access to justice, but also undermine the capacity to handle the growing caseloads. Therefore, the pending proposal by the Legal and Parliamentary Affairs Committee to increase the number of judges at the High Court to 82 is critical. The appointment of additional 26 judges in 2013 is a commendable effort in line with the Judicature (Amendment) Act, 2011 but is still below the required threshold.⁴⁶

The Directorate of Public Prosecution has also improved coverage to over 90 districts with 98 stations outside Kampala.⁴⁷ This positive trend should be continued and resources should be made available to ensure the deployment of prosecutors especially in remote areas. Similar attention should be given by the Judiciary to the deployment of magistrates.

In line with Article 23 (6) of the Constitution prisoners on remand are entitled to be released in line with their constitutional due process guarantees after 180 days for those charged with capital offences, and after 60 days for minor offences. However, OHCHR has monitored cases where prisoners have been in remand detention up to nine months or even longer while awaiting trial in Magistrates Courts. In other cases, prisoners charged with capital offences have spent up to two or three years awaiting trial by the High Court.⁴⁸

To address these challenges, OHCHR urges to make available more resources and improve methods of criminal investigations, as well as granting bail in accordance with the law, hold more frequent High Court sessions and consistent judicial monitoring of suspects who overstay the constitutional remand periods in detention facilities.

3.4.2. Lack of access to legal counsel

Lack of access to legal representation is another contributing factor to the high number of detainees on remand. In Uganda, it is mostly non-governmental entities providing paralegal advisory services under the legal aid basket support programme such as Legal Aid Service Providers’ Network (LASPNET).⁴⁹

⁴² The Quick Wins program was launched by JLOS in March 2010 for a period of nine months to reduce the excessive case backlog in the justice sector including at the Human Rights Commission. The programme, with the help of additional resources, sought to expedite cases that were pending for over 2 years to enhance delivery of justice services to the Ugandan population.

⁴³ See JLOS Annual Performance Reports, 2010/11; 2011/12.

⁴⁴ JLOS Semi-Annual Performance Report, 2012/13, (draft/5), pp.19-20;

⁴⁵ The Judicature (Amendment) Act, 2011 increased the number of judges prescribed for the Supreme Court and Court of Appeal from 7 to 11 and 8 to 15 judges respectively.

⁴⁶ According to the Principal Judge Hon. Justice Yorokamu Bamwine considering the rate at which cases are filed, the number of judges at the High Court should be between 130 and 150 judges. Currently, the High Court has 54 Hon. Judges. In 2013, 26 judges were appointed including: two judges to the Supreme Court, seven Court of Appeal judges and 17 High Court Judges. See, <http://jlos.go.ug/index.php/component/k2/item/314-new-judges-sworn-in>

⁴⁷ According to the Director of Public Prosecutions, interview reported in the Sunday Monitor, 20 January 2013.

⁴⁸ The inordinate delay to bring the accused person to justice can render the prosecution a nullity and the affected persons must be released. *Ug Vs. Robert Sekabira and 10 others (H/CT Crime Session 0085/2010)*, *Dr. Kiiza Besigye&Ors Vs. AG (Constitutional Petition No. 07/2007)* 14 May 2012, Court’s ruling *Dr. Kiiza Besigye&Ors Vs. AG (Constitutional Petition No. 07/2070)*.

⁴⁹ LASPNET is an umbrella organization of different legal aid service providers coordinated by the Law Development Centre and include:

State-provided legal aid is directed to indigent persons accused in capital cases in accordance with Article 28 of the Constitution.⁵⁰ The State Brief Scheme, administered by the Judiciary, provides funds to lawyers to represent accused persons in capital cases who cannot afford to engage lawyers on their own. However, the challenges of poor facilitation have meant that there is low incentive for experienced lawyers to subscribe to the scheme, which tends to undermine the quality of legal representation.⁵¹ The restriction of legal aid to capital offenders falls below international standards as established in article 14 of the ICCPR.⁵² In a country like Uganda, with high poverty and illiteracy rates, the lack of legal aid is bound to affect a large majority of suspects on remand.

The Poor Persons Defence Act Cap 20 provides that a detainee with insufficient means is entitled to have an advocate assigned to him or her at the expense of the State.⁵³ However, the majority of suspects in detention or imprisoned falling under this category are not usually assigned an advocate at the expense of the State. As an important development, in 2009, the Government established Justice Centres which offer legal aid to indigent defendants regardless of the nature of the offence committed. With support from development partners, four Justice Centres were established, in Kampala, Lira, Tororo and Hoima districts, to pilot state-provided legal aid for three years which ended in June 2013 and have subsequently been extended for another three years with new stations in Jinja, Masaka and Fort Portal.⁵⁴ The Justice Centres are largely donor-funded and have contributed to prison decongestion in their areas of impact through their outreach services.⁵⁵ It is therefore important that the Government progressively increases its support to these centres and extends them to other regions.

A draft national legal aid policy, as well as a corresponding law, has been prepared by the Justice Law and Order Sector to facilitate the establishment of an independent legal aid body and a legal aid fund. According to Government, the Legal Aid Bill is before Cabinet and will be presented to Parliament soon. OHCHR welcomes these developments and hopes that the policy will be tabled before Cabinet for approval without delay.

3.4.3. Administration of justice by Local Council Courts

The Local Council Courts Act of 2006 provides for the establishment of the courts and procedures for the dispensation of justice at the lower local government levels in Uganda. Local Council Courts were established to provide the first tier of access to justice within the country's smallest administrative units (villages, parishes, and sub-counties). Consequently, these are courts of first instance and, for most Ugandans in rural areas LC courts are the main entry to the justice system established by law although not under the judiciary. The Local Council Courts have the authority to settle minor civil disputes, land matters under customary tenure, debt cases, and criminal cases involving children.⁵⁶

The Local Council Court system suffers, however, from financial and logistical constraints. It often relies on the court fees charged to users to operate. OHCHR also observed LCCs that do not have access to relevant legislation pertaining to their mandate, and court officials who do not have any formal legal training.⁵⁷

the Uganda Law Society, Avocats Sans Frontiers, the Foundation for Human Rights Initiative among others. They give free legal representation to the poor especially in rural areas.

⁵⁰ Under Article 28 of the Constitution, any person charged with a criminal offence that carries a death sentence or imprisonment for life is entitled to legal representation at the expense of the State. See Preamble of the Draft Legal Aid Policy, 2011.

⁵¹ According to information gathered from Justice Canters, approximately 850m Ugandan Shillings is allocated for state briefs annually.

⁵² Art. 14. 3 (d) of the ICCPR establishes that, in the determination of any criminal charge against an individual, everyone should be entitled to have legal assistance, in any case where the interests of justice so require, and without payment by the individual in any such case if s/he does not have sufficient means to pay for it. This provision provides for legal aid for all persons in need of it and not just capital offences as the case in the Constitution of Uganda. See also United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, A/RES/67/187.

⁵³ Section 2, Poor Persons Defence Act, 1998, Cap 20.

⁵⁴ In July 2013, the Centres received funding from Democratic Governance Facility and JLOS to operate for another three years.

⁵⁵ According to the National Coordinator of the Justice Centres, over 4,700 suspects have been released through their prison decongestion programme implemented with other justice stakeholders such as the Community Service Programme in the Ministry of Internal Affairs, Uganda Prisons Service, Public Prosecutions Directorate and Judiciary. The bulk of cases handled by the Justice Centres are land related (44 per cent); family (30 per cent) and criminal (22 per cent). At least 2,600 clients have been assisted in court.

⁵⁶ Section 4 – Local Council Court Act, Section 10 (1), Section 3.

⁵⁷ According to JLOS, the delay in conducting elections for LC1 and LC2 executives has affected capacity-building efforts for court

Although Magistrate Courts are expected to play an oversight function in relation to the LCC system⁵⁸, they have not been able to do so consistently due to resource constraints. OHCHR observed that, based on incorrect interpretation and application of the law, specific LCCs have delivered judgments on matters beyond their jurisdiction such as sexual offences and land disputes.⁵⁹ As a result, there are procedural and substantive shortcomings within their operations that contribute to structural and systemic gaps in the delivery of justice at the local level. This has served to both weaken the integrity of decisions taken by the LCCs as well as public confidence in the system. The strengthening of the oversight function of the magistrates in relation to the LCC system would greatly improve the situation.

In addition, the legitimacy of LCC I and II has been challenged. In 2006, the Constitutional Court declared unconstitutional the election of Local Council officials at the village and parish levels.⁶⁰ This ruling required new elections of these officials, which have been pending since then. This situation has diluted efforts towards institutional strengthening targeting LCCs and consequently, affected access to justice for rural communities.

3.4.4. Trial of civilians by Court Martial

The UN Human Rights Committee General Comment 13 (1984) on “equality before the courts and the right to a fair and public hearing by an independent court established by law” notes, *inter alia*, that “the trying of civilians by [military] courts should be very exceptional and take place under conditions which genuinely afford the full guarantees stipulated in article 14 of the International Covenant on Civil and Political Rights. The African Union Principles on the Right to a Fair Trial take an even stricter stance. They state clearly that military courts should not try civilians.⁶¹

While the trial of civilians is not strictly prohibited under the ICCPR, the Human Rights Committee notes that the existence, in many countries, of military or special courts which try civilians “could present serious problems as far as the fair, impartial and independent administration of justice is concerned”. As such, the Committee lays down conditions on due process and fair trial procedures which must be strictly followed in accordance with article 14 of the ICCPR. The UPDF Act extends jurisdiction to military courts to try civilians under certain circumstances.⁶²

The trial of civilians under Court Martial has been addressed in two cases and related appeals considered by the High Court, Constitutional and Supreme Courts which upheld that Section 119 (1) (h) of the UPDF Act permitted trial of civilians found in unlawful possession of arms as long as it is proved that such arms fall within the category of ‘ordinarily being the monopoly of defence forces’ in accordance with the Act.⁶³

During 2011/12, the UPDF administration started a consultative process in coordination with the Director of Public Prosecutions aiming to transfer cases involving civilians from military courts to ordinary courts for trial and attempts were underway to implement it before the Supreme Court ruling

officials and renders LC 3 ineffective in some cases. LC 1 and 2 court officials were not targeted in JLOS training during 2011. See JLOS Annual Performance Report 2010 – 2011, p.38.

⁵⁸ Section 40, Local Council Court Act, 2006

⁵⁹ In the *Mutunyi Margaret Wakyala & Ors V. Tito Wakyala and Ors*, [2011] UGHC 49, (16 August 2011) decision, the court ruled on the impropriety of LC 3 courts in handling land matters outside their jurisdiction by serving as a court of first instance contrary to the law.

⁶⁰ *Rubaramira Ruranga Vs. EC & AG* (Constitutional Petition No. 21 of 2006)

⁶¹ African Union’s Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 2001 – Principle L (c); see also Dakar Declaration and Recommendations on the Right to a Fair Trial (1999).

⁶² The UPDF Act 2005 stipulates that a Court Martial can try civilians as persons subject to military law, who “aid, abet or assist in any way a person subject to military law in the commission of a service offence,” and those in unlawful possession “of arms, ammunition or equipment, ordinarily being the monopoly of the Defence Forces. Section 119 (1) (g) and (h), UPDF Act, 2005; see also the Uganda Peoples’ Defence Forces (Application to Civilians) Regulations. In addition, Section 179 of the same Act further extends jurisdiction to military courts for offences under the Penal Code or any other law committed by persons subject to military law. The UPDF Act also defines a ‘service offence’ as an offence under the Act or any other law committed by a person while being subject to military law. Such persons may include civilians as has been affirmed by the Courts of law. Section 2, UPDF Act

⁶³ See *Uganda Law Society V. A.G.* - Constitutional Petition No. 18/2005 ruling delivered on 31 January 2006 and upheld by the Supreme Court on appeal in *A.G. V. Uganda Law Society* (Supreme Court Constitutional Appeal No. 1 of 2006) delivered on 2 January 2009. Also in *Hadijah Namugerwa Vs. DPP & AG* (Civil Appeal No. 4 of 2012).

of 2013, affirming a previous High Court Decision recognising that military courts have authority to try civilians found in unlawful possession of arms ‘ordinarily being the monopoly of the Defence Forces’, which is a matter of proof.⁶⁴ In July 2013, the UPDF administration has nonetheless assured OHCHR of its commitment to reduce trial of civilians to a bare minimum.⁶⁵

In 2012 OHCHR monitored 16 cases in Karamoja, where civilians appeared before the Military Court Martial on charges of illegal possession of firearms. In 2013, eight cases of civilians were brought before a Court Martial in Karamoja.⁶⁶ OHCHR observed violations of due process and fair trial standards in these proceedings and raised these concerns with UPDF. The civilian suspects were held in pre-trial detention for prolonged periods, in some cases for up to five years. This is partly due to the delays in constituting the Court Martial and also to difficulties in collecting evidence. Most suspects cannot afford private legal counsel and are obliged to use the legal counsel assigned by the Court Martial who in most of these cases are not readily available to provide timely assistance.

OHCHR encourages the UPDF administration to continue reducing the number of cases involving civilians tried under Court Martial and reinforce institutional capacity to adhere to the full guarantees of Article 14 of the CCPR as highlighted in the Human Rights Committee’s General Comment.

3.5. Rights to freedoms of expression, assembly and association

3.5.1. Challenges in upholding international standards in emerging public order management legislation

Article 29 of the Constitution of Uganda specifically lays out the legal standards for the protection of the rights to freedoms of expression, assembly and association, among others. The right to freedom of peaceful assembly is guaranteed in Article 21 of the Covenant on Civil and Political Rights, and the right to freedom of association in its Article 22. Both rights are also reflected in Article 8 of the International Covenant on Economic, Social and Cultural Rights and in other international and regional human rights treaties or instruments.⁶⁷

According to Article 43 of the Constitution of Uganda and Article 4 of the International Covenant on Civil and Political Rights, the rights to peaceful assembly and to freedom of association are not absolute rights. They “can be subject of certain restrictions, which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others”.⁶⁸ General comment No. 27 (1999) of the United Nations Human Rights Committee states that: “in adopting laws providing for restrictions ... States should always be guided by the principle that the restrictions must not impair the essence of the right ... the relation between right and restriction, between norm and exception, must not be reversed”.

Furthermore, the Human Rights Committee stresses that while public freedoms may be subject to certain limitations, these should also be reasonable, clear, objective, non-discriminatory and otherwise in compliance with the treaty. Such limitations cannot be generic, but must be content-specific and not be excessive. As a result, when States wish to restrict these rights, all the above conditions must be met. Any restrictions must therefore be motivated by one of the above limited interests, have a legal basis or be “prescribed by law”, which implies that the law must be accessible and its provisions must be formulated with sufficient precision and be “necessary in a democratic society”.⁶⁹

⁶⁴ See, *Hadijah Namugerwa Vs. DPP & AG* (supra, no. 53)

⁶⁵ Meeting of OHCHR with the Chief of UPDF Defence Forces in July 2013

⁶⁶ In a recent meeting the UPDF Chief of Defence Forces assured OHCHR that trials of civilians would be exceptional.

⁶⁷ Article 7 (c) of the Convention on the Elimination of All Forms of Discrimination against Women; International Labour Organization (ILO) Convention No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organise, Article 5 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

⁶⁸ Article 21, ICCPR; General Comment 34 of the Human Rights Committee; The comment refers to Article 19, but under both articles the same scope of legitimate restrictions is laid out. See also paragraphs No. 39, 43, and 46 of the comment and A/HRC/RES/ 15/21, 6 October 2010 on the Rights to Freedom of peaceful Assembly and Association, paragraph 4.

⁶⁹ A/HRC/20/27, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 2102, paragraph 16.

OHCHR recognizes the need for a law on public order management to protect the enjoyment of the rights to peaceful assembly and freedom of association, to clearly regulate the powers and responsibilities of law enforcement institutions to ensure peaceful assembly, public order and the respect for the rights and freedoms of others.⁷⁰ In this regard, OHCHR has been monitoring the development of the 2011 Public Order Management Bill submitted to Parliament. OHCHR provided in December 2011 a comprehensive analysis of this bill to the Office of the Inspector General of Police and to Parliament, and emphasized the international and constitutional standards that should be upheld. The Uganda Human Rights Commission also stated its concern with a number of provisions in the bill and referred in particular to the spirit of the law which should facilitate the exercise of the right rather than hindering or preventing it.⁷¹

At the time of writing of this report, the Bill was passed into law by Parliament. In particular, OHCHR notes the following developments; explicit inclusion of the constitutional provision guaranteeing the freedom to peaceful assembly and demonstration, reduction in days from seven to three for notice of public meetings, provision of direct appeal to judicial courts for aggrieved persons, and recognition of spontaneous meetings. The Act still maintains limitations on public freedoms which do not conform to the permissible grounds for restriction in international and national human rights standards in specific areas; among them, the Act accords wide powers to the Inspector General of Police to regulate public meetings without adequate checks and balances on the exercise of these powers. Section 6 on notification by authorised officer gives wide discretion to Police Officers to impose restrictions on public meetings. The proposed grounds of restriction which accords apparent priority to certain activities fails to strike a proper balance required under human rights law. The Act also creates undue burden and onerous requirements for organisers and criminalises contravention under several sections. The proposed regulations under Section 14 of the Act are an opportunity to delineate the exercise of discretion in managing public assemblies and reduce avenues of subjective interpretation of ambiguous sections in the Act.

In line with the above comments, the power to disperse unlawful assemblies conferred under Sections 69 of the Penal Code Act and Section 36 of the Police Act also needs to be amended with the aim to harmonise them with the recently adopted Act as well as to comply with international human rights standards. In particular, these amendments should remove any immunity bestowed upon officers using excessive force that results in harm or death to citizens when exercising their fundamental human rights in accordance with the law.

3.5.2. Restrictions to the rights to freedoms of assembly and association

OHCHR observed, that although efforts have been made for constructive dialogue between human rights defenders and state authorities, restrictions on the exercise of the rights to freedom of peaceful assembly and association continued to be imposed against political opponents.⁷² Other actors such as journalists, individuals and organizations who are engaging in activities or assemblies to protest against corruption, to raise awareness about human rights concerns related to land, extractive industries, and about the human rights of lesbians, gays, bi-sexual or transgender persons (LGBT) have been exposed to pressure, threats and sometimes to arrests.

OHCHR monitored, for instance, two complaints on interruptions of meetings of human rights defenders and LGBT organisations, in February⁷³ and June 2012 respectively; and of detention of members of human rights organisations in Fort Portal in January 2013, who were released under the

⁷⁰ See ICCPR, Art.21. It also outlines as legitimate grounds for legal restriction in a democratic society the interest of national security or public safety and the protection of public health or morals.

⁷¹ UHRC, 14th Annual Report 2011 To The Parliament of Uganda, Chapter 7, pages 78-83.

⁷² UHRC, in its 15th Annual Report 2012 to the Parliament of the Republic of Uganda gave a detailed overview of the events in 2012, pages 97-102.

⁷³ Following the interruption of the meeting held in February 2012, four activists, in March 2012, filed a civil suit in the High Court for violation of their freedoms of expression, assembly and association and their right to education (Kasha Jacqueline Nabagesera, Frank Mugisha, Pepe Julian Onziema and Geoffrey Ogwaro Vs. Attorney General and Minister of Ethics and Integrity Rev. Father Simon Lokodu -HCT-00-CV-MC-0033-2012). At the time of writing, the hearing of this case is still ongoing.

instructions of the Resident State Attorney after two days.

In June 2012, national media reported an alleged list of 21 NGOs compiled by the Ministry of Ethics at risk of de-registration, including LGBTI organizations, and NGOs working on human rights, land and accountability issues. With the aim to discuss the related human rights concerns, OHCHR met with the Minister of Internal Affairs who expressed the Government's commitment to re-establish the dialogue with the civil society organizations. Eventually, no de-registration was effectuated. This situation was also registered and reported by the UHRC in its 15th Annual Report to Parliament for 2012.⁷⁴

Furthermore, in this reporting period, OHCHR followed-up on the institutional response over the violent incidents happened in April and May 2011, during the Opposition's Walk to Work campaign, when nine people lost their lives and at least 269 people⁷⁵, including children and women, were affected by tear gas or injured by live ammunition, rubber bullets and/or severe beatings. In 2012, OHCHR was informed by the police that investigations into the allegations of human rights violations during these incidents had been initiated. At the time of writing of this report, these investigations had not been concluded.⁷⁶ Efforts have been made to compensate some of the victims with "compassionate payments" from the Inspector General of Police and the State House. Nevertheless, these settlements do not satisfy the right of the victims to effective remedies and reparations, nor are they adequate in ensuring accountability.

3.6. Discrimination against lesbian, gay, bisexual, transgender and intersex persons (LGBTI)

Chapter IV of the Constitution of Uganda recognizes rights and freedoms for all its citizens. It prohibits in article 31 (2a) marriages between persons of the same sex. The Penal Code Act under Section 145 and 146 punishes homosexual acts under "unnatural offences".

In 2009, a Member of Parliament tabled the Anti-Homosexuality Bill in Parliament to reinforce the provisions in the Penal Code Act, proposing life imprisonment and the possibility of the death penalty for anyone found to have committed "aggravated acts of homosexuality." The bill among other provisions also prescribed punishment for individuals who fail to report known LGBT persons to the authorities, including members of their own family. In 2011, the Legal and Parliamentary Affairs Committee of Parliament (LPAC) recommended minor changes to the bill and it was re-tabled by the 9th Parliament in 2012. In November 2012, LPAC prepared a new report and four MPs submitted a minority report. At the time of writing the bill was not included on the Parliament's order paper.⁷⁷

OHCHR finds the Anti-homosexuality Bill to be incompatible with Uganda's human rights obligations under both its own constitutional provisions⁷⁸ and international human rights treaties ratified by the State⁷⁹. While the State has a sovereign right to determine its own legislative priorities based on the views, values and norms of its people, States are bound by the human rights guarantees in their Constitutions and in the treaties that they have ratified to respect the rights of all persons and protect them from discrimination and violence. The Bill, if enacted, would implicate a number of fundamental rights and freedoms of the targeted individuals, such as non-discrimination, equal protection of the law, right to privacy, respect for human dignity and security of the person, freedom of association, opinion and expression as well as impact the work of human rights defenders. Besides, the possible side effects of this Bill would affect access to health care, education, housing and the right to work of the affected persons.

⁷⁴ UHRC, 15th Annual Report 2012 to the Parliament of the Republic of Uganda, page 108.

⁷⁵ 269 victims of injuries and tear gas suffocation, according to OHCHR verification in Mulago Hospital (210 persons) and several health centres (59 persons). Uganda Police Force registered 166 persons with different types of injuries.

⁷⁶ Only one reserve police officer has so far faced criminal charges. UPF informed that 11 files remain open for investigation, but progress was not achieved because of the difficulty to establish individual responsibility with the available information.

⁷⁷ At the time of reviewing this report, the Anti-Homosexuality Bill was enacted by Parliament, on 20 December 2013.

⁷⁸ See articles 21, 27 (2) and 29 of the Constitution of Uganda

⁷⁹ In particular, the ICCPR prohibits discrimination without distinction of any kind under article 2, protects the right to privacy under article 17, article 27 guarantees the equality before the law and entitlement to equal protection of the law without discrimination on any ground.

The Uganda Human Rights Commission stated before Parliament in 2011 that “most of the provisions in the bill are inconsistent with international human rights law...” and expressed concerns about “the potential to violate the right to life, privacy, equality and non-discrimination and freedoms of speech, expression, association and assembly, among others.”⁸⁰ These concerns must be accorded serious consideration by the authorities.

In a notable case in 2010⁸¹, which involved publication of names and addresses of persons perceived to be gay in a local tabloid with an explicit call to “hang them”, the High Court ruled that such exposure threatened the rights to human dignity and privacy of the targeted individuals in contravention of the Constitution which guarantees fundamental rights and freedoms for all.

During the UPR process of Uganda in 2011, the Government accepted three recommendations in relation to the treatment of LGBT persons: 111.69. Investigate and prosecute intimidation and attacks on LGBT-community members and activists (Netherlands); 111.70. Investigate thoroughly and sanction accordingly violence against LGBTs, including gay rights activists (Belgium); 111.71. Take immediate concrete steps to stop discrimination and assaults against LGBT persons (Czech Republic);⁸²

In view of these official positions, OHCHR encourages the Government, the Parliament and other state entities to uphold the country’s human rights obligations regardless of cultural, religious and personal disapproval.

3.7. Economic social and cultural rights (ESCR), including land rights

During 2012, OHCHR focused its analysis of economic and social rights in four main areas: the analysis of the enforceability of ESCR within the constitutional framework, the analysis of the policy and budgetary framework for ESCR, the analysis of the situation of the right to health, and land-related rights.

In the past decade, Uganda has registered marked improvements in certain socio-economic indicators which can serve as catalysts for the realization of economic and social rights. Poverty was reduced from 56 per cent in 1993 to approximately 25 per cent in 2010, beyond the expected Millennium Development Goals, target 1.⁸³ However, an estimated seven million Ugandans still live in chronic poverty. Inequality between urban and rural areas has increased and significant regional disparities remain, with the Central and Western regions showing better development indicators than Karamoja (poverty rate of 75 per cent) and northern Uganda (poverty rate of 40 per cent).

Uganda’s Universal Primary Education system has been free of charge since 1997. The Net Enrolment Rate (NER) is now almost universal at 96.1 per cent (96 per cent boys, 96.5 per cent girls). Progress was also noted in access to water and sanitation and in the caloric intake of children under five. Nevertheless, significant challenges persist. In the 2013 Human Development Index report, Uganda ranked 162 out of 187 countries, lower than in previous years.

⁸⁰ UHRC Position on the Anti-Homosexuality Bill 2009, pages 2 and 7. The statement was read out before LPAC in May 2011.

⁸¹ Kasha Jacqueline & 3 others V. Rolling Stone and Another, High Court Miscellaneous Cause No. 163/2010

⁸² Report of the Working Group on the UPR, Uganda, A/HRC/19/16, 22 December 2011, p.19; the response by the Government delegation to requests of clarification on the Anti-Homosexuality Bill is in the same report as follows: “72. On LGBTI persons, any individual who felt his or her rights had been infringed by the provisions of the law was free to go to court for redress or to initiate a process for the amendment of specific provisions of the law. The Anti-Homosexuality Bill was before Parliament. As for the plight of human rights defenders, the delegation stated that the Government did not condone violence against anyone. There was no evidence to corroborate the assertion that those who had left were being targeted. Regarding LGBTI organizations, Uganda laws did not discriminate against any organization wishing to register. What was important was that such an organization must meet the criteria as provided for in the NGO Registration (Amendment) Act 2009. 73. Regarding health-related discrimination, the delegation indicated that the HIV policy of Uganda was not discriminatory. According to laws and medical ethics, medical practitioners were under obligation not to discriminate and/or disclose personal medical records to third parties.” In paragraph 108 the delegation emphasized that the Anti-Homosexuality Bill was a Private Member’s Bill.

⁸³ Millennium Development Goal 1 – Target 1 calls for halving a country’s poverty rate by 2015 based on figures from 1990.

3.7.1. Constitutional framework in relation to the enforceability of ESCR in Uganda

Chapter Four of the Constitution of Uganda lists the bill of rights, which, among others, includes the right to education (article 30), to culture and similar rights (article 37), the right to a clean and healthy environment (article 39) and economic rights (article 40), focusing primarily on labour-related rights. Additionally, the section on “National Objectives and Directive Principles of State Policy” incorporates key provisions related to economic social and cultural rights⁸⁴ without acknowledging them as rights. This has given them an indeterminate status in terms of how rights-holders could claim these rights and how duty-bearers should be obliged to enforce their protection.

Article 45 of the Constitution could be instrumental in addressing this matter as it states that the rights, duties, declarations and guarantees relating to fundamental and other human rights and freedoms specifically mentioned in Chapter Four shall not be regarded as excluding others not specifically mentioned in that section. In the case of the right to health, for example, a positive interpretation has been given in the national health policy which recognizes that healthcare is a constitutionally guaranteed right and that the State has an obligation to provide basic health services.⁸⁵ Yet the courts have not pronounced themselves in favour of the justiciability of the right to health when this right has been violated.

In 2011 and 2012, OHCHR provided technical assistance about applicable international human rights standards to the Centre for Health, Human Rights and Development (CEHURD), who submitted a petition to the Constitutional Court (Petition 16).⁸⁶ The petition maintained that insufficient budget allocation for health was one of the causes of the high maternal mortality rate in Uganda, and argued that this amounted to a violation of the right to life. A Constitutional Court ruling on this matter would have given the rights enshrined in the preamble of the Constitution a clearer legal standing. Yet, in June 2012, the Court dismissed the case on a procedural basis without pronouncing itself on its merits. In its ruling, the Constitutional Court found that the case could not be considered because “the acts and omissions complained of fall under the doctrine of political question” and are not within the Court’s mandate to interpret for doing so, “would be substituting its discretion for that of the Executive granted to it by law” An appeal submitted to the Supreme Court is pending hearing. OHCHR encourages further discussion and comparative research on this matter with the aim of strengthening the enforceable character of economic and social rights.

3.7.2. Policy framework for ESCR

Uganda’s five-year National Development Plan (NDP), launched in 2010, is the key development framework which sets out the country’s investment and policy priorities up to 2015. The NDP brings together all other plans, including the Peace Recovery and Development Plan (PRDP) for northern Uganda and the Karamoja Integrated Disarmament and Development Plan (KIDDP). The NDP seeks to significantly improve specific socio-economic development indicators associated with transformation and highlights social protection as one of the mechanisms to achieve social and economic development. In 2009, OHCHR provided a view and recommendations on the incorporation of human rights principles in the plan but efforts to implement them still need to be made.

Uganda “Vision 2040”⁸⁷, launched in April 2013, highlights the respect and protection of human rights as central to development and requires all development plans contributing to the vision to be anchored in human rights standards. OHCHR submitted in 2012 a comment on the draft document. The National Planning Authority (NPA), which is the lead agency in development Planning commissioned

⁸⁴ The “National Objectives and Directive Principles of State Policies” section provides for the right to development, social justice and economic development, protection of natural resources, general social and economic development, access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food security, pension and retirement benefits, recognition of the women in society, recognition of the dignity of persons with disabilities, recreation and sports, protection of the family, protection from natural disasters; and cultural objectives, and preservation of public property and heritage.

⁸⁵ Uganda’s second National Health Policy acknowledges the constitutional obligation to provide basic health services, promote proper nutrition, access to health services, clean and safe water (Introduction to the 2nd National Health Policy, Page 1).

⁸⁶ In Petition 16 of the CEHURD & 3ors V. AG (Constitution Petition No. 16/2011), the petitioners argued that the state was not fulfilling its obligations in respect to the right to health when it continuously under budgeted for the health sector.

⁸⁷ “Vision 2040” states that the respect for human rights and its fundamental principles shall be at the core of development planning and that the government shall ensure that HRBA is integrated in policies, legislation, plans and programmes; page 108, para 323.

a midterm review in 2013, which provides an excellent analysis with regard to the status of human rights mainstreaming into Uganda's development program. OHCHR urges the Planning Authority and the Government ministries and sectors to fully consider the results of the review in the formulation of the NDPII (2015/16 – 2019/20). OHCHR together with other partners started to support NPA in this process.

In line with the NDP, the Government, through the Ministry of Gender, Labour and Social Development, continued to implement an expanded social protection programme which piloted a cash transfer scheme to raise the standard of living of particularly vulnerable groups. The programme currently covers 14 districts selected on the basis of key vulnerability indicators⁸⁸. Since this social protection programme is currently dependent on donor funding, its sustainability is not guaranteed. The Government should therefore prioritise this crucial programme for funding and ensure that it moves from the pilot 14 districts to more districts.

3.7.3. Budget framework for ESCR, in particular for the right to the highest attainable standard of physical and mental health

According to Article 2 of the ICESCR, a State has the obligation to “take steps... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights”, in a non-discriminatory manner. An inclusive and rights-oriented planning, budgeting and implementation process would provide an opportunity for translating Uganda's commitments on ESCRs into actual enjoyment of these rights. Along with the implementation of the normative content of these rights, citizens' participation, the accountability of the State administration, striving for equality and non-discrimination are key principles for human rights-oriented planning and budgeting. These principles are underpinned by the Constitution, the Objectives of the Local Government Act, 1997, the Access to Information Act, 2005 and the Public Finance and Accountability Act 2003 as well as the Decentralization Policy.

In line with this, in the 2011/ 2012 and 2012/2013 financial years, the Government prepared pre-budget statements published and circulated to key national stakeholders, including to civil society organizations that participated in a pre-budget dialogue.⁸⁹ The Open Budget Survey 2012 conducted by the International Public Budget Partnership scored Uganda with 65 points (out of 100) in the Open Budget Index.⁹⁰ Nevertheless, the same survey concluded that “Uganda has much room to improve public participation” in the budgeting processes.

In relation to the decentralization policy, district governments remained at the forefront of service delivery, but their capacity to provide essential services appeared to be affected by decisions and policies adopted at the central level. This includes measures which diminished the revenue base of local governments and limited their capacity to make district-specific capital investments on ESCRs. Up to 85 per cent of funds transferred to local governments were already earmarked for specific capital development and wage bills, leaving limited space for local authorities to allocate funds that could contribute to the enjoyment of rights for areas they had identified.

In terms of budget allocation, the national budget for the financial year 2012/2013 had a slight increase in education from 14.7 per cent in 2011/12 to 15.2 per cent in 2012/13. Efforts were undertaken to ensure access to health facilities through Government of Uganda funding including through staff salary enhancements and recruitments which increased the staffing level from 58 per cent in 2011/12

⁸⁸ The Expanded Social Protection Programme is funded by DFID, Irish Aid, UNICEF, with a budget of 160 billion Ugandan Shillings and includes direct income support for the poorest and most vulnerable.

⁸⁹ The Civil Society Budget Advocacy Group (CSBAG) provided its position in an analytical paper on the 2010/2011 to 2014/15 Budget Framework, highlighted budgetary gaps in maternal mortality, and criticized underfunding for “Special Needs” education, and poor quality education among others during a pre-budget dialogue.

⁹⁰ Open Budget Survey by the International Budget Partnership (IBP), surveys and rates the performance of countries on budget transparency, accountability and participation. Uganda's 65per cent rating puts it in the second best group out of 5 categories of countries globally, which reflects positively in its level of budget transparency and accountability (Open Budget Survey 2012 Report, Open Budget Transform lives, International Budget Partnership-IBP, page 7).

to 63 per cent in 2012/13. The Health Sector Strategic Plan target of 70 per cent is yet to be achieved. While there was an increase in the health budget absolute figures' from UGX 660 billion in FY2010/11 to UGX 799.11 billion in 2011/12, and the continuous efforts to increase the budget allocation from 7% in 2012/13 to 8% share of national budget in 2013/14 Financial year to cater for salary enhancements at HCIV and HCIII levels with about 7000 health workers having been recruited, the investment in health has been fluctuating between 8 to 10 per cent over the last decade, which is below the pledge to invest 15 per cent of its budget in the health sector under the African Union Abuja Declaration of 2001. The budget allocation actually declined from 8.3 per cent in the 2011/12 to 7.8 per cent in the 2012/13 financial years below the HSSP Target of 9.8 per cent.⁹¹

This trend illustrates retrogression in the Government's budgetary measures in the realization of the right to health which, in principle, is not permissible under the ICESCR.⁹² However, a public private partnership for implementing the Health Policy is in place to harness resources from the private sector. Furthermore the National Health Insurance Scheme Bill which aims at enhancing contributions from the private sector and subsidizing the indigent is at stage of Cabinet submission. As the deplorable state of the health services to the population face increasing criticism, a substantive rise in the health budget and control over the effectiveness of its implementation appears to be imperative.

3.7.4. The right to the highest attainable standard of physical and mental health

In the last decade, Uganda has made significant progress in improving most key health sector indicators. For instance, between 2001 and 2010, there were accelerated declines in infant mortality (from 81 to 54 per 1,000 births), under-five mortality (from 156 to 90 per 1,000 live births), and maternal mortality (438 per 100,000 births⁹³). In the same period, there has been an increase in the proportion of births attended by skilled personnel (38 to 59 percent).⁹⁴

Nevertheless, there are persistent policy, and implementation issues in particular, that need to be addressed in the health sector. These include differences in the access to quality health care between urban and rural areas, a continuing high maternal mortality rate by international standards, continued prevalence of communicable and non-communicable diseases, insufficient health infrastructure, inadequate distribution of health workers at different levels of service delivery, the still low pay of workers, absence of basic facilities, inadequate provision of essential drugs and insufficiently equipped health facilities. The population that covers long distances to health facilities

In order to address these challenges, in 2010, the Ministry of Health elaborated its Health Sector Strategic and Investment Plan (HSSIP), which provides a comprehensive overview of the shortcomings in the sector and makes proposals to address them. The challenge remains in effectively translating these policy documents into actions and ensuring that the goals and objectives of the plan are met. For instance, as noted already, the health sector performance for the financial year 2011/ 2012, shows that the Government's investments in health were below the HSSIP targets, which were already below the globally recommended standards.⁹⁵ This undermines the realization of most of the entitlements under the right to health, especially for the most vulnerable sectors of the population.

The healthcare delivery system requires major improvements in ensuring access, availability and quality for the most vulnerable, as recommended by the General Comment 14 of the United Nations Committee for Economic Social and Cultural Rights.

⁹¹ Annual Health Sector Performance Report 2012/2013) (MOH) Page 26 to 28 (Government allocation to Health Sector 2000/01 to 2011/12). Ministry of Finance, Planning and Economic Development (MOFPED) Background to the Budget FY 2012/2013, Table 8.3 in page 117

⁹² As with all other rights in ICESCRs, there is a strong presumption that retrogressive measures taken in relation to the right to health are not permissible. UN ESCR Committee General Comment No: 14 (32).

⁹³ 2011 Demographic and Health Survey, the maternal mortality Ratio (MMR) stands at 438 deaths per 100,000 live births which have risen from 435 per 100,000 live births in 2006. (UDHS, 2011, page 13 and 14);

⁹⁴ National Budget Framework Paper FY 2013/14- FY 2017/2018, pp. 61-62, by MFPEP, April 2013.

⁹⁵ The 2011/2012 Annual Health Sector Performance report shows that investments on health particularly in human resources and funding declined from 9.6 per cent in 2009/2010 to 8.3 per cent in 2011/2012 which is not just below the HSSIP target but far below the globally recommended standard. (Ministry of Health Annual Health Sector Performance Report 2011-2012, page X)

These improvements are critical given that 72 per cent of the population has to walk long distances (around 5 km average) to reach a government health unit, especially in rural areas. They also suffer from the consequences of drug shortages and insufficient training of health workers as well as affordable specialised services within their reach.

Another challenge is related to inadequate human resources. Nationally, 58 per cent of the approved posts in 2011/12 in the health sector were filled by trained health workers, a slight improvement from the 56 per cent in 2010/11.⁹⁶ The concerns on the inadequate capacity of the health workers caused a budget stalemate that halted the passing of the FY 2012/1013 budget for nearly a month in Parliament until an increment was affected for the recruitment of more health workers. Low salaries for health care workers and poor working conditions have also impacted negatively on the deployment and retention strategies for qualified medical personnel particularly in remote areas. OHCHR strongly encourages increasing significantly the investment in the right to health to strengthen the implementation of the HSSIP.

3.7.5. Land conflicts and human rights

The legal and institutional framework for land management is expressed in the Constitution of the Republic of Uganda, Chapter 15, and the Land Act (1998). It establishes a plural legal system encompassing constitutional, statutory and customary law. The ambiguities of the tenure system and existence of complex and overlapping rights and claims to land and dispute resolution institutions, as laid out in the law, have exacerbated disputes on land.⁹⁷ There are also new challenges such as the return of the over one million internal displaced persons in northern Uganda, and the new perspectives for business, tourism and extractive industries, which rely on the availability of land.

To effectively implement the Act and address some of these challenges, the Land Policy was approved on 7 February 2013. It highlights the need to restructure land rights administration to enhance efficiency, to ease land access, to ensure cost effectiveness and to deal with corruption. It contains strategies on land rights for pastoral communities, for women and children, as well as for other vulnerable groups. It also underlines the need to domesticate relevant international treaties and conventions ratified by Uganda, and to enforce laws against discrimination, in particular laws on inheritance, which have stifled women's rights to access, own and use of land. In order to address the gaps in the enforcement of Article 237(1) and 2(a) of the Constitution of the Republic of Uganda on compulsory acquisition of land in public interest,⁹⁸ including by local governments, the policy proposes amendments to the Constitution and the Land Act to clarify the power of compulsory acquisition for public interest. In the past, this provision had not been applied responsibly.

OHCHR encourages drafting these amendments that will also help to streamline roles and clarify the capacity of local governments in terms of compensation requirements upon compulsory acquisition.

OHCHR monitored conflicts and consequences of land conflicts in Northeast and northern Uganda during the period under review. In Gulu, Kitgum, and Otuke, OHCHR supported community land reconciliation efforts through training on human rights standards, mediation and reconciliation and engaged local authorities to resolve these conflicts. Unresolved land conflicts have raised human rights concerns such as in cases of forced evictions where extrajudicial killings and excessive use of force by security forces have been alleged and arrests and detentions have taken place. Communities and individuals registered loss of housing, livelihood and property. It is mainly very vulnerable communities or groups that are affected, and the State has a duty to protect them.

⁹⁶ Annual Health Sector Performance for FY 2011/12, p. X and XI

⁹⁷ UN-HABITAT, A guide to property law in Uganda, (December 2007), p.34

⁹⁸ Article 237(1) of the Constitution of the Republic of Uganda states that land in Uganda belongs to the Citizens of Uganda and shall vest in them in accordance with the Land Tenure systems provided for in the constitution. Sub section 2 (a) states; not withstanding 237 (1), the government or local government, may subject to Article 26.

As an example, the forceful eviction in Apaa parish, Pabbo sub-county, Amuru district, of communities of returned IDPs ended in tragic incidents. In February 2012, an estimated 300 UPDF, UPF and Uganda Wildlife Authority (UWA) Officers forcefully evicted the returnees who were in conflict with the UWA over a contested area of land. The security agencies destroyed or burnt huts and household items during the eviction. Tear gas was fired directly at people, and more than 25 community members were randomly arrested and beaten when they resisted eviction. 23 of them were later released on bail. Two people died in this incident as a result of gunshots by security forces. As of the end of 2012, no investigations had been conducted into the alleged human rights violations committed during these evictions. When OHCHR followed up this matter and met the affected communities and local leaders, it found that the communities had returned to these areas but remained uncertain as to their fate given that the Government had still not given its official position. This case shows the need to strengthen the land management and dispute resolution mechanisms. Consultations should be ensured with the full participation and involvement of the affected communities, who must be offered alternatives for shelter, food production and resettlement.

The United Nations Committee on Economic Social and Cultural Rights has asserted that “instances of forced evictions can be *prima facie* incompatible with the requirements of the Covenant and can only be justified in most exceptional circumstances and in accordance with relevant principles of international law.”⁹⁹ Furthermore, existing international standards offer important guidance on land tenure and management governance, which the Government should take into account.¹⁰⁰

⁹⁹ UN Gen. Comm. No 4 (1991) on the Right to Adequate Housing.

¹⁰⁰ See for instance FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (2012).

4. HUMAN RIGHTS SITUATION IN KARAMOJA AND NORTHERN UGANDA

OHCHR initially focused its work on northern Uganda, including the Northeast part (Karamoja) in accordance with its mandate signed in 2006. Although in 2009 the OHCHR mandate was extended to the whole territory, OHCHR kept its presence in northern Uganda and Karamoja as it considered it important to follow the human rights situation in these sub-regions. The following sections describe OHCHR's activities and some areas of special concern, in addition to those already outlined above.

4.1. Human rights in the context of the disarmament process and law enforcement in Karamoja

Karamoja remains the most vulnerable region in Uganda.¹⁰¹ Since 2001, the Karamoja Integrated Disarmament and Development Plan (KIDDP) guided the Government's interventions in the region "to contribute to human security and promote conditions for recovery and development." As a result of the disarmament process, there has been a considerable improvement in the security situation over the last years. This contributes to considerable investment in the development of the region. The government's priorities in development are the improvement of the food production, access to water for production and human consumption, health and education services, as well as access to justice. Government programs such as NAADS, NUSAF2, KALIP, UPE, USE and the contribution and support of development partners have been instrumental. The human rights situation has overall improved, though serious concerns remain.

With regard to the security situation, the UPDF started to include communities more actively in the disarmament process and related law enforcement by deploying Local Defence Units (LDUs) whose members were proposed by the communities and attached to UPDF. However, the insufficient training on law enforcement and on human rights provided to the LDUs as well as inadequate oversight resulted in a number of human rights violations during the period, in particular affecting the rights to life, integrity and personal liberty. The UPDF in Karamoja requested support from OHCHR and UHRC for additional training. In 2011 and 2012, the UPDF and LDU leadership was engaged in Training of Trainers courses. The rollout of the training benefitted 893 LDUs, nearly 50 per cent of the deployed units. Currently, OHCHR is carrying out an assessment on the impact of the training to inform future actions.

In addition, the UPF and UPDF launched a community policing programme that has led to increased reporting of crimes and to better cooperation between communities and both institutions. OHCHR supported UPDF and UPF to conduct 10 activities to sensitize communities on human rights and policing in North Karamoja and organized two trainings for 52 police commanders on basic human rights related to policing work. This has contributed to building trust and to higher rates of crime reporting. Furthermore, less violent means are used when recovering arms.

Based on the improved security situation in Karamoja, the UPDF announced, in November 2011, the end of the forceful disarmament process and the gradual transfer of the responsibility for public security to the police.

Despite their progressive deployment in Karamoja, the Police still lack human resources, equipment and infrastructure. Owing in part to this, the UPDF currently still leads disarmament operations, as well as cattle recovery and other law enforcement operations. Investment in Police structures and personnel should therefore be seen as a priority to create a sustainable environment for development.

¹⁰¹ Karamoja has the lowest Human Development Index in Uganda :80 per cent of the population suffer from some form of food insecurity, 82 per cent live below the poverty line compared to 31 per cent at the national level, maternal mortality stands at 750 of 100.000 live births, access to sanitation units is estimated at 9 per cent compared to the national average of 59 per cent, access to safe water at 43 per cent against the national average of 67 per cent, the literacy rate is at 11 per cent compared to a national average of 67 per cent (ACODE, 2011).

OHCHR observed the disarmament process led by UPDF since 2006 and issued several reports on the development of the human rights situation in this context. The main concerns were related to extrajudicial killings, arbitrary detention and the use of torture in UPDF detention facilities. The monitored cases have been reported regularly to the 3rd and 5th Divisions as well as to the UPDF Human Rights Directorate.

In 2012, OHCHR registered a total of 148 complaints of alleged violations of the rights to life, to freedom from torture and to personal liberty implicating UPDF, UPF and LDU Personnel in Karamoja. Out of this number, 133 complaints were accepted to be followed-up by OHCHR and 207 meetings and missions were conducted to monitor the complaints.¹⁰² OHCHR raised 97 allegations with the local authorities of UPDF or UPF for further investigation, corrective measures and prosecution.

In 2013, OHCHR in Karamoja registered 101 complaints related to disarmament and law enforcement operations. Out of these complaints, 88 were accepted to be monitored and 100 meetings and missions were conducted as a follow up on these complaints. 72 of the complaints were allegations against UPDF, including LDU. All of them were monitored and raised by OHCHR to UPDF authorities in Karamoja for further investigation and corrective measures.

4.1.1. Right to life

After three serious incidents of extra-judicial killings in 2010 in Kacheri and Rengen sub-counties which were investigated and reported by OHCHR to the Government, no similar incidents have been observed ever since. On the contrary the number of reported cases regarding violations of the right to life in Karamoja has decreased. In 2012, OHCHR received and investigated 20 complaints related to violations of the right to life, allegedly committed by UPDF, including LDU, and the UPF. OHCHR raised all of them with the UPDF and UPF. While the alleged perpetrators in five cases were arrested and investigations are reportedly ongoing, investigations have not been conducted yet in another 13 cases. In 2013, OHCHR received and monitored 22 complaints related to the right to life, allegedly committed by UPDF, including LDU, as well as UPF and UWA. OHCHR raised all these cases to the respective authorities. In seven of them, the alleged perpetrators were arrested and investigations are reportedly ongoing, while in 15 cases, OHCHR did not yet receive a response about the status of the investigations.

4.1.2 Right to physical and mental integrity

The highest number of complaints received by OHCHR in Karamoja during 2012 and 2013 are related to the right to physical and mental integrity, implicating UPDF (including LDUs) and UPF in the context of disarmament and law enforcement operations. However, the numbers of allegations reduced considerably in 2013 compared to 2012. In 2012, OHCHR received 78 complaints while in 2013, 34 complaints were registered. Torture was allegedly used in interrogations to extract confessions of gun possession and involvement in crime in all districts of Karamoja. OHCHR raised 73 cases (51 in 2012, and 22 in 2013) with the relevant authorities. To date, in 87.61 per cent of the reported cases, OHCHR has not yet been informed of any investigation or corrective action. In 53 cases (41 in 2012, and 12 in 2013), the UPDF responded that it would carry out investigations. So far, the UPDF has investigated nine cases, which represents 12.39 per cent of the cases that were raised by OHCHR. Two of them were submitted to the Military Court Martial. In one of these two cases, on 28 October 2012, the Unit Disciplinary Court (UDC) of the Military Court Martial tried and sentenced two LDU officers and one UPDF soldier for committing torture and for misusing firearms. Two other investigated cases were handed over by UPDF to UPF. Three cases were mediated after the perpetrator agreed to pay compensation for medical costs of the victims. On the other hand, Police has initiated investigations over two other cases, and has submitted one of them to the First Magistrate Court.

¹⁰² The missions in 2012 and 2013 were often carried out together with the Ugandan Human Rights Commission Regional and District Offices in Moroto and Kotido.

While the UPDF command has assured OHCHR of its commitment to respect human rights, internal investigations to hold perpetrators accountable for violations of human rights are not systematic. Furthermore, the remoteness and isolation of most areas in Karamoja, particularly areas bordering Kenya, render investigations more difficult. The population's limited access to the formal justice system restricts the victims' right to effective remedy and reparation. OHCHR acknowledges that responsiveness of the UPDF authorities to reports of human rights violations has improved, but also observes that there is a need to investigate such cases systematically to discourage unlawful acts and overcome impunity, especially in cases where the right to life and to integrity are at stake.

4.1.3 Right to personal liberty and security

In 2012, OHCHR in Karamoja received 32 complaints of violations related to the right to personal liberty concerning a total number of 149 victims. Four of the complaints were related to incidents of short-term mass arrests of community members during cordon and search operations. In 2013, OHCHR registered and monitored a total of 32 complaints (13 in Kotido and 19 in Moroto) with approximately 72 people in UPDF detention (40 in Kotido, and 32 in Moroto).

OHCHR observed that repeatedly small groups of individuals were detained by UPDF for days with allegations of possessing fire arms. The suspects remain in military barracks for periods from one week to over two months, without being brought before court. The military barracks where suspects are kept are not gazetted as authorised facilities for the detention of civilians. Frequently, arrests are accompanied by torture or cruel, inhumane and degrading treatment or punishment. In at least three cases, those found to be in possession of weapons had to pay in addition sums of money to be released.

Detainees suspected of cattle rustling arrested by UPDF are held for several days or weeks in military barracks and are then transferred to the police where they remain in custody for more days or weeks due to the lack of evidence to bring them to court. Once produced in court and remanded, they remain in prison for periods beyond the mandatory constitutional pre-trial periods¹⁰³ because investigations lead to no evidence for prosecution or because court sessions are irregular.

Although cattle rustling or theft and violence in communities have to be addressed, the situation of arbitrary arrest and detention in Karamoja must be handled in conformity with the law. Regular court sessions and early transfer of detainees to the police should be ensured.

4.2. **Peace-building and transitional justice in northern Uganda**

4.2.1 Peace-building

Since the signing of the Cessation of Hostilities Agreement between the Lord's Resistance Army and the Government of Uganda in 2006, the majority of internally displaced persons, estimated to have been 1.8 million people at the height of the displacement, have returned to their original homes or have resettled in new locations.¹⁰⁴

This is a significant achievement and can serve as an example for other countries in the region. By December 2010, 247 out of the 251 camps in northern Uganda were closed and in 2011, the UN-led protection cluster system to support humanitarian action and coordination was phased out. The coordination functions were handed over to the Government of Uganda.

It is estimated that approximately 21,300 IDPs remain in four camps in Acholiland. This is mainly attributed to ongoing land conflicts in return areas, poor infrastructure, the presence of unexploded ordinances¹⁰⁵, the absence of means and services to return home for persons with special needs or for

¹⁰³ Article 23 (6), (b) and (c) of the Constitution of Uganda;

¹⁰⁴ According to UNHCR, by December 2011, the percentages of return from the camps in the region stood at: Gulu 98.4 per cent, Nwoya/Amuru 98.3 per cent, Pader/Agago 99.36 per cent and Kitgum/Lamwo 99.32 per cent, UNHCR Source: northern Uganda Internally Displaced Persons Profile, December 2011, p.4.

¹⁰⁵ At the time of writing, the Government of Uganda declared northern Uganda landmine free. Daily Monitor, 30 July 2013.

extremely vulnerable people.¹⁰⁶ Although this is a unique situation, it should be addressed, as emphasized by the Special Rapporteur on the human rights of internal displaced persons in his follow-up visit to Uganda in 2009.

Despite the relative peace, the returnee population in northern Uganda stills faces significant challenges in terms of access, availability, quality and adequacy of basic services such as water, sanitation, education and health. Since 2010, the Government has created seven new districts in northern Uganda with the aim of improving service delivery. However, severe constraints remain due to the limited resources for districts to operate effectively.

Psycho-social trauma and physical wounds of the majority of the population, as well as developmental disparities, leave the region vulnerable and in need of active recovery and peace-building.¹⁰⁷ The Government's strategy for post-conflict reconstruction set out in the Peace Recovery and Development Plan (PRDP) was launched in 2007 to "consolidate peace and lay the foundation for recovery and development" in the northern Uganda region. It includes a strategic focus on peace-building and reconciliation. The PRDP initially suffered from protracted delays, and implementation started only in July 2009. In 2012, PRDP II was launched and it is expected to run until 2015.

While the PRDP¹⁰⁸ represents a progressive and elaborate plan for the recovery and development of northern Uganda, it suffered a setback following reports in June 2012 on mismanagement of funds, within the Office of the Prime Minister which coordinates the implementation of the PRDP. This resulted in several major donors freezing their direct contribution to the programme affecting progress on the targeted results and timelines in key sectors such as health and education in the region. OHCHR finds the misuse of these funds especially concerning in view of the needs and rights of the affected population.

Peace-building interventions, led by the Government through PRDP, still have to address the weak institutional capacity to deliver psycho-social care, to amend the mainly ineffective and incomplete reintegration processes of ex-combatants and rehabilitation of victims, and to facilitate meaningful reconciliation activities including through traditional justice systems. In particular, the limited reintegration support hamper peaceful coexistence and reconciliation for returnees in local communities. OHCHR has observed significant challenges for returnees, be they victims, former IDPs or ex-combatants. The latter endure stigma in their communities on account of their criminal acts during the conflict. To date, no prosecutorial strategy has been developed and the amnesty provisions contained in the Amnesty Act 2000 have been discussed controversially. Besides, many of the women with children born during captivity of the LRA and who returned to their families and communities face stigma and exclusion.

In addressing these problems, NGOs and civil society organizations have also undertaken a number of initiatives to help affected communities cope with the effects of the conflict. This is ongoing through reconciliation projects, psycho-social support, family tracing and reunification, capacity-building and medical support. Besides, different measures have been adopted by the communities of northern Uganda to deal with the effects of the conflict. An example is the traditional reconciliation ceremony, *matooput*, between perpetrators and families of victims that are facilitated by traditional leaders in Ker Kwaro Acholi. Traditional systems need to be supported for reconciliation procedures as they contribute to healing and to peaceful dispute resolution in local communities.

¹⁰⁶ It is estimated that by 2011 the number of IDPs in the Acholi sub-region stood at 21,255 with 465 in active camps, 11,465 in former camps and 9,325 in transit sites. See OCHA Eastern Africa: Displaced Population Report 2012 and UNHCR brief, "Northern Uganda, Internally Displaced Persons", December 2011.

¹⁰⁷ UNICEF Peacebuilding, Education and Advocacy Programme; Conflict Analysis, October 2012, p.17

¹⁰⁸ The PRDP is organized around four main Strategic Objectives (SO), 1) consolidation of state authority, 2) rebuilding and empowering communities, 3) revitalization of the economy and 4) peace building and reconciliation, see Uganda Humanitarian Profile 2012, p.26.

4.2.2. Transitional justice - Addressing the past in northern Uganda

Northern Uganda was the epicentre of the conflict between Government forces (UPDF) and the Lord's Resistance Army (LRA) for over 20 years, from 1986 to 2006. In the aftermath of the conflict, it was widely reported that gross violations of human rights and serious violations of international humanitarian law had occurred during that period, including war crimes and crimes against humanity.¹⁰⁹ Under international and domestic law, Uganda is obliged to provide redress to the victims through reparative measures and to bring to justice those implicated for the crimes and violations victims suffered.¹¹⁰ In this regard, JLOS together with Uganda Law Reform Commission prepared a draft policy on transitional justice drawing from the Juba Peace Agreements¹¹¹ which provides mechanisms for traditional justice, formal justice, truth telling and reparations, accountability and reconciliations needs. According to Government, the Policy was recently approved by the Leadership Committee of JLOS. It will soon be forwarded to Cabinet by the Minister of Internal Affairs.

OHCHR commends the Government for initiating the proposed framework which underlines crucial interventions to address the legacy of serious crimes and gross violations of human rights committed during the LRA conflict and beyond. To this extent, the policy incorporates the essential pillars for implementing a holistic context-specific transitional justice process even though a broader focus on institutional reform has not been highlighted. The policy also depicts conformity with international good practices and human rights principles by reinforcing victim-centred approaches to ensure the centrality of victims in the implementation of local transitional justice processes and prohibits blanket amnesty which would undermine aspirations for restorative justice, meaningful accountability and reconciliation in conflict affected communities.

In the pursuit of individual accountability, the Juba Agreement sought a balanced approach targeting not just LRA perpetrators but also State actors in the UPDF who would be subjected to the Court Martial process. The UPDF verbally expressed that some army officials had been tried for crimes committed during the LRA conflict. However, it will be paramount for the process that UPDF fully cooperates with truth and justice efforts by providing information, documentation and by allowing investigations to be carried out into past crimes.

The Government has put in place measures to investigate and prosecute international crimes through the establishment of the International Crimes Division (ICD)¹¹² and domesticated the Rome Statute through the International Criminal Court Act, 2010. In spite of the prevailing challenges, these developments have so far demonstrated the Government's commitment to fulfil its obligations under the Rome Statute,¹¹³ the Geneva Conventions and other applicable human rights treaties.¹¹⁴

¹⁰⁹ Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen, ICC-02/04-01/05;

¹¹⁰ See Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of serious violations of international human rights law and international humanitarian law A/RES/60/147; see also the Geneva Conventions Act 1964, which criminalizes grave breaches of the Geneva Conventions 1949.

¹¹¹ See the Juba Peace Agreements, which were signed between the Government of Uganda and the Lord's Resistance Army in 2006 – 2008. In particular, the Agreement on Accountability and Reconciliation, signed on 29 June 2007.

¹¹² The ICD is a Division of the High Court of Uganda that has the authority to try genocide, crimes against humanity, war crimes, and any other international crime defined in Uganda's Penal Code Act, the 1964 Geneva Conventions Act, the 2010 International Criminal Court Act, or any other criminal law. See the High Court (International Crimes Division) Practice Direction, 2011.

¹¹³ See, Preamble of the Rome Statute, which echoes the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes; Articles 7 and 8 relate to specific war crimes and crimes against humanity – recognized as most serious crimes under the Statute to which the ICC is authorized to exercise jurisdiction. Article 17 (1) (a) of the Rome Statute highlighting the primacy of national courts to investigate and prosecute persons implicated for committing serious crimes falling within the jurisdiction of the ICC. The ICC can only intervene when a national government is "unwilling or unable" to investigate and prosecute such crimes.

¹¹⁴ See, International Covenant on Civil and Political Rights (Art. 7) also the UN Human Rights Committee, in its General Comment No. 20 (1992); UN Convention against Torture (Art. 5); Principle 19 of the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (Updated Set of Principles)

The first LRA trial at the International Crimes Division of the High Court started in July 2011, with Thomas Kwoyelo, a former LRA commander charged with war crimes.¹¹⁵ Basing on Part II of the Amnesty Act, 2000, which grants a blanket amnesty, the trial was challenged and the matter referred to the Constitutional Court for a determination of Kwoyelo's eligibility for amnesty. The Constitutional Court held in Kwoyelo's favour and the trial has been suspended. An appeal by the Attorney-General is pending at the Supreme Court, which, at the time of writing, had still not been heard. The suspect remains in detention, although his release was ordered by a lower Court.

In view of the above, it is important to ensure that any provision for amnesty does not contravene international law. In particular, amnesties that prevent the prosecution of individuals who may be legally responsible for war crimes, genocide, crimes against humanity and other gross violations of human rights are inconsistent with States' obligations under various ratified treaties. In this respect, the Government's decision to lapse Part II of the Amnesty Act in May 2012 opened the possibility to investigate persons implicated in committing serious crimes during the LRA conflict. However, this decision was revoked in May 2013 and the Amnesty Act continues to be in force. It would be paramount to harmonise amnesty legislation with the transitional justice policy, in particular recognising the duty of the State to combat impunity and prosecute serious crimes and human rights violation or abuses.

Similarly, to further develop the provision of justice to the victims, OHCHR encourages the enactment of a specific law on witness protection as well as adopting important legislation for compensation of victims of serious crimes and gross human rights violations. Since 2010, OHCHR has collaborated and supported the Uganda Law Reform Commission, to develop a relevant bill on witness protection providing international expertise and facilitating space for discussion. With regard to transitional justice, formerly abducted men and women, particularly former forced wives/mothers and victims of sexual violence, face distinct challenges in engaging in the justice processes. Appropriate support involving a range of measures before, during and after trial should be given attention at the International Crimes Division to secure the cooperation and safety of victims and witnesses in such proceedings.

¹¹⁵ AG vs. Thomas Kwoyelo, (HCT-00-ICD-Case No. 2/10) Kwoyelo was charged with various offences under Article 147 of the Geneva Conventions Act 1964. The Constitutional Court upheld Kwoyelo's entitlement to obtain amnesty and ordering the Director of Public Prosecutions and the Amnesty Commission to grant him amnesty in accordance with the provisions of the Amnesty Act, 2000.

5. CONCLUSIONS AND RECOMMENDATIONS

This report has highlighted positive steps made in areas of civil and political rights, such as anti-torture legislation and steps taken so far to facilitate its implementation, as well as in the social and economic sphere where Uganda is especially progressing in its policy framework. However, the challenges outlined in the report are still numerous. OHCHR renews its commitment to further accompany the State authorities and civil society organisations in addressing these challenges, building on progress over the last two years. OHCHR will therefore further strengthen its collaboration and constructive engagement with various government institutions as well as the UHRC, including in the development of a national human rights action plan. In addition to the recommendations outlined under Chapters 3 and 4, OHCHR wishes to highlight the following recommendations to the Government of Uganda;

Accountability and the fight against impunity for human rights violations and abuses:

- OHCHR urges the Government to ensure all necessary support for the implementation of the roadmap, coordinated by UHRC, to operationalise the Prevention and Prohibition of Torture Act. It encourages the Directorate of Public Prosecution, the Judiciary and Court Martial authorities to pay special attention to investigating and punishing cases of torture. It is important that the Uganda Police Force, the Uganda Peoples' Defence Force and intelligence mechanisms take effective measures to improve internal and external oversight and control, to eliminate impunity for alleged perpetrators of acts of torture and ill-treatment; in particular, it is vital to ensure the availability of funds for the proper and prompt compensation of victims of torture by the Government and Parliament; furthermore, the legality of detentions should be ensured by respecting due process guarantees, in particular the constitutional 48-hour rule; no person shall be detained in "ungazetted" or unauthorized places of detention.
- OHCHR urges the UPDF to complete investigations into human rights violations in the context of the disarmament and law enforcement operations in Karamoja and encourages to progressively transferring arrested civilians to the police. Therefore, the Government should strengthen the police presence and capacity in Karamoja as well as the deployment and strengthening of the administration of justice.
- OHCHR recommends that the Judiciary takes a proactive role in safeguarding economic and social rights through adjudicating cases reinforcing their legal protection when other means and ways to achieve justice are not available or are exhausted.
- OHCHR encourages Government and Parliament to reflect the progress made in the draft Transitional Justice Policy in any forthcoming legislation, in particular upholding the rights of the victims to truth, reparation and justice as well as harmonizing any legal provision of amnesty with international standards.
- OHCHR urges the Government to expedite the process of adopting a legal framework on witness protection including establishing a witness protection programme, particularly to facilitate trials before the International Crimes Division.

Institutional and policy framework for the promotion and protection of human rights

- OHCHR urges the Government of Uganda to take further measures to strengthen the Uganda Human Rights Commission, by further increasing its budget to support its deployment in the country, providing adequate premises where needed and ensuring the availability of funds for compensation to victims of human rights violations. OHCHR also calls on the Government to systematically implement the Commission's recommendations and report on the status of actions taken.

- In view of the recently launched Human Rights Checklist by the Parliament Human Rights Standing Committee, OHCHR urges both the Government of Uganda and the Parliament to ensure that any submission of new legislation or review of existing laws is compliant with Uganda's human rights commitments.
- OHCHR expresses its continued commitment to support the process of a National Human Rights Action Plan and urges the Government to further create and strengthen the necessary institutional structures as pledged at the Universal Periodic Review, expedite the drafting, and make sure wide consultations and dissemination of the process and its results. It also encourages the Ministry of Foreign Affairs to ensure timely treaty body reporting and follow-up of international and regional recommendations on human rights matters. The Government may consider to further ratify outstanding treaties and to remove existing reservations. OHCHR also recommends that the Government considers issuing formal invitations to Special Rapporteurs of both the African Commission on Human and Peoples' Rights and the Human Rights Council.
- OHCHR encourages the Ministry of Finance and the National Planning Authority to continue efforts in issuing guidance for the integration of a human rights approach to planning and budgeting and to incorporate a forthcoming National Human Rights Action Plan into the second National Development Plan.
- In view of the progress made in terms of human rights in the framework of the Land Policy adopted in February 2013, OHCHR encourages the Government of Uganda to widely disseminate and implement it, as it provides realistic policy options to address land conflicts in Uganda. Private businesses are called to exercise due diligence in all phases of land acquisition and investment. In addition, OHCHR urges the State to protect the livelihood of people and to ensure due process in evictions, as well as to promote alternatives and remedies to those who are being legally dispossessed of land.

Rights to freedoms of expression, association and assembly and other political rights.

- OHCHR urges the Government of Uganda and the Parliament to remove existing legal restrictions to public freedoms that are not in accordance with the letter and spirit of relevant international, regional and domestic human rights standards. In particular, it encourages the development of regulations to the Public Order Management Act, 2013 that delineate the exercise of discretion and procedures to be followed mindful of human rights standards. It also appeals to Parliament to amend the Penal Code Act and the Police Act with a view to upholding the freedoms of peaceful assembly and association.
- OHCHR exhorts the police to respect and protect public freedoms in demonstrations, meetings or other events and use force proportionally and only as strictly necessary.

Non-Discrimination

- The Government of Uganda should provide more resources and support to accelerate the full establishment of the Equal Opportunity Commission (EOC). The EOC should actively disseminate information about its mandate.
- OHCHR encourages the Parliament to enact amendments to the existing legislation or to conclude the discussion over pending bills to address still existing discrimination of women, persons with disability, persons living with HIV/AIDS, migrants and elderly persons and ethnic minorities, in accordance with the country's regional and international treaty obligations.

**TABLE OF COMPLAINTS RECEIVED BY OHCHR DURING 2012, DISTRIBUTED ACCORDING TO
ALLEGED RESPONSIBILITY OR ADMISIBILITY**

Complaints received by OHCHR from January to December 2012				
Institutions complained against	Karamoja sub-offices (Moroto, Kotido)	Northern Uganda sub-offices (Gulu, Kitgum)	Kampala Office	Total per institution
UPDF (including CMI)	87	10	67	164
UPF	32	34	69	135
UPS	2	4	-	6
UWA	2	-	-	2
Judiciary	1	4	-	5
ISO	1	-	-	1
District Government	3	4	-	7
LCC	2	1	-	3
Health facilities	2	-	-	2
Others (individuals or non-state actors)	41	17	28	86
Transferred	-	2	6	8
Out of mandate	-	6	13	19
Total per sub region	173	82	183	438

Complaints received by OHCHR from January to 30 September 2013				
Institutions complained against	Karamoja sub-offices (Moroto, Kotido)	Northern Uganda sub-offices (Gulu, Kitgum)	Kampala Office	Total per institution
UPDF (including CMI)	72	5	25	102
UPF	21	77	54	152
UPS	6	21	4	31
UWA	3	-	1	4
Judiciary	3	-	4	7
District Government	3	6	-	9
LCC	-	1	-	1
MPs	2	-	-	2
Other Institutions/agencies	-	-	29	29
Others (individuals or non-state actors)	5	40	13	58
Transferred	6	4	22	32
Out of mandate	4	19	21	44
Total per sub region	125	173	173	471

Office of the UN High Commissioner for Human Rights in Uganda,
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